

**KWAW KWAW APILT FIRST NATION  
LAND CODE**

**Final Draft for Community Approval  
Dated for Reference  
February 5, 2017**

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## **PART 1 PRINCIPLES**

### *Kwaw Kwaw Apilt Aboriginal Title*

- 1.1 Kwaw Kwaw Apilt First Nation has occupied, used and shared with other Stó:lō our lands, waters and resources since time immemorial and has never surrendered or relinquished aboriginal title.

### *Kwaw Kwaw Apilt Authority to Govern*

- 1.2 By enacting this Land Code, Kwaw Kwaw Apilt exercises its inherent right to govern that part of S'ólh Témexw (our lands) which has been designated as Kwaw Kwaw Apilt reserve land within the meaning of the *Indian Act*, R.S.C. 1985, c I-5.
- 1.3 The authority of Kwaw Kwaw Apilt to govern our land and resources flows from:
- (a) the Creator to the Kwaw Kwaw Apilt people;
  - (b) the Kwaw Kwaw Apilt people to the Council according to the culture, traditions, customs and laws of Kwaw Kwaw Apilt; and
  - (c) Kwaw Kwaw Apilt's inherent right of self-government and its other aboriginal rights, including aboriginal title.
- 1.4 In relation to Kwaw Kwaw Apilt Lands and associated lands, Kwaw Kwaw Apilt First Nation shall have legal capacity to acquire, hold and register property and legal rights, Interests and Licenses, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise our powers and to perform our duties.

### *Respect for Stó:lō heritage, culture and tradition*

- 1.5 Using this Land Code, Kwaw Kwaw Apilt will continue to carry out our responsibility to protect and manage the land and her resources for future generations in accordance with Stó:lō heritage, culture and traditions, while allowing for the evolution of modern expressions of that heritage, culture and tradition.

### *Legal Title held by Canada for Purposes of Land Code*

- 1.6 Kwaw Kwaw Apilt acknowledges that, subject to section 2.8 [*non-derogation of aboriginal rights and title*], for the purposes of this Land Code, the nominal legal title to Kwaw Kwaw Apilt reserve land continues to be held for Kwaw Kwaw Apilt's use and benefit by Her Majesty the Queen in right of Canada.

## **PART 2 DEFINITIONS, INTERPRETATION AND APPLICATION**

- 2.1 In this Land Code, unless the context does not permit, these words have the following meanings:

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

*Allotment* means an interest in Kwaw Kwaw Apilt Lands granting a Member possession of part of Kwaw Kwaw Apilt Lands under Part 9 of this Land Code or, prior to the date this Land Code comes into force, pursuant to section 20 of the *Indian Act*;

*Certificate of Possession* or *CP* means an official document issued under this Land Code or formerly issued under section 20 of the *Indian Act* to confirm a Member's Allotment;

*Chief* means the hereditary Chief of Kwaw Kwaw Apilt;

*Child* includes the natural offspring of an individual, and any Person less than 18 years of age who has been adopted legally or by Stó:lō custom;

*Common-law Marriage* means the union of two individuals who, though not married to each other, have lived together as Spouses for a period of not less than ten years;

*Committee* means the Land Management Advisory Committee established in Part 6;

*Community Lands* means any Kwaw Kwaw Apilt Lands in which no Allotment or CP to a Member has been made or affirmed by this Land Code or under the *Indian Act*;

*Community Purpose* means a purpose which is intended to provide a facility, benefit or support for the Members or Persons residing on Kwaw Kwaw Apilt Lands and may include facilities, public works, utility or transportation corridors, or similar vital purposes;

*Council* means the elected or appointed governing body of Kwaw Kwaw Apilt;

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

*Easement* means a non-exclusive interest in Kwaw Kwaw Apilt Lands granted under Part 9 of this Land Code or, prior to the date of this Land Code, under the *Indian Act*, giving the grantee the right to use the land of another 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;

*Eligible Voter* means a Member who, as of the date of a Ratification Vote or other vote provided for in this Land Code, has attained the age of eighteen years;

*Framework Agreement* means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen Indian Bands on February 12, 1996, as amended;

*Immediate Family* means, in respect of an individual, that individual's parent, grandparent, sister, brother, grandchild, Child or Spouse;

*Individual Agreement* means the agreement entered into between Kwaw Kwaw Apilt and the Government of Canada pursuant to section 6(3) of the *Act* and Section 6.1 of the Framework Agreement;

*Interest* means an interest in Kwaw Kwaw Apilt Lands, including an Allotment, Easement, Lease, Mortgage, right-of-way, Statutory Right-of-Way, covenant, certificate and Sublease or other interests in land;

*Kwaw Kwaw Apilt Indian Band, Kwaw Kwaw Apilt First Nation* and *Kwaw Kwaw Apilt* means the collective of those individuals who recognize each other as members of a community traditionally connected to Kwaw Kwaw Apilt Lands, and which is a First Nation and also an Indian Band within the meaning of the Framework Agreement;

*Kwaw Kwaw Apilt Lands* means:

- (i) Kwaw Kwaw Apilt Indian Reserve No. 6 as described in the Individual Agreement, and any lands added to Kwaw Kwaw Apilt Indian Reserve No. 6 through claims, settlements, additions to Reserves or other processes;
- (ii) Lands set apart by Canada in the future as lands reserved for the use and benefit of Kwaw Kwaw Apilt within the meaning of subsection 91(24) of the *Constitution Act, 1867* and subsection 2(1) of the *Indian Act*;
- (iii) Reserve lands jointly for the use and benefit of Kwaw Kwaw Apilt and one or more other Indian Bands, if the other Indian Bands agree upon a joint management scheme for those lands;

the water beds underlying the water, riparian rights, the air and airsheds, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of the lands described above to the extent that those resource are under the jurisdiction of Canada or Kwaw Kwaw Apilt; and

all the Interests and Licenses granted or confirmed to Kwaw Kwaw Apilt by Her Majesty in right of Canada listed in the Individual Transfer Agreement.

*Kwaw Kwaw Apilt Lands Office* means the department established by Council to manage Kwaw Kwaw Apilt Lands and may include the S.A.Y. Lands Office if that office is designated to manage Kwaw Kwaw Apilt Lands in relation to this Land Code;

*Land Code* means this Kwaw Kwaw Apilt Land Code;

*Lands Governance Director* means the Kwaw Kwaw Apilt Indian Band employee or contractor responsible for the day-to-day administration of Kwaw Kwaw Apilt Lands

and includes the employee or contractor formerly called the Lands Manager;

*Land Use Plan* means a formal plan addressing land use and other factors related to the use or development of Kwaw Kwaw Apilt Lands;

*Law* means a law enacted under this Land Code and the authority to pass a Council Resolution, regulation or order under such a law, but does not include a Council Resolution that is not authorized under this Land Code or a Land Code law that fails to comply with the requirements set out in this Land Code;

*Lease* means a written agreement granting a Leasehold;

*Leasehold* means an interest in Kwaw Kwaw Apilt Lands granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, including a Sub-lease, giving a Person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including any renewal or extension period;

*License* means a right of use or occupation of a specified parcel or area of Kwaw Kwaw Apilt Lands or any right or permit to use or extract Natural Resources or carry out an activity, other than an Interest in the Land but which does not grant exclusive possession of Kwaw Kwaw Apilt Lands;

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

*Member* means a Person who meets the requirements of membership in the Kwaw Kwaw Apilt Membership Code and whose name is shown on the Kwaw Kwaw Apilt membership list;

*Minister* means the Minister of Indian Affairs and Northern Development, as the representative of Her Majesty the Queen in Right of Canada;

*Mortgage* means a charge on an Interest in Kwaw Kwaw Apilt Lands in favour of another as security for a debt;

*Natural Resources* means any minerals, oil, gas, substances, groundwater, water, air, vegetation or animals found on, under or in Kwaw Kwaw Apilt Lands which, when removed, have economic or other value;

*Permit* means a right or permission, other than an Interest in the Land, granted under Land Code or, prior to the date of this Land Code, the *Indian Act*, giving a Person the right to use or occupy a specified area of Kwaw Kwaw Apilt Lands for a specified purpose to use or extract Natural Resources or carry out an activity, but which does not grant exclusive possession of Kwaw Kwaw Apilt Lands and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit

granted;

*Person* includes a natural person, corporation, partnership or party, and the personal or other legal representatives of a Person to whom the context can apply according to law;

*Ratification Vote* means a vote carried out in relation to this Land Code in a manner consistent with Part 4;

*Register* or *Registration* means to submit a document, License, Interest or Law to the Registry or, if permitted under this Land Code, or a Law or Council Resolution in accordance with this Land Code, another registry;

*Registry* means the First Nation Lands Register System established by Canada in accordance with clause 51.1 of the Framework Agreement and maintained by the Minister in Ottawa, Ontario;

*Residential Use* means use of an Allotment or CP by one or more Members, who do not already have an Allotment or a CP, for the purpose of situating their home, and does not include buildings intended for renting out, or industrial, commercial or other uses except in accordance with Kww Kwaw Apilt laws including laws for home-based businesses;

*Spouse* means an individual who is married to another, whether by custom, religious or civil ceremony, and includes a Spouse by Common-law Marriage;

*Statutory Right-of-Way* means an easement, right-of-way or other Interest in lands which does not require a dominant and servient tenancy and can be created on any Kww Kwaw Apilt Lands in accordance with this Land Code and applicable laws;

*Sub-Lease* means a portion of that Interest held under Lease; and

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

### *Interpretation*

#### 2.2 In this Land Code

- (a) the use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

- (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- (f) unless it is otherwise clear from the context, the use of the masculine includes the feminine and the use of the feminine includes the masculine;
- (g) where the time limited for the doing of an act expires or falls on a Saturday, a Sunday or a federal, provincial, or aboriginal holiday, the act may be done on the next business day;
- (h) where the time limited for the doing of an act in the Kwan Kwan Apilt administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open; and
- (i) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.

#### *Paramountcy*

- 2.3 If there is an inconsistency or conflict between this Land Code and any other Kwan Kwan Apilt Law or Council Resolution in relation to Kwan Kwan Apilt Lands or laws or administration for Kwan Kwan Apilt Lands, this Land Code shall prevail to the extent of the inconsistency or conflict.
- 2.4 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.

#### *Culture and Traditions*

- 2.5 The structures, bodies and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of Kwan Kwan Apilt unless otherwise provided.

#### *Fair Interpretation*

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

#### *Purpose*

- 2.7 The purpose of this Land Code is to set out the principles, procedures and administrative structures that apply to Kwan Kwan Apilt Lands and by which Kwan Kwan Apilt will exercise authority over those lands.

#### *Lands and Application of Land Code*

- 2.8 This Land Code applies to:
- (a) Kwan Kwan Apilt Lands; and



- (b) any land acquired by Kwaw Kwaw Apilt after this Land Code takes effect, whether by land claim, purchase, addition to Reserve, or other process, provided that:
  - (i) an environmental site profile or audit has been completed;
  - (ii) Council has passed a Resolution confirming that Kwaw Kwaw Apilt wishes the lands to be Reserve lands; and
  - (iii) the lands are set aside as a Reserve.

*Non-abrogation*

- 2.9 This Land Code shall not abrogate or derogate from any aboriginal right, treaty right or other right or freedom that pertains now or in the future to Kwaw Kwaw Apilt or its Members
- 2.10 This Land Code does not affect the eligibility of Kwaw Kwaw Apilt or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time.
- 2.11 This Land Code does not abrogate or derogate from the fiduciary relationships between Her Majesty the Queen in Right of Canada and, Kwaw Kwaw Apilt and its Members.

**PART 3 KWAW KWAW APILT LAW-MAKING AND LAWS**

*Law-making Powers*

- 3.1 Council may, in accordance with this Land Code, make Laws and Council Resolutions respecting:
  - (a) development, conservation, protection, management, regulation, occupation, use and possession of, and planning for, and zoning of, Kwaw Kwaw Apilt Lands;
  - (b) Interests and Licenses;
  - (c) establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, rents, royalties, revenues, fines, penalties or other monies in relation to Kwaw Kwaw Apilt Lands;
  - (d) enforcement and establishment of offences, fines, orders and other enforcement measures;
  - (e) any matter necessary to give effect to this Land Code; and
  - (f) any matter necessary or ancillary to a Law or to give effect to a Law.
- 3.2 For greater certainty, and without limiting the generality of section 3.1, Council may make Laws and Council Resolutions respecting the following but only after completing the community consultation process set out in PART 4:
  - (a) a disposal or grant of an Interest or License in Community Lands having a term of more than 15 years, except for the grant of an Interest or License to another government or utility company for the provision of infrastructure or utilities provided that the Lands Committee has reviewed the proposed Interest or License;
  - (b) setting aside of heritage lands and sacred sites;

- (c) approval of a Land Use Plan or a significant amendment to a Land Use Plan, but not a zoning law or land use law that implements a Land Use Plan; or
- (d) an expropriation law but not an expropriation of an Interest in Kwaw Kwaw Apilt Lands by Kwaw Kwaw Apilt in accordance with this Land Code.

3.3 For greater certainty, and without limiting the generality of section 3.1, Council may make Laws and Council Resolutions respecting the following:

- (a) the purchase, acquisition or sale of lands in accordance with the Act and this Land Code;
- (b) regulation, control, authorization and prohibition of residency, access, occupation, presence on, use of, and development of Kwaw Kwaw Apilt Lands;
- (c) zoning and land use planning;
- (d) fees or charges to be paid to Kwaw Kwaw Apilt for the granting or transfer of Interests or Licenses;
- (e) protection, regulation and granting of Interests and Licenses, including Interests and Licenses relating to Natural Resources;
- (f) fees, stumpage, charges, rents or royalties to be paid to Kwaw Kwaw Apilt for the deposit, removal or extraction of Natural Resources from Kwaw Kwaw Apilt Lands, including for the deposit, removal or extraction of minerals, gravels, timber and water from Community Lands and from Allotments or CP lands;
- (g) fees to be paid to Kwaw Kwaw Apilt for Permit or License applications or administrative processes;
- (h) provision, installation and regulation of utilities, infrastructure, and local services and the imposition of user charges including development cost charges or their equivalent;
- (i) authorization and regulation of subdivisions including requirements for contributions to community benefits, park dedications or grants in lieu of park dedications;
- (j) the conduct of surveys of lands or Interests and Licenses and permission for surveyors to access Kwaw Kwaw Apilt Lands;
- (k) setting aside, designation, regulation or management of parks, protected areas, trails and recreational lands;
- (l) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys relating to Kwaw Kwaw Apilt Lands and Interests and Licenses, and the establishment of administrative structure to manage such moneys;
- (m) creation of management and administrative bodies or agencies;
- (n) removal and punishment of Persons trespassing upon Kwaw Kwaw Apilt Lands or frequenting Kwaw Kwaw Apilt Lands for prohibited purposes;
- (o) public nuisance and private nuisance;
- (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (q) construction and maintenance of boundaries, berms, screening, hedges and fences;
- (r) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches, dykes and other local and public works;
- (s) regulation of roads, intersections, traffic and transportation, including designation of roads and safety and insurance requirements;

- (t) hunting, fishing, and management and protection of fish, wildlife and their habitat on
- (u) Kwaw Kwaw Apilt Lands;
- (v) use and storage of fireworks, firearms, weapons and hazardous materials or substances;
- (w) archaeological assessment and protection of archaeological and cultural resources;
- (x) economic development relating to Kwaw Kwaw Apilt Lands;
- (y) all aspects of enforcement of laws, including establishment and ticketing or prosecution of offences, fines, orders and other enforcement measures;
- (z) mortgages, secured interests and priorities relating to Interests and Licences;
- (aa) creation, regulation, transfer and registration of Interests and Licences, including, covenants and liens and including priority of registration; and
- (bb) regulation of development, building and construction, including the application of building codes, engineering standards and other standards.

#### *Introduction of Laws*

3.4 A proposed draft Law may be introduced at a meeting of Council by:

- (a) a member of Council;
- (b) a representative on behalf of the Committee, or other body composed of Members as may be authorized by Council; or
- (c) the Lands Governance Director.

#### *Tabling and Posting of Proposed Laws*

3.5 At least 30 days prior to a Council vote on a Law, the proposed Law shall be:

- (a) tabled at a meeting of Council;
- (b) deposited with the Chair of the Committee;
- (c) posted in Kwaw Kwaw Apilt administration offices;
- (d) posted in other public places Kwaw Kwaw Apilt which may include posting on social website such as Facebook and, where possible, in locations where off-Reserve members gather; and
- (e) where appropriate, and if time and resources allow for it, accompanied by notices mailed to off-Reserve members for whom the Lands Office has a valid mailing address.

3.6 For proposed Laws or final Council Resolutions relating to subsections 3.2 above, in addition to the requirements set out in subsections 3.4, and 3.5 above, Council or the Lands Governance Director must also bring the proposed Law or Council Resolution to a Special Membership Meeting for consultation or, if required under subsection 4.9, a Ratification Vote.

3.7 Council may, based on input from a Meeting of Members, make variances and pass minor Resolutions relating to land use planning that do not alter the vision, principles or basic land use designations approved by the Members and may pass Laws regarding land use planning and zoning by following subsections 3.1 to 3.6 above. However, for a Land Use Plan and any major amendments to a Land Use Plan, in addition to the requirements set out above, a community discussion at a Special Membership Meeting is required, in accordance with PART 4 below.

### *Urgent Matters*

- 3.8 Council may enact a Law or pass a Council Resolution without the preliminary steps required above, and, if necessary, without consulting with the Committee, if Council, acting reasonably, believes that the Law or Council Resolution is required urgently to protect Kwaw Kwaw Apilt Lands or Members.
- 3.9 A Law or Council Resolution enacted or passed under subsection 3.8 will be deemed to have been repealed and to have no force and effect 120 days after its enactment, but may be re-enacted or re-passed in whole or as amended in accordance with subsections 3.4 and 3.5 above, as appropriate

### *Enactment of Laws*

- 3.10 A Law is enacted when approved by Council Resolution after Council has complied with subsections 3.1 to 3.8 above, as appropriate.

### *Administration*

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

### *Delegation*

- 3.12 Notwithstanding subsection 3.11, Council may, by Council Resolution, delegate administrative authority to an individual or a body established or authorized under this Land Code.

### *Regulations and Policies*

- 3.13 Council has the authority to pass any regulations, Council Resolutions or policies relating to the implementation or administration of:
- (a) any matter under this Land Code; or
  - (b) any law passed under this Land Code

### *Certification of Laws*

- 3.14 A quorum of Council shall sign the original copy of a Law, Council Resolution, regulation or policy that is passed under this Land Code.

### *Amendments*

- 3.15 Any Kwaw Kwaw Apilt Law in relation to Kwaw Kwaw Apilt Lands may be repealed or amended by following the procedure by which the Law was enacted or set out in the provisions under which the Law was enacted.
- 3.16 Despite subsection 3.15, Council may, in consultation with the Committee, make minor amendments to any Kwaw Kwaw Apilt Law in relation to Kwaw Kwaw Apilt Lands of the nature listed in subsection 11.14 [Amendments to the Land Code] without going through the

full process for approval or amendments of Kwaw Kwaw Apilt Laws set out in this Land Code.

*Law Coming Into Force*

3.17 A Law comes into force on:

- (a) the date it is enacted; or
- (b) such other reasonable date as may be set by Council Resolution or Law.

*Publication*

3.18 All Laws shall be published in the minutes of the Council meeting at which they were passed.

*Posting Laws*

3.19 As soon as practicable after a Law has been enacted, Council shall post a copy of the Law in the Kwaw Kwaw Apilt administration office.

*Register of Laws*

3.20 Council shall require all Laws to be Registered and shall cause a register of Laws to be kept at the Kwaw Kwaw Apilt administration office or through the Registry, containing the original copy of all Laws and Council Resolutions, including those that have been repealed or are otherwise no longer in force.

3.21 Any Person may, during regular business hours at the Kwaw Kwaw Apilt administration office, have reasonable access to the register of Laws.

*Copies for Any Person*

3.22 Any Person may obtain a copy of a land Law or Council Resolution relating to a land Law upon payment of such reasonable fee, if any, as may be set by Council or the Lands Governance Director.

## **PART 4      COMMUNITY AND COMMITTEE CONSULTATION**

*Right of Eligible Voter*

4.1 An Eligible Voter in good standing is entitled to:

- (a) attend Special Membership Meetings called under this Land Code; and
- (b) if there is a vote, vote at a Special Membership Meeting called under this Land Code.

*Conduct of Meetings*

4.2 Council shall, in consultation with the Committee, develop Laws, policies or procedures for the conduct of meetings under this Land Code.

*Consultation with Committee*

4.3 Council shall meet with the Committee to receive input prior to proposing or enacting a

Law in relation to Kwaw Kwaw Apilt Lands or this Land Code.

*Process to Implement Laws*

- 4.4 Council shall, in consultation with the Committee and within a reasonable time after this Land Code takes effect, and subject to available resources, establish a process to develop and implement core land Laws.
- 4.5 Nothing in this Land Code precludes Council or the Committee from consulting with other advisors or representatives of other jurisdictions, including Canada, a province, another Indian Band, a municipal Council or a regional district.

*Special Membership Meetings*

- 4.6 Where required by this Land Code, Council shall consult with Members at a Special Membership Meeting.

*Notice*

- 4.7 Council shall give written notice of a Special Membership Meeting that:
- (a) specifies the date, time and place of the meeting;
  - (b) contains a brief description of matters to be discussed at the meeting; and
  - (c) includes the text of any Law or other document or matter to be voted on, if any, and such notice shall be:
  - (d) posted in public places on Kwaw Kwaw Apilt Lands at least 30 days before the meeting;
  - (e) mailed or delivered to Members for whom the Lands Office has a current mailing address at least 30 days before the meeting; and
  - (f) given by such additional methods as Council may consider appropriate.
- 4.8 Nothing precludes Council from holding a Special Membership Meeting in conjunction with any other meeting of Kwaw Kwaw Apilt Members.

*Approval by Ratification Vote*

- 4.9 Prior to passing a Law or making a final decision on any of the following, approval by a Ratification Vote at a Special Membership Meeting or a Special Membership Meeting in combination with a mail-in vote must be obtained:
- (a) a voluntary exchange of Kwaw Kwaw Apilt Lands under subsection 7.11; or
  - (b) Enactment of a Law or class of Laws that Council, by Council Resolution, declares to be subject to this section.
- 4.10 No Ratification Vote is required for the regular granting of or transfer of Interests and Licenses by CP-Holders in CP lands or Allotments or by Council or the Lands Governance Director in Community Lands provided the transaction is not referenced in paragraph 4.9.

*Ratification Process*

4.11 A Ratification Vote required under this Land Code shall be conducted, with any modifications necessary in the circumstances, in substantially the same manner as that provided in the process used to ratify this Land Code.

*Minimum Requirements for Approval*

4.12 A matter is approved by a Ratification Vote where a Majority of those Eligible Voters who cast a vote, in accordance with registration procedures approved by Council, vote by secret ballot in favour of the matter.

*No Verifier*

4.13 A Verifier is not required in a Ratification Vote.

## **PART 5 FINANCIAL ADMINISTRATION RELATING TO LAND**

### **Financial Management**

*Application*

5.1 This part applies only to financial matters in relation to Kwaw Kwaw Apilt Lands that are administered under this Land Code.

*Establishment of Bank Accounts*

5.2 Council will maintain one or more dedicated financial accounts in an accredited financial institution and will ensure the following are deposited in those accounts:

- (a) Transfer payments received from Canada for the management and administration of
- (b) Kwaw Kwaw Apilt Lands;
- (c) Moneys received by Kwaw Kwaw Apilt from the grant or disposition of Interests and Licenses in Kwaw Kwaw Apilt Lands;
- (d) Fees, fines, charges and levies collected under a Law or Council Resolution in respect of Kwaw Kwaw Apilt Lands;
- (e) All capital and revenue moneys received from Canada from the grant or disposition of Interests and Licenses in Kwaw Kwaw Apilt Lands; and
- (f) Any other revenues received by Kwaw Kwaw Apilt in relation to Kwaw Kwaw Apilt Lands, excluding property taxes and other taxes.

5.3 Council will continue to implement a system of financial planning and financial administration for the management of Kwaw Kwaw Apilt moneys through which Council, Kwaw Kwaw Apilt employees and other Persons who manage moneys in relation to Kwaw Kwaw Apilt Lands are accountable to the Members within the meaning of subsection 5.2(d) of the Framework Agreement.

*Financial Policy*

5.4 Kwaw Kwaw Apilt may, in accordance with this Land Code, adopt a financial policy to further manage money related to Kwaw Kwaw Apilt Lands.

### *Signing Officers*

- 5.5 A cheque or other bill of exchange or transfer drawn on a financial account maintained under subsection 5.2 must be signed by at least two members of Council in accordance with Kwaw Kwaw Apilt financial policy.
- 5.6 Despite subsection 5.5, Council may delegate signing authority to the Lands Governance Director to act as one of two signers provided that this delegation:
- (a) is set out in a Council Resolution;
  - (b) is for a specified and limited period of time and expires if the Lands Governance Director is no longer an employee or contractor of Kwaw Kwaw Apilt; and
  - (c) is for specified types of payments and within a dollar limit set by Council in the
  - (d) Council Resolution.
- 5.7 A signing authority in subsection 5.5 or 5.6 shall not sign a cheque for which they are the payee.
- 5.8 Any signing authority who violates subsection 5.7 is subject to having the cheque signed in violation voided and is also personally liable for any additional costs incurred by Kwaw Kwaw Apilt.
- 5.9 Every signing officer will complete all reasonable security screening processes as required by Council or in accordance with Kwaw Kwaw Apilt financial policy.

### *Fiscal Year*

- 5.10 Unless set out otherwise in a financial administration law, the fiscal year of Kwaw Kwaw Apilt will begin on April 1 of each year and end on March 31 of the following year.

## **Budgets**

### *Adoption of Budget*

- 5.11 Council will, by Council Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 5.12 Prior to adopting a budget or supplementary budget referred to in subsection 5.11, Council will consult with the Committee.

### *Procedure*

- 5.13 After adopting a land management budget or supplementary budget, Council will as soon as practicable make a copy of the budget or supplementary budget available at the Kwaw Kwaw Apilt administration offices for inspection by Members during regular business hours.

### *If No Budget*

- 5.14 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year:



- (a) Council will adopt a land management budget as soon as possible; and
- (b) the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

*Spending Must Follow Budget*

5.15 Council shall not spend moneys related to Kwaw Kwaw Apilt Lands or commit, by contract or otherwise, to spend moneys related to Kwaw Kwaw Apilt Lands unless the spending is authorized under a duly approved budget.

*Determination of Fees and Revenues*

5.16 Council will establish, in consultation with the Committee, a process for determining:

- (a) Fees, rents, royalties or other payments payable for the granting and transfer of Interests and Licenses in Kwaw Kwaw Apilt Community Lands;
- (b) Fees or charges payable for the registration and transfer of Interests and Licenses relating to Kwaw Kwaw Apilt Lands held under an Allotment or CP; and
- (c) Fees for services provided in relation to Kwaw Kwaw Apilt Lands and compliance with this Code.

*Financial Records*

5.17 Kwaw Kwaw Apilt will keep financial records in accordance with generally accepted accounting principles.

*Preparation of Financial Statements*

5.18 After the end of each quarter of each fiscal year, in relation to Kwaw Kwaw Apilt Lands, the Kwaw Kwaw Apilt Finance Department will prepare a financial statement in comparative form containing:

- (a) A balance sheet;
- (b) A statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any duly approved supplementary budget; and
- (c) Any other information necessary for a full and fair presentation of the financial position of Kwaw Kwaw Apilt in relation to Kwaw Kwaw Apilt Lands.

*Consolidated Accounts*

5.19 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other Kwaw Kwaw Apilt accounts, audits and reports, provided that the statement and analysis relating to Kwaw Kwaw Apilt Lands is clearly distinguishable.

**Audit**

*Appointment of Auditor*

5.20 For each fiscal year Council will appoint a duly accredited auditor to audit the financial records under this Part.

5.21 An auditor appointed for other Kwaw Kwaw Apilt audits may be appointed under subsection 5.20.

#### *Vacancy in Office*

5.22 If a vacancy occurs during the term of an auditor, Council will forthwith appoint a new auditor for the remainder of the former auditor's term.

#### *Remuneration*

5.23 All appointments of auditors in relation to this Land Code will contain a statement approving the remuneration to be paid to the auditor.

#### *Duty of Auditor*

5.24 The auditor will within 90 days after the end of Kwaw Kwaw Apilt's fiscal year prepare and submit to Council an audit report of the Kwaw Kwaw Apilt financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of Kwaw Kwaw Apilt in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

#### *Access to Records*

5.25 The auditor may at all reasonable times inspect any Kwaw Kwaw Apilt financial records and the financial records of any Person or body who is authorized to administer money relating to Kwaw Kwaw Apilt Lands.

### **Annual Report**

#### *Annual Report to be Published*

5.26 The Lands Governance Director will prepare and table with Council an annual report on Kwaw Kwaw Apilt Land management within 60 days of the end of each fiscal year.

5.27 The annual report will include:

- (a) An annual review of Kwaw Kwaw Apilt land management activities;
- (b) A copy and explanation of the audit report as it applies to Kwaw Kwaw Apilt Lands; and
- (c) Such other matters as may be directed by Council or reasonably requested by the Committee.

#### **Access to Information**

5.28 Any Member may, during regular business hours at Kwaw Kwaw Apilt administration office, have reasonable access to view:

- (a) Kwaw Kwaw Apilt Lands audit reports; and
- (b) Kwaw Kwaw Apilt Lands annual reports.

5.29 Council may decide to include all or a portion of any Kwaw Kwaw Apilt Lands audit reports or annual reports in a newsletter or meeting presentation to Kwaw Kwaw Apilt members.

## **Offences**

- 5.30 Any Person who has control of Kwaw Kwaw Apilt financial records and who:
- (a) Impedes or obstructs any Member or Auditor from exercising a right to inspect those records; or
  - (b) Fails to give all reasonable assistance to any Member or Auditor exercising a right to inspect those financial records,
- is guilty of an offence under this Land Code.

## **PART 6 LANDS ADMINISTRATION**

### **Lands Governance Director**

- 6.1 Kwaw Kwaw Apilt Council shall hire, contract with, or appoint a Lands Governane Director to oversee land administration and the implementation of this Land Code and shall ensure that there is always a qualified individual in this position.
- 6.2 Council may appoint by Council Resolution a Lands Governance Director from the S.A.Y. First Nations or another entity to act as the Lands Governance Director for Kwaw Kwaw Apilt.

### **Land Management Advisory Committee**

#### *Committee Established*

- 6.3 A Kwaw Kwaw Apilt Land Management Advisory Committee is hereby established and may operate in combination with or in coordination with the Land Management Advisory Committees from Aitchelitz First Nation and Skowkale First Nation and Yakweakwioose First Nation.
- 6.4 The purpose of the Kwaw Kwaw Apilt Committee is to:
- (a) Advise Council and the Land Manager on the Kwaw Kwaw Apilt Land administration system;
  - (b) Advise Council and Kwaw Kwaw Apilt staff on matters respecting Kwaw Kwaw Apilt Lands;
  - (c) Recommend to Council: Laws, regulations, forms fees, Council Resolutions, and policies and procedures respecting Kwaw Kwaw Apilt Lands;
  - (d) Subject to Part 10 [*Dispute Resolution*], hold or assist in arranging Meetings of Members and other meetings to discuss issues relating to Kwaw Kwaw Apilt Lands and make recommendations to Council on the resolution of such issues;
  - (e) Assist in the exchange of information between Members and Council regarding
  - (f) Kwaw Kwaw Apilt Land matters;
  - (g) Oversee other related matters and consultations under this Land Code; and
  - (h) Perform such other duties and functions as Council may direct.

#### *Development of Land Related Rules and Procedures*

- 6.5 Within a reasonable time after this Land Code comes into effect, subject to available time and resources, Council will, in consultation with Members and the Committee, establish rules and procedures or develop Laws, regulations or policies to address:
- (a) Environmental protection and assessment;
  - (b) Subject to Part 10 (Dispute Resolution) Resolution of disputes in relation to Kwaw Kwaw Apilt Lands;
  - (c) Subject to subsections 3.7 and 4.9 (Community approval of Land Use Plans), land use planning and zoning; and
  - (d) Subsection 9.48 respecting spousal property and the policy upon which that subsection is based.

#### *Implementation of Policies*

- 6.6 Recommendations of the Committee in relation to subsection 6.5 will be given full and fair consideration by Council for implementation under this Land Code or as amendments to this Land Code.

#### *Internal Procedures*

- 6.7 The Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 6.8 Subject to approved budgets and to Council requirements in respect of financial obligations, the Committee may:
- (a) Recommend policies for the remuneration and recovery of expenses incurred by Committee members; and
  - (b) Recommend programs for the orientation and education of Council, staff, and Committee members.
- 6.9 The Committee will take reasonable measures to consult with Elders with respect to matters in general under this Land Code, and particularly with respect to heritage lands and sacred lands.

### **Committee Membership**

#### *Composition of Committee*

- 6.10 Subject to coordination with Aitchelitz First Nation and Skowkale First Nation and Yakweakwioose First Nation, the Committee will be comprised of at least two Members appointed by Council.
- 6.11 Council will try to ensure representation of a broad diversity of the Kwaw Kwaw Apilt community in making appointments to the Committee.
- 6.12 A quorum for a Committee of only Kwaw Kwaw Apilt Members is two and a quorum for a combined Committee with Aitchelitz First Nation and Skowkale First Nation and Yakweakwioose First Nation is at least four Committee members, including at least one from

each First Nation, or as otherwise directed in writing by the Councils of all four First Nations.

#### *Eligibility*

- 6.13 Any Eligible Voter, whether or not resident on Kwaw Kwaw Apilt Lands, is eligible to be appointed to the Committee except for:
- (a) A Person convicted of an offense prosecuted by way of indictment or felony conviction within five years prior to the date of the appointment; and
  - (b) A Person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or other wrongful conduct.
- 6.14 The Lands Governance Director will be a non-voting member of the Committee.
- 6.15 Council will enact a Law or pass a Council Resolution to establish the procedure for selection of Committee members, including such transitional rules as may be necessary for the members of the first Committee.
- 6.16 A Law enacted or a Council Resolution passed under subsection 6.15 will include:
- (a) A process for providing notice to Members that appointments will be made to the Committee and offering Members an opportunity to apply for such appointment; and
  - (b) Standards and criteria for appointment to the Committee.

#### *Terms of Office and Vacancy*

- 6.17 A member of the Committee will serve for two years or until that member:
- (a) Resigns in writing;
  - (b) Becomes ineligible under subsection 6.13;
  - (c) Ceases to be a Member;
  - (d) Is absent from three consecutive meetings of the Committee for a reason other than illness or incapacity without being authorized in writing by the Chair of Council to be absent by the Committee;
  - (e) Is removed by Council Resolution, including if this removal is recommended by other members of the Committee; or
  - (f) Dies or is unable to fulfill their duties.

#### *Filling Vacancies*

- 6.18 Where a seat becomes vacant on the Committee, Council will fill the seat in accordance with Part 6 as soon as possible and no later than three months after it becomes vacant.

#### **Chair of the Committee**

##### *Chair*

- 6.19 The Committee will select a Committee member in good standing to be the Chair.

##### *Co-Chair*

6.20 The Committee members will select a Co-Chair to perform the functions of the Chair if the Chair is unavailable or unable to perform them.

#### *Interim Chair*

6.21 If both the Chair and Co-Chair are unavailable or unable to perform the functions of Chair, the Committee will appoint another member of the Committee to serve as interim Chair.

#### *Duties of Chair*

6.22 The duties of the Chair are to:

- (a) Chair meetings of the Committee;
- (b) Ensure that there is an agenda prepared and circulated to Committee members in advance of each meeting and that the agenda is followed, as amended, at each meeting;
- (c) Ensure that financial statements relating to the activities of the Committee, including any applicable revenues and expenditures in relation to Kwaw Kwaw Apilt Lands, are prepared and tabled with Council;
- (d) Report to Council and Members on the activities of the Committee and ensure that written recommendations are provided to Council in a timely manner on key issues in accordance with subsection 6.4;
- (e) Monitor the presentation of the annual report under subsection 5.26; and
- (f) Perform such other duties as Council or the Committee may reasonably prescribe.

### **Registration of Interests and Licenses**

#### *Kwaw Kwaw Apilt Lands Registry*

6.23 The official registry for Kwaw Kwaw Apilt Lands is the Registry. Council may by Council Resolution direct the Kwaw Kwaw Apilt Lands Office to maintain an unofficial duplicate Kwaw Kwaw Apilt Lands Registry in, at a minimum, the same form and with the same contents as the Registry but any such Kwaw Kwaw Apilt Lands Registry is unofficial and not the authoritative Registry.

6.24 An Interest in Kwaw Kwaw Apilt Lands or a License created or granted after this Land Code comes into effect is void and unenforceable unless it is Registered, with the approval of the Kwaw Kwaw Apilt Lands Office, in the Registry.

6.25 Persons or entities involved in registering Interests, Licenses, documents or transactions are responsible for ensuring the validity and accuracy of their documents. Neither Kwaw Kwaw Apilt, nor the Lands Governance Director or Kwaw Kwaw Apilt Lands Office shall be responsible or liable for ensuring that a document which affects or purports to affect Kwaw Kwaw Apilt Lands:

- (a) is validly made;
- (b) complies with the Land Code;
- (c) should be Registered or recorded; or
- (d) will be accepted for registration or recording.

#### *Council Consent Must be Registered*

6.26 No document in relation to this Land Code that requires the consent of Council by Council Resolution can be validly Registered unless the Council Resolution approving it, or a certified copy of the Council Resolution, is attached to the document.

*Duty to Submit for Registration*

6.27 Every Person who receives an Interest, Licence, transfer or a purported Interest, Licence or transfer in Kwaw Kwaw Apilt Lands shall:

- (a) submit the written Instrument and any relevant related documents to the Kwaw Kwaw Apilt Lands Department, together with:
  - (i) a written request to Register or record the written Instrument or appropriate documents in the First Nations Land Registry,
  - (ii) a filing fee if applicable, and
  - (iii) a signed waiver of liability.

6.28 Upon receiving the items under subsection 6.27, the Lands Governance Director shall review the written instrument or document for form, and, if all of the requirements have been met and it appears to be in compliance, submit the written instrument and supporting documentation for Registration or recording in the First Nations Land Register.

6.29 Council will direct the Lands Governance Director to ensure that a copy of the following documents is submitted for Registration, provided the Lands Governance Director receives a completed copy in the required format, along with the required fee, if any, and that all legal requirements have been met:

- (a) A grant of an Interest or License in Kwaw Kwaw Apilt Lands;
- (b) A transfer or assignment of an Interest or License in Kwaw Kwaw Apilt Lands;
- (c) A Land Use Plan or subdivision plan;
- (d) This Land Code and any laws passed under it or amendments to this Land Code;
- (e) Any related documents that are registerable; and
- (f) Any other documents requested by Council for registration.

## **PART 7 PROTECTION OF LAND**

### **Expropriation by Kwaw Kwaw Apilt**

*Rights, Interests and Licenses that May Be Expropriated*

7.1 An Interest or License in Kwaw Kwaw Apilt Lands or in any building or other structure on Kwaw Kwaw Apilt Lands may be expropriated by Kwaw Kwaw Apilt in accordance with the Framework Agreement and a Law enacted under this Land Code.

*Community Purpose*

7.2 An expropriation may be made only for a necessary Community Purpose.

*Process and Limits on Expropriation*

7.3 Council may only expropriate an Interest or License in Kwaw Kwaw Apilt Lands:

- (a) For a Community Purpose;

- (b) After Council has notified all holders of legal Interests and Licenses of Kwaw Kwaw Apilt's need for the land, Interest or License and of the proposed use;
- (c) After Council has made good faith efforts to try and acquire the Interest or License through negotiations;
- (d) If no other similar and suitable land is reasonably available;
- (e) After a Special Membership Meeting to identify whether the proposed use is sufficiently compelling to justify expropriation;
- (f) In the smallest amount of land and for the shortest period of time necessary to reasonably meet the need for which the land or interest is required by Kwaw Kwaw Apilt (for example, Kwaw Kwaw Apilt cannot expropriate a full CP if the interest can be met with a lease or an easement on part of the land);
- (g) After Kwaw Kwaw Apilt has paid fair market value or provided fair and reasonable replacement compensation for the expropriation; and
- (h) After all of the other relevant requirements set out in the Land Code or Kwaw Kwaw Apilt Law have been followed.

#### *Expropriation Law*

- 7.4 Prior to making any expropriation, Council will enact a Law in respect of rights and procedures for expropriation including provisions in respect of:
- (a) Taking possession of an expropriated Interest or License;
  - (b) Transfer of an expropriated Interest or License;
  - (c) Notice of expropriation;
  - (d) Service of a notice of expropriation;
  - (e) Entitlement to compensation;
  - (f) Determination of the amount of compensation; and
  - (g) The method of payment of compensation.

#### *Rights that Cannot Be Expropriated*

- 7.5 Council cannot expropriate:
- (a) an Interest of Her Majesty the Queen in right of Canada, or
  - (b) an Interest previously expropriated under section 35 of the Indian Act.

#### *Calculating Compensation*

- 7.6 The total value of compensation payable under subsection 7.3 will be based on the following factors:
- (a) The fair market value of the Interest or License being expropriated;
  - (b) The replacement value of any improvement to the Interest or License being expropriated;
  - (c) The damage attributable to any disturbance; and
  - (d) Damages for reduction in the value of any remaining Interest or License.

#### *Fair Market Value*

- 7.7 The fair market value of an expropriated Interest or License is equivalent to the amount that would have been paid for the Interest or License if it had been sold on Kwaw Kwaw Apilt



Lands, with all of the rights, limits and restrictions that apply to Interests and Licenses and transactions on Kwaw Kwaw Apilt Lands, by a willing seller to a willing buyer.

*Neutral Evaluation to Resolve Disputes*

7.8 Subject to subsection 7.10 [*Dispute Resolution*], the resolution of a dispute concerning an expropriation involving Canada will be determined by neutral evaluation as provided in Part IX of the Framework Agreement.

7.9 The 60-day period referred to in subsection 32.6 of the Framework Agreement will be applied, or extended, as appropriate in the circumstances, by the neutral evaluator.

*Arbitration to Resolve Disputes*

7.10 Resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement, with any reasonable modifications necessary to fit the parties and the specific situation:

- (a) A dispute about the right to compensation for the holder of an expropriated Interest or License; and
- (b) A dispute about the amount of compensation owed for an expropriation.

**Voluntary Land Exchange**

*Conditions for a Land Exchange*

7.11 Kwaw Kwaw Apilt may, by agreement with another party, exchange Kwaw Kwaw Apilt Land for land from that other party in accordance with this Land Code and the Framework Agreement.

*No Effect unless Ratified*

7.12 A land exchange is of no force and effect unless it receives approval by a Ratification Vote.

*Conditions for Lands to be Received*

7.13 A proposed Land Exchange cannot proceed to a Ratification Vote unless the land to be received by Kwaw Kwaw Apilt is:

- (a) of equal or greater area than the Kwaw Kwaw Apilt Land to be exchanged;
- (b) of a value comparable to the appraised value of the Kwaw Kwaw Apilt Land to be exchanged; and
- (c) eligible to become a Reserve under the Indian Act and to become Kwaw Kwaw Apilt Land in accordance with this Land Code.

*Negotiators Must be Designated by Resolution*

7.14 A Person can only negotiate a land exchange agreement on behalf of Kwaw Kwaw Apilt if they are designated by Council Resolution for that specific negotiation.

*Additional Compensation*

7.15 Kwaw Kwaw Apilt may accept additional compensation, including money or other land, in addition to the exchange land referred to in subsection 7.13.

7.16 Other land accepted under subsection 7.15 may be held by Kwaw Kwaw Apilt in fee simple or otherwise.

#### *Federal Consent*

7.17 Before Kwaw Kwaw Apilt completes a land exchange, it must receive a written statement from Canada stating that Her Majesty in right of Canada:

- (a) Consents to set apart as a Reserve subject to this Land Code the land to be received in the land exchange, as of the date of the land exchange or such later date as Council may specify by Council Resolution; and
- (b) Consents to the manner and form of the land exchange as set out in the land exchange agreement.

#### *Information to Members*

7.18 At such time as negotiations of a land exchange agreement are concluded, and at least 30 days before the Ratification Vote set out in subsection 7.12, Council will provide the following information to Members:

- (a) A description of the Kwaw Kwaw Apilt Land to be exchanged;
- (b) A description of the land to be received by Kwaw Kwaw Apilt;
- (c) A description of any additional compensation to be received by Kwaw Kwaw Apilt;
- (d) A report from a certified land appraiser stating that the conditions set out in subsections 7.13(a) and 7.13(b) have been met;
- (e) A copy of the land exchange agreement; and
- (f) A copy of the statement referred to in subsection 7.17.

#### *Process for Land Exchange*

7.19 A land exchange agreement will provide that:

- (a) The other party to the exchange will transfer to Canada the title to the land that is to be set apart as Reserve;
- (b) Council will pass a Council Resolution authorizing Canada to transfer title to the Kwaw Kwaw Apilt Land being exchanged, in accordance with the land exchange agreement; and
- (c) A copy of the documents transferring title to the land will be registered in the Registry.

7.20 Despite the voluntary transfer and expropriation provisions in this Part, nothing in this Land Code prevents a Member with an Allotment or CP from transferring all or a portion of their interest in Land to Kwaw Kwaw Apilt for fair market value or other agreed-upon compensation. Such transfers do not require community consultation or a ratification vote.

## **PART 8      CONFLICT OF INTEREST**

## **Conflict of Interest**

### *Application of Rules*

8.1 Section 8.2 applies to:

- (a) A member of Council who is dealing with a matter before Council that is related to Kwaw Kwaw Apilt Lands;
- (b) An employee of Kwaw Kwaw Apilt dealing with a matter that is related to Kwaw Kwaw Apilt Lands; and
- (c) A member of a Kwaw Kwaw Apilt board, committee or other body dealing with a matter that is related to Kwaw Kwaw Apilt Lands.

### *Duty to Report and Abstain*

8.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual referred to in subsection 8.1, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) Disclose in writing the interest to Council, their employment supervisor, the board, the committee, or the other body;
- (b) Take no part in deliberations or discussions on the matter; and
- (c) Take no part in any votes, decisions or recommendations on the matter.

### *Common Interests Not a Conflict*

8.3 Section 8.2 does not apply to an interest that is held by a Member in common with every other Member. For example, an individual is not in conflict if a proposed decision will benefit that Member in the same way it will benefit all Members.

### *Council May Refer Matter to Meeting of Members*

8.4 If Council is unable to vote on a proposed Law or Council Resolution due to one or more conflicts of interest, Council may refer the matter to a Special Membership Meeting to be decided by a Ratification Vote.

### *Committee May Refer Matter to Council*

8.5 If a board, committee or other body is unable to make a decision or recommendation due to one or more conflicts of interest, the board, committee or other body will refer the matter to Council for a final decision.

### *Disputes*

8.6 Any Person may refer a matter to the Adjudicator to determine if there has been a breach of the conflict of interest provisions in this Part.

### *Penalty*

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

## **PART 9 INTERESTS AND LICENSES IN LAND**

### **Limits on Interests and Licenses**

#### *Dispositions Must be in Writing*

- 9.1 An Interest in Kwaw Kwaw Apilt Lands may only be created, granted, disposed of, assigned, or transferred by a document issued in accordance with this Land Code.

#### *Standards and Forms*

- 9.2 Council may, after full and fair consideration of any recommendation made by the Committee, establish mandatory standards, criteria and forms for Interests and Licenses and transfers and transactions relating to Kwaw Kwaw Apilt Lands.

#### *Improper Transactions Void*

- 9.3 A document by which Kwaw Kwaw Apilt, a Member or any other Person purports to create, grant, dispose of, assign, or transfer an Interest in Kwaw Kwaw Apilt Lands after the date this Land Code comes into effect is void if it contravenes this Land Code or a Law passed under the Land Code.

#### *Non-Members*

- 9.4 Subject to this Land Code, a Person who is not a Member may hold an Interest in Kwaw Kwaw Apilt Lands but a non-Member may never hold an Allotment or a CP.

#### *Ceasing to be a Member*

- 9.5 A Person who ceases to be a Member shall within six months of ceasing to be a Member transfer any Allotment or CP they hold to Kwaw Kwaw Apilt or another Member.
- 9.6 Where a Member does not transfer their Allotment or CP in accordance with subsection 9.5, the Allotment and any CP issued shall, six months and one day after the Person ceases to be a Member, be cancelled and the Kwaw Kwaw Apilt Lands described in the Allotment shall automatically become Community Lands.
- 9.7 Where an Allotment reverts to Kwaw Kwaw Apilt under subsection 9.6, the Person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any interest they held prior to the date the Allotment or CP reverts to Kwaw Kwaw Apilt.

#### *Natural Resources*

- 9.8 Subject to applicable law, all Natural Resources on Kwaw Kwaw Apilt Lands belong to Kwaw Kwaw Apilt.
- 9.9 The use and development of Natural Resources on or under Kwaw Kwaw Apilt Lands will be subject to this Land Code and all Kwaw Kwaw Apilt laws, Land Use Plans and Laws.

9.10 Subject to subsections 9.8 and 9.9, unless specifically excluded by the document granting any new Allotment or CP for Kwaw Kwaw Apilt Lands, the Allotment or CP includes all Natural Resources on or under that land to the extent they are under Kwaw Kwaw Apilt jurisdiction.

### **Existing Interests and Licenses**

#### *Continuation of Existing Interests*

9.11 An Interest in Kwaw Kwaw Apilt Lands or a License that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that Interest.

9.12 All existing Interests and Licenses will be subject to the terms and conditions set out in this Land Code and to any relevant Laws, Land Use Plans or regulations passed in relation to this Land Code. For greater certainty, Kwaw Kwaw Apilt 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.

9.13 Council may, subject to receiving and reviewing compelling information, or subject to an applicable ruling under Part 9 or by a court of competent jurisdiction, cancel or correct any Interest or License issued or allotted in error or by fraud.

### **New Interests and Licenses**

#### *Authority to Make Dispositions*

9.14 Council may grant, in accordance with this Land Code:

- (a) Subject to paragraph (e) directly below, Interests and Licenses in Kwaw Kwaw Apilt Lands;
- (b) Permits and Licenses to occupy lands, carry out activities or take Natural Resources from Community Lands;
- (c) Permits, Easements, Statutory Rights-of-Way, covenants, liens, priority agreements, and Licenses, and other related rights, permissions or authorizations for utilities and other beneficial uses for in relation to Kwaw Kwaw Apilt Lands;
- (d) Permits, Easements, Statutory Rights-of-Way, covenants, liens, priority agreements, and Licenses, and other related rights, permissions or authorizations in relation to Community Lands; and
- (e) With the written consent of a CP-holder, any similar Interest, License, right, permission or authorization in CP lands to those listed in paragraphs (a) to (c) directly above.

#### *Conditional Grant*

9.15 In addition to the section above, Council may attach specific conditions to the grant of an Interest or License, or a disposition or matter set out in subsection 9.14 but any such conditions must be set out in writing in the granting of the Interest or License or other disposition.

### **Allotments and CPs**

9.16 Council may not grant any new Allotments or CPs unless an Allotment or CP Law is approved by the Members by a Ratification Vote.

9.17 Despite any other provision of this Land Code, a Person who is not a Member cannot hold an Allotment or CP in Kwaw Kwaw Apilt Lands.

**Creation of Sub-Interests and Licenses in Allotted Kwaw Kwaw Apilt Lands**

9.18 A Member or Members holding an Allotment or CP in Kwaw Kwaw Apilt Lands may grant, transfer, devise, or transfer or grant by way of a matrimonial real property agreement, a Leasehold, Easement, Permit, Easement or License in those lands by a written document registered in the Registry provided that:

- (a) The Member or Members are the sole lawful possessor of the Allotment or CP or that any other Member with an interest in the Allotment or CP states in writing that they do not oppose the granting of the sub-Interest,
- (b) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey Registered or recorded in the Registry,
- (c) The Member receives a letter from the Lands Governance Director or, if required by Law or regulation, a Council Resolution, stating that the sub-Interest complies with this Land Code and all Kwaw Kwaw Apilt laws, Land Use Plans and bylaws,
- (d) The Member states in writing that the terms of the document creating the sub-Interest will not violate any agreement with a Person who has, or will have, an interest in the lands affected, or any portion thereof, or the Member has obtained the written consent of the other interest holder or holders, and
- (e) The Member receives the written consent of Council via a Council Resolution.

9.19 A Person holding a Leasehold in Kwaw Kwaw Apilt Lands may grant a Sub-lease, Easement, Permit or License in those lands by a written document registered in the Registry provided that:

- (a) The grant complies with the Land Code and all Kwaw Kwaw Apilt Laws and bylaws;
- (b) The grant is permitted by the terms of the Lease;
- (c) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey registered or recorded in the Kwaw Kwaw Apilt Lands Registry, and
- (d) The term of the Interest granted does not exceed the duration of the Leasehold.

9.20 For greater certainty, unless otherwise prescribed by Kwaw Kwaw Apilt law, nothing in this Part prevents a Member with an Allotment or Leasehold occupied by a trailer park or similar development prior to the commencement of this Land Code from registering each trailer pad as a sub-Interest using a reasonable sketch of the trailer park and pad numbers without requirement for a legal survey of each pad.

9.21 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease.

- 9.22 For transactions under this Part,
- (a) neither the Kwaw Kwaw Apilt Lands Office nor the Lands Governance Director is obligated to undertake any investigations or due diligence and will not, in any way be responsible or liable for any breaches of those provisions or for any representation or warranty made by the Person granting the Interest; and
  - (b) without restricting the generality of (a) directly above, neither Kwaw Kwaw Apilt, the Kwaw Kwaw Apilt Lands Office nor the Lands Governance Director shall be responsible for determining whether an Interest or sub-Interest is in good standing or the terms have been complied with.

### **Transfer and Assignment of Interests and Licenses**

#### *Transfer of Interests and Licenses*

- 9.23 Council may enact Laws providing that a Member holding an Interest or License in Kwaw Kwaw Apilt Lands may transfer, leave in their will, or otherwise dispose of that Interest or License to another Member or to Kwaw Kwaw Apilt.
- 9.24 A Member holding an Allotment or CP may sell or transfer that Allotment or CP to another Member provided that:
- (a) there are no outstanding housing arrears, mortgage guarantees or other debts owing to, or guaranteed by, Kwaw Kwaw Apilt in relation to the land or home, unless:
    - (i) the purchaser or transferee agrees in writing to assume any outstanding housing arrears, mortgage guarantees or other debts owing to, or guaranteed by, Kwaw Kwaw Apilt, and
    - (ii) Council approves the sale or transfer by Council Resolution;
  - (b) the Member applies to the Lands Governance Director for a parcel abstract report and a list of any known outstanding issues relating to the Allotment or CP;
  - (c) the Member makes reasonable efforts to resolve outstanding issues relating to the Allotment or CP; and
  - (d) the sale or transfer is Registered.
- 9.25 Where an Allotment is transferred to, or reverts to, Kwaw Kwaw Apilt other than in relation to the granting of a Mortgage, the Allotment and any CP issued are automatically cancelled and the lands described in the Allotment become Kwaw Kwaw Apilt Community Lands.
- 9.26 Subject to this Part, a Person holding an Interest or License other than an Allotment in Kwaw Kwaw Apilt Lands may transfer, assign or devise their Interest or License to any Person or entity by an instrument or other valid written document provided the transaction complies with this Land Code and any Laws and is duly Registered.

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

#### *Protections*

9.27 In accordance with the Framework Agreement, sections 29, 87, 89(1), 89 (1.1), and 89(2) of the Indian Act continue to apply on Kwaw Kwaw Apilt Lands but section 89 is modified as set out below.

*Mortgage of Member's Interest*

9.28 The Interest of a Member in Kwaw Kwaw Apilt Lands other than a Leasehold may only be subject to a mortgage or charge to Kwaw Kwaw Apilt or to another Member or via a mortgage or charge approved by Kwaw Kwaw Apilt by Council Resolution.

9.29 Subject to subsection 9.27 and 9.28, the holder of an Allotment, Leasehold or License may, in accordance with this section grant a Mortgage of that interest.

9.30 A Leasehold in Kwaw Kwaw Apilt Lands, including allotted lands, that is 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 the mortgagee has all the same legal and equitable rights it would have had if the Leasehold were held by a non-Indian, and, for greater certainty, the mortgagee has a right of access onto Kwaw Kwaw Apilt Lands and onto the leasehold lands if necessary to deal with seizure, forfeiture or any related matter.

9.31 A Leasehold in Kwaw Kwaw Apilt Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

9.32 Subject to this Land Code and any Laws, a Mortgage may be granted by Registered document Kwaw Kwaw Apilt provided that:

- (a) the Mortgage complies with this Land Code and any Kwaw Kwaw Apilt laws;
- (b) the land is in the sole lawful possession of the Member granting the Mortgage, or that any other Member with an interest in the Allotment or CP states in writing that they do not oppose the granting of the Mortgage, or the Leaseholder or License holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or License;
- (c) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, CP, Lease or License;
- (d) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey Registered;
- (e) in the case of a Mortgage of a Leasehold or License, the Mortgage term does not exceed the duration of the Leasehold or License; and
- (f) if there is an arrangement with the mortgagee regarding rights of first refusal, Kwaw Kwaw Apilt has a right of first refusal to redeem the mortgage if there is a default.

9.33 Neither Kwaw Kwaw Apilt, the Kwaw Kwaw Apilt Lands Office nor the Kwaw Kwaw Apilt Lands Governance Director shall be responsible or liable for ensuring that the Lease or License permits the interest in the land to be mortgaged or that the Lease or License is in good standing or its terms have been complied with.

*Power of Redemption*



9.34 If Council exercises Kwaw Kwaw Apilt's power of redemption with respect to a Leasehold Interest, Kwaw Kwaw Apilt becomes the lessee of the land and takes the position of the charger or mortgagor for all purposes after the date of redemption.

### **Residency and Access; Trespass**

#### *No Financial Obligations*

9.35 A right of residence or access to Kwaw Kwaw Apilt Lands does not create any financial obligation on the part of Kwaw Kwaw Apilt.

#### *Trespass*

9.36 Subject to any Kwaw Kwaw Apilt Laws, any Person who resides on, enters, remains on, or solicits on Kwaw Kwaw Apilt Lands other than in accordance with a residence or access right under this Land Code:

- (a) is trespassing;
- (b) accepts all responsibility and liability for any claims, injuries or losses of any kind in relation to the trespass;
- (c) is subject to any fine or ticket imposed by any Kwaw Kwaw Apilt Law;
- (d) may be immediately removed by the RCMP or an enforcement officer designated by Council; and
- (e) is guilty of a summary offence.

9.37 Subject to any laws or bylaws, all civil remedies for trespass are preserved.

#### *No Liability*

9.38 No liability is imposed upon Kwaw Kwaw Apilt in respect of any Person exercising a right of residency or access under this Land Code for injuries or damages suffered on account of condition or state of Kwaw Kwaw Apilt Lands.

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

9.39 In making any decision on its merits under subsections 9.40 to 9.47 below, Council shall consider:

- (a) all input, requests or recommendations from Immediate family members and the Committee;
- (b) any outstanding loans or financial obligations in relation to the Interest in the lands in question and may give priority to the arrangement that is most likely to result in ensuring these loans or financial obligations are paid out; and
- (c) all other relevant information.

#### *Right of Widow or Widower*

9.40 In the event that:

- (a) a Member holding an Interest in Kwaw Kwaw Apilt Lands dies without a will and is survived by a Spouse or dependent who does not hold a registered Interest in that land;  
or

- (b) a Member holding an Interest in Kwaw Kwaw Apilt Lands is declared incompetent due to mental incapacity,

the Member's Spouse and/or dependents may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until:

- (c) the Member's Interest is disposed of under this Part, or
- (d) there is a court order or other legal proceeding, order or action that requires them to leave.

9.41 A Spouse or dependent referred to in subsection 9.40 whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's Interest, and Council will, subject to this Land Code, evaluate the application on its merits and make a recommendation to the Minister.

#### *Notification*

9.42 Pursuant to the Land Code, in the event that;

- (a) no other provision has been made by a Member referred to in section 9.40 for the disposition of the Interest in Kwaw Kwaw Apilt Lands;
- (b) the Member's Spouse or dependent does not within 3 months make application under section 9.41; or
- (c) a member of the Member's Immediate Family disputes the continued residence on and use of the land by the Member's Spouse or dependent,

Council or the Lands Governance Director shall take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute.

#### *Optional Meeting of Members or Committee*

9.43 If a Member's Immediate Family does not within 3 months after the date of a Member's death or declaration of incompetence under section 9.41 recommend who is to receive the Interest, Council may refer the matter to the Committee or call a Meeting of Members to provide advice on the disposition of the Interest.

#### *Land Goes to Kwaw Kwaw Apilt if No Immediate Family*

9.44 If no Immediate Family members are interested and eligible to take the Interest in the Land within 4 months of a death or declaration of mental incapacity under section 9.40, subject to any applicable provisions of the *Indian Act*,

- (a) Council will pass a Council Resolution to transfer the Interest in the Land to Kwaw Kwaw Apilt and,
- (b) if the Interest is an Allotment or a CP, the Land will become Community Lands.

*If Competing Members, Council Makes Recommendations*

9.45 If there is more than one Immediate Family member interested and eligible to take the Interest in the Land arising from subsection 9.40, Council will, after taking into account any information received under subsection 9.43, recommend to the Minister on the merits who should receive the Interest.

*Council May Comment on Outstanding Debts*

9.46 In making a recommendation under subsection 9.45, Council may include recommendations or comments on dealing with any outstanding debts or liabilities relating to the Interest to be transferred.

*Council to Make Best Efforts to Influence Minister*

9.47 Council will make best efforts to influence the Minister of the Department of Indian and Northern Affairs to implement recommendations made under this Part but Kwaw Kwaw Apilt is not liable in any way for any decisions made or not made by the Minister of the Department of Indian and Northern Affairs in relation to Interests and Licenses or transfers relating to this Part.

**Spousal Property Law**

*Development of Rules and Procedures*

9.48 Within twelve months after the date this Land Code comes into effect Council will enact a spousal property Law providing rules and procedures applicable on the breakdown of a marriage to:

- (a) the use, occupancy and possession of Kwaw Kwaw Apilt Lands; and
- (b) the division of Interests in that land.

*Enactment of Rules and Procedures*

9.49 For greater certainty, the rules and procedures contained in the spousal property Law will be developed in consultation with the Members and the Committee.

*General Principles*

9.50 The rules and procedures developed under subsection 9.48 will take into account the following general principles:

- (a) regard for the best interests of any children of the marriage;
- (b) the distinction between Members and Non-Members for the purpose of determining what Interest in Kwaw Kwaw Apilt Lands may be held by an Individual; and
- (c) the rules and procedures will not discriminate on the basis of gender.

*Interim Law*

9.51 Council may enact an interim spousal property Law at any time within the twelve month period set out in subsection 9.48.

9.52 An interim Law enacted under subsection 9.51 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or as amended, in accordance with subsections 9.48 to 9.50.

## **PART 10 DISPUTE RESOLUTION**

### **Adjudicator of Disputes**

#### *Informal Resolution of Disputes*

- 10.1 Kwaw Kwaw Apilt intends that whenever possible, a dispute in relation to Kwaw Kwaw Apilt Lands will be resolved through informal discussion by the parties to the dispute and nothing in this part will be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this Part.
- 10.2 Kwaw Kwaw Apilt further intends that whenever possible, a dispute in relation to Kwaw Kwaw Apilt Lands that is not resolved by informal discussions by the parties may be resolved through voluntary participation of the parties to the dispute in a tribal or alternate justice forum.

#### *Adjudicator Established*

- 10.3 The office of the Adjudicator is hereby established to hear and resolve disputes in relation to Kwaw Kwaw Apilt Lands in accordance with the Land Code and relevant Kwaw Kwaw Apilt Laws and Policies.
- 10.4 The Adjudicator will be a Barrister and Solicitor and a member of the British Columbia Bar who is independent of the parties to a dispute and to other Interests in the dispute.

### **Dispute Resolution Procedure**

#### *Disputes*

- 10.5 The parties to a dispute in relation to Kwaw Kwaw Apilt Lands, after demonstrating they have made efforts to resolve the dispute under subsection 10.1 to 10.2, may notify Council that they wish to refer the dispute to the Adjudicator for resolution.

#### *Prior Disputes*

- 10.6 Disputes relating to Kwaw Kwaw Apilt Lands that originated before this Land Code comes into effect may be referred to the Adjudicator.

#### *Council to Appoint*

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

#### *Optional Process*

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

### *Application Procedure*

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

### *Limitation Period*

10.10 The limitation period for referring a dispute to the Adjudicator is:

- (a) sixty days after the day of the decision, act or omission that is the subject of the dispute occurred;
- (b) in the case of a dispute under section 9.40-9.47 (transfer on death or mental incompetence), twelve months after the date of the final decision of Council under that section;
- (c) in the case of historic grievances not involving Aboriginal Affairs and Northern Development Canada, within twelve months of the Effective Date of this Land Code; and
- (d) for any other disputes, such reasonable time period as Council may decide by Council Resolution or a court may decide on the merits of each situation.

### *Duty to Act Impartially*

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

### *Offense*

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

### *Rejection of Application*

10.13 The Adjudicator may refuse to hear or decide an application:

- (a) if, regardless of whether a Person has been found to have committed an offence under subsection 10.12, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision; or
- (b) one or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

## **Powers of Adjudicator**

### *Power of Adjudicator*

10.14 The Adjudicator may, after hearing a dispute:

- (a) confirm or reverse the decision in dispute, in whole or in part;
- (b) substitute his or her own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute for reconsideration by the decision-maker; or
- (e) refer the matter to a tribal, alternative justice or other forum.

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

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

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

### **Adjudication Procedures**

#### *Rules of Adjudicator*

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

#### *Professional Services*

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

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

#### *Decisions*

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

10.21 Subject to subsection 10.22 [*Appeal of Decision*], a decision of the Adjudicator is binding.

#### *Appeal of Decision*

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

#### *Costs*

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

10.24 For greater certainty, Kwaw Kwaw Apilt will not be liable or responsible for the costs of any dispute resolution process where Kwaw Kwaw Apilt is not a party.

#### *Alternate Forums*

10.25 Nothing in this part precludes Council or the Committee from establishing additional processes for resolving disputes under this Part, which processes may include facilitated

discussion, mediation, arbitration, or referral to a tribal or other forum.

## **PART 11 OTHER MATTERS**

### **No Liability**

- 11.1 Kwaw Kwaw Apilt is not liable for anything done or omitted to be done by Canada or any Person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.
- 11.2 This Land Code is not, nor shall it be interpreted as being, a waiver by Kwaw Kwaw Apilt in regard to any liabilities, acts, or omissions of Canada.
- 11.3 No liability shall be imposed upon Kwaw Kwaw Apilt, nor any Kwaw Kwaw Apilt Chief or Council members, staff member or contractor or Committee member in respect of:
- (a) any Registration or delay in making a Registration;
  - (b) any Person exercising a right of residency or access under this Land Code for any claims, injuries or damages suffered on account of the condition or state of Kwaw Kwaw Apilt Lands; or
  - (c) any investigation or enforcement measures taken under this Land Code or Laws passed or decisions made under this Land Code.
- 11.4 Council will arrange for, maintain and pay insurance coverage for:
- (a) Liability of Kwaw Kwaw Apilt in relation to Kwaw Kwaw Apilt Community Lands and assets; and
  - (b) Personal liability of Kwaw Kwaw Apilt Lands Department employees, officers or Committee members for acts done in good faith while engaged in carrying out duties related to Kwaw Kwaw Apilt Lands under this Land Code.

### *Extent of Coverage*

- 11.5 Council will determine the extent of insurance coverage reasonably required under subsection 11.4.

### **Offences and Enforcement**

#### *Application of the Criminal Code*

- 11.6 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the Criminal Code apply to offences under this Land Code and offences under a Law.
- 11.7 Despite subsection 11.6:
- (a) a Law may provide for fines of up to \$100,000 for violations of specified provisions of the Law;
  - (b) a Law relating to environmental protection may include punishments at least equivalent in their effect to any standards established and punishments imposed by laws of the Province of British Columbia; and

- (c) a Law may provide for a variety of enforcement mechanisms including ticketing, stop work orders, restorative orders, and fines.

### **Enforcement**

- 11.8 Council may enact any enforcement Law or procedures authorized under the Act or the Framework Agreement including any provisions consistent with federal law for inspections, searches, seizures and compulsory sampling, testing and the production of information.
- 11.9 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.
- 11.10 If no justice of the peace is appointed, this Land Code and Laws are to be enforced by a court of competent jurisdiction.
- 11.11 Council may enact laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through Qwi:qwelstóm or other relevant tribal or community justice process.
- 11.12 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.

### **Amendments to Land Code**

- 11.13 This Land Code may be amended from time to time.
- 11.14 A ratification vote is not required for revisions made to this Land Code that do not change the substance. Council may, from time to time, arrange and revise this Land Code. Revisions may be made as a result of, but are not limited to:
  - (a) an amendment of the description of Kwaw Kwaw Apilt First Nation Land subject to the Land Code;
  - (b) a reference in this Land Code to a clause in another Act, Law or document that was amended and resulted in clause renumbering;
  - (c) a reference in this Land Code to an Act or Law or parts thereof that have expired, have been repealed or suspended;
  - (d) changes in this Land Code as are required to reconcile seeming inconsistencies with other Acts or Laws;
  - (e) minor improvements in the language as may be required to bring out more clearly the intention of the Kwaw Kwaw Apilt First Nation without changing the substance of the Land Code; and
  - (f) correct editing, grammatical or typographical errors.
- 11.15 Council will ensure that any proposed amendments to the Land Code are reviewed by the Committee prior to any decisions or votes.



11.16 Council or the Lands Office will post all proposed amendments in the Kwap Kwap Apilt Office and will make best efforts to provide notification of any proposed amendments to all Members.

11.17 All major amendments to this Land Code must be done by Ratification Vote.

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

## **Commencement**

### *Ratification*

11.19 This Land Code will be ratified if:

- (a) the eligible voters approve this Land Code and the Individual Agreement with Canada by ratification vote held in accordance with the Kwap Kwap Apilt First Nation Community Ratification Process dated for reference January 15, 2018; and
- (b) this Land Code has been certified by the Verifier pursuant to the Framework Agreement.

11.20 This Land Code and the Individual Agreement will be approved if a sufficient number of Eligible Voters vote to approve them in accordance with the majority and the threshold requirements set out in the Kwap Kwap Apilt First Nation Community Ratification Process dated for reference January 15, 2018.

### *Effective Date*

11.21 This Land Code will come into effect on the later of:

- (a) the first day of the month following certification of this Land Code by the Verifier; and
- (b) the date the Individual Agreement is executed on behalf of Canada.