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**Hupacasath Noise Control By-law
BY-LAW NO. 20-05-06-01
of the Hupacasath First Nation**

A BY-LAW FOR THE PREVENTION OF NOISE

WHEREAS the Council of the Band desires to make a by-law governing the prevention of noise, with respect to any matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act*, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Band is empowered to make such by-law pursuant to subsections 81(1) (c), (d), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the health, safety and protection of the inhabitants of the Band to provide for the prevention of noise on the Reserves;

NOW THEREFORE the Council of the Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the “Hupacasath Noise Control By-law”.

Interpretation

2. In this by-law:

“*Band*” means the Hupacasath First Nation;

“*construction*” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway 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;

“*conveyance*” includes a vehicle and any other device employed to transport a person or persons or goods from place to place but does not include any such device or vehicle if operated only



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within the premises of a person;

“*Council*” means the council of the band, as defined in the *Indian Act*, of the Hupacasath First Nation;

“*motor vehicle*” includes an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power; but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor or self-propelled implement of husbandry (within the meaning of the *Motor Vehicle Act* (British Columbia));

“*noise*” means unwanted sound that materially impairs the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of the Reserve community, but does not include a sound to the extent it is unavoidably necessary for carrying on any business or other means of livelihood authorized by the Council;

“*officer*” means any Royal Canadian Mounted Police officer, police officer, police constable or other person charged with the duty to preserve and maintain the public peace, a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the Reserves;

“*person*” means any means any natural person, resident or guest and includes a corporation, partnership, sole proprietorship, trust or other entity;

“*point of reception*” means any point on the premises of a person where sound or vibration originating from other than those premises is received; and

“*Reserves*” means the Band's reserves Ahahswinis No. 1 and Kleeqhoot No. 2, and “*Reserve*” means either of them.

Zones

3. All lands within the geographic limit of the Reserves shall be considered as the area affected by this by-law.

General Prohibitions

4. No person shall emit or cause or permit the emission of noise resulting from any of the following acts, and which sound is clearly audible at a point of reception:



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- (a) racing of any motorized conveyance other than in a racing event regulated by law;
- (b) the operation of a motor vehicle in such a way that the tires squeal, mark the road surface or omit noxious fumes;
- (c) the operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation;
- (d) the operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance;
- (e) the operation of a motor vehicle horn, air horn or other warning device except where required or authorized by law or in accordance with good safety practices; or
- (f) the operation of any item of construction equipment within the Reserves without effective muffling devices in good working order and in constant operation.

Prohibitions by Time

5. No person shall emit or cause or permit the emission of noise resulting from any act listed in the attached "Table 1" if clearly audible at a point of reception located within the Reserves and within the prohibited time as shown in the attached "Table 1".

Exemption

6. Notwithstanding any other provision of this by-law, it shall be lawful to emit or cause or permit the emission of noise or vibration in connection with emergency measures undertaken:
- (a) for the immediate health, safety or welfare of the inhabitants or any of them; or
 - (b) for the preservation or restoration of property,

unless such noise or vibration is clearly of a longer duration or nature more disturbing than is reasonably necessary for the accomplishment of such emergency purpose.

Grant of Exemption by Council

Application to Council

7. Notwithstanding anything contained in this by-law, any person may make application to



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Council to be granted an exemption from any provision of this by-law with respect to any source of noise or vibration for which such person might be prosecuted and Council may, by resolution, refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period, not in excess of six (6) months, during which it is effective and may contain such terms and conditions as Council sees fit.

Decision

8. In deciding whether to grant an exemption under section 7, Council shall give the applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as it sees fit.

Reapplication

9. Where an application made under section 7 is refused, Council is not required to consider any further application by the applicant for a period of one (1) year from the date of the refusal, unless the applicant can show that there has been a material change of circumstances relating to such prior application.

Breach

10. A breach by the applicant of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

Offence

11. (1) Everyone who creates or causes a noise contrary to the provisions of this by-law is guilty of an offence.

(2) An officer may order any person who is causing or who threatens to cause a noise on the Reserves to refrain from causing the noise or to abate the noise within such period as is reasonable in the circumstances.

(3) In determining whether a period fixed under subsection (2) was reasonable in the circumstances, the officer shall consider the following:
 - (a) the nature and extent of the noise;
 - (b) the methods available to abate the noise; and



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

Enforcement

12. (1) Where a person who has been ordered to refrain from causing a noise or to abate a noise within a specified period, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to abate the noise.
- (2) A person who fails or refuses to comply with an order made under this by-law or who resists or interferes with an officer acting under this by-law, commits an offence.

Penalty

13. (1) A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both.
- (2) The fines for applicable offenses are as set out in the by-law violation fines schedule attached to this by-law as Schedule A.
- (3) Fines as indicated in subsection (1) may be recovered through Band distributions of any kind including cash, fish, seafood, or other distributions entitled to the Band member.
- (4) Band members are responsible for the conduct and actions of their invited guests on the Reserves and may be held liable for fine of their guests.

Immunity

14. No action for damages lies or may be instituted against present or past Council or members, employees, servants, or agents of either Hupacasath Administration or Council:
- (a) for anything said or done or omitted to be said or done by such person in the performance or intended performance of such person's duty or the exercise of such person's authority; or
- (b) for any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority.

Dispute Process

15. (1) Any penalty pursuant to section 13 can be disputed within fourteen (14) days. Any



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penalty not disputed stands. Disputed penalties can either be:

- (a) disputed to Council; or
 - (b) adjudicated through a third-party adjudicator (with all final decisions by the adjudicator being binding on both the Band and the recipient of the penalty).
- (2) Recipients of a penalty that choose to have a disputed penalty adjudicated through a third-party adjudicator will apply to Council for an adjudication hearing, which adjudication process can take up to two (2) months to finalize.
- (3) An application made for an adjudication hearing may be cancelled by the recipient of the penalty by paying the applicable fine in full at any time.
- (4) A separate application for an adjudication hearing must be submitted for each separate penalty that is being disputed by the recipient.
- (5) Once a fine has been paid by the recipient of the penalty, the recipient is no longer eligible to make an application for the penalty to be adjudicated.
- (6) The following provisions shall apply to an adjudication hearing:
- (a) an adjudicator is not able to reduce the amount of a penalty;
 - (b) the officer that issued the penalty is not required to attend the adjudication hearing;
 - (c) if the penalty is upheld by the adjudicator, the recipient will be required to pay an additional \$50 fine on top of the previously issued fine.

General

16. (1) Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.
- (2) This by-law comes into force twenty-four (24) hours after posting the by-law on the Band's website at www.hupacasath.ca, as required pursuant to subsection 86(1) of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band this 4th day of July, 2020.



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

(Member of the Council – Brandy Lauder)

(Member of the Council – Jim Tatoosh)

(Member of the Council – Warren Lauder)

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

No. of members of the Council present at the meeting: 3.

I, James Tatoosh Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was published on the Band's website at www.hupacasath.ca, pursuant to subsection 86(1) of the *Indian Act*, this 4th day of July, 2020.

(Witness - [Signature]) (Councillor – Jim Tatoosh) [Signature]

Richard Donald Hewson
Commissioner for Affidavits for British Columbia
Commission Expires: November 30, 2021
Appointee No. 2018-1567



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TABLE 1 - Prohibition by time

	Prohibited period
The detonation, without the permission of the Band Council, of fireworks or explosive devices not used in construction, except for December 31 st , January 1 st or October 31 st .	At all times
The discharge of firearms within 300 metres of any residential structure or public gathering place without the permission of Council.	At all times
The operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers, and intended for the production, reproduction, or amplification of sound	11PM to 8AM
The operation of any auditory signalling 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	10 PM to 8 A
The operation of any motorized conveyance other than on a highway or other place intended for its operation	10 PM to 8 A
Persistent barking, calling, or whining or other similar noise making, if such noise persists for a period of time in excess of fifteen minutes, by any domestic pet or any other animal kept or used for any purpose other than agricultural	At all times
Yelling, shouting, hooting, whistling or singing	10 PM to 8 A
All selling or advertising by shouting or outcry or amplified sound	10 PM to 8 A
Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services, or the moving of private household effects	9 PM to 8 AM
The operation of any equipment in connection with construction	8 PM to 8 AM



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The operation or use of any tool including mowers for household purposes other than snow removal

9 PM to 8 AM

The operation of solid waste bulk lift or refuse compacting equipment

9 PM to 8 AM



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SCHEDULE A

**BY-LAW NO. 2020-05-06-01
VIOLATION FINES SCHEDULES**

By-Law No. 20-05-06-01 Code Violation Fines	By Law for the Prevention of Noise	1st Offence	2nd Offence	3rd Offence
1.1	A person creates or permits noise to disturb neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
1.2	Landowner allow or permit noise to disturb neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
1.3	Operate sound or other equipment that creates noise, sounds to disturb neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
1.4	Disturbs the peace and quiet enjoyment of the neighborhood or persons in the vicinity including shouting, outcry, amplified sounds, shouting, whistling, singing or hooting	\$ 150.00	\$ 250.00	\$ 500.00
1.5	Permit any animal or bird that disturbs the peace, creates noise to disturb the neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
1.6	Make or cause construction noise	\$ 150.00	\$ 250.00	\$ 500.00
1.7	Operation of bulk lift or refuse compacting equipment	\$ 150.00	\$ 250.00	\$ 500.00
1.8	Detonation without permission of fireworks or explosive devices not used in construction except for December 31st, January 1st, October 31st	\$ 150.00	\$ 250.00	\$ 500.00
1.9	Races any motorized vehicle, operates a motor vehicle in such a way that the tires squeal, mark the road surfaces or emits noxious fumes	\$ 150.00	\$ 250.00	\$ 500.00



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2	Discharge of firearms within 300 meters of any residential structure or public gathering place	\$ 250.00	\$ 500.00	\$ 1,000.00
2.1	Loading, unloading, packing, unpacking, or otherwise handling any containers, products, materials or refuse whatsoever unless for the maintenance of essential services	\$ 150.00	\$ 250.00	\$ 500.00
2.2	Interferes with the duties or conduct of a an officer who is enforcing this or any other by-law	\$ 500.00	\$ 750.00	\$ 1,000.00



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**Hupacasath Disorderly Conduct By-law
BY-LAW NO. 20-05-06-02
of the Hupacasath First Nation**

A BY-LAW FOR THE PREVENTION OF DISORDERLY CONDUCT

WHEREAS the Council of the Band desires to make a by-law governing the prevention of disorderly conduct, with respect to any matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act*, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Band is empowered to make such by-law pursuant to subsections 81(1) (c), (d), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the health, safety and protection of the inhabitants of the Reserves to provide for the prevention of disorderly conduct on the Reserves;

NOW THEREFORE the Council of the Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the “Hupacasath Disorderly Conduct By-law”.

Interpretation

2. In this by-law:

“*Band*” means the Hupacasath First Nation;

“*Council*” means the council of the band, as defined in the *Indian Act*, of the Hupacasath First Nation;

“*disorderly conduct*” means any act or behaviour, including, without limitation:

- (a) fighting;
- (b) making or causing unreasonable noise;
- (c) using abusive language;
- (d) using offensive or indecent gestures or indecent displays;



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- (e) being drunk or intoxicated from any substance;
- (f) loitering or trespassing;
- (g) exposing, firing or discharging any gun, pistol or other firearm to threaten any person or endanger them by discharge in proximity, or using or threatening to use any other article as a weapon against any person; or
- (h) interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the Reserves,

that disrupts public order on the Reserves, scandalizes the Band community, or causes public inconvenience, annoyance or alarm on the Reserves;

“*officer*” means any Royal Canadian Mounted Police officer, police officer, police constable, or other person charged with the duty to preserve and maintain the public peace, a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the Reserves;

“*person*” means any natural person, resident or guest and includes a corporation, partnership, sole proprietorship, trust or other entity; and

“*Reserves*” means the Band’s reserves Ahahswinis No. 1 and Kleeckhooht No. 2, and “*Reserve*” means either of them.

Disorderly Conduct

3. (1) Every person who commits an act of disorderly conduct is guilty of an offence.

(2) An officer may order any person who is engaging in any disorderly conduct to stop such conduct immediately.

Enforcement

4. (1) Where a person who has been ordered to stop engaging in disorderly conduct, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to stop the disorderly conduct.

(2) A person who fails or refuses to comply with an order made under subsection 3(2), or who resists or interferes with an officer acting under subsection 4(1), commits an offence.



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Penalty

5. (1) A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both.
- (2) The fines for applicable offenses are as set out in the by-law violation fines schedule attached to this by-law as Schedule A.
- (3) Fines, damages and costs as indicated in subsection (1) may be recovered through Band distributions of any kind including cash, fish, seafood or other distributions entitled to the Band member.
- (4) Band members are responsible for the conduct and actions of their invited guests on the Reserves and may be held liable for fine of their guests.

Immunity

6. No action for damages lies or may be instituted against present or past Council or members, employees, servants, or agents of either Hupacasath Administration or Council:
 - (a) for anything said or done or omitted to be said or done by such person in the performance or intended performance of such person's duty or the exercise of such person's authority under this by-law; or
 - (b) for any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority under this by-law.

Dispute Process

7. (1) Any penalty issued pursuant to section 5 can be disputed within fourteen (14) days. Any penalty not disputed stands. Disputed penalties can either be:
 - (a) disputed to Council; or
 - (b) adjudicated through a third-party adjudicator (with all final decisions by the adjudicator being binding on both the Band and the recipient of the penalty).
- (2) Recipients of a penalty that choose to have a disputed penalty adjudicated through a third-party adjudicator will apply to Council for an adjudication hearing, which adjudication process can take up to two (2) months to finalize.



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- (3) An application made for an adjudication hearing may be cancelled by the recipient of the penalty by paying the applicable fine in full at any time.
- (4) A separate application for an adjudication hearing must be submitted for each separate penalty that is being disputed by the recipient.
- (5) Once a fine has been paid by the recipient of the penalty, the recipient is no longer eligible to make an application for the penalty to be adjudicated.
- (6) The following provisions shall apply to an adjudication hearing:
- (a) an adjudicator is not able to reduce the amount of a penalty;
 - (b) the officer that issued the penalty is not required to attend the adjudication hearing;
 - (c) if the penalty is upheld by the adjudicator, the recipient will be required to pay an additional \$50 fine on top of the previously issued fine.

General

8. (1) Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.
- (2) This by-law comes into force twenty-four (24) hours after posting the by-law on the Band's website at www.hupacasath.ca, as required pursuant to subsection 86(1) of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band this 4th day of July, 2020.

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

(Member of Council – Warren Lauder) 

(Member of the Council – Jim Tatoosh) 

(Member of the Council – Brandy Lauder) 

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.



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The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: 3

I, Jim Tatoosh Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was posted as required (as the case may be) pursuant to subsection 86(1) of the *Indian Act*, this 4th day of July, 2020.

(Witness -) [Signature] (Councillor – Jim Tatoosh) [Signature]

Richard Donald Hewson
Commissioner for Affidavits for British Columbia
Commission Expires: November 30, 2021
Appointee No. 2018-1567



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SCHEDULE A

**BY-LAW NO. 2020-05-06-02
VIOLATION FINES SCHEDULES**

By-Law No. 20-05-06-02 Code Violation Number	By Law for the Prevention of Disorderly Conduct	1st Offence	2nd Offence	3rd Offence
1.1	Fighting, using offensive gestures, or offensive or indecent displays, offensive language, making unreasonable noise	\$ 150.00	\$ 250.00	\$ 500.00
1.2	Being drunk, intoxicated from any substance	\$ 150.00	\$ 250.00	\$ 500.00
1.3	Loitering or trespassing	\$ 150.00	\$ 250.00	\$ 500.00
1.4	Exposing, firing or discharging any gun, pistol, firearm, or explosive device to threaten any person, endanger them, or by discharge in proximity to any residential neighborhood or place of gathered people or using any other article as a weapon or discharging within 300 meters of any residential neighborhood or gathering of people or a person	\$ 500.00	\$ 1,000.00	1000- and 30-days incarceration



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1.5	Interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious, or ceremonial activities that disrupts public order on the reserve, scandalizes the community or causes public inconvenience, annoyance or alarm	\$ 500.00	\$ 750.00	\$ 1,000.00
1.6	Races any motorized vehicle, operates a motor vehicle in such a way that the tires squeal, mark the road surfaces or emits noxious fumes	\$ 150.00	\$ 250.00	\$ 500.00
1.7	Interferes with the duties or conduct of a an officer who is enforcing this or any other by-law	\$ 500.00	\$ 750.00	\$ 1,000.00



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**Hupacasath Traffic By-law
BY-LAW NO. 20-05-06-03
of the Hupacasath First Nation**

A BY-LAW FOR THE REGULATION OF TRAFFIC

WHEREAS the Council of the Band desires to make a by-law governing the regulation of traffic using private roads on Reserve lands;

AND WHEREAS the Council of the Hupacasath Band is empowered to make such by-law pursuant to subsections 81(1)(b), (c), (d), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the safety and convenience of the inhabitants of the Band to regulate traffic on private roads on the Reserves;

NOW THEREFORE the Council of the Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the “Hupacasath Traffic By-law”.

Interpretation

2. In this by-law:

“*access road*” means a driveway:

- (a) that is situated on leased land, on land that is subject to a certificate of possession or a certificate of occupation, or on land that is otherwise in private occupation; and
- (b) that leads from a reserve road and is used to provide access from such road to such land, and in respect of which no invitation to pass has been extended to the general public by the person in possession or occupation thereof;

“*Administrator*” means the person appointed by the Council pursuant to section 4 to act as Administrator of this by-law;

“*Band*” means the Hupacasath First Nation;



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“BCR” means a band council resolution duly passed by the Band in accordance with the requirements of the *Indian Act*;

“Council” means the council of the band, as defined in the *Indian Act*, of the Hupacasath First Nation;

“highway” has the same meaning as in the *Motor Vehicle Act* (British Columbia);

“Band Traffic Commission” means the traffic commission of the Band consisting of three (3) members of Council appointed pursuant to a BCR and referred to as the Band Traffic Commission;

“motor vehicle” means a vehicle, of which the operation on a highway requires a licence or permit under the *Motor Vehicle Act* (British Columbia);

“officer” means any Royal Canadian Mounted Police officer, police officer, police constable or other person charged with the duty to preserve and maintain the public peace, a by-law enforcement officer or any other person appointed by the Council for the purpose of maintaining law and order on the Reserves;

“operator’s licence” means a licence to operate a motor vehicle issued or accepted as valid under the *Motor Vehicle Act* (British Columbia);

“person” means any natural person, resident or guest and includes a corporation, partnership, sole proprietorship, trust or other entity;

“Reserves” means the Band’s reserves Ahahswinis No. 1 and Kleekeet No. 2, and “Reserve” means either of them;

“reserve road” means a private road or other way situated on the Reserves which is designed and intended for, or used for, the passage of vehicles;

“traffic control device” means any sign, marker or mechanical or electrical device designed for the purpose of regulating traffic; and

“vehicle” means a device by which a person or thing is or may be transported or drawn, other than a device designed to be moved by human power alone.

Band Traffic Commission

3. (1) There shall be a Band Traffic Commission, consisting of three (3) members of Council,



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who shall be appointed pursuant to a BCR.

(2) The Band Traffic Commission may:

- (a) designate locations on or adjacent to a reserve road at which traffic control devices shall be erected;
- (b) designate speed limits for reserve roads or portions thereof;
- (c) designate parking areas on or adjacent to reserve roads, and areas in which parking is prohibited;
- (d) designate areas of Reserve lands to be reserve roads; and
- (e) perform such other functions as are set out for the Band Traffic Commission in this by-law.

(3) A copy of any designation made pursuant to this by-law shall be posted in the Band Office, and on the Band's website and provided to the enforcement designates and may be appealed to the Council by any resident of the Reserves by filing a Notice of Appeal with the Administrator within ten (10) days after the designation was first posted.

(4) A designation comes into effect ten (10) days after the day it was first posted pursuant to subsection (3), or, if appealed, seven (7) days after the day a notice was posted per section (3) and advising that the designation has been confirmed by the Council.

(5) The Council may, of its own initiative, and at any time, revoke any designation made by the Band Traffic Commission under this by-law, and may substitute a new designation.

Administrator

4. (1) The Council may appoint an Administrator of this by-law.

(2) The Council may provide for reasonable remuneration to be paid to the Administrator.

(3) The Administrator shall perform such functions as are imposed by this by-law or are directed by the Band Traffic Commission and shall report to the Band Traffic Commission on his activities in respect of the administration of this by-law.



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Licence

5. No person shall operate a motor vehicle on a reserve road unless such person holds a subsisting operator's licence of a class appropriate to the category of motor vehicle operated.

Insurance

6. No person shall operate a motor vehicle on a reserve road unless a valid insurance policy has been issued for the motor vehicle, such as would be required by the *Motor Vehicle Act* (British Columbia) to operate the motor vehicle on a highway.

Possession of Licence and Proof of Insurance

7. (1) A person shall have in possession at all times while operating a motor vehicle on a reserve road:
- (a) such person's operator's licence;
 - (b) the certificate of registration of the motor vehicle; and
 - (c) proof of a valid insurance policy for the motor vehicle.

(2) Every person who is in possession or control of a motor vehicle shall produce or exhibit his or her operator's licence, registration and proof of motor vehicle insurance upon being requested by an officer to do so.

Speed Limits

8. (1) The speed limit for a reserve road shall be designated by the Band Traffic Commission and marked on a traffic control device erected on the reserve road.
- (2) No person shall operate a vehicle on a reserve road at a rate of speed in excess of the speed limit for that reserve road.

Traffic Control Devices

9. (1) The Administrator shall erect traffic control devices at locations designated by the Band Traffic Commission.
- (2) The operator of a vehicle shall obey all traffic control devices erected pursuant to this



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by-law, except where otherwise directed by an officer or by a person authorized by the Band Traffic Commission or the Administrator to direct traffic.

(3) No person shall remove, attempt to remove, deface, destroy, or otherwise interfere with any traffic control device erected in accordance with this by-law.

Parking

10. (1) No person shall park a vehicle in a location where a traffic control device indicates that parking is prohibited.

(2) Notwithstanding that the Band Traffic Commission has not prohibited parking in a particular location, no person shall park a vehicle on a reserve road unless there is sufficient room to pass and there is a clear view of the parked vehicle for a distance of sixty (60) metres in either direction along such reserve road.

Weight Restrictions

11. (1) The Band Traffic Commission may designate weight restrictions for vehicles using reserve roads.

(2) The Administrator may issue temporary permits allowing vehicles exceeding weight restrictions to use reserve roads where the circumstances are urgent and the Administrator is of the opinion that the use of the vehicle granted the temporary permit will not damage the reserve road.

(3) An applicant who receives a decision from the Administrator refusing an application for a temporary permit may appeal such decision to the Band Traffic Commission, who will have final say over such decision.

(4) No person shall operate a vehicle on a reserve road the weight of which, including the load carried, is more than the maximum weight designated for that vehicle on such reserve road and posted by a traffic control device on the reserve road.

Rules of the Reserve Road

12. (1) A person shall not operate a vehicle on a reserve road:

(a) without due care and attention;

(b) without reasonable care and consideration for other persons on the reserve



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road; or

- (c) at a speed that is excessive relative to road, traffic, visibility and weather conditions.

(2) The operator of a vehicle shall keep to the right-hand half of a reserve road, except:

- (a) when overtaking and passing a vehicle proceeding in the same direction;
- (b) when the right-hand half of the reserve road is closed for traffic while under construction or repair; or
- (c) where necessary because of the operation of road grading or snow removing equipment.

(3) The operator of a vehicle on a reserve road shall not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having regard to the speed of the vehicles and the amount and nature of the traffic on, and the condition of, the reserve road.

(4) The operator of a vehicle on a reserve road shall not pass or attempt to pass another vehicle travelling in the same direction:

- (a) when proceeding uphill;
- (b) when on a curve; or
- (c) when approaching within thirty (30) metres of another road or a railway crossing.

(5) The operator of a vehicle on a reserve road shall, before turning the vehicle, signal his intention to do so by giving the signal in sufficient time to provide reasonable warning to other persons.

(6) Where a flagman is stationed, or a barricade or sign is erected, on a reserve road to direct traffic in connection with any construction or other work on or adjacent to such reserve road, the operator of a vehicle shall obey the directions given by the flagman, or, if none, by the barricades or signs.

(7) The operator of a vehicle about to enter a reserve road from an access road shall yield the right of way to traffic on the reserve road being entered upon unless a traffic control



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device otherwise directs.

Duties of the Operator

13. (1) The operator of a vehicle on a reserve road must bring the vehicle to a stop when ordered to do so by an officer.

(2) The operator or any other person in charge of a vehicle that is directly or indirectly involved in an accident on a reserve road shall:

- (a) remain at or immediately return to the scene of the accident;
- (b) render all reasonable assistance to anyone injured in the accident; and
- (c) produce in writing to any other operator involved in the accident or anyone sustaining loss or injury and, on request, to an officer:
 - (i) the name, address and telephone number of the operator;
 - (ii) the name, address and telephone number of the registered owner of the vehicle;
 - (iii) the licence number of the vehicle; and
 - (iv) particulars of any insurance policy on the vehicle, or any other information as requested.

(3) The operator or any person in charge of a vehicle that collides with an unattended vehicle on a reserve road shall”

- (a) stop; and
- (b) locate and notify in writing the person in charge of or the owner of the unattended vehicle, or leave a written notice on the vehicle containing:
 - (i) the name, address and telephone number of the operator;
 - (ii) the name, address and telephone number of the registered owner of the vehicle involved in the collision; and
 - (iii) the licence number of the vehicle involved in the collision.



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(4) Where a vehicle that is operated on a reserve road causes injury to a person or damage to property exceeding \$250.00, the operator of such vehicle shall report the injury to an officer or to the Administrator and shall provide a report in writing if requested.

School Bus

14. (1) If a vehicle bearing the sign "SCHOOL BUS" and displaying alternatively flashing red lights is stopped on any reserve road, or on any access road, the operator of a vehicle approaching the school bus from either direction on a reserve road shall stop before reaching the school bus.

(2) The operators of school buses and of vehicles in the vicinity of a stopped school bus shall comply with the *Motor Vehicle Act* (British Columbia) respecting the operation of school buses and vehicles in the vicinity of school buses.

Equipment

15. No person shall operate, on a reserve road, a vehicle that is in a dangerous or unsafe condition, or a motor vehicle that is not equipped as required by the *Motor Vehicle Act* (British Columbia) for operation on a highway.

Impounding of Vehicles

16. (1) Where a vehicle is situated on or adjacent to a reserve road, whether attended or unattended, in such a position that:

- (a) it interferes with the normal flow of traffic on the reserve road;
- (b) it interferes with the removal of snow from the reserve road;
- (c) it interferes with fire fighting or other emergency equipment;
- (d) it is likely to be vandalized; or
- (e) the vehicle is parked contrary to this by-law, or apparently has been abandoned for a period of seventy-two (72) hours or longer,

an officer may:

- (a) remove the vehicle, or require the operator or person in charge of the vehicle to remove it, to a position determined by the officer; or



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- (b) take the vehicle into custody and cause it to be removed to and stored in a suitable place.

(2) All costs and charges for the removal, care or storage of a vehicle removed under subsection (1) shall be paid by the owner of the vehicle.

(3) The keeper of any repair shop, garage or storage place where the vehicle is stored is under no obligation to return the vehicle to the owner until the costs and charges referred to in subsection (2) have been paid.

Penalty

17. (1) A person who contravenes, or who otherwise fails to comply with any provision of this by-law, commits an offence and is liable on summary conviction to:

- (a) a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both; and/or
- (b) costs and damages associated with correcting or abating the nuisance as determined.

(2) The fines for applicable offenses are as set out in the by-law violation fines schedule attached to this by-law as Schedule A.

(3) Fines, damages and costs as indicated in subsection (1) may be recovered through Band distributions of any kind including cash, fish, seafood or other distributions entitled to the Band member.

(4) Band members are responsible for the conduct and actions of their invited guests on the Reserves and may be held liable for fine of their guests.

Immunity

18. No action for damages lies or may be instituted against present or past Council or members, employees, servants, or agents of either Hupacasath Administration or Council:

- (a) for anything said or done or omitted to be said or done by such person in the performance or intended performance of such person's duty or the exercise of such person's authority under this by-law; or



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- (b) for any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority under this by-law.

Dispute Process

19. (1) Any penalty issued pursuant to section 17 can be disputed within fourteen (14) days. Any penalty not disputed stands. Disputed penalties can either be:
 - (a) disputed to Council; or
 - (b) adjudicated through a third-party adjudicator (with all final decisions by the adjudicator being binding on both the Band and the recipient of the penalty).
- (2) Recipients of a penalty that choose to have a disputed penalty adjudicated through a third-party adjudicator will apply to Council for an adjudication hearing, which adjudication process can take up to two (2) months to finalize.
- (3) An application made for an adjudication hearing may be cancelled by the recipient of the penalty by paying the applicable fine in full at any time.
- (4) A separate application for an adjudication hearing must be submitted for each separate penalty that is being disputed by the recipient.
- (5) Once a fine has been paid by the recipient of the penalty, the recipient is no longer eligible to make an application for the penalty to be adjudicated.
- (6) The following provisions shall apply to an adjudication hearing:
 - (a) an adjudicator is not able to reduce the amount of a penalty;
 - (b) the officer that issued the penalty is not required to attend the adjudication hearing; and
 - (c) if the penalty is upheld by the adjudicator, the recipient will be required to pay an additional \$50 fine on top of the previously issued fine.

General

20. (1) Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall



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not be affected.

(2) This by-law comes into force twenty-four (24) hours after posting the by-law on the Band's website at www.hupacasath.ca, as required pursuant to subsection 86(1) of the *Indian Act*.

This by-law is hereby made at a duly convened meeting of the Council of the **Hupacasath** Band this 4th day of July, 2020.

Voting in favour of this by-law are the following members of the Council:

(Member of the Council – Warren Lauder) 

(Member of the Council – Jim Tatoosh) 

(Member of the Council – Brandy Lauder) 

being the majority of those members of the Council of the Hupacasath Band present at the aforesaid meeting of the Council.

The quorum of the Council is three (3) members.

No. of members of the Band Council present at the meeting: Three (3).

I, Jim Tatoosh Councillor of the Hupacasath Band, do hereby certify that a true copy of the foregoing by-law was posted as required (as the case may be) pursuant to subsection 86(1) of the *Indian Act*, this 4th day of July, 2020.

(Witness -)

 (Councillor-Jim Tatoosh) 

Richard Donald Hewson
Commissioner for Affidavits for British Columbia
Commission Expires: November 30, 2021
Appointee No. 2018-1567



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SCHEDULE A

**BY-LAW NO. 2020-05-06-03
VIOLATION FINES SCHEDULES**

By-Law No. 20-05-06-03 Code Violation Number	By Law for the Regulation of Traffic	1st Offence	2nd Offence	3rd Offence	
1.1	Speeding in excess of any posted speed limit	\$ 50.00	\$ 50.00	\$500.00*	
1.2	Blocking access roads	\$ 50.00	\$ 100.00	\$ 100.00	
1.3	Blocking fire access	\$ 100.00	\$ 250.00	\$ 500.00 *	
1.4	Operating a vehicle without a license or failure to produce on request to an officer	\$ 100.00	\$ 250.00	\$ 500.00 *	
1.5	Parking Violation	\$ 25.00	\$ 50.00	\$ 100.00	
1.6	Operating a vehicle without insurance or registration or failure to produce on request to an officer	\$ 100.00	\$ 250.00	\$ 500.00 *	
1.7	Defacing, removing, destroying or interfering with a traffic control device or sign	\$ 100.00	\$ 250.00	\$ 500.00	
1.8	Driving with undue care or attention	\$ 100.00	\$ 250.00	\$ 500.00*	
1.9	Leaves the scene of an accident	\$ 250.00	\$ 500.00	\$ 1,000.00*	



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2.0

Interferes with the duties or
conduct of a an officer who is
enforcing this or any other by-law

\$
500.00

\$
750.00

\$
1,000.00

SCHEDULE "A" A By-Law No. 20-05-06-03 Code Violation Number	By Law for the Regulation of Traffic	1st Offence	2nd Offence	3rd Offence	Over Speed Limit in excess of 10 kms per hour	3rd Offence
1.1	Speeding in excess of any posted speed limit	\$ 50.00	\$ 50.00	\$500.00*	Plus \$20 for every km per hour over	* includes vehicle impoundment
1.2	Blocking access roads	\$ 50.00	\$ 100.00	\$ 100.00		
1.3	Blocking fire access	\$ 100.00	\$ 250.00	\$500.00 *		* includes vehicle impoundment
1.4	Operating a vehicle without a license or failure to produce on request to an officer	\$ 100.00	\$ 250.00	\$500.00 *		* includes vehicle impoundment
1.5	Parking Violation	\$ 25.00	\$ 50.00	\$ 100.00		
1.6	Operating a vehicle without insurance or registration or failure to produce on request to an officer	\$ 100.00	\$ 250.00	\$500.00 *		* includes vehicle impoundment
1.7	Defacing, removing, destroying or interfering with a traffic control device or sign	\$ 100.00	\$ 250.00	\$ 500.00		
1.8	Driving with undue care or attention	\$ 100.00	\$ 250.00	\$500.00*		
1.9	Leaves the scene of an accident	\$ 250.00	\$ 500.00	\$1,000.00*		* includes vehicle impoundment
2.0	Interferes with the duties or conduct of an officer who is enforcing this or any other by-law	\$ 500.00	\$ 750.00	\$ 1,000.00		



**Hupacasath Nuisances By-law
BY-LAW NO. 20-05-06-04
of the Hupacasath First Nation**

A BY-LAW FOR THE PREVENTION OF NUISANCES

WHEREAS the Council of the Band desires to make a by-law governing the prevention of nuisances, with respect to any matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act*, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Band is empowered to make such by-law pursuant to subsections 81(1)(c), (d), (p), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Reserves to provide for the prevention of nuisances on the Reserves;

NOW THEREFORE the Council of the Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the “Hupacasath Nuisances By-law”.

Interpretation

2. In this by-law:

“*Band*” means the Hupacasath First Nation;

“*Council*” means the council of the band, as defined in the *Indian Act*, of the Hupacasath First Nation;

“*nuisance*” means any act, activity or condition, including, but not limited to:

- (a) the abandonment of cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- (b) the storage of abandoned cars, household appliances or furniture, or parts of cars, household appliances or furniture;



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- (c) the dumping or storage of tires, garbage or other refuse;
- (d) the burning of tires, grass, garbage, leaves or other refuse;
- (e) the discharge of any substance into the air or water;
- (f) noise; or
- (g) any fire exceeding two meters unless allowed under permission of this by-law,

that materially impairs, otherwise than by direct physical interference, the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of the Reserve community, but does not include any act, activity or condition to the extent it is unavoidably necessary for carrying on any business or other means of livelihood authorized by the Council;

“*officer*” means any Royal Canadian Mounted Police officer, police officer, police constable or other person charged with the duty to preserve and maintain the public peace, a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the Reserves;

“*person*” means any natural person, resident or guest and includes a corporation, partnership, sole proprietorship, trust or other entity; and

“*Reserves*” means the Band’s reserves Ahahswinis No. 1 and Kleekhoot No. 2, and “*Reserve*” means either of them.

Nuisance

3. (1) Every person who creates or causes a nuisance is guilty of an offence.

(2) An officer may order any person who is causing or who threatens to cause a nuisance on the Reserves to refrain from causing the nuisance or to abate the nuisance within such period as is reasonable in the circumstances, including recovering costs associated with abating the nuisance.

(3) In determining whether a period fixed under subsection (2) was reasonable in the circumstances, the officer shall take into account:



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- (a) the nature and extent of the nuisance;
- (b) the methods available to abate the nuisance;
- (c) the approximate time required to abate the nuisance; and
- (d) the effect of the order on any business or means of livelihood of the person who is the subject of an order.

Enforcement

4. (1) Where a person who has been ordered to refrain from causing a nuisance or to abate a nuisance within a specified period, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to prevent or to abate the nuisance.

(2) A person who fails or refuses to comply with an order made under subsection 3(2) or who resists or interferes with an officer acting under subsection 4(1), commits an offence.

Penalty

5. (1) A person who commits an offence under this by-law is liable on summary conviction to:

- (a) a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both; and/or
- (b) costs and damages associated with correcting or abating the nuisance as determined.

(2) The fines for applicable offenses are as set out in the by-law violation fines schedule attached to this by-law as Schedule A.

(3) Fines, damages and costs as indicated in subsection (1) may be recovered through Band distributions of any kind including cash, fish, seafood or other distributions entitled to the Band member.

(4) Band members are responsible for the conduct and actions of their invited guests on the Reserves and may be held liable for fine of their guests.



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General

6. (1) Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

(2) This by-law comes into force twenty-four (24) hours after posting the by-law on the Band's website at www.hupacasath.ca and at the Band Hall – 5500 Ahahswinis Drive Port Alberni, B.C., as required pursuant to subsection 86(1) of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band this day of 4th day of July, 2020.

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

(Member of the Council – Brandy Lauder)

(Member of the Council – Jim Tatoosh)

(Member of the Council – Warren Lauder)

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is three (3) members.

Number of members of the Council present at the meeting: Three (3)

I, Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was posted as required (as the case may be) pursuant to subsection 86(1) of the *Indian Act*, this 4 day of July, 2020.

(Witness)

(Councillor – Jim Tatoosh)

Richard Donald Hewson
Commissioner for Affidavits for British Columbia
Commission Expires: November 30, 2021
Appointee No. 2018-1567



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SCHEDULE A

**BY-LAW NO. 2020-05-06-04
VIOLATION FINES SCHEDULES**

By-Law No. 20-05-06-04 Code Violation Number	By Law for the Prevention of Nuisances	1st Offence	2nd Offence	3rd Offence
1.1	Abandonment of cars, household appliances, furniture, or parts of cars, household appliances or furniture	\$ 50.00	\$ 100.00	\$ 250.00
1.2	The storage of abandoned cars, household appliances, furniture, or parts of cars, household appliances or furniture	\$ 50.00	\$ 100.00	\$ 250.00
1.3	Dumping or storage of tires, garbage or other refuse	\$ 100.00	\$ 250.00	\$ 500.00
1.4	The burning of tires, leaves, grass, garbage or other refuse	\$ 100.00	\$ 250.00	\$ 500.00
1.5	Fires exceeding 2 meters	\$ 50.00	\$ 100.00	\$ 250.00
1.6	The discharge of any noxious or contaminating substance into the Band land, air or water	\$ 100.00	\$ 250.00	\$ 500.00
1.7	The discharge of any noxious or contaminating substance into the land air or water	\$ 100.00	\$ 250.00	\$ 500.00



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1.8	Intereferes with the duties or conduct of a an officer who is enforcing this or any other by-law	\$ 500.00	\$ 750.00	\$ 1,000.00
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**Hupacasath Livestock, Poultry and Domestic Animals By-law
BY-LAW NO. 20-05-06-5
of the Hupacasath First Nation**

**A BY-LAW FOR THE CONTROL OF STRAY LIVESTOCK, POULTRY AND
DOMESTIC ANIMALS**

WHEREAS the Council of the Band desires to make a by-law governing the prevention of stray livestock, poultry and domestic animals with respect to any matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act* and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Band is empowered to make such by-law pursuant to subsections 81(1)(d), (e), (k), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Reserves to provide for the prevention of stray livestock, poultry and domestic animals on the Reserves;

AND WHEREAS Council has determined that stray livestock, poultry or domestic animals may be detrimental to the health and safety of the residents of the Reserves and a nuisance to such residents;

NOW THEREFORE the Council of the Band hereby makes the following by-law:

PART 1 - INTERPRETATION

Short Title

- 1.1 This by-law may be cited as the “Hupacasath Livestock, Poultry and Domestic Animals By-law”.

Interpretation

- 1.2 In this by-law:

“*Band*” means the Hupacasath First Nation;

“*BCR*” means a band council resolution duly passed by the Band in accordance with the requirements of the *Indian Act*;

“*BCSPA*” means the British Columbia Society for the Prevention of Cruelty to Animals, the society to prevent cruelty to and promote the welfare of animals and deemed by this by-law to have the ability to impound and remove animals for varying causes;



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“*Council*” means the council of the band, as defined in the *Indian Act*, of the Hupacasath First Nation;

“*damage*” means damage done to real or personal property by livestock, poultry, domestic animals or any person capturing livestock, poultry or domestic animals;

“*domestic animals*” means any pets including all dogs, cats or any other tame animals which have been domesticated by humans or animals deemed to be domestic by the Council;

“*expenses*” means the expenses incurred in capturing, confining, impounding, identifying, maintaining, transporting and selling livestock, poultry or domestic animals or attempting to ascertain the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals and carrying out any other provisions of this by-law;

“*impound facility*” means a place where livestock, poultry or domestic animals are impounded or sent to be impounded.;

“*last person in possession of livestock, poultry or domestic animals*” means:

- (a) the last person in actual possession of livestock, poultry or domestic animals but does not include a person who captures, confines or impounds livestock, poultry or domestic animals pursuant to this by-law; and
- (b) when livestock, poultry or domestic animals are captured, confined or impounded pursuant to this by-law the “last person in possession of livestock, poultry or domestic animals” means the person who was the last person in actual possession of livestock, poultry or domestic animals before the capture, confinement or impoundment of the livestock, poultry or domestic animals;

“*livestock*” means:

- (a) any horse, head of cattle, sheep, swine, goat, mule, ass or bison;
- (b) any other similar animal declared by the Council to be livestock; or
- (c) any wild animals captured for domestication or other use;

“*Livestock Control Officer*” means:

- (a) a person appointed as a Livestock Control Officer pursuant to this by-law;
- (b) any by-law enforcement officer, BCSPCA officer, Royal Canadian Mounted Police officer, police officer, sheriff or animal control officer or a person employed by the Council for the purpose of enforcing the provisions of this by-law; or
- (c) Council in the absence of any other appointed officer;



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“Notice of Impoundment” means a notice given to the owner or last person in possession of livestock, poultry or domestic animals and posted on the Band’s website and in the Band office to inform owners of impoundment;

“Notice of Sale” means a notice posted on the Band’s website and in the Band office for the sale of livestock, poultry or domestic animals to inform interested parties of the opportunity to purchase;

“occupant of the land” means the person who has been allocated Reserve land by Certificate of Possession by the Council and is shown on the land registry as the person entitled to possession of such land;

“owner of livestock” means a person who has legal title to livestock, poultry or domestic animals as described in this by-law and any person who may not have legal title but who has possession or control of livestock, poultry or domestic animals, either temporarily or permanently, or any person who keeps livestock or allows livestock, poultry or domestic animals to remain on his, her or its land which is held with or without certificate of possession;

“person” means any natural person, resident or guest and includes a corporation, partnership, sole proprietorship, trust or other entity;

“poultry” means poultry of any kind including chickens, turkeys, geese, ducks, squab, fowl, pigeons, grouse, quail, hens, roosters and any other bird deemed poultry by Council;

“property” means Certificate of Possession property, member-owned Reserve property, Band property, Reserve property or any other property under Band control, whether leased, owned or otherwise;

“Reserves” means the Band’s reserves Ahahswinis No. 1 and Kleekhoot No. 2, and *“Reserve”* means either of them; and

“resident” means any person living on a Reserve either permanently or temporarily.

Application

1.3 This by-law applies on the Reserves.

PART 2 - ADMINISTRATION

Livestock Control Officers, Assessors and Others

2.1 The Council may appoint, by BCR, Livestock Control Officers, or the ability for BCSPCA personnel, by-law officers, Royal Canadian Mounted Police officers, police officers or any other persons the ability to come on Reserve and remove any livestock, poultry or domestic animals in trespass, levy fines and lay charges in conjunction with this by-law and under section 9.



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- 2.2 The Council may, in the BCR, provide for reasonable remuneration to be paid to the persons appointed pursuant to Section 2.1.
- 2.3 All livestock, poultry and domestic animals on the Reserves shall be restricted to property of the resident and kept in enclosed pens, compounds, barns, buildings, corals, cages, fenced enclosures or other repository as deemed necessary for the type of livestock, poultry or domestic animals without exception to ensure no trespass, nuisance, health or safety issues occur.

PART 3 - LIABILITY

Liability for Trespassing Livestock, Poultry or Domestic Animals

3.1 When livestock, poultry or domestic animals trespass on any other property and cause damage or expenses are incurred, both the owner of livestock, poultry or domestic animals and the last person in possession of livestock, poultry or domestic animals are jointly and severally liable for the damage and/or expenses, except where such damage or expense is due wholly to the fault of the person suffering the damage or expense.

3.2 For greater certainty, any damage or expense shall not be treated as due to the fault of the person suffering it by reason that he could have prevented it by fencing his land and preventing access of livestock, poultry or domestic animals from trespass.

Liability for Opening and Failing to Not Close Gates

3.3 When a person:

- (a) opens and fails to close a gate; or
- (b) tampers with, damages or destroys a gate or a fence,

as a result of which livestock, poultry or domestic animals can escape, the person is liable for any damage that occurs or expenses that are incurred, or both, and is liable to both the owner of livestock, poultry or domestic animals, and, when the last person in possession of livestock, poultry or domestic animals was required to pay for any damage or expenses under Section 3.1, to that person.

3.4 Nothing in Section 3.3 restricts the liability under Section 3.1 of the owner of livestock, poultry or domestic animals and the last person in possession of livestock, poultry or domestic animals.



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**PART 4 - CAPTURE, CONFINEMENT AND IMPOUNDMENT OF LIVESTOCK,
POULTRY OR DOMESTIC ANIMALS**

Powers of Livestock Control Officer

4.1 A Livestock Control Officer may at any time, if he is satisfied that livestock, poultry or domestic animals are trespassing, capture and impound them or authorize another person designated by Council pursuant to a BCR to capture and impound them.

Destruction of Dangerous Livestock, Poultry or Domestic Animals

4.2 A Livestock Control Officer who is satisfied that:

- (a) livestock, poultry or domestic animals are trespassing on land;
- (b) attempted capture of the livestock, poultry or domestic animals will likely result in injury to some person; and
- (c) after reasonable inquiry, the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals is unknown, or the owner of livestock, poultry or domestic animals or the last person in possession of livestock is unwilling or unable to remove the livestock, poultry or domestic animals,

may destroy the livestock, poultry or domestic animals in a safe and humane manner or authorize another person designated by Council pursuant to a BCR to destroy the livestock, poultry or domestic animals in the same manner.

4.3 No damages or compensation may be recovered because of the destruction of livestock, poultry or domestic animals by the Livestock Control Officer pursuant to Section 4.2.

Destruction of Injured Livestock, Poultry or Domestic Animals

4.4 Where livestock, poultry or domestic animals are captured which are injured or should be destroyed without delay for humane reasons or for reasons of health or safety to persons or animals, the Livestock Control Officer shall destroy the livestock, poultry or domestic animals as soon after the capture as he thinks fit without permitting any person to reclaim the livestock, poultry or domestic animals and no damages or compensation may be recovered on account of such action.

Capture of Livestock, Poultry or Domestic Animals

4.5 If livestock, poultry or domestic animals trespass on property, the occupant of the land, or resident of the property may, while the livestock, poultry or domestic animals are on the occupant's or resident's property, capture and confine them or authorize another person to capture and confine them in a place appropriate to enable a Livestock Control Officer to identify and remove them.



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4.6 No occupant of the land, resident, or a person acting on their behalf, capturing trespassing livestock, poultry or domestic animals under Section 4.5 shall permit or allow the captured livestock, poultry or domestic animals to be:

- (a) transported or driven across or along a highway; or
- (b) transported or driven over any land which does not belong to the occupant of the land or is not land upon which the resident resides and is allowed to occupy.

4.7 When the occupant of the land, resident, or a person acting on their behalf, captures livestock, poultry or domestic animals trespassing on the occupant's or resident's property, the occupant of the land, resident, or the person acting on their behalf shall, within forty-eight (48) hours of the time that the livestock, poultry or domestic animals is captured or confined, complete a statement of capture and expenses incurred in connection with the capture and provide it to the Livestock Control Officer and to the Council.

Confinement of Stray Livestock, Poultry or Domestic Animals

4.8 When a Livestock Control Officer receives a statement of capture of stray livestock, poultry or domestic animals pursuant to Section 4.7, he shall impound such livestock, poultry or domestic animals and:

- (a) leave the livestock, poultry or domestic animals with the person who has them; or
- (b) transport or arrange for the transport of the livestock, poultry or domestic animals to an impound facility at the expense of the owner or the last person seen with the livestock, poultry or domestic animals.

Impoundment of Livestock, Poultry or Domestic Animals

4.9 Where a Livestock Control Officer impounds livestock, poultry or domestic animals pursuant to this by-law:

- (a) he shall issue a Notice of Impoundment to the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals, or both, if he knows who they are, after reasonable inquiry; or
- (b) he shall post a Notice of Impoundment in the Band Office and any other public place or media when deemed suitable, when he cannot determine the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals.

4.10 The notice period for a Notice of Impoundment shall be as follows:

- (a) for the first impoundment of a person's livestock, poultry or domestic animals in a



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- calendar year, seven (7) days; and
- (b) for the second or more impoundment of a person's livestock, poultry or domestic animals in a calendar year, three (3) days.

Release of Impounded Livestock, Poultry or Domestic Animals

4.11 For the first impoundment of a person's livestock, poultry or domestic animals in a calendar year, if the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals claims the livestock, poultry or domestic animals on or before the date set out in the Notice of Impoundment and pays all applicable expenses and damages, the Livestock Control Officer shall release or authorize the person confining the livestock, poultry or domestic animals to release said livestock, poultry or domestic animals to the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals.

4.12 For the second or more impoundment of a person's livestock, poultry or domestic animals in a calendar year, if the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals claims such livestock, poultry or domestic animals on or before the date set out in the Notice of Impoundment, and:

- (a) establishes, to the satisfaction of the Livestock Control Officer, that a proper place to keep the livestock, poultry or domestic animals has been secured, which may consist of executed permits or similar agreements;
- (b) fully pays the applicable expenses; and
- (c) pays for all damages,

then the Livestock Control Officer shall release or authorize the person confining the livestock, poultry or domestic animals to release the livestock, poultry or domestic animals to the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals.

PART 5 - SALE OF LIVESTOCK, POULTRY OR DOMESTIC ANIMALS

Sale of Livestock, Poultry or Domestic Animals

5.1 When livestock, poultry or domestic animals are impounded pursuant to this by-law and:

- (a) the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals refuses to pay the expenses and damages referred to in Section 4.12 on or before the date set out in the Notice of Impoundment;



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(b) the owner of the livestock, poultry or domestic animals or the last person in possession of the livestock, poultry or domestic animals has not established, to the satisfaction of the Livestock Control Officer, that he has secured a proper place to keep the livestock, poultry or domestic animals and refuses to pay the expenses and damages referred to in Section 4.12 on or before the date set out in the Notice of Impoundment; or

(c) no person claims the livestock, poultry or domestic animals on or before the date set out in the Notice of Impoundment,

then the Livestock Control Officer shall, after the date set out in the Notice of Impoundment has passed:

(a) issue a Notice of Sale to the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals, or both, if he knows who they are, by any means he considers reasonable; or

(b) post a Notice of Sale in the Band Office and any other public place deemed suitable where he does not know, and after reasonable inquiry is unable to determine, the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals.

5.2 For the first impoundment in a calendar year, if the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals claims the livestock, poultry or domestic animals on or before the date set out in the Notice of Sale and pays the applicable expenses and damages, the Livestock Control Officer shall release or authorize the person confining the livestock, poultry or domestic animals to release the livestock, poultry or domestic animals to the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals.

5.3 For the second or more impoundment in a calendar year, if the owner of livestock, poultry or domestic animals or the last person in possession of livestock or poultry claims the livestock, poultry or domestic animals on or before the date set out in the Notice of Sale, and:

(a) establishes, to the satisfaction of the Livestock Control Officer, that a proper place to keep the livestock, poultry or domestic animals has been secured, which may consist of an executed grazing permit or similar agreement;

(b) pays the applicable expenses; and

(c) pays for all applicable damages,

then the Livestock Control Officer shall release or authorize the person confining the livestock, poultry or domestic animals to release the livestock, poultry or domestic animals to the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals.



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5.4 The notice period for a Notice of Sale shall be as follows:

- (a) for a person's first impoundment of livestock, poultry or domestic animals in a calendar year, seven (7) days; and
- (b) for a person's second or more impoundment of livestock, poultry or domestic animals in a calendar year, three (3) days.

5.5 When a Notice of Sale has been issued or posted pursuant to this by-law and:

- (a) the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals refuses to pay the expenses and damages referred to in Section 5.2 on or before the date set out in the Notice of Sale;
- (b) the owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals has not established, to the satisfaction of the Livestock Control Officer, that he has secured a proper place to keep the livestock, poultry or domestic animals and refuses to pay the expenses and damages referred to in Section 5.2 on or before the date set out in the Notice of Sale; or
- (c) no person claims the livestock, poultry or domestic animals on or before the date set out in the Notice of Sale,

then the Livestock Control Officer shall, after the date set out in the Notice of Sale has passed, sell the livestock, poultry or domestic animals by public auction or by any other means deemed expedient in the opinion of the Livestock Control Officer.

PART 6 - DISPOSITION OF PROCEEDS OF SALE OF LIVESTOCK, POULTRY OR DOMESTIC ANIMALS

6.1 When livestock, poultry or domestic animals is sold pursuant to this by-law, the proceeds of sale shall be disbursed in accordance with this PART 6.

6.2 The proceeds of the sale of the livestock, poultry or domestic animals shall be disbursed as follows:

- (a) to pay expenses and damages associated with the sale of livestock, poultry or domestic animals, including transporting the livestock, poultry or domestic animals to the place of sale;
- (b) to pay expenses and damages incurred in capturing and impounding the livestock, poultry or domestic animals;
- (c) to pay expenses and damages in transporting the livestock, poultry or domestic animals to an impound facility and attempting to ascertain the owner of livestock, poultry



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or domestic animals or the last person in possession of livestock, poultry or domestic animals, including expenses for issuing notices and mileage; and

(d) to pay any other applicable expenses and damages.

6.3 Any balance of the proceeds of a sale remaining after compliance with Section 6.2 shall be paid into the general funds account of the Band.

6.4 The Council shall pay out of a balance referred to in Section 6.3, to the extent that money is available in that balance, the following amount to a person claiming damage:

(a) the amount of the damage claim, if it is reasonable in the opinion of the Livestock Control Officer; or

(b) the amount of assessed damages calculated pursuant to Section 6.8.

6.5 The Council may pay out of the balance, if any, of the proceeds of a sale of livestock, poultry or domestic animals after compliance with Section 6.4 to a person who:

(a) claims, within ten (10) days from the date of the sale of livestock, poultry or domestic animals; and

(b) establishes, to the satisfaction of the Council,

that the person was the owner of livestock, poultry or domestic animals prior to the sale.

6.6 When livestock, poultry or domestic animals is sold pursuant to this by-law and a dispute exists or arises between the former owner of livestock, poultry or domestic animals or the last person in possession of livestock, poultry or domestic animals and any person claiming to have suffered damage, the proceeds of the sale of the livestock, poultry or domestic animals shall be paid in accordance with Sections 6.2 and 6.3 until the parties to the dispute agree in writing to the disposition of the balance of the proceeds, in which case the Council shall pay the balance of the proceeds of the sale of such livestock, poultry or domestic animals in accordance with such agreement.

Assessment of Damages

6.7 When livestock, poultry or domestic animals is impounded pursuant to this by-law and:

(a) the owner of livestock, poultry or domestic animals and the last person in possession of livestock, poultry or domestic animals are not known; and

(b) a person claiming to have suffered damage and a Livestock Control Officer do not agree on the amount of damage,



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the Council may, on being requested to do so, direct an appointed assessor to assess the amount of the damage and, when appropriate, to determine the livestock, poultry or domestic animals responsible for the damage.

6.8 The assessor shall, on making his assessment and determination, give a written notice to the Council, the Livestock Control Officer and the person claiming to have suffered damage, showing the assessment and determination, if any.

6.9 The assessment and determination, if any, of the assessor is final for the purpose of computing the amount to be paid to a person claiming to have suffered damage pursuant to Section 6.4.

PART 7 - REGISTRY

7.1 The Band shall keep a registry of all livestock, poultry and domestic animals and all residents are required to register their livestock, poultry or domestic animals with the Band.

7.2 All livestock, poultry or domestic animals kept by any resident on the Reserves must be registered within seven (7) days of bringing on Reserve.

PART 8- PENALTY

8.1 In addition to PART 3, a person or resident who fails to comply under this by-law is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both in addition to liability as described in PART 3.

8.2 The fines for applicable offenses are as set out in the by-law violation fines schedule attached to this by-law as Schedule A.

8.3 Fines, damages and costs as indicated in subsection 8.1 may be recovered through Band distributions of any kind including cash, fish, seafood or other distributions entitled to the Band member.

8.4 Band members are responsible for the conduct and actions of their invited guests on the Reserves and may be held liable for fine of their guests.

PART 9 - IMMUNITY

9.1 No action for damages lies or may be instituted against present or past Council or members, employees, servants, or agents of either Hupacasath Administration or Council:



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- (a) for anything said or done or omitted to be said or done by such person in the performance or intended performance of such person's duty or the exercise of such person's authority; or
- (b) for any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority.

PART 10 - DISPUTE PROCESS

- 10.1 Any penalty issued pursuant to PART 8 can be disputed within fourteen (14) days. Any penalty not disputed stands. Disputed penalties can either be:
 - (a) disputed to Council; or
 - (b) adjudicated through a third-party adjudicator (with all final decisions by the adjudicator being binding on both the Band and the recipient of the penalty).
- 10.2 Recipients of a penalty that choose to have a disputed penalty adjudicated through a third-party adjudicator will apply to Council for an adjudication hearing, which adjudication process can take up to two (2) months to finalize.
- 10.3 An application made for an adjudication hearing may be cancelled by the recipient of the penalty by paying the applicable fine in full at any time.
- 10.4 A separate application for an adjudication hearing must be submitted for each separate penalty that is being disputed by the recipient.
- 10.5 Once a fine has been paid by the recipient of the penalty, the recipient is no longer eligible to make an application for the penalty to be adjudicated.
- 10.6 The following provisions shall apply to an adjudication hearing:
 - (a) an adjudicator is not able to reduce the amount of a penalty;
 - (b) the officer that issued the penalty is not required to attend the adjudication hearing; and
 - (c) if the penalty is upheld by the adjudicator, the recipient will be required to pay an additional \$50 fine on top of the previously issued fine.

PART 11 - GENERAL

- 11.1 Council may delegate any of its duties, powers or functions under this by-law.
- 11.2 Should a court determine that a provision of this by-law is invalid for any reason, the



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provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

- 11.3 This by-law comes into force twenty-four (24) hours after posting the by-law on the Band's website at www.hupacasath.ca, as required pursuant to subsection 86(1) of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band this day of 4 day of July, 2020.

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

(Member of the Council – Brandy Lauder)

(Member of the Council – Jim Tatoosh)

(Member of the Council – Warren Lauder)

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is three (3) members.

Number of members of the Council present at the meeting: Three (3)

I, Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was posted as required (as the case may be) pursuant to subsection 86(1) of the *Indian Act*, this 4 day of July, 2020.

(Witness-) _____ (Councillor – Jim Tatoosh) _____

Richard Donald Hewson
Commissioner for Affidavits for British Columbia
Commission Expires: November 30, 2021
Appointee No. 2018-1567



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SCHEDULE A

**BY-LAW NO. 2020-05-06-05
VIOLATION FINES SCHEDULES**

By-Law No. 20-05-06-05 Code Violation Number	By Law for the Control of Livestock, Poultry and Domestic Animals	1st Offence	2nd Offence	3rd Offence
1.1	Livestock poultry and domestic animals on reserve trespass	\$ 50.00	\$ 100.00	\$ 250.00
1.2	When a person opens or fails to close the gate	\$ 50.00	\$ 100.00	\$ 250.00
1.3	Releases confined livestock, poultry or domestic animals	\$ 50.00	\$ 100.00	\$ 250.00
1.4	Harbours, stores, pens, or confines livestock, poultry or domestic animals on band land with out explicit written permission from the band	\$ 100.00	\$ 500.00	\$ 1,000.00
1.5	Intereferes with the duties or conduct of a an officer who is enforcing this or any other by-law	\$ 500.00	\$ 750.00	\$ 1,000.00