

SEMA:TH

LAND CODE

8/31/2010

Amended as per BCR 12-08-19  
On August 9, 2012

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## PREAMBLE

**WHEREAS** Sema:th (Sumas First Nation) has never relinquished aboriginal rights and title to our traditional territory that has sustained and defined our culture, traditions, spirituality, social and economic way of life since time immemorial;

**AND WHEREAS** the teachings of the Sema:th ancestors speak of the obligation of the people to look after the land and all resources as they rightfully use them in a sustainable manner according to Sema:th laws;

**AND WHEREAS** Sema:th's pursuit of economic development will be sensitive to the cultural and environmental needs of the people for future generations;

**AND WHEREAS** Sema:th has entered into the *Framework Agreement on First Nation Land Management* with Canada initially signed on February 12, 1996, as amended, and which was ratified on behalf of the Government of Canada by the *First Nation Land Management Act*;

**AND WHEREAS** by enacting this Land Code, the Members of Sema:th are exercising their inherent right of self-government and providing for governance that is accessible, stable, effective, accountable and transparent;

**NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF SEMA:TH.**

## PART 1

### 1. Title

1.1. The title of this enactment is the Sema:th Land Code.

### 2. Interpretation

2.1. The following definitions apply in this Land Code:

“Act” means the *First Nations Land Management Act*, S.C. 1999, c.24;

“Adjudicator” means an independent third party appointed under this Land Code to hear and settle a conflict or dispute by judicial procedure;

“Administrator” means a person who is hired by Council to hold the principal non-political management position for Sema:th;

“Allotment” means an interest in Sema:th Lands granting a Member lawful possession of a part of Sema:th Lands under Part 7 of this Land Code or, prior to the date this Land Code comes into force granted pursuant to section 20 of the *Indian Act*;

“Arbitrator” means an independent third party appointed under this Land Code to hear appeals, petitions or other matters to be determined by the arbitrator;

“Canada” means Her Majesty the Queen in right of Canada;

“CEAA” means the *Canadian Environmental Assessment Act*, S.C. 1992, c.37;

“Certificate of Possession”, or “CP”, means an official document issued under this Land Code or formerly

issued under section 20 of the *Indian Act* to confirm a Member's Allotment;

"CP Holder" means a person who has been issued a Certificate of Possession to Sema:th lands either under the *Indian Act* or section 35 of this Land Code;

"Chief" means the duly elected Chief of Sema:th;

"Child" means a natural offspring of an individual, and any person less than 18 years of age who has been adopted legally or by Sto:lo custom;

"Cohabitation", for the purpose of Conflict of Interest in this Land Code, means an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotional and conjugal relationship prior to a term of three years;

"Common-law spouse", for the purpose of Conflict of Interest in this Land Code, means the person who is in a conjugal relationship between two individuals who live together for a period of at least three years and share a common domestic life but are neither joined by marriage or domestic partnership;

"Community Land" means any Sema:th Lands in which all Members have a common interest in which is not the subject of an Allotment or Certificate of Possession;

"Community Purpose" means a purpose which is intended to provide a facility, benefit or support for the Members and is limited to public works, utility or transportation corridors, or similar vital purpose;

"Council" means the governing body of Sema:th, comprised of the duly elected Chief and Councillors;

"Councillor" means a duly elected Councillor of Sema:th;

"Council Resolution" means a formal, written motion passed by a quorum of Council at a duly constituted meeting of Council;

"Criminal Code" means the *Criminal Code*, R.S. C. 1985, c C-46;

"Devise" means the gift or disposition of an interest in Sema:th Land by a will;

"Domestic partnership", for the purpose of Conflict of Interest in this Land Code, means two unmarried adults over the age of nineteen (19) in a conjugal relationship, not party to another domestic partnership or marriage, who live in Sumas First Nation that wish to register their partnership, giving the couple the same rights and benefits available to common-law spouses;

"Duplicate Lands Register" means the duplicate register that may be maintained by Sema:th under section 30 of this Land Code;

"Easement" means a non-exclusive interest in Sema:th Lands granted under Part 7 of this Land Code or, prior to the date this Land Code comes into force, under the *Indian Act*, giving the grantee the right to use the land of another for the right-of-way or to provide utility or other services to the land of the grantee, and is limited to such interest as is necessary to give effect to the Easement granted;

"Elder", for the purpose of this Land Code, means any Member over the age of 55 and any other person who is a respected Member of the community recognized as knowledgeable in traditional matters whose

name appears on a list of Elders, maintained by Council;

“Electoral Officer” means the person appointed under this Land Code to conduct referendums held under Part 3 of this Land Code;

“Eligible Voter” means a person who, as of the date of the referendum under Part 3 of this Land Code or other vote provided for under this Land Code:

- I. Has attained the age of eighteen (18) years; and
- II. Is listed on the Membership list.

“Exchanged Lands” has the meaning provided in section 17;

“Expropriation” means a taking of an Interest or all Interests in portions of Sema:th Lands for a Community purpose, through a process established by Sema:th Law in accordance with section 15;

“Extended family” means, in respect of an individual, the individual’s immediate family, uncles, aunts and cousins;

“Final Draft”, in respect of the proposed Sema:th law, means a draft that has been revised, if appropriate, pursuant to section 8;

“Financial Institution” means a deposit taking institution approved by the Financial Institutions Commission of B.C. of the Office of Superintendent of Financial Institutions;

“First Nation Land Register” means the register maintained by the Department of Indian Affairs and Northern Development under the *Framework Agreement*;

“Framework Agreement” means *the Framework Agreement* on First Nation Land Management between Canada and a group of First Nations concluded on February 12, 1996, as amended, which was ratified by Canada by the enactment of the *First Nations Land Management Act*;

“Heritage Site” includes historic buildings and places, sacred sites, cultural landscape features, archaeological sites, burial sites, monuments, artifacts, etc. that are part of Sema:th or Stó:lō heritage;

“Holder” means the holder of an Interest in Sema:th Lands;

“Immediate Family” means an individual’s spouse (including domestic partner and “common-law spouse”), parents, grandparents, children (including adopted children or those living with the family as children), grandchildren and siblings;

“Indian Act” means the *Indian Act*, R.S.C. 1985, c I-5 and any amendments thereto;

“Individual Agreement” means the agreement entered into between Sema:th and the Government of Canada pursuant to section 6(3) of the *Act* and section 6.1 of the *Framework Agreement*;

“Instrument” means a legal document in writing, properly signed and witnessed, which purports to create, grant, assign or transfer an Interest in Sema:th Lands or to affect Sema:th Lands;

“Interest”, in relation to Sema:th Lands, means any estate or interest in land but does not include title to the land and, without limiting the generality of the foregoing, includes:

- i. An Allotment;
- ii. A Certificate of Possession
- iii. A Leasehold;
- iv. A Mortgage of a leasehold interest;
- v. A Right-of-way;
- vi. A Licence; and
- vii. A Permit;

“Land Code” means this Sema:th Land Code;

“Lands Advisory Committee” means the Sema:th Committee established under section 24;

“Land Use Plan” means a formal plan addressing land use and other factors related to the use or development of Sema:th Lands;

“Lands Manager” means the person appointed by Resolution to oversee the day-to-day operations of the Sema:th Lands Office;

“Lease” means a written contract setting out terms and conditions of a Leasehold;

“Leasehold” means an interest in Sema:th granted under this Land Code or, prior to the date this Land Code comes into force, under the *Indian Act*, including a sub-lease, giving a person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including renewal and extension period;

“Licence” means an interest in Sema:th Lands granted under this Land Code, giving a person the right to use, develop or extract Natural Resources from a specified parcel of Sema:th Lands, but which does not grant exclusive possession of Sema:th Lands;

“Majority” means fifty percent plus one (50%+1);

“Member” mean a person who is entitled to have his or her name appear on the Membership List according to section 10 or 11 of the *Indian Act* or who meets the requirements of a membership in the Sema:th Membership Code and whose name appears o the Sema:th Band List, whichever is applicable;

“Membership List” means the list of names of Members maintained by the Department of Indian and Northern Affairs Canada or by Sema:th if they take over the responsibility;

“Membership Clerk” means the person at Sema:th who is responsible for maintaining the “Band List” of Sema:th;

“Minister” means the Minister of Aboriginal Affairs and Northern Development or his or her successor;

“Mortgage” means an interest in Sema:th Lands granted under Part 7 of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, in which a person with a registered allotment, leasehold, or licence, (the “mortgagor”) transfers their interest to another person (“mortgagee”), as security for a debt on conditions set out in a written mortgage agreement including a condition that if the debt is repaid by a specific time the encumbrance is void;

“Natural Resources” means any materials on or under the land in their natural state which when

extracted have economic or other value;

“Permit” means the Instrument which, under Part 7 of this Land Code or, prior to the date this Land Code comes into force, was granted pursuant to the provisions of the *Indian Act*, grants a person a right to use Sema:th Lands for a specific purpose. A Permit does not convey any right to exclusive possession in the land does not restrict the rights of the grantor of the permit beyond that required to give effect to the Permit granted;

“Person” means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization of any trustee, executor, administration or other legal representative;

“Prenuptial” means a contract entered into prior to marriage, civil union, domestic partnership or any other agreement prior to the main agreement by the people intending to marry or contract with each other;

“Ratification Vote” means a vote carried out in relation to this Land Code in a matter consistent with Part 3;

“Referendum” means a referendum held pursuant to Part 3;

“Referendum Officer” means a person appointed by Council for the purposes of a Referendum;

“Sema:th” means the Sumas First Nation, a band for the purposes of the *Indian Act*;

“Sema:th Lands” means:

- i. Upper Sumas Indian Reserve – No. 6;
- ii. Lands set apart by Canada in the future as lands reserved for the use and benefit of Sema:th within the meaning of subsection 91(24) of the Constitution Act, 1867 and subsection 2(21) of the *Indian Act*;
- iii. Reserve lands jointly for the use and benefit of Sema:th and one or more other First Nations, if the First Nations agree upon a joint management scheme for those lands;
- iv. The water, beds underlying the water, riparian rights, Natural Resources including minerals and subsurface resources an all other renewable and non-renewable resources described in (i) or (ii) directly above to the extent that those resources are under the jurisdiction of Canada or Sema:th; and
- v. All Interests and licences granted or confirmed to Sema:th by Her Majesty the Queen in right of Canada listed in the Individual Agreement.

“Sema:th Law” means a law enacted pursuant to this Land Code or any other law making authority Sumas has;

“Sema:th Lands Register” means a register that may be established by a Sema:th Law to record transactions affecting Sema:th Lands;

“Special Membership Meeting” means a meeting held as required for voting Members to consider a specific issue or issues or Sema:th Laws relating to Sema:th Lands;

“Spouse” means an individual who is married or living with another, whether by a domestic partnership, traditional, religious or civil ceremony, and includes Common-law spouse;

“Sub-lease” means a leasehold in which the person transferring the interest is the lessee in a prior existing lease; and

“Verifier” means a verifier appointed in accordance with clause 8.1 of the *Framework Agreement*.

- 2.2. The definitions as set forth in the *Framework Agreement* and *Act* shall have the same meaning in this Land Code.
- 2.3. Where the time is limited for the doing of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday or Sunday or holiday.
- 2.4. Where the time is limited for the doing of an act in the Sema:th administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open.
- 2.5. Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.
- 2.6. If there is an inconsistency or conflict between this Land Code and the *Framework Agreement* shall prevail to the extent of the inconsistency or conflict.
- 2.7. This Land Code is not intended to affect the eligibility of Sema:th or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that Sema:th has not assumed responsibility for such services or programs.
- 2.8. The principles set out in the Preamble to this Land Code may be used to interpret this Land Code.
- 2.9. In this Land Code:
  - a) The use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
  - b) Unless it is otherwise clear from the context, the use of the word “including” means “including but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
  - c) Headings and subheadings are for convenience only, they do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
  - d) A reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or any replacement of it;
  - e) Unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
  - f) Unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

Paramourncy

- 2.10. If there is an inconsistency between this Land Code and any other enactment of Sema:th, this Land Code prevails to the extent of the inconsistency.

Culture and Traditions

- 2.11. The structures, organizations and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of Sema:th, unless otherwise provided.

Non-abrogation

2.12. This Land Code does not abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to Sema:th or its Members.

Fair Interpretation

2.13. This Land Code shall be interpreted in a fair, large and liberal manner.

Fiduciary Relationship

2.14. This Land Code does not abrogate or derogate from the fiduciary relationship between Her Majesty and Sema:th and its Members.

### **3. Authority to Govern**

Flow of Authority

3.1. The authority of Sema:th to govern its land and resources flows from the Creator to the people of Sema:th, and from the people to the Chief and Council according to the culture, traditions, customs and laws of Sema:th.

### **4. Purpose**

4.1. The purpose of this Land Code is to set out the principles and administrative structures that apply to Sema:th Lands and by which Sema:th will exercise authority over these lands.

### **5. Description of Sema:th Lands**

First Nation Land

5.1. All Sema:th Lands are subject to this Land Code.

Additional Lands

5.2. The following lands may be subject to this Land Code after the applicable condition is met:

- a) Any land or interest acquired by Sema:th after this Land Code takes effect, whether by land claim, Specific Claim, purchase or other process, when an environmental site assessment (ESA) declares it free of environmental hazard and safe for community use, provided the lands are set aside as Reserve.

Land Exchange

5.3. For greater certainty, section 5.2 does not apply to land acquired by land exchange, which is governed by the process in section 17.

## **PART 2**

### **FIRST NATION LEGISLATION**

### **6. Law-Making Powers**

Council May Make Laws

6.1. Council may, in accordance with this Land Code, make Sema:th Laws respecting;

- a) Development, conservation, protection, management, regulation, use and possession of and planning for Sema:th Lands;
- b) Interests;
- c) Establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, revenues or other monies in relation to Sema:th Lands;
- d) Any matter necessary to give effect to this Land Code; and
- e) Any matter necessary or ancillary to a Sema:th Law.

- 6.2. For greater certainty, and without limiting the generality of section 6.1 Council may make Sema:th Laws respecting the following but only after completing the community consultation or Ratification Vote process set out in Part 3;
- a) A Sema:th Law creating, or making a significant amendment to, a Land Use Plan;
  - b) Creation, regulation and prohibition of Interests;
  - c) Environmental assessment and environmental protection;
  - d) Expropriation; and
  - e) Setting aside and regulation of heritage lands and scared sites.
- 6.3. For greater certainty, and without limiting the generality of section 6.1, Council may make, amend or repeal Sema:th Laws respecting the following:
- a) The purchase, acquisition or sale of lands in accordance with the *Act* and this Land Code;
  - b) Regulation, control, authorization and prohibition of residency, access, occupation and development of Sema:th Lands;
  - c) Regulation, licensing and control of businesses on Sema:th Lands;
  - d) Regulation of construction and standards for buildings, structures and facilities on Sema:th Lands;
  - e) Zoning and Land Use Planning;
  - f) Fees or charges to be paid to Sema:th for the granting or transfer of Interests in Community Lands;
  - g) Fees, stumpage or royalties to be paid to Sema:th for the removal or extraction of Natural Resources from Sema:th Lands; including removal or extraction of minerals, gravel or timber from Community Lands and from Allotments or CP lands;
  - h) Fees to be paid to Sema:th for Permit or Licence or other applications, registrations or administrative processes;
  - i) Provision of local services and the imposition of user charges including development cost charges or their equivalent;
  - j) Authorization and regulation of subdivisions including requirements for park dedications or grants in lieu of park dedications;
  - k) The conduct of surveys of lands or Interests;
  - l) Setting aside, designation, regulation or management of parks, parklands and recreational lands;
  - m) Rules and procedures for the receipt, management, expenditure, investment and borrowing of monies and the establishment of administrative structure to manage such monies;
  - n) Creation of management and administrative bodies or agencies;
  - o) Removal and punishment of persons trespassing upon Sema:th Lands or frequenting Sema:th Lands for prohibited purposes;
  - p) Removal of dangerous people from Sema:th Lands;
  - q) Public nuisance and private nuisance;
  - r) Regulation of sanitary condition and the provision of sanitary services in private premises and public places;
  - s) Construction and maintenance of boundary and internal fences;
  - t) Construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
  - u) Regulation of traffic and transportation;
  - v) Hunting, fishing, management and protection of fish, wildlife and their habitat on Sema:th

- Lands; and
- w) Use and storage of fireworks, firearms, weapons and hazardous materials or substances.

Other Laws

- 6.4. Council may, without community consultation or a Ratification Vote, make Sema:th Laws respecting the Land Code amendment ratification process in accordance with this Land Code, and may make Sema:th Laws with respect to the appointment, remuneration and functions of the electoral officer.

## 7. Law-Making Procedure

Introduction of Laws

- 7.1. A proposed Sema:th Law may be introduced by a written proposal at a duly convened meeting of the Council by:
- a) A member of Council;
  - b) The Lands Manager;
  - c) A Member of the Lands Advisory Committee; or
  - d) A group of 30 or more Eligible Voters.
- 7.2. A written proposal in 7.1 above shall contain in relation to the proposed Sema:th Law:
- a) A proposed title;
  - b) A brief description of the subject matter to be addressed;
  - c) Reasons why the proposed Sema:th Law is necessary;
  - d) A draft outline of the proposed Sema:th Law; and
  - e) The section or sections of the Land Code which authorize the proposed Sema:th Law.
- 7.3. If requested by a Member or a group of Members, the Lands Manager shall assist them in preparing the following information required in section 7.2.

Tabling and Posting of Proposed Laws

- 7.4. For simple administrative Sema:th Laws, including the following types of Sema:th Laws, Council is not required to post proposed Sema:th Laws or invite comments from the Members:
- a) Sema:th Laws relating to procedures, forms or fees for applications, registrations, grants or transactions relating to Sema:th Lands; and
  - b) Sema:th Laws of a similar administrative nature.
- 7.5. Upon initiation of a proposed Sema:th Law, excluding simple administrative Sema:th Laws, Council shall, as soon as possible, provide notice to the Membership of the subject matter of proposed Sema:th Law and the general nature of provisions to be included in the proposed Sema:th Law.
- 7.6. The notice in subsection 7.5 shall be provided to the Membership by:
- a) Posting of the notice in a public area of the Sema:th administrative building and on the Sumas First Nation website; and
  - b) Publication of a notice in the Sema:th newsletter mailed to the Eligible Voters or by a separate written notice, delivered or mailed to Eligible Voters when deemed necessary by Council.
- 7.7. The notice in subsection 7.5 shall request written comments from Members on the subject matter and content of the proposed Sema:th Law, and shall specify a date at least twenty-one (21) days from the date of the notice of Members to respond to Council.

Community Input

- 7.8. Upon expiration of the time for submitting comments, Council shall take into consideration the comments received, the needs of the community and other relevant matters and, if deems it appropriate, may direct the Lands Manager and the Lands Advisory Committee to prepare a draft Sema:th Law.
- 7.9. For proposed Sema:th Laws requiring a community meeting under section 11, in addition to the requirements set out in 7.2-7.8 above, Council or the Lands Manager must also bring the proposed Sema:th Law to a community meeting under section 11 below.
- 7.10. For proposed Sema:th Laws relating to subsections 12.1 below, in addition to requirements set out in 7.2-7.8 above, Council or the Lands Manager must also bring the proposed Sema:th Law to a Special Membership Meeting under section 12 below.
- 7.11. All Sema:th Laws shall be developed and considered under procedures set out in this Part.

Urgent Matters

- 7.12. Council may enact a Sema:th Law without the preliminary steps required under this Part, if Council is of the opinion that the Sema:th Law is needed urgently to protect any portion or Interest in Sema:th Lands or any Members, but such a Sema:th Law expires 90 days after its enactment, unless re-enacted in accordance with this Part.

Approval of Law by Council

- 7.13. A Sema:th Law is enacted if it is approved by a Majority of the Council at a duly convened meeting of the Council open to the Members and follows the process set out in this Part.

Administration

- 7.14. Council shall perform all the duties and functions, and exercise all the powers of Sema:th that are not specifically assigned to an individual or body established under this Land Code.

Delegation

- 7.15. Despite section 7.14, Council may, by Resolution, delegate administrative authority to an individual or a body established or authorized under this Land Code.

Certification of Laws

- 7.16. The original copy of any Sema:th Law or Resolution concerning Sema:th Lands shall be signed by a quorum of the Council present at the meeting which it was enacted.

Amendments

- 7.17. Any Sema:th Law may be repealed or amended by following the procedure set out in provisions under which the Sema:th Law was enacted.

## 8. Publication of Laws

Publication

- 8.1. All Sema:th Laws shall be published in the minutes of the Council.

Posting Laws

- 8.2. Within seven (7) days after a Sema:th Law has been enacted, Council or the Lands Manager shall post a

copy of the Sema:th Law in the administrative offices and on the website of Sema:th.

Registry of Laws

8.3. The Council shall cause to be kept, at the administrative offices of Sema:th, a register of the original copy of all Sema:th Laws and Resolutions relating to Sema:th Lands or this Land Code, including Sema:th Laws and Resolutions that have been repealed or are no longer in force.

8.4. The Lands Manager may also register a copy of any Laws and Resolutions in subsection 8.3 in the First Nation Land Register.

Copies for any Person

8.5. Any person may obtain a copy of a Sema:th Law or Resolution upon payment of a reasonable fee set by the Council.

## **9. Commencement of Laws**

9.1. A Sema:th Law enacted by Council takes effect on the date of its enactment or such alter date as specified by the Sema:th Law.

## **PART 3**

### **COMMUNITY APPROVALS**

## **10. Rights of Eligible Voters**

10.1. Each Member who is at least 18 years of age is eligible to vote at a meeting of Members when a vote is required under this Part and at a Ratification Vote.

## **11. Community Input**

11.1. Council or the Lands Manager shall convene a meeting of Members to receive their input (but not for a Ratification Vote) prior to the introduction of the following Sema:th Laws:

- a) A Sema:th Law respecting a subdivision plan;
- b) A Sema:th Law declaring land or an Interest referred to in section 5.2 or 5.3 to be subject to this Land Code;
- c) A Sema:th Law affecting a Heritage Site or an environmentally sensitive property;
- d) A Sema:th Law respecting environmental assessment;
- e) A Sema:th Law respecting the rate and criteria for the payment of fees or rent for land; and
- f) Any other Sema:th Law or class of Sema:th Law that Council, by Resolution, declares to be subject to this section.

Process to Implement Laws

11.2. The Lands Advisory Committee shall, within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Sema:th Laws referred to in section 11.1.

## **12. Community Approval at a Special Membership Meeting**

12.1. Community approval by Ratification Vote at a Special Membership Meeting must be obtained for the following:

- a) Any land use plan;
- b) Any development on a Heritage Site referred to in section 16 unless exempted under

- subsection 16.2;
- c) Any voluntary exchange of Sema:th Lands exceeding a term of 49 years;
  - d) Any grant or disposition of an Interest in any Sema:th Lands exceeding a term of 49 years;
  - e) Any renewal of a grant or disposition of an Interest in any Sema:th Lands that extends the original term beyond 49 years;
  - f) Any grant or disposition of any Natural Resources on or under any Sema:th Lands exceeding a term of 5 years;
  - g) A charge or Mortgage of a Leasehold interest exceeding a term of 49 years;
  - h) Any Sema:th Law on spousal separation that may be enacted under section 45;
  - i) Any Sema:th Law governing creation of new Allotments or C.P.s;
  - j) Expropriation of any Interest;
  - k) Any amendment to this Land Code other than amendments to fix minor typographical or similar errors; and
  - l) Any Sema:th Law or class of Sema:th Law that Council, by Resolution, declares to be subject to this section.

### **13. Procedure at a Special Membership Meeting**

Voting

13.1. Notice of the Special Membership Meeting on the items specified for the agenda in advance will be made by a Majority vote of the Eligible Voters present at the meeting.

Notice of Meeting

13.2. Notice of the Special Membership Meeting shall be sent to Members before the meeting and shall include:

- a) A brief description of the matter to be discussed and decided on;
- b) Notification that a descriptive copy of the proposed matter can be obtained by Members at the Sema:th administration building;
- c) A statement that there will be a vote by secret ballot of Eligible Voters present at the Special Membership Meeting to make a decision on the matter; and
- d) The date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.

Manner of Notice

13.3. The notice of a Special Membership Meeting must be given to the Members by:

- a) Posting the notice in a public place on Sema:th Lands at least twenty-one (21) days before the meeting;
- b) Mailing the notice to Members for whom Sema:th has a current mailing address;
- c) Publishing the notice in the community newsletter and on the Sema:th website at least ten (10) working days before the meeting; and
- d) Such additional methods as the Council may consider appropriate in the circumstances.

13.4. Nothing precludes Council from holding a Special Membership Meeting in conjunction with any other meeting of Sema:th Members provided the notice requirements in this Part are met.

Who May Attend

13.5. All Members have a right to attend a Special Membership Meeting, but other Persons may attend only

with the permission of the Council.

Quorum

13.6. The quorum of a Special Membership Meeting under this Land Code is fifty percent plus one (50%+1) Eligible Voters that are in attendance.

Decision

13.7. The decision at the Special Membership Meeting shall be recorded in the minutes and if required, shall be included in the certificate.

## 14. Ratification Votes

Ratification Process

14.1. Any Ratification Vote required under this Land Code shall be conducted in substantially the same manner as the *Sema:th Community Ratification Process*, which was used to ratify this Land Code with any modifications required to suit the circumstances.

No verifier

14.2. A verifier is not needed in any Ratification Vote, except for the passing of the Land Code.

Minimum Requirements for Approval

14.3. A matter shall be considered approved at a Ratification Vote if a Majority of the Eligible Voters present who voted cast their vote in favour of the matter.

## PART 4

### PROTECTION OF LAND

## 15. Expropriation

Rights and Interests That May Be Expropriated

15.1. An Interest in Sema:th Lands, or in any building or other structures on those lands, may only be expropriated by Sema:th in accordance with the *Framework Agreement* and any Sema:th Law enacted for the purpose of establishing the rights and procedures for community expropriations.

Community Purposes

15.2. A community expropriation may only be made for a necessary Community Purpose or works of Sema:th, including but not limited to: a fire hall, sewage or water treatment facility, hospitals, health care facility or retirement home.

Expropriation Laws

15.3. Before proceeding to make any community expropriations in accordance with this Land Code, the Council shall enact a Sema:th Law respecting rights and procedures for community expropriations, including provisions respecting;

- a) The taking of possession of the Interest;
- b) Transfer of an Interest;
- c) Entitlement to compensation;
- d) Determination of the amount of compensation; and
- e) The method of payment of compensation.

Public Report

15.4. Before Sema:th decides to expropriate an Interest it shall make a public report on the reasons

justifying the expropriation.

Rights That May Not Be Expropriated

15.5. An Interest of Her Majesty the Queen in right of Canada or the province is not subject to expropriation by Sema:th.

Acquisition by Mutual Agreement

15.6. The right of Sema:th to expropriate can only be exercised after a good faith effort by Council to acquire, by mutual agreement, the Interest in Sema:th lands.

Compensation for Rights and Interests

15.7. Sema:th shall, in accordance with Sema:th laws and the *Framework Agreement*:

- a) Serve reasonable notice of the expropriation on each affected Holder or the Interest to be expropriated; and
- b) Pay fair and reasonable compensation to the Holders of the Interest being expropriated.

Compensation Calculations

15.8. The total value of the compensation under this section will be based on the following:

- a) The market value of the Interest that is being expropriated;
- b) The replacement value of any improvements to the land that is being expropriated;
- c) The damages attributable to any disturbance; and
- d) Damages for any reduction in the value of a remaining Interest.

Market Value

15.9. The “market value” of an expropriated Interest is equal to the amount that would have been paid for the Interest if it had been sold on Sema:th Lands by a willing seller to a willing buyer at arm’s length and under no duress.

Neutral Evaluation

15.10. A dispute concerning the right of Sema:th to expropriate an Interest in Sema:th Lands shall be reviewed by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the 60 day period referred to in clause 32.6 of the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.

Arbitration to Resolve Disputes

15.11. The resolution of the following disputes shall be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*:

- a) Disputes concerning the right of a person who claims an Interest in expropriated Sema:th Lands to compensation; and
- b) Disputes concerning the amount of the compensation to be paid to the person who held an Interest in expropriated Sema:th Lands.

## 16. Heritage Sites

Community Approval Of Development

16.1. No development or redevelopment shall be allowed on any site designated as a Heritage Site under a Sema:th Law or Land Use Plan, unless the development receives community approval by a Ratification Vote.

16.2. Section 16.1 does not apply to:

- a) Renovations, repairs or upgrading of buildings or structures which are in existence at the date the Sema:th Law or Land Use Plan, designates the Heritage Site; or
- b) Landscaping and maintenance which do not result in any new disturbances to heritage values

of the Heritage Site.

Land Use Plan

16.3. No amendment may be made to a Land Use Plan to delete a Heritage Site unless the amendment receives community approval by Ratification Vote.

## 17. Voluntary Land Exchanges and Protections

Conditions For a Land Exchange

17.1. Sema:th may agree with another party to exchange a parcel of Sema:th Lands for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.

No Effect

17.2. A community land exchange is of no effect unless it receives community approval by a Ratification Vote.

Land to be Received

17.3. A proposed Land Exchange cannot proceed to a Ratification Vote unless the land to be received by Sema:th:

- a) Is of equal or greater areas than the area of the Sema:th Lands to be exchanged; and
- b) Is at least comparable in value to the appraised value of the Sema:th Land to be exchanged.

Negotiators

17.4. Any person given authority to negotiate a land exchange agreement on behalf of Sema:th must be designated by Band Council Resolution.

Additional Land

17.5. Sema:th may negotiate to receive other compensation, such as money or one more other parcels of land, in addition to the parcel referred to above which is intended to become a reserve and any such other parcels of land may be held by Sema:th in fee simple or some other manner.

Federal Consent

17.6. Before Sema:th concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Her Majesty the Queen in right of Canada:

- a) Consents to set apart as a reserve the land to be received in exchange, as of the date the land exchange or such alter date as the Council may specify by Resolution or as provided by an agreement with Canada; and
- b) Consents to the manner and form of the exchange as set out in the exchange agreement.

Community Notice

17.7. Once negotiations on the land exchange agreement are concluded, the Council shall provide the following information to Eligible Voters at least 21 days before the Ratification Vote:

- a) A description of the Sema:th Land to be exchanged;
- b) A description of the land to be received in the exchange;
- c) A description of any other compensation to be exchanged;
- d) A report of a certified land appraiser setting out that the conditions in section 17.3 have been met;
- e) A copy or summary of the exchange agreement; and
- f) A copy of the consent referred to in section 17.6.

Process of Land Exchange

17.8. The land exchange agreement shall provide that:

- a) The other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve to become Sema:th Lands;

- b) The Council must pass a Resolution authorizing Canada to transfer title to Sema:th Land Being exchanged, in accordance with the exchange agreement; and
- c) A copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Land Register.

## PART 5

### ACCOUNTABILITY

#### 18. Conflict of Interest

##### Application of Rules

18.1. The rules set out in section 18.2 apply to the following persons:

- a) Each member of the Council who is dealing with any matter before Council that is related to Sema:th Lands or any Interests in Sema:th Lands;
- b) Each person who is an employee or contractor of Sema:th dealing with any matter that is related to Sema:th Lands or any Interests in Sema:th Lands; and
- c) Each person who is a member of a board, committee or other body of Sema:th dealing with any matter that is related to Sema:th Lands or any Interest in Sema:th Lands.

##### Conflict of Interest Prohibition

18.2. A person to whom this Part applies must not exercise his or her power or carry out his or her responsibility provided for in this Land Code if the person has a conflict of interest or an apparent conflict of interest.

##### Duty to Report and Abstain

18.3. Any person who has any interest, financial or otherwise, in the matter being dealt with that might involve the person or his or her Immediate Family is in a potential conflict of interest and:

- a) Shall immediately disclose the interest to the Council, the board, committee or to other body as the case may be;
- b) Shall physically withdraw from the meeting without voting or participating in the consideration of the matter;
- c) May return to that meeting once the consideration and voting on the matter is finished; and
- d) May be counted in the quorum at the meeting whether or not he or she votes on any of the matters considered at that meeting.

18.4. Sections 18.2 and 18.3 do not apply to any interest that is held by a Member in common with every other Member.

18.5. If a person has complied with subsections 18.2 and 18.3, the person taking minutes of the meeting must record:

- a) The disclosure;
- b) The general nature of the conflict of interest disclosed; and
- c) The withdrawal of the person from the meeting.

##### Conflict of Interest In Doubt

18.6. If a person to which this Part is in doubt whether he or she has a conflict of interest, he or she may request a decision whether he or she is in compliance with this Part:

- a) From Council, if the person is a member of Council; or
- b) From the Lands Advisory Committee, if the person is a member of the Committee.

18.7. If a person to which this Part applies has reasonable grounds to believe that another person to which this Part applies has a conflict of interest, the former may request a decision on whether the person is in compliance with this Part:

- a) From Council, if the person is a member of Council; and
- b) From the Lands Advisory Committee, if the person is a member of the Committee.

18.8. Unless appealed to a court, a decision of the Council or the Land Advisory Committee, if the person is a member of the Committee.

*Meeting of Eligible Voters*

18.9. If the Council is unable to vote on a proposed Sema:th law or Resolution due to a conflict of interest, the Council may refer the matter to a Special Membership Meeting and, a Majority of the Eligible Voters present at the meeting may enact the Sema:th Law or resolution.

*Inability to Act*

18.10. If the board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to the Council.

*Specific Conflict Situations*

18.11. Because of potential conflicts of interest possible in a small community, no more than two members of the same Immediate Family may be members of a board, committee or other body dealing with any matter that is related to Sema:th Lands.

*Disputes*

18.12. Questions about whether a breach of this section has occurred may be referred to the Adjudicator under Part 4.

*Penalty*

18.13. In addition to any other penalty that may be prescribed by Council or by Sema:th Law for breach of this Part, an individual is liable to Sema:th for any benefits to himself, Immediate Family member or a business in which that individual holds an interest, resulting from violation of this Part.

*Other Laws*

18.14. For greater certainty, the Council may enact Sema:th Laws to further implement this section.

## **19. Financial Management**

*Application*

19.1. This section applies only to financial matters relating to Sema:th Lands.

*Establishment of Bank Accounts*

19.2. Council shall maintain one or more financial accounts in a Financial Institution and shall deposit in those accounts:

- a) Transfer payments received from Canada for the management and administration of Sema:th Lands;
- b) Moneys received by Sema:th from the grant or disposition of any Interests in Sema:th Lands;
- c) All fees, fines, royalties, stumpage, charges and levies collected by Sema:th in relation to Sema:th Lands;
- d) All capital and revenue monies received from Canada from the grant or disposition of any

- Interests in Sema:th Lands; and
- e) Any other land-related revenues received by Sema:th.

Signing Officers

19.3. Signing officers will be appointed as per Sema:th's administration policy.

Two Signatures

19.4. To be valid, a cheque or other bill of exchange or transfer drawn on the account established under subsection 19.2 must be signed by two signing officers.

Fiscal Year

19.5. The fiscal year of Sema:th begins on April 1 of each year and ends on March 31 of the following year.

Adoption of Budget

19.6. Council shall, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if the Council deem it necessary in the course of the fiscal year, adopt supplementary budgets by Resolution for that fiscal year.

Procedure

- 19.7. After adopting the land management budget or supplementary budget, the Council shall, without undue delay:
- a) Explain the budget or supplementary budget to the Members at an annual community meeting; and
  - b) Make a copy of the budget or supplementary budget available at the administrative office of Sema:th for inspection by Members at reasonable hours.

If No Budget

19.8. If the Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any relevant supplementary budgets of the previous fiscal year apply until a new budget is adopted.

Budget Rules

19.9. The Council may make rules respecting the preparation and implementation of land management budgets.

Expenditures

19.10. The Council may not expend monies related to land or commit itself, by contract or otherwise, to expend monies related to Sema:th Lands or Interests in Sema:th Lands, unless the expenditure is authorized by or under a Sema:th Law or an approved budget.

Financial Policy

19.11. Sema:th may, in accordance with this Land Code, adopt a financial policy to further manage monies related to Sema:th Lands.

## 20. Financial Records

Financial Records

20.1. Sema:th shall keep financial records related to land in accordance with generally accepted accounting practices.

Offences

- 20.2. A person is guilty of an offence if the person;
- a) Impedes or obstructs anyone from exercising their right to inspect the financial records of Sema:th; or
  - b) Has control of the books or account or financial records of Sema:th and fails to give all reasonable assistance to anyone exercising their right to inspect all financial records.

Preparation of Financial Statement

20.3. Within 90 days after the end of the fiscal year, the Council on behalf of Sema:th shall prepare or have

prepared a financial statement in comparative form, containing the minimum:

- a) A balance sheet
- b) A statement of revenues and expenditures and a comparison of these with amounts stated in the land management budget and any supplementary budget; and
- c) Any other information necessary for a fair presentation of the financial position of Sema:th in relation to lands revenues and expenditures.

Consolidate Accounts, etc.

20.4. The accounting, auditing and reporting requirements of this Land Code may be done together with, and consolidated with, the other accounts, audits and reports of Sema:th provided that the statement and analysis relating to Sema:th Lands is clearly distinguishable.

## **21. Audit**

Appointment of Auditor

21.1. For each fiscal year, a duly accredited auditor shall be appointed by Council by Resolution to audit the land related financial records of Sema:th.

Holding Office

21.2. The auditor appointed under this section holds office until reappointed or replaced.

Vacancy in Office

21.3. Where a vacancy occurs during the term of an auditor, the Council shall, without delay, appoint a new auditor for the remainder of the former auditor's term.

Remuneration

21.4. The auditor's remuneration shall be reasonable and shall be fixed by the Council by Resolution.

Duty of Auditor

21.5. The auditor shall, within 120 days after the end of Sema:th's fiscal year, prepare and submit to the Council, a report on Sema:th's financial statement, stating whether, in the opinion of the auditor, the financial statement presents fairly the financial position of Sema:th in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

21.6. In order to prepare the report on Sema:th's financial statement, the auditor may, at all reasonable times, inspect any financial records of Sema:th and any Person or body who administers money on behalf of Sema:th.

Explanation of Auditor's Report

21.7. The Council shall present the auditor's report to the Members at a meeting of members.

## **22. Annual Report**

Publish Annual Report

22.1. The Council, on behalf of Sema:th, shall present an annual report to the Membership on lands issues within one month of receipt of the audit under subsection 21.5.

Contents

22.2. The annual report will include:

- a) An annual review of land management of Sema:th Lands;
- b) A copy and explanation of the audit as it applies to Sema:th Lands and Interests in them; and
- c) Any other matter as determined by the Council, the Lands Manager, or Lands Advisory Committee.

## **23. Access to Information**

23.1. Any Member may, during normal business hours at the main administrative office of Sema:th, have reasonable access to:

- a) The register of Sema:th Laws
- b) The auditor's report; and
- c) The annual report on lands.

Copies for Members

23.2. Any Member may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under Resolution of the Council.

Access to Records

23.3. Any Person authorized by the Council by Resolution may, at any reasonable time, inspect the financial records of Sema:th related to Sema:th Lands.

## **PART 6 LAND ADMINISTRATION**

### **24. Lands Advisory Committee**

Committee Established

24.1. The Lands Advisory Committee is hereby established to:

- a) Provide advice and make recommendations to Council on land use plans, development plans, Sema:th Laws, Resolutions, policies and practices in respect of management and administration of Sema:th Lands;
- b) Provide advice and make recommendations to Council on proposed transactions involving Community Lands;
- c) Assist in the flow of information on issues related to Community Lands between Members and Council;
- d) Develop a community process to develop and implement the Sema:th Laws, rules and procedures referred to in sections 11 and 24.2;
- e) Assist in the communication of land issues between Members and the Council;
- f) Provide assistance as may be required in the holding of General Band Meetings regarding land issues or Ratification Votes; and
- g) Perform other such duties and functions as the Council may direct.

Development of Land Related Rules and Procedures

24.2. Within a reasonable time after this Land Code takes effect, the Lands Advisory Committee shall, in consultation with Members, ensure that Sema:th Laws, rules and procedures, as may be appropriate, are developed that address the following matters:

- a) Environmental protection and assessment in relation to Sema:th Lands;
- b) Any outstanding issues on the resolution of disputes in relations to Sema:th Lands;
- c) Land use planning and zoning; and
- d) Any other matter referred by Council.

Implementation of Policies

24.3. The rules and procedures, once developed, shall be reviewed by the Committee and presented to the Council by the Lands Manager for consideration and implementation as policies, Sema:th Laws or amendments to this Land Code, whichever is most appropriate.

Internal Procedures

24.4. The Lands Advisory Committee may establish rules for the procedure at its meetings and generally of the conduct of its affairs, not inconsistent with those established by the Council.

Member Consultation

24.5. The Committee will take reasonable measures to consult with Sema:th Members with respect to matters in general under this Land Code.

### **25. Membership of the Lands Advisory Committee**

Composition

25.1. The first Lands Advisory Committee shall be composed of the Lands Manager, the six original members who assisted in developing the Land Code and its two alternates for a term of two years.

25.2. Within two years of the date this Land Code takes effect and every two years thereafter Council will appoint a Committee consisting of at least five Members, all of whom must be Eligible Voters and meet the eligibility criteria of 25.3 and 25.4.

Eligibility to be Selected as a Lands Advisory Committee Member

25.3. Any Eligible Voter, whether resident on or off Sema:th Lands, is eligible for appointment to the Lands Advisory Committee, except for the following persons:

- a) Any person convicted of an offence that was prosecuted by way of indictment;
- b) Any person who is in bankruptcy;
- c) Any person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct;
- d) Any person found by a Court to have breached a fiduciary duty owed to Sema:th or to have defrauded Sema:th;
- e) A person who is unable to regularly attend meetings due to living elsewhere; or
- f) A person who is unfit by reason of mental incapacity.

Selection of Committee Members

25.4. The members of the Lands Advisory Committee are to be appointed by Council, being mindful of the overall Committee composition, based on their written application highlighting, among other characteristics:

- a) Able to commit to the time that will be required to meet (days, evenings and weekends);
- b) Excellent reading and writing skills in order to assist in drafting of policies, rules, procedures and regulations to be presented to all Sema:th Members;
- c) Able to participate fully in Committee discussions;
- d) Committed to information sharing, team building, cooperative decision making and all similar activities that will ensure the effective functioning of the Committee;
- e) Integrity and a commitment to ethical behaviour;
- f) Personal maturity and leadership skills;
- g) Independence of thought and willingness to deal directly with the difficult issues;
- h) Must be a Member of Sema:th;
- i) Must be an Eligible Voter;
- j) The make-up of the committee is to characterize a cross section of the community Membership that represents the following groups: Elders, youth, the different family groups, CP Holders, on/off reserve, etc.;
- k) The requirement to ensure that no more than two members of the same Immediate Family are on the Committee as per subsection 18.11; and
- l) Must be willing to sign an Oath of Confidentiality.

25.5. There are no proxy votes permitted for the Committee and a Committee member shall not, at any time, transfer or assign his or her membership to another person.

Term of Appointment

25.6. The length of the term of appointment for members of the Lands Advisory Committee is two years.

Vacancy on Committee

25.7. A Committee member loses his or her appointment to the Lands Advisory Committee if the person, during his or her term:

- a) Is or becomes ineligible under this section;
- b) Transfer his or her membership to another First Nation; or
- c) Is absent for 3 consecutive meetings of the Lands Advisory Committee for a reason other than illness or incapacity, and without being authorized to do so by the Committee or Council.

Vacancy in Term

25.8. Where a Committee member loses his or her appointment under subsection 25.7 more than 90 days before the date when another appointment would ordinarily take place, Council shall make an appointment in accordance with this section 25 to fill the vacancy.

Balance of Term Of Office

25.9. A member of the Lands Advisory Committee appointed to fill a vacancy remains in place for the balance of the term in respect of which the vacancy occurred.

## 26. Chairperson of the Lands Advisory Committee

Chairperson and Co-chairperson

26.1. Any member of the Lands Advisory Committee can run for the position of Chairperson or Co-Chairperson of the Lands Advisory Committee. These positions are elected annually by the other members of the Lands Advisory Committee.

Co-Chairperson

26.2. If the Chairperson is unable to perform the functions of office, either temporarily or on a long-term basis, the Co-chairperson shall act as or be the Chairperson.

Functions of Chairperson

26.3. The functions of the Chairperson and Co-Chairperson are as follows:

- a) A Chairperson is an elected member of the Lands Advisory Committee to direct the Committee meetings;
- b) A Chairperson has no authority to override those decisions made by and within the realm of the Lands Advisory Committee.
- c) A Co-Chairperson is a member of the Lands Advisory Committee and who is voted by way of a quorum of the members of the Committee to direct the meetings in the absence of the Chairperson; and
- d) Upon absence of a Chairperson and Co-Chairperson, the Committee will select a Chairperson to fulfill the duties of a chairperson at that particular meeting.

Chair Duties

26.4. The Chairperson:

- a) Is a member of the Committee;
- b) Chairs meetings of the Committee;
- c) Works with the Lands Manager and Assistant to ensure the agenda and any necessary materials are prepared in advance for meetings;
- d) Encourages the Committee's role in planning;
- e) Appoints members of any necessary working groups, in consultation with other Committee members;
- f) Discusses issues confronting the Committee with Committee members;
- g) Helps guide and mediate the Committee's actions with respect to the Development Phase and other assigned priorities; and
- h) Reviews with the Committee Co-Chair, Lands Manager and Assistant any issues of concern to the Committee.

## 27. Lands Office and Lands Manager

Lands Office

27.1. The Sema:th Lands Manager shall carry out duties and responsibilities delegated or assigned to it pursuant to this Part or by Sema:th Law.

27.2. Without limiting the generality of the duties and responsibilities of the Sema:th Lands Office, it shall:

- a) Administer Sema:th Lands in accordance with this Land Code and Sema:th Law;
- b) Coordinate the development and implementation of Sema:th Laws, forms, fees and policies relating to Sema:th Lands;
- c) Prepare forms of Instruments for use in registering or recording Interests in Sema:th Lands where deemed necessary and advisable by the Sema:th Lands Office;

- d) Prepare forms of Instruments for use in registering or recording instruments which affect, or purport to affect, Sema:th Lands where deemed necessary and advisable by the Sema:th Lands Office;
- e) Receive Instruments sought to be registered or recorded in the First Nation Land Register;
- f) Review Instruments sought to be registered or recorded in the First Nation Land Register;
- g) Review Instruments for technical compliance with this Land Code, Sema:th Law and other applicable policies;
- h) Arrange for the execution of Instruments and related documentation on behalf of Sema:th or formerly on behalf of Her Majesty the Queen in right of Canada;
- i) Arrange for the registration or recording of Instruments in the First Nation Land Register;
- j) Maintain and protect records in relation to Sema:th Lands;
- k) Prepare and present regular reports to the Council; and
- l) Carry out other such duties as are requested or required by the Council and are consistent with this Land Code, Sema:th Law and other applicable laws and policies.

Lands Manager

27.3. The Lands Manager shall oversee the day-to-day operations of the administration of Sema:th Lands and the Lands Office and perform other such duties and responsibilities consistent with this Land Code and Sema:th Law.

27.4. Without limiting the generality of sections 27.2 and 27.3, the Lands Manager or his or her designate appointed in writing, shall:

- a) Execute such Instruments and carry out action required to be taken by and on behalf of the Minister or Her Majesty the Queen in right of Canada in relation to an Interest in Sema:th Lands;
- b) Carry out any action that was required to be taken by the Minister or Her Majesty the Queen in right of Canada in relation to an Interest described in section prior to the date this Land Code comes into force;
- c) Manage Sema:th Lands Office;
- d) Ensure that any necessary certifications of Council or community approval are prepared and registered;
- e) Coordinate the development of Sema:th Laws, policies, procedures and forms under this Land Code;
- f) Assist in ensuring compliance with reporting requirements under this Land Code;
- g) Act as liaison between Council and the Lands Advisory Committee;
- h) Present proposed Sema:th Laws to the Members and to Council; and
- i) Carry out any action or responsibility delegated to the Lands Manager pursuant to section 27.2.

Delegation

27.5. Despite section 27.1, the Council may delegate administrative authority in relation to a Sema:th Law enacted under section 7.1 to an individual or a body established or authorized under this Land Code. The Sema:th Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Part or by Sema:th Law.

## **28. Revenue from Lands**

Determination of Fees and Rent

28.1. The Lands Advisory Committee shall, subject to the approval of the Council, establish the process and recommend any Sema:th Laws, rules and policies for determining:

- a) The fees and rent for Interests in Community Land;
- b) The fees for services provided in relation to any Sema:th Lands; and
- c) The fees and royalties to be paid for the extraction of Natural Resources from Sema:th Lands and CP lands, with reference to requirements and policies under sections 28 and 29 of the *Indian Act*.

## 29. Registration of Interests

### Enforcement of Interest

- 29.1. The grant, transfer or other disposition of an Interest in Sema:th Lands shall be effective on the date the documents are registered or recorded in the First Nation Land Register.
- 29.2. An Interest in Sema:th Lands created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Lands Register. This section is not meant to preclude *in personam* rights or causes of action that may be pursued by one party against another party for a claim in relation to an Interest in Sema:th Lands.
- 29.3. Persons or entities involved in registering Interests are responsible for ensuring the validity and accuracy of their documents. Neither Sema:th nor the Lands Manager shall be responsible or liable for ensuring that a document which affects or purports to affect Sema:th Lands:
- a) Is validly made;
  - b) Complies with the Land Code;
  - c) Should be registered or recorded; and
  - d) Will be accepted for registration or recording.

### Registration of Consent or Approval

- 29.4. An instrument granting an Interest in Sema:th Lands that requires the consent of the Council, or community approval, shall include a certificate issued by the Lands Manager indicating that the applicable consent or approval has been obtained.
- 29.5. An Instrument registered in the First Nation Land Register which does not include the certificate referred to in clause 29.4 is void.

### Duty to Deposit

- 29.6. Every person who receives an Interest in Sema:th Lands shall deposit a copy of the relevant instrument with Sema:th and keep the original copy.
- 29.7. Provided they have access to a copy, the Council or the Lands Manager shall ensure that a copy of the following Instruments or documents is deposited in the First Nation Land Register:
- a) Any grant of an Interest in Sema:th Lands;
  - b) Any transfer or assignment of an Interest in Sema:th Lands;
  - c) Every land use plan, subdivision plan or resource use plan; and
  - d) This Land Code and any amendment to this Land Code.
- 29.8. Except as against the person making it, an Instrument purporting to create, grant, assign, transfer, dispose of or otherwise deal with an Interest in Sema:th Lands after this Land Code takes effect does not operate to pass an Interest in Sema:th Lands or convey a right to use or occupy Sema:th Lands unless such Instrument is registered in the First Nation Land Register.
- 29.9. Notwithstanding section 29.8, only those Instruments that are in compliance with this Part can be registered or recorded in the First Nation Land Register, upon payment of a reasonable fee, as may be prescribed by Council, to defray costs of registration.
- 29.10. A copy of all Instruments that are submitted for registration or recording in the First Nation Land Register may be kept at the Sema:th Lands Office.
- 29.11. The First Nation Land Register shall accommodate the registration and recording of Interests not accommodated specifically by the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and Sema:th.
- 29.12. Transactions dealing with Interests in Sema:th Lands shall be filed with the Sema:th Lands Office and, once verified as technically complying with this Land Code and Sema:th Law, shall be forwarded to the

First Nation Land Register for registration and recording.

- 29.13. Surveys prepared in accordance with section 46 may, subject to Sema:th Law and other applicable law, be registered or recorded in the First Nation Land register subject to the approval of the form and content of the same by the Sema:th Lands Office.
- 29.14. Financial claims or other assertions of rights which affect, or purport to affect, Sema:th Lands may, in accordance with Sema:th Law and other applicable law, be recorded in the First Nation Land Register subject to the approval of the form and content of same by the Sema:th Lands Office and acceptance by the First Nation Land Register for registration.
- 29.15. The type of documents or Instruments which may be recorded in the First Nation Land Register in relation to legal claims or proceedings may include, but are not limited to, Instruments relating to:
- a) Judgements;
  - b) Court of Orders;
  - c) Rights of First Refusal;
  - d) Certificates of Pending Litigation;
  - e) Caveats;
  - f) Liens;
  - g) Assignments of Rent;
  - h) Options of Purchase;
  - i) Tax Certificates; and
  - j) Written decisions of the Minister or his or her designate in relation to Sema:th Lands, estates or Interests

But recording or registration of all such documents or Instruments, and all other documents or Instruments, is subject to confirmation by the Lands Manager and the Registrar of the First Nation Land Register for form.

- 29.16. Recording or registration in the First Nation Land Register shall not be deemed to be support for the legal validity of any claims nor the ability to take execution or other proceedings as a result of the recording or registration.

### **30. Duplicate Lands Register**

Duplicate Register

- 30.1. The Council may choose to maintain a Duplicate Lands Register in the same form and with the same content as the First Nation Land Register.
- 30.2. Subject to this Part, the *Act* and any regulation passed pursuant to the *Act*, if Sema:th creates its own duplicate registry, it shall be administered in the same manner as the First Nation Land Register established under the *First Nation Land Management Act*.

## **PART 7 LAND RULES**

### **31. General**

- 31.1. The purpose of this Part is to set out the principles, rules and administrative structures pursuant to which Sema:th will govern and manager Sema:th Lands.
- 31.2. Sema:th Lands are “lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*, and are, or will be in the future, subject to any Sema:th Treaty, reserves set apart by Her Majesty the Queen in right of Canada for the use and benefit of Sema:th.

31.3. Legal title to all Sema:th Lands shall continue to be held in the name of Her Majesty the Queen in right of Canada for the use and benefit of Sema:th.

31.4. The use and development of Sema:th Lands is subject to this Land Code, Sema:th Law and other applicable laws.

31.5. Any instruments purporting to create, grant, assign or transfer an Interest in Sema:th lands which is inconsistent with this Land Code or Sema:th Law is void.

31.6. Despite section 31.5, if an offending provision is capable of being severed from the Instrument, the remaining provisions shall not in any way be affected or impaired.

31.7. Council shall develop Sema:th Laws consistent with this Land Code regarding management, administration, use and protection of Sema:th Lands.

31.8. Council shall, within two (2) years of the date this Land Code comes into force, refer a final draft Sema:th Law to adopt a Land Use Plan to a Special Membership Meeting for enactment by Eligible Voters in accordance with Part 3 of this Land Code.

### **32. Interest in Sema:th Lands**

32.1. All existing Interests will be subject to the terms and conditions set out in this Land Code and to any relevant Laws, Land Use Plans or regulations passed in relation to this Land Code. For greater certainty, Sema:th is not liable for any decrease in value or use of an Interest arising in relations to a Sema:th Law, Land Use Plan or regulation duly passes under in relation to this Land Code.

32.2. Where an Interest described in section 32.1 includes an action to be taken by the Minister or Her Majesty the Queen in right of Canada, the responsibility for such action after the date this Land Code comes into force shall be with the Council but can be designated to the Lands Manager.

### **33. No Interest Created**

33.1. Subject to section 32.1, an Interest in Sema:th Lands may only be created, granted, assigned or transferred by Instrument in accordance with this Part or a Sema:th Law provided for in this Part.

33.2. No person may acquire an Interest in Sema:th Lands by use, occupation or any other means not authorized either pursuant to this Part or a Sema:th Law provided for in this Part.

33.3. A contract, Instrument or agreement of any kind entered into after date this Land Code comes into force, whether written or oral, by which a person purports to create, grant, assign or transfer an Interest in Sema:th Lands is void if it does not comply with this Part or a Sema:th Law provided for in this Part.

33.4. No Instrument is valid nor shall it be forwarded to the First Nation Land Register for registration or recording unless it has first been submitted to the Lands Manager or his or her designate at the Sema:th Lands Office.

### **34. Natural Resources**

34.1. Subject to applicable laws, all Natural Resources on or under Sema:th Lands belong to Sema:th.

34.2. The use and development of Natural Resources on Sema:th Lands will be subject to this Land Code, Sema:th Law and other applicable laws.

34.3. To the extent that Sema:th has ownership or rights over waters as recognized by federal or provincial legislation or by operation of law, Sema:th retains ownership and has jurisdiction to manage and regulate water use.

34.4. Allotments are subject to this section.

### **35. Allotment**

35.1. Only Members can hold, receive or purchase an Allotment or CP.

35.2. Subject to section 35.5, no Allotment or CP shall be granted until a Sema:th Law has been enacted establishing policy, procedure or criteria for granting Allotments and CPs.

35.3. A Sema:th Law regarding Allotments must include the basic principle of fairness to all Members when granting an Allotment.

35.4. A Sema:th Law referred to in section 35.2 shall be enacted by Ratification Vote as set out in Part 3 of this Land Code.

35.5. Despite subsection 35.4, an Allotment or CP may be granted by Resolution where the Allotment is required to fulfil a written agreement lawfully entered into prior to the date this Land Code comes into force or to comply with an order of a court of competent jurisdiction.

### **36. Leasehold in Community Lands**

36.1. Council may issue a Leasehold in Community Lands for a term or possible term of fifteen (15) years or less, calculated by including any renewal or extension period, and may be granted by Council by Resolution.

36.2. Where Sema:th proposes to grant a Leasehold in Community Lands for a term or possible term of more than fifteen (15) years, calculated by including any renewal or extension period, but not more than forty-nine (49) years, Council shall schedule a meeting of Members to discuss (but not to hold a Ratification Vote) on whether the Leasehold should be granted.

36.3. Notice of the meeting of Members shall be given to the Membership in the manner set out in Part 3.

36.4. At the meeting of Members, Council or its designate shall explain the purpose and provisions of the Lease and Members may ask questions and provide comments.

36.5. Where the Leasehold is for a term or possible term longer than forty-nine (49) years, calculated by including any renewal or extension period, the proposed Leasehold must be approved at a Special Membership Meeting by a Ratification Vote held in accordance with Part 3 of this Land Code.

36.6. The granting of a Leasehold for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved in the Ratification Vote by a Majority of members who attend the Special Membership Meeting.

36.7. The results of the Ratification Vote held under section 36.6 shall be:

- a) Evidence of approval for granting the proposed Leasehold or rejection of the proposed Leasehold; and
- b) Recorded in the minutes and included in the certificate required under subsection 29.4 as evidence of approval for granting the Leasehold or rejecting the granting of the proposed Leasehold.

36.8. The granting of a Leasehold does not grant any Interest in the Natural Resources on or under the land

described in the Lease unless specifically included in the terms and conditions of the Lease.

### **37. Easements and Permits in Community Lands**

- 37.1. Subject to section s37.3 to 37.12, Council may, by Resolution, grant Easements, Licenses and Permits in Community Lands.
- 37.2. Council may, by Resolution, grant Easements and Permits to utility companies or entities for such length of term as Council, in its absolute discretion, deems appropriate. The granting of such Easements and Permits are not subject to the procedures set forth in section 37.3 through 37.12.
- 37.3. Subject to 37.2, where Sema:th proposes to grant an Easement or Permit in Community Lands for a term, or possible term, of more than fifteen (15) years, calculated by including any renewal or extension period, Council shall schedule a meeting of Members to consider whether the proposed Easement or Permit should be granted.
- 37.4. Notice of the meeting of Members shall be given to Members in the manner set out in Part 3.
- 37.5. Where the proposed Easement or Permit is for a term, or possible term, longer than forty-nine (49) years, calculated by including any renewal or extension period, the proposed Easement or Permit must be approved at a Special Membership Meeting by Ratification Vote held under Part 3 of this Land Code.
- 37.6. The granting of an Easement or Permit for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved in the Ratification Vote by a Majority of Members present at the Special Membership Meeting.
- 37.7. The results of the Ratification Vote held under section 36.6 shall be:
- a) Evidence of approval for granting or rejection of the proposed Easement or Permit; and
  - b) Recorded in the minutes and included in the certificate required under subsection 29.4 as evidence of approval for granting or rejecting the Easement or Permit.

### **38. Creation of Sub-Interest in Allotted Sema:th Lands**

- 38.1. A Member holding an Allotment or a Certificate of Possession in Sema:th Lands may grant a Leasehold, Easement, Licence, or Permit in those lands by Instrument registered or recorded in the First Nation Land Register provided that:
- a) The Member is the sole possessor of the land;
  - b) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey registered or recorded in the First Nation Lands Register;
  - c) The Member states in writing that the terms of the Instrument will not violate any agreement with a Person or entity who has, or will have, an Interest in the lands affected, or any portion thereof, of the Member has obtained the written consent of there and/or licence Holder;
  - d) The Leasehold, Easement, Licence, or Permit does not exceed ninety-nine (99) years, including any extensions thereof; and
  - e) The Member has confirmation from eh Lands Manager that the Interest or Sub-Interest complies with the Land Code an any relevant Sema:th Laws.
- 38.2. A Member may grant a Leasehold to himself or herself in the same manner as to another person.
- 38.3. A Person holding a Leasehold in Sema:th Lands may grant a Sublease, Easement or a Permit in those lands by Instrument registered or recorded in the First Nation Lands Register provided that:
- a) The Interest to be granted is permitted by the terms of the Lease;
  - b) There is a proper legal description of the lands and if required, the lands have been surveyed and the survey registered or recorded in the First Nation Lands Register; and
  - c) The term of the Interest granted does not exceed the duration of the Leasehold.

38.4. The granting of a Leasehold in allotted Sema:th Lands does not grant any Interest in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease in compliance with this Land Code and any applicable Sema:th Laws.

38.5. For transactions under subsections 38.1 to 38.3, neither the Sema:th Lands Office nor the Lands Manager are obligated to undertake any investigation or due diligence and will not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the person granting the Interest.

38.6. For greater certainty, without restricting the generality of subsection 38.5, neither the Sema:th Lands Office nor the Lands Manager shall be responsible for determining whether a Lease, Sublease, Easement, Licence or Permit is in good standing or its terms have been complied with.

### **39. Mortgages**

39.1. Subject to section 39.2 the Holder of an Allotment, CP or Leasehold may, in accordance with this section, grant a Mortgage of their interest.

39.2. The Holder of an Allotment or CP may only grant a Mortgage of that Interest to a Member or to Sema:th.

39.3. Despite subsection 39.2, the Holder of an Allotment who has granted themselves a Lease pursuant to section 38.2 may grant a Mortgage of the Leasehold to any person, but only with the written consent of the Council or its designate.

39.4. A Leasehold interest held by an Indian, as that term is defined in the *Indian Act*, in Sema:th Lands, including allotted lands, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution. The Mortgage has all the same legal and equitable rights it would have if the Leasehold was held by a non-Indian.

39.5. A Leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by mortgagee.

39.6. The Holder of a Permit or Easement cannot grant a Mortgage.

39.7. A Mortgage that complies with the requirements of this section 39 may be granted by Instrument registered in the First Nation Land Register provided that:

- a) The land or Interest is in the sole lawful possession of the Member granting the Mortgage or the Leaseholder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold;
- b) The granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, CP or Lease and by this Land Code;
- c) There is a proper legal description of the lands that are subject to the mortgage and, if required, the lands have been surveyed and the survey registered or recorded in the First Nation Land Register;
- d) In the case of a Mortgage or a Leasehold, the Mortgage term does not exceed the duration of the Leasehold; and
- e) Council has consented by Resolution.

39.8. Neither the Sema:th Lands Office nor the Sema:th Lands Manager shall be responsible or liable for ensuring that an Interest permits a mortgage, that a Lease or Interest to be mortgaged is in good standing or that its terms have been complied with.

39.9. Except as modified in this section 39, the provisions of section 89 of the *Indian Act* continue to apply.

39.10. If Council exercises its power of redemption with respect to a Leasehold, Sema:th becomes the lessee of the land and takes the position of the charger or mortgagor for all purposes after the date of redemption.

#### **40. Transfers of Interests**

40.1. Subject to subsection 40.2 and this Part, a Member may, by Instrument registered in the First Nation Land Register, transfer their Allotment or CP.

40.2. A Member may only transfer their Allotment or CP to another Member or Sema:th.

40.3. Where an Allotment or CP is transferred to Sema:th, other than solely for the purposes of the Holder being granted a Mortgage, the Allotment and any CP issued are cancelled and the Sema:th Lands described in the Allotment become Community Lands.

40.4. Subject to section 40.5 and this Part, a Person holding an Interest in Sema:th Lands other than by way of Allotment or CP may transfer, assign or devise their Interest to any Person by an Instrument registered or recorded in the First Nation Land Register.

40.5. A Member or Sema:th holding a Mortgage of an Allotment or CP can only transfer or assign that Mortgage to another Member or to Sema:th.

#### **41. Transfer on Death**

41.1. A Member who claims to be entitled to possession of Sema:th Land by devise or descent in accordance with the provisions of the *Indian Act* relating to the estate of an Indian is not entitled to lawful possession of that Sema:th Land or CP unless:

- a) The Member has filed with Council, and the Council has approved, an Instrument, duly executed by the personal representative of the estate of the deceased Member transferring the possession to the Member; and
- b) The Instrument referred to in subsection 41.1(a) is registered in the First Nation Land Register.

41.2. The purchaser of a right to possession of Sema:th Lands under the provisions of subsection 50(2) of the *Indian Act*, shall be deemed not to be in lawful possession of the Sema:th Lands unless:

- a) The purchaser has filed with Council, and the Council has approved, an Instrument, duly executed by the person authorized under the *Indian Act* to execute a transfer of lawful possession of the Sema:th Lands obtained under subsection 50(2) of the *Indian Act*; and
- b) The Instrument referred to in subsection 41.2(a) is registered in the First Nation Land Register.

#### **42. Ceasing to Be a Member**

42.1. A person who ceases to be a Member shall, prior to transferring their Membership to another band, transfer their allotment to Sema:th or to another Member.

42.2. Where a Member does not transfer their Allotment in accordance with section 42.1 the Allotment and any CP issued shall, one (1) year after the person ceases to be a Member, be cancelled by way of Resolution and the Sema:th Lands described in the Allotment shall become Community Lands, at which time the Member shall be paid compensation for permanent improvements by Sema:th, as the Council may determine, based on an appraisal.

42.3. Where an Allotment reverts to Sema:th pursuant to section 42.2, the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any Interest they granted prior to the date the Allotment or CP reverts to Sema:th.

#### **43. Cancellation, Correction or Forfeiture of Interests**

43.1. Except as otherwise provided in this Land Code, Sema:th Law or by operation of law, no Interest in

Sema:th Lands may be cancelled or forfeited unless:

- a) All parties to the relevant Instrument have consented in writing to the cancellation or forfeiture as the case may be;
- b) The document or Instrument granting or transferring the Interest provides for cancellation or forfeiture and the specified terms have been met;
- c) The Interest is cancelled or forfeited in accordance with this Land Code or by operation of law or Sema:th Law;
- d) A court of competent jurisdiction has ordered the cancellation or forfeiture of the Interest and the time period for filing an appeal of the court has passed without an appeal having been taken; or
- e) An arbitrator or other person appointed to adjudicate a dispute pursuant to the Instruments in issue has ordered or declared the Interest to be cancelled or forfeited and no appeal has been taken from the decision within the allotted time.

43.2. Notwithstanding section 44.1, no Interest in Sema:th Lands may be cancelled or forfeited if it will adversely affect:

43.3. Whenever a Certificate of Possession was, in the opinion of the Council through due process, issued to or in the name of the wrong person, through mistake or, contains any clerical error or misnomer or a wrong description of any material fact therein, the Council may cancel the Certificate of Possession and issue a corrected Certificate of Possession in lieu thereof.

43.4. The Council may cancel any Certificate of Possession that in its opinion, acting reasonably, was issued through proven fraud or in error.

43.5. The Council may, with the written consent of the Holder, cancel any Certificate of Possession.

43.6. If an Interest in Sema:th Lands is cancelled, corrected or forfeited under this section 43, the First Nation Land Register will be amended or rectified accordingly.

#### **44. Surveys**

44.1. Sema:th may cause surveys to be made of Sema:th Lands in accordance with the *Canada Lands Survey Act* and the *Canada Lands Surveyors Act*.

44.2. The Holder of an Interest in Sema:th Lands may cause surveys to be made of those lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.

44.3. All surveys of Sema:th Lands prepared by the Surveyor General of Canada, or his or her designate, shall be deemed for all purposes to accurately describe and identify the boundaries of the lands covered by such survey.

44.4. Where a survey prepared in accordance with the *Canada Lands Surveys Act* identifies that Community Lands are included in a previous Allotment, the new survey shall be registered or recorded and the portion of Community Lands that should have been included in the original Allotment are deemed to have been allotted to the Member holding the Certificate of Possession for the Allotment.

44.5. Where an Allotment has been granted and a survey prepared in accordance with the *Canada Lands Surveys Act* identifies that the Allotment included Community Lands that should not have been allotted these lands shall be deemed to be Community Lands.

44.6. Where sections 44.4 or 44.5 applies, if required Council shall be Resolution within thirty (30) days of the survey plan being registered or recorded:

- a) Cancel the Allotment(s) affected by the survey and send an application to the Registrar at the

- b) Registry to amend the First Nation Land Register accordingly;
- b) Grant a new Allotment(s) reflecting the boundaries identified in the survey and issue a replacement Certificate of Possession(s); and
- c) Apply to the Registrar of the Registry to register the new Allotment(s).

44.7. All surveys respecting Sema:th Lands only become effective upon registration or recording in the First Nation Land Register.

#### **45. Spousal Property Law**

Development of Rules and Procedures

45.1. The Council shall enact a Sema:th Law on spousal property providing rules and procedures applicable on the breakdown of a marriage to:

- a) The use, occupancy and possession of Sema:th Lands; and
- b) The division of Interests in that land.

Enactment of Rules and Procedures

45.2. The rules and procedures contained in the Sema:th Law on spousal property shall be developed by the Lands Advisory Committee in consultation with the community.

Enactment Deadline

45.3. The spousal property law must be enacted within twelve (12) months from the date this Land Code takes effect.

General Principles

45.4. For greater certainty, the rules and procedures developed by the Lands Advisory Committee under this section must respect the following general principles:

- a) Each spouse should have equal right to possession of their matrimonial home;
- b) Each spouse should be entitled to an undivided half interest in their matrimonial home, as a tenant in common;
- c) The rules and procedures shall not discriminate on the basis of sex; and
- d) Only Members are entitled to hold a permanent Interest in Sema:th Lands or a charge against a permanent Interest in Sema:th Lands.

Immediate Rules

45.5. In order that Members benefit immediately from the legislative authority of the Council to address the issue of spousal property under this Land Code, the Council may enact a Sema:th Law on spousal property as soon as this Land Code comes into force. As this Sema:th Law would be enacted before the work of the Land Committee and community consultation is complete, the law will expire at the end of the twelve (12) month period after the coming into force of this Land Code, unless re-enacted, replaced or amended.

## **PART 8 DISPUTE RESOLUTION**

#### **46. Adjudicator of Disputes**

Informal Resolution of Disputes

46.1. Sema:th intends that whenever possible, a dispute in relation to Sema:th Lands will be resolved through informal discussion by the parties to the dispute, and nothing in this Part will be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this Part.

46.2. Sema:th further intends that whenever possible, a dispute in relation to Sema:th Lands that is not resolved by informal discussions by the parties to the dispute be resolved through voluntary participation of the parties to the dispute in a tribal or alternate justice forum.

Adjudicator Established

46.3. The office of the Adjudicator is hereby established to hear and resolve disputes in relation to Sema:th Lands in accordance with the Land Code and relevant Sema:th Laws and this Sema:th Land Code.

46.4. The Adjudicator will be a Barrister and Solicitor and a member of the British Columbia Bar who is independent of the parties to a dispute and to other Interests in the dispute.

#### **47. Dispute Resolution Procedure**

Disputes

47.1. The parties to a dispute in relation to Sema:th Lands, after demonstrating they have made efforts to resolve the dispute under 48.1 – 48.2, may notify Council that they wish to refer the dispute to the Adjudicator for resolution.

Prior Disputes

47.2. Disputes that originated before this Land Code comes into effect may be referred to the Adjudicator.

Council to Appoint

47.3. Council will appoint the Adjudicator in a timely manner as required to settle any dispute.

Original Process

47.4. Referral of a dispute to the Adjudicator is optional and all other civil remedies continue to be available to all parties in a dispute.

Application Procedure

47.5. Referral of a dispute to the Adjudicator will be made in accordance with procedures established by Council in consultation with the Committee.

Limitation Period

47.6. Unless otherwise decided by Council by Resolution, the limitation period for referring a dispute to the Adjudicator is:

- a) Thirty (30) days after the day the decision, act or omission that is the subject of the dispute occurred;
- b) In the case of a dispute under section 41 9transfer on death or mental incompetence), twelve (12) months after the date of the final decision of Council under that section;
- c) In the case of historic grievances not involving INAC, within twelve (12) months of the Effective Date of this Land Code; and
- d) For any other disputes, such reasonable time period as Council may decide on the merits of each situation.

Duty to Act Impartially

47.7. The Adjudicator will act impartially and without bias or favour to any party in a dispute.

Offense

47.8. It is an offense for a person to act, or attempt to act, in an improper way to influence the decision of the Adjudicator.

Rejection of Application

47.9. The Adjudicator may refuse to hear or decide an application:

- a) If, regardless of whether a person has been found to have committed an offense under section 49.8, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision; or
- b) One or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

#### **48. Powers of Adjudicator**

48.1. The Adjudicator may, after hearing a dispute:

- a) Confirm or reverse the decision in dispute, in whole or in part;

- b) Substitute his or her own decision for the decision in dispute;
- c) Direct that an action be taken or ceased;
- d) Refer the matter or dispute for reconsideration by the decision-maker; or
- e) Refer the matter to a tribal or other forum.

48.2. The Adjudicator has the authority to order one, both or all of the parties to pay some or all costs of the adjudication process, including but not limited to the costs of the Adjudicator and any professionals retained, taking into account:

- a) The reasonableness of the parties in their positions;
- b) The conduct of the parties;
- c) The result of the adjudication;
- d) The use of professional services; and
- e) Any other relevant factor.

48.3. An order from an Adjudicator may be entered into court and enforced through the court.

#### **49. Adjudication Procedures**

##### *Rules of Adjudicator*

49.1. The Adjudicator may, consistent with this Land Code, establish rules for procedure at its hearing and for the general conduct of proceedings.

##### *Professional Services*

49.2. Prior to retaining the services of any professionals to assist in fulfilling his or her functions, the Adjudicator will notify the parties to the dispute of the proposed professionals and their estimated services and costs.

49.3. Upon agreement of the parties, the Adjudicator may retain the services of professionals to assist in fulfilling his or her functions, in which case they will make best efforts to use professional services available in the community who do not have a conflict of interest.

##### *Decisions*

49.4. The Adjudicator will give written reasons for a decision and will sign the written reasons.

49.5. Subject to section 51.6 (Appeal of Decision), a decision of the Adjudicator is binding.

##### *Appeal of Decision*

49.6. Subject to any exception established by a Law, a decision of the Adjudicator may be appealed to a court of competent jurisdiction.

##### *Costs*

49.7. Unless otherwise ordered by the Adjudicator or an appellate court, the parties to a dispute will bear their own costs and an equal share of the costs of the adjudication process.

49.8. For greater certainty, Sema:th will not be liable or responsible for the costs of any dispute resolution process where Sema:th is not a party.

##### *Alternate Forums*

49.9. Nothing in this Part precludes Council or the Committee from establishing additional processes for resolving disputes under this Part, which processes may include facilitated discussion, mediation, arbitration or referral to a tribal or other forum.

## **PART 9 OTHER MATTERS**

## 50. Liability

### Liability Insurance

50.1. Sema:th is not liable for anything done or omitted to be done by Canada or any person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.

50.2. This Land Code is not, nor shall be interpreted as being, a waiver by Sema:th in regard to any liabilities, acts or omission of Canada.

50.3. Council will arrange for, maintain and pay insurance coverage for:

- a) Liability of Sema:th in relation to Sema:th Community Lands and assets; and
- b) Personal liability of Sema:th Lands Department employees, officers or Committee members for acts done in good faith while engaged in carrying out duties related to Sema:th Lands under this Land Code.

### Extent of Coverage

50.4. Council will determine the extent of insurance coverage reasonably required under section 50.3.

## 51. Offences and Enforcement

### Application of the Criminal Code

51.1. Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offenses under this Land Code and offenses under a Law.

### Enforcement

51.2. Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

51.3. If no justice of the peace is appointed, this Land Code and Laws are to be enforced by a court of competent jurisdiction.

51.4. Council may enact laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through any relevant tribal or community justice process.

## 52. Amendments to Land Code

52.1. This Land Code may be amended from time to time.

52.2. Council or the Lands Office will post all proposed amendments in the Sema:th Office and will make best efforts to provide notification of any proposed amendments to all Members.

52.3. All significant amendments to this Land Code must be done by Ratification Vote.

52.4. A Ratification Vote on an amendment to the Land Code will be approved if a Majority of the Members who vote in the Ratification Vote vote in favour.

## 53. Commencement

### Ratification

53.1. This Land Code will be ratified if:

- a) The Members approve this Land Code and the Individual Agreement by a Ratification Vote in accordance with the Sumas First Nation Community Ratification Process dated for reference January 29, 2010.

### Effective Date

53.2. Once the Land Code has been certified as valid by the verifier appointed pursuant to the *First Nations Land Management Act*, it will take effect on a date specified by Resolution of Council.