



# Reserve Land Code

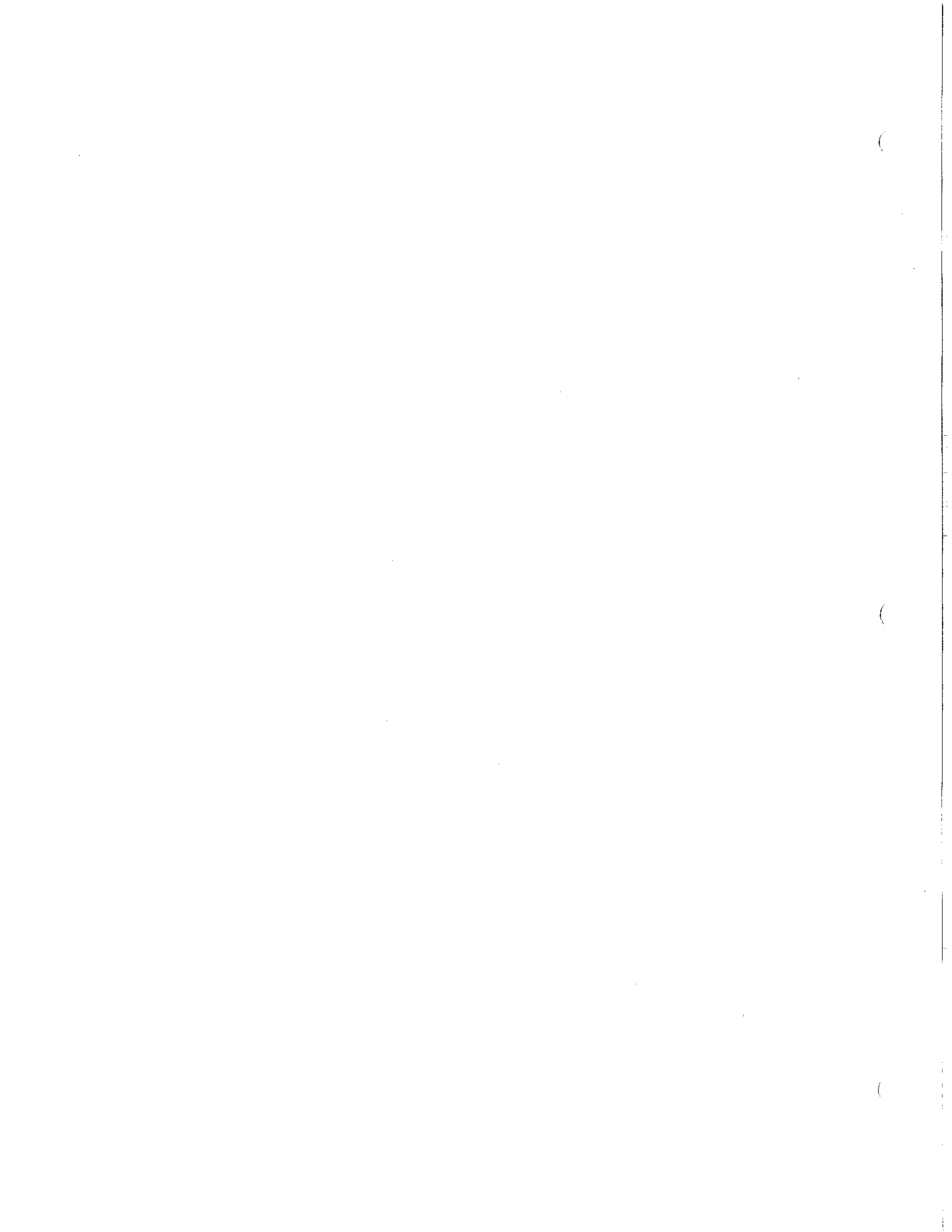
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## NAK'AZDLI WHUT'EN RESERVE LAND CODE

### Preamble

**Whereas** Nak'azdli Whut'en has occupied and benefited from their traditional territory since time out of memory and has never ceded, surrendered, or in any way relinquished Aboriginal title to their traditional territory and shall continue to assert their interests and exercise their Aboriginal rights over their traditional territory;

**Whereas** Nak'azdli Whut'en honors their connection to their Reserve Land, resources and the elements of the natural world that provide for their physical and spiritual needs, now and for generations to come;

**Whereas** Nak'azdli Whut'en recognizes their responsibility to protect their Reserve Land and resources for future generations and to protect the rights of Nak'azdli Whut'en and their members, and through this *Reserve Land Code* Nak'azdli Whut'en shall exercise their inherent right of self-government over their Reserve Land and natural resources, and provide for governance that is accessible, stable, effective, accountable and transparent;

**Whereas** the members of Nak'azdli Whut'en are proud, united people whose purpose is to promote a healthy and prosperous future that ensures the continued existence of Nak'azdli Whut'en as a strong political, social and cultural community that aspires to move ahead as an organized, highly-motivated, determined and self-reliant First Nation;

**Whereas** Nak'azdli Whut'en values the need to respect, protect and promote their heritage, culture and traditions as the driving force of their success and destiny while understanding that these practices may change and require contemporary expression;

**Whereas** Nak'azdli Whut'en wishes to govern their Reserve Lands and natural resources by ratifying the *Framework Agreement on First Nation Land Management*, entered into between Canada and fourteen first nations on February 12, 1996, as amended, and ratified on behalf of the Government of Canada by the *First Nations Land Management Act*, S. C. 1999, c. 24, rather than having its Reserve Land and resources managed on its behalf under the *Indian Act*; and

**NOW THEREFORE, THIS NAK'AZDLI WHUT'EN RESERVE LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL RESERVE LAND LAW OF THE NAK'AZDLI WHUT'EN.**

### PART 1 PRELIMINARY MATTERS

#### 1.0 Title

1.1 The title of this enactment is the *Nak'azdli Whut'en Reserve Land Code*.

#### 2.0 Definitions

2.1 The following definitions apply in this *Reserve Land Code*:



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

**"allotment"** means those Reserve Lands that have been lawfully granted either:

(a) by Council to a member in accordance with a Nak'azdli Whut'en Land Law enacted under section 26.2 of this *Reserve Land Code*, or

(b) prior to the date a Nak'azdli Whut'en Land Law enacted section 26.2 of this *Reserve Land Code* comes into force, by Council to a member, with the approval of the Minister, under section 20 of the *Indian Act*;

**"arbitrator"** means a person who:

(a) is a practicing member in good standing of the British Columbia Arbitration and Mediation institute, its successor, or a similar body, or

(b) has been designated as an acceptable arbitrator in accordance with section 44.1 of the *Framework Agreement*;

**"community reserve land"** means any Reserve Land in which all members have a common interest and which does not form part of an allotment;

**"community meeting"** means a meeting held in accordance with section 16 for members to consider a specific Nak'azdli Whut'en Land Law or Reserve Land matter;

**"community purpose"** means a purpose intended to provide a facility, benefit or support for members or persons residing on Reserve Land;

**"community ratification process"** means the Nak'azdli Whut'en community approval process that is used to ratify this *Reserve Land Code* and Individual Agreement, as required under the *Framework Agreement* and Act;

**"Council"** means the lawfully elected Chief and Council of Nak'azdli Whut'en or any successor elected government of Nak'azdli Whut'en;

**"easement"** means an interest in Reserve Land that gives one person (the "grantee") the right to use the Reserve Land of another (the "grantor") for a right of way or to provide utility or other service or right of access and egress by the grantee over the grantor's Reserve Land. An easement does not confer any right of exclusive possession in Reserve Land and does not restrict the rights of the grantor of the easement beyond that required to give effect to the easement granted;

**"eligible voter"** means, an individual who, as of the date of either a special meeting of members or referendum:

(a) has attained the age of eighteen (18) years;

(b) is listed on the membership list; and

(c) is included on the eligible voters list;



**"expropriation"** means the taking by Nak'azdli Whut'en of an interest or licence in Reserve Land for a community purpose, without the consent of the interest or licence holder, through a process established by a Nak'azdli Whut'en Land Law enacted in accordance with paragraph 39.1(a);

**"First Nation Land Register"** means the register maintained by the Department of Indigenous and Northern Affairs Canada pursuant to section 25 of the Act;

**"Framework Agreement"** means the *Framework Agreement on First Nation Land Management* concluded between the Minister of Indian Affairs and Northern Development and the Chiefs of fourteen First Nations, on February 12, 1996, as amended;

**"heritage site"** means a parcel of Reserve Land that is of cultural, historical, archaeological, anthropological or spiritual importance to Nak'azdli Whut'en and is designated by Nak'azdli Whut'en as a heritage site in a Reserve Land Use Plan;

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

**"Individual Agreement"** means the individual transfer agreement entered into between Nak'azdli Whut'en and the Government of Canada pursuant to section 6.1 of the *Framework Agreement* and subsection 6(3) of the Act;

**"interest"** means an interest, right or estate of any nature in or to Reserve Land, including an allotment, leasehold, easement, mortgage, right of way or permit, but does not include title to that Reserve Land;

**"jurisdiction"** means law-making authority;

**"lease"** means a written instrument setting out terms and conditions of a leasehold;

**"leasehold"** means an exclusive right to use and possess Reserve Land upon agreed conditions;

**"licence"** means a written instrument that grants to a person a right of use or occupation of Reserve Land;

**"majority"** means fifty per cent plus one (50% + 1);

**"mediator"** means a person who:

(a) is a practicing member in good standing of the British Columbia Mediation Roster Society, its successor, or a similar body, or

(b) has been designated as an acceptable mediator in accordance with section 44.1 of the *Framework Agreement*;

**"member"** means an individual whose name appears on the membership list;

**"membership list"** means the list maintained by Nak'azdli Whut'en that contains the names of all members;

**"Minister"** means the Minister of Indigenous and Northern Affairs Canada;

**"mortgage"** means a written instrument by which an interest in Reserve Land is, in any manner, conveyed, assigned, pledged or charged as security for the payment of money or money's worth to be reconveyed, reassigned or released on satisfaction of the debt;

**"Nak'azdli Whut'en"** also known as Nak'azdli or the Nak'azdli Indian Band, means the Nak'azdli Whut'en First Nation and its members;

**"Nak'azdli Whut'en Land Law"** means a law enacted by Nak'azdli Whut'en in accordance with this *Reserve Land Code*;

**"natural resources"** means any materials on or under Reserve Land in their natural state which:

(a) prior to the date this *Reserve Land Code* takes effect, were under the jurisdiction of Canada; and

(b) when extracted, have economic value;

**"permit"** means a non-exclusive right to use, occupy or take natural resources from Reserve Land for a specified term;

**"person"** includes an individual, corporation, body corporate, partnership, joint venture, association, trust, unincorporated organization of any trustee, executor, administrator, or other legal representative;

**"petition"** means a formal, signed, written request;

**"referendum"** means a ratification vote held in accordance with Part 8 to determine whether eligible voters approve a matter relating to this *Reserve Land Code*;

**"Reserve Land"** means any Nak'azdli Whut'en Reserve Land as described in the Individual Agreement that is subject to this *Reserve Land Code* and any Reserve Lands added in compliance with this *Reserve Land Code*, and includes the following Reserve Lands:

(a) Nak'azdli IR#1 CLSR 52908;

(b) Williams Prairie Meadow IR#1A CLSR 56063;

(c) Tatselawas (Stuart River) IR#2 CLSR 71160;

(d) Sowchea IR#3 CLSR 51014;

(e) Sowchea IR#3A CLSR BC1065;

(f) Uzta (Nahounli Creek) IR#4 CLSR 59306;

(g) Six Mile Meadow IR#6 CLSR BC105;

(h) Uzta (Nahounli Creek) IR#7A CLSR 59306;

- (i) Beaver Island IR#8 CLSR BC488;
- (j) Stuart Lake (Hungry Island) IR#9 CLSR BC489;
- (k) Stuart Lake (Dunah Island) IR#10 CLSR BC489;
- (l) Inzana Lake IR#12 CLSR 73009;
- (m) Nehounlee (Six Mile Lake) IR#13 CLSR 59283;
- (n) Tatsadah Lake IR#14 CLSR BC381;
- (o) Carrier Lake IR#15 CLSR 59589;
- (p) Great Bear Lake IR#16 CLSR 59587; and
- (q) Mission Reserve Lands IR#17 CLSR 93305/93306/93307;

**"Reserve Land Code"** means this *Nak'azdli Whut'en Reserve Land Code* that sets out the basic provisions regarding the exercise of Nak'azdli Whut'en rights and powers over its Reserve Land;

**"Reserve Lands Manager"** means an individual appointed by resolution to oversee the day to day operations of the Reserve Lands Office;

**"Reserve Lands Office"** means an office established by Council to assist in the governance, management and administration of Reserve Land;

**"Reserve Land Use Plan"** means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and development of Reserve Lands;

**"Reserve Lands Advisory Committee"** means the Reserve Lands Advisory Committee established under this *Reserve Land Code*;

**"resolution"** means a formal motion moved by a Council member, seconded by another Council member and passed by a majority of a quorum of Council at a duly convened meeting of Council;

**"special members' meeting"** means a meeting held in accordance with sections 17 and 18 for members to consider and make a decision on a Nak'azdli Whut'en Land Law or Reserve Land matter;

**"sublease"** means a leasehold in which the person transferring the interest is the lessee in a prior existing lease;

**"written instrument"** means an instrument in writing which purports to create, grant, assign or transfer an interest or licence in Reserve Land.

2.2 The definitions as set forth in the *Framework Agreement* shall have the same meaning in this *Reserve Land Code*, unless the context requires otherwise.

### 3.0 Interpretation

3.1 Only land that is a reserve under subsection 2(1) of the *Indian Act* set apart by Her Majesty the Queen in right of Canada for the use and benefit of Nak'azdli Whut'en shall be governed under this *Reserve Land Code*.

3.2 Legal title to all Reserve Land shall continue to be held in the name of Her Majesty the Queen in right of Canada for the use and benefit of Nak'azdli Whut'en.

3.3 A reference to "Reserve Land" means all rights and natural resources that belong to the Reserve Land, and includes:

(a) the water, beds underlying water, riparian rights, and renewable and non-renewable natural resources belonging to that Reserve Land, to the extent that these are under the jurisdiction of Canada;

(b) all interests and licences granted by her Majesty in right of Canada that are listed in the Individual Agreement; and

(c) all interests and licences granted by Nak'azdli Whut'en after this *Reserve Land Code* comes into effect.

3.4 The structures, organizations and procedures established by or under this *Reserve Land Code* shall be interpreted in accordance with the culture, traditions and customs of Nak'azdli Whut'en, unless otherwise provided.

3.5 The language of Nak'azdli Whut'en may be used to clarify the meaning of any provision in this *Reserve Land Code*, if the meaning of that provision is not otherwise clear in English.

3.6 In this *Reserve Land Code*:

(a) all words shall be interpreted in a fair, large and liberal manner;

(b) the use of the word "shall" denotes an obligation that, unless this *Reserve Land Code* provides to the contrary, shall be carried out as soon as practicable after this *Reserve Land Code* comes into effect or the event that gives rise to the obligation occurs;

(c) 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";

(d) headings and subheadings are for convenience only, do not form a part of this *Reserve Land Code* and in no way define, limit, alter or enlarge the scope or meaning of any provision of this *Reserve Land Code*;

(e) a reference to a statute includes every amendment to it, every regulation made under it and any Law enacted in substitution for it or in replacement of it;

(f) 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;

(g) 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;

(h) where the time limit for the doing of an act expires or falls on a Saturday or Sunday or on a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;

(i) where the time limit for the doing of an act falls on a day when the Reserve Lands Office is not open during regular business hours, the act may be done on the next day that the Reserve Lands Office is open;

(j) where there is 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; and

(k) the principles set out in the Preamble to this *Reserve Land Code* may be used to interpret this *Reserve Land Code*.

3.7 If there is an inconsistency between this *Reserve Land Code* and any Nak'azdli Whut'en Land Law, this *Reserve Land Code* prevails to the extent of the inconsistency or conflict.

3.8 If there is an inconsistency or conflict between this *Reserve Land Code* and the *Framework Agreement*, the *Framework Agreement* shall prevail to the extent of the inconsistency or conflict.

3.9 This *Reserve Land Code* does not change, abrogate or derogate:

(a) the by-law powers of Council pursuant to the *Indian Act*;

(b) the Aboriginal title of Nak'azdli Whut'en over their traditional territory;

(c) any Aboriginal, treaty, inherent rights or other rights or freedoms that pertain now or in the future to Nak'azdli Whut'en or its members; or

(d) the fiduciary relationships between Her Majesty the Queen in right of Canada, Nak'azdli Whut'en and its members.

3.10 This *Reserve Land Code* is not intended to affect the eligibility of Nak'azdli Whut'en or any member to receive services or participate in such public or Aboriginal programs as may be established from time to time by either Canada or the Province, to the extent that Nak'azdli Whut'en has not assumed responsibility for such services or programs.

#### **4.0 Authority to Govern**

- 4.1 The traditional teachings of the Nak'azdli Whut'en speak of the obligation of the people to care for and respect the land and the magnificent wonders of nature created on their traditional territory. By enacting this *Reserve Land Code*, Nak'azdli Whut'en is reclaiming this special responsibility over their Reserve Land.
- 4.2 The authority of the Nak'azdli Whut'en to govern their lands and resources flows from the Creator to the people of the Nak'azdli Whut'en and from the people to Council according to Nak'azdli Whut'en culture, traditions, customs and laws.
- 4.3 Through this *Reserve Land Code*, Nak'azdli Whut'en shall be partially exercising their Aboriginal title and inherent right of self-government in relation to the Reserve Land that is transferred to them pursuant to the Individual Agreement.
- 4.4 For any purpose related to Reserve Land, Nak'azdli Whut'en has the legal capacity necessary to exercise its powers and perform its duties and functions under this *Reserve Land Code* and in particular, may:
  - (a) acquire and hold property;
  - (b) borrow money;
  - (c) enter into contracts;
  - (d) expend and invest money; and
  - (e) be a party to legal proceedings.

## 5.0 Purpose

- 5.1 The purpose of this *Reserve Land Code* is to set out the principles, rules and administrative structures that apply to Reserve Lands and the manner in which Nak'azdli Whut'en shall exercise authority over those Reserve Lands.
- 5.2 The *Framework Agreement* is ratified and confirmed when this *Reserve Land Code* takes effect.

## 6.0 Description of Nak'azdli Whut'en Reserve Lands

- 6.1 The lands that are subject to this *Reserve Land Code* are:
  - (a) Nak'azdli IR#1 CLSR 52908;
  - (b) Williams Prairie Meadow IR#1A CLSR 56063;
  - (c) Tatselawas (Stuart River) IR#2 CLSR 71160;
  - (d) Sowchea IR#3 CLSR 51014;
  - (e) Sowchea IR#3A; CLSR BC1065;

- (f) Uzta (Nahounli Creek) IR#4 CLSR 59306;
  - (g) Six Mile Meadow IR#6 CLSR BC105;
  - (h) Uzta (Nahounli Creek) IR#7A CLSR 59306;
  - (i) Beaver Island IR#8 CLSR BC488;
  - (j) Stuart Lake (Hungry Island) IR#9 CLSR BC489;
  - (k) Stuart Lake (Dunah Island) IR#10 CLSR BC489;
  - (l) Inzana Lake IR#12; CLSR 73009;
  - (m) Nehounlee (Six Mile Lake) IR#13 CLSR 59283;
  - (n) Tatsadah Lake IR#14 CLSR BC381;
  - (o) Carrier Lake IR#15 CLSR 59589;
  - (p) Great Bear Lake IR#16 CLSR 59587;
  - (q) Mission Reserve Lands IR#17 CLSR 93305/93306/93307; and
  - (r) such other lands as may be described in Appendix "G" to the Individual Agreement, from time to time.
- 6.2 Council shall hold a community meeting in accordance with section 16 prior to amending the description of Reserve Land in the Individual Agreement that is subject to this *Reserve Land Code*.
- 6.3 For greater certainty, subject to section 6.2 Council may by resolution:
- (a) amend the description of Reserve Land in the Individual Agreement; or
  - (b) declare additional lands to be subject to this *Reserve Land Code*.

## **PART 2 NAK'AZDLI WHUT'EN LEGISLATION**

### **7.0 General**

- 7.1 Council may, in accordance with this *Reserve Land Code*, make Nak'azdli Whut'en Land Laws respecting:
- (a) the development, conservation, protection, management, use and possession of Reserve Land;

- (b) interests and licences in relation to Reserve Land;
  - (c) any matter necessary to give effect to this *Reserve Land Code*; and
  - (d) any matter necessary or ancillary to the making of Nak'azdli Whut'en Land Laws.
- 7.2 For greater certainty, Council may make Nak'azdli Whut'en Land Laws including:
- (a) authorization, regulation, control and prohibition of Reserve Land use, zoning, subdivision control and Reserve Land development;
  - (b) the setting aside and regulation of heritage sites;
  - (c) the creation, regulation and prohibition of interests and licences in Reserve Land;
  - (d) environmental assessment and protection;
  - (e) the provision of local services in relation to Reserve Land and the imposition of equitable user charges;
  - (f) the enforcement of Nak'azdli Whut'en Land Laws;
  - (g) the provision of services for the resolution, outside of courts, of disputes in relation to Reserve Land;
  - (h) the removal and punishment of persons trespassing on Reserve Lands or accessing Reserve Lands for a prohibited purpose;
  - (i) public nuisance and private nuisance;
  - (j) the regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
  - (k) the construction, maintenance and management of roads, bridges, ditches, and fences within Reserve Lands; and
  - (l) the regulation of traffic and transportation on Reserve Lands.
- 7.3 For greater certainty, in addition to Nak'azdli Whut'en Land Laws, Council may make other regulatory instruments, including, but not limited to, rules, regulations, standards, codes and policies in relation to Reserve Land.
- 7.4 Council shall develop, review, approve and enact all Nak'azdli Whut'en Land Laws in accordance with this *Reserve Land Code*.

## **8.0 Initiating the Development of Nak'azdli Whut'en Land Laws**

- 8.1 A Nak'azdli Whut'en Land Law may be proposed to Council by:
- (a) a member of Council;



- (b) the Reserve Lands Advisory Committee;
- (c) the Nak'azdli Whut'en Chief Operating Officer;
- (d) the Reserve Lands Manager; or
- (e) a petition signed by at least twenty-five (25) eligible voters.

8.2 A proposal to develop a Nak'azdli Whut'en Land Law shall set out:

- (a) background information regarding the problem or initiative that is to be addressed in the Nak'azdli Whut'en Land Law; and
- (b) the objectives or goals of the Nak'azdli Whut'en Land Law.

8.3 Where Council receives a proposal to develop a Nak'azdli Whut'en Land Law, they shall:

- (a) make a decision, by resolution on whether to develop that Nak'azdli Whut'en Land Law; and
- (b) where Council decides to develop that Nak'azdli Whut'en Land Law, prepare or cause to be prepared a draft of that Nak'azdli Whut'en Land Law.

## **9.0 First Reading: Acceptance in Principle**

9.1 Upon the completion of a draft Nak'azdli Whut'en Land Law, Council shall table it at a regular meeting of Council and pass a resolution to:

- (a) accept the draft Nak'azdli Whut'en Land Law in principle;
- (b) reject the draft Nak'azdli Whut'en Land Law; or
- (c) request further work on the draft Nak'azdli Whut'en Land Law and direct that it be re-tabled at a future Council meeting.

9.2 If Council resolves to reject a draft Nak'azdli Whut'en Land Law, they shall ensure the resolution regarding the rejection:

- (a) sets out the reasons for the rejection;
- (b) is clearly documented in the Council meeting minutes; and
- (c) is available to members by request.

## **10.0 Second Reading: Community Meeting**

- 10.1 Where Council accepts a draft Nak'azdli Whut'en Land Law in principle, they shall schedule and hold a community meeting in accordance with section 16 for the purpose of consulting with members on the draft Nak'azdli Whut'en Land Law.
- 10.2 At a community meeting for the purpose of consulting with members on a draft Nak'azdli Whut'en Land Law, Council shall:
- (a) make copies of the draft Nak'azdli Whut'en Land Law available to all members who are in attendance;
  - (b) ensure that the purpose and provisions of the draft Nak'azdli Whut'en Land Law are explained to all members who are in attendance;
  - (c) invite questions and comments by members who are in attendance; and
  - (d) ensure the questions and comments made by members who are in attendance are documented for Council to consider.

## **11.0 Final Draft and Third Reading: Enactment of the Law**

- 11.1 Council shall:
- (a) at the Council meeting following the twentieth (20<sup>th</sup>) day after a community meeting for the purpose of consulting with members on a draft Nak'azdli Whut'en Land Law, consider the comments received from members, the needs of the community, and other relevant matters, and as soon as practical thereafter, prepare or cause to be prepared a final draft Nak'azdli Whut'en Land Law; and
  - (b) where substantive changes to a final draft Nak'azdli Whut'en Land Law are made, schedule another community meeting to provide members an opportunity to ask questions and make comments regarding the final draft Nak'azdli Whut'en Land Law.
- 11.2 Council shall provide members notice of the Council meeting where they shall consider enacting a final draft Nak'azdli Whut'en Land Law by posting a written notice on the Nak'azdli Whut'en website and in the public areas of the Reserve Lands and Nak'azdli Whut'en Administration Offices at least seven (7) days before the meeting, which sets out:
- (a) a summary of the final draft Nak'azdli Whut'en Land Law;
  - (b) notification that a full copy of the final draft Nak'azdli Whut'en Land Law can be obtained by members at the Reserve Lands Office;
  - (c) a statement that the final draft Nak'azdli Whut'en Land Law shall be considered for enactment at the Council meeting; and
  - (d) the date, time and place of the Council meeting at which Council shall consider the Nak'azdli Whut'en Land Law.

- 11.3 At the Council meeting stated in a written notice posted in accordance with section 11.2, Council shall consider the final draft Nak'azdli Whut'en Land Law and, by resolution:
- (a) enact the final draft Nak'azdli Whut'en Land Law;
  - (b) reject the final draft Nak'azdli Whut'en Land Law;
  - (c) make changes to the final draft Nak'azdli Whut'en Land Law;
  - (d) direct that another community meeting be held to further consult with members on the final draft Nak'azdli Whut'en Land Law prior to Council making a final decision on whether to enact it;
  - (e) refer the final draft Nak'azdli Whut'en Land Law to a special members' meeting for community approval and enactment by eligible voters; or
  - (f) refer the final draft Nak'azdli Whut'en Land Law to a referendum for community approval and enactment by eligible voters.
- 11.4 As soon as practicable following a decision by Council under section 11.3, Council shall post a written notice on the Nak'azdli Whut'en website and in public areas of the Reserve Lands and Administration Offices setting out the decision reached by Council concerning the final draft Nak'azdli Whut'en Land Law.
- 11.5 Where Council decides to refer a final draft Nak'azdli Whut'en Land Law to a special members' meeting, Council shall:
- (a) schedule a date for the special members' meeting;
  - (b) ensure the procedure set out in sections 17 and 18 are followed for the special members' meeting; and
  - (c) ensure copies of the final draft Nak'azdli Whut'en Land Law are available to members:
    - (i) both electronically and in hard paper copy prior to the special members' meeting, and
    - (ii) in hard paper copy at the special members' meeting;
  - (d) ensure the decision made by members at the special members' meeting is recorded in the minutes.
- 11.6 The result of a special members' meeting or referendum shall have the same effect as a resolution enacting a Nak'azdli Whut'en Land Law.
- 11.7 Despite sections 7.0 to 11.6, Council may enact a Nak'azdli Whut'en Land Law by resolution if Council is of the opinion that the Nak'azdli Whut'en Land Law is needed urgently:
- (a) for public health and safety; or

(b) to protect Reserve Land or members.

11.8 A Law enacted under section 11.7 expires one hundred and eighty (180) days after its enactment, unless it is re-enacted in accordance with this Part.

## **12.0 Procedures Upon Enactment of a Nak'azdli Whut'en Land Law**

12.1 A Nak'azdli Whut'en Land Law enacted by resolution under paragraph 11.3(a) shall be signed by a quorum of Council and shall come into effect on the date the resolution is passed or on such date as specified in the resolution.

12.2 A Nak'azdli Whut'en Land Law enacted at a special members' meeting or referendum shall be signed by a quorum of Council members and shall come into effect on the date of the special members' meeting or referendum.

12.3 Notice of a newly enacted Nak'azdli Whut'en Land Law shall be posted on the Nak'azdli Whut'en website and in public areas of the Reserve Lands and Administration Offices within seven (7) days of its enactment.

12.4 Where a Nak'azdli Whut'en Land Law has been enacted, original copies of the Nak'azdli Whut'en Land Law shall be deposited in a register of Nak'azdli Whut'en Land Laws.

12.5 A true copy of all Nak'azdli Whut'en Land Law shall be kept in the register of Nak'azdli Whut'en Land Laws, including Nak'azdli Whut'en Land Laws that have been repealed or are no longer in force, at the Reserve Lands Office.

12.6 The register of Nak'azdli Whut'en Land Laws shall be accessible to the public.

12.7 Copies of Nak'azdli Whut'en Land Laws shall be provided to members and other persons, upon payment of a reasonable copying fee, which must be set by Council and may be amended by Council from time to time.

12.8 No Nak'azdli Whut'en Land Law shall be set aside or be declared invalid by reason only that a Council member at the time of the enactment of the law subsequently ceases to be a member of Council.

## **13.0 Enforcement of Nak'azdli Whut'en Land Laws**

13.1. To enforce this *Reserve Land Code* and Nak'azdli Whut'en Land Laws, Nak'azdli Whut'en may enact a Nak'azdli Whut'en Land Law to:

(a) establish offences that are punishable on summary conviction;

(b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance;

(c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information; and

(d) allow for the appointment of a justice of the peace to adjudicate offences under Nak'azdli Whut'en Land Laws.

13.2. For the purpose of prosecuting offences, Nak'azdli Whut'en may:

(a) retain its own prosecutor;

(b) enter into an agreement with her Majesty and the government of the Province of British Columbia to arrange for a provincial prosecutor; or

(c) enter into an agreement with Her Majesty for the use of agents engaged by Her Majesty.

## **14.0 Amendment of Nak'azdli Whut'en Land Laws**

14.1. A Nak'azdli Whut'en Land Law may be repealed or amended following the procedure provided for in the Nak'azdli Whut'en Land Law.

14.2. Where a Nak'azdli Whut'en Land Law does not provide a procedure for its repeal or amendment, it may be repealed or amended in the same manner in which it is enacted.

## **PART 3 COMMUNITY AND SPECIAL MEMBERS' MEETINGS**

### **15.0 General**

15.1 Every Member is entitled to participate in a community meeting and a special members' meeting.

15.2 For greater certainty, Council may make Laws or policies:

(a) for community meetings; and

(b) for special members' meetings.

### **16.0 Community Meetings**

16.1 A community meeting shall be held for the following:

(a) to provide to provide information to members about a Nak'azdli Whut'en Land Law or Reserve Land matter that Council, by resolution, declares to be subject to this section; and,

(b) where otherwise required under this *Reserve Land Code*.

16.2 For greater certainty, no decisions or community approvals may be made at a community meeting.

At least fourteen (14) days prior to a community meeting, Council shall ensure a written notice of that community meeting is:

(a) either:

(i) delivered or mailed to all eligible voters at their last known addresses, or

(ii) publicised in a Nak'azdli Whut'en newsletter that is delivered or mailed to all eligible voters at their last known address; and

(b) posted on:

(i) the Nak'azdli Whut'en website,

(ii) Nak'azdli Whut'en social media pages, and

(iii) any other public areas of the Reserve Lands and Nak'azdli Whut'en Administration Offices as determined by Council.

16.3 A written notice of a community meeting shall set out:

(a) the date, time and location of the community meeting;

(b) a summary of the draft Nak'azdli Whut'en Land Law or Reserve Land matter to be discussed;

(c) if the community meeting relates to a draft Nak'azdli Whut'en Land Law, notification that a full copy of the draft Nak'azdli Whut'en Land Law may be obtained by members:

(i) at the Nak'azdli Whut'en Administration Office,

(ii) at the community meeting, or

(iii) by contacting the Reserve Lands Office to obtain an electronic copy;

(d) an invitation for members to provide written comments to Council on the draft Nak'azdli Whut'en Land Law or Reserve Land matter;

(e) the return date by which members shall provide written comments to Council, which date shall be at least twenty (20) days after the date of the community meeting; and

(f) if the community meeting relates to a draft Nak'azdli Whut'en Land Law, the community meeting may be advertised or referred to in the written notice by the name of the draft Nak'azdli Whut'en Land Law being discussed.

16.4 At a community meeting Council, or its designate shall:

- (a) explain the purpose and nature of the Nak'azdli Whut'en Land Law or Reserve Land matter to members; and
  - (b) provide members an opportunity to ask questions and provide comments regarding the Nak'azdli Whut'en Land Law or Reserve Land matter.
- 16.5 Council may schedule as many community meetings as is necessary to ensure that members are well informed about a proposed Nak'azdli Whut'en Land Law or Reserve Land matter.
- 16.6 For greater certainty, a community meeting for input purposes does not require a quorum.

## **17.0 Special Members' Meetings**

- 17.2 The purpose of a special members' meeting is to:
- (a) inform and discuss with members a Nak'azdli Whut'en Land Law or Reserve Land matter; and
  - (b) seek the approval of members on a proposed Nak'azdli Whut'en Land Law or Reserve Land matter.
- 17.3 A special members' meeting shall be held for the following:
- (a) respecting any matter or Nak'azdli Whut'en Land Law or class of law that Council, by resolution, declares to be subject to this section; and
  - (b) where otherwise required under this *Reserve Land Code*.
- 17.4 The date, time and place of the special members' meeting shall be determined by Council, or if the special members' meeting has not been called within seven (7) days of the determination of the meeting, then the Chief Operations Officer or the Reserve Lands Manager shall set the date, time and place of the meeting.
- 17.5 All special members' meetings shall take place on the Reserve Land.
- 17.6 At least fourteen (14) days prior to a special members' meeting, Council shall ensure a written notice of that special members' meeting is:
- (a) either:
    - (i) delivered or mailed to all eligible voters at their last known addresses, or
    - (ii) publicised in a Nak'azdli Whut'en newsletter that is delivered or mailed to all eligible voters at their last known address; and
  - (b) posted on:

- (i) the Nak'azdli Whut'en website,
  - (ii) Nak'azdli Whut'en social media pages, and
  - (iii) any other public areas of the Reserve Lands and Nak'azdli Whut'en Administration Offices as determined by Council.
- 17.7 A notice of the special members' meeting shall include:
- (a) a summary of the proposed Nak'azdli Whut'en Land Law or Reserve Land matter;
  - (b) a description of who is eligible to attend the special members' meeting;
  - (c) the ballot question that shall be voted on at the special members' meeting;
  - (d) any other information and material that Council deems necessary;
  - (e) a statement that at the special members' meeting, Council shall seek community approval of either a proposed Nak'azdli Whut'en Land Law or Reserve Land matter;
  - (f) details regarding the manner in which voting shall take place and instructions for how persons living off Reserve Land may vote; and
  - (g) the date, time and place of the special members' meeting.
- 17.8 An individual, other than a member, may attend a special members' meeting with the permission of Council, but only an eligible voter may vote.
- 17.9 Voting at a special members' meeting may be conducted by various methods, as determined by Council, including any of the following methods or combinations thereof, one of which shall provide an opportunity for persons residing off Reserve Land to vote:
- (a) ballots cast in person by secret ballot at the special members' meeting;
  - (b) a show of hands at the special members' meeting;
  - (c) electronic ballots;
  - (d) mail-in-ballots; or
  - (e) phone-in ballots.
- 17.10 A proposed Nak'azdli Whut'en Land Law or Reserve Land matter is deemed approved at a special members' meeting if a majority of those eligible voters who participate in the special members' meeting cast a vote in favour of the Nak'azdli Whut'en Land Law or Reserve Land matter.
- 17.11 The results of a vote at a special members' meeting, and the decision made in that vote, shall be recorded in the minutes and shall have the same effect as a resolution in



relation to the enacting of a Nak'azdli Whut'en Land Law or approval of a Reserve Land matter.

## **18.0 Attendance at Special members' meetings**

- 18.1 The Councilor assigned the Reserve Lands portfolio shall attend all special members' meetings unless he or she has just cause for being absent.
- 18.2 The Councilor with the Reserve Lands portfolio shall notify Council at a Council meeting, or notify the Chief Operations Officer, of any anticipated absence and the reasons for such absence.
- 18.3 Where notification under section 18.2 is given to the Chief Operations Officer, the Chief Operations Officer shall inform the other Council members of the absence and reasons, and another Councilor shall be assigned to take the absent Councilor's place.
- 18.4 If the Councilor with the Reserve Lands portfolio is absent from a special members' meeting, the chairperson shall, if requested by an eligible voter, inform the attendees of the reason for the Council member's absence, and announce the Councilor in attendance.
- 18.5 A quorum of Council is not required for special members' meeting.
- 18.6 Council may, at a meeting of Council, prior to a special members' meeting, by vote of a majority of those Council members present, determine that a special members' meeting shall only be open to members and to employees of, or consultants to, Nak'azdli Whut'en.

## **PART 4 RESERVE LAND ADMINISTRATION**

### **19.0 General**

- 19.1 The purpose of this Part is to set out the principles, rules and administrative structures pursuant to which Nak'azdli Whut'en shall govern and manage Reserve Lands.
- 19.2 Any and all use and development of Nak'azdli Whut'en Reserve Land is subject to this *Reserve Land Code*, Nak'azdli Whut'en Land Laws and other applicable laws.
- 19.3 An interest or licence in Reserve Land created or granted after this *Reserve Land Code* comes into effect is not enforceable unless it is registered or recorded in the First Nation Land Register.
- 19.4 Council shall develop Nak'azdli Whut'en Land Laws consistent with this *Reserve Land Code* regarding the management, administration, use and protection of Reserve Lands.

## **20.0 Reserve Lands Staff and Appointment of Reserve Lands Manager**

- 20.1 Council shall, by resolution, appoint a Reserve Lands Manager to administer this *Reserve Land Code* in an effective and fiscally responsible manner in accordance with this *Reserve Land Code* and Nak'azdli Whut'en Land Law.
- 20.2 Council may, by resolution, appoint an alternate Reserve Lands Manager to act in the position and role of the Reserve Lands Manager when the Reserve Lands Manager is absent.
- 20.3 For greater certainty,
- (a) Council may assign powers, duties and functions to the Reserve Lands Manager in addition to those required to be assigned by this *Reserve Land Code* or Nak'azdli Whut'en Land Law; and
  - (b) the same individual may be appointed to two (2) or more officer positions.

## **21.0 Reserve Lands Office and Reserve Lands Manager**

- 21.1 The Reserve Lands Office shall:
- (a) administer Reserve Land in accordance with this *Reserve Land Code* and any other applicable laws, regulations or policies;
  - (b) administer fee simple lands owned by Nak'azdli Whut'en;
  - (c) upon request by Council, assist with the matters related to territorial land management off Reserve;
  - (d) develop forms of written instruments for use in registering or recording of interests or licences in Reserve Land in the First Nation Land Register;
  - (e) process applications for the registration or recording of written instruments and documents in the First Nation Land Register in relation to interests or licences in Reserve Land;
  - (f) provide electronic copies of applications for the registration and recording of written instruments and documents in relation to interests or licences in Reserve Land to the First Nation Land Register;
  - (g) arrange for the execution of written instruments and documents on behalf of Nak'azdli Whut'en;
  - (h) maintain and protect records in relation to Reserve Land;
  - (i) prepare and present regular reports to Council regarding Reserve Land matters; and

- (j) carry out such duties as are requested or required by Council consistent with this *Reserve Land Code*, a Nak'azdli Whut'en Land Law and other applicable law.
- 21.2 The Reserve Lands Manager shall oversee the day-to-day operations of the Reserve Lands Office and perform such duties and responsibilities consistent with this *Reserve Land Code* and Nak'azdli Whut'en Land Law.
- 21.3 Without limiting the generality of section 21.2, the Reserve Lands Manager, or his or her designate appointed by Council resolution, shall:
- (a) carry out any 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 or licence in Reserve Land described in effect at the time this *Reserve Land Code* comes into force;
  - (b) manage the Reserve Lands Office; and
  - (c) carry out any action or responsibility delegated to the Reserve Lands Manager under section 41.0.

## **PART 5 RESERVE LAND ADVISORY COMMITTEE**

### **22.0 Establishment of Reserve Lands Advisory Committee**

- 22.1 A Reserve Lands Advisory Committee shall be established by Council resolution to:
- (a) assist with the development of a Reserve Land administration system;
  - (b) advise Council and staff of the Reserve Lands Office on matters in relation to Reserve Land;
  - (c) recommend to Council Nak'azdli Whut'en Land Laws, resolutions, policies and procedures in relation to Reserve Land;
  - (d) hold regular meetings and community meetings to discuss Reserve Land issues and make recommendations to Council on the resolution of those issues;
  - (e) assist in the exchange of information in relation to Reserve Land issues between members and Council;
  - (f) monitor community approvals under this *Reserve Land Code*; and
  - (g) perform other such duties and functions as Council or the Reserve Lands Manager may direct.
- 22.2 The Reserve Lands Advisory Committee shall perform its work under the direction of the Council.

- 22.3 The Reserve Lands Advisory Committee may establish rules and procedures for the conduct of its meetings and general affairs, that are consistent with any rules and procedures established by Council.
- 22.4 Subject to any requirements and approvals of Council in relation to financial obligations, the Reserve Lands Advisory Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by the Reserve Lands Advisory Committee; and
  - (b) establish programs for the orientation and education of the Reserve Lands Advisory Committee members.
- 22.5 The Reserve Lands Advisory Committee shall be composed of one (1) Council member and a minimum of three (3) and a maximum of five (5) other individuals.
- 22.6 A majority of the Reserve Lands Advisory Committee must be Nak'azdli Whut'en members.
- 22.7 A person is eligible for appointment to the Reserve Lands Advisory Committee, unless they:
- (a) have been convicted of an offence that was prosecuted by way of indictment for which they have not been pardoned;
  - (b) are an undischarged bankrupt;
  - (c) have been convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct;
  - (d) have been found by a court to have defrauded or breached a fiduciary duty owed to Nak'azdli Whut'en;
  - (e) are, due to living elsewhere, unable to participate in regular meetings either in-person, by conference call or over the internet; or
  - (f) have been found by a medical doctor to be unfit by reason of mental incapacity.
- 22.8 Subject to section 22.7, appointments to the Reserve Lands Advisory Committee shall be made by Council.
- 22.9 Subject to section 22.12, those appointed to the Reserve Lands Advisory Committee hold office for staggered terms.
- 22.10 In order to establish staggered terms those appointed to the Reserve Lands Advisory Committee shall be divided as equally as possible into two (2) groups. One group shall serve an initial term of two (2) years. Another group shall serve an initial term of four (4) years. Thereafter, Council shall appoint individuals to the Reserve Lands Advisory Committee to fill expiring terms for a term of four (4) years.

- 22.11 The appointment of the first Reserve Lands Advisory Committee shall be made when Council deems necessary, after the coming in force of this *Reserve Land Code*.
- 22.12 Council shall establish the procedure for Reserve Lands Advisory Committee appointments, including such additional transitional rules as may be necessary for appointments to the first Reserve Lands Advisory Committee.
- 22.13 The position as an appointee of the Reserve Lands Advisory Committee shall become vacant if the appointee:
- (a) resigns;
  - (b) is or becomes ineligible to be a Reserve Lands Advisory Committee appointee;
  - (c) is absent from three (3) consecutive meetings of the Reserve Lands Advisory Committee for a reason other than illness or incapacitation without being authorized to be absent by the chair of the Reserve Lands Advisory Committee;
  - (d) dies or becomes mentally incompetent; or
  - (e) the Council member appointed as the Council representative ceases to be a Council member.
- 22.14 Where a position on the Reserve Lands Advisory Committee becomes vacant more than ninety (90) days prior to the expiration of the term, Council may appoint an individual to fill the vacant position for the remainder of the term.
- 22.15 The Reserve Lands Advisory Committee shall select its Chair and Vice-Chair from its appointees.
- 22.16 If the Chair of the Reserve Lands Advisory Committee is unable to perform the functions of office, the Vice-Chair shall act in the capacity of the Chair.
- 22.17 The duties of the Chair are to:
- (a) chair meetings of the Reserve Lands Advisory Committee;
  - (b) table any Reserve Lands Advisory Committee financial statements with Council;
  - (c) report to the Council and members on the activities of the Reserve Lands Advisory Committee; and
  - (d) perform such other duties as Council may reasonably prescribe.

## **PART 6 INTERESTS AND LICENCES**

### **23.0 Interests and Licences in Reserve Land**

- 23.1 Interests and licences in Reserve Land that are approved, created, granted or issued pursuant to the *Indian Act* and registered in the First Nations Land Register as of the date this Reserve Land Code comes into force shall continue to have effect in accordance with their terms and conditions.
- 23.2 Where an interest or licence described in section 23.1 includes an action to be taken by the Minister or the Queen in right of Canada, the responsibility for such action after the date this *Reserve Land Code* comes into force shall be with the Reserve Lands Manager or his or her designate.
- 23.3 The types of interests or licences in Nak'azdli Whut'en Reserve Land include:
- (a) allotments;
  - (b) leaseholds;
  - (c) easements;
  - (d) permits; and
  - (e) mortgages.

### **24.0 No Interest or Licence Created**

- 24.1 No person may acquire an interest or licence in Reserve Lands by use, occupation or by any other means that is not authorized under this Reserve Land Code or a law enacted under it.

### **25.0 Natural Resources**

- 25.1 Subject to applicable laws, all natural resources on or under Reserve Land belong to Nak'azdli Whut'en.
- 25.2 The use and development of natural resources on or under Reserve Land shall be subject to this *Reserve Land Code*, and other applicable laws.
- 25.3 To the extent that Nak'azdli Whut'en has ownership or rights over water as recognized by federal or provincial legislation or by operation of law, Nak'azdli Whut'en retains ownership and has jurisdiction to manage and regulate air and water use.
- 25.4 Unless specifically included by a written instrument granting an allotment, the allotment does not include any right to the natural resources on or under that Reserve Land.

25.5 For greater certainty, no person may remove or permit anyone to remove from Nak'azdli Whut'en Reserve Lands, without written consent of Council, any:

- (a) minerals, stone, sand, gravel, clay or soil;
- (b) trees, saplings, shrubs, underbrush, timber, cordwood or hay;
- (c) water; or
- (d) similar type materials.

## 26.0 Allotments

26.1 Only members can hold or receive an allotment.

26.2 Subject to section 26.3, no allotment shall be granted until a Nak'azdli Whut'en Land Law has been enacted establishing the criteria for granting allotments of Reserve Land.

26.3 Despite section 26.2, Council may grant an allotment by resolution where the allotment is required either:

- (a) to fulfill a written agreement lawfully entered into prior to the date this *Reserve Land Code* comes into force; or
- (b) to comply with an order of a court of competent jurisdiction.

## 27.0 Leaseholds in Community Reserve Land

27.1 Subject to sections 27.2 to 27.5, Council may grant a leasehold in community reserve land by resolution.

27.2 A leasehold in community reserve lands for a term of twenty-five (25) years or less, calculated by including any renewal or extension period, may be granted by resolution without community approval.

27.3 A leasehold in community reserve land for a term of more than twenty-five (25) years but not more than nine-nine (99) years, calculated by including any renewal or extension period, shall:

- (a) if a land use plan and laws to regulate development on Reserve have not been approved or enacted under this *Reserve Land Code*, be approved by members at a special members' meeting held in accordance with sections 17 and 18; or
- (b) where a land use plan and laws to regulate development on Reserve have been approved or enacted under this *Reserve Land Code* and they permit the proposed uses and term of the leasehold in community reserve land, be approved by resolution.

27.4 A notice of a special members' meeting to seek member approval on a leasehold shall include:

(a) a summary of the proposed lease; and

(b) notification that a full copy of the proposed lease can be obtained by members at the Reserve Lands Office.

27.5 At a special members' meeting to seek member approval on a leasehold Council, or its designate shall:

(a) explain the purpose and provisions of the leasehold to members; and

(b) provide members an opportunity to ask questions and provide comments regarding the leasehold.

## **28.0 Easements and Permits in Community Reserve Lands**

28.1 Subject to section 28.2 to 28.3, Council may grant easements and permits in community reserve lands by resolution unless Council determines that a community meeting, special members' meeting, or referendum is required.

28.2 If Council determines that a special members' meeting is required to seek member approval on an easement or permit, the written notice of that special members' meeting shall include:

(a) a summary of the proposed easement or permit; and

(b) notification that a full copy of the proposed easement or permit can be obtained by members at the Reserve Lands Office.

28.3 At a special members' meeting to seek member approval on an easement or permit, Council, or its designate shall:

(a) explain the purpose and provisions of the easement or permit to members; and

(b) provide members an opportunity to ask questions and provide comments regarding the easement or permit.

## **29.0 Creation of Sub-interests in Allotments**

29.1 A member holding an allotment may grant a leasehold, easement or permit in that allotment to a person subject to the consent of Council, which consent:

(a) must not be arbitrarily withheld; and

(b) may be conditional on the member holding the allotment providing Council an assignment of the compensation set out in the lease, easement or permit up to an amount equal to any debt amount owed by the member to Nak'azdli Whut'en.



- 29.2 A member may grant a leasehold to himself or herself in the same manner as to another person.
- 29.3 A person holding a leasehold in an allotment may grant a sublease in relation to that leasehold without the consent of Council provided that:
- (a) the interest or licence to be granted is permitted by the terms of the lease; and
  - (b) the term of the sublease granted does not exceed the duration of the leasehold.
- 29.4 Where a member holding an allotment grants a leasehold, easement or permit in that allotment to a person, Nak'azdli Whut'en shall not be obligated to undertake any investigations or due diligence with regard to that leasehold, easement or permit and shall not be responsible or liable for any breaches of that leasehold, easement or permit or for any representation or warranty made by the person granting the leasehold, easement or permit.
- 29.5 For greater certainty, without restricting the generality of section 29.4, Nak'azdli Whut'en shall not be responsible for determining whether a lease, easement or permit granted by a member holding an allotment is in good standing or whether its terms have been complied with.

### **30.0 Mortgages**

- 30.1 Subject to section 30.2, the holder of an allotment or leasehold may, in accordance with this section, grant a mortgage of their interest.
- 30.2 The holder of an allotment may grant a mortgage of that interest to a member or to Nak'azdli Whut'en.
- 30.3 The holder of an allotment who has been granted a lease over that allotment pursuant to section 29.2 may grant a mortgage of the leasehold interest to any person.
- 30.4 A leasehold interest held by an Indian, as that term is defined in the *Indian Act*, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution and any mortgage of that leasehold interest has all the same legal and equitable rights it would have if the leasehold interest was held by a non-Indian.
- 30.5 A leasehold interest in community reserve land is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.
- 30.6 The holder of a permit or easement cannot grant a mortgage over that permit or easement.
- 30.7 A written instrument granting a mortgage shall:
- (a) if it relates to a mortgage over a leasehold, be permitted by the provisions of the lease and not exceed the duration of the leasehold; and

(b) set out a legal description of the Reserve Lands that are to be subject to the mortgage.

30.8 Nak'azdli Whut'en shall not be responsible or liable for ensuring that a lease permits the interest in the Reserve Land to be mortgaged, that the lease is in good standing, or that the terms of the lease have been complied with.

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

### **31.0 Transfer of Interest**

31.1 A member may, by a written instrument registered in the First Nation Land Register, transfer their allotment to another member or to Nak'azdli Whut'en.

31.2 Where an allotment is transferred to Nak'azdli Whut'en the allotment shall be cancelled and the Reserve Land described in the allotment shall become community reserve land, subject to any terms of a mortgage guarantee which require Nak'azdli Whut'en to re-issue the allotment upon discharge of the mortgage and fulfilment of the terms of the guarantee.

31.3 Subject to this Part, a person or entity holding an interest or licence in Reserve Land other than by way of allotment may transfer, assign or devise their interest or licence to any person or entity by a written instrument registered or recorded in the First Nation Land Register.

### **32.0 Transfer on Death or Mental Incompetence**

32.1 A member or Nak'azdli Whut'en who receives an interest in Reserve Land from another member by testamentary disposition, succession, or following a declaration of mental incompetence, is entitled to have that interest registered in the First Nation Land Register provided that the written instrument transferring the interest is duly executed either by:

(a) a person appointed under the *Indian Act* as the administrator of the estate of the deceased member;

(b) a person declared by a court to be the executor of the estate of the deceased member; or

(c) a person appointed under the *Indian Act* as the personal representative of the mentally incompetent member

### **33.0 Ceasing to be a Member**

33.1 A person who ceases to be a member shall, within six (6) months from the date their name is removed from the membership list, transfer their allotment to Nak'azdli Whut'en or another member.

- 33.2 Where a person ceases to be a member and does not transfer their allotment in accordance with section 33.1, lawful possession of that allotment shall revert to Nak'azdli Whut'en and become community reserve land six (6) months plus one (1) day after the date person who ceases to be a member's name is removed from the membership list.
- 33.3 Where an allotment reverts to Nak'azdli Whut'en pursuant to section 33.2, the individual ceasing to be a member shall remain liable for any obligations or monies owing, prior to the date the allotment reverts to Nak'azdli Whut'en, pursuant to any interest or licence they granted.

### **34.0 Registration of Interests and Licences**

- 34.1 Written instruments which affect or purport to affect Reserve Lands shall be registered or recorded in the First Nation Land Register.
- 34.2 Notwithstanding section 34.1 only those written instrument that are in compliance with this Part shall be registered or recorded in the First Nation Land Register.
- 34.3 A copy of all written instruments that are submitted for registration or recording in the First Nation Land Register shall be kept at the Reserve Lands Office.
- 34.4 Subject to section 34.5, interests and licences in Reserve Land that are deposited with the Reserve Lands Office shall be forwarded by the Reserve Lands Office to the First Nation Land Register for registration.
- 34.5 Where a written instrument requires a resolution, the consent of Council or approval of eligible voters, the Reserve Lands Office must not submit it, or forward it, to the First Nation Land Register to be registered or recorded, unless evidence of that approval is attached to the written instrument.
- 34.6 Surveys prepared in accordance with section 37 that are deposited with the Reserve Lands Office shall be forwarded by the Reserve Lands Office to the First Nation Land Register for registration.
- 34.7 Financial claims or other assertions of right which affect, or purport to affect, Reserve Lands may be recorded in the First Nation Land Register.
- 34.8 The types of instruments which may be recorded in the First Nation Land Register include written instruments relating to:
- a. judgments;
  - b. court orders;
  - c. rights of first refusal;
  - d. certificates of pending litigation;

- e. caveats;
- f. liens;
- g. assignments of rent;
- h. options to purchase; and
- i. tax certificates.

34.9 The registration or recording of a written instrument in the First Nation Land Register shall not be deemed to be evidence of the legal validity of any claims nor the standing to take execution or other proceedings as a result of recording.

### **35.0 Effective Date of Written Instruments**

35.1 The grant, transfer or other disposition of an interest or licence in Reserve Land shall be effective on the date the written instrument is registered or recorded in the First Nation Land Register.

35.2 An interest or licence in Reserve Land is not enforceable unless it is registered or recorded in the First Nation Land Register. This section is not meant to preclude rights or causes of action that may be pursued by one party as against another party of a claim in relation to an interest or licence in Reserve Land.

35.3 Subject to sections 35.6 and 35.7, registered or recorded interests or licences that affect the same parcel of Reserve Land have priority according to the time and date of their registration and not according to the time and date of their execution.

35.4 A registered interest or licence is entitled to priority over an unregistered interest or licence affecting the same parcel of Reserve Land.

35.5 A registered mortgage has a priority over a subsequently registered interest or licence that affects the same Reserve Land to the extent of the money actually advanced under the mortgage, to a maximum of the amount secured by the mortgage, even if all or part of the money was advanced after the registration of the subsequently registered interest or licence.

35.6 The holder of a registered interest or licence, or a person applying to register an interest or licence, may apply to register or record a postponement agreement that gives priority over the registered interest or licence to a specified interest or licence that was or is to be, subsequently registered.

35.7 On the registration or recording of a postponement agreement, priority shall be accorded to the interests or licences referred to in the agreement in the manner provided for in the agreement.

### **36.0 Cancellation or Forfeiture of Interests or Licences**

- 36.1 Except as otherwise provided in this *Reserve Land Code*, or by operation of law or contract, no interest or licence in Reserve Land may be cancelled or forfeited unless:
- (a) all parties to the written instrument have consented in writing to the cancellation or forfeiture as the case may be;
  - (b) a court of competent jurisdiction has ordered the cancellation or forfeiture of the interest or licence and the time period for filing an appeal of the order has passed without an appeal having been taken; or
  - (c) an arbitrator or other person appointed to adjudicate a dispute pursuant to the written instrument in issue has ordered or declared the interest or licence to be cancelled or forfeited and no appeal has been taken from the decision within the allotted time.
- 36.2 Notwithstanding section 36.1 no interest or licence in Reserve Land may be cancelled or forfeited if it shall adversely affect:
- (a) an interest or licence in those Reserve Lands held by a third party; or
  - (b) a claim against, or interest or licence in, those Reserve Lands that is held by Nak'azdli Whut'en.
- 36.3 Whenever an allotment is, in the opinion of the Council, issued to or in the name of the wrong individual through mistake, or contains any clerical error or misnomer or a wrong description of any material fact, the Council may cancel the allotment and issue a corrected allotment in lieu thereof.
- 36.4 Council may cancel any allotment that in its opinion, acting reasonably, was issued through proven fraud or in error.
- 36.5 Council may, with the consent of an allotment holder, cancel any allotment.
- 36.6 If an interest or licence in Reserve Land is cancelled or forfeited under sections 36.1, 36.3, 36.4 or 36.5, such cancellation shall be registered in the First Nation Land Register.

## **37.0 Surveys**

- 37.1 Council may cause surveys to be made of Reserve Land in accordance with the *Canada Lands Surveys Act*.
- 37.2 The holder of an interest or licence in Reserve Land may, with written consent of Council and on terms specified by Council, cause surveys to be made of their allotment in accordance with the *Canada Lands Surveys Act*.
- 37.3 A surveyor shall be a licensed member in good standing with the Association of Canada Reserve Lands Surveyors and shall not be a member.
- 37.4 A surveyor shall provide a copy of the written permission granted by Council to the person occupying the Reserve Land upon commencement of any survey work.

- 37.5 All surveys of Reserve Lands approved or confirmed by the Surveyor General of Canada or his or her designate shall be deemed for all purposes to accurately describe and identify the extent of the Reserve Land covered by such survey.
- 37.6 A survey made of Reserve Land shall be approved in writing by Council prior to being submitted for recording in the Canada Reserve Lands Surveys Records or registered in the First Nation Land Register.

### **38.0 Exchange of Reserve Lands**

- 38.1 Subject to federal expropriation under the Act or expropriation for a community purpose under this *Reserve Land Code*, no part of Reserve Land shall be alienated unless:
- (a) the Minister has approved of the form of the exchange; and
  - (b) Council has made full disclosure to its members of all the circumstances surrounding the exchange;
  - (c) at least three (3) community meetings are held where the proposed exchange is disclosed to and discussed with members; and
  - (d) the exchange is approved by members in a referendum held under Part 8.

### **39.0 Expropriation for Community Purposes**

- 39.1 Nak'azdli Whut'en may expropriate an interest or licence in Reserve Land for a community purpose once the following conditions, in the order listed, have been met:
- (a) an expropriation law has been enacted setting out:
    - (i) a procedure governing the expropriation process,
    - (ii) a method of determining fair compensation to be paid to the interest or licence holder, and
    - (iii) the procedure for an arbitrator to resolve disputes regarding the amount of compensation to be paid to any interest or licence holder;
  - (b) written notice has been given to the interest or licence holder specifying the interest or licence that is being considered for expropriation or cancellation as a result of an expropriation;
  - (c) Council has attempted in good faith to negotiate an agreement with the interest or licence holder for the transfer or cancellation of that interest or licence that is being considered for expropriation, but has failed to reach such as agreement; and

(d) Council has issued a report to members setting out the community purpose for which the proposed expropriation is required and the necessity for the proposed expropriation.

#### **40.0 Dispute Resolution**

40.1 Except as otherwise provided in this Part, disputes in relation to Nak'azdli Whut'en Reserve Land or an interest or licence in Nak'azdli Whut'en Reserve Land shall be determined as follows:

(a) the parties to the dispute may agree the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to and paid for by the parties; or

(b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute may be determined by a court of competent jurisdiction.

40.2 For greater certainty, Council may enact a Law regarding Reserve Land disputes in accordance with Part 2 of this *Reserve Land Code*.

#### **41.0 Delegation**

41.1 Council may, by resolution, delegate any authority under this Part to the Reserve Lands Office or the Reserve Lands Manager, including the consents of the Council set forth in sections 29 and 30, except law making.

#### **42.0 Interests and Licences on Marriage Breakdown**

42.1 Nak'azdli Whut'en may enact a Matrimonial Real Property Law under this *Reserve Land Code* or the *Family Homes on Reserves and Matrimonial Interests or Rights Act* that sets out the rules and procedures applicable to the use, occupancy and possession of Reserve Land and the division of interests and licences in these Reserve Lands on the breakdown of a marriage.

42.2 For greater certainty, the Law referred to in section 42.1 shall not discriminate on the basis of gender but may distinguish as between members and non-members for the purpose of determining what type of interest or licences in Reserve Land may be held by a person.

#### **43.0 Review**

43.1 Within two (2) years of the effective date of this *Reserve Land Code*, Council shall conduct a review and consult with members concerning this *Reserve Land Code* and, if required, propose amendments.

### **PART 7 FINANCIAL ADMINISTRATION AND CONFLICT OF INTEREST**

#### **44.0 Financial Administration**

44.1 The financial administration of Nak'azdli Whut'en funds expended in relation to Reserve Lands administered under this *Reserve Land Code* shall be conducted in accordance with the *Nak'azdli Whut'en Financial Administration Law 2015* and all regulations, policies or procedures enacted or approved under it.

#### **45.0 Conflict of Interest**

45.1 In the event of any real, perceived or potential conflict of interest that arises in any matter related to Reserve Land, a Nak'azdli Whut'en Land Law or this *Reserve Land Code*, the provisions relating to conflict of interest in the *Nak'azdli Whut'en Financial Administration Law 2015* shall apply.

#### **46.0 Revenue from Reserve Land and Natural Resources**

46.1 Council shall, as it deems necessary, establish any rules and policies for determining:

(a) the fees and rent for interests and licences in community reserve land;

(b) the fees for services provided in relation to any Reserve Land; and

(c) the fees and royalties to be paid, for the taking of natural resources from Reserve Land.

#### **47.0 Annual Report**

47.1 The Reserve Lands Manager, on behalf of Council, shall publish an annual report for distribution to members that includes the following:

(a) an annual review of Reserve Land and natural resources management;

(b) the annual budget for the Reserve Lands Office;

(c) a copy and explanation of the audit as it applies to Reserve Land and natural resources; and

(d) any other matter as determined by Council or the Reserve Lands Advisory Committee.

#### **48.0 Access to Information**

48.1 A member may, during normal business hours of the Reserve Lands Office, have reasonable access to:



- (a) the register of Nak'azdli Whut'en Land Laws:
  - (b) the auditor's report; and
  - (c) an annual report published under section 47.1.
- 48.2 A member may obtain a copy of the auditor's report or annual report published under section 47.1 from the Reserve Lands Office on payment of a reasonable fee set by resolution.
- 48.3 A person authorized by Council may, at any reasonable time, inspect the financial records of Nak'azdli Whut'en related to Reserve Land.

## **PART 8 REFERENDUM PROCEDURES**

### **49.0 General**

- 49.1 The following matters shall be approved by members at a referendum:
- (a) subject to section 50.2, amendments to this *Reserve Land Code*;
  - (b) as deemed necessary under this *Reserve Land Code*; and
  - (c) as required by a resolution of Council, matters relating to the governance, management or administration of Reserve Land.
- 49.2 A referendum shall be:
- (a) conducted in substantially the same manner as that set out in the *Nak'azdli Whut'en Community Ratification Process* that is used to ratify this *Reserve Land Code*; and
  - (b) considered approved if:
    - (i) at least ten percent (10%) of eligible voters participate in the referendum; and
    - (ii) a majority of those eligible voters who participate in the referendum cast a vote in favour of the matter.
- 49.3 For greater certainty, a verifier shall not be required for a referendum under this *Reserve Land Code*.

## **PART 9 RESERVE LAND CODE REVISIONS AND AMENDMENTS**

### **50.0 General and Procedures**

- 50.1 Subject to section 50.2, an amendment to this *Reserve Land Code* shall be approved by members at a referendum.
- 50.2 The following revisions and amendments do not require a referendum and may be approved by Council, by resolution:
- (a) changes to the description of Reserve Land that are subject to this *Reserve Land Code* and Individual Agreement;
  - (b) a reference in this *Reserve Land Code* to a clause in another act or document that was amended and resulted in clause renumbering;
  - (c) a reference in this *Reserve Land Code* to an act or parts thereof that have expired, have been repealed or suspended;
  - (d) changes in this *Reserve Land Code* to reconcile seeming inconsistencies with other acts or changes in the law;
  - (e) changes in this *Reserve Land Code* to permit electronic and online voting;
  - (f) minor improvements in the language to bring out more clearly the intention of the Nak'azdli Whut'en without change the substance of this *Reserve Land Code*;
  - (g) changes required to correct an internal inconsistency in the *Reserve Land Code*; and
  - (h) changes to correct editing, grammatical or typographical errors.
- 50.3 The process for development and passage of amendments to this *Reserve Land Code* may be initiated by:
- (a) resolution; or
  - (b) a member petition presented to Council by at least twenty-five (25) eligible voters, setting out the specific area in this *Reserve Land Code* requested to be amended.
- 50.4 Upon receipt of a petition Council may, or upon passage of the resolution under section 50.3 Council shall, develop proposed amendments to this *Reserve Land Code*.
- 50.5 Upon completion of the proposed amendments to this *Reserve Land Code*, Council shall schedule and hold a community meeting for the purpose of discussing the proposed amendments with members.
- 50.6 The notice of the community meeting required under section 50.5 shall include:
- (a) a summary of the proposed amendments to this *Reserve Land Code*; and
  - (b) notification that the full copy of the proposed amendments to this *Reserve Land Code* and a copy of this *Reserve Land Code* can be obtained at the Reserve Lands Office.

50.7 At a community meeting to discuss an amendment to this Reserve Land Code with members, Council, or its designate shall:

(a) explain the purpose and nature of the amendments to members; and

(b) provide members an opportunity to ask questions and provide comments regarding the amendments.

50.8 No later than sixty (60) days following a community meeting held to discuss proposed amendments to this *Reserve Land Code* with members, Council shall prepare a final draft of the proposed amendments, taking into consideration the comments received from members, the needs of the community and other relevant matters.

50.9 Proposed amendments to this *Reserve Land Code* approved in accordance with this Part come into force and effect on the date of community approval by way of referendum.

## **PART 10 OTHER MATTERS**

### **51.0 Liability**

51.1 Council shall arrange, maintain and pay insurance coverage for:

(a) liability of Nak'azdli Whut'en in relation to Reserve Land; and

(b) personal liability of its officers and employees for acts done in good faith while carrying out their duties in relation to Reserve Land.

51.2 The extent of the insurance coverage under section 51.1 shall be determined by Council.

### **52.0 Offences**

52.1 Unless some other procedure is provided for by a Nak'azdli Whut'en Land Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this *Reserve Land Code* or under a Nak'azdli Whut'en Land Law.

52.2 Subject to section 52.3, any person who commits an offence under this *Reserve Land Code* or a Nak'azdli Whut'en Nak'azdli Whut'en Land Law is liable to a fine not to exceed \$100,000 and to a term of imprisonment not to exceed six (6) months or to both fine and imprisonment, provided however, that offences related to Nak'azdli Whut'en environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

52.3 A Nak'azdli Whut'en Land Law may provide for a penalty which is different than the penalties referred to in sections 52.1 and 52.2.

### **53.0 Commencement**

53.1 The *Reserve Land Code* is approved by a ratification vote, held pursuant to the *Nak'azdli Whut'en Community Ratification Process*.

53.2 This *Reserve Land Code* shall take effect on the first day of the month following the date that both:

(a) members approve this *Reserve Land Code* and the Individual Agreement with Canada in accordance with the *Nak'azdli Whut'en Community Ratification Process*; and

(b) this *Reserve Land Code* is certified by a verifier pursuant to the *Framework Agreement*.