



## **Penelakut Tribe Tumuhw (Land) Code Summary**

### **Introduction**

Penelakut Tribe Members will be voting on the Penelakut Tribe Tumuhw Code on December 17<sup>th</sup> and 18<sup>th</sup>, 2019. The Tumuhw Code was drafted by a committee of Penelakut Members, with assistance from several technical advisors and legal council. The purpose of the Penelakut Tribe Tumuhw Code is to set out the principles, guidelines and processes for land management for Penelakut Tribe. Furthermore, Penelakut will exercise control, decision making, governance, administration and management over reserve lands and resources.

### **Ratification**

The Tumuhw Code cannot come into force unless Penelakut Tribe Members approve both the Tumuhw Code and the Individual Agreement with Canada, in a ratification vote. If approved, Penelakut Tribe will govern, manage and administer our own lands and natural resources under our own law. Penelakut Tribe reserve lands will no longer be managed by the government of Canada under the *Indian Act*.

**The Penelakut Tumuhw Code contains a Preamble and 9 Sections. The following is a summary of each:**

### **Preamble**

The Preamble is a statement about our community's reasons for adopting our own land management law. The Preamble states:

“The Penelakut people plan and care for our lands based on Penelakut's distinct Indigenous laws. As outlined through our snuw'ey'ulh and oral history the Penelakut culture and our economic survival has been clearly tied to our relationship to our land and our resources, since time immemorial. Penelakut peoples are immersed in the cyclical nature of our land and organized our trade, our living spaces, our hunting and gathering based upon these cycles. The cyclical nature of our land, our water and our resources affected us as we affected them. This relationship to our land is sacred in nature and difficult to define in a few words.

On February 14, 2017 Penelakut Tribe became a signatory to the Framework Agreement on First Nations Land Management, as the Penelakut Tribe wishes to govern our land and resources under the Penelakut Tribe Tumuhw Code, rather than having our land and resources managed on our behalf under the Indian Act.

Neither the Framework Agreement on First Nations Land Management, nor the Penelakut Tumuhw Code are intended to define or prejudice inherent rights, or any other rights, of Penelakut Tribe to control our reserve lands and resources or to preclude other negotiations in respect of those rights.”

### **Part 1: Preliminary Matters**

Part one discusses the definitions to be used throughout the Tumuhw Code, how the document should be interpreted, an explanation of where the authority to govern comes from, what the purpose of the Tumuhw Code is and what lands the Tumuhw Code applies to.



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The snuw'ey'ulh of the Penelakut Tribe speaks to the obligation of the Penelakut people to care for and respect the land. By enacting the Tumuhw Code, the Penelakut Tribe is reasserting this relationship. Nothing in the Penelakut Tribe Tumuhw Code is intended to suppress or abolish any Aboriginal rights and title now or in the future.

Penelakut Tribe Lands that are subject to the Tumuhw Code:

- Tsussie – IR #6
- Penelakut Island – IR #7
- Tent Island – IR #8
- Galiano Island – IR #9

### **Part 2: Penelakut Tribe Authority**

Part two outlines the process for Law-Making and the Regulatory Instruments, which Penelakut Tribe can develop under the Tumuhw Code. Council may make Laws respecting:

- development, conservation, protection, management, regulation, occupation, servicing, use and possession of and planning for, Penelakut Tribe Lands;
- Interests or Licenses;
- establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, revenues, royalties or other monies in relation to Penelakut Tribe Lands;

In addition to Laws, Council may make other regulatory instruments, including rules, regulations, standards, codes and policies.

Part two also details the procedure for how new land laws will be created, including where they will be published, when they take effect, who can access copies and where:

- any Eligible Voter or Penelakut Tribe staff member may propose a Law
- before a proposed law can be enacted, Chief and Council must post and publish it at least twenty-one (21) days before it is enacted
- once enacted, all laws must be published in the administration office and on the Tribe's website
- all laws developed under the Tumuhw Code take effect on the date it is enacted
- any person may obtain a copy of a law or resolution created under the Tumuhw Code.

### **Part 3: Community Meetings and Approvals**

Part three defines the rights of Eligible Voters, community input requirements, procedures at a meeting of members and ratification votes:

- each Eligible Voter is entitled to attend a meeting of Members called under the Tumuhw Code and cast a ballot in a ratification vote



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- Council must convene a meeting of members to receive their input prior to the enactment of a variety of laws. For example, laws respecting a community plan, a heritage site, environmental protection and matrimonial property on reserve.
- notice of a meeting of members must be given at least two weeks prior to a meeting
- a ratification vote is required for any voluntary exchange of land, amendments to the Tumuhw Code, a Land Use Plan, any grant or renewal of an interest or license exceeding 35 years, deletion of a heritage site, and any grant of non-renewable resources for a term exceeding five years.

### **Part 4: Protection of Interests in Land**

Part four of the Tumuhw Code deals with expropriation of Land for community purposes, interim environmental protection of the Land, voluntary Land exchanges and protections.

Expropriation of Lands for community purposes:

- Can only be done for a necessary community purpose where no other Lands suited to the stated purpose are reasonably available
- Council must enact a law respecting the rights and procedures for community expropriations
- Compensation for expropriated Lands must be based upon fair market value

Interim Environmental protection of Land:

- Until Penelakut Tribe enacts an Environmental protection law and an archaeological and cultural resource law, Provincial standards will apply.

Voluntary Land Exchanges and Protections

- An exchange of Land can only be done with a ratification vote by members
- If an exchange is to be done, the land received in the exchange must be the same or greater in size and value

### **Part 5: Accountability**

Part five provides rules around conflict of interest, financial management, financial records, annual report and access to the audit:

Conflict of Interest

- Rules will apply to Chief and Council, staff and any member of a Board, Committee or other body established to deal with Penelakut Tribe Lands matters
- If there is any actual or perceived conflict of interest in a matter being dealt with, the person in conflict must disclose the conflict and abstain from participating in deliberations, discussions or decisions on the matter
- A dispute resolution panel will have jurisdiction to decide any matter regarding a Conflict of Interest
- If Council is not able to pass a law or resolution due to a Conflict of Interest, they may refer the matter to the community for a ratification vote



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### Financial Management

- Applies only to financial matters relating to Penelakut Tribe Land and Natural Resources that are administered under the Tumuhw Code
- Council will establish financial laws and policies around receipt, management and expenditure of monies
- At the end of each fiscal year, Council will prepare a financial statement in respect of monies related to Penelakut Tribe Lands and Natural Resources
- Council will appoint an Auditor to provide an audit report to Council and the Lands Advisory Committee not more than one hundred and fifteen (115) days after the fiscal year end

### Annual Report

- Council must publish an annual report on Land administration within one hundred and eighty (180) days after the end of each fiscal year, which must include a review of land management activities and a copy and explanation of the audit as it applies to Penelakut Tribe Lands and Natural Resources

### Access to the Audit

- Any Member of Penelakut Tribe can have reasonable access to the Auditor's Report and the Annual Report

## Part 6: Land Administration

Part six defines the role of the Lands Manager, the Lands Department and the Lands Advisory Committee.

### Lands Manager

Council will hire a Lands Manager to manage and administer Penelakut Tribe Land in accordance with the Tumuhw Code and will also manage and oversee the day-to-day operations of the Lands Department

### Lands Department

A Lands Department will be established to administer Penelakut Tribe Lands in accordance with the Tumuhw Code and will maintain and protect records in relation to Penelakut Tribe Lands.

### Lands Advisory Committee

After the Tumuhw Code becomes operational, a Lands Advisory Committee will be established to:

- Advise Council and the Lands Manager on matters related to the Land administration system
- Advise Council and staff on matters respecting Penelakut Tribe Land



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- Make recommendations to Council on enacting and amending Laws, resolutions, policies and practices
- Hold meetings of Members to discuss Penelakut Tribe Land issues
- Review and make recommendations to Council concerning applications for Interests and Licenses in Penelakut Tribe Lands
- Assist in the exchange of information on land issues between Members and Council
- Oversee community input and approvals

The Lands Advisory Committee may establish rules for the procedure at its meetings and conduct of its affairs, which are consistent with any established Laws, Resolutions, rules or procedures

### **Part 7: Interests and Licenses**

Part seven describes the ways that individuals or companies can have legal interests in Penelakut Tribes Lands and how Penelakut Tribe Members and non-members can use and occupy the Lands.

An Interest in land is when someone has a legal right to use or occupy the land. Interests are leases, licenses, permits, mortgages, and Certificates of Possession (CP) and are granted by Council according to the rules of the Tumuhw Code.

This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law that would replace the existing Family Homes on Reserve and Matrimonial Interests or Rights Act

- Revenue from Lands
  - The Lands Department will, in consultation with the Lands Advisory Committee establish the process and recommend any Laws, rules and policies for determining fees to be paid in relation to Interests and Licenses, fees for service provided by staff or contractors and the fees and royalties to be paid for the taking of Natural Resources
- Registration of Interests and Licenses
  - Interests or Licenses created or granted after the Tumuhw Code takes effect must be registered in the First Nations Land Registry system
- Duplicate Lands Register
  - Council may direct the Lands Manager to maintain a duplicate Lands Registry with the same content as the First Nation Lands Registry System
- Limits on Interests and Licenses
  - All Interests and Licenses must be in writing
  - Standards, criteria and forms for Interests and Licenses in Penelakut Tribe Lands will be established
  - Agreements purporting to grant, dispose of, transfer, encumber or assign an Interest or License after the Tumuhw Code takes affect is void if it contravenes the Code
- Existing Interests and Licenses



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- Any valid Interest, License or Custom Holding that exists when the Tumuhw Code takes effect, will continue in accordance with its terms and conditions
- New Interests or Licenses
  - Some of the Interests and Licenses that can be granted by Council are Certificates of Possession, Leaseholds and easements, licenses to take natural resources, certificates or documentation to confirm ownership, life estates in Land and consent for mortgages.
  - Any grants to remove natural resources from a CP holder's land can only be done with the consent of the CP holder
- Certificates of Possession entitle the holder to
  - Benefit from the natural resources arising from the Land
  - Grant subsidiary interests in their CP lands including leases, life estates and easements
  - Transfer the CP to another Member
  - Any other rights that are attached to the CP under the *Indian Act*
- Limits on mortgages and seizures
  - The holder of an Allotment, CP or Leasehold may grant a mortgage of that Interest
  - The term of any Leasehold must not exceed ninety-nine (99) years
- Residency, access and trespass
  - Outlines the rights of residence and access to Penelakut Tribe reserve Lands
  - All civil remedies for Trespass are preserved, which means that trespassers are breaking the law and can be prosecuted
- Transfers on death
  - A Person who is eligible to receive an Interest in Penelakut Land is entitled to have that Interest registered in the First Nation Lands Registry System
  - Rights of Members in the absence of a Will
- Spousal property law
  - Council may enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage

### Part 8: Dispute Resolution

Part eight outlines how Land disputes will be addressed. The intent of this part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Penelakut Tribe Land will do so harmoniously and with access to procedures to resolve disputes.

If disputes cannot be settled through informal discussions by the parties to the dispute, a staged process can be used, which involves:

- Facilitated discussions
- Negotiation
- Mediation
- Final arbitration by a Dispute Resolution Panel or adjudicator.



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A Dispute Resolution Panel can be requested by the parties to a land dispute. Council may create Laws, policies and procedures for resolving Disputes including code of conduct for any persons retained to assist in the resolution of disputes.

### Part 9: Other Matters

Part nine addresses four important issues:

- Liability
  - The Tribe must maintain Liability insurance
- Offenses, Penalties and Enforcement
  - The summary conviction procedures under Part XXVII of the *Criminal Code*, apply to offences under the Tumuhw Code
  - Council may enact laws respecting the appointment of justices of the peace for the enforcement of Penelakut Tribe Land Laws, however if no justices of the peace are appointed, laws are to be enforced by the courts
- Amendments
  - All amendments must receive community approval by ratification vote, except editing for minor improvements, which do not change the substance of the Tumuhw Code.
- Commencement
  - The Tumuhw Code will only come into effect if the community approves it by ratification vote and it has been certified by the Verifier