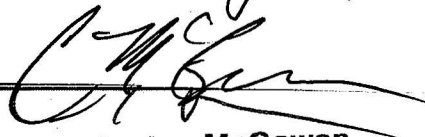


This is <sup>Annex</sup> ~~Exhibit~~ "1" referred to in the  
Affidavit of A. J. Gross  
sworn before me at Kelowna, British  
Columbia this 9<sup>th</sup> day of January 20 20

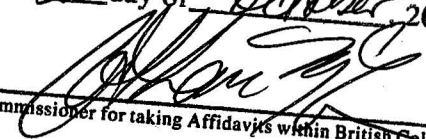


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# Kitsumkalum Land Code

September 19, 2019

Certified a true copy  
this 2<sup>nd</sup> day of October 20 19

  
A Commissioner for taking Affidavits within British Columbia

**Catherine McGowan**  
Barrister & Solicitor  
#8-1638 Pandosy Street  
Kelowna, BC V1Y 1P8  
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**KITSUMKALUM LAND CODE**

**Preamble**

Kitsumkalum or "Gitsm'geelm" is an original Tribe of the Tsimshian Nation. Our Galts'ap are comprised of four Pteex: the Laxsgiik, the Laxgibuu, the Ganhada, and the Gispudwada, each containing one or more Waap, the communal identity of the Kitsumkalum tribe;

Kitsumkalum territory ranges from the Kitsumkalum Valley down the Skeena River and the Ecstall River, to the Marine Coast of the Tsimshian Peninsula including the Prince Rupert and Port Edward Harbour.

Kitsumkalum's connection to the lands, waters, and natural resources has been and continues to be central to Kitsumkalum social, cultural and political life;

Kitsumkalum has the right and responsibility to continue to manage and protect all Kitsumkalum lands, waters and resources as has been done by our ancestors shaped by the Tsimshian Ayaawx and Adaawx;

Kitsumkalum has constitutionally protected and legally enforceable inherent Aboriginal Title and Rights to the lands, waters, and resources of Kitsumkalum's territories. The Canadian legal system recognizes Aboriginal title as *sui generis*, or unique collective right to the use of and jurisdiction over Kitsumkalum territories;

It is the tradition of Kitsumkalum that no Kitsumkalum Reserve Land or any of Kitsumkalum's traditional Aboriginal title lands will be sold without full consultation with the Hereditary Chief of each Pteex responsible for those lands that are proposed to be sold. This Land Code is not intended to, nor will it, interfere with that tradition.

Kitsumkalum continues to hold title and rights over Kitsumkalum territory including, but not limited to its reserve lands;

Kitsumkalum is committed to integrating cultural values, customs and traditions into reserve land management;

Kitsumkalum is committed to building a strong local economy for Kitsumkalum and its Members;

Kitsumkalum strives to adapt and create opportunities from changing environmental and economic conditions;

Kitsumkalum recognizes the importance of building accountability and transparency into reserve land management;

Kitsumkalum has opted to manage its reserve lands pursuant to this Kitsumkalum Land Code rather than having them managed by Canada under the Indian Act;

Kitsumkalum is affirming its right to exercise control over its reserve lands and resources for the use and benefit of its Members under the Framework Agreement on First Nations Land Management and this Land Code;

This Kitsumkalum Land Code is hereby enacted as the fundamental land law of Kitsumkalum.

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**PART 1  
PRELIMINARY MATTERS**

**1. Definitions**

*Clarification*

1.1. Any words or terms used in this Land Code which are defined in the Framework Agreement shall have the same meaning as in the Framework Agreement, unless the context otherwise requires.

*Definitions*

1.2. The following definitions apply in this Land Code:

"Allotment" means the granting of the equivalent of a Certificate of Possession to a Member of a parcel of Kitsumkalum Reserve Land;

"Arbitrator" means an arbitrator appointed by Council pursuant to paragraph 14.3(d) or an Arbitrator selected or appointed pursuant to subsection 47.8. An Arbitrator may not be a Member.

"Band Manager" means the person designated as the band manager or band administrator by Council;

"Canada" means Her Majesty the Queen in Right of Canada;

"Certificate of Possession" means a certificate of possession granted to a Member by the Minister pursuant to the Indian Act;

"Common-Law Partnership" means the relationship between two (2) individuals who are cohabiting in a conjugal relationship for two (2) consecutive years;

"Community Land" means any Kitsumkalum Reserve Land in which all Members have a common interest;

"Community Information Meeting" means a meeting of the Members convened under Part 3 of this Land Code;

"Community Purpose" means a purpose which is intended to provide a facility, benefit, or support for the Members or persons residing on Kitsumkalum Reserve Land. It shall include, but shall not be limited to, utility or transportation corridors, and requirements related to transportation and utility corridors, including expansion of roads and utilities, public works, cemeteries, schools, day-care facilities, administrative buildings and facilities, seniors housing facilities, Kitsumkalum-owned housing, hospitals, fire halls, sewage and water treatment facilities, playgrounds, community centres and other similar facilities, the protection of heritage sites and lands needed for economic or social development that will benefit Kitsumkalum and its Members on Kitsumkalum Reserve Land;

"Council" means the governing body of the Kitsumkalum comprised of the elected Chief and Councillors of the Kitsumkalum, and includes any successor elected governing body;

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"Deputy Electoral Officer" means the deputy electoral officer or officers appointed pursuant to subsection 14.7;

"Easement" means an Interest in Kitsumkalum Reserve Land granted under this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the Indian Act, giving one person (the "grantee") the right to use the land of another ("grantor") for a right of way or common law easement or to provide utility or other services to the land of the grantee. An Easement does not confer any right of exclusive possession in the land and does not restrict the rights of the grantor of the Easement beyond that required to give effect to the Easement granted;

"Elder" means a Member who is over fifty-five (55) years of age.

"Electoral Officer" means the electoral officer appointed by Council pursuant to paragraph 14.3(c);

"Eligible Voter" means, for the purpose of voting in respect to any matter pursuant to this Land Code, an individual whose name appears on the Kitsumkalum Band Membership List, and has attained the age of eighteen (18) years of age on the date of the vote;

"Expropriation" means a taking of an Interest or Licence in respect of Kitsumkalum Reserve Land for a Community Purpose through a process established by a Law and in accordance with this Land Code;

"First Nations Land Management Act" means the First Nations Land Management Act (Canada) S.C, 1999, c.24, as amended from time to time;

"First Nations Land Register" means the register established pursuant to clause 51 of the Framework Agreement and regulated by the First Nations Land Registry Regulations;

"Framework Agreement" means the Framework Agreement on First Nation Land Management, entered into between Canada and the signatory First Nations on February 12, 1996, and amended to include Kitsumkalum on May 4, 2016;

"Individual Agreement" means the individual transfer agreement made between Kitsumkalum and Canada in accordance with clause 6(1) of the Framework Agreement and subsection 6(3) of the First Nations Land Management Act;

"Instrument" means a formal legal written document that provides evidence of an Interest, including a Certificate of Possession, Allotment, Easement, Permit, or Licence, or transaction in relation to Kitsumkalum Reserve Land that is registered or recorded in the First Nations Land Register;

"Interest" means an interest, right or estate of any nature in or to a specific parcel or area of Kitsumkalum Reserve Land, including a Certificate of Possession, Allotment, Leasehold, Easement or Permit, but does not include title to, or the beneficial interest in, that Kitsumkalum Reserve Land;

"Jurisdiction" means law-making authority;

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"Kitsumkalum" means the Kitsumkalum Indian Band also referred to as the Kitsumkalum First Nation;

"Kitsumkalum Band Membership List" means the list maintained by Kitsumkalum that contains the names of all Members;

"Kitsumkalum Register" means the register of Kitsumkalum Reserve Land maintained in the Register of the Registry;

"Kitsumkalum Reserve Land" means any reserve land that is subject to this Land Code;

"Land Code" means this Kitsumkalum Land Code, including any amendments as may be made from time to time;

"Law" means any law enacted pursuant to Part 2 of this Land Code or Kitsumkalum laws or by-laws in force prior to the effective date of this Land Code;

"Lands Committee" means the committee established under section 24 of this Land Code;

"Lands Department" means the department of Kitsumkalum that administers the day to day operations of Kitsumkalum Reserve Land and this Land Code;

"Lands Manager" means the person employed or otherwise engaged by Kitsumkalum to oversee the day to day operations of the Lands Department and the administration of this Land Code and to sign documents, including Written Instruments, as authorized by Council;

"Leasehold" means an Interest in Kitsumkalum Reserve Land granted pursuant to this Land Code or prior to the coming into force of this Land Code granted pursuant to the Indian Act, including a Sublease, giving a person or entity exclusive right and occupation of a surveyed parcel of Kitsumkalum Reserve Land, upon agreed conditions, and "Lease" is formal document evidencing the Leasehold;

"Licence" means any right of use or occupation in Kitsumkalum Reserve Land or any right or permit to carry out an activity on Kitsumkalum Reserve Land, other than an Interest in the Land;

"List of Eligible Voters" means the list of Eligible Voters prepared in accordance with subsection 14.19.

"Member" means an individual whose name appears on the Kitsumkalum Band Membership List;

"Minister" means the Minister of Indian Affairs and Northern Development;

"Natural Resources" means any materials, substances, vegetation or animals found on, under, or in Kitsumkalum Reserve Land, which, when removed, have economic or other value;

"Ordinarily Resident" means the place where, in the settled routine of a person's life, that person regularly, normally or customarily lives;

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"Permit" means an Interest in Kitsumkalum Reserve Land other than a Leasehold or Easement granted under this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of subsection 28(2) the Indian Act, giving one person the right to use the land of another for a specified purpose. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted;

"Public Notice" means the notice given to the Kitsumkalum Members as set forth in section 13;

"Referendum" means a referendum conducted amongst the Eligible Voters in accordance with section 13;

"Register" means the First Nations Lands Register;

"Registry" means the registry holding the Register located in the National Capital Region;

"Resolution" means a resolution of Council passed at a duly convened meeting of Council;

"Special General Meeting" means a meeting held in accordance with Part 3 for Members to consider and make a decision on a Law or Kitsumkalum Reserve Land matter;

"Spouse" means an individual who is married to another, whether by a traditional, religious or civil ceremony, and includes an individual who is in a Common-Law Partnership;

"Sublease" means a sublease of a Leasehold;

"Subordinate Legislation" means any regulation, policy, procedure, rule, standard, terms of reference or code enacted or approved by Council under this Land Code or Laws;

"Youth" means a Member who is between thirteen (13) and eighteen (18) years of age;

"Written Instrument" means an instrument in writing, either in the approved form prepared by the Lands Department or such other form as may be agreed to by the Lands Department, which is intended to create, grant, assign or transfer an interest in Kitsumkalum Reserve Land or affect Kitsumkalum Reserve Land by registration or recording.

**2. Interpretation**

*Interpretation*

2.1 This Land Code should be interpreted in a fair, large, and liberal manner.

2.2 In this Land Code:

- (a) the use of the word "shall", "will", 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 the obligation;

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- (b) where the time limited for doing an act expires or falls on a Saturday or Sunday or federal or provincial holiday, or National Indigenous Peoples Day, the act may be done on the next day that is not a Saturday, Sunday, or holiday;
- (c) where the time limited for doing an act falls on a day when the Lands Department is not open during regular business hours, the act may be done on the next day that the Lands Department is open;
- (d) where there is a reference to a number of days between the two events, in calculating that number of days, the days on which the events happened are excluded;
- (e) 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";
- (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) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (h) the headings of parts and sections in this Land Code have been inserted as a matter of convenience and for reference only, and in no way define or limit any of its provisions; and
- (i) the principles set out in the Preamble to this Land Code may be used to interpret this Land Code.

*Paramountcy*

2.3 If there is an inconsistency or conflict:

- (a) between this Land Code and the Framework Agreement, the Framework Agreement will prevail to the extent of the inconsistency or conflict; and
- (b) between this Land Code and any other enactment of Kitsumkalum including a by-law enacted under section 81 of the Indian Act and any Law or Subordinate Legislation enacted under this Land Code, this Land Code prevails to the extent of the inconsistency or conflict.

*Non-abrogation (or Non-derogation)*

2.4 This Land Code does not change:

- (a) any Indigenous, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to Kitsumkalum or its Members; or
- (b) the fiduciary relationship between Canada or the Province of British Columbia and Kitsumkalum and its Members.

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*Rights to services not affected*

2.5 This Land Code is not intended to affect the eligibility of Kitsumkalum or any Member to receive services to participate in such public or Aboriginal or Indigenous programs as may be established by Canada or the Province to the extent that Kitsumkalum has not assumed responsibility for such services or programs.

*Lands and Interests affected*

2.6 A reference to Kitsumkalum Reserve Land in this Land Code means all the rights and resources in and of the Kitsumkalum Reserve Land to the extent these are under the Jurisdiction of Canada and are part of that Kitsumkalum Reserve Land, and includes:

- (a) the water, beds underlying water, riparian rights, air rights, minerals and sub-surface resources, and all other renewable and non-renewable Natural Resources in and of that Kitsumkalum Reserve Land, water, or air, to the extent that these are under the Jurisdiction of Canada;
- (b) all the Interests and Licences granted by Canada listed in the Individual Agreement and subsequently added to the Individual Agreement, and falling under the Jurisdiction of this Land Code; and
- (c) all the Interests and Licences granted by Kitsumkalum after this Land Code comes into effect.

**3. Authority to Govern**

3.1 For any purpose related to Kitsumkalum Reserve Land, Kitsumkalum shall have the 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 without any involvement by Canada.

**4. Purpose**

*Purpose*

4.1 The purpose of this Land Code is to set out the principles and administrative structures that apply to Kitsumkalum Reserve Land and by which Kitsumkalum will exercise authority and Jurisdiction over Kitsumkalum Reserve Land in accordance with the Framework Agreement and this Land Code.

**5. Description of Kitsumkalum Reserve Land**

*Description of Land*

5.1 The Kitsumkalum Reserve Land that is subject to this Land Code is:

- (a) Kitsumkaylum Indian Reserve No. 1 (07646);
- (b) Dalk-ka-gila-quooux Indian Reserve No. 2 (07647); and

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- (c) Zimagord Indian Reserve No. 3 (07648).

as described in the Land Description Reports referred to in Annex G of the Individual Agreement and includes all the Interests in, and Natural Resources of, the land that are within the legislative authority of Parliament.

*Additional Lands*

- 5.2 The following lands may be made subject to this Land Code if they are, or become, Kitsumkalum Reserve Land and the following applicable conditions are met:
  - (a) any lands owned jointly by Kitsumkalum and another First Nation or First Nations, when all of the First Nations agree upon a joint management scheme for those lands; and
  - (b) any land acquired by Kitsumkalum and its entities before or after this Land Code comes into effect, whether by land claim, land exchange agreement, purchase or other process;

*Land Exchange*

- 5.3 For greater certainty, paragraph 5.2(b) applies to land acquired by land exchange in accordance with section 16 of this Land Code.

*Inclusion of lands or Interest*

- 5.4 When the relevant conditions in subsection 5.2 are met, Council may, by passing a Resolution, declare the lands to be subject to this Land Code and authorize the amendment of the Individual Agreement.
- 5.5 For greater certainty, subject to subsection 5.2, only Council approval, by way of a Resolution is required for amending the description of Kitsumkalum Reserve Land in section 5.1 of the Land Code and in the Individual Agreement.

**PART 2  
KITSUMKALUM LEGISLATION**

**6. Law-Making Powers**

*Council Powers*

- 6.1 The Council may make all Laws in accordance with this Part consistent with this Land Code.

*Subordinate Legislation*

- 6.2 Council may, by Resolution, approve Subordinate Legislation.

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*Legislative Development Framework*

6.3 The Lands Manager or the Lands Committee, or both of them, in consultation with the Members, shall propose a framework for legislative development to prioritize the development of Laws and Subordinate Legislation for recommendation to Council.

**7. Law-Making Procedure**

*Introduction of Laws*

7.1 The development of a law may be proposed at a duly convened meeting of Council by:

- (a) the Lands Committee;
- (b) the Lands Manager; or,
- (c) another individual or body authorized by Council.

7.2 Where Council receives a proposal to develop a Law, they shall, by Resolution, decide on whether or not to develop that Law.

*First Reading*

7.3 Upon the completion of a draft law, Council shall review it at a regular or special meeting of Council and pass a Resolution to:

- (a) accept the draft law in principle;
- (b) reject the draft law and provide a written rationale; or,
- (c) request further work on the draft law and direct that it be reviewed at a future Council meeting wherein it will be considered to be first reading of that draft law.

*Community Information Meeting*

7.4 Where Council accepts a draft law in principle, they shall schedule and hold a Community Information Meeting in accordance with section 10 for the purpose of consulting with Members on the draft law.

*Second Reading and new Draft*

7.5 At a Council meeting following the Community Meeting, Council shall consider the comments received from the Members and either:

- (a) reject the draft law;
- (b) cause to be prepared a new draft law. Where substantive changes to the draft law are necessary given the comments from the Members another Community Information Meeting will be held in accordance with subsection 7.4; or
- (c) accept the draft law and proceed with the posting of the Public Notice set forth in subsection 7.6 and refer the final draft law to a Special General Meeting pursuant

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to subsections 7.8, 7.9, and 7.10 without the necessity of holding the further Council meeting described in subsection 7.7.

*Notice of Meeting*

7.6 Council shall provide Public Notice where they will consider enacting a final draft law at least seven (7) days before the meeting, which sets out:

- (a) a summary of the final draft law;
- (b) notification that a full copy of the final draft law can be obtained by Members at the Lands Department;
- (c) a statement that the final draft law shall be considered for enactment at the Council meeting; and
- (d) the date, time and place of the Council meeting at which Council shall consider the final draft law.

*Third Reading*

7.7 At the Council meeting stated in a Public Notice posted in accordance with subsection 7.6, Council shall consider the final draft law, and by Resolution refer the final draft Law to a Special General Meeting for approval by the Eligible Voters in attendance.

7.8 Council shall:

- (a) schedule a date for the Special General Meeting;
- (b) ensure the procedure set out in section 11 of this Land Code are followed for the Special General Meeting;
- (c) ensure copies of the final draft law are available to Members:
  - (i) electronically or in hard paper copy, or both, prior to the Special General Meeting; and
  - (ii) in hard paper copy at the Special General Meeting; and
- (d) ensure the decision made by the Members at the Special General Meeting is recorded in the minutes.

*Law coming into effect*

7.9 A Law enacted at a Special General Meeting shall be signed by a quorum of Council and shall come into effect on the date of the Special General Meeting.

*Urgent Matters*

7.10 Despite subsections 7.2 – 7.9, Council may enact a Law by Resolution if Council is of the opinion that the Law is urgently needed:

- (a) for public health and safety; or

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(b) to protect Kitsumkalum Reserve Land or Members.

7.11 A Law enacted under subsection 7.10 expires one hundred and twenty (120) days after its enactment, unless it is re-enacted in accordance with this Part.

7.12 A Law enacted by Resolution under subsection 7.10 shall come into effect on the date the Resolution is passed or on such date as specified in the Resolution.

*Procedures Upon Enactment of a Law*

7.13 Notice of a newly enacted Law shall be posted on the Kitsumkalum website and in public areas of Kitsumkalum Reserve Land and in Kitsumkalum's administration offices within fourteen (14) days of being signed by a quorum of Council.

*Register of Laws*

7.14 The Lands Department shall keep a register of the original copy of all Laws and Subordinate Legislation, including Laws that have been repealed or are no longer in force.

7.15 The register of Laws shall be accessible to the public.

7.16 Copies of Laws shall be provided to Members and other persons upon request.

*Notice to Adjacent Jurisdictions*

7.17 Upon a Law being enacted in accordance with this Land Code, Council may decide to provide written notice of an enacted Law to other governmental and enforcement bodies.

**8. Enforcement of Laws**

*Enforceability of Laws*

8.1 Council may:

(a) authorize a Justice of the Peace or a Judge of the Provincial Court of British Columbia or of the Supreme Court of British Columbia to adjudicate offences under a Law; and

(b) enter into agreements with provincial or municipal governments with respect to any matter concerning the enforcement of this Land Code and Laws.

*Prosecuting Offences*

8.2 For the purpose of prosecuting offences, Kitsumkalum may:

(a) retain its own prosecutor;

(b) enter into an agreement with Canada or the Province of British Columbia, or both, to arrange for a provincial prosecutor; or

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

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**PART 3  
COMMUNITY MEETINGS AND APPROVALS**

**9. General**

- 9.1 Every Member is entitled to participate in a Community Information Meeting and a Special General Meeting.
- 9.2 All Community Meetings and Special General Meetings shall take place on Kitsumkalum Reserve Land.

**10. Community Information Meetings**

*Purpose of Community Information Meeting*

- 10.1 A Community Information Meeting shall be held for the following:
  - (a) to provide to Members information about, but to not vote on, a proposed law or Kitsumkalum Reserve Land matter that Council, by Resolution, declares to be subject to this subsection 10.1; and,
  - (b) where otherwise required under this Land Code.
- 10.2 For greater certainty, no decisions or approvals may be made at a Community Meeting.

*Convening a Community Meeting*

- 10.3 At least thirty (30) days prior to a Community Meeting, Council shall provide Public Notice of the Community Information Meeting which shall include:
  - (a) the date, time and location of the Community Meeting;
  - (b) a brief description of the matter to be discussed;
  - (c) where the full copy of a draft law may be obtained by Members if the matter relates to a proposed law;
  - (d) an invitation for Members to provide written comments to Council on the draft law or Kitsumkalum Reserve Land matter; and
  - (e) the return date by which Members shall provide written comments to Council, which date shall be at least seven (7) days after the date of the Community Meeting.

*Community Information Meetings*

- 10.4 At a Community Information Meeting a representative of the Lands Committee, the Lands Manager or an individual or body authorized by Council shall:
  - (a) make copies of the draft law available to all Members who are in attendance;

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- (b) ensure that the purpose and provisions of the draft law are explained to all Members who are in attendance;
- (c) invite questions and comments by Members who are in attendance; and
- (d) ensure the questions and comments made by Members who are in attendance are documented or recorded for Council to consider.

*When Community Meetings Required*

- 10.5 Council shall call a Community Information Meeting prior to passing a Law and before holding a Special General Meeting to vote on a proposed law.
- 10.6 Council may schedule as many Community Meetings as is necessary to ensure that Members are well informed about a draft law or Kitsumkalum Reserve Land matter.

*Meeting with Interest Groups Prior to Community Information Meeting*

- 10.7 Prior to calling a Community Information Meeting the Lands Committee along with the Lands Manager will make reasonable efforts to meet with:
  - (a) Youth;
  - (b) Elders; and
  - (c) any other interest group, as deemed necessary by Council.

*In-camera Community Meeting*

- 10.8 A Member may, at any time before or during a Community Meeting, request that the meeting be held in-camera for any Members or their Spouses however the ultimate decision will be left to the members of Council that are present at the Community Meeting. If the meeting is restricted to only Members and their Spouses, only Members are entitled to participate in the in-camera Community Meeting.

**11. Special General Meetings**

- 11.1 The purpose of a Special General Meeting is to:
  - (a) inform and discuss with Members a draft law or Kitsumkalum Reserve Land matter; and
  - (b) seek the approval of Members on a draft law or Kitsumkalum Reserve Land matter.
- 11.2 A Special General Meeting shall be held for the following:
  - (a) respecting any matter or proposed law that Council, by Resolution, declares to be subject to this subsection 11.2; and
  - (b) where otherwise required under this Land Code.

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- 11.3 Member approval is not required for those matters set forth in subsection 29.2.
- 11.4 The date, time and place of the Special General Meeting shall be determined by Council.
- 11.5 At least thirty (30) days prior to a Special General Meeting, Council shall provide Public Notice of that Special General Meeting which shall include:
  - (a) a summary of the draft law or Kitsumkalum Reserve Land matter;
  - (b) a description of who is eligible to attend the Special General Meeting;
  - (c) the ballot question that shall be voted on at the Special General Meeting;
  - (d) any other information and material that Council deems necessary;
  - (e) a statement that at the Special General Meeting, Council shall seek the approval of the Eligible Voters who attend the Special General Meeting for the draft law or Kitsumkalum Reserve Land matter;
  - (f) details regarding the manner in which voting shall take place and instructions for how Eligible Voters living off Kitsumkalum Reserve Land may vote; and
  - (g) the date, time and place of the Special General Meeting.
- 11.6 An individual, who is not a Member, may attend a Special General Meeting with the permission of Council. The Spouse of a Member may attend a Special General Meeting. Only an Eligible Voter may vote at a Special General Meeting.
- 11.7 Voting at a Special General Meeting may be conducted by various methods, as determined by Council, including any of the following methods or combinations thereof, one of which shall provide an opportunity for Eligible Voters residing off Kitsumkalum Reserve Land to vote:
  - (a) ballots cast in person by secret ballot at the Special General Meeting;
  - (b) electronic ballots;
  - (c) mail-in-ballots; and
  - (d) any other method approved by Council.
- 11.8 A draft law or Kitsumkalum Reserve Land matter is deemed approved at a Special General Meeting if:
  - (a) at least ten percent (10%) of Eligible Voters cast a ballot; and,
  - (b) a majority of those Eligible Voters who participate in the Special General Meeting vote "Yes" to the question asked.

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- 11.9 If the threshold set forth in paragraph 11.8(b) is not obtained at the first Special General Meeting, but a majority of those who did vote, voted in favour, a second Special General Meeting and vote may be called without any threshold requirement.
- 11.10 A matter shall be considered approved at a second Special General Meeting if a majority of fifty percent plus one (50%+1) of the Eligible Voters who participate in the Special General Meeting vote "Yes" to the question.
- 11.11 The results of a vote at a Special General Meeting, and the decision made in that vote, shall be recorded in the minutes and shall have the same effect as a Resolution in relation to the enacting of a law or approval of a Kitsumkalum Reserve Land matter.

**12. Attendance at Special General Meetings**

- 12.1 Members of Council shall make best efforts to attend all Special General Meetings unless he or she has just cause for being absent.
- 12.2 Members of Council shall notify Council at a Council meeting, or notify the Lands Manager, of any anticipated absence and the reasons for such absence.
- 12.3 Where notification under subsection 12.2 is given to the Lands Manager, the Lands Manager shall inform the other Council members of the absence and reasons.
- 12.4 If a member of Council is absent from a Special General Meeting, the chairperson or a member of Council shall, if requested by an Eligible Voter, inform the attendees of the reason for the Council member's absence.
- 12.5 A quorum of Council is not required for the holding of a Special General Meeting.
- 12.6 Council may, at a meeting of Council, prior to a Special General Meeting, by vote of a majority of those Council members present, determine that a Special General Meeting shall only be open to Eligible Voters and their Spouses, and to employees of, or consultants to, Kitsumkalum.

**13. Public Notice**

*Methods of Public Notice*

- 13.1 For all matters requiring Public Notice under this Land Code, notice shall be given to Members by the following means:
  - (a) written notice posted in at the Kitsumkalum administration building and such other community places as Council decides;
  - (b) posting on the Kitsumkalum website;
  - (c) written notice delivered to Members on reserve and mailed to Members off reserve sent to their last known address;

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13.2 At the discretion of Council, the following methods may also be used to provide Public Notice:

- (a) direct phone calls to Eligible Voters;
- (b) posting on social media;
- (c) in-person meetings with identified interest groups; and
- (d) any other method deemed necessary by Council.

*Contents of Public Notice*

13.3 Any Public Notice distributed to the Members should be written in plain language.

**14. Referendum**

*Application*

14.1 This section 14 applies only to a Referendum required by this Land Code or a Referendum Council determines is advisable in relation to the management and administration of Kitsumkalum Reserve Land.

*Holding a Referendum*

14.2 Council shall hold a Referendum by way of vote when so required by this Land Code or when it considers it advisable. A second Referendum on any question cannot be held for at least thirty (30) days after the first vote on that question.

14.3 Council shall, by Resolution at least sixty (60) days prior to the date on which the Referendum is being held:

- (a) set a date for the Referendum;
- (b) determine the question or questions to be asked in the Referendum;
- (c) appoint an Electoral Officer to conduct the Referendum; and
- (d) appoint an Arbitrator to hear and determine any appeals of the Referendum.

14.4 Unless otherwise required by this Land Code, a question put to a Referendum shall be approved, if:

- (a) at least twenty percent plus one (20% + 1) of the Eligible Voters cast ballots in the Referendum; and
- (b) a majority of the Eligible Voters who cast valid ballots vote "Yes" to the question asked; and,

14.5 In order to be entitled to vote in a Referendum, a person must be an Eligible Voter.

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*Electoral Officer and Deputy Electoral Officer*

- 14.6 If an Electoral Officer and an Arbitrator have not been appointed within the time set out in subsection 14.3, the Electoral Officer and Arbitrator shall be appointed by the Lands Manager as soon as possible.
- 14.7 A Deputy Electoral Officer or Officers may be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.
- 14.8 The Deputy Electoral Officer(s) shall have such powers as described in this section 14 and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.
- 14.9 No Deputy Electoral Officer(s) shall be a member of Council.
- 14.10 The Electoral Officer shall not be a member of Council, a Member or salaried officer or employee of Kitsumkalum or a holder of other contracts of services for Kitsumkalum.
- 14.11 Every Electoral Officer and Deputy Electoral Officer(s) shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office and shall file with the Lands Manager the sworn oath of office before assuming their office.
- 14.12 The Electoral Officer and Deputy Electoral Officer(s) shall:
  - (a) uphold and abide by the rules established in this section 14;
  - (b) act fairly and impartially;
  - (c) not favour, oppose, promote or be associated with a campaign on any aspect of a Referendum;
  - (d) not discriminate against anyone because of race, religion, sex, age or disability;
  - (e) not accept anything of value in exchange for preferential treatment or access to a public official or non-public information;
  - (f) use public office facilities to fulfill the duties of their office and not for personal or partisan benefit; and
  - (g) always act in the best interests of Kitsumkalum.
- 14.13 The Electoral Officer may make such order and issue such instructions consistent with the provisions of this section 14, as he or she may from time to time deem necessary for the effective administration of the Referendum.

*Contact Addresses*

- 14.14 The Lands Manager shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of all Eligible Voters, if known.

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- 14.15 The contact address shall take the form of a mailing address and, where available, an email address.
- 14.16 The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Eligible Voters who are entitled to receive them under this section 14. Except for these purposes, the contact address shall not be disclosed by the Electoral Officer without the consent of the Eligible Voter.
- 14.17 Eligible Voters shall be responsible for providing the Lands Manager or the Electoral Officer with current contact addresses.
- 14.18 A document shall be considered properly provided if it was mailed or delivered to the contact address of the Eligible Voter.

*List of Eligible Voters*

- 14.19 The Electoral Officer shall prepare a List of Eligible Voters within thirty-five (35) days of assuming office. The List of Eligible Voters will be the official record of Eligible Voters for the Referendum.
- 14.20 The Electoral Officer shall post the List of Eligible Voters by way of a Public Notice no later than thirty (30) days prior to the date on which the Referendum is to be held.
- 14.21 A person whose name does not appear, or does not correctly appear, on the List of Eligible Voters, and believes that they should be an Eligible Voter for purposes of the Referendum, or an Eligible Voter on their behalf, may, no later than twenty (20) days prior to the date on which the Referendum is to be held, apply in writing to the Electoral Officer to have his or her name added to the List of Eligible Voters.
- 14.22 The application under subsection 14.21 shall set out the reasons why the person's name should be added to the List of Eligible Voters, together with any documents supporting the application.
- 14.23 Where the Electoral Officer believes or has information that a person whose name is on the List of Eligible Voters is not an Eligible Voter, or where an Eligible Voter applies in writing to the Electoral Officer to have another person's name removed from the List of Eligible Voters because that person does not qualify as an Eligible Voter, the Electoral Officer shall give written notice to the person whose eligibility is challenged at least twenty (20) days prior to the date on which the Referendum is to be held.
- 14.24 The application by an Eligible Voter under subsection 14.23 shall set out the reasons why a person's name should be removed from the List of Eligible Voters together with any documents supporting the application and must be received by the Electoral Officer no later than twenty-five (25) days prior to the date on which the Referendum is to be held.
- 14.25 The notice given under subsection 14.24, shall include the reasons for seeking removal of a name from the List of Eligible Voters and any supporting documents, and shall provide notice that a written reply may be sent to the Electoral Officer which must be received no later than fifteen (15) days prior to the date on which the Referendum is to be held.

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- 14.26 After consideration of all information and representations relating to amendments to the List of Eligible Voters, the Electoral Officer shall add or delete names to the List of Eligible Voters, based on whether persons qualify as Eligible Voters.
- 14.27 The Electoral Officer shall give a person whose name has been added to or deleted from the List of Eligible Voters written notice of the decision, which may be by electronic means and shall post their decision by way of a Public Notice at least ten (10) days prior to the date on which the Referendum is to be held.
- 14.28 The decision of the Electoral Officer under subsection 14.26 is final and not subject to appeal.
- 14.29 The Electoral Officer shall, at least seven (7) days prior to the date on which the Referendum is to be held, post a final List of Eligible Voters by way of a Public Notice.
- 14.30 Any person whose name does not appear on the final List of Eligible Voters shall not be entitled to vote in the Referendum.

*Preparation of Ballots*

- 14.31 The Electoral Officer shall prepare ballots setting out the question to be asked in the Referendum. The Referendum question shall be in clear, concise, impartial language and in a form that may only be answered with a "Yes" or "No".
- 14.32 The ballots shall indicate that the Eligible Voter is to signify his or her choice with an "X" or other mark under the word "Yes" or "No" in the appropriate space opposite each question stated on the ballot.

*Entitlement to Vote by Mail-In Ballot and Electronic Voting*

- 14.33 At least fifty-five (55) days prior to the date on which the Referendum is to be held, the Electoral Officer shall publish a notice in the Kitsumkalum newsletter sent to Eligible Voters or shall forward to Eligible Voters at their contact address a notice setting out the conditions for voting by mail-in ballot and, if Council decides, electronic voting.
- 14.34 The notice shall include:
  - (a) notification that a copy of this Land Code can be obtained at the Kitsumkalum administration building;
  - (b) the places where copies of the List of Eligible Voters shall be posted;
  - (c) a statement that Eligible Voters who are Ordinarily Resident on Kitsumkalum Reserve Land who are unable to vote in person on the date of the Referendum may, at least twenty (20) days prior to the date on which the Referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot;
  - (d) a statement that Eligible Voters who are not Ordinarily Resident on Kitsumkalum Reserve Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them unless they advise the Electoral Officer in writing that they do not want to receive a mail-in ballot at least forty (40) days prior to the date on which the Referendum is to be held;

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- (e) the business address, telephone number, facsimile number and email address of the Electoral Officer;
- (f) the date of the notice;
- (g) the method for electronic voting if Council decides that this shall occur;
- (h) any other information that the Electoral Officer deems necessary or appropriate.

14.35 Any Eligible Voter who is Ordinarily Resident on Kitsumkalum Reserve Land and who is unable to vote in person on the date the Referendum is to be held may, at least ten (10) days prior to the date on which the Referendum is to be held, apply to the Electoral Officer to vote by mail-in-ballot or by way of electronic voting should Council authorize it.

14.36 An Eligible Voter requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address. The Electoral Office shall keep a list of each Eligible Voter to whom he or she sent a mail-in ballot to and the date on which it was sent.

14.37 The Electoral Officer shall, at least thirty-five (35) days prior to the date on which the Referendum is to be held, mail to every Eligible Voter who is not Ordinarily Resident on Kitsumkalum Reserve Lands and to every Eligible Voter who is Ordinarily Resident on Kitsumkalum Reserve Lands whose application to vote by mail-in ballot or by way of electronic voting has been received, a mail-in ballot package, or electronic voting instructions, consisting of:

- (a) a ballot initialed on the back by the Electoral Officer;
- (b) an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
- (c) a second inner envelope marked "ballot" for insertion of the completed ballot;
- (d) an Eligible Voter declaration form which shall set out:
  - (i) the name of the Eligible Voter;
  - (ii) the Kitsumkalum membership number and address of the Eligible Voter; and
  - (iii) the name, address and telephone number of the witness to the signature of the Eligible Voter.
- (e) a letter of instruction regarding voting by mail-in ballot; and
- (f) a statement identifying the location of all polling places, advising the Eligible Voter that they may vote in person at any polling station on the day of the Referendum if they return their mail-in ballot to the Electoral Officer at the polling station or swear a written declaration before the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot.

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14.38 Any Eligible Voter who is not Ordinarily Resident on Kitsumkalum Reserve Lands and who has not been sent a mail-in ballot package in accordance with subsection 14.36 may, at least twenty (20) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot.

*Notice of Polls*

14.39 The Electoral Officer shall, at least thirty-five (35) days prior to the date on which the Referendum is to be held, post a Public Notice.

14.40 The Public Notice shall include:

- (a) the date of the Referendum;
- (b) the date of the advance vote; if there is to be one;
- (c) the time the polling stations will be open and closed;
- (d) the location of the polling stations; and
- (e) the question or questions to be asked in the Referendum.

*Voting by Mail-In Ballot*

14.41 An Eligible Voter shall vote by mail-in ballot by:

- (a) clearly marking the ballot with an (X) or other mark that clearly indicates the Eligible Voter's choice under the word "Yes" or "No" in the appropriate space opposite each question stated in the ballot;
- (b) folding the ballot in a manner so as to conceal the mark or marks on the face of the paper but exposing the Electoral Officer's initials on the back;
- (c) placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
- (d) completing and signing the Eligible Voter declaration form in the presence of a witness who is at least eighteen (18) years of age;
- (e) placing the inner envelope and the completed, signed and witnessed Eligible Voter declaration form in the postage-paid, return envelope, pre-addressed to the Electoral Officer; and
- (f) delivering to, or otherwise ensuring receipt of the envelope by the Electoral Officer before the time at which the polls close on the day of the Referendum.

14.42 Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the Referendum shall not be counted.

14.43 An Eligible Voter whom a mail-in ballot was mailed or delivered may vote in person at a polling station if:

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- (a) the Eligible Voter returns the mail-in ballot to the Electoral Officer or Deputy Electoral Officer; or
- (b) where the Eligible Voter has lost the mail-in ballot, the Eligible Voter provides the Electoral Officer or Deputy Electoral Officer with a written affirmation of loss signed by the Eligible Voter in the presence of either the Electoral Officer, Deputy Electoral Officer, justice of the peace, notary public or commissioner for taking oaths.

*Advance Voting*

- 14.44 The Electoral Officer shall conduct an in-person vote on the advance voting day in the same manner as on the date of the Referendum.
- 14.45 At the close of the advance poll, the Electoral Officer will, in the presence of two or more Eligible Voters who will act as witnesses, seal the ballot boxes in such a manner as to prevent tampering and take them to a secure location pending the tallying of the votes on the close of the date of the Referendum.

*Voting at a Polling Station*

- 14.46 The polling station shall be open from eight o'clock (8:00) in the morning until eight o'clock (8:00) in the evening on the day on which the Referendum is to be held and on the advance voting day.
- 14.47 The Electoral Officer shall, before the polling station is open, supply the polling station with:
  - (a) ballot boxes;
  - (b) a sufficient number of ballots;
  - (c) the final List of Eligible Voters;
  - (d) the necessary materials for marking ballots; and
  - (e) a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- 14.48 During the time the polling station is open, only the following people may be present:
  - (a) the Electoral Officer and the Deputy Electoral Officer(s);
  - (b) any member of the Council;
  - (c) any person authorized by the Electoral Officer; and
  - (d) voters who are actually engaged in voting.
- 14.49 The Electoral Officer shall issue on voting day to all individuals referred to in paragraph 14.48 (a)-(c) identification badges to wear in a prominent manner.

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- 14.50 The Electoral Officer shall provide a voting compartment inside the polling station where the Eligible Voters can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the polling site.
- 14.51 The Electoral Officer or Deputy Electoral Officer shall, immediately before the commencement of the poll:
- (a) open the ballot box and, in the presence of any appointed security and other Deputy Electoral Officers, confirm that it is empty and complete a written statement to that effect;
  - (b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
  - (c) place the ballot box in public view for the reception of the ballots.
- 14.52 Each Eligible Voter presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or Deputy Electoral Officer identification issued by the Federal or Provincial governments or by Kitsumkalum.
- 14.53 If a person applies for a ballot and it is not clear to the Electoral Officer or Deputy Electoral Officer which name on the List of Eligible Voters pertains to that person, the Electoral Officer or Deputy Electoral Officer shall:
- (a) select, with the assistance of that person if needed the entry that corresponds most closely to the person; and
  - (b) enter in the List of Eligible Voters a notation as to how the selection was determined, including any characteristics such as age, sex and address that may distinguish the voter from another voter with the same or a similar name.
- 14.54 An Eligible Voter, who on requesting a ballot, claims to be a particular person after another person has voted in the same name, shall be entitled to receive a ballot and to vote after signing a declaration that he or she has been impersonated. The Electoral Officer or Deputy Electoral Officer shall note in the List of Eligible Voters:
- (a) that the Eligible Voter voted on a second ballot issued under the same name;
  - (b) that a declaration of impersonated voter was made; and
  - (c) any objections made by member of Council.
- 14.55 Where a person is properly identified as an Eligible Voter, he or she shall sign the sign-in sheet presented by the Electoral Officer or Deputy Electoral Officer and list their membership number on the sign-in sheet.
- 14.56 Upon signing the sign-in sheet, the Eligible Voter shall receive a ballot initialed by the Electoral Officer or Deputy Electoral Officer.

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- 14.57 The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the List of Eligible Voters, a mark opposite the name of every Eligible Voter receiving a ballot.
- 14.58 The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Eligible Voter.
- 14.59 Voting at all Referendums shall be by secret ballot.
- 14.60 No Eligible Voter may vote by proxy or authorize another person to vote on his or her behalf.
- 14.61 Notwithstanding subsection 14.60 and subsection 14.64 any Eligible Voter who requires assistance may request that the Electoral Officer or a Deputy Electoral Officer vote on their behalf in their presence in favour of, or against the question, as the Eligible Voter directs.
- 14.62 In the event that an Eligible Voter votes in the manner described in subsection 14.61 the Electoral Officer or Deputy Electoral Officer shall note on the List of Eligible Voters in the column for remarks opposite the name of such Eligible Voter, the fact that the ballot was marked by him or her in the presence of the Eligible Voter and the reasons therefore.
- 14.63 Except for voting in the manner provided in subsection 14.61, the Electoral Officer or Deputy Electoral Officer shall ensure the Eligible Voter's privacy while in the voting compartment.
- 14.64 Upon receiving the ballot, each Eligible Voter shall:
- (a) immediately proceed to the voting compartment and clearly mark the ballot with an (X) or other mark that clearly indicates the Eligible Voter's choice under the word "Yes" or "No" in the appropriate space opposite each question stated on the ballot;
  - (b) fold the ballot, so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or Deputy Electoral Officer; and
  - (c) without unfolding the ballot, have the Electoral Officer or Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Deputy Electoral Officer in the polling station.
- 14.65 An Eligible Voter who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Eligible Voter with a new ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- 14.66 An Eligible Voter who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word "declined" on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.

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- 14.67 An Eligible Voter forfeits his or her right to vote at the Referendum after being provided a ballot by the Electoral Officer or Deputy Electoral Officer if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.
- 14.68 Any Eligible Voter who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.
- 14.69 Save and except for the Electoral Officer, Deputy Electoral Officer, or appointed security, no one other than the Eligible Voters who are in the process of voting, or in the case of an elderly or physically incapacitated person, an attendant, is permitted to be inside the polling station.
- 14.70 No person shall, on the day the Referendum is held, on the premises of the polling site:
  - (a) distribute any printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purposes of conducting the Referendum;
  - (b) attempt to interfere with or influence any Eligible Voter in marking his or her ballot; or
  - (c) attempt to obtain information as to how an Eligible Voter is about to vote or has voted.
- 14.71 The Electoral Officer may request appointed security to remove any person from the polling site who is in violation of subsection 14.70.

*Procedures After the Close of the Polls*

- 14.72 The Electoral Officer shall not perform the tasks set out in section 14 in the presence of any other person except:
  - (a) the Deputy Electoral Officer(s);
  - (b) any member of the Council;
  - (c) any person authorized by the Electoral Officer.
- 14.73 The Electoral Officer and Deputy Electoral Officer(s) shall begin the counting the ballots immediately after the end of voting.
- 14.74 The Electoral Officer and Deputy Electoral Officer(s) opening the mail-in ballots shall set aside the inner envelope if:
  - (a) it is not accompanied by a voter declaration form or contains a voter declaration that has not been signed;
  - (b) the Eligible Voter's information of the voter declaration form does not match that on the Eligible Voters List; or
  - (c) the Eligible Voters List shows that the Eligible Voter has already voted.

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14.75 If the Electoral Officer or Deputy Electoral Officer does not set aside the inner envelope, he or she shall:

- (a) mark the Eligible Voters List to indicate that the Eligible Voter has voted; and
- (b) open the inner envelope and place the enclosed ballot into a ballot box.

14.76 After the mail-in votes have been processed, the Electoral Officer or the Deputy Electoral Officer shall open the ballot boxes and set aside any ballot that:

- (a) does not have the Electoral Officer's initials on the back or is not an official ballot;
- (b) does not indicate a clear preference for "Yes" or "No"; or
- (c) is spoiled.

14.77 The Electoral Officer or Deputy Electoral Officer shall mark each ballot set aside as "rejected" on the back of the ballot, indicate the reason and initial the ballot. If a member of Council objects to the Electoral Officer's decision on whether to set aside a ballot, the Electoral Officer shall:

- (a) make a note of the objection;
- (b) number the objection;
- (c) place the same number on the back of the ballot in question; and
- (d) decide any question arising from the objection.

14.78 The Electoral Officer shall:

- (a) count the votes given in favour of or against the question or questions submitted in the Referendum;
- (b) not count ballots set aside;
- (c) once the counting of the ballots has been completed, he or she shall seal the following in separate envelopes:
  - (i) ballots marked "Yes";
  - (ii) ballots marked "No";
  - (iii) ballots set aside, including notes taken or objections made;
  - (iv) the Eligible Voters List; and
- (d) prepare and sign a statement in writing of the number of votes so given and of the number of ballots rejected.

14.79 Immediately after the completion of the counting of the votes, the Electoral Officer shall:

- (a) publicly declare the results of the Referendum;

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- (b) prepare a statement in duplicate signed by himself or herself indicating:
  - (i) the number of Eligible Voters who voted;
  - (ii) the number of votes cast in favour of and against the question or questions submitted in the Referendum;
  - (iii) the number of rejected ballots; and
- (c) deliver a copy of the statement to Council.

14.80 The Electoral Officer shall:

- (a) within three (3) days on which the Referendum is held post in the places where Public Notices are posted, a written statement signed by the Electoral Officer, showing the number of votes cast in favour of and against the question or questions submitted in the Referendum and the number of rejected ballots; and
- (b) publish a written statement, showing the number of votes cast in favour of and against the question or questions submitted in the Referendum and the number of rejected ballots, in the Kitsumkalum newsletter mailed to, or emailed to, Eligible Voters or in a separate written notice delivered or mailed to Eligible Voters.

*Disposal of Ballots*

14.81 The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it for one hundred and eighty (180) days after the date on which the Referendum is held or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two witnesses.

*Appeals*

14.82 Any Eligible Voter may file an appeal in writing to the Band Manager within seven (7) days of the written statement of the Electoral Officer as set forth in subsection 14.80 requesting that the Referendum be declared invalid on one or more of the following grounds:

- (a) there was a violation of any provision of this section 14 in the conduct of the Referendum that might have affected the result of the Referendum; or
- (b) there was a corrupt or fraudulent practice in connection with the Referendum.

14.83 Every notice of appeal shall be filed with the Band Manager within thirty (30) days from the date upon which the Referendum was held together with a non-refundable filing fee of one-hundred and fifty dollars (\$150).

14.84 Every appeal shall also set out in an affidavit sworn before a notary public, lawyer or duly appointed commissioner for taking oaths, the facts substantiating the grounds for declaring the Referendum invalid and shall be accompanied by any documents relied on to support the appeal.

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- 14.85 The Eligible Voter appealing the result of the Referendum shall deposit with the Band Manager together with the appeal, security for costs in the amount of one-hundred and fifty dollars (\$150).
- 14.86 Upon receipt of the Referendum appeal, the supporting documents, the filing fee and security for costs, the Band Manager shall forward the appeal and supporting documents to Council.
- 14.87 Council shall have thirty (30) days from the receipt of the material described in subsection 14.86 to file with the Band Manager a written reply to the appeal.
- 14.88 Upon expiration of the time to file a reply, the Band Manager shall forward the appeal, the supporting documents and any reply to the Arbitrator chosen by Council to hear and determine the appeal.
- 14.89 The Arbitrator may, at his or her discretion, give directions for:
- (a) fixing the date, time and place for the hearing of the appeal;
  - (b) designating the method of taking evidence, either by sworn declaration or written testimony or both;
  - (c) designating what persons are to be notified and how they are to be served; and
  - (d) dealing with any matter or other thing not otherwise provided for in this subsection 14.89.
- 14.90 No witness shall be required to divulge how he or she voted in the Referendum.
- 14.91 The Arbitrator shall provide a written decision together with reasons, confirming or invalidating the Referendum results.
- 14.92 The result of the Referendum shall not be declared invalid by reason only of any irregularity or non-compliance with the Referendum procedures, or any mistake in the use of forms, if it appears to the Arbitrator that the Referendum was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the Referendum.
- 14.93 The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs of the appeal shall be paid. The Arbitrator shall make disposition of the security for costs paid under this section 14 in accordance with their order.
- 14.94 The Arbitrator shall give the person appealing the Referendum and Council written notice of the decision and shall post the decision in the places where Public Notices are placed.
- 14.95 The determination of the Arbitrator is final and not subject to appeal.

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*Second Ratification Vote Quorum*

14.96 In order to obtain a quorum for Member approval for a second attempt at a Referendum under this Land Code at least ten percent (10%) of the Eligible Voters shall participate.

*Approval by Majority*

14.97 A matter shall be considered approved at a second Referendum if a majority of fifty percent plus one (50%+1) of the Eligible Electors who vote in the second Referendum vote to approve the matter.

**PART 4  
PROTECTION OF LAND**

**15. Expropriation for Community Purposes**

*Acquisition by Mutual Agreement*

15.1 Kitsumkalum may Expropriate an Interest or Licence in Kitsumkalum Reserve Land, provided that it has made a good faith effort to acquire, by mutual agreement, the Interest or Licence.

*Guidelines for Expropriation*

15.2 An Interest or Licence in respect of Kitsumkalum Reserve Land, or in any building or other structure on that Kitsumkalum Reserve Land, may only be expropriated by Kitsumkalum in accordance with:

- (a) the Framework Agreement; and
- (b) any Law enacted for the purpose of establishing the rights and procedures for community expropriations.

*Situations allowing for Expropriations*

15.3 An expropriation by Kitsumkalum shall only be carried out for Community Purpose.

*Procedures for Expropriation*

15.4 Before proceeding to make any Expropriations in accordance with this Land Code and the Framework Agreement, Council shall, in consultation with the Lands Committee, enact a Law respecting the rights and procedures for Expropriations, including provisions respecting:

- (a) the taking of possession of the Interest or Licence or a portion thereof;
- (b) transfer of the Interest or Licence or a portion thereof;
- (c) notice of Expropriation and service of the notice of Expropriation;
- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and

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- (f) the method of payment of compensation.

*Notification of Expropriation*

- 15.5 In the case of an Expropriation of an Interest or Licence in Kitsumkalum Reserve Land, any affected person or persons shall receive notification of the Expropriation, including the specific interest(s) to be expropriated and the reasons for the Expropriation.
- 15.6 In the case of an Expropriation affecting any one Member or Members, any affected individuals shall receive the public report of the Expropriation prior to its release to Members.

*Rights that may not be expropriated*

- 15.7 In accordance with clause 17.6 of the Framework Agreement, an Interest of Canada in Kitsumkalum Reserve Land is not subject to expropriation by Kitsumkalum.

*Compensation for rights and Interests*

- 15.8 Kitsumkalum shall, in accordance with its Laws and the Framework Agreement, pay fair and reasonable compensation to the holders of the Interest or Licence being expropriated.

*Compensation calculations*

- 15.9 In accordance with the Framework Agreement, Kitsumkalum shall calculate the total value of the compensation under section 15 based on the compensation criteria set out in the Expropriation Act (Canada).

*Market value*

- 15.10 The "market value" of an expropriated Interest or Licence is equal to the amount that would have been paid for the Interest or Licence if it had been sold by a willing seller to a willing buyer under no duress.

*Neutral evaluation to Resolve Disputes*

- 15.11 The resolution of disputes concerning the right of Kitsumkalum to Expropriate shall be determined by neutral evaluation, in the same manner as provided in Part IX of the Framework Agreement, and the sixty (60) day period referred to in the Framework Agreement shall be applied, as appropriate in the circumstance, by the neutral evaluator.

*Arbitration to Resolve Disputes*

- 15.12 The resolution of the following disputes shall be determined by arbitration, in the same manner as provided in Part IX of the Framework Agreement:
  - (a) disputes concerning the right of a holder of an expropriated Interest or Licence to compensation; and
  - (b) disputes concerning the amount of the compensation.

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**16. Voluntary Exchange of Kitsumkalum Reserve Land**

*Conditions for a land exchange*

16.1 Kitsumkalum may agree with another party to exchange a parcel of Kitsumkalum Reserve Land for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.

*No effect*

16.2 A land exchange is of no effect unless it receives member approval pursuant to a Referendum conducted in accordance with section 14 of this Land Code and with clause 14.2 of the Framework Agreement.

*Land to be received*

16.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:

- (a) it shall be equal to or greater than the area of the Kitsumkalum Reserve Land to be exchanged;
- (b) it shall be at least comparable to the appraised value of the Kitsumkalum Reserve Land; and
- (c) the lands that meet the criteria set forth in paragraphs 16.3(a) and (b) shall become reserve land and thence be Kitsumkalum Reserve Land subject to this Land Code as is reasonably practicable after the exchange.

*Negotiators*

16.4 Council will, by Resolution, designate an individual or entity who will have authority to negotiate a land exchange agreement on behalf of Kitsumkalum.

*Additional land*

16.5 Kitsumkalum may negotiate to receive other compensation, such as money or other additional parcels of land, in addition to the parcel or parcels which are intended to become Kitsumkalum Reserve Land. Such other parcels of land may be held by Kitsumkalum or an entity controlled by, or beneficially owned by, Kitsumkalum in fee simple or some other manner.

*Community notice*

16.6 Once negotiations on the land exchange agreement are concluded, Council shall provide the following information to Eligible Voters at least forty-two (42) days-before the Referendum:

- (a) a description of the Kitsumkalum Reserve Land to be exchanged;
- (b) a description of the land to be received in the exchange;
- (c) a description of any other compensation to be exchanged;

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- (d) a report of a certified land appraiser setting out that the conditions for the land to be received in the exchange have been met; and
- (e) a copy or summary of the exchange agreement.

*Process of Land Exchange*

16.7 The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) Council must pass a Resolution authorizing Canada to transfer title to the Kitsumkalum Reserve Land being exchanged, in accordance with the exchange agreement;
- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register;
- (d) the land to be set apart as a reserve has been subject to an environmental audit satisfactory to Kitsumkalum; and
- (e) the land exchange is subject to approval by way of a Referendum.

**PART 5  
ACCOUNTABILITY**

**17. Conflict of Interest or Appearance of Conflict of Interest**

*Application of rules*

17.1 In the event of any real, perceived or potential conflict of interest that arises in any matter related to Kitsumkalum Reserve Lands, a Law or this Land Code, the provisions relating to conflict of interest in the Kitsumkalum Indian Band Conflict of Interest Policy 2015 as may be amended apply.

**18. Financial Management**

*Application of rules*

18.1 The financial administration of Kitsumkalum Reserve Lands funds expended in relation to Kitsumkalum Reserve Lands administered under this Land Code shall be conducted in accordance with the Kitsumkalum Indian Band Financial Administration Policy 2016 as may be amended.

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**19. Annual Report**

*Publish annual report*

19.1 The Lands Committee together with the Lands Manager shall publish an annual report on Kitsumkalum Reserve Land matters.

*Contents of annual report*

19.2 The annual report shall include:

- (a) an annual review of Kitsumkalum Reserve Land matters;
- (b) an annual budget prepared by the Lands Department;
- (c) any other matter as determined by Council, the Lands Committee, or the Lands Manager.

**20. Access to Information**

*In-person Access*

20.1 A Member may, during normal business hours of the Lands Department, have reasonable access to:

- (a) the register of Laws; and
- (b) the annual report;

20.2 A Member may obtain a copy of the annual report published under section 19 of this Land Code from the Lands Department.

20.3 An individual authorized by Council may, at any reasonable time, inspect the financial records of Kitsumkalum related to Kitsumkalum Reserve Land.

**21. Revenue from Kitsumkalum Reserve Land**

21.1 Council shall, as it deems necessary, establish any Subordinate Legislation for determining:

- (a) the fees and rent for Interests or Licenses in Kitsumkalum Reserve Land;
- (b) the fees for services provided in relation to any Kitsumkalum Reserve Land;
- (c) the fees and royalties to be paid for the removal, disposal or taking of Natural Resources from Kitsumkalum Reserve Land; and
- (d) the fees, rents or royalties to be paid for use of the air and air space on or over Kitsumkalum Reserve Land.

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**PART 6  
LAND ADMINISTRATION**

**22. General**

*Administration*

22.1 Council may hire, contract with, or appoint a Lands Manager to oversee land administration and the implementation of this Land Code.

*Delegation*

22.2 Notwithstanding subsection 22.1 the Council may, by enacting a Law or Subordinate Legislation or by Resolution, delegate administrative authority in relation to this Land Code or a Law to an individual or body established or authorized under this Land Code or pursuant to a Law.

*Exercise of Duties*

22.3 Any power, authority or discretion exercised by the Council, the Lands Committee and Lands Manager 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, Kitsumkalum.

**23 Lands Committee**

*Purpose*

23.1 The purpose of the Lands Committee is to:

- (a) assist Council with the development of the land administration system;
- (b) advise Council and the Lands Manager on matters respecting Kitsumkalum Reserve Land;
- (c) recommend to Council laws, Resolutions, Subordinate Legislation respecting Kitsumkalum Reserve Land;
- (d) assist with the flow of information on land matters between Members and Council;
- (e) assist with oversight and support to engagement processes targeted to the Members under this Land Code;
- (f) assist in the development of laws created under Part 2 of this Land Code;
- (g) assist with member approvals under Part 3 of this Land Code; and
- (h) perform other duties and functions that are ancillary to the powers, duties and functions set out in this Land Code or Subordinate Legislation or as Council may direct.

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*Internal procedures*

23.2 The Lands 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 this Land Code or any rules and procedures established by Council.

**24 Implementation of the Lands Committee**

*Lands Committee Required*

24.1 Immediately upon the coming into effect of this Land Code, Council shall appoint a Lands Committee to serve for a term of up to three (3) years until a policy governing the Lands Committee comes into force.

*Composition*

24.2 The Lands Committee shall be composed of an uneven number of no less than five (5) and no more than seven (7) members, including the Chair.

24.3 Reasonable efforts will be made to have the Lands Committee consist of:

- (a) at least one (1) Elder;
- (b) at least one (1) Youth;
- (c) a member of each of the four (4) clans;
- (d) at least one (1) member of the Kitsumkalum staff or a consultant, or both;

however, Council reserves the right to appoint none of the above persons to the Lands Committee.

**PART 7  
INTERESTS AND LICENCES IN LAND**

**25 Standards and Written Instruments**

25.1 Council may, in consultation with the Lands Committee and the Lands Manager, institute policies, processes and criteria for:

- (a) granting Allotments, Interests, including Leaseholds, Easements and Permits, and Licences in Kitsumkalum Reserve Land; and
- (b) forms, including Written Instruments, in respect of Allotments, Interests, including Leaseholds, Easements and Permits, and Licences in Kitsumkalum Reserve Land.

25.2 Interests in Kitsumkalum Reserve Land approved, created, granted or issued pursuant to the Indian Act and existing as of the date that this Land Code comes into force shall continue to have effect in accordance with their terms and conditions.

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- 25.3 Where an Interest, including a Leasehold, Easement, Permit or Certificate of Possession, or a Licence includes an action to be taken by the Minister or Canada before this Land Code comes into force the responsibility for such action after the date this Land Code comes into force shall be with Council, or if delegated by Council, the Lands Manager or his or her designate.
- 25.4 The types of Interests in Kitsumkalum Reserve Land are:
- (a) Certificates of Possession;
  - (b) Allotments;
  - (c) Leaseholds;
  - (d) Easements;
  - (e) Permits; and
  - (f) Mortgages.

## 26 Existing Interests

### *Continuation of existing Interests*

- 26.1 Any legally valid Interest or Licence in Kitsumkalum Reserve Land existing when this Land Code takes effect will, subject to this Land Code and any Laws passed under it, continue in force in accordance with its terms and conditions.

### *Voluntary Replacement of Existing Interests or Licences*

- 26.2 For greater certainty, Interests or Licences previously issued under the Indian Act shall continue in effect after the coming into force of this Land Code unless the Member or non-Member voluntarily agrees to have the Interest or Licence replaced by a new Interest or Licence.

### *Transfer of Certificate of Possession or Allotments*

- 26.3 An individual who ceases to be a Member shall, within six months of ceasing to be a Member, transfer any Certificate of Possession or Allotment they hold to Kitsumkalum or another Member.
- 26.4 Where an individual ceases to be a Member and fails to transfer their Certificate of Possession or Allotment within six months, the Certificate of Possession or Allotment shall automatically be cancelled and the subject Kitsumkalum Reserve Land shall thereupon immediately become Community Land.

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**27 No Interest Created**

- 27.1 Subject to subsection 26.1, an Interest in Kitsumkalum Reserve Land may only be created, granted, assigned or transferred by Written Instrument in accordance with this Part 7 or a Law provided for in this Land Code.
- 27.2 No person may acquire an Interest in Kitsumkalum Reserve Land by use, occupation or any other means not authorized under this Land Code or a Law.
- 27.3 A contract, instrument or agreement of any kind entered into after the date this Land Code comes into force, whether written or oral, by which a person or entity purports to create, grant, assign or transfer an Interest in Kitsumkalum Reserve Land is void if it does not comply with this Land Code or a Law.
- 27.4 No Written Instrument is valid nor shall it be forwarded to the Registry for registration or recording unless it has first been submitted to the Lands Manager or his or her designate at the Lands Department. Only the Lands Department may submit a Written Instrument for registration or recording in the Kitsumkalum Register.

**28 Leasehold in Kitsumkalum Community Land**

- 28.1 A Leasehold in Kitsumkalum Community Land for a term or possible term of fifteen (15) years or less, calculated by including any renewal or extension period, may be granted by Resolution.
- 28.2 Where Kitsumkalum proposes to grant a Leasehold in Kitsumkalum Community Land for a term or possible term of more than fifteen (15) years, calculated by including any renewal or extension period, but not more than forty-nine (49) years, Council shall schedule a Special General Meeting to decide whether the Leasehold should be granted.
- 28.3 Public Notice of the Special General Meeting shall be given to the Members at least twenty (20) days before the Special General Meeting and shall include:
  - (a) a summary of the proposed Lease;
  - (b) notification that a full copy of the proposed Lease, subject to any further non-substantive amendments, can be obtained by Members at the Kitsumkalum administration building or at the Special General Meeting;
  - (c) a statement that there will be a vote by secret ballot of the Eligible Voters present at the Special General Meeting to make a decision on whether or not to grant the proposed Leasehold; and
  - (d) the date, time and place of the Special General Meeting including specifying the time period during which voting will take place.
- 28.4 Public Notice of the Special General Meeting shall be provided to the Members.

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- 28.5 At the Special General Meeting, those members of Council or their designate shall explain the purpose and provisions of the proposed Lease and Members may ask questions and provide comments.
- 28.6 Upon completion of the discussion, the Eligible Voters, including Council members, present at the Special General Meeting shall vote by secret ballot on whether or not to grant the proposed Leasehold.
- 28.7 The granting of a Leasehold described in subsection 28.2 shall be deemed authorized if a majority of the Eligible Voters present at the Special General Meeting vote in favour of granting the proposed Leasehold.
- 28.8 The decision at the Special General Meeting shall be recorded in the Minutes and shall be evidence of the approval for granting the proposed Leasehold or rejecting the granting of the proposed Leasehold.
- 28.9 Where the proposed Leasehold is for a term or possible term longer than forty-nine (49) years and up to ninety-nine (99) years, calculated by including any renewal or extension period, the proposed Leasehold must be approved by Referendum. For clarity no Leasehold shall exceed ninety-nine (99) years.
- 28.10 The granting of a Leasehold for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved by the Referendum.
- 28.11 The results of the Referendum held under subsection 28.9 shall be evidence of approval for granting the proposed Leasehold or rejection of the proposed Leasehold.
- 28.12 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the land described in the Leasehold unless specifically included in the terms and conditions of the Leasehold.

## **29 Easements, Licences, and Permits in Kitsumkalum Community Lands**

- 29.1 Council may, by Resolution, grant Easements, Licences and Permits in Kitsumkalum Community Land.
- 29.2 Council may, by Resolution, grant Easements, Licences and Permits to utility companies or other public or governmental entities, or partnerships including limited partnerships, corporations and other entities in which Kitsumkalum has an economic interest, or for a Community Purpose for such length of term as Council, in its absolute discretion, deems appropriate. The granting of such Easements, Licences and Permits are not subject to the procedures set forth in subsections 29.3 through 29.11.
- 29.3 Subject to subsection 29.2, where Kitsumkalum proposes to grant an Easement, Licence or Permit in Kitsumkalum Community Land for a term, or possible term, of more than fifteen (15) years, calculated by including any renewal or extension period, Council shall schedule a Special General Meeting to consider whether the proposed Easement, Licence or Permit should be granted.

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- 29.4 Public Notice of the Special General Meeting shall be given to the Members at least twenty (20) days before the Special General Meeting and shall include:
  - (a) a summary of the proposed Easement, Licence, or Permit;
  - (b) notification that a full copy of the proposed Easement, Licence or Permit, subject to any non-substantive changes being made, can be obtained by Members at the Kitsumkalum administration building;
  - (c) a statement that there will be a vote by secret ballot of the Eligible Voters at a Special General Meeting to make a decision on whether or not to grant the proposed Easement, Licence or Permit; and
  - (d) the date, time and place of the Special General Meeting also specifying the time period during which voting will take place.
- 29.5 At the Special General Meeting the Council members present or their designate, shall explain the purpose and provisions of the proposed Easement, Licence or Permit and Members may ask questions and provide comments.
- 29.6 Upon completion of the discussion, the Eligible Voters, including Council members, present at the Special General Meeting shall vote by secret ballot on whether or not to grant the proposed Easement, Licence or Permit.
- 29.7 The granting of an Easement, Licence or Permit shall be deemed authorized if a majority of the Eligible Voters present at the Special General Meeting vote in favour of granting the proposed Easement or Permit.
- 29.8 The decision at the Special General Meeting shall be recorded in the minutes and shall be evidence of approval for granting the proposed Easement, Licence or Permit or rejecting granting the proposed Easement, Licence or Permit.
- 29.9 Where the proposed Easement, Licence or Permit is for a term, or possible term, longer than forty-nine (49) years and not more than ninety-nine (99) years, calculated by including any renewal or extension period, the proposed Easement, Licence or Permit must be approved by Referendum. For clarity no Easement, Licence or Permit shall exceed ninety-nine (99) years.
- 29.10 The granting of an Easement, Licence or Permit for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved by the Referendum.
- 29.11 The results of the Referendum held under subsection 29.9 shall be evidence of approval for granting or rejecting the proposed Easement, Licence, or Permit.

**30 Mortgages**

- 30.1 Subject to subsection 30.3 the holder of a Leasehold, Certificate of Possession or Allotment may, in accordance with this section, grant a Mortgage of that Leasehold, Certificate of Possession or Allotment without the written consent of Council.

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- 30.2 The holder of a Licence, Permit or Easement cannot grant a Mortgage unless agreed to by way of a Resolution.
- 30.3 A Mortgage may be granted by Written Instrument registered in the Kitsumkalum Register provided that:
  - (a) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Certificate of Possession, Allotment or Leasehold;
  - (b) there is proper legal description of the lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered or recorded in the Kitsumkalum Register; and
  - (c) in the case of a Mortgage of a Leasehold, the Mortgage term does not exceed the duration of the Leasehold.
- 30.4 Neither the Lands Department nor the Lands Manager shall be responsible or liable for ensuring that the Lease permits the Interest in the land to be mortgaged, that the Lease is in good standing or its terms have been complied with.
- 30.5 A Mortgagee shall have the right to exercise all of its rights under the Mortgage, including the right to take the place of the Mortgagor under the Leasehold, notwithstanding Section 89 of the Indian Act.

**31 Creation of Sub-interests in Kitsumkalum Reserve Land held under a Certificate of Possession or Allotment**

- 31.1 A Member holding a Certificate of Possession or an Allotment in Kitsumkalum Reserve Land may grant a Leasehold, Easement, Permit or Licence in those lands by Written Instrument registered in the Kitsumkalum Register provided that:
  - (a) The Member is the sole lawful possessor of the land or, where more than one Member holds a Certificate of Possession or an Allotment of a parcel of Kitsumkalum Reserve Land, a majority of those Members holding the Allotment agree in writing to the granting of the Leasehold, Easement, Permit or Licence;
  - (b) there is a proper legal description of the lands, and, if required, the lands have been surveyed and the survey registered in the Kitsumkalum Register;
  - (c) the Member states in writing that the terms of the Written Instrument 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 interest holder; and
  - (d) the Leasehold, Easement or Permit does not exceed ninety-nine (99) years including any extensions thereof.
- 31.2 A Member may grant a Leasehold to himself or herself in the same manner as to another person.

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- 31.3 Subject to subsection 31.1 a person holding a Leasehold in Kitsumkalum Reserve Land held under a Certificate of Possession or an Allotment may grant a Sublease, Easement, Permit or Licence in those lands by Written Instrument registered in the Kitsumkalum Register provided that:
- (a) the Interest to be granted is permitted by the terms of the Leasehold;
  - (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 Kitsumkalum Register; and
  - (c) the term of the Interest granted does not exceed the duration of the Leasehold.
- 31.4 The granting of a Leasehold in Kitsumkalum Reserve Land held under a Certificate of Possession or Allotment does not grant any Interest in the Natural Resources on or under the lands described in the Leasehold unless specifically included in the terms and conditions of the Leasehold.
- 31.5 In transactions under subsections 31.1 and 31.3 neither the Lands Department nor the Manager of Lands are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the person granting the Interest.
- 31.6 For greater certainty, without restricting the generality of subsection 14.5, neither the Lands Department nor the Lands Manager shall be responsible for determining whether a Leasehold, Sublease, Easement, Permit or Licence is in good standing or its terms have been complied with.

**32 Transfer of Interest**

- 32.1 Subject to subsection 32.2, a Member may, by a Written Instrument registered in the Kitsumkalum Register, transfer their Certificate of Possession or Allotment.
- 32.2 A Member may only transfer their Allotment or Certificate of Possession to another Member or Kitsumkalum.
- 32.3 Where a Certificate of Possession or Allotment is transferred to Kitsumkalum other than solely for the purposes of the Certificate of Possession or Allotment holder being granted a Mortgage, the Certificate of Possession or Allotment is cancelled and the Kitsumkalum Reserve Land described in the Certificate of Possession or Allotment shall become Kitsumkalum Community Land.
- 32.4 Subject to subsection 32.5, a person or entity holding an Interest in Kitsumkalum Reserve Land other than by way of Certificate of Possession or Allotment may transfer, assign or devise their Interest to any person or entity by a Written Instrument registered in the Kitsumkalum Register.
- 32.5 A Member or Kitsumkalum holding a Mortgage of a Certificate of Possession or an Allotment can only transfer or assign that Mortgage to another Member or Kitsumkalum.

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**33 Cancellation**

33.1 Council may, by Resolution, upon receiving compelling evidence or subject to an applicable ruling by a court of competent jurisdiction, confirm, cancel, discharge, amend or correct any Interest or Licence issued or allotted in error or by fraud or that has expired.

**34 Natural Resources**

*Ownership of Natural Resources*

34.1 Subject to applicable Laws and more specific provisions in this Land Code, all Natural Resources on or under Kitsumkalum Reserve Land belong to Kitsumkalum.

*Development of Natural Resources*

34.2 The use and development of Natural Resources on or under Kitsumkalum Reserve Land shall be subject to this Land Code, and other applicable Laws.

*Management of Natural Resources*

34.3 To the extent that Kitsumkalum has ownership or rights over water as recognized by federal or provincial legislation or by operation of law or due to its Aboriginal rights, including title, Kitsumkalum retains ownership and has jurisdiction to manage and regulate air, water and Natural Resource use.

*Natural Resources and Interests in Land*

34.4 Unless specifically included by an Instrument granting any new Interest, the Interest does not include any right to any Natural Resources on or under that Kitsumkalum Reserve Land.

*Prohibition on removal of Natural Resources*

34.5 No person may remove, or permit anyone to remove from Kitsumkalum Reserve Land, without written consent of Council or its authorized designate or in accordance with more specific legislation:

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

**35 Transfer and Assignment of Interests and Licences**

*Transfer and assignment of Interests or Licences*

35.1 A Member may transfer or assign an Interest or Licence in Kitsumkalum Reserve Land to another Member in compliance with this Land Code and applicable Laws.

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*Consent of Council not required*

35.2 Subject to subsection 27.4 all transfers or assignments of an Interest or Licence in Kitsumkalum Reserve Land do not require the written consent of Council, unless required by the Instrument.

*Review of Interests or Licences*

35.3 For transactions under this Part 7:

- (a) Council, the Lands Manager, and the Lands Committee are not obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions for any representation or warranty made by the individual granting the Interest or Licence; and
- (b) without restricting the generality of paragraph 35.3(a), Kitsumkalum, the Lands Department, Kitsumkalum staff, the Lands Manager nor the Lands Committee shall be responsible for determining whether an Interest, including an Easement, Leasehold or Permit or a Licence is in good standing or the terms have been complied with.

**36 Non-Application of Indian Act Provisions**

36.1 On the coming into force of this Land Code the provisions of the Indian Act set forth in section 38 of the First Nations Land Management Act, as may be amended, will no longer apply.

**37 Kitsumkalum Register**

37.1 Allotments, Interests, including Easements, Leaseholds, or Permits and Licences in, and Written Instruments which affect, or purport to affect, Kitsumkalum Reserve Land shall be registered or recorded in the Kitsumkalum Register.

37.2 Notwithstanding subsection 37.1 only those Written Instruments that are in compliance with this section 37 can be registered or recorded in the Kitsumkalum Register.

37.3 A copy of all Written Instruments that are submitted for registration or recording in the Kitsumkalum Register will be kept at the Lands Department.

37.4 Subject to this section 37, the First Nations Land Management Act and any regulations passed pursuant to that Act, the Kitsumkalum Register shall be administered in the same manner as the Reserve Land Register established under the Indian Act.

37.5 The Kitsumkalum Register shall accommodate the registration of Interests and the recording of Written Instruments pursuant to subsection 37.9 not accommodated specifically by the Indian Act, in accordance with criteria or procedures to be agreed upon by Canada and Kitsumkalum.

37.6 Transactions dealing with Interests in, or Licences on, Kitsumkalum Reserve Lands, or affecting Kitsumkalum Reserve Land, shall be filed with the Lands Department and once

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verified as technically complying with this section 37 and Kitsumkalum Law shall be forwarded to the Registry for registration or recording in the Kitsumkalum Register.

- 37.7 No Written Instrument that requires a Resolution, approval of the Lands Manager or his or her designate or approval by Eligible Voters at a Special General Meeting or in a Referendum may be registered or recorded unless evidence of that Resolution, approval or Referendum result is attached to the Written Instrument.
- 37.8 Surveys prepared in accordance with Section 39 may, subject to Laws and other applicable law, be registered or recorded in the Kitsumkalum Register subject to the approval of the form and content of same by the Lands Department.
- 37.9 Financial claims or other assertions of right which affect, or purport to affect, Kitsumkalum Reserve Land may, in accordance with Laws and other applicable law, be recorded in the Kitsumkalum Register subject to the approval of the form and content of same by the Lands Department.
- 37.10 The types of Written Instruments which may be recorded in the Kitsumkalum Lands Register under subsection 37.9 include, but are not limited to, Written Instruments relating to:
- (a) assignments of rent;
  - (b) caveats;
  - (c) certificates of pending litigation;
  - (d) court orders;
  - (e) judgments;
  - (f) Licences;
  - (g) liens;
  - (h) options to purchase;
  - (i) rights of first refusal;
  - (j) tax certificates;
  - (k) written decisions of the Minister or his or her designate;
  - (l) Laws;
  - (m) land use, subdivision, or natural resource use plans;
  - (n) this Land Code and any amendment to this Land Code; and
  - (o) such other Written Instruments as may be approved by Council by Resolution.

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- 37.11 The recording of such instruments, or other instruments, is subject to approval by the Lands Manager and the Registrar of the Registry.
- 37.12 Recording under subsection 37.10 shall not be deemed to be support for the legal validity of any claims nor the ability to take execution or other proceedings as a result of recording.

**38 Date of Grant or Transfer of Interest**

- 38.1 The grant, transfer or other disposition of an Interest in Kitsumkalum Reserve Land and the grant of a Licence, shall be effective on the date the documents are registered or recorded in the Kitsumkalum Register.
- 38.2 An Interest or Licence in Kitsumkalum Reserve Land is not enforceable unless it is registered or recorded in the Kitsumkalum Register. This subsection 38.2 is not meant to preclude *in personam* rights or causes of action that may be pursued by one party as against another party for a claim in relation to an Interest in Kitsumkalum Reserve Land.
- 38.3 Subject to subsection 38.2, registered or recorded Interests and Licences that affect the same parcel of Kitsumkalum Reserve Land have priority according to the time and date of their registration or recording and not according to the time and date of their execution.

**39 Surveys**

*Conduct of Surveys*

- 39.1 Kitsumkalum may cause or require surveys to be made of Kitsumkalum Reserve Land. Unless otherwise directed by Resolution, all surveys must be carried out in accordance with the Canada Lands Surveys Act and the Canada Lands Surveyors Act.

*Initiation of Surveys*

- 39.2 The holder of an Interest, including an Easement, Leasehold or Permit, or a Licence in or on Kitsumkalum Reserve Land may only cause surveys to be made of those lands with the concurrence of the Lands Manager, acting reasonably.

*Approved surveys deemed accurate*

- 39.3 Unless otherwise directed by Council in writing, all surveys of Kitsumkalum Reserve Land approved or confirmed by the Surveyor General of Canada and his or her designate shall be deemed for all purposes to accurately describe and identify the extent of the lands covered by each survey.

*Selection of Surveyor*

- 39.4 Any surveyor must be a licenced member in good standing with the Association of Canada Lands Surveyors or any successor entity.

*Authority of Surveyor*

- 39.5 With written permission of the Lands Manager or Council, the surveyor has the right to enter any Kitsumkalum Reserve Land for the purpose of installing control survey

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markers. A person entering lawfully occupied lands under this subsection 39.5 must provide written notice to the person occupying the land.

*Approval of Surveys*

39.6 Council must approve any survey made of Kitsumkalum Reserve Land prior to the plan being submitted for registration or recording in the Canada Lands Survey Records and the Register.

*Surveys coming into effect*

39.7 A survey respecting Kitsumkalum Reserve Land shall only become effective upon being registered or recorded in the Register.

**40 Environment and Cultural Heritage Resources**

*Interim use of Canadian Environmental Assessment Act*

40.1 Until Council enacts environmental assessment and protection laws, it shall conduct an assessment process in respect of every project on Kitsumkalum Reserve Land that requires an assessment under the Canadian Environmental Assessment Act consistent with the requirements set out in Annex 'F' of the Individual Agreement.

*Interim use of British Columbia Heritage Conservation Act*

40.2 Until Council enacts a cultural heritage resource protection law, it shall follow the *British Columbia Heritage Conservation Act* or other applicable legislation.

**41 Prohibited Activities**

*Prohibited activities*

- 41.1 Subject to any Law with more specific provisions all of the following are, unless authorized by Council in writing, prohibited on Kitsumkalum Reserve Land:
- (a) dumping, spilling, discharging, releasing or depositing any substance, liquid or gas, that is noxious, hazardous, polluting, deleterious or harmful to human health or the environment;
  - (b) any other activities resulting in contamination on Kitsumkalum Reserve Land or contaminants affecting the Natural Resources on Kitsumkalum Reserve Land; and
  - (c) any activities that have the potential to damage or otherwise impact any Kitsumkalum cultural sites or artifacts, including culturally modified trees.

**42 Certificates of Possession or Member Interests**

*Application*

42.1 For greater certainty, Certificates of Possession or Member Interests previously issued under the Indian Act shall continue to exist after the coming into force of this Land Code, subject to their having been lawfully granted.

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**43 Allotments of Kitsumkalum Reserve Land to Members**

*Policies and procedures for Allotment of Kitsumkalum Reserve Land*

- 43.1 Council shall have the authority to grant Allotments to Members provided that:
- (a) the parcel of land being allotted does not exceed one (1) acre;
  - (b) the proposed Allotment holder is not the holder, in whole or in part, of another parcel of Kitsumkalum Reserve Land; and
  - (c) the proposed Allotment holder is in compliance with all Laws.
- 43.2 Council, in consultation with the Lands Committee and the Lands Manager, shall work towards the passage of an Allotment law.

*No Allotment of Land to non-Members*

- 43.3 An individual who is not a Member is not entitled to receive an Allotment of Kitsumkalum Reserve Land or to hold a permanent Interest in Kitsumkalum Reserve Land.

**44 Transfer and Assignment of Interests, Certificates of Possession and Allotments**

*Transfer of Member Interest, Certificates of Possession and Allotments*

- 44.1 A Member may transfer or assign an Interest, including a Certificate of Possession or Allotment, in Kitsumkalum Reserve Land to another Member without community approval or the consent of Council.

**45 Residency and Access Rights**

*Right of residence*

- 45.1 The following individuals have a right to reside on Kitsumkalum Reserve Land:
- (a) Members and their Spouses and children unless Council determines, acting reasonably, that the Member, their Spouse and children or some of them, constitute a danger to the health and safety to the Kitsumkalum community or its Members;
  - (b) holders of Leaseholds and Permits, in accordance with the provisions of the Instrument; and
  - (c) an individual authorized in writing by Council or by a Law.

*Right of Access*

- 45.2 The following individuals have a right of access to Kitsumkalum Reserve Land:
- (a) Members and their Spouses and children unless Council determines, acting reasonably, that the Member, their Spouse and children or some of them,

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constitute a danger to the health and safety to the Kitsumkalum community or its Members;

- (b) holders of Leaseholds, Easements, Permits and Licences in accordance with the provisions of the Instrument;
- (c) an individual who is authorized by a government body or any other public body, established by or under an enactment of Kitsumkalum, the Parliament of Canada or the Province of British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey provided that the individual received written authorization from Council; or
- (d) an individual authorized in writing by Council or a designate of Council, or by a Law.

#### *Public access*

45.3 Any individual may have access to Kitsumkalum Reserve Land for any social or business purposes, if:

- (a) the individual complies with all applicable laws and Kitsumkalum Laws and policies; and
- (b) no Resolution has been enacted barring that individual or a class of individuals that the individual is a member of from accessing Kitsumkalum Reserve Land.

#### *Use of Roads*

45.4 Any individual may have the right of access to Kitsumkalum public roads, subject to this Land Code and Laws.

#### *Trespass*

45.5 Any individual, who resides on, enters or remains on Kitsumkalum Reserve Land, other than in accordance with subsections 45.1 through 45.4 of this Land Code, is guilty of an offence.

#### *Civil remedies*

45.6 All civil remedies for trespass are preserved.

### **46 Transfers on Death**

#### *Indian Act application*

46.1 Until Kitsumkalum exercises jurisdiction in relation to wills and estates, the provisions of the Indian Act dealing with wills and estates shall continue to apply with respect to Interests in Kitsumkalum Reserve Land.

#### *Registration of transfer*

46.2 An individual who receives an Interest in Kitsumkalum Reserve Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or

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her designate, pursuant to the Indian Act, is entitled to have that Interest registered in the Kitsumkalum Register.

*Disposition of Interest*

46.3 If no provision has been made by the deceased Member of the disposition of the Interest to another Member, the following rules apply:

- (a) the Minister or his or her delegate may make application to Council requesting that an Instrument evidencing lawful possession or occupation of Kitsumkalum Reserve Land be issued; or
- (b) a certificate for an Interest or other instrument may be issued in accordance with procedures established by Council, or application of the Minister or his or her delegate, if the beneficiary or purchaser is a Member.

**PART 8  
DISPUTE RESOLUTION**

**47 Dispute Resolution Process**

*Informal resolution to Disputes*

47.1 Kitsumkalum intends that wherever possible, a dispute in relation to Kitsumkalum Reserve Land or the interpretation of a provision in the Land Code will be resolved through informal discussion by the parties to the dispute and nothing in this Part is intended to limit the parties' ability to resolve the dispute informally.

47.2 It is the expectation that parties to a dispute under this Part will be treated fairly and be given a full opportunity to present their case.

*Application of this Part to disputes*

47.3 This Part applies to:

- (a) disputes involving a Member who claims an Interest;
- (b) disputes involving a person who has a dispute with another person or with Kitsumkalum in relation to the possession, use or occupation of Kitsumkalum Reserve Land including the right to reside on or have access to Kitsumkalum Reserve Land;
- (c) Kitsumkalum when disputing the possession, use or occupation of Kitsumkalum Reserve Land;
- (d) disputes about whether or not a person is in a conflict of interest as set out in this Land Code;
- (e) disputes in relation to Expropriation as set out in Section 15; and
- (f) disputes in relation to interpretation of provisions in the Land Code.

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*Disputes that cannot be resolved under this Part*

47.4 This Part does not apply to disputes of decisions:

- (a) relating to housing allocations; or
- (b) of the Council to grant, or refuse to grant, an Interest or Licence in Kitsumkalum Reserve Land.

*Resolution of disputes that originated before Land Code*

47.5 Disputes that originated before this Land Code came into effect may be decided under this Part, at the discretion of Council.

*Procedure to File a Dispute*

47.6 An individual who wishes to resolve a dispute with another individual or Kitsumkalum in relation to the matters set forth in subsection 47.2 may file a written notice of dispute setting out:

- (a) the nature of the dispute;
- (b) a statement outlining the facts and supporting arguments of the dispute claim; and
- (c) the relief that is sought.

*Mediation*

47.7 Parties that have been unable to resolve a dispute through informal discussion in accordance with subsection 47.1 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 within thirty (30) days of the dispute not being resolved by informal discussion;
- (b) if the parties are unable to agree on a mediator, the parties may request the British Columbia International Commercial Arbitration Centre to appoint a mediator; and
- (c) the mediator to the dispute shall set the rules and procedures for the mediation.

*Arbitration*

47.8 If the parties are unable to resolve the dispute through informal discussion or mediation, or the parties are not able to agree on a mediation process, the parties may attempt to resolve the dispute through arbitration, or one or more parties to a dispute may give written notice of its intention to submit the dispute to arbitration to the other party or parties (the "Notice") in accordance with the following procedure:

- (a) the parties to the dispute shall jointly select an Arbitrator within thirty (30) days of the parties agreeing to refer the dispute to arbitration or the date of the Notice;

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- (b) if the parties are unable to agree on an Arbitrator within the time set forth in paragraph 47.8 (a) a party to the dispute may request the British Columbia International Commercial Arbitration Centre to appoint an Arbitrator; and
- (c) the Arbitrator of the dispute shall set the rules and procedures for the arbitration. The decision of the Arbitrator shall be final and binding on the parties.

*Assumption of Costs*

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

*Kitsumkalum not liable for costs.*

47.10 For greater certainty, Kitsumkalum shall not be liable or responsible for the costs of any dispute resolution process under this Part 8 where Kitsumkalum is not a party.

*Rules and Procedures*

47.11 Council may pass such Laws, Resolutions, rules, policies and procedures, approve of forms and impose reasonable fees not inconsistent with this Land Code, as may be necessary to give effect to this Part.

**PART 9  
OTHER MATTERS**

**48 Liability**

*Liability Coverage*

48.1 Kitsumkalum shall arrange, maintain and pay insurance coverage for its officers and employees engaged in carrying out any matter related to Kitsumkalum Reserve Land to indemnify them against individual liability arising from the performance of those duties.

*Extent of coverage*

48.2 The extent of the insurance coverage shall be determined by the person authorized by Council.

**49 Offences**

*Application of the Criminal Code*

49.1 Unless a different procedure is provided for by a Law, the summary conviction procedures of part XXVII of the Criminal Code, as amended from time to time, apply to offences under this Land Code or under a Law.

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*Fines & Imprisonment*

49.2 Unless some other procedure is provided for by a Law, any person who commits an offence under this Land Code or a Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both a fine and imprisonment, provided however, that offences related to Kitsumkalum environmental protection Laws may carry penalties consistent with similar environmental protection laws in force in Canada.

*Other Offences and Penalties*

49.3 Despite subsection 49.1 of this Land Code:

- (a) a Law may provide for fines for violation of a specified provision of the Law; and
- (b) a Law may provide for a variety of enforcement mechanisms including ticketing, stop work orders, restorative orders, and fines.

*Alternative Enforcement Mechanisms*

49.4 For greater certainty, Council may enact Laws:

- (a) to enable appropriate enforcement issues and disputes to be dealt with through a community justice process; and,
- (b) to create a ticketing process or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

*Courts*

49.5 This Land Code and Laws are to be enforced by a court of competent jurisdiction which shall include, but not be limited to the Provincial Court of British Columbia, the Supreme Court of British Columbia and the Federal Court of Canada, Trial Division and those courts are authorized to take jurisdiction in relation to the matters set out in this Land Code unless jurisdiction has been granted to a Justice of the Peace or through a community justice process pursuant to a Law or Laws.

**50 Revisions to Land Code***Revisions*

50.1 Member approval is not required for revisions made to this Land Code that do not change the substance of this Land Code. Council may, from time to time, revise this Land Code. Revisions include:

- (a) an amendment of the description of Kitsumkalum Reserve Land subject to this Land Code and Individual Agreement;
- (b) a reference in this Land Code to a clause or section in another act or document that was amended and resulted in renumbering;

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- (c) a reference in this Land Code to an Act 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 legislation;
- (e) minor improvements in the language as may be required to bring out more clearly the intention of Kitsumkalum without changing the substance of this Land Code; and
- (f) correcting or editing, grammatical or typographical errors in the Land Code.

**51 Amendments to the Land Code**

51.1 Other than the revisions to this Land Code set forth in subsection 50.1, Member approval by Referendum in accordance with Part 3 of this Land Code shall be obtained for an amendment to this Land Code.

**52 Commencement**

*Preconditions*

52.1 This Land Code shall take effect if the Eligible Voters approve this Land Code and the Individual Agreement with Canada and this Land Code has been certified by the verifier pursuant to the Framework Agreement.

*Commencement date*

52.2 This Land Code shall take effect on the first day of the month following the certification of this Land Code by the verifier.

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