WE WAI KAI NATION
Noise Control Law
NO. 2021-9

Final November 15, 2021

WE WAI KAI NATION
NOISE CONTROL LAW NO. 2021 - __

WHEREAS the We Wai Kai Nation has an inherent right to self-government which emanates from its people, culture, language, Aboriginal rights, including title, over its traditional lands, which includes, but is not limited to, our We Wai Kai Lands, and is recognized and affirmed by section 35 of the Constitution Act, 1982 and the *United Nations Declaration on the Rights of Indigenous Peoples*;

WHEREAS as an aspect of our inherent right of self-government, We Wai Kai Nation has the jurisdiction to address issues such as the right to regulate environmental matters, including noise control on We Wai Kai Lands, and this inherent right has not been extinguished;

WHEREAS the We Wai Kai Nation has taken control of its We Wai Kai Lands and resources pursuant to the *Framework Agreement on First Nation Land Management* (the "Framework Agreement") and the *First Nations Land Management Act,* S.C. 1999, c. 24, and has enacted the Land Code, which came into force and effect on December 7, 2009;

WHEREAS pursuant to Part IV of the Land Code, the Council may enact laws relating to the management and administration of We Wai Kai Lands and Natural Resources;

WHEREAS pursuant to section 5.8 of the Land Code, Council shall develop laws consistent with the Land Code regarding the management, administration, use and protection of the We Wai Kai Lands and Natural Resources;

WHEREAS it is essential to the health and survival of We Wai Kai Nation that we maintain our community through the passage of laws; and

AND WHEREAS Council of the We Wai Kai Nation deem it advisable and in the best interests of the We Wai Kai Nation to enact a law to regulate noise on We Wai Kai Nation Lands,

NOW THEREFORE Council hereby enacts the following Law:

1.0 SHORT TITLE

1.1 This Law may be cited as the "*We Wai Kai Nation Noise Control Law*".

2.0 PURPOSE

2.1 The general objective and purpose of this Law shall be to regulate noise on We Wai Kai Lands.

3.0 INTERPRETATION

3.1 For the purposes of this Law, terms have the same definitions as in the Land Code.

3.2 The following definitions apply in this Law:

"**Application**" means an application to the Lands Administration Officer for an Exemption Permit in accordance with article 7.0;

""**CAO**" means the Chief Administrative Officer;

"construction" includes erection, alteration, repair, dismantling, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and includes any work in connection therewith;

"Construction Equipment" means any equipment or device designed and intended for use in construction or material handling, including but not limited to, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment;

"**Enforcement Notice**" means a notice as described in section 4.1 of the *We Wai Kai Nation Enforcement and Prosecution Law*;

"**Exemption Permit**" means a permit for an exemption from a provision of this Law granted in accordance with article 7.0;

"**Land Code**" means the *We Wai Kai Nation Land Code*, which came into force and effect on December 7, 2009;

"Motor vehicle" means a vehicle, not run-on rails, that is designed to be self propelled, but does not include mobile equipment or an electric assisted cycle;

"noise" means unwanted sound, noise or vibration that materially impairs the use and enjoyment of a person's premises or property, or that prejudicially affects a person's

health, comfort or convenience or the public health, safety or welfare of the community, but does not include a sound to the extent it is unavoidably necessary for carrying on any business authorized by We Wai Kai Nation;

"**Occupier**" includes a person who owns, holds, leases, rents or occupies a property within We Wai Kai Lands;

"Officer" means the Lands Administration Officer, a member of the local detachment of the Royal Canadian Mounted Police responsible for policing We Wai Kai Lands, and any person appointed by Resolution from time to time to administer and enforce the provisions of We Wai Kai Laws, or for the purpose of maintaining law and order on We Wai Kai Lands, and includes any delegate and assisting personnel;

"person" includes a natural person, a company, corporation, partnership, firm, association, society, or party and the personal or other legal representatives of a person to whom the context can apply according to law;

"Point of Reception" means any point on the premises of a person where noise is heard or received that originates outside of those Premises;

"**Resolution**" means a formal motion moved and seconded by a member of Council requiring a decision of Council;

"We Wai Kai Nation Associated Entities" means any business that is owned by We Wai Kai Nation.

3.3 In this Law, the following rules of interpretation apply:

a) words in the singular include the plural, and words in the plural include the singular;

b) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;

c) the expression "shall" or "must" is to be construed as imperative, and the expression "may" is to be construed as permissive;

d) unless the context indicates otherwise, "including" means "including, but not limited to", and "includes" means "includes, but not limited to";

e) the headings given to the sections and paragraphs in this Law are for convenience of reference only, and do not form part of this Law; and

f) a reference to a law or an enactment or a policy includes any amendment or replacement of it and every regulation made under it.

3.4 The headings given to the sections in this Law are for convenience of reference only and do not form part of this Law and must not be used in the interpretation of this Law.

3.5 In the event of a conflict between this Law and the Land Code, the Land Code shall prevail.

4.0 GENERAL PROHIBITIONS

4.1 Without limiting sections 4.2 or 5.1,

a) a person shall not, at any time, make or cause a noise or sound in a street, park, plaza or similar public place which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of persons at a Point of Reception or in the neighbourhood or vicinity; and

b) a person who is the Occupier of, or is in possession or control of, real property shall not make, suffer or permit, at any time, any other person to make, a noise or sound, on that property, which can be easily heard by a person not on the same premises and which disturbs or tends to disturb the quiet, peace rest, enjoyment, comfort or convenience of persons at a Point of Reception or in the neighbourhood or vicinity.

4.2 Without limiting section 4.1, no person shall, at any time, make, emit or cause or permit the emission of sound or noise resulting from any of the following acts, and which sound or noise is clearly audible at a Point of Reception:

a) racing of any motor vehicle other than in a racing event permitted and regulated by law;

b) the operation of a motor vehicle in such a way that the tires squeal;

c) the operation of any combustion engine or pneumatic device, including Construction Equipment, without muffling devices in good working order and in constant operation;

d) the operation of a motor vehicle, with or without a trailer, resulting in banging, clanking, squealing or other similar sounds due to improperly secured load or equipment or inadequate maintenance;

e) the operation of a motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices;

f) persistent barking, calling or whining or other similar noise making by any domestic animal kept or used for a purpose other than agriculture;

g) the discharge of firearms;

h) the detonation, without an Exemption Permit, of fireworks or explosive devices not used in construction and exempted in accordance with this Law;

i) shouting, using a megaphone or sound amplification device, or making other noise in, or on streets, parks, wharves, docks, boat landings, bus stops or other public places; or

j) persistent yelling, shouting, hooting, whistling or singing.

5.0 PROHIBITIONS BY TIME AND PLACE

5.1 No person shall emit or cause or permit the emission of noise or sound resulting from any act listed below if clearly audible at a Point of Reception, or that disturbs or tend to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public, within We Wai Kai Lands during the specified times:

a) the use or operation of any tool for household purposes other than snow removal, including any power gardening tool or other power tool or machine between 10:00PM and 7:00AM of the following day;

b) the use or operation of any model airplane, boat or car powered by an internal combustion, turbine or rocket engine between 10:00PM and 7:00AM of the following day;

c) the playing or emitting of amplified sound or use of sound amplification equipment or speakers that emanates from a motor vehicle between 10:00PM and 7:00AM of the following day;

d) the playing, production or emitting of any amplified sound or use of sound amplification equipment or speakers or the playing or amplification of a musical instrument including but not limited to radios, record players, disc players,

televisions, receivers, audio/video tape players and musical instruments between 10:00PM and 7:00AM of the following day;

e) the operation of any auditory signaling device, including but not limited to the ringing of bells, except for religious services, or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar sounds by electronic means, except where required or authorized by law or in accordance with good safety practices between 10:00PM and 7:00AM of the following day; and/or

f) the operation of any Construction Equipment between 10:00PM and 7:00AM of the following day on any day except Saturday or Sunday when the operation is prohibited between the hours of 10:00PM and 8:00AM of the following day.

6.0 EXEMPTIONS

6.1 Notwithstanding any other provision of this Law, it shall be lawful to emit or cause or permit the emission of noise in connection with emergency purposes undertaken for the immediate health, safety or welfare or any person or persons, or for the preservation or restoration of property, unless the sound is of a longer duration or of a nature more disturbing than is reasonably necessary for the accomplishment of such emergency purpose.

6.2 Notwithstanding article 4.0, the emission of sound in connection with the following acts shall be permitted:

a) sounds emitted between 7:00AM and 10:00PM on any day for work, or activities associated with and necessarily incidental to:

i. installing, altering, repairing, or removing public facilities or utilities;

ii. well drilling; and

iii. logging or forest related activities;

b) traditional, religious or other activities, listed as follows:

i. special events held by the We Wai Kai Nation and We Wai Kai Nation Entities; and

ii. dances, concerts, fairs and other events held until midnight at community halls, or other public venues which the public is invited to attend, provided, however, that this exception does not extend to any private parties or events other than weddings that occur on private property, and does not apply between midnight and 9:00AM;

c) shouting in relation to games or sports played in a community park or school grounds;

d) operation of mechanical or motorized equipment for the purpose of cutting grass in a community, commercial or industrial area; and

e) logging or other forestry activities:

i. undertaken in periods of high risk for forest fires; and

ii. which are mandated by Council or by an enactment to be carried out during specific times;

provided, however that all Construction Equipment operated in accordance with the exemptions in this section must use effective muffling devices in good working order and in constant operation.

7.0 EXEMPTION PERMITS

7.1 The Occupier of a property must submit a written Application to the We Wai Kai Lands Department, in the form attached as Schedule "A" of this Law or the form as prescribed by the Lands Administration Officer from time to time, in order to be granted an exemption from any of the provisions of this Law with respect to any source of sound or noise on that person's property that may constitute an offence under this Law.

7.2 An Application fee of **$10** (waived for We Wai Kai Citizens) shall be required upon submission of an Application.

7.3 The Application shall be submitted at least ten (10) business days prior to the requested exemption, and shall contain the following information:

a) the name of the Applicant;

b) the location and address of the subject property;

c) the nature of the proposed sound or noise;

d) the date and time, or date range and times, of the proposed sound or noise;

e) the anticipated effect of the exemption on the residents of or businesses on any neighbouring properties, if applicable;

f) letters of support from neighbouring residents and businesses, if requested by the Wei Wai Kai Lands Department; and

g) any further information as required by the Lands Administration Officer.

7.4 The Lands Administration Officer shall review each Application and may request further information from the Applicant and from the residents and business owners of properties that may be affected by the Exemption Permit.

7.5 When the Lands Administration Officer determines that an Application is complete, the Lands Administration Officer shall evaluate the requested exemption, taking into consideration:

a) the nature of the exemption being requested;

b) the potential effect of the exemption on members of the community and residents of or businesses on neighbouring properties, if any;

c) the nature of the area or zone where the exemption is being requested;

d) the reason the exemption is being requested;

e) the health, safety and well-being of the community; and

f) any other factors the Lands Administration Officer Lands Administration Officer considers relevant.

7.6 Upon consideration of the Application, the Lands Administration Officer Lands Administration Officer may:

a) grant an Exemption Permit as requested in the Application;

b) grant an Exemption Permit with any conditions deemed appropriate by the Lands Administration Officer; or

c) refuse to grant an Exemption Permit.

7.7 A person who has been refused an Exemption Permit by a decision of the Lands Administration Officer may apply to have the CAO reconsider that decision in accordance with the following procedures:

a) the person may apply by written notice to the CAO within ten (10) business days of the decision;

b) the person may address the CAO in writing or in person concerning the Application and the reasons for the reconsideration for the Exemption Permit; and

c) the CAO may grant or refuse to grant the Exemption Permit.

7.8 Where an Application made in accordance with this article is refused, the Applicant shall not be entitled to submit another Application in respect of same exemption for a period of thirty (30) days from the date of the refusal, unless the Applicant can demonstrate that there has been a material change of circumstances.

7.9 A breach of any of the terms or conditions of an Exemption Permit shall immediately render the Exemption Permit null and void.

8.0 POWERS OF OFFICER

8.1 No person shall obstruct, interfere with or hinder Council, the Lands Administration Officer, any authorized employee, or agent, or an Officer in the carrying out of their duties and responsibilities under this Law.

8.2 An Officer is authorized to enter, at all reasonable times, upon any parcel of land within We Wai Kai Lands, in order to ascertain whether the provisions of this Law are being obeyed.

8.3 An Officer may order any person who is causing or who threatens to cause a noise or sound on We Wai Kai Lands in contravention of this Law to refrain from causing the noise or to abate the noise within such period of time as is reasonable in the circumstances.

8.4 In determining whether a period of time fixed under section 8.3 is reasonable in the circumstances, the Officer shall take into account:

a) the nature and extent of the noise;

b) the methods available to abate the noise; and

c) the effect of the order on any business or means of livelihood of the person who is the subject of an order.

8.5 Where a person who has been ordered to refrain from causing a noise or sound or to abate a noise or sound within a specified period, in accordance with this Law, fails or refuses to comply with the order, an Officer may take such reasonable measures as are necessary to abate the noise.

9.0 OFFENCES

9.1 Any person who:

a) violates any of the provisions of this Law;

b) violates any term or provision of a decision, order, Resolution or Exemption Permit made in accordance with this Law;

c) suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law;

d) fails or refuses to comply with an order made under this Law or who resists or interferes with an Officer acting under this Law;

e) fails to pay any amounts owing in accordance with this Law;

f) neglects to do or refrains from doing any act or thing required by any of the provisions of this Law;

g) obstructs, interferes with or hinders Council, an Officer or any authorized employee, or agent of We Wai Kai Nation in the carrying out of their duties and responsibilities under this Law, or any other We Wai Kai Law;

h) is the employer of another person and thereby directs or counsels that other person to commit an offence under this Law as part of their employment, and that other person proceeds to commit the said offence; or

i) is the principal of another person and thereby directs or counsels that other person to commit an offence under this Law as their agent, and that other person proceeds to commits the said offence,

is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.

9.2 Each offence under this Law is a strict liability offence, unless expressly indicated otherwise.

10.0 ENFORCEMENT AND PENALTIES

10.1 The *We Wai Kai Nation Enforcement and Prosecution Law* applies to all offences or contraventions under this Law.

10.2 A person who commits an offence under this Law is liable on summary conviction to a fine not less than $75 and not more than $5,000 or to imprisonment for a term not exceeding thirty (30) days, or to both.

10.3 A person suspected of committing an offence under this Law may be served with an Enforcement Notice and can be subject to prosecution under the *We Wai Kai Nation Enforcement and Prosecution Law.*

10.4 For each offence under this Law, an Enforcement Notice may be issued to the person against whom an offence is alleged, in accordance with the *We Wai Kai Nation Notice Enforcement Law*.

10.5 Each day a violation of this Law continues will be deemed to be a separate offence for which a separate fine or other remedy may be imposed.

10.6 Where more than one person commits an offence under this Law, they shall be jointly and severally liable for any penalties and recourses set out in accordance with this Law.

10.7 Any We Wai Kai Citizen who refuses to pay a penalty will have those amounts deducted from any existing or future financial distribution.

10.8 Nothing in this Law precludes the We Wai Kai Nation from pursuing any other enforcement action or remedy provided for in any other law.

11.0 IMMUNITY

11.1 No action for damages lies or may be instituted against present or past Council, or members, employees, servants or agents of either We Wai Kai Nation or Council:

a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or

b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.

11.2 Section 11.1 does not provide a defence if Council, members, employees, servants or agents have, 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 if the cause of action is libel or slander.

11.3 We Wai Kai Nation, present or past Council, or members, employees, servants or agents of any of We Wai Kai Nation or Council 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 from the neglect or failure, for any reason or in any manner, to enforce this Law or any other We Wai Kai Law.

11.4 All actions against We Wai Kai Nation, present or past Council, or members, employees, servants or agents of any of We Wai Kai Nation or Council for the unlawful doing of anything that:

a) is purported to have been done by them under the powers conferred by this Law or any We Wai Kai Law; and

b) might have been lawfully done by them 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 Council in a particular case, but not afterwards.

11.5 We Wai Kai Nation is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to We Wai Kai Nation, within two (2) months from the date on which the damage was sustained.

11.6 If the party commencing an action against fails to deliver notice as required under section 11.5, the action must be struck and We Wai Kai Nation will not be liable for damages.

12.0 REGULATIONS

12.1 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 We Wai Kai Nation administration building; and

b) make a copy of same available for viewing free of charge at the administrative offices of the We Wai Kai Nation, and available for distribution at a nominal charge to any person upon request.

13.0 GENERAL

13.1 Where any federal act or regulation or provincial act or regulation or any other We Wai Kai Law may apply to any matter covered by this Law, compliance with this Law shall not relieve the person from also complying with the provisions of the other applicable act, regulation or law.

13.2 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.

14.0 AMENDMENT

14.1 This Law may only be amended in accordance with section 33 of the Land Code.

15.0 COMING INTO FORCE

15.1 This Law shall come into force and effect on the date that it is enacted pursuant to Part IV of the Land Code.

THIS LAW IS HEREBY ENACTED BY THE approval of a quorum of five (5) members of Council on the 15 day of November, 2021.

Voting in favour of the law are the following members of Council:

Chief
Ronnie Chickite

Councillor
Glenn Assu

Councillor
Nicole Assu

Councillor
Ted Assu

Councillor
Jonathan Chickite

Councillor
Kim Duncan

Councillor
Cindy Inrig

Councillor
Mildred Price

Councillor
Art Wilson

SCHEDULE "A" – EXEMPTION FORM

attached