



# K'ómoks First Nation

## **K'ómoks First Nation Order Review Law, 2023**

Enacted October 19, 2023  
Amended and Consolidated December 7, 2023

## Table of Contents

PART 1 – INTERPRETATION, PURPOSE AND APPLICATION .....	2
1. SHORT TITLE .....	2
2. DEFINITIONS .....	2
3. PURPOSE .....	4
4. APPLICATION .....	4
5. INTERPRETATION .....	4
PART 2 – REVIEW NOTICE AND PRELIMINARY SCREENING .....	5
6. RIGHT TO REVIEW .....	5
7. DUTIES OF THE ADMINISTRATOR UPON RECEIPT OF A REVIEW NOTICE.....	5
8. PRELIMINARY REVIEW.....	6
PART 3 – REVIEW HEARING AND DETERMINATION .....	7
9. REVIEW HEARING .....	7
10. REVIEW DETERMINATION .....	8
PART 4 – ADMINISTRATION .....	9
11. POWERS AND DUTIES OF THE JUSTICES OF THE PEACE .....	9
12. GENERAL POWER TO MAKE RULES RESPECTING PRACTICE AND PROCEDURE .....	9
13. APPOINTMENT AND POWERS OF THE ADMINISTRATOR .....	9
PART 5 – GENERAL .....	10
14. PROVISION OF DOCUMENTS.....	10
15. REGULATIONS, FEES AND FORMS .....	11
16. IMMUNITY .....	11
17. AMENDMENTS AND ENACTMENT .....	12

**K'ÓMOKS FIRST NATION  
ORDER REVIEW LAW**

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**KFN-2023-02**

**WHEREAS** the K'ómoks First Nation has an inherent right to self-government, including the right to establish and enforce laws governing K'ómoks First Nation lands and peoples, as recognized and affirmed by section 35 of the *Constitution Act, 1982* and articles 3, 4 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples;

**WHEREAS** Canada and a group of First Nations concluded the *Framework Agreement on First Nation Land Management* on February 12, 1996, and Canada later ratified the agreement via the enactment of the *Framework Agreement on First Nation Land Management Act*, SC 2022, c 19;

**WHEREAS** the K'ómoks First Nation became a signatory to the *Framework Agreement on First Nation Land Management* and later brought the *K'ómoks First Nation Land Code* into effect on November 30, 2016;

**WHEREAS** the K'ómoks First Nation has the authority under subsection 18.1 of the *Framework Agreement on First Nation Land Management* and under subsection 12.1(a) of the *K'ómoks First Nation Land Code* to make laws respecting the development, conservation, protection, management, use and possession of, and planning for K'ómoks First Nation land;

**WHEREAS** the K'ómoks First Nation has a profound relationship with its land;

**AND WHEREAS** the K'ómoks First Nation deems it advisable and in the best interests of the band to enact a law to provide for the independent review, in appropriate circumstances, of orders made under the *Summary Offence Law*, KFN-2023-01,

**NOW THEREFORE** the K'ómoks First Nation Chief and Council enacts the following law.

## PART 1 – INTERPRETATION, PURPOSE AND APPLICATION

### 1. SHORT TITLE

- 1.1 This Law may be cited, for all purposes, as the *Order Review Law*.

### 2. DEFINITIONS

- 2.1 In this Law, unless the context otherwise requires:

**"Administrator"** means a person appointed under subsection 13.1, for the administration of matters set out under this Law, or any delegate acting on behalf of the Administrator;

**"Applicant"** means a person that has submitted a Review Application to the Administrator under subsection 6.1;

**"Banishment"** means a penalty prescribed under a Sanction Order, which banishes a Defendant from some or all KFN land;

**"Banishment Rescission Hearing"** means a hearing to determine whether to issue a Banishment Rescission Order to rescind all or part of a Sanction Order under section 30 of the *Summary Offence Law*;

**"Chief and Council"** means KFN's "council of the band", as that term is defined in the *Indian Act*, RSC 1985, c I-5, or any successor legislation;

**"Defendant"** means a Person who is alleged to have committed an Offence and is served with an information under the *Summary Offence Law*;

**"Dispute Resolution"** means the dispute resolution processes established to resolve disputes related to KFN Land under Part 8 of the *K'ómoks First Nation Land Code*, including informal discussion, mediation and arbitration;

**"Enforcement Notice"** means a notice of fine, a warning notice, or a notice of hearing, as defined in the *Summary Offence Law*;

**"Framework Agreement on First Nation Land Management"** means the *Framework Agreement on First Nation Land Management* concluded between Canada and First Nations on February 12, 1996, as amended or replaced from time to time;

**"Immune Person"** means present or past Chief and Council, Justice of the Peace, or any employees, servants or agents of either KFN or Chief and Council;

**“Justice of the Peace”** means a person who is appointed as a Justice of the Peace under subsection 45.1 of the *Summary Offence Law*, as well as under subsection 19.4 of the *Framework Agreement on First Nation Land Management*, and who may further be called upon from time to time to conduct a Review Hearing under this Law;

**“KFN”** means the K’ómoks First Nation, recognized as a band under the *Indian Act*, RSC 1985, c-15, or any successor to the K’ómoks First Nation under a federal statute or otherwise;

**“Land Code”** means the *K’ómoks Land Code*, as may be supplemented or amended from time to time, and which was adopted by the KFN in accordance with the *Framework Agreement on First Nation Land Management*;

**“Law”** means this *Order Review Law*, as amended or replaced from time to time, and any associated regulations;

**“Offence”** means any offence set out in any KFN law;

**“Order”** means a Sanction Order, a Banishment Suspension Order, or a Banishment Rescission Order made under the *Summary Offence Law*, but does not include a summons;

**“Person”** means a natural person a corporation of any type, a partnership, a society or an association, whether or not incorporated;

**“Prosecutor”** means a prosecutor appointed under the *Summary Offence Law*, and includes any agent or delegate acting on behalf of the prosecutor;

**“Provincial Court”** means the Provincial Court of British Columbia or any other court of competent jurisdiction;

**“Provincial Court Act”** means the *Provincial Court Act*, RSBC 1996, c 379, as amended or replaced from time to time;

**“Sanction Hearing”** means a hearing conducted under section 19 of the *Summary Offence Law*;

**“Sanction Order”** means an order issued under section 20 of the *Summary Offence Law* to prescribe a penalty in respect of a Defendant who is convicted or found guilty of an Offence;

**“Summary Offence Law”** means the *Summary Offence Law*, KFN-2023-01, as amended or replaced from time to time;

**“Resolution”** means a resolution of Chief and Council made at a duly convened meeting;

**“Review Application”** means an application for a review of an Order that is submitted to the Administrator under subsection 6.1;

**“Review Determination”** means a decision of the Justice of the Peace made under section 10 with respect to a Review Application and an Order; and

**“Review Hearing”** means a hearing conducted by a Justice of the Peace under section 9 for the purpose of considering a Review Application and reviewing all or part of an Order.

### **3. PURPOSE**

- 3.1 The purpose of this Law is to provide a mechanism by which a Person subject to an Order may apply, on limited grounds, for a review of all or part of that Order.

### **4. APPLICATION**

- 4.1 This Law is an enactment of Canada for all purposes, including for the purpose of interpreting the *Provincial Court Act*.
- 4.2 In the event of an inconsistency between this Law and the Land Code, the Land Code prevails.
- 4.3 Where a KFN law or federal or provincial act or regulation applies to a matter covered by this Law, compliance with this Law will not relieve any Person from also complying with provisions of the applicable law, act or regulation.

### **5. INTERPRETATION**

- 5.1 Unless otherwise provided for under this Law, the words, expressions and rules of construction used in this Law have the same meaning as in the Land Code.
- 5.2 The following rules of interpretation apply in this Law:
- (a) if this Law prescribes the use of a set form for an application under this Law, deviations from the set form which do not affect the substance or are not calculated to mislead, do not invalidate the form used;
  - (b) gender specific terms include all genders and include corporations;
  - (c) words in the singular include the plural, and words in the plural include the singular;
  - (d) if a word or expression is defined in this Law, other parts of speech and grammatical forms of the same word or expression have corresponding meanings; and
  - (e) the word ‘including’ means ‘including but not limited to’.
- 5.3 The headings given to the sections, subsections, paragraphs and subparagraphs in this

Law are for convenience of reference only, and do not form part of this Law and will not be used in the interpretation of this Law.

- 5.4 If any section, subsection, paragraph or subparagraph of this Law is, for any reason, held invalid by a decision of a court of competent jurisdiction, the invalid section, subsection, paragraph or subparagraph must be severed from this Law in such a way as to minimize the effect of the severance on the remainder of the Law.

## **PART 2 – REVIEW NOTICE AND PRELIMINARY SCREENING**

### **6. RIGHT TO REVIEW**

- 6.1 Subject to subsection 6.2, a Person who is subject to an Order may apply for a review of all or part of that Order by submitting a Review Application to the Administrator within thirty (30) days of the date the Order was issued.
- 6.2 An Applicant may only apply for a review under subsection 6.1 if one or more of the following grounds is met:
- (a) the Applicant was unable to attend a Sanction Hearing or a Banishment Rescission Hearing due to circumstances that could not reasonably be anticipated by the Applicant and that were beyond the Applicant's control; or
  - (b) the Applicant has fresh and relevant evidence that was not available:
    - (i) at the time of the Sanction Hearing or the Banishment Rescission Hearing; or
    - (ii) at the time that a suspension of Banishment was applied for by the Applicant.
- 6.3 A Review Application must be in a form established by the Administrator, and must include the following information:
- (a) the date and details of the Order subject to review;
  - (b) the Applicant's name, address and telephone number;
  - (c) if the Applicant is represented by an agent in respect of the review, the name of the agent and a telephone number at which the agent may be contacted during regular business hours; and
  - (d) the grounds on which the Applicant seeks a review of the Order.
- 6.4 Where an Applicant submits a Review Application under subsection 6.1, the Order for which the Applicant is seeking a review remains in force and is not suspended or stayed, unless and until the Justice of the Peace makes a decision to stay all or a portion of the said Order in accordance with Part 3 of this Law.

### **7. DUTIES OF THE ADMINISTRATOR UPON RECEIPT OF A REVIEW NOTICE**

- 7.1 Where an Applicant submits a Review Application under subsection 6.1, the

Administrator must:

- (a) call upon a Justice of the Peace to carry out the duties under sections 8 to 10 of this Law in respect of the Review Application; and
- (b) provide the Justice of the Peace with the Order under review, the written reasons for the decision related to the Order, the Review Application and any other materials that the Administrator deems relevant.

7.2 Where an Applicant submits a Review Notice under subsection 6.1 and there is a technical defect in the Review Application, the Administrator must allow the Applicant an opportunity to cure any such technical defect within a reasonable time, regardless of whether the time to submit a Review Application under subsection 6.1 has expired.

7.3 An Administrator may use its reasonable discretion to extend the time to submit a Review Application under subsection 6.1, and may do so either before or after that time expires.

## **8. PRELIMINARY REVIEW**

8.1 Within fourteen (14) days of receipt of a Review Application, the Justice of the Peace called upon under paragraph 7.1(a) must carry out a preliminary review to determine whether to:

- (a) allow all or part of the Review Application to proceed to a Review Hearing; or
- (b) dismiss all or part of the Review Application on one or more of the following grounds:
  - (i) the Review Application was submitted for improper motives or was made in bad faith;
  - (ii) the Review Application is not within the jurisdiction of the Justice of the Peace;
  - (iii) there is no reasonable prospect that the Review Application will succeed;
  - (iv) the substance of the Review Application has been appropriately dealt with in another proceeding; or
  - (v) the Review Application does not meet the requirements set out in section 6, or the Applicant did not remedy technical defects when provided the opportunity to do so under subsection 7.2.

8.2 Where the Justice of the Peace allows all or part of the Review Application to proceed to a Review Hearing under paragraph 8.1(a), the Justice of the Peace must, within seven (7) days of its decision thereunder, provide written notice to the Applicant and the Prosecutor of:

- (a) the Justice of the Peace's decision under paragraph 8.1(a), including which parts of the Review Application are allowed to proceed, as applicable; and



- (b) the details of the upcoming Review Hearing, including:
  - (i) the right of the Applicant and Prosecutor to make submissions at the Review Hearing;
  - (ii) the date and time of the Review Hearing;
  - (iii) the means by which the Review Hearing will be conducted pursuant to subsection 9.3;
  - (iv) if applicable, the location at which the Review Hearing will be conducted;
  - (v) if applicable, the time period for completing procedural steps related to the Review Hearing; and
  - (vi) any other relevant information.

8.3 Where the Justice of the Peace dismisses the entire Review Application under paragraph 8.1(b), the Justice of the Peace must, within seven (7) days of its decision to dismiss, provide written notice of its decision, including reasons, to the Applicant.

### **PART 3 – REVIEW HEARING AND DETERMINATION**

#### **9. REVIEW HEARING**

- 9.1 If an Applicant submits a Review Application under subsection 6.1 and the Justice of the Peace allows all or part of the Review Application to proceed to a Review Hearing under paragraph 8.1(a), then the Justice of the Peace must hold a Review Hearing at which only order of business is to consider the submissions of the Applicant and Prosecutor, as applicable, and to determine whether to accept or reject the Review Application under subsection 10.1.
- 9.2 A Review Hearing must be set down for a date that is at least fourteen (14) days after the Justice of the Peace’s decision under subsection 8.1.
- 9.3 The Justice of the Peace may conduct a Review Hearing in one of the following manners:
  - (a) in writing;
  - (b) by video conference, audio conference, telephone or other electronic means; or
  - (c) in-person, if the Justice of the Peace considers it necessary for the just and timely resolution of the Review Hearing.
- 9.4 An Applicant may apply, in writing, to the Justice of the Peace for a Review Hearing to be conducted in-person.
- 9.5 In conducting a Review Hearing, the Justice of the Peace may do any or all of the following:
  - (a) receive, and accept as evidence any information or documentation that it considers relevant, necessary and appropriate;
  - (b) ask questions of the Applicant, Prosecutor, and witnesses, as applicable; and
  - (c) inform itself in any other way it considers appropriate.

- 9.6 Subject to subsection 9.3, an Applicant or Prosecutor may present evidence and call witnesses at the Review Hearing, and any such evidence must be given under oath or affirmation.
- 9.7 An Applicant may be represented by an agent or legal counsel at the Review Hearing.
- 9.8 If an Applicant does not make submissions at a Review Hearing held under paragraph 9.3(a), or does not attend a Review Hearing held under paragraphs 9.3(b) or (c), the Justice of the Peace may:
- (a) reschedule the hearing;
  - (b) hold the hearing in the absence of the Applicant; or
  - (c) issue a Review Determination dismissing the claim without a hearing if, after reviewing the Review Application and the written record, the Justice of the Peace determines there is no genuine issue to be reviewed.

## **10. REVIEW DETERMINATION**

- 10.1 At the conclusion of a Review Hearing, the Justice of the Peace must:
- (a) if the Justice of the Peace is not satisfied that the grounds for review are met, reject the Review Application and confirm the Order; or
  - (b) if the Justice of the Peace is satisfied that the one or more of the grounds for review are met, accept the Review Application in whole or in part and require that a new Sanction Hearing, a new consideration of an application for a Banishment Suspension Order, or a new Banishment Rescission Hearing, as applicable, be held.
- 10.2 A Review Determination must be in writing and must include the following information:
- (a) the reasons for the Justice of the Peace's determination under subsection 10.1;
  - (b) the Applicant's name;
  - (c) the Order under review;
  - (d) the date on which the Review Determination is issued; and
  - (e) the reasons for the Review Determination.
- 10.3 If the Review Determination refers all or a portion of an Order back for reconsideration under paragraph 10.1(b), the Justice of the Peace must also suspend the relevant portion of the Order being referred back until a new Order is made.
- 10.4 If a Justice of the Peace issues a Review Determination under subsection 10.1, the Administrator must, within fourteen (14) days from the date the Review Determination was issued:
- (a) provide a copy of the Review Determination, along with notification that such Review Determination will be filed in Provincial Court, to the Applicant, Prosecutor, Chief and Council, and the Justice of the Peace, as applicable; and

(b) file a copy of the Review Determination in the Provincial Court.

10.5 A Review Determination filed in Provincial Court under subsection 10.4(b) has the same force and effect as if it were a judgment of the Provincial Court.

#### **PART 4 – ADMINISTRATION**

##### **11. POWERS AND DUTIES OF THE JUSTICES OF THE PEACE**

11.1 The powers of a Justice of the Peace include all things necessary to fulfill the duties and responsibilities set out in this Law.

11.2 A Justice of the Peace must faithfully, honestly and impartially perform their duties hereunder and must not, except in the proper performance of those duties, disclose to any Person any information obtained by them as a Justice of the Peace.

11.3 If a Justice of the Peace has, or is reasonably apprehended to have, any bias or conflict of interest in relation to the outcome of a Review Hearing, the Justice of the Peace must:

- (a) identify the potential conflict to the Administrator;
- (b) recuse themselves from the Review Hearing, and
- (c) not make any decision with respect to a Review Hearing.

##### **12. GENERAL POWER TO MAKE RULES RESPECTING PRACTICE AND PROCEDURE**

12.1 Subject to this Law, the *Summary Offence Law* and any rules respecting practice and procedure set out by Resolution, a Justice of the Peace has the power to control the Justice of the Peace's own processes and may make rules respecting the practice and procedure to be followed in the course of a Review Hearing.

12.2 If a Justice of the Peace makes rules respecting practice and procedure under this section, the Administrator must make such rules available for viewing free of charge at the administrative offices of the KFN, and available for distribution at a nominal charge to any Person upon request.

##### **13. APPOINTMENT AND POWERS OF THE ADMINISTRATOR**

13.1 Chief and Council must, by Resolution, appoint one or more Administrators to carry out the duties of the Administrator as set out in this Law.

13.2 The Administrator's powers include all things necessary to fulfill the duties and functions of the Administrator, as set out in this Law.

## **PART 5 – GENERAL**

### **14. PROVISION OF DOCUMENTS**

14.1 Unless otherwise indicated, any document that is required to be provided to a Person or Chief and Council under this Law must be provided in any of the following ways:

- (a) if provided to an individual, by:
  - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the actual or last known address of the individual;
  - (ii) leaving a copy of the document with the individual;
  - (iii) leaving a copy of the document addressed to the individual at the individual's place of residence with a person who appears to be over sixteen (16) years of age and who resides with the individual;
  - (iv) leaving a copy of the document in a mailbox or mail slot for the address at which the individual resides;
  - (v) by attaching a copy of the document to a door or other conspicuous place at the address at which the individual resides; or
  - (vi) sending a copy of the document by email to the email address provided by the individual;
- (b) if provided to a corporation, business or society, by:
  - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the registered office of the corporation, business or society;
  - (ii) leaving a copy of the document with an officer, senior manager, director, or other executive officer of the corporation, business or society; or
  - (iii) sending a copy of the document by email to the email address provided by the corporation, business or society;
- (c) if provided to a partnership, by:
  - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the business office or registered office of the partnership;
  - (ii) leaving a copy of the document with a partner or other executive officer of the partnership; or
  - (iii) sending a copy of the document by email to the email address provided by the partnership; and
- (d) if provided to Chief and Council, by:
  - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the mailing address of the KFN or to the administrative office of the KFN;
  - (ii) leaving a copy of the document with an elected official or administrative officer of the KFN; or
  - (iii) sending a copy of the document by email to the email address provided by the KFN.

**15. REGULATIONS, FEES AND FORMS**

15.1 Chief and Council may, by Resolution, and in accordance with this Law, establish regulations associated with this Law, and must thereafter:

- (a) post notice of same in a public area of the KFN administration building; and
- (b) make a copy of same available for viewing free of charge at the administrative offices of the KFN, and available for distribution at a nominal charge to any person upon request.

15.2 Chief and Council may, by Resolution, establish, correct or revise any fee schedules, notices, forms, protocols or other documentation related to this Law and must thereafter:

- (a) post notice of same in a public area of the KFN administration building; and
- (b) make a copy of same available for viewing free of charge at the administrative offices of the KFN, and available for distribution at a nominal charge to any person upon request.

**16. IMMUNITY**

16.1 No action for damages lies or may be instituted against an Immune Person for:

- (a) anything said or done or omitted to be said or done by that Immune Person in the performance or intended performance of the Immune Person's duty or the exercise of their authority under the powers conferred by this Law; or
- (b) any alleged neglect or default in the performance or intended performance of the Immune Person's duty or the exercise of their authority under the powers conferred by this Law.

16.2 Subsection 16.1 does not provide a defense if:

- (a) an Immune Person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
- (b) the cause of action is libel or slander.

16.3 An Immune Person is not liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other KFN law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other KFN law.

- 16.4 All actions against the KFN for the unlawful doing of anything that:
- (a) is purported to have been done by an Immune Person under the powers conferred by this Law or any KFN law; and
  - (b) might have been lawfully done by an Immune Person if acting in the manner established by law, must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Chief and Council in a particular case, but not afterwards.
- 16.5 A party commencing an action against an Immune Person must provide notice in writing, setting out the time, place and manner in which the damage was sustained, to the KFN and the Immune Person within sixty (60) days from the date on which the damage was sustained.
- 16.6 If the party commencing an action against an Immune Person fails to provide notice to the KFN and the Immune Person as required under subsection 16.5, the action must be struck and the Immune Person will not be liable for damages.

## **17. AMENDMENTS AND ENACTMENT**

- 17.1 Chief and Council may, by Resolution, make minor amendments that do not change the substance of this Law, including but not limited to:
- (a) changes necessary to clarify the drafting of provisions;
  - (b) correcting grammatical or typographical errors; and
  - (c) changes required to address inconsistencies with the *Framework Agreement on First Nation Land Management*.
- 17.2 For greater certainty, all other amendments to this Law must be in accordance with the Land Code.
- 17.3 This Law comes into force on the day of its enactment, being October 19, 2023.

**BE IT KNOWN** that this Law entitled the *Order Review Law*, KFN-2023-02 was/is hereby:

Tabled a first time by the Chief and Council of K'ómoks First Nation at a duly convened meeting held on the 3<sup>rd</sup> day of August, 2023;

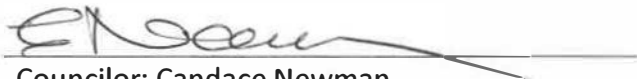
Posted at the Band Administration office on the 4<sup>th</sup> day of August, 2023;

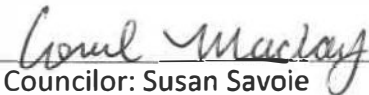
Tabled a second time and enacted by the Chief and Council of K'ómoks First Nation at a duly convened meeting held on the 19<sup>th</sup> day of October, 2023; and

Signed by the following members of Chief and Council who were present at the duly convened meeting wherein this *Order Review Law*, KFN-2023-02:

  
\_\_\_\_\_  
Chief Councilor: Ken Price

  
\_\_\_\_\_  
Councilor: Coral Mackay

  
\_\_\_\_\_  
Councilor: Candace Newman

  
\_\_\_\_\_  
Councilor: Susan Savoie