

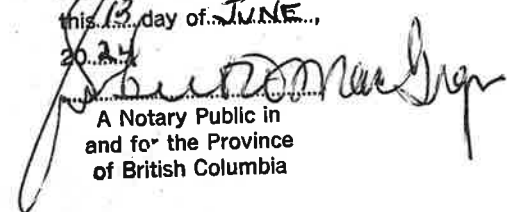
Gwa'sala-'Nakwaxda'xw Nations

TRESPASS BYLAW

**A Bylaw For The Removal And Punishment Of Persons Trespassing
Or Frequenting The Reserve For Prohibited Purposes**

April 22, 2024

Certified a true copy
of an original at Port
Hardy, British Columbia
this 13 day of JUNE,
2024



A Notary Public in
and for the Province
of British Columbia

ROBERT W. MacGREGOR
BARRISTER & SOLICITOR
8700 MARKET STREET, BOX 1289
PORT HARDY, BC V0N 2P0
TEL: 949-6031 FAX: 949-2633

TABLE OF CONTENTS

PART 1 5

1. NAME..... 5
2. REPEAL AND REPLACE..... 5

PART 2 5

3. INTERPRETATION..... 5

PART 3 7

4. APPLICATION OF BYLAW..... 7

PART 4 7

5. TRESPASS..... 7
 Restrictions on access to the Reserve..... 7

PART 5 8

6. TRADITIONAL LEADERSHIP..... 8

PART 6 9

7. ENFORCEMENT, PENALTIES, AND RECONSIDERATION..... 9
 Inspection..... 9
 Offences..... 9
 Orders..... 9

PART 7 10

8. GENERAL..... 10
 No Liability..... 10
 Compliance with Other Laws..... 10
 Severability..... 11

PART 8 11

9. COMING INTO FORCE..... 11

PART 9 11

10. AMENDMENTS..... 11

**DECLARATION OF THE GWA'SALA-'NAKWAXDA'XW
GI'GIGAME AND NI'NOGAAD'**

WHEREAS:

- A. The Gwa'sala-'Nakwaxda'xw Gi'gigame and Ni'nogaad', are the Traditional Leadership of the amalgamated Gwa'sala-'Nakwaxda'xw Nations. They include the Hereditary Chiefs, Heads of Families and the Matriarchs and represent the unbroken history and lineages of their respective 'Ni'namima;
- B. The Traditional Leadership has a right and responsibility to make decisions about our traditional territories, resources, and the wellbeing of the people;
- C. This historic and ongoing form of government flows from our Creator and is our inherent right and responsibility as the Gwa'sala-'Nakwaxda'xw Nations, which we exercise, in part, through Traditional Leadership working with the elected Council to make decisions for the protection and uplifting of our community;
- D. The Traditional Leadership has had discussions with elected Council regarding the Gwa'sala-'Nakwaxda'xw Nations *Trespass Bylaw* and welcome the ongoing coordination with our elected Council in this matter and future governance matters;
- E. The Traditional Leadership has reviewed the Gwa'sala-'Nakwaxda'xw Nations *Trespass Bylaw* and approve of Council enacting the Bylaw for the protection and betterment of our community.

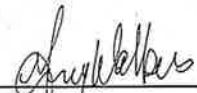
Now therefore, we hereby sign this declaration on the 22nd day of April, 2024 to indicate our support for this bylaw.

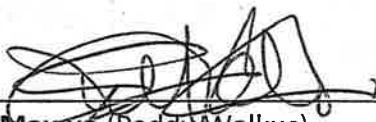
By: 
Gixistalisame' Wakas (Willie Walkus)

By: _____
Pudfidagame' (Michael George)

By: _____
T'talis (James Walkus)

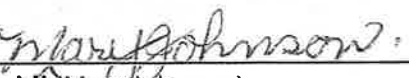
By: _____
Yekawidi (Albert Charlie)

By: 
Siwid (Gary Walkus)

By: 
'Maxwa (Paddy Walkus)

By: 
Lalakutsa (Thomas Jack)

By: 
Pangwidi (Walter George)

By: 
Hamidi (Mary Johnson)

WHEREAS:

- A.** The Gwa'sala-'Nakwaxda'xw Nations have always acknowledged our traditional governance systems, led by the Gi'gigame and Ni'nogaad', (**Traditional Leadership**) whose ongoing role is to safeguard and make decisions about our territories, resources, and history, and the wellbeing of all members of their respective 'Ni'namima. The Hamatsa Society, consisting of the collective Gwa'sala-'Nakwaxda'xw Hamatsas who have been initiated in accordance with recognized ceremonial protocols, including non-Gwa'sala-'Nakwaxda'xw initiated Hamatsas who reside on the Tsulquate Reserve 4, support Traditional Leadership through enforcing our traditional laws and protocols and maintaining peace and good order in ways consistent with our traditional cultural practices;
- B.** The elected Gwa'sala-'Nakwaxda'xw Chief and Council (**Council**) acknowledges the authority of Traditional Leadership and the role of the Hamatsa Society and coordinates with the Traditional Leadership for wisdom and guidance in determining the steps needed to protect our traditional practices, history, language, Elders, 'Ni'nogaad, and all present and future generations;
- C.** The Gwa'sala-'Nakwaxda'xw Nations have an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- D.** Council and Traditional Leadership have an obligation to protect and uplift Gwa'sala-'Nakwaxda'xw Nations members and residents, particularly Elders, kwa'layu (children) and other vulnerable community members, from acts or threats of acts that may cause harm or diminish the health and safety of our members and communities;
- E.** The Gwa'sala-'Nakwaxda'xw community has suffered far too many deaths of precious members and youth recently, and much of the suffering, harm and death in the community is being caused, or contributed to, by non-Members bringing drugs, alcohol and criminal activities into the community;
- F.** Council has discussed with Traditional Leadership and considers it necessary for the protection, health and welfare of the Gwa'sala-'Nakwaxda'xw Nations to make a bylaw to provide for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes; and
- G.** Council is empowered to pass laws under Gwa'sala-'Nakwaxda'xw's inherent rights and also to pass by-laws pursuant to paragraphs 81(1)(a), (c), (d), (p), (p.1), (q) and (r) of the *Indian Act*;

Now Therefore the Council of Gwa'sala-'Nakwaxda'xw Nations at a duly convened meeting enacts the following Bylaw:

PART 1

1. NAME

1.1 This Bylaw may be cited as the *Gwa'sala-'Nakwaxda'xw Nations Trespass Bylaw, 2024*.

2. REPEAL AND REPLACE

2.1 This Bylaw repeals and replaces *By-law No. 1994.02 Respecting the Removal of Trespassers on the Tsulquate Indian Reserve No. 4*.

PART 2

3. INTERPRETATION

3.1 In this Bylaw:

"Council" means the duly elected Chief and Council of Gwa'sala-'Nakwaxda'xw Nations;

"disorderly conduct" has the meaning given it in the Nuisance Bylaw;

"GNN" means the Gwa'sala-'Nakwaxda'xw Nations;

"GNN laws" means the laws, bylaws, rules, regulations and policies enacted, adopted or amended by Council from time to time;

"Hamatsa Society" means a traditional body whose responsibilities include maintaining peace and good order in the GNN community and enforcing traditional laws and protocols in ways that are consistent with GNN traditional cultural practices;

"Indian Act" means the federal *Indian Act*, R.S.C. 1985, c. I-5, as amended;

"intoxicant" means a substance that, if taken into the body, has the potential to alter mood and/or impair physical and/or mental function, including alcohol, drugs, including without limitation drugs listed under the *Controlled Drugs and Substances Act*, SC 1996, c. 19, as amended, and drugs listed under the *Pharmacy Operations and Drug Scheduling Act*, SBC 2003, c 77, but does not include caffeine, nicotine, or authorized medication used in accordance with directions given by a registered health care professional or licensed pharmacist;

"member" means a person whose name appears on the GNN membership list, or who is entitled to have their name appear on the GNN membership list;

"nuisance" has the meaning given it in the Nuisance Bylaw;

"Nuisance Bylaw" means the Gwa'Sala-'Nakwaxda'xw Reserve Disorderly Conduct and Nuisance Bylaw;

“officer” means

- (a) any person designated in writing by Council to enforce this Bylaw;
- (b) R.C.M.P. officers; and
- (c) any other person charged by Canada or British Columbia with the duty to preserve and maintain the public peace in accordance with their laws;

“premises” means

- (a) land, including foreshore and land covered by water;
- (b) anything on the land, including:
 - (i) a building or other permanent structure, including a building or permanent structure designed or used for shelter for livestock,
 - (ii) a vehicle,
 - (iii) a trailer or a portable structure designed or used as a residence, for shelter, including shelter for livestock, or to house a business, and
 - (iv) water;

“prohibited purpose” means any of the following activities conducted on the reserve by any person:

- (a) engaging in conduct which causes or may cause harm or potential harm to persons or property on the reserve;
- (d) engaging in disorderly conduct or nuisance;
- (e) engaging in an activity that constitutes an offence under the *Controlled Drugs and Substances Act*, SC 1996, c. 19, as amended;
- (f) engaging in an activity that constitutes an offence under the *Criminal Code*, RSC, 1985, c. C-46, as amended;
- (g) engaging in the sale, barter, supply or manufacture of intoxicants;
- (h) hawking or peddling of wares or merchandise without written authorization from Council; and
- (i) hunting, fishing, or trapping, except by members who have the exclusive right to hunt, fish and trap on the reserve;

“reserve” means all those lands set aside by Canada for the use and benefit of Gwa’sala-Nakwaxda’xw Nations within the meaning of the *Indian Act*, including those lands known as Tsulquate I.R. #4;

"Residency Bylaw" means the Gwa'sala-'Nakwaxda'xw Nations Residential Occupancy Bylaw, as amended;

"resident" has the meaning given it in the Residency Bylaw, and, for greater certainty does not include a person who has merely been invited onto the reserve or into a premises by another person;

"spouse" means a person who is married to a member, or has lived with a member in a marriage-like relationship, and has either done so for a continuous period of at least 2 years, or has a child with the member;

"Traditional Leadership" means the traditional governance systems of the Gwa'sala-'Nakwaxda'xw Nations and includes the Gi'gigame and Ni'nogaad';

"trespass" means any act that constitutes trespass under common law and includes,

- (a) entering or remaining on the reserve without lawful justification or authority;
 - (b) entering or remaining on the reserve for a prohibited purpose; and
 - (c) entering or remaining in or on a premises without lawful authority or the permission of a resident granted in accordance with GNN laws;
- 3.2 Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

PART 3

4. APPLICATION OF BYLAW

- 4.1 This bylaw applies to the reserve.
- 4.2 This bylaw applies to all persons on the reserve, including members.
- 4.3 To the extent of any inconsistency with previously enacted GNN bylaws under section 81 of the *Indian Act*, this bylaw prevails.

PART 4

5. TRESPASS

Restrictions on access to the Reserve

- 5.1 No person may trespass on the reserve or any part of it.

- 5.2 Subject to sections 5.3 and 5.4, a person who enters onto the reserve for the purpose of attending at or carrying on a lawful business is not in trespass.
- 5.3 A person who is frequenting the reserve for a prohibited purpose is in trespass.
- 5.4 A person who enters onto the reserve in contravention of an order made under this bylaw or under the Residency Bylaw is in trespass, whether or not they are a member and whether or not they are a resident.
- 5.5 A person found on or in a premises on the reserve is presumed to be on or in the premises without the consent of GNN or the resident of the premises.
- 5.6 A person who trespasses on the reserve, in addition to any other fines or penalties, is liable for all injuries, damages and costs relating to their trespass.
- 5.7 A person who has been directed, either orally or in writing, by a resident of a premises or by an officer to
- (a) leave the reserve,
 - (b) leave the premises, or
 - (c) stop engaging in an activity on or in the premises
- commits an offence if the person,
- (d) does not leave the reserve, the premises or stop the activity, as applicable, as soon as practicable after receiving the direction, or
 - (e) re-enters the reserve or the premises or resumes the activity on or in the reserve or the premises, as applicable.

PART 5

6. TRADITIONAL LEADERSHIP

- 6.1 Council shall seek recommendations from Traditional Leadership regarding measures to protect GNN and members under this Bylaw, which may include:
- (a) the use of the Hamatsa Society to provide protection and support for the community;
 - (b) promotion of traditional ceremonies and practices;
 - (c) in respect of members who have committed offences under this Bylaw, appropriate restorative justice measures consistent with GNN traditional governance and cultural protocols; and

- (d) any other guidance as Council may request or Traditional Leadership may recommend.

PART 6

7. ENFORCEMENT, PENALTIES, AND RECONSIDERATION

Inspection

- 7.1 An officer may stop a person or vehicle, enter a vehicle or premises and inspect a vehicle or premises to monitor or confirm compliance with a provision of this bylaw including, without limitation, to determine whether a person is in trespass.
- 7.2 Before entering a vehicle or premises to conduct an inspection in accordance with section 7.1, an officer must take reasonable steps to notify the owner or occupier of the vehicle or premises and to obtain their consent to enter, except that an officer can conduct an inspection without providing notice if
 - (a) providing notice would not be reasonably possible or practical in the circumstances, or
 - (b) providing notice would frustrate the purposes of the inspection.

Offences

- 7.3 No person may interfere with or obstruct an officer who is exercising their enforcement powers under this bylaw, or fail to comply with an officer's order enforcing this bylaw.
- 7.4 A person who breaches section 7.3 commits an offence.
- 7.5 Where an act in contravention of this bylaw continues for more than one day, each day on which the offence is committed will be deemed a separate offence and may be punished as such.
- 7.6 The offences created by this bylaw are in addition to, and do not replace, any applicable provincial or federal offences.

Orders

- 7.7 An officer may order a person to do or not do anything that the officer reasonably believes is necessary to bring the person into compliance with this bylaw, including by ordering any person not to enter or to immediately leave the reserve.
- 7.8 Where a person who has been ordered to leave the reserve fails or refuses to do so, an officer may take such reasonable measures as may be necessary to remove the person from the reserve.

Penalties

- 7.9 A person who commits an offence under this bylaw is liable on summary conviction to a fine of up to one thousand dollars (\$1,000.00), imprisonment for up to thirty (30) days or to both pursuant to section 81(1)(r) of the *Indian Act*.
- 7.10 In accordance with section 6.1(c), where a member has committed an offence under this bylaw, Council shall meet with Traditional Leadership to review the circumstances of the offence and solicit Traditional Leadership's recommendations regarding the appropriate penalties for the offence, before making a decision whether to:
- (a) undertake restorative justice measures consistent with GNN traditional governance and cultural protocols; or
 - (b) pursue a summary conviction and impose penalties in accordance with section 7.9Part 67.9.
- 7.11 Council must provide written notice of a decision made under section 7.9 to a person who is subject to that decision.

PART 7

8. GENERAL

No Liability

- 8.1 Subject to section 8.2, no legal proceeding for damages lies or may be commenced or maintained against a person because of,
- (a) anything done or said or omitted to be done or said by that person in the performance or intended performance of the person's duty or the exercise of the person's power under this bylaw, or
 - (b) for any alleged neglect or default in the performance or intended performance of that person's duty or the exercise of that person's power under this bylaw.
- 8.2 Section 8.1 does not provide a defence if the person referred to in that section has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct.

Compliance with Other Laws

- 8.3 Compliance with this bylaw shall not relieve a person from having to comply with the requirements of any other applicable law or legal requirement.

Severability

8.4 If a court of competent jurisdiction determines that a provision of this bylaw is invalid for any reason, the provision shall be severed from the bylaw and the remaining provisions of this bylaw shall remain in full force and effect.

PART 8

9. COMING INTO FORCE

9.1 This bylaw will come into force and effect on the day it is enacted by resolution of Council.

PART 9

10. AMENDMENTS

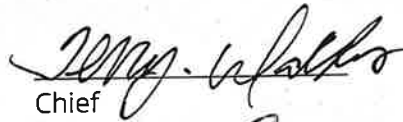
10.1 Council shall meet with Traditional Leadership prior to adopting any substantive amendment to this bylaw.

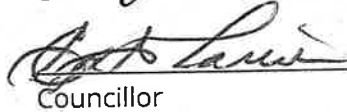
10.2 Subject to section 10.1, Council may adopt any amendment to this bylaw by resolution at a duly convened meeting. Council will promptly post the amended bylaw on the GNN website and in prominent locations on the reserve, and it will share the amended bylaw with the officers appointed to enforce it.

This *Gwa'sala-Nakwaxda'xa Nation Trespass Bylaw* is hereby duly enacted by Council on April 22nd, 2024 at Tsulquate Reserve.

Quorum: 5


Councillor


Chief

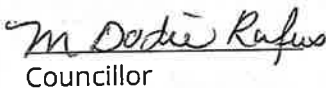

Councillor


Councillor


Councillor


Councillor

Councillor


Councillor


Councillor



Gwa'sala-'Nakwaxda'xw Nation

PO Box 998, Port Hardy, B.C. V0N 2P0 • Tel (250) 949-8343 • Fax (250) 949-7402

NOTICE OF PROHIBITION AND ORDER TO VACATE

DELIVERED BY: _____ **DATE:** _____ **AT (TIME):** _____

TO: _____

FROM: Gwa'sala-'Nakwaxda'xw Nations Chief and Council (Council)
SUBJECT: NOTICE TO VACATE TSULQUATE RESERVE NO. 4 (the Reserve)

Council has reason to believe, and does believe, on reasonable and probable grounds that you are or have been engaged in one or more prohibited activities on the Reserve in contravention of GNN Bylaws, and that you are causing or have caused harm, or risk of harm, to the health, safety and well-being of Gwa'sala-'Nakwaxda'xw members, other persons on the Reserve and the Gwa'sala-'Nakwaxda'xw community as a whole.

The prohibited activities include [check all that apply]:

- Engaging in threats or acts of violence or intimidation with or without a weapon, drug trafficking and other criminal activities;
- Entering onto or being present on the Reserve without lawful justification, including by residing in rental homes and other buildings on the Reserve without permission or authorization, or frequenting the Reserve for prohibited purposes;
- Engaging in disorderly conduct, including fighting and other acts of violence involving weapons and bodily harm or threats of bodily harm and other activities that disrupt the public order on the Reserve;
- Committing any nuisance, disturbing the peace or acting contrary to public order on the Reserve; and
- Obstructing, preventing or hindering the rights of others, including GNN and GNN members to use and enjoy the Reserve.

REQUIREMENT TO LEAVE RESERVE: You are hereby prohibited from occupying or otherwise residing on the Reserve or entering the Reserve for any purpose whatsoever.

**YOU MUST VACATE THE RESERVE BY _____ am/pm ON
_____, 20____.**

You must not re-enter the Reserve thereafter.

Failure to comply with this notice will result in enforcement pursuant to the GNN Bylaws and the Criminal Code, where applicable.

This notice is issued pursuant to the inherent self-governance rights of Gwa'sala-'Nakwaxda'xw Nations, s. 2 and s. 20 of the *Indian Act*, R.S.C. 1985, c. I-5, s. 35 of the *Criminal Code*, and the following bylaws: the Gwa'sala-'Nakwaxda'xw Reserve Disorderly Conduct and Nuisance Bylaw, Bylaw Respecting the Removal of Trespassers on the Tsulquate Indian Reserve No. 4 and the Gwa'sala-'Nakwaxda'xw Band Residential Occupancy Bylaw (altogether, "GNN Bylaws").

Any personal property left on the Reserve by you behind will be stored for a period of 60 days. Perishable, soiled, wet, illegal or dangerous items will not be stored. You may contact the Chief Administrative Officer at (250)949-8343 by no later than [time] _____ on [date] _____ to retrieve any stored personal property, after which it will be disposed of.

REVIEW:

Council will review this prohibition sixty (60) days from the date of this notice to consider whether this prohibition is still warranted and necessary.

Council may determine the prohibition is no longer necessary when you demonstrate, to Council's reasonable satisfaction, that you are not engaging or likely to engage in the prohibited activities and that you no longer pose a threat of harm or danger to persons or property on the Reserve.

QUESTIONS:

If you have questions about this notice you may contact the Gwa'sala-'Nakwaxda'xw Nations Chief Administrative Officer at (250) 949-8343.