



# Land Code Summary

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## INTRODUCTION

Kitsumkalum members aged eighteen (18) and over will have an opportunity to vote on the Kitsumkalum Land Code and Individual Agreement. If approved by the community, our Land Code becomes our basic land governance system replacing the sections of the *Indian Act* related to land management.

This summary provides an overview and some important highlights from each section of the Land Code.

We encourage all members to take the time to read all of the information materials provided online and in the information package that will be mailed to all eligible voters.

You can find the full Kitsumkalum Land Code, Community Ratification Process (CRP), Individual Agreement and lots of other relevant information on the website, at the band office, and at the lands department office.

Website link: <http://www.kitsumkalum.com/kitsumkalum-laxyuup/land-code/>

*Note to Readers: Terms that are capitalized in this Summary refer to terms defined in the Kitsumkalum Land Code.*

Questions? Want more information?  
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## LAND CODE PREAMBLE

- Kitsumkalum or "Gitsm'geelm" is an original Tribe of the Tsimshian Nation. Our Galts'ap are comprised of four Pteex: the Laxsgiik, the Laxgibuu, the Ganhada, and the Gispudwada, each containing one or more Waap, the communal identity of the Kitsumkalum tribe;
- Kitsumkalum territory ranges from the Kitsumkalum Valley down the Skeena River and the Ecstall River, to the Marine Coast of the Tsimshian Peninsula including the Prince Rupert and Port Edward Harbour;
- Kitsumkalum's connection to the lands, waters, and natural resources has been and continues to be central to Kitsumkalum social, cultural and political life;
- Kitsumkalum has the right and responsibility to continue to manage and protect all Kitsumkalum lands, waters and resources as has been done by our ancestors shaped by the Tsimshian Ayaawx and Adaawx;
- Kitsumkalum has constitutionally protected and legally enforceable inherent Aboriginal Title and Rights to the lands, waters, and resources of Kitsumkalum's territories. The Canadian legal system recognizes Aboriginal title as sui generis, or unique collective right to the use of and jurisdiction over Kitsumkalum territories;
- It is the tradition of Kitsumkalum that no Kitsumkalum Reserve Land or any of Kitsumkalum's traditional Aboriginal title lands will be sold without full consultation with the Hereditary Chief of each Pteex responsible for those lands that are proposed to be sold. This Land Code is not intended to, nor will it, interfere with that tradition;
- Kitsumkalum continues to hold title and rights over Kitsumkalum territory including, but not limited to its reserve lands;
- Kitsumkalum is committed to integrating cultural values, customs and traditions into reserve land management;
- Kitsumkalum is committed to building a strong local economy for Kitsumkalum and its Members;
- Kitsumkalum strives to adapt and create opportunities from changing environmental and economic conditions;
- Kitsumkalum recognizes the importance of building accountability and transparency into reserve land management;
- Kitsumkalum has opted to manage its reserve lands pursuant to this Kitsumkalum Land Code rather than having them managed by Canada under the Indian Act;
- Kitsumkalum is affirming its right to exercise control over its reserve lands and resources for the use and benefit of its Members under the Framework Agreement on First Nations Land Management and this Land Code;
- This Kitsumkalum Land Code is hereby enacted as the fundamental land law of Kitsumkalum.



*Nothing in the Land Code or any decisions made under the Land Code changes any Aboriginal, Indigenous, treaty, inherent or other rights and freedoms of Kitsumkalum or members now or in the future.*

## PART 1 – Preliminary Matters

Part 1 covers some of the basics on how to read and interpret the Kitsumkalum Land Code as well as define the scope of Kitsumkalum's land management authorities.

It describes the purpose of the Land Code which is to set out the principles and administrative structures that will guide Kitsumkalum's exercise of authority and jurisdiction over Kitsumkalum Reserve Land.

The Kitsumkalum Land Code does **not** affect:

- Indigenous, Treaty, inherent rights, or other rights or freedoms;
- our fiduciary relationship with Canada or the Province and;
- our eligibility to receive and or participate in services, programs, and funding offered by Canada and the Province.

It describes the reserve land that will be subject to the Land Code, including:

- Kitsumkaylum Indian Reserve No.1

- Dalk-ka-gila-quooux Indian Reserve No.2 (otherwise known as "Robintown")
- Zimagord Indian Reserve No.3

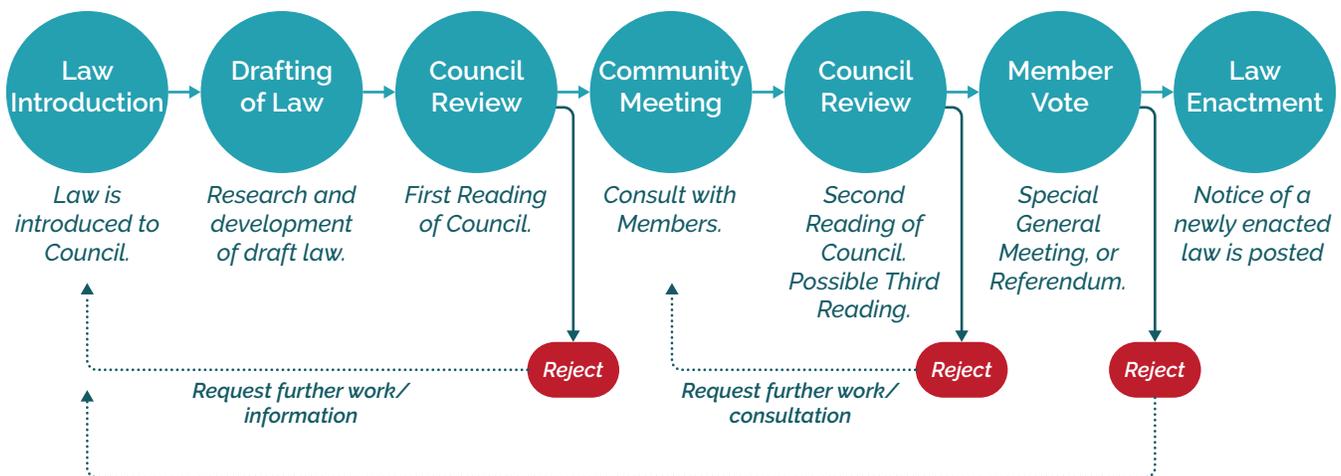
It describes the ways and conditions under which additional lands can be brought under the Land Code.

## PART 2 – Kitsumkalum Legislation

Part 2 covers law making; describing in detail, how Kitsumkalum laws can be proposed, drafted, shared, and approved.

It outlines Kitsumkalum's authority to make laws, and sets out a law-making process involving a lands manager, lands committee, leadership, and community members. Kitsumkalum laws will need to be passed by the community in a Special General Meeting, or by Referendum as determined by Council.

### Kitsumkalum Law Making Procedure



It includes a provision that Council can pass urgent laws without going through the full process if the law is urgently needed for public health and safety or to protect members. An urgent law expires 120 days after it is passed.

All laws that get passed are published on the Kitsumkalum website, posted within the administrative office, and recorded in the Kitsumkalum Land Register.

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### **PART 3 – Community Meetings And Approvals**

Part 3 describes the ways in which the community will come together to become informed and participate in law-making and land-related decisions.

It distinguishes three meeting types (depending on the significance of the land matter) as follows:

- **Community Information Meetings** will be held for the purposes of providing information and gathering input.
- **Special General Meetings** will be held for important lands matters and laws that require community approval by a vote; and
- **Referendums** will be required for specific matters of significant interest or concern and laws that require community approval by a vote as determined by Council.



*Member approval will be needed for any proposed laws.*

A Special General Meeting consisting of Council and members will be held specifically for a vote on a proposed law or an amendment to a law. A law will pass if:

- At least 10% of Eligible Voters cast a ballot in the vote; and
- A majority of those that cast a valid ballot vote in favour.

A Referendum will be held specifically for a vote on significant matters and proposed laws as determined by Council. A matter put to Referendum shall be approved if:

- At least 20% of Eligible Voters cast a ballots in the Referendum; and
- A majority of those that cast a valid ballot vote in favour.

It also details how members will be notified. Public Notice will be posted at the Kitsumkalum administration building, posted on the website, delivered to members on reserve and mailed to members off reserve.

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### **PART 4 – Protection Of Land**

Part 4 describes the important ways we can protect our reserve lands under a Kitsumkalum Land Code.

#### **Community Expropriation**

For occasions when Kitsumkalum may need to use land that is held by an Interest holder as defined in the Land Code for a community purpose, the Expropriation process sets-out how Kitsumkalum can take the land, ONLY if it is necessary for a specific community purpose. Before expropriating the land, Council must try and reach agreement with the Interest holder and compensate them. Before proceeding to make any expropriations, Council must enact a law respecting expropriation.

## **Voluntary Exchange of Kitsumkalum Reserve Land**

The voluntary exchange of reserve land process outlines how Kitsumkalum can exchange a parcel of Kitsumkalum Reserve Land for another parcel of land. An exchange must always be for a parcel of land that is the same size or bigger. Also, the appraised value of the parcel must be the same or higher. An exchange of land must be decided by Referendum.

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### **PART 5 – Accountability**

Part 5 covers how we can be accountable to our members with how we manage our Kitsumkalum Reserve Lands through establishing processes for conflict of interest, financial management and reporting to members.

Conflict of interest relates to situations where a person has a real or perceived interest in the outcome of a decision, and is also involved in making the decision. This section details that we will deal with conflicts of interests through the existing *Kitsumkalum Conflict of Interest Law 2015*.

Similarly, finances will be dealt with through our existing *Kitsumkalum Indian Band Financial Administration Policy 2016*.

This section also outlines how an annual report on land matters will be prepared and available to members.

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### **PART 6 – Land Administration**

Part 6 covers the basics of how land administration will be set-out on a day to day basis.

It describes how a lands manager and staff will need to be appointed to oversee land administration (i.e. issuing permits, coordinating

surveys, etc.) and Land Code implementation.

This section identifies the need for a lands committee to support with things like recommending laws, engaging the community on land matters, and providing advice to Council and staff on land matters.

Reasonable efforts will be made to have the Lands Committee consist of:

- one elder;
- one youth;
- a member of each of the 4 clans; and
- a member of staff or a consultant

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### **PART 7 – Interests In Kitsumkalum Reserve Land**

Part 7 deals with Council's authority to approve land uses and land related activities. These formal authorizations are called 'Interests' in the land. Examples of 'Interests' include Leaseholds, Permits, and Certificates of Possession or CP's that can be described as follows:

- **Certificate of Possession:** documented evidence of a Kitsumkalum member's lawful possession of Reserve lands.
- **Permits:** a land use permit is required where a person(s) wishes to conduct a specific land use activity.
- **Mortgages:** a mortgage loan is an agreement that allows a person(s) to borrow money from a bank or similar organization to purchase land and/or property.
- **Leaseholds:** the holding of property by lease or sublease, which gives a person the right to use a parcel of land for a specific period of time. In the Land Code, Leaseholds also refer to sub - leases.
- **Easements:** a right to use and/or enter onto

the property of another without possessing it.

- **Allotments:** lawful possession of a parcel of reserve land. Basically, the equivalent of a Certificate of Possession.

It confirms that Interests that were granted by the Minister under the *Indian Act* and before the Land Code will be managed by Kitsumkalum under the Land Code. These Interests and/or Licenses will continue unless the grantee (the person or business with the Interest) agree to have it replaced.

### **Leaseholds**

Council can grant a Leasehold in Kitsumkalum Reserve Land for a term of up to fifteen (15) years.

If the proposed Leasehold has a term longer than fifteen (15) years, including any renewal term, (but not more than forty-nine (49) years) community approval is required at a Special General Meeting.

If the proposed Leasehold has a term long than forty-nine (49) years, including any renewal term, a Referendum is required.

A Leasehold may not have a term longer than ninety-nine (99) years.

### **Easements, Licenses, And Permits in Kitsumkalum Community Lands**

Council can grant Easements, Licenses, and Permits in Kitsumkalum Community Land to utility companies or other public or governmental entities, or partnerships including limited partnerships, corporations and other entities in which Kitsumkalum has an economic interest, or for a Community Purpose for a term determined by Council.

In other cases:

If the proposed Easement, License or Permit has a term longer than fifteen (15) years, including any renewal term (but not more than

forty-nine (49) years) community approval is required at a Special General Meeting.

If the proposed Easement, License or Permit has a term longer than forty-nine (49) years, including any renewal term, a Referendum is required.

An Easement, License, or Permit may not have a term longer than ninety-nine (99) years.

### **Mortgages**

The holder of a Leasehold, Certificate of Possession, or Allotment can grant a Mortgage of that Leasehold or Certificate of Possession or Allotment with the written consent of Council.

### **Transfers**

A Certificate of Possession or an Allotment may only be transferred to another member or to Kitsumkalum. A member or Kitsumkalum with a Mortgage can only transfer or assign that Mortgage to another member or Kitsumkalum.

### **Allotments**

Council can grant Allotments to members that do not exceed one acre in size, if that member is not the holder of another parcel of reserve land.

This section establishes that Interests and Licenses as well as written instruments in the land will require appropriate record keeping in the Kitsumkalum Register.

It details that Certificates of Possession previously issued under the *Indian Act* continue to exist after the coming into force of this Land Code.

It confirms that natural resources on Kitsumkalum Reserve Land belong to Kitsumkalum and are subject to the following rules:

- The removal or use of natural resources from Kitsumkalum Reserve Land without written consent of Council is not permitted.

- Unless it is specifically included in a Leasehold, Permit or License, the Interest does not include any right to any natural resource.
- No person can remove or permit someone else to move minerals, stone, sand, gravel clay soil, trees, saplings, shrubs, underbrush, timber, cordwood, hay, water or other types of materials without permission from Council.

It describes how surveys will be conducted in accordance with the *Canada Lands Survey Act* and the *Canada Lands Surveyor Act*.

The provisions of the *Indian Act* that deal with wills and estates will continue to apply to Interests in Kitsumkalum Reserve Land. A person who inherits an Interest from a deceased member is entitled to have their Interest registered in the Kitsumkalum Land Register.

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## **PART 8 – Dispute Resolution**

Part 8 covers how Kitsumkalum Reserve Land disputes will be addressed. Wherever possible, land-related disputes will be resolved through informal discussions between the parties in a dispute. If the parties are unable to resolve their disputes they may agree to try and resolve the dispute through mediation. If the parties aren't able to decide on a mediator or the mediation process, one or more parties can escalate the dispute to arbitration. Kitsumkalum will not be responsible for the costs of dispute resolution between two parties where Kitsumkalum is not a party.

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## **PART 9 – Other Matters**

Part 9 covers important topics that do not necessarily fit into other sections of the Land Code.

It describes how, unless otherwise outlined

in law, the summary conviction procedures of part XXVII of the Criminal Code, apply to offences under the Land Code.

It details that the Kitsumkalum Land Code will be amended in accordance with the rules in the Land Code which state that amendments to the Land Code requires a Referendum. Minor amendments, referred to as "Revisions" in the Land Code may be made by Council.

It details that the Land Code does not take effect unless:

- Kitsumkalum members vote to approve the Land Code.
- The Land Code is certified by the Verifier in accordance with the Framework Agreement.

This section describes how Kitsumkalum will arrange for and maintain insurance coverage for liability of Kitsumkalum in relation to the management of Kitsumkalum Reserve Lands.