

KAMLOOPS INDIAN BAND
HERITAGE CONSERVATION BY-LAW

WHEREAS the Stk'emlupsemc (literally "The People of Kamloops") now known as the Kamloops Indian Band (the "Band") has had a long and active involvement in the protection, management and interpretation of its heritage;

WHEREAS the Band has an inherent right and obligation to maintain and preserve a distinct cultural identity and way of life for the present and future generations of its people;

WHEREAS the Band asserts its proprietorship and stewardship over all its heritage resources within the Band's traditional territory, including within reserve lands under the *Indian Act* and reserve lands set aside by authority of Governor James Douglas (the "Douglas Reserve");

WHEREAS the Band is concerned that the Band's heritage, including traditional use areas, areas of historical significance, sacred and spiritual places and archaeological sites, may be adversely affected by increased land and natural resource development within the Band's traditional territory and reserves;

WHEREAS section 81 of the *Indian Act*, and in particular sub-sections (1)(c), (g), (h), (q) and (r) provide that the Council of the Band may make by-laws for certain purposes;

WHEREAS the Band intends to take steps to protect the Band's heritage from disturbance, desecration or destruction;

AND WHEREAS the Council of the Band deems it to be in the best interests of the Band to make a by-law for such purposes;

NOW THEREFORE BE IT RESOLVED that the Council of the Kamloops Indian Band, at a duly convened meeting, enacts the following by-law.

1. SHORT TITLE

This by-law may be cited as the "Heritage Conservation By-law".

2. **INTERPRETATION**

- (a) "Band" means the Kamloops Indian Band.
- (b) "Band Member" means a person who is a member of the 'Band' and registered on the Band List as defined in the Indian Act
- (c) "Chief and Council" or "Band Council" means the Chief and Council elected according to the custom of the Band.
- (d) "conservation" includes any activity undertaken to protect, preserve or enhance the Band's heritage.
- (e) "designate" means to designate under section 6.
- (f) "develop" means any use of reserve land which involves a change, an expansion or an alteration of an existing use from that as at January 1, 1996.
- (g) "heritage" means having aesthetic, cultural, educational, historical, or spiritual significance to the Band and includes that heritage consisting of traditional use areas, areas of historical significance, sacred and spiritual places, archaeological sites, structural features and landscape features.
- (h) "heritage investigation" means an archaeological or other systematic study of an area with the purpose of revealing its history and establishing where there is a need for protection and conservation; and may include the recording, removal and analysis of artifacts, features and other material necessary for the purpose of the heritage investigation.
- (i) "heritage object" means any object or artifact having heritage significance.
- (j) "proponent" means any person, firm or corporation, whether or not they are related to or part of the Band, which is seeking to develop land within the reserve.

- (k) "reserve" means the reserve lands of the Band, including designated lands, and including lands held under a Certificate of Possession or a Certificate of Occupation, as defined by the Indian Act.

3. OBJECT OF THE HERITAGE CONSERVATION BY-LAW

- (1) The object of the Heritage Conservation By-law is to:
- (a) ensure that considerations of heritage be involved in any development and use of the Band's lands and resources;
 - (b) encourage and facilitate the protection and conservation of the Band's heritage.

4. CULTURAL RESOURCES MANAGEMENT DEPARTMENT

- (1) There shall be a Cultural Resources Management Department (the "CRMD") within the Band. Members of the CRMD shall be appointed by Band Council and shall take direction from Band Council.
- (2) The purposes of the CRMD are as follows:
- (a) to ensure the protection of heritage;
 - (b) to gain further knowledge about the Band's heritage;
 - (c) to increase public awareness, understanding and appreciation of the Band's heritage;
 - (d) to advise Band Council on the preservation and fostering of the Band's heritage and culture;
 - (e) to work with other governments in the regulation and management of all projects related to the Band's heritage within the Band's traditional territory;
 - (f) to undertake such other activities related to the Band's heritage as authorized by Band Council.
- (3) The CRMD may do one or more of the following:
- (a) designate lands in accordance with section 6;
 - (b) issue permits for the investigation of an area to determine the need for heritage conservation and protection;
 - (c) issue permits for the use of areas having heritage significance;

- (d) enter into agreements with proponents and with outside agencies in accordance with the provisions and purposes of this By-law;
 - (e) conduct and arrange exhibits to inform the public;
 - (f) represent the Band in matters regarding the use, management, conservation and protection of heritage.
- (4) In order to fulfil its duties under this By-law, a duly authorized representative of the CRMD may have access to any and all reserve land.

5. CULTURAL RESOURCES MANAGEMENT REGISTER

- (1) The CRMD shall establish and maintain one or more registers, to be known collectively as the Cultural Resources Management Register, for the recording of the following:
- (a) the designation of lands in accordance with section 6;
 - (b) heritage objects acquired under this By-law;
 - (c) permits issued pursuant to this By-law.
- (2) The Cultural Resources Management Register shall be available for inspection by any person during regular business hours.

6. HERITAGE DESIGNATION

- (1) The CRMD will establish an inter-departmental Band working group which shall designate lands within the reserve in accordance with the following categories:

Category #1: Designated heritage areas which, in the opinion of the working group, are currently in need of protection.

Category #2: Areas which, in the opinion of the working group, are not in need of protection.

Category #3: Areas for which the level of protection required is uncertain.

Category #4: Areas which are of such significance that no development which interferes with these areas will be allowed.

- (2) The recommendations of the working group for designating lands shall be submitted to Band Council for approval.

- (3) Band Council shall approve or amend the designation of lands submitted to it by the working group.
- (4) Band Council may amend any designation based on a new report submitted by the CRMD or in light of new information discovered at any time.
- (5) With respect to category #3 lands (ie. uncertain level of protection) the CRMD shall provide to Chief and Council a schedule of heritage investigations to be conducted on lands within this category, as part of the Band's on-going archaeological recovery program. This work shall be paid for out of the heritage protection trust fund. Priority shall be given to the investigation of lands which may be desired for development. The costs of any heritage investigations conducted under this sub-section may be included as a heritage surcharge in any future development of the land.

7. HERITAGE PROTECTION

Except as authorized by a permit issued under section 8, a person shall not do any of the following:

- (a) damage, desecrate or alter any of the Band's heritage areas or remove material that constitutes part of that heritage;
- (b) damage, desecrate or alter a burial place or remove human remains or any object from a burial place;
- (c) damage, alter, cover or move an aboriginal rock painting or aboriginal rock carving;
- (d) damage, excavate, dig in or alter a site, or remove any object from a site that contains artifacts, features, materials or other physical evidence of archaeological value with respect to the Kamloops people's habitation or use.

8. CULTURAL RESOURCE MANAGEMENT PROCESS

(1) HERITAGE INVESTIGATION PERMIT APPLICATION: DEVELOPMENT PROPONENTS

- (a) In order to obtain a permit for category #1 lands (ie. in need of protection) a proponent shall make an application to the CRMD for a heritage investigation permit in the form set out in Schedule 1.
- (b) For category #2 lands (ie. no known protection needed), no application need be made, however a proponent shall provide the undertaking set out in section 9.

- (c) In the event that a proponent proposes to develop category # 3 lands (i.e. uncertain level of protection), before an investigation is conducted by the CRMD, then this land shall be treated as category #1 lands and the relevant permit application procedures shall apply.
- (d) As there can be no development of areas within category #4 lands (ie. fully protected), no heritage investigation application from a proponent will be considered and no permit shall be issued for these lands.

(2) HERITAGE INVESTIGATION PERMIT APPLICATION: OTHERS

- (a) Any party wanting to conduct archeological work on the reserve for any category of land shall apply to the CRMD for a permit in the form set out in Schedule 1.
- (b) The CRMD may require, as a condition of the permit, that the applicant conduct archeological work in an area chosen by the CRMD.
- (c) For greater certainty, this section applies, amongst others, to a member of the Band and to Band Council.

(3) PART I INVESTIGATION: FIELD SURVEY AND RESEARCH

- (a) If required by this By-law, a party shall apply to the CRMD for a heritage investigation permit in order to conduct a comprehensive field survey and field investigation report.
- (b) If the applicant is a proponent, then:
 - (i) the proponent and the CRMD will decide whether the investigation shall be conducted directly by the CRMD or by the proponent. If it is decided that the CRMD is going to perform the work (either under contract or by its own staff), there shall be an agreement as to the costs payable by the proponent.
 - (ii) the proponent shall provide funds for the completion of the work. If required by the CRMD, the proponent and the CRMD may enter into an agreement whereby the proponent pays into the heritage protection trust fund an agreed upon amount to defray the costs of heritage protection required of the development. The agreement may contain such further and other terms as may be necessary. All funds so paid in shall be used pursuant to this By-law and the terms of the agreement.
- (c) Permits issued by the CRMD shall be in the form set out in Schedule 2, and shall contain a clause stipulating that all material found or generated as a result of heritage investigations shall be the property of the Band.

- (d) The CRMD may charge an administration fee in respect of each permit issued under this by-law.

(4) PART II REPORT: IMPACT ASSESSMENT AND SITE EVALUATION: PROPONENT

- (a) Unless otherwise agreed to by the CRMD, on the basis of the field survey work of Part I, a proponent shall prepare an impact assessment and site evaluation report.
- (b) The assessment and evaluation report shall be submitted to the CRMD. The report shall:
 - i) Provide all information obtained from an area in order to document its land use history, including the area's resources, means of utilization, history, relationship to individuals and/or families and any other pertinent documentary evidence of past and current use;
 - ii) Include an analysis of all inventory and research-based information in relationship to the proposed development project which shall include an evaluation of the heritage significance of the area;
 - iii) State the actual and potential impact on heritage resources of the proponent's project;
 - iv) Provide options for avoiding adverse impacts, if these exist;
 - v) If the adverse impacts cannot be avoided, detail alternative proposals for otherwise preserving the heritage value of an area.
- (c) The CRMD may obtain a second opinion on the conclusions reached by the proponent's experts as a result of the Part II work, and generally may take whatever steps may be necessary to ensure that proper information is obtained.
- (d) The CRMD and the proponent shall endeavour to prepare joint recommendations to Chief and Council concerning mitigation measures, including a recommendation as to whether the CRMD or the proponent should perform the mitigation measures. If such joint recommendations are not developed, then the recommendations of the CRMD shall be taken to Chief and Council, along with the comments of the proponent. Chief and Council shall direct what mitigation measures the proponent is required to take as a condition of proceeding with the development.
- (e) If further investigation is required as a result of the decision of Chief and Council pursuant to Section 8(4)(d) hereof, then the proponent shall comply with Section 8(3)(b) of Part I.

(5) **PART II REPORT: SITE EVALUATION: OTHERS**

- (a) Unless otherwise agreed to by the CRMD, on the basis of the field survey work of Part I, the holder of a permit, who is not a proponent, shall prepare a site evaluation report.
- (b) The assessment and evaluation report shall be submitted to the CRMD. The report shall:
 - i) Provide all information obtained from an area in order to document its land use history, 'including the area's resources, means of utilization, history, relationship to individuals and/or families and any other pertinent documentary evidence of past and current use;
 - ii) Include an analysis of all inventory and research-based information including an evaluation of the heritage significance of the area;

(6) **PART III - IMPACT MITIGATION**

- (a) If a ~~Part~~ Part III Impact Mitigation Permit is required pursuant to Section 8(4), it shall contain the terms and conditions approved by Chief and Council under subsection 8(3)(d).
- (b) For greater certainty, sections 8(3)(b), (c) and (d) of ~~Part~~ Part I apply equally to the completion of the work required under this ~~Part~~ Part III.
- (c) When the impact mitigation measures have been completed, a final report shall be provided to the CRMD. The final report may include recommendations for follow up. The CRMD will provide to Chief and Council a copy of every final report.

(7) **COMPLETION OF INVESTIGATION**

- (a) Upon the completion of the heritage investigation work required under this section and upon the CRMD being satisfied that the Band's heritage is protected consistent with the object and purposes of this By-law, the CRMD shall provide Band Council with a written statement advising that conservation and protection of the Band's heritage in relation to the proponent's development has been or will be met by the proponent.
- (b) Upon approval by Chief and Council, the CRMD shall provide the proponent with a certificate in the form of Schedule 3.
- (c) The certificate shall include any terms and conditions required by Chief and Council pursuant to section 8(4)(d).

9. PROPONENT'S UNDERTAKINGS

- (1) Every proponent seeking to develop lands within the reserve shall provide a written undertaking to the CRMD that, in the event that any heritage resources are discovered on the land at any time during the course of the development, the CRMD shall immediately be advised as to the nature of the discovery. The proponent shall cease work until the CRMD can take the necessary action.
- (2) Forthwith upon being advised of the discovery, the CRMD shall immediately investigate and determine what, if any, steps the proponent must take in order to deal with the discovery. The CRMD will have an emergency response system in place for such events.
- (3) If the proponent is uncertain as to whether or not any discovery comes within this provision, it shall immediately seek the advice of the CRMD.
- (4) The CRMD has the obligation to act quickly and expeditiously in relation to any information it receives from a proponent, or any advice which is sought.

10. HERITAGE PROTECTION TRUST FUND

- (1) The Band shall establish a heritage protection trust fund. The fund shall be used for heritage conservation and protection purposes.
- (2) The fund shall be under the control of the Band Council and administered by the CRMD.
- (3) The fund will be derived from the following sources:
 - i) payments required under sub-sections 8(3)(b) to be made by proponents, whose development of reserve land may have an impact on the Band's heritage
 - ii) heritage protection levy applied to interests in land taxed pursuant to the Band's assessment and taxation by-laws
 - iii) heritage surcharge pursuant to a building permit issued by the Band
 - iv) provincial and federal funding provided for heritage purposes
 - v) such other revenue as may become available
- (4) Any person applying for a permit under this by-law may apply to the CRMD for a financial contribution from the fund. The applicant shall provide reasons why such contribution is needed. The recommendations of the CRMD shall be made to Chief and Council, who shall either approve or alter the recommendations of the CRMD. Priority shall be given to providing financial assistance to non-profit projects.

11. BREACH OF BY-LAW

- (1) If the CRMD reasonably believes that there has been or may be a breach of this By-law as a result of an alteration to any portion of the reserve, the CRMD may issue, to a person or class of persons, a stop work order that prohibits any alteration of the area for a period of up to 120 days, subject to any requirements the CRMD considers appropriate.
- (2) Everyone who contravenes this By-law is liable, on *summary* conviction, to a fine of not more than \$1,000.00 or to imprisonment for not more than 30 days or to both.

12. APPLICATION OF BY-LAW

- (1) If there is a conflict between the provisions of this By-law and any other by-law of the Band, this By-law shall apply to any matter affecting the protection and conservation of the Band's heritage.
- (2) This By-law applies to all land developments and resource management projects within the reserve, including those proposed for rivers and waterways, that may impact the Band's heritage.
- (3) The Band may enter into an agreement with another Indian Band and/or with the provincial or federal government with respect to conservation and protection of heritage.

13. GENERAL PROVISIONS

- (1) No person shall interfere with heritage investigations undertaken in accordance with the provisions of a permit issued under this By-law.
- (2) The CRMD may amend, suspend or cancel a permit at any time,
 - (a) with the concurrence of the holder of the permit
 - (b) without the concurrence of the holder of the permit where the holder provided false or misleading information in the permit application or the holder has breached a condition of the permit or the holder has contravened a provision of this By-law.
- (3) This By-law shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its purposes.

- (4) Where a provision of this By-law is expressed in the present tense, the provision applies to the circumstances **as** they arise.
- (5) Headnotes, marginal notes and headings form no part of the enactment, but shall be construed **as** being inserted for convenience of reference only.
- (6) A finding by a court that a provision of this By-law is void or invalid shall not affect the validity or invalidity of the rest of the By-law.

14. COMING INTO FORCE

- (1) This By-law shall come into force upon approval of Chief and Council and in accordance with s.82(2) of the *Indian Act*.

APPROVED BY CHIEF AND COUNCIL THIS _____ day of _____, 199__.

CHIEF: _____

COUNCILLOR: _____ COUNCILLOR: _____

COUNCILLOR: _____ COUNCILLOR: _____

COUNCILLOR: _____ COUNCILLOR: _____

COUNCILLOR: _____ COUNCILLOR: _____

Schedule 1

(See Section 8(1) of Heritage Conservation By-law)

KAMLOOPS INDIAN BAND

HERITAGE INVESTIGATION PERMIT

APPLICATION

To: Kamloops Indian Band
Cultural Resources Management Department (CRMD)
374 Yellowhead Highway
Kamloops, B.C.

From: (Name and address of applicant)

This is an application to the Kamloops Indian Band ~~Cultural~~ Resources Management Department (CRMD) for a Part I () or Part III () Heritage Investigation Permit.

1. The area of the proposed development is as follows (please also attach a sketch or map):

(Lot numbers or legal description, if available)

2. A Part I Heritage Investigation Permit requires that the applicant conduct a comprehensive field survey resulting in the identification of all archaeological, spiritual, traditional-use, and historically significant areas which may be affected by a development.

Outline below (or attach a statement) as to the archaeological methodology to be used during the heritage investigation (including what soil testing or excavation work is proposed to be done).

Please indicate the level to which the heritage material will be analyzed.

3. What archival, library and oral history research do you propose to do (interviews with the elders, etc.).

4. Please attach a budget for the work to be performed under the permit.

5. Has an agreement been reached with the CRMD as to the heritage costs payable by the applicant?

If so, please indicate the agreement which has been reached, and attach relevant documents confirming the agreement.

6. Please attach a list of all archaeologists and/or anthropologists and other employees whom the applicant proposes conduct the heritage work, including their educational and work history.

Applicants are encouraged to hire qualified workers from the Band membership to participate in the heritage investigation work. Please indicate whether any of the above people are members of the Kamloops Indian Band.

7. The applicant acknowledges the following:

7.1 That it is aware of the Cultural Heritage Policy for the Kamloops Indian Band, and that it will abide by the terms and conditions of the policy and any applicable by-laws, including the Heritage Conservation By-law, of the Band.

7.2 That CRMD shall retain the right to approve the experts used by the applicant.

8. The applicant specifically undertakes that in the event that this application is approved and a permit issued, if any heritage resources are discovered in the course of the development which were not revealed or considered as a result of the Part I investigation,

then the applicant, its agents servants and employees shall immediately advise the CRMD as to the nature of the discovery.

Dated at _____, in the Province of British Columbia, this
_____ day of _____, 199__.

Signed by the duly authorized representative of the applicant:

(Print Name)

(Position)

For CRMD use only:

Date received: _____

Category of lands to which this application relates: _____

Action to be taken:

Futher comments:

Date that Part I Heritage Investigation Permit granted or denied:

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Schedule 2
KAMLOOPS INDIAN BAND
PART I: FIELD SURVEY
or
PART III: IMPACT MITIGATION PERMIT

Permit No. _____ Date _____

Name of Project:

Type of Project:

Permit Area:

Permittee:

Address of Permittee:

Pursuant to the agreement between the Kamloops Indian Band and _____, this permit is issued to _____ of _____ (the "Permittee").

This permit authorizes the Permittee, his agents, servants and employees (hereinafter referred as the "~~firm~~") conduct an archaeological investigation of the Permit Area in accordance with the Band's heritage policy.

The terms and conditions of this permit as follows:

1. The ~~firm~~ is to conduct this study under the direction of the Cultural Resources Management Department ("CRMD") of the Kamloops Indian Band.
2. The term of the permit is from _____ to _____
3. The ~~firm~~ will conduct a complete systematic heritage resource inventory and significance assessment of all heritage sites within the Permit Area, which area is described as:
4. The Permittee has submitted to the CRMD a detailed proposal and application for this permit which ~~was~~ approved by the CRMD on the _____
5. The highest standard of skill and workmanship will be used in the performance of the work under this permit.
6. The study will be performed in accordance with the current professional standards and practices for archaeological work in British Columbia.

7. Restoration of all sites is required in accordance with the Permittee's proposal, and direction of the CRMD.
8. All persons engaged by the firm to assist in the study shall be bound by the terms and conditions of this Permit and shall be fully qualified to perform the work.
9. The Band reserves the right to terminate this permit if the permit is breached or if Chief and Council of the Band form the opinion that a continuation of the study is contrary to the interests of the Band.
10. On completion of the work under this Permit, or as otherwise directed by the CRMD, the firm will submit a detailed report to the CRMD.
11. If the work is terminated for any reason before the completion of the study, the ~~firm~~ will submit a detailed report of conclusions up to this point to the CRMD.
12. All data, maps, journals and photographs and other material generated through or found as a result of the study are the exclusive property of the Band and are to be submitted to the CRMD no later than 60 days following the conclusion of this permit, unless otherwise agreed to by the CRMD.
13. The Band and the Permittee shall jointly use their best efforts to publish any results from the investigation. There shall be joint copyright between the Permittee and the Band over any such publication, unless otherwise agreed between the parties.
14. All material found or generated by the proponent as a result of heritage investigations shall be the property of the Kamloops Indian Band.
15. Subject to any further direction from the CRMD, and in accordance with the Band's heritage policy, all heritage objects and associated materials are to be deposited with the Secwepmec Museum, Kamloops, B.C.

16. The investigation study shall be performed on the basis that the Permit Area is within Kaniloops I.R. #1. Therefore, the work under the permit shall not be conducted under any permit obtained from the Province of British Columbia.

Chief and Council
Kaniloops Indian Band

_____	_____
_____	_____
_____	_____
_____	_____

Declarations:

I, _____, hereby agree to abide by conditions outlined in this Permit.

Signature: _____

Date: _____ (day) _____ (month) _____ (year)

I, _____, for and on behalf of _____, hereby agree to abide by conditions outlined in this Permit.

Signature: _____

Date: _____ (day) _____ (month) _____ (year)

Schedule 3

(See Section 8 (7) of Heritage Conservation By-law)

I, _____ of the Kamloops Indian Band Cultural Resources Management Department hereby certify that the proponent, _____, to whom various heritage permits were issued as follows:

has satisfactory complied with the requirements of the permit(s) and the Heritage Conservation Policy and By-law. I am satisfied that the conservation and protection of the Band's heritage in relation to the proponent's development has been or will be met by the proponent. [The proponent is required to comply with the following additional conditions]:

Dated at the City of Kamloops, Province of British Columbia this _____ day of _____, 199__.