



# K'ómoks First Nation

## K'OMOKS FIRST NATION

### LAND CODE

June, 2016

-In accordance with-

The Framework Agreement on

First Nations Land Management

This Exhibit "1" referred to in the affidavit of Hugh Taylor sworn before me at Castro this 6 day of July, 2016.

A Commissioner for taking Affidavits for British Columbia

**LOFANE D. MAANI**  
A Notary Public in and for the Province of British Columbia

Certified a true copy this 17<sup>th</sup> day of June, 2016

  
A Commissioner for taking Affidavits for British Columbia:

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## PREAMBLE

**WHEREAS** the people of the K'omoks First Nation (KFN), being of Pentlatch, Coast Salish and Kwakwaka'wakw ancestry, have a profound relationship with the land and resources in their territory passed down through generations, and have occupied, protected and benefitted from their lands and resources in their traditional territory since time immemorial, and have never ceded, surrendered or in any way relinquished aboriginal title and will continue to assert its interests and exercise its aboriginal rights over its traditional territory;

**AND WHEREAS** our lands and resources provide for our physical, mental, emotional, cultural and spiritual needs, and we honour, respect and protect our relationship with them;

**AND WHEREAS** the people of the K'omoks First Nation develop our lands and resources responsibly, promote environmental and economic sustainability, and strive to protect and enhance our cultures and languages to keep our connection to our heritages and traditions;

**AND WHEREAS** the people of the K'omoks First Nation have strong leadership that represents all K'omoks First Nation members in a fair and equal manner;

**AND WHEREAS** the people of K'omoks First Nation pursue economic opportunities through strong, honest and open communication with our economic department, partners and our Nation;

**AND WHEREAS** the K'omoks First Nation has entered into the *Framework Agreement on First Nation Land Management*, as amended, and which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*;

**AND WHEREAS** K'omoks First Nation wishes to manage its land and resources on Reserve lands and must adopt a land code applicable to its reserves to remove them from management under the Indian Act;

**AND WHEREAS** the people of the K'omoks First Nation maintain, hold and exercise their aboriginal rights and title for their own benefit and for the benefit of future generations;

**NOW THEREFORE**, this Land Code, governing the management and administration of the K'omoks First Nation reserves is hereby adopted and is the fundamental land law of the K'omoks First Nation in accordance with the *First Nations Land Management Act*;

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## Part 1

### Preliminary Matters

#### 1. Title

1.1 The title of this enactment is the K'omoks First Nation Land Code.

#### 2. Principles

2.1 This Land Code shall be interpreted in accordance with the principles set out in this Section 2.

2.2 Nothing in this Land Code is intended to or does abrogate or derogate from any aboriginal, treaty, or other rights and freedoms that pertain now or in the future to K'omoks First Nation or Members.

2.3 Nothing in this Land Code is intended or does abrogate the fiduciary relationship between Canada and K'omoks First Nation and between Canada and Members.

#### 3. Interpretation

3.1 *In this Land Code:*

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

(b) "Allotment" means an interest conferred to a Member pursuant to clause 31 of this KFN Land Code for Residential Use;

(c) "Band Administrator" means the person employed by, and reporting to the Council to oversee the day-to-day administration of the business of K'omoks First Nation

(d) "Canada" means Her Majesty the Queen in Right of Canada;

(e) "Certificate of Possession (CP)" means an instrument issued, previously under section 20 of the Indian Act, and under this Land Code, granting exclusive use and possession of the particular parcel of K'omoks First Nation land to a K'omoks First Nation Member;

(f) "Common-Law Marriage" means a relationship between two individuals not married to each other, who have lived together in a conjugal relationship for a period of not less than two years;

(g) "Community Lands" means any of KFN Lands in which all Members have a common interest and to which no Members have been granted a Certificate of Possession and is not subject to a Permanent Interest created under this Land Code

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(h) "Community Purpose" means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on KFN Lands, and may include public works, utility or transportation corridors, or similar purposes;

(i) "Council" means the elected Chief and Councillors of the K'omoks First Nation in accordance with the Indian Band Election Regulations, or any successor to, or replacement of that Council;

(j) "Easement" means a non-exclusive interest in KFN Lands, giving the "grantee" the right to use the land of the "grantor" for a right of way or to provide utility or other services to the land of the grantee, and is limited to only such interest as is necessary to give effect to the easement granted;

(k) "Eligible Voter" means, for the purpose of voting in relation to matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

(l) "Expropriation" means the taking of an Interest or all Interests in portions of KFN Lands for a community purpose through a process established by a Law of the Nation, in accordance with Part 6 of this Land Code;

(m) "Financial Benefit" includes all tangible and non-tangible benefits, and includes but is not limited to: employment benefits, contract benefits, educational, medical or other social benefits, honorariums which are above those previously agreed upon, the payment of any money, and the allotment, leasing or other grant of an Interest in KFN Lands;

(n) "First Nations Land Registry" means the register maintained by *Indian Affairs and Northern Development Canada* under clause 51 of the Framework Agreement;

(o) "Framework Agreement" means the Framework Agreement on First Nation Land Management entered into by Canada and the Chiefs of 14 First Nations on February 12, 1996, as amended;

(p) "Indian Act" means the *Indian Act*, R.S.C. 1985, c. 1-5;

(q) "Individual Agreement" means the Individual Transfer Agreement made between KFN and Canada in accordance with clause 6.1 of the Framework Agreement;

(r) "Interest" in relation to KFN Lands, means any interest, right or estate of any nature in or to that land including, a lease, easement, mortgage, right of way permit, but does not include title to that land;

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(s) "KFN Lands" means any portion of a reserve of the Nation that is subject to this Land Code as identified in the Individual Agreement and any amendments that may be made to the Land Code or Individual Agreement from time to time;

(t) "Land Code" means this KFN Land Code;

(u) "Lands Department" means the department established under clause 9 of this Land Code to assist in the management and administration of KFN Lands;

(v) "Lands Advisory Committee" means the Lands Advisory Committee created under Section 10.0;

(w) "Lands Manager" means the person who is responsible for the administration of KFN Lands Department;

(x) "Land Use Plan" means a plan that provides for the development, conservation and utilization of all or a portion of KFN Lands; OR: means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environmental and other needs in the use and development of KFN Lands;

(y) "Law" means a law enacted under this Land Code;

(z) "Lease" means a Written Instrument granting a person an exclusive right of use and possession to a parcel of KFN Lands, upon agreed to conditions, for a specified period of time, and includes a sub-lease;

(aa) "License" means any right of use or occupation of KFN Lands other than an Interest in that land;

(bb) "Meeting of Members" means a meeting of the Members of the Nation held in accordance with Part 4;

(cc) "Member" means a person whose name appears on the KFN band membership list;

(dd) "Mortgage" means a charge on an interest in KFN Lands, in which a person with a registered Certificate of Possession (CP), lease or license (the "mortgagor") transfers their interest to another person (the "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 transfer becomes void and the interest returns to the mortgagor;

(ee) "The Nation" means K'omoks First Nation (KFN) as defined in the Act;

(ff) "Natural Resources" means all minerals, trees, rock, sand, gravel, clay, coal, petroleum oil, gas and gases, substances, groundwater, water, vegetation or animals found on or in KFN Lands which, when removed, have economic or other value;

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(gg) "Non-Substantive Amendments" means any amendment to this Land Code that is to correct typographical errors or remedy inconsistencies;

(hh) "Permit" means an interest in a specified area of KFN Lands other than a lease, easement or license that gives a person the right to non-exclusive use of a specified area of KFN Lands for a specified purpose;

(ii) "Person" includes a natural person, a partnership, syndicate, association, corporation, society and the personal or other legal representatives of a natural person;

(jj) "Ratification Vote" means a vote under Section 21.0;

(kk) "Registered Interest" means an interest in KFN Lands registered in accordance with Section 29;

(ll) "Related Person" means a spouse, common-law spouse, child of a spouse, parent, parent in-law, brother/sister in-law, sibling, child, grandparent, grandchild, dependant, aunt, uncle, niece, nephew, first cousin, any person with whom that person currently resides, or a corporation or other organization in which that person has an interest;

(mm) "Residential Use" means use of an Allotment or CP by a Member, for use as a principal residence, and does not include use of land or buildings for industrial or commercial or other uses except in accordance with KFN Laws including Laws for Member owned home-based businesses;

(nn) "Resolution" means a formal, written motion passed by a quorum of the Council at a duly convened meeting of the Council;

(oo) "Sacred Site" means a site on KFN Lands that is of particular cultural, historical, archaeological, anthropological or spiritual importance to KFN and the Members;

(pp) "Spouse" means an individual who is married to another person, whether by traditional, religious or civil ceremony, and includes a spouse by common-law marriage;

(qq) "Substantive Amendments" means all amendments to this Land Code, not including minor amendments to correct typographical errors or to remedy inconsistencies;

(rr) "Term" means the period of time for which an Interest in KFN Land has been conferred to a Person under this Land Code or related Law, and includes any option or right to extend that period of time;

(ss) "Verifier" means a person appointed to monitor and verify the process of KFN opting into the Act, in accordance with section 8.1 of the Framework Agreement; and

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(tt) "Written Instrument" means a written document, in the form approved by the Lands Manager, which purports to create, grant, assign or transfer an interest in KFN Lands or affect KFN Lands.

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

3.3 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to KFN Lands and includes all rights and resources in and of KFN Lands, including:

(i) the water, beds underlying water, the foreshore to the mean higher high water mark, riparian rights, and aquifers;

(ii) minerals, subsurface resources and all renewable and non-renewable natural resources belonging to that land, to the extent that these are under the jurisdiction of Canada or KFN; and

(iii) all the interests granted to KFN by Canada listed in the Individual Agreement.

For greater certainty, K'omoks First Nation may exclude certain reserve lands from the application of this Land Code by omission in the Individual Agreement, and may include or exclude certain reserve lands by an express provision in the Individual Agreement.

3.4 In this Land Code,

(i) the use of the word "shall" or "must" 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 an obligation;

(ii) 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";

(iii) headings and subheadings are for convenience only, 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;

(iv) a reference to a statute or Law of the Nation includes every amendment to it, every by-law or regulation made under it and any statute enacted in substitution for it or in replacement of it; and

(v) 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.

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3.5 If there is an inconsistency or conflict between this Land Code and any other KFN enactment, this Land Code shall prevail to the extent of the inconsistency.

3.6 This Land Code is not intended to affect the eligibility of the Nation or any Member to receive services or participate in such public or aboriginal programs or services as may be established from time to time to the extent that the Nation has not assumed responsibility for such services or programs.

3.7 This Land Code is not intended to abrogate from the fiduciary relationships between Canada, KFN and KFN Members.

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

3.9 If there is an inconsistency or conflict between this Land Code and regulation made under section 42 or 73 of the *Indian Act*, this Land Code must prevail to the extent of the inconsistency or conflict.

#### **4. Authority to Govern**

4.1 The authority of KFN to govern its lands and resources flows from its aboriginal title and its inherent right of self-government.

4.2 By enacting this Land Code, KFN is reaffirming its special responsibility to care for and respect the land, water and resources, which has been the obligation of Members and their ancestors since time immemorial.

4.3 Through this Land Code, K'omoks First Nation will, in part, be exercising its inherent right of self-government and provide for governance of KFN Lands that is accessible, stable, effective, accountable and transparent.

4.4 For any purpose related to KFN Lands, KFN shall have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.

#### **5. Purpose**

5.1 The purpose of this Land Code is to set out the principles, legislative and administrative structures that apply to KFN Lands and through which the Nation exercises its authority over those lands.

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## 6. Description of KFN Lands

6.1 The Land Code governs all of the land legally described in the Individual Agreement, and any lands added in compliance with this Land Code. This includes:

- (a) Comox I.R. #1 (K'ómoks);
- (b) Pentledge I.R. #2 (Puntledge);
- (c) Goose Spit I.R. #3;
- (d) Salmon River IR #1; and
- (e) lands set apart by Canada in the future as lands reserved for the use and benefit of KFN, within the meaning of subsection 91(24) of the *Constitution Act, 1867*, and section 2(1) of the *Indian Act*.

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

- i) any land jointly owned or in common by KFN and another First Nation, when the First Nations involved agree upon a joint management scheme for those lands;
- ii) any land or interest acquired by KFN after this Land Code takes effect, whether by treaty, land claim, specific claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use, and provided that the lands are set aside as a reserve; and
- iii) existing reserve lands that were omitted or expressly excluded from the description of the relevant lands in the Individual Agreement.

6.3 If the relevant conditions in section 6.2 are met, the Council must call a Meeting of Members and, after receiving input at that meeting, may enact a Law or pass a Resolution declaring the land or Interest to be subject to this Land Code.

6.4 For greater certainty, sections 6.2 and 6.3 do not apply to land acquired by land exchange, which is governed by the process set out in section 34.

6.5 The definition of "KFN Lands" in section 3.1 and the description of KFN Lands in section 6.1 are not intended, and should not be construed, as an admission by the Nation that those lands are the only lands to which the Nation is entitled pursuant to its Aboriginal rights, Aboriginal title, or treaty rights.

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## Part 2: LAND ADMINISTRATION

### 7.0 Responsibilities of Council

7.1 The Council is responsible through the Band Administrator for all matters relating to the management and administration of KFN Lands whether or not they have been assigned or delegated to an individual or body by or under this Land Code.

7.2 Notwithstanding section 7.1, and subject to the Act, the Framework Agreement and this Land Code, the Council may, through the Band Administrator, assign or delegate duties to the Lands Manager, the Lands Department, or a body established by or under this Land Code any of its functions under this Land Code except:

- (a) the granting of interests in KFN Lands;
- (b) the negotiation of amendments to the Individual Agreement;
- (c) expropriation of KFN Lands;
- (d) the establishment of a Lands Advisory Committee;
- (e) the enactment of Laws; and
- (f) the approval of budgets and financial statements of the Lands Department.

### 8.0 Lands Manager

8.1 The Lands Manager shall:

- (a) manage and administer KFN Lands in accordance with the Laws and this Land Code;
- (b) manage and oversee the day-to-day operations of the Lands Department; and
- (c) perform such duties and responsibilities as are required and consistent with this Land Code and the Laws.

8.2 Without limiting the generality or scope of the duties and responsibilities of the Lands Manager, the Lands Manager shall:

- (a) prepare and present regular reports to the Band Administrator, and Council as directed by Band Administrator;
- (b) approve all forms of Written Instruments developed or adapted for use by the Lands Department;

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(c) make recommendations to the Band Administrator regarding the fees and rent for interests in Community Land;

(d) determine the fees for services provided by the Lands Department;

(e) execute such Written Instruments and carry out any action required to be taken by and on behalf of Canada in relation to an Interest described in section 22.1;

(f) carry out any action required to be taken by Canada in relation to an Interest described in section 23.1 after the date this Land Code comes into force; and

(g) carry out any duty or responsibility delegated to the Lands Manager under section 7.2.

8.3 The Lands Manager may assign their duties or functions to an individual or body, but any such assignment does not relieve the Lands Manager of the responsibility to ensure that these duties or functions are carried out properly.

## 9.0 Lands Department

9.1 The Lands Department is hereby established for the purpose of carrying out all duties and responsibilities assigned or delegated to it under this Land Code or by Law.

9.2 Without limiting the generality of the duties and responsibilities of the Lands Department, it shall:

(a) administer KFN Lands in accordance with this Land Code and Laws;

(b) prepare forms of Written Instruments for use in creating, granting, transferring or assigning interests in KFN Lands, where deemed necessary and advisable by the Lands Manager;

(c) prepare forms of Written Instruments for use in registering documents which affect or purport to affect KFN Lands, where deemed necessary and advisable by the Lands Manager;

(d) arrange for the execution of Written Instruments and related documents on behalf of KFN and Canada;

(e) maintain and protect records in relation to KFN Lands;

(f) carry out any duty or responsibility delegated to the Lands Department under section 7.2; and

(g) carry out such additional duties as are requested by the Lands Manager consistent with the Laws and this Land Code.

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## 10.0 Lands Advisory Committee

10.1 The Council may, by Law or Resolution, establish a Lands Advisory Committee, as an advisory body to the Council or the Lands Department.

10.2 A Law or Resolution that establishes a Lands Advisory Committee shall include provisions that set out:

- (a) the composition of the Lands Advisory Committee, including quorum;
- (b) eligibility criteria and process for selecting members of the Lands Advisory Committee;
- (c) the term of office for members of the Lands Advisory Committee;
- (d) the process for selecting a chair;
- (e) the duties of the chair; and
- (f) the role of the Lands Advisory Committee;
- (g) establish honoraria where required.

10.3 Council shall approve or amend and approve terms of reference proposed by the Lands Advisory Committee.

## 11.0 Exercise of Duties

11.1 Any power, authority or discretion exercised by the Council, the Band Administrator, the Lands Manager, the Lands Department, or other individual or body established or authorized under this Land Code shall be exercised on behalf of, and for the benefit and protection of KFN.

## PART 3: LEGISLATION OF THE NATION

### 12.0 Law-Making Powers

12.1 The Council may, in accordance with this Land Code, make Laws respecting:

- (a) the development, conservation, protection, management, use and possession of, and planning for KFN Lands;
- (b) Interests and Licences in relation to KFN Lands;

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(c) any matter necessary to give effect to this Land Code; and

(d) any matter necessary or ancillary to a Law respecting KFN Lands.

12.2 For greater certainty, and without limiting the generality of section 12.1, the Council may make Laws on matters relating to KFN Lands including but not limited to:

- (a) regulation, control and prohibition of zoning, land use planning, authorization and regulation control of subdivisions and land development (including requirements for contributions to community benefits and amenities), park dedications and grants in lieu of park dedications, in accordance with the KFN development guide, and the KFN Comprehensive Community Plan and the KFN Official Community Plan;
- (b) rules, procedures and rights respecting the expropriation of interests in KFN Lands;
- (c) regulation, control, authorization and prohibition of residency, access and the occupation and development of land, and protection of community health and safety;
- (d) creation, and regulation of Interests and Licenses;
- (e) environmental assessment and protection;
- (f) provision of services for the Resolution, outside the courts, of disputes in relation to KFN Lands;
- (g) regulation of construction standards for buildings, structures and facilities on KFN Lands;
- (h) fees, stumpage or royalties to be paid to KFN for the removal or extraction of natural resources for KFN Lands;
- (i) fees to be paid to KFN for permit or license applications or for administrative processes;
- (j) the conduct of surveys;
- (k) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, spiritual sites and wildlife areas;
- (l) creation of management and administrative bodies or agencies;
- (m) public nuisance and private nuisance;
- (n) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (o) construction, maintenance and management of roads, water courses, storm drains, water diversions, bridges, fences, ditches, and other local and public works, and the imposition of user charges including development cost charges or their equivalent;
- (p) setting aside of lands for community purposes or works;
- (q) hunting, fishing, management and protection of fish, wildlife, and their habitat on KFN Lands;

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- (r) use and storage of fireworks, firearms, weapons and hazardous materials or substances on KFN Lands;
- (s) archaeological assessment and protection of archaeological and cultural resources;
- (t) enforcement of the Laws of the Nation; and
- (u) any matter deemed necessary by the Council.

12.3 A Law may:

- (a) establish offences that are punishable in summary conviction;
- (b) provide for fines, tickets, imprisonment, restitution, community service, and alternate means for achieving compliance; and
- (c) establish enforcement procedures consistent with federal and/or provincial laws.

12.4 Council may enact Laws to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

12.5 All Laws shall be:

- (a) posted in accordance with section 15; and
- (b) included in the KFN Law Registry in accordance with section 15.3.

12.6 The Council must perform all the duties and functions, and exercise all the powers of the Nation that are not specifically assigned to an individual or body established under this Land Code.

12.7 Notwithstanding section 12.2, the Council may, by Resolution, delegate administrative authority in relation to a Law enacted under section 12.1 to an individual or body established or authorized under this Land Code.

12.8 Any power, authority or discretion exercised by the Council, the Lands Committee or other individual or body established or authorized under this Land Code must be exercised on behalf of, and for the benefit and protection of the Nation.

### 13.0 Spousal Property Law

13.1 Within 12 months after the date this Land Code comes into effect the Council must enact a spousal property Law providing rules and procedures applicable on the breakdown of a relationship between Spouses to:

- (a) the use, occupancy and possession of KFN Lands; and

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(b) the division of Interests in that land.

13.2 The Council must develop the rules and procedures contained in the spousal property Law.

13.3 The rules and procedures developed by the Council under section 13.2 must take into account the following general principles:

(a) the best interests of any children of the Spouses;

(b) the rules and procedures must not discriminate on the basis of sex; and

(c) only Members are entitled to hold a Permanent Interest in KFN Lands or a charge against a Permanent Interest in KFN Lands.

13.4 The Council may enact an interim spousal property Law at any time within the 12-month period prescribed in section 13.1.

13.5 A Law enacted under section 13.4 must be deemed to be repealed 12 months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 13.1.

13.6 A Spousal Property Law enacted under this Part shall be:

(a) posted in accordance with section 15.2; and

(b) included in the KFN Law Registry in accordance with section 15.3.

#### 14.0 Law Making Procedure

14.1 A proposed Law may be introduced at a duly convened meeting of the Council by

(a) the Chief or a Councillor;

(b) the Lands Manager; or

(c) a representative of a body or authority authorized by the Council to do so.

14.2 A Member who wishes to propose a Law to the Council shall submit their request to the Lands Manager, who will bring the proposal to the Council, in accordance with section 14.1 (b).

14.3 Before a proposed Law may be enacted by the Council, it shall first be;

(a) tabled at a Council meeting at least 28 days before the Law is to be enacted; and

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(b) posted at the Band Administration office, at least 21 days before the Law is to be enacted.

14.4 The Council may enact a Law without the preliminary steps required under section 14.3, if the Council is of the opinion that the Law is needed urgently to protect KFN Lands or the Members, but the Law expires 120 days after its enactment, unless re-enacted in accordance with section 14.3 or 14.5, as appropriate.

14.5 The Council must provide notice in accordance with Part 4 of this Land Code if community input or approval is required prior to voting on the Law.

14.6 A Law is enacted if it is approved by a majority of the Council at a duly convened meeting of the Council.

14.7 The original copy of any Law or Resolution concerning KFN Lands shall be signed by a quorum of the Council present at the meeting at which it was enacted.

#### **15.0 Publication of Laws**

15.1 All Laws must be published in the minutes of the Council.

15.2 Within seven days after a Law has been enacted, KFN shall:

(a) post a copy of the Law at the band administration office; and

(b) post a copy on the Nation's website.

15.3 The Nation must maintain a register of Laws at the Nation's administration office containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are no longer in force.

15.4 Any person may, during normal business hours at the Nation's administration office, have reasonable access to the register of Laws.

15.5 Any person may obtain a hard copy of a Law or Resolution upon payment of such reasonable fee as may be set by the Lands Manager.

#### **16.0 Commencement and Amendments of Laws**

16.1 A Law enacted by the Council takes effect on the date of its enactment or such later date as specified by the Law.

16.2 A Law may be repealed or amended by following the procedure set out in section 14.

16.3 If a Law provides for the enactment of regulations on specific topics:

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- (a) Council may initiate the development of a regulation by Resolution;
- (b) Council may, in any manner that Council considers advisable, consult with Members regarding a proposed regulation; and
- (c) unless otherwise stated in the regulation, a regulation is enacted and comes into force on the date that it is approved and adopted by Resolution.

#### **Part 4: MEMBER INPUT AND APPROVALS**

##### **17.0 Rights of eligible voters**

17.1 Each Member who is at least 18 years of age is eligible to vote at a Meeting of Members and at a Ratification Vote

##### **18.0 Informing Members**

18.1 The Council shall call a Meeting of Members to receive input prior to the introduction of:

- (a) any Land Use Plan;
- (b) any Law on spousal property that may be enacted under section 13.1
- (c) a Law respecting the community plan or subdivision plan;
- (d) a Law declaring land or an Interest in land referred to in section 6.2 or 6.4 to be subject to this Land Code;
- (e) a Law affecting a Sacred Site, cultural site, traditional site, spiritual site or wildlife refuge or an environmentally sensitive property;
- (f) a Law or process respecting assessment of environmental impacts;
- (g) a Law respecting the transfer and assignment of Interest in KFN Lands;
- (h) a Law respecting the rate and criteria for the payment of fees or rent for KFN Land; and
- (i) any other Law or class of Law that the Council, by Resolution, declares to be subject to this section.

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## 19.0 Approval at a Meeting of Members

19.1 The Council shall convene a Meeting of Members for consideration and voting on the following matters:

- (a) a voluntary exchange of KFN Lands in accordance with section 35;
- (b) subject to section 19.2, amendments to this Land Code;
- (c) a charge or mortgage of a Leasehold exceeding a term of 25 years;
- (d) a Law or class of Law that the Council, by Resolution, declares to be subject to this section; and;
- (e) any matter in relation to KFN Lands that the Council, by Resolution, declares to be subject to this section.

19.2 Notwithstanding section 19.1 (b) the Council may, in consultation with the Lands Department and in accordance with section 20.8 (a) (iii), require that an amendment to this Land Code be approved by a Ratification Vote.

## 20.0 Procedure at a Meeting of Members

20.1 The Council shall give public notice of a Meeting of Members that:

- (a) specifies the date, time and place of the meeting; and
- (b) contains a brief description of the matters to be discussed and decided at the meeting.

20.2 A public notice for a Meeting of Members must be given by:

- (a) posting the notice in public places on KFN Lands at least 21 days before the meeting;
- (b) mailing the notice to Eligible Voters at their last known address at least 21 days before the meeting;
- (c) publishing the notice in a community newsletter and/or website at least 10 days before the meeting;
- (d) such other methods as the Council may consider appropriate.

20.3 All Members have the right to attend a Meeting of Members.

20.4 The Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members, provided that any vote taken at a

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Meeting of Members must not be accumulated with any vote taken at a subsequent Meeting of Members.

20.5 The Council may make Laws respecting procedures for Meetings of Members.

20.6 Subject to section 20.8, decisions at a Meeting of Members must be made by a majority vote of the Eligible Voters present at the meeting.

20.7 Voting at a Meeting of Members may be by secret ballot, or any method approved by Council.

20.8 The Council may, by Resolution,

(a) provide that any matter that requires approval at a Meeting of Members must be decided by;

(i) a majority vote by mail in ballot;

(ii) a majority vote at a Meeting of Members in conjunction with a mail-in ballot;

(iii) a Ratification Vote in accordance with section 21; or

(b) set a quorum for any Meeting of Members.

#### 21.0 Ratification Votes

21.1 Approval by a Ratification Vote must be obtained for:

(a) a voluntary exchange of KFN Lands under Part 6 section 35;

(b) an amendment to the Individual Agreement that reduces the amount of funding provided by Canada by 10% or more; and

(c) the enactment of a Law or class of Laws that the Council, by Resolution, declares to be subject to this section.

21.2 The Council may, by Resolution in accordance with section 20.8 (a) (iii), require that an amendment to, or renewal of, the Individual Agreement be approved by Ratification Vote if, in the Council's opinion, the amendment or renewal significantly impacts the community.

21.3 A matter shall be considered approved in a ratification vote if a majority of voters who cast a vote, vote in favor of the matter.

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## Part 5: INTERESTS AND LICENSES IN LAND

### 22.0 Limits on Interests

22.1 An Interest in KFN Lands may only be created, granted, disposed of, assigned or transferred by a Written Instrument in accordance with this Land Code.

22.2 The Lands Department may establish mandatory standards, criteria, and forms for Interests and Licenses in KFN Lands.

22.3 Any written deed, lease, contract, Written Instrument, document or agreement of any kind, whether written or oral, by which KFN, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or License in KFN Lands after the date this Land Code takes effect is void if it contravenes this Land Code.

22.4 A person who is not a Member may only hold a Lease, License or Permit in KFN Lands.

22.5 The written consent of the Council must be obtained for any grant or disposition of a Lease, License or Permit in KFN Lands to a person who is not a Member.

22.6 Unless expressly stated in the relevant Written Instrument, the granting of any Interest or License in KFN Lands, including an Allotment pursuant to section 32 and the issuing of a Certificate of Possession pursuant to section 33, does not include any rights to Natural Resources, and any and all interests in Natural Resources are reserved for the benefit of the Nation.

### 23.0 Existing Interests and Licenses

23.1 Any Interest or License in KFN Lands that existed when this Land Code takes effect shall, subject to this Land Code, continue in force in accordance with its terms and conditions and to any relevant laws, Land Use Plans or regulations passed in relation to this Land Code. For greater certainty, KFN is not liable for any decrease in value or use of an interest arising in relation to a law, Land Use Plan or regulation duly passed in relation to this Land Code.

### 24.0 New Interests and Licenses

24.1 The Lands Department may:

(a) set criteria for issuing Permits and Licenses; and

(b) make recommendations to the Council regarding the granting of Interests in KFN Lands.

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24.2 The grant of an Interest may be made subject to the satisfaction of written conditions.

24.3 Subject to 33.2, no community approval is required for the granting of an Interest under section 32.2.

24.4 A person who is not a Member is not entitled to be granted an Interest under sections 25.1 or 33.

### **25.0 Transfer and Assignment of Interests**

25.1 Subject to this Land Code and the Laws of the Nation, a Member who wishes to transfer or assign an Interest in KFN Lands to another Member must inform Chief and Council, via a formal letter, and the transfer must be registered with the K'omoks Lands Registry.

25.2 Council will not seek to acquire a CP from a Member unless it is in accordance with section 34.0 of this Land Code, and any KFN Law.

25.3 Except for the transfers under sections 25.1 and transfers that occur by operation of law:

(a) there must be no transfer or assignment of an Interest or License in KFN Lands without the written consent of the Council; and

(b) the grant of an Interest or License is deemed to include section 25.3 (a) as a condition on any subsequent transfers or assignments.

### **26.0 Limits on Mortgages and Seizures**

26.1 In accordance with the Framework Agreement, section 29, section 87 and subsections 89(1). (1.1) and (2) of the Indian Act continue to apply to KFN Lands, whether or not KFN Lands were designated before this Land Code came into effect.

26.2 The holder of a Certificate of Possession may only grant a mortgage of that interest to KFN or to a Member.

26.3 A leasehold interest may be subject to charge or mortgage, provided that, in the event of a default, KFN shall have first right of refusal.

26.4 The term of any charge or mortgage of a leasehold interest shall not exceed the term of the lease.

26.5 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest shall not be subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:

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- (a) the charge or mortgage was registered in the First Nation's Land Registry; and
- (b) the chargee or mortgagee has given the Council, acting on behalf of KFN, 90 days on which to redeem the charge or mortgage.

26.6 If the Council exercises its power of redemption with respect to a leasehold interest, KFN becomes the lessee of the land and takes the position of the charger or mortgager for all purposes after the date of the redemption, and, for greater certainty has full and immediate rights to access and eviction.

### 27.0 Surveys

27.1 The Lands Department, or a holder of an Interest in KFN Lands, may cause surveys to be made of KFN Lands in accordance with *the Canada Lands Surveys Act*, R.S.C. 1985, c. L-6 and the *Canada Land Surveyors Act*, S.C. 1998, c. 14.

27.2 A survey respecting KFN Lands shall only become effective upon being registered in the First Nations Land Registry.

27.3 Notwithstanding sections 27.1 and 27.2, surveys determining boundaries of KFN Lands shall not abrogate or derogate from KFN's Aboriginal rights and title or treaty rights, and is not intended to prejudice any of the First Nation's claim(s) to lands beyond the Reserve.

### 28.0 Land Use Plans

28.1 Subject to availability of funding, Council shall, in consultation with the Lands Department cause the development of a Land Use Plan as soon as practicable after the effective date of this Land Code. The Land Use Plan shall designate any Sacred Site, or medicinal/traditional lands to be protected from development or other disturbances.

28.2 Subject to section 28.4, a Land Use Plan comes into effect when it has been adopted by Resolution on the date of that Resolution, or on such later date as may be provided for in that Resolution.

28.3 Pursuant to section 18.1, before Council passes a Resolution to adopt a Land Use Plan, Council must obtain approval at a Meeting of Members.

28.4 A Land Use Plan is of no force and effect unless section 28.3 has been complied with prior to its adoption by Council.

28.5 Once a Land Use Plan has been adopted by Council pursuant to this section 28, it may not be amended unless the amendment has been approved by Eligible Voters at a Meeting of Members and adopted by Resolution.

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## 29.0 Registration of Interests

29.1 An Interest in KFN Lands created or granted after this Land Code takes effect is void and not enforceable unless it is registered or recorded in the First Nations Land Registry (FNLR).

29.2 Every person who receives an Interest or a purported Interest in KFN Lands shall:

- (a) submit the Written Instrument creating, transferring, or assigning the Interest for registration or recording in the FNLR; or
- (b) submit the Written Instrument to the Lands Department, together with:
  - (i) a written request to register or record the written instrument in the FNLR,
  - (ii) a filing fee if applicable, and
  - (iii) a signed waiver or liability.

29.3 Upon receiving the items under paragraph 29.2, the Lands Manager shall confirm if the Written Instrument is in compliance with this Land Code, all relevant Laws, the Act and the First Nations Land Registry Regulations, and, if it is in compliance, submit the Written Instrument and supporting documentation for registration or recording in the FNLR.

29.4 A Written Instrument granting an Interest or License in KFN Lands that requires the consent of the Council, or approval at a Meeting of Members shall include a certificate issued by the Lands Manager indicating that the applicable consent or approval has been obtained.

29.5 A Written Instrument registered in the FNLR which does not include the certificate required under section 28.4, is void.

29.6 Provided the Lands Manger receives the documents, the Lands Manager shall ensure that an original copy of the following documents is deposited in the FNLR:

- (a) every Land Use Plan, subdivision plan or resource use plan; and
- (b) this Land Code and any amendment to this Land Code.

## 30.0 Transfers on Death

30.1 A member who claims to be entitled to a Certificate of Possession by testamentary disposition or succession pursuant to the Indian Act is not entitled to such Certificate of Possession until:

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(a) the Member has filed with the Lands Department a Written Instrument in a form prescribed by the Lands Manager, duly executed by the personal representative of the estate of the deceased Member transferring such Certificate of Possession to the Member; and

(b) the Written Instrument referred to in subsection (a) is registered in the First Nations Land Registry.

30.2 A purchaser of a Certificate of Possession pursuant to subsection 50(2) of the Indian Act is not entitled to such Certificate of Possession until:

(a) the purchaser has filed with the Lands Department, an Written Instrument in a form prescribed by the Lands Manager, duly executed by the person authorized under the Indian Act to execute a transfer of a Certificate of Possession acquired pursuant to section 50(2) of the Indian Act; and

(b) the Written Instrument referred to in subsection (a) is registered in the First Nation's Land Registry.

### **31.0 Residency and Access Rights**

31.1 Any person who resides on, enters or remains on KFN Lands other than in accordance with a residence or access right under this Land Code or under a Law is guilty of an offence.

31.2 Subject to any Laws passed under this Land Code, all civil remedies for trespass are preserved.

31.3 Subject to the Laws of the Nation, the following persons have a right to reside on KFN Lands:

(a) Members, who have been allocated a residential lot by Council, their spouses and children, and their invitees;

(b) Members who have been assigned band housing, and their spouses and children, during the term of agreement and to the extent to which they pay rent and comply with the terms of the agreement;

(c) lessees under a valid lease, in accordance with the provisions of the Written Instrument granting the lease.

31.4 Subject to the Laws of the Nation, the following persons have a right of access to KFN Lands, so long as any documentary requirements under this Land Code, including sections 22.1, 22.2 and 22.3 are in place;

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- (a) Members and their spouses, children and invitees;
- (b) lessees and their invitees;
- (c) renters and their invitees;
- (c) permittees and those granted a right of access under the Permit;
- (d) persons authorized by a government body or any other public body, established by or under enactment of KFN or British Columbia to establish, operate or administer a public service, to operate a public institution or to conduct a technical survey;
- (e) persons authorized by a Law; or
- (f) any person, for a valid social or business purpose, provided that the person;
  - (i) does not trespass on occupied land and does not interfere with any interest in land;
  - (ii) complies with all applicable Laws; and
  - (iii) is not the subject of a Resolution barring the person from KFN Lands.

31.5 A right of residence on or access to KFN Lands does not imply or create any financial obligation on the part of KFN.

31.6 No liability is imposed upon KFN, in respect of any person exercising a right of residency or access under this Land Code, for injuries or damages suffered on account of the condition or state of KFN Lands.

**32.0 Allotments in KFN Land**

32.1 Subject to this Land Code and any relevant KFN Laws, Land Use Plans and policies approved by Resolution (including but not limited to the K'omoks First Nation New Home Build Policy), Council may grant an Allotment to a Member 19 years and older for Residential Use by Council Resolution, provided that Member does not have debts/and or arrears owing to KFN.

32.2 No Allotment may be granted until a KFN Land Law has been enacted establishing policy, procedure and criteria for the creation, grant, holding, transfer, disposition and encumbering of lots.

32.3 Any Law or policy relating to Allotments for Residential Use and any decision to grant an Allotment for Residential Use shall include:

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- (a) a maximum lot size which shall not be greater than half an acre;
- b) a fair process to ensure that Members who do not yet have an Allotment or CP have an opportunity to apply for one.

**33.0 Certificates of Possession (or CP's)**

33.1 Only a K'omoks First Nation Member can hold or receive a Certificate of Possession.

33.2 No Certificate of Possession will be issued until a KFN Land Law has been enacted establishing a policy and procedure for their issuance.

33.3 Subject to this Land Code and the policies and Laws of the Nation, Council may issue a Certificate of Possession to a Member for a lot allocated to that Member for Residential Purposes.

33.4 A Certificate of Possession (or CP) is an Interest in KFN Lands that, subject to terms of the Certificate of Possession and any applicable restrictions or reservations, may entitle the Member holding it to:

- (a) permanent possession of the land;
- (b) grant subsidiary Interests in the land, including:
  - i.) leases not exceeding 25 years,
  - ii.) Permits subject to 22.5 of this Land Code provided:
    - a.) that they are the sole lawful possessor(s) of the Allotment or CP (ie. that another Member with an Interest in the Certificate of Possession does not oppose the granting of the sub-interest); and
    - (b) that the sub-interest complies with this Land Code and all KFN laws and by-laws; and
    - (c) that the Lease or Permit is registered in the KFN Lands Registry, or
- (c) transfer, devise or otherwise dispose of the land to another Member.

33.5 Subject to section 25.1 and 29 a CP holder may transfer or assign his/her CP to another Member but such assignment must be registered in the KFN lands office, pursuant to this Land Code to be effective.

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## Part 6: EXPROPRIATION AND PROTECTION OF LAND

### 34.0 Expropriation

34.1 An Interest in KFN Lands, or in any building or other structure on KFN Lands, may only be expropriated by KFN in accordance with the Framework Agreement and in accordance with any Law enacted for the purpose of establishing the rights and procedures for expropriations.

34.2 An Expropriation may be made only if Council considers it necessary for a community purpose, including but not limited to a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, daycare facility, hospitals, health-care facility, or retirement home:

- (a) after notifying the Interest-holders of the purpose for expropriation, and making a good faith effort to acquire, by mutual agreement, the Interest in KFN Lands;
- (b) if no other similar and suitable KFN Land is reasonably available; and
- (c) in the most reasonable amount and for the shortest period of time necessary to reasonably meet the need for which the Interest, building or structure is required by KFN.

34.3 Notwithstanding section 34.2, an Interest granted by a Member in KFN Lands may be expropriated if:

- (a) the Interest to be expropriated is determined to be fraudulent or to have been granted for an illegal purpose; or
- (b) the granting of the Interest is determined to be not in the best interests of the Nation.

34.4 No Expropriation may be made under section 34.3 unless:

- (a) the holder of the Interest is given a reasonable opportunity to address and rectify the concerns of the Member or the Nation and fails within a reasonable time to do so;
- (b) the expropriated Interest reverts to a Member; and
- (c) the Expropriation is carried out in accordance with this Part 6.

34.5 KFN shall, in accordance with its Laws and the Framework Agreement,

- (a) serve reasonable notice of the Expropriation on each affected holder of the Interest to be expropriated; and

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(b) pay fair and reasonable compensation to the holders of the Interest being expropriated.

34.6 In determining the total value of the compensation under this section, KFN shall apply the rules set out in the *Expropriation Act*, with such modifications as the circumstances may require.

34.7 In determining compensation under section 34.6, the "fair compensation" of an expropriated interest is equal to the amount that would have been paid for the Interest if it had been sold on the reserve by a willing seller to a willing buyer under no duress.

34.8 An Interest of Her Majesty the Queen in right of Canada, or an Interest previously expropriated under section 35 if the *Indian Act* is not subject to Expropriation by KFN.

34.9 Disputes concerning the:

(a) right of a person who claims an Interest in expropriated KFN Lands to compensation; and

(b) amount of the compensation to be paid to the person who held an Interest in expropriated KFN Lands shall be determined in accordance with Part 8 of this Land Code.

34.10 No Expropriation of an Interest in KFN Lands or in any building or other structure on KFN Lands by KFN shall take effect earlier than either of the:

(a) date the notice of Expropriation is registered in the First Nations Land Registry; or

(b) 30<sup>th</sup> day after the day the last copy of the notice is served on the Interest-holder.

34.11 The Nation may Expropriate an Interest or License only after a good faith effort to acquire the Interest or License by mutual agreement.

### **35.0 Voluntary Land Exchanges and Protections**

35.1 The Nation may, in a written land exchange agreement, agree with another party to exchange a parcel of KFN Land for land from that other party in accordance with this Land Code and the Framework Agreement.

35.2 A land exchange is of no effect unless it receives approval at a Meeting of Members in accordance with section 19.1.

35.3 No land exchange may proceed to a Meeting of Members for approval unless:

(a) the land to be received in the exchange is

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- i.) equal to or greater than the area of the KFN Land to be exchanged,
- ii.) at least comparable to the appraised value of the KFN Land, and
- iii.) eligible to become a reserve under the *Indian Act* and KFN Lands subject to this Land Code; and

(b) KFN receives from Canada a written statement clearly stating that Canada consents to:

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

35.4 The Council may, by Resolution, delegate to another person the authority to negotiate a land exchange agreement on behalf of KFN.

35.5 In addition to the land described at section 35.3, KFN may negotiate to receive other compensation, such as money, or other parcels of land which may be held by KFN in fee simple or in some other manner.

35.6 Once negotiations on the land exchange agreement are concluded, the Council shall, at least 21 days before the Meeting of Members (or ratification vote), provide to eligible voters a:

- (a) description of the KFN Land to be exchanged;
- (b) description of the land to be received in the exchange;
- (c) description of any other compensation to be exchanged;
- (d) report of a certified land appraiser setting out that the conditions in paragraph 35.3(a) have been met;
- (e) copy or summary of the exchange agreement; and
- (f) copy of the consent referred to in paragraph 35.3(b)

35.7 Any land exchange agreement shall provide that:

- (a) the other party to the exchange shall transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) the Council shall pass a Resolution authorizing Canada to transfer title to KFN Land being exchanged, in accordance with the exchange agreement; and

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(c) a copy of the Written Instruments transferring title to the relevant parcels of land shall be registered in the First Nation's Land Registry. **36.0 Sacred Sites**

36.1 Development on a site designated as a Sacred Site under a KFN Law or Land Use Plan shall not be permitted, unless the development receives approval at a Meeting of Members.

36.2 No amendment may be made to a Law or Land Use Plan to delete a heritage site or remove Sacred Site designation unless the amendment receives approval at a Meeting of Members.

36.3 Within three years of ratifying this Land Code, the Lands Manager and if applicable, the Lands Advisory Committee will develop a Sacred Site inventory.

36.4 The Council may develop and enact, in accordance with section 14, a Law regarding the protection of Sacred Sites.

36.5 Any Law enacted under section 36.4 shall be

(a) posted in accordance with section 15; and

(b) included in the KFN Law Registry in accordance with section 15.3.

### **37.0 Natural Resources**

37.1 All Natural Resources on or under KFN Community Lands, and revenues from these Natural Resources are the property of KFN.

37.2 A Lease in KFN Land does not grant any Interests in the Natural Resources on or under the KFN Land unless specifically included in the terms of the Lease.

37.3 The use and development of Natural Resources on or under KFN Lands shall be subject to this Land Code and KFN Law, and may not be removed unless such removal is authorized by KFN Law or an Instrument granted pursuant to Part 5.

37.4 Before Council or the Lands Department grants a Permit which has, as its primary purpose, the removal of Natural Resources from KFN Lands, Council and/or the Lands Manager shall:

(a) present to the Lands Advisory Committee, if then constituted, a summary of the terms of the proposed grant and seek and consider comments and advice; and

(b) ensure the proposed grant is consistent with any applicable Land Use Plan approved and adopted by KFN Members.

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37.5 To the extent that KFN has ownership or rights over water as recognized by federal or provincial legislation, Order-In-Council, or by operation of law, KFN retains ownership and has jurisdiction to manage and regulate water use.

## **Part 7: Conflicts of Interest and Financial Management**

### **38.0 Conflicts of Interest**

38.1 This part applies only to conflicts of interest and financial matters in relation to the management and administration of KFN Lands under this Land Code, and applies to:

- (a) a member of Council who is dealing with a matter before Council that is related to KFN Lands;
- (b) an employee of KFN dealing with a matter that is related to KFN Land;
- (c) a member of a board, committee, or other body of KFN dealing with a matter that is related to KFN Land; and
- (d) any member of a dispute resolution body established under this Land Code.

38.2 A conflict of interest arises when:

(a) An individual referenced in section 38.1 exercises an official power or performs an official duty or function in the execution of their office, position, or committee and at the same time knows or ought to know that in the performance of the duty or function or in the exercise of the power there is opportunity to receive Financial Benefit for themselves or to provide Financial Benefit to a Related Person or to otherwise create an advantage for them or a Related Person over and above any other Member or member of the public, or

(b) An individual referenced in section 38.1's personal interests supersede or compete with their dedication to the best interests of the K'omoks First Nation.

38.3 A perceived conflict of interest occurs if there is a reasonable perception, which a reasonably informed person might have, that in the Councillor's, employee's or board or committee members exercise of an official power or performance of an official duty or function was affected by his/her own private interest.

38.4 Where an individual referenced in section 38.1 is uncertain as to whether a conflict of interest may exist, the situation must be disclosed to Council, and Council will determine whether a conflict of interest exists.

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38.5 In the event that an actual or perceived conflict of interest affects the entire Council, any Member may raise the matter with the KFN Band Administrator or Council.

38.6 In the event that an individual referenced in section 38.1 believes another Councillor, employee or board or committee member to be in an actual or perceived conflict of interest, such person shall immediately report the matter to the Council or Band Administrator.

38.7 An individual referenced in section 38.1 with an actual or perceived conflict of interest will, without delay, declare the actual or perceived conflict of interest as follows:

- (a) if a Councillor or Band Administrator, to Council;
- (b) if an employee other than the Band Administrator, to the Band Administrator, who will notify Council;
- (c) if a board, committee member, to the applicable committee/advisory/board, which will notify Council;

And Council shall advise of the appropriate action in each case.

38.8 An individual referenced in section 38.1 who attends a meeting and has reasonable grounds to believe that they have an actual or perceived conflict of interest in a matter being considered, will disclose the general nature of the actual or perceived conflict of interest and will:

- (a) not participate in any discussion or decision of or vote on any question in respect of the matter;
- (b) immediately leave the meeting or the part of the meeting during which the matter is under consideration;
- (c) not sign a Resolution or letter in respect of the matter; and
- (d) not attempt in any way, whether before, during or after the meeting, to influence the opinion or vote of the Council or board or committee on any question in respect of the matter.

38.9 Any individual referenced in section 38.1 who fails to, or makes an incomplete disclosure of an actual or perceived conflict of interest is liable to K'omoks First Nation for any benefit to themselves, a Related Person, or a business in which that individual holds an interest resulting from a violation of this Part, and may be subject to any other penalty as prescribed by Law for breach of this Part, up to and including loss of their position without prejudice to any other disciplinary or legal action that Council, on behalf of K'omoks First Nation, may take.

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## 39.0 Financial Administration

39.1 Financial Administration of K'ómoks First Nation funds, in relation to KFN Lands administered under this Land Code must be conducted in accordance with the K'ómoks First Nation Financial Administration Law (2014), as amended from time to time, and all regulations, policies or procedures enacted or approved under it.

## Part 8: DISPUTE RESOLUTION

### 40.0 Informal Resolution of Disputes

40.1 KFN intends that whenever possible, a dispute in relation to KFN Lands shall be resolved through informal discussion by the parties to the dispute and nothing in this part shall be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this Part.

40.2 KFN further intends that a dispute in relation to KFN Lands that is not resolved by informal discussion shall be resolved by parties through the alternative dispute resolution mechanisms outlined in this Part.

40.3 Nothing in this Part precludes Council from establishing additional processes or Laws for resolving disputes involving KFN Lands, or restricts parties' right to pursue remedies in a court of competent jurisdiction at any time.

### 41.0 Application of this Part

41.1 This Part applies to:

- (a) disputes involving a Member who claims an Interest or License based on a Registered Interest;
- (b) disputes involving a person who has a dispute with another person or with KFN in relation to the possession, use or occupation of KFN Lands;
- (c) KFN when asserting an Interest in KFN Lands;
- (d) KFN when disputing the possession, use or occupation of KFN Lands;
- (e) a dispute over the amount of compensation in relation to an Interest or License expropriated by KFN;
- (f) disputes about whether or not a Person is in a Conflict of Interest as set out in this Land Code; and

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HPD

(g) disputes in relation to expropriation as set out in section 34.8.

41.2 Dispute resolution is not available under this Part for disputes of decisions:

- (a) relating to housing allocation;
- (b) decisions of the Council to grant or refuse to grant an Interest or License in KFN Lands;
- (c) decisions of the Council to expropriate an Interest or License.

41.3 Disputes that originated before this Land Code came into effect may be decided under this Part.

#### 42.0 Mediation

42.1 Parties that have been unable to resolve a dispute through informal discussion in accordance with section 41.1 may attempt to resolve the dispute through mediation, in accordance with the following procedure:

- (a) the parties to the dispute shall jointly select a mediator from the roster of mediators maintained by the British Columbia Mediator Roster Society;
- (b) if the parties are unable to agree on a mediator, the parties may select any other mediator by mutual agreement or request the British Columbia Mediator Roster Society to appoint a mediator; and
- (c) the mediator to the dispute must set the rules and procedures for the mediation.

42.2 Should the British Columbia Mediator Roster Society cease to exist or become known by another name, Council may, by Resolution, establish an alternative process for selecting a mediator under this section.

#### 43.0 Arbitration

43.1 If the parties are unable to resolve the dispute through mediation, or the parties are not able to agree on a mediation process, the parties may attempt to resolve the dispute through arbitration, in accordance with the following procedure:

- (a) the parties to the dispute shall jointly select an arbitrator;
- (b) if the parties are unable to agree upon an arbitrator, the parties may request the British Columbia Arbitration and Mediation Institute to appoint an arbitrator; and
- (c) the arbitrator of the dispute shall set the rules and procedures for the arbitration.

**Verified**  
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[Signature]

43.2 Subject to section 43.3, the decision of the arbitrator shall be final and binding on all parties.

43.3 Notwithstanding section 43.2, where there is an exception established by law, the decision of the arbitrator may be appealed to a court of competent jurisdiction.

43.4 Should the British Columbia Arbitration and Mediation Institute cease to exist, or become known by another name, Council may, by Resolution, establish an alternative process for selecting an arbitrator under this section.

#### 44.0 Costs

44.1 Subject to any ruling by an arbitrator, all parties to a dispute shall bear their own costs in any dispute resolution process they undertake.

44.2 For greater certainty, KFN shall not be liable or responsible for the costs of any dispute resolution process under this Part where KFN is not a party.

### Part 9: OTHER MATTERS

#### 45.0 Public Notice

45.1 Unless expressly provided otherwise, public notice under this Land Code

(a) shall specify the time, date and location of the meeting or vote, if applicable;

(b) shall contain a brief description of the matter at issue;

(c) shall be posted at least 21 days prior to the event that is the subject of the public notice;

(d) is properly posted if a written notice is placed in the reception area of the band and office, and at each public building on SFN Lands; and

(e) may, at the discretion of the Council, be

i.) published in KFN's newsletter,

ii.) posted on KFN's website, or

iii.) posted by any such additional method as the Council may consider appropriate in the circumstances.

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## 46.0 Liability

46.1 KFN is not liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to KFN Lands that occurred before this Land Code came into effect.

46.2 The Council shall arrange, maintain and pay insurance coverage for:

- (a) liability of KFN in relation to community land and KFN assets; and
- (b) personal liability of KFN Councillors, officers and employees for acts done in good faith while engaged in carrying out duties related to KFN Lands under this Land Code.

46.3 The Council shall determine the extent of the insurance coverage reasonably required under section 46.2, and that it is adequate.

46.4 Every employee of KFN whose responsibilities include land administration or collecting or accounting for land revenue shall be bondable.

## 47.0 Offences

47.1 Unless some other procedure is provided for by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code*, R.S.C. 1985, c. C-46 apply to offences under this Land Code or under a Law.

47.2 The Council may enact Laws respecting the appointment of justices of the peace for the purposes of enforcing this Land Code and the Laws.

47.3 If no justice of the peace is appointed or available, then this Land Code and the Laws shall be enforced through the provincial courts.

## 48.0 Commencement

48.1 This Land Code shall take effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada by Ratification Vote held in accordance with the KFN Community Ratification Process dated for reference \_\_\_\_\_, and
- (b) this Land Code has been certified by the Verifier pursuant to the Framework Agreement.

48.2 This Land Code shall take effect 30 days following the certification of this Land Code by the Verifier.

**Verified**  
June 28, 2016  
NR

48.3 The Framework Agreement is ratified and confirmed when this Land Code takes effect.

**49.0 Amendments to the Land Code**

49.1 The Council may, by Resolution, make non-substantive amendments to this Land Code.

49.2 Any Substantive Amendments to this Land Code shall be approved at a Meeting of Members, in accordance with section 19.

49.3 This Land Code must undergo a first year review on the one year anniversary of the effective date, and on each consecutive one year anniversary.

**Verified**

June 28, 2016

HRD