



<sup>Annex</sup>  
This is Exhibit "1" referred to in the  
Affidavit of A.J. Gross  
sworn before me at Kelowna, British  
Columbia this 25<sup>th</sup> day of November 2019.

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**Xwemalhkwu**  
**Homalco First Nation**  
**Land Code**

Dated for Reference:  
**July 31, 2019**

Alison Trenholm

RECEIVED  
3/1/19  
For Verification

Certified a true copy  
this 1<sup>st</sup> day of August, 2019  
  
A Commissioner for taking Affidavits within British Columbia

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NOV 25 2019

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## **HOMALCO FIRST NATION LAND CODE**

### **Preamble**

**Whereas** Homalco has used, occupied and benefited from their traditional territory since time immemorial and has never ceded, surrendered, or in any way relinquished Aboriginal title to their traditional territory and shall continue to assert their Interests and exercise their Aboriginal rights over their traditional territory;

**Whereas** Homalco honours their connection to their lands, resources and the elements of the natural world that provide for their physical and spiritual needs, now and for generations to come;

**Whereas** Homalco recognizes their responsibility to protect their lands and resources for future generations and to protect the rights of Homalco and their Members;

**Whereas**, through this *Land Code*, Homalco shall exercise their inherent right of self-government over their Homalco Lands, Natural Resources and airspace, and provide for governance that is accessible, stable, effective, accountable and transparent in relation thereto;

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

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

**Whereas**, rather than have Homalco Lands and resources managed on the behalf of Homalco under the *Indian Act*, Homalco wishes to govern their Homalco Lands and resources by ratifying the *Framework Agreement on First Nation Land Management*, entered into between Canada and fourteen First Nations on February 12, 1996, as amended and ratified on behalf of the Government of Canada by the *First Nations Land Management Act*, S.C. 1999, c. 24 and amendments thereto; and

**NOW THEREFORE, THIS HOMALCO FIRST NATION LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL HOMALCO LAND LAW OF THE HOMALCO.**

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## **PART 1 – PRELIMINARY MATTERS**

### **1.0 Title**

1.1 The title of this enactment is the *Homalco First Nation Land Code* ("**Land Code**").

### **2.0 Definitions**

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

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

**"Aboriginal and treaty rights"** are those rights affirmed by section 35 of the Constitution Act of Canada, 1982;

**"Allotment"** means an Interest which is granted to a Member pursuant to section 26.2 of this *Land Code* for residential purposes; or, prior to the date this *Land Code* comes into force and effect, those Homalco Lands that have been lawfully granted by Council to a Member, with approval of the Minister, under section 20 of the *Indian Act*;

**"Arbitrator"** means an individual who is a practicing member in good standing of the British Columbia Arbitration and Mediation Institute or its successor, or a similar professional arbitrator or mediation body or entity or a person who has been designated as an acceptable arbitrator in accordance with section 44.1 of the *Framework Agreement*;

**"By-law"** means a law or regulation that has been enacted by Council in accordance with this *Land Code*, or enacted pursuant to section 81 of the *Indian Act*;

**"Calculation of Time"** applies to a law and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument:

- (a) If the time for doing an act falls or expires on days in which Homalco closes its offices, the time is extended to the next day that is not a Homalco closure day,
- (b) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday,
- (c) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open,
- (d) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded,
- (e) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included,

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- (f) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month, and
- (g) A specified time of day is a reference to Pacific Standard time, unless Daylight Saving time is being used or observed on that day;

**"Certificate of Occupancy (or Occupancy)"** means the right to occupy a parcel of Homalco Lands, allotted to a Member pursuant to with section 20(5) of the *Indian Act*, prior to the enactment of this *Land Code*;

**"Certificate of Possession"** means an exclusive right of possession to a parcel of Homalco Lands, allotted to a Member in accordance with section 20(1) or section 20(3) of the *Indian Act* prior to the enactment of this *Land Code*;

**"Community Lands"** means any Homalco Lands in which all Members have a common interest but expressly does not form part of an Allotment;

**"Community Meeting"** means an information meeting held in accordance with section 17 of this *Land Code*, for the purpose of providing Members with the opportunity to consider a specific Homalco Land Law or land matter;

**"Community Purpose"** means a purpose intended to provide a facility, benefit or support for Members or Persons residing on Homalco Land;

**"Community Ratification Process"** means the Homalco community approval process that is used to ratify this *Land Code* and Individual Agreement, as required under the *Framework Agreement* and the *First Nations Land Management Act*;

**"Conflict of Interest"** arises in a situation wherein a person or organization's directly or indirectly is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another, such as in the case of a member of Council acting in their own personal interest or failing to disclose a personal interest which may adversely affect a duty owed by the member of Council to make decisions for the benefit and welfare of Homalco.

**"Council"** means the duly elected Chief and Council of Homalco or any successor elected government of Homalco;

**"Easement"** means an Interest in Homalco Lands that gives one Person (the "grantee") the right to use Homalco Lands of another (the "grantor") for a Right of Way or to provide utility or other service or right of access and egress by the grantee over the grantor's land. An Easement does not confer any right of exclusive possession in Homalco Lands to the grantee; nor does it restrict the rights of the grantor of the Easement beyond that required to give effect to the Easement granted;

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**“Eligible Voter”** means a Member who, as of the date of either a Special General Meeting or Referendum:

- (a) has attained the age of eighteen (18) years,
- (b) is listed on the Homalco Band Membership list, and
- (c) is included on the eligible voters list;

**“Expropriation”** means the taking by Homalco of an Interest in Homalco Lands for a Community Purpose, without the consent of the Interest holder, through a process established by Homalco Land Laws enacted in accordance with section 43 of this *Land Code*;

**“First Nation Land Register”** means the register maintained by the Department of Indigenous Services Canada pursuant to section 25 of the Act, or any successor registrar or registry designated by the Council and subsequently maintained by Homalco under this *Land Code*;

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

**“Heritage Site”** means a parcel of Homalco Lands that is of cultural, historical, archaeological, anthropological or spiritual importance to Homalco and is designated by Homalco as a Heritage Site in a Land Use Plan of Homalco;

**“Homalco”** (also known as the Homalco Nation or Homalco Band) means the Homalco First Nation and its Members;

**“Homalco Band Membership List”** means the list maintained by Homalco that contains the names of all Members, which List is to be provided to and maintained at Indigenous Services Canada (the successor of Indian Affairs and Northern Development Canada) until such time as Homalco assumes control of its Membership List;

**“Homalco Lands”** means any parcel of Homalco reserve land as described in the Individual Agreement that is subject to this *Land Code* and any Homalco Lands added thereafter in compliance with this *Land Code*, and includes the following Homalco reserve lands:

- (a) Homalco 1 (7906) (FB42041),
- (b) Homalco 2 (7907) (FB42042),
- (c) Homalco 2A (7908) (FB42043),
- (d) Potato Point 3 (7909) (FB42044),
- (e) Orford Bay 4 (7910) (FB42045),
- (f) Mushkin 5 (7911) (FB42046),
- (g) Mushkin 5A (7912) (FB42047),
- (h) Aupe 6 (7913) (FB42048),

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- (i) Aupe 6A (7914) (FB42049),
- (j) Bartlett Island 7 (7915) (FB42050),
- (k) Bear Bay 8 (7916) (FB42050), and
- (l) Homalco 9 (9038) (FB42052);

**"Homalco Land Laws"** means a laws or regulations enacted by the Council in accordance with this *Land Code*, but does not mean or include a Resolution as defined in this section 2.1 of this *Land Code*;

**"Homalco Law Register"** means the registry which records and contains a copy of all Homalco Land Laws, By-laws, Resolutions and other Laws of Homalco, and is accessible to Members from Monday to Friday between the hours of 9:00 a.m. to 4:00 p.m.;

**"Immediate Family"** means children, parents, grandparents, aunts (aunties), uncles, cousins, nieces and nephews;

**"Indian Act"** means the *Indian Act*, R.S.C.1985, c. I-5, as amended from time to time;

**"Indians and Lands Reserved for Indians"** as defined by section 91(24) of the Constitution Act, 1867;

**"Individual Agreement"** means the individual transfer agreement entered into between Homalco and the Government of Canada pursuant to section 6.1 of the *Framework Agreement* and subsection 6(3) of the *First Nations Land Management Act*;

**"Incapacity"** means an individual who has been determined to be mentally incapable by a Court or other proper authority or determined to be mentally incapable of handling their own affairs in a written opinion of two physicians;

**"Interest or Interests"** means any interest, right or estate of any nature in or to Homalco Land or Homalco Lands, and includes an allotment, leasehold, easement, mortgage, licence, right of way or permit but expressly does not include title to that land, or the Natural Resources in, on, under or over Homalco Lands as defined in this section 2.1 of this *Land Code*;

**"Jurisdiction"** means law-making authority and includes the geographic area of land over which such law-making authority may or is entitled to be exercised and/or the Persons over whom such law-making authority may or is entitled to be exercised;

**"Law"** means a law enacted by Homalco or laws enacted by the Government of Canada or the Government of British Columbia, respectively as may be applicable;

**"Land Code"** means this *Homalco First Nation Land Code* that sets out the basic provisions regarding the exercise of Homalco rights and powers over its Homalco Lands;

**"Lands Governance Committee"** means the Homalco Lands Governance Committee established under section 23 of this *Land Code*;

**"Land Governance Committee Meeting"** means a duly convened meeting of the Lands Governance Committee pursuant to section 23.3 of this *Land Code*;

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**“Lands Governance Director”** means an individual appointed, pursuant to section 21 of this *Land Code*, to oversee the day-to-day operations of the Homalco Lands Governance Office, which includes this *Land Code* and any Homalco Land Laws;

**“Lands Governance Office”** means the Homalco Lands Governance Office established by Council to assist in the governance, management and administration of Homalco Lands, Homalco Land Laws and this *Land Code*;

**“Land Use Plan”** means a plan that provides for the development, conservation and utilization of all or a portion of Homalco Lands or means a plan that addresses housing, transportation, parks, economic development, infrastructure and services, social, cultural, environmental and other needs in the use and development of Homalco Lands or otherwise designates Heritage Sites on Homalco Lands as defined in this section 2.1 of this *Land Code*;

**“Lease”** means a written instrument setting out terms and condition of a leasehold interests;

**“Leasehold”** means an exclusive right to use and possess Homalco Lands upon agreed terms and conditions;

**“Licence”** means a written instrument that grants to a Person a right of use, possession or occupancy of Homalco Lands other than an Interest in or on such lands, in whole or in part;

**“Location (Locatee) Ticket”** means an interest in or on a particular plot of Homalco Lands,

**“Majority”** means fifty per cent plus one (50% + 1) of eligible voters in attendance at a Special General Meeting or a Referendum;

**“Mediator”** means an individual who:

- (a) is a practicing member in good standing of the British Columbia Mediation Roster Society, its successor, or a similar body, or
- (b) has been designated as an acceptable persons willing to act as mediators in accordance with section 44.1 of the *Framework Agreement*;

**“Member”** means an individual whose name appears on the Homalco Band Membership List;

**“Mentally Incompetent”** means and includes an individual who is deemed incapable as defined in this Section 2.1 under the heading “Incapacity”;

**“Minister”** means the Minister of Indigenous Services Canada, or Its successor representative of that office, branch or department of the Government of Canada;

**“Minutes”** means the official record of the proceedings of a meeting;

**“Mortgage”** means a written instrument by which an Interest in Homalco Lands is, in any manner, conveyed, assigned, pledged or charged as security for the payment of money or money’s worth to be discharged, re-conveyed, reassigned or released on satisfaction of the debt which is the subject of the Mortgage;

**“Natural Resources”** means but is not limited to all minerals, trees, rocks, sand, gravel, clay, coal, petroleum oil, gas and gases, substances, groundwater, water, vegetation or animals

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found on, in, under or over Homalco Lands (including the air and air space over or on Homalco Lands) which, when removed or interfered with, has or may have an economic or other value to Homalco;

**"Other Laws as Applicable"** means those Laws defined under the heading "Law" in this section 2.1 of this *Land Code*;

**"Permit"** means a non-exclusive right to use, occupy or take Natural Resources from Homalco Lands for a specified term and upon specific conditions;

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

**"Quorum of Council"** is determined by the number of Members contained in the Membership List at the relevant time and date, the current quorum of Council being consisted of 3 duly elected members of Council;

**"Referendum"** means a ratification vote held in accordance with Part 10 of this *Land Code* to determine whether eligible voters approve a matter relating to this *Land Code*;

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

**"Right of way"** means a written instrument that grants or confers to a Person a right of use, possession or occupancy of Homalco Lands other than an Interest in or on such lands, in whole or in part, in some way which may have the effect of partially restricting an owner's use of the affected portions of land;

**"Special General Meeting"** means a meeting held in accordance with sections 18 and 19 of this *Land Code*, for Members to consider and make a decision on a Homalco Land Laws or land matters;

**"Sublease"** means a Leasehold in which the Person transferring the Interest is the lessee in a prior existing Lease;

**"Unregistered Interest"** means any unregistered interest in or on Homalco Lands, as defined under the heading "Homalco Lands" of section 2.1 of this *Land Code*;

**"Written Instrument"** means an instrument in writing which purports to create, grant, assign or transfer an Interest in Homalco Lands.

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

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### 3.0 Interpretation

- 3.1 Only land that is a reserve under subsection 2(1) of the *Indian Act* set apart by Her Majesty the Queen in right of Canada for the use and benefit of Homalco shall be governed under this *Land Code*.
- 3.2 Legal title to all Homalco reserve land shall continue to be held in the name of Her Majesty the Queen in right of Canada for the use and benefit of Homalco.
- 3.3 A reference to “Homalco Lands” means all rights in, on, over and under Homalco Lands and its Natural Resources and includes:
- (a) the water, beds underlying water, the foreshore, water lots, riparian rights, and renewable and non-renewable Natural Resources belonging to that Homalco Lands, to the extent that these are under the jurisdiction of Homalco or Canada;
  - (b) minerals, subsurface resources and all renewable and non-renewable resources belonging to that land, to the extent that these are under the jurisdiction of Homalco or Canada
  - (c) air and air space on or over Homalco Lands;
  - (d) all Interest granted by her Majesty the Queen in right of Canada that are listed in the Individual Agreement; and
  - (e) all Interest granted by Homalco after this *Land Code* comes into effect.
- 3.4 The structures, organizations and procedures established by or under this *Land Code* shall be interpreted in favour of the culture, traditions, practices and customs of Homalco, unless otherwise provided.
- 3.5 The language of Homalco may be used to clarify the meaning of any provision in this *Land Code*, if the meaning of that provision is not otherwise clear in English.
- 3.6 In this *Land Code*:
- (a) all words shall be interpreted or construed liberally and in a fair, large and generous manner;
  - (b) the use of the word “shall” denotes an obligation that, unless this *Land Code* provides to the contrary, shall be carried out as soon as practicable after this *Land Code* comes into effect or the event that gives rise to the obligation occurs;
  - (c) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
  - (d) headings and subheadings are for convenience only, do not form a part of this *Land Code* and in no way define, limit, alter or enlarge the scope or meaning of any provision of this *Land Code*;

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- (e) a reference to a statute includes every amendment to it, every regulation made under it and any Law enacted in substitution for it or in replacement of it;
  - (f) the use of the singular includes the plural, and the use of the plural includes the singular;
  - (g) the use of binary genders (the masculine and the feminine) shall not preclude the use of non-binary genders;
  - (h) where the time limit for the doing of an act expires or falls on a Saturday or Sunday or on a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
  - (i) where the time limit for the doing of an act falls on a day when the Lands Governance Office is not open during regular business hours, the act may be done on the next day that the Lands Governance Office is open;
  - (j) where there is reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded; and
  - (k) the principles set out in the Preamble to this *Land Code* may be used liberally and in a fair, large and generous manner to interpret or construe this *Land Code*.
- 3.7 If there is an inconsistency or conflict between this *Land Code* and any Homalco Land Laws, this *Land Code* prevails to the extent of the inconsistency or conflict.
- 3.8 If there is an inconsistency or conflict between this *Land Code* and the *Framework Agreement*, the *Framework Agreement* shall prevail to the extent of the inconsistency or conflict.
- 3.9 This *Land Code* does not alter, change, abrogate or derogate:
- (a) the by-law powers of Council enacted pursuant to section 81 of the *Indian Act* and/or any successor Homalco law enacted by Council,
  - (b) the self-governance powers under treaty or under any constitutional agreement with Government of Canada;
  - (c) the Aboriginal title of Homalco over their traditional territory;
  - (d) any Aboriginal, treaty, inherent rights or other rights or freedoms that pertain now or in the future to Homalco or its Members; or
  - (e) the fiduciary relationships between Her Majesty the Queen in right of Canada, Homalco and its Members.
- 3.10 This *Land Code* is not intended to affect the eligibility of Homalco or any Member to receive services or participate in such public or Aboriginal or Indigenous programs as may be established from time to time by either Canada or the Province, to the extent that Homalco has not assumed responsibility for such services or programs.

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## 4.0 Authority to Govern

- 4.1 By enacting this *Land Code*, Homalco is reaffirming its traditional Homalco teachings that speak to the special responsibility to care for and respect its Homalco Lands and the Natural Resources in, on, over and under those lands, which has been the obligation of Members and their ancestors since time immemorial.
- 4.2 The authority of the Homalco to govern Homalco Lands and its Natural Resources flows from the Creator to the Homalco People, from Homalco's Aboriginal title and Homalco's inherent right to self-determination and self-government as evidenced by Homalco's culture, traditions, customs and laws.
- 4.3 The authority of Homalco to govern by Council flows from the Homalco People to Council, being consistent with Homalco's culture, traditions, customs and laws.
- 4.4 Through this *Land Code*, Homalco will, in part, be exercising Homalco's inherent right of self-determination and to self-government by providing governance of Homalco Lands that is accessible, stable, effective, accountable and transparent to its People.
- 4.5 For any purpose related to Homalco Lands, Homalco has the legal capacity necessary to exercise its powers and perform its duties and functions under this *Land Code* and in particular, may:
- (a) acquire and hold property;
  - (b) borrow money;
  - (c) enter into contracts;
  - (d) expend and invest money; and
  - (e) be a party to legal proceedings.

## 5.0 Purpose

- 5.1 The purpose of this *Land Code* is to set out the rules, policies, practices, procedures and administrative structures that apply to Homalco Lands and the manner in which Homalco shall exercise authority over those Homalco Lands.
- 5.2 The *Framework Agreement* is ratified and confirmed on the date that this *Land Code* is in force and effect.

## 6.0 Description of Homalco Lands

- 6.1 The lands that are subject to this *Land Code* are:
- (a) Homalco 1 (7906) (FB42041);

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- (b) Homalco 2 (7907) (FB42042);
- (c) Homalco 2A (7908) (FB42043);
- (d) Potato Point 3 (7909) (FB42043);
- (e) Orford Bay 4 (7910) (FB42045);
- (f) Mushkin 5 (7911) (FB42046);
- (g) Mushkin 5A (7912) (FB42047);
- (h) Aupe 6 (7913) (FB42048);
- (i) Aupe 6A (7914) (FB42049);
- (j) Bartlett Island 7 (7915) (FB42050);
- (k) Bear Bay 8 (7916) (FB42051);
- (l) Homalco 9 (9038) (FB42052); and
- (m) such other lands as may be described in Appendix "G" to the Individual Agreement, from time to time.

6.2 Council shall hold Community Meetings in accordance with section 17 of this *Land Code*, prior to amending the description of the Homalco Lands set out in the Individual Agreement that is subject to this *Land Code*.

6.3 Subject to section 6.2 of this *Land Code*, Council may at any time by Resolution:

- (a) amend the description of Homalco Lands in the Individual Agreement; or
- (b) declare reserve lands of Homalco to be subject to this *Land Code*.

6.4 The definition of "Homalco Lands" in section 2.1 and the description of Homalco Lands in section 6.1 of this *Land Code* are not intended, and should not be interpreted or construed as an admission by Homalco that those lands are the only lands to which Homalco is entitled under its Aboriginal title or treaty rights.

## **PART 2 – HOMALCO LEGISLATION**

### **7.0 General**

7.1 Council may, in accordance with this *Land Code*, make Homalco Land Laws respecting:

- (a) the development, conservation, protection, preservation, management, use, possession and occupancy of Homalco Lands;
- (b) any Interest in relation to Homalco Lands;

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- (c) any matter necessary to give effect to this *Land Code*; and
- (d) any matter necessary or ancillary to the making of Homalco Land Laws.

7.2 Council may make Homalco Land Laws including:

- (a) authorization, regulation, control and prohibition of Homalco Lands use, zoning, subdivision control and Homalco Lands development;
- (b) the setting aside and regulation of Heritage Sites, including but expressly not limited to archeological assessment and protection of archaeological and cultural resources
- (c) the setting aside and regulation of wildlife refuges;
- (d) the creation, regulation and prohibition of Interests within Homalco Lands;
- (e) environmental assessment and protection;
- (f) economic development;
- (g) setting aside lands for Community Purposes or works;
- (h) to provide for community health and safety;
- (i) procedures that apply to the transfer, testamentary disposition or succession of an Interest in Homalco Lands;
- (j) rules, procedures and rights respecting the expropriation of Interests in Homalco Lands;
- (k) the provision of local services in relation to Homalco Lands and the imposition of fair and equitable user charges;
- (l) the purchase, acquisition or sale of lands in accordance with the *Indian Act* and this *Land Code*;
- (m) the enforcement of Homalco Land Laws;
- (n) the provision of services for the Resolution, outside of courts, of disputes in relation to Homalco Lands;
- (o) the removal and punishment of an individual trespassing on Homalco Lands or accessing Homalco Lands for a prohibited purpose or otherwise in contravention of this *Land Code*;
- (p) public nuisance and private nuisance;
- (q) the regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (r) conduct of surveys;

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- (s) setting aside and regulation of parks, parklands and recreational lands;
- (t) regulation of the construction, maintenance and management of roads, water courses, storm drains, bridges, water diversions, ditches, fences and other local and public works within Homalco Lands;
- (u) the regulation of traffic and transportation within Homalco Lands;
- (v) the regulation of air and air space on or over Homalco Lands;
- (w) creation of management and administrative bodies or agencies;
- (x) regulation of hunting, fishing, management and protection of fish, wildlife and their habitat within Homalco Lands;
- (y) regulation of use and storage of fireworks, firearms, weapons and hazardous materials of substances within Homalco Lands;
- (z) regulation of timber harvested on Homalco Lands including but expressly not limited to the designation of cut areas, re-trees and/or the implementation of fees for stumpage; and
- (aa) administrative appeals for a decision to grant or refuse to grant Interests within Homalco Lands.

7.3 In addition to Homalco Land Laws, Council may make other regulatory instruments, including, but not limited to, rules, regulations, standards, codes and policies in relation to Homalco Lands.

7.4 Council shall develop, review, approve and enact all Homalco Land Laws in accordance with this *Land Code* and any power or discretion exercised by the Council, the Lands Governance Director, the Lands Governance Committee or other individuals or body established or authorized under this *Land Code* must be exercised on behalf of, and for the benefit and protection of Homalco.

## 8.0 Emergency Homalco Land Laws

8.1 Notwithstanding sections 10.0 to 12.6 of this *Land Code*, Council may enact Homalco Land Laws by Resolution if Council is of the opinion that the Homalco Land Law is needed urgently:

- (a) for public health and safety; or
- (b) to protect Homalco Lands; or
- (c) to protect Homalco Members; or
- (d) in the case of an emergency event or circumstance.

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8.2 A Homalco Land Law enacted under section 8.1 of this *Land Code* expires one hundred eighty (180) days after its enactment, unless it is re-enacted in accordance with this Part.

## 9.0 Initiating the Development of Homalco Land Laws

9.1 A Homalco Land Law may be proposed to Council by:

- (a) a member of Council;
- (b) the Lands Governance Committee;
- (c) the Lands Governance Director; or
- (d) the Land Code Registrar appointed under this *Land Code*.

9.2 A proposal to develop a Homalco Land Law shall set out:

- (a) a summary of the problem or initiative that is to be addressed in the Homalco Land Law; and
- (b) the objectives or goals of the Homalco Land Law.

9.3 Where Council receives a proposal to develop a Homalco Land Law, Council shall:

- (a) make a decision, by Resolution, on whether to develop that Homalco Land Law; and
- (b) where Council decides to develop that Homalco Land Law, prepare or cause to be prepared a draft of that Homalco Land Law.

## 10.0 First Reading: Acceptance in Principle

10.1 Upon the completion of a draft Homalco Land Law, Council shall table it at a regular meeting of Council and pass a Resolution to:

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

10.2 In the event that the Council resolves to reject a draft Homalco Land Law pursuant to section 10.1(b) of this *Land Code*, the Council shall ensure the Resolution regarding the rejection:

- (a) sets out the reasons for the rejection;
- (b) is clearly documented in the Minutes of the Council meeting; and

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- (c) is available to Members by request.

## 11.0 Second Reading: Community Meeting

- 11.1 Where Council accepts a draft Homalco Land Law in principle, they shall schedule and hold a Community Meeting in accordance with section 17 of this *Land Code* for the purpose of informing Members about a draft Homalco Land Law, pursuant to section 11.2 of this *Land Code*.
- 11.2 At a Community Meeting for the purpose of informing Members of a draft Homalco Land Law, Council shall:
  - (a) make copies of the draft Homalco Land Law available to all Members who are in attendance;
  - (b) ensure that the purpose and provisions of the draft Homalco Land Law are explained to all Members who are in attendance;
  - (c) invite questions and comments by Members who are in attendance;
  - (d) ensure the questions and comments made by Members who are in attendance are documented for Council to consider; and
  - (e) where appropriate, may alter, amend or change the draft Homalco Land Law.

## 12.0 Final Draft and Third Reading: Enactment of the Law

- 12.1 Council shall:
  - (a) at the Council meeting following the twentieth (20<sup>th</sup>) day after a Community Meeting for the purpose of consulting with Members on a draft Homalco Land Law, consider the comments received from Members, the needs of the community, and other relevant matters, and as soon as practical thereafter, prepare or cause to be prepared a final draft Homalco Land Law; and
  - (b) where substantive changes to a final draft Homalco Land Law are made, schedule another Community Meeting to provide Members an opportunity to ask questions and make comments regarding the final draft Homalco Land Law.
- 12.2 Council shall provide Members notice of the Council meeting where they shall consider enacting a final draft Homalco Land Law by posting a written notice on the Homalco website and in the public areas of Homalco Lands and Homalco Administration Offices at least fourteen (14) days before the meeting, which sets out:
  - (a) a summary of the final draft Homalco Land Law;
  - (b) notification that a full copy of the final draft Homalco Land Law can be obtained by Members at the Lands Governance Office;

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- (c) a statement that the final draft Homalco Land Law shall be considered for enactment at the Council meeting; and
- (d) the date, time and place of the Council meeting at which Council shall consider the final draft Homalco Land Law.

12.3 At the Council meeting stated in a written notice posted in accordance with section 12.2 of this *Land Code*, Council shall, acting reasonably, consider the final draft Homalco Land Law and by Resolution:

- (a) enact the final draft Homalco Land Law;
- (b) reject the final draft Homalco Land Law;
- (c) make changes to the final draft Homalco Land Law;
- (d) direct that another Community Meeting be held to further consult with Members on the final draft Homalco Land Law prior to Council making a final decision on whether to enact such Homalco Land Law ;
- (e) refer the final draft Homalco Land Law to a Special General Meeting for community approval and enactment by eligible voters; or
- (f) refer the final draft Homalco Land Law to a Referendum for community approval and enactment by eligible voters.

12.4 As soon as practicable following a decision by Council under section 12.3 of this *Land Code*, Council shall post a written notice on the Homalco website and in public areas of Homalco Lands and Administration Offices setting out the decision reached by Council concerning the final draft Homalco Land Law.

12.5 Where Council decides to refer a final draft Homalco Land Law to a Special General Meeting, Council shall:

- (a) schedule a date for the Special General Meeting;
- (b) ensure the procedure set out in sections 17 and 18 of this *Land Code* is followed for the Special General Meeting; and
  - (i) ensure copies of the final draft Homalco Land Law are available to Members:
  - (ii) both electronically and in hard paper copy prior to the Special General Meeting, and
  - (iii) in hard paper copy at the Special General Meeting;
- (c) ensure the decision made by Members at the Special General Meeting is recorded in the Minutes for Special General Meeting.

12.6 The result of a Special General Meeting or Referendum shall have the same force and effect as if a Resolution enacting a Homalco Land Law was passed by Council and the Council shall affirm that result in a separate and stand-alone Resolution.

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### 13.0 Procedures upon Enactment of a Homalco Land Law

- 13.1 Homalco Land Laws enacted by Resolution of Council under section 12.3(a) of this *Land Code* shall be signed by a quorum of Council and shall come into force and effect on the date the Resolution is passed or on such date as specified in the Resolution.
- 13.2 Homalco Land Laws enacted at a Special General Meeting or by Referendum shall be signed by a quorum of Council and shall come into effect on the date of the Special General Meeting or the date of the Referendum.
- 13.3 Notice of a newly enacted Homalco Land Law shall be posted on the Homalco website and in public areas of Homalco Lands and Administration Offices within seven (7) days of its enactment.
- 13.4 Where a Homalco Land Law has been enacted, original copies of the Homalco Land Law shall be deposited in a register of Homalco Land Laws.
- 13.5 A true copy of all Homalco Land Laws shall be kept in the Homalco Land Law Registry, including Homalco Land Laws that have been repealed or are no longer in force and effect, at the Lands Governance Office.
- 13.6 The Homalco Laws Registry shall be accessible to the public Monday to Friday between the hours of 9:00 a.m. to 4:00 p.m.
- 13.7 Copies of Homalco Land Laws shall be provided to Members and other Persons, upon payment of a reasonable copying fee and administration, which fee must be set by Council and may be amended by Council from time to time.
- 13.8 A duly enacted Homalco Land Law shall not be set aside or be declared invalid by reason only that a member of Council at the time of the enactment of the Law subsequently ceases to be a member of Council.

### 14.0 Enforcement of Homalco Land Laws

- 14.1. To enforce this *Land Code* and Homalco Land Laws, Homalco may enact a Homalco Land Law to:
- (a) establish offences that are punishable on summary conviction;
  - (b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance;
  - (c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information; and
  - (d) allow for the appointment of a:
    - (i) justice of the peace,

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- (ii) enforcement officer,
  - (iii) prosecutor,
  - (iv) Conservation Officer,
  - (v) Guardian, and
  - (vi) Any other enforcement officer duly appointed by the Council; and.
- (e) allow, by way of written agreement, the appointment of an RCMP Officer.
- 14.2. For the purpose of prosecuting offences, Homalco may:

- (a) retain its own prosecutor;
- (b) enter into an agreement with her Majesty the Queen in right of the Province of British Columbia as represented by the Attorney General of British Columbia to arrange for a provincial prosecutor; or
- (c) enter into an agreement with Her Majesty the Queen in right of Canada as represent by the Minister of Justice, Government of Canada, for the use of agents engaged by the Department of Justice Canada.

## 15.0 Amendment of Homalco Land Laws

- 15.1. A Homalco Land Law may be repealed or amended following the procedure provided for in the Homalco Land Laws.
- 15.2. A Homalco Land Law my be repealed or amended following the procedure set out in section 12.2-12.6 of this *Land Code*.
- 15.3. Where a Homalco Land Law does not provide a procedure for its repeal or amendment, it may be repealed or amended in the same manner in which it is enacted.

## **PART 3 – COMMUNITY AND SPECIAL GENERAL MEETING**

### 16.0 General

- 16.1 Every Member is entitled to participate in a Community Meeting and/or a Special General Meeting.
- 16.2 Council may make Laws or establish policies and procedures in relation to:
- (a) Community Meetings; and
  - (b) Special General Meeting.

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## 17.0 Community Meetings

- 17.1 A Community Meeting shall be held for the following:
- (a) to provide information to Members about a Homalco Land Law or Homalco Lands matters that Council, by Resolution, declares to be subject to this section; and,
  - (b) where otherwise required under this *Land Code*.
- 17.2 No decisions or community approvals may be made at a Community Meeting.
- 17.3 At least fourteen (14) days prior to a Community Meeting, Council shall ensure a written notice of that Community Meeting is:
- (a) either:
    - (i) delivered or mailed to all eligible voters at their last known addresses, and
    - (ii) published in a Homalco newsletter that is delivered or mailed to all eligible voters at their last known address;
  - (b) or, on:
    - (i) the Homalco website,
    - (ii) Homalco social media pages, and
    - (iii) any other public areas of Homalco Lands and Homalco Administration Offices as determined by Council.
- 17.4 A written notice of a Community Meeting shall set out:
- (a) the date, time and location of the Community Meeting;
  - (b) a summary of the draft Homalco Land Law or Homalco Lands matter to be discussed;
  - (c) if the Community Meeting relates to a draft Homalco Land Law, notification that a full copy of the draft Homalco Land Law may be obtained by Members:
    - (i) at the Homalco Administration Office,
    - (ii) at the Community Meeting, or
    - (iii) by contacting the Lands Governance Office to obtain an electronic copy;
  - (d) an invitation for Members to provide written comments to Council on the draft Homalco Land Law or Homalco Lands matter;

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- (e) the return date by which Members may provide written comments to Council, which date shall be at least twenty (20) days after the date of the Community Meeting; and
  - (f) if the Community Meeting relates to a draft Homalco Land Law, the Community Meeting may be advertised or referred to in the written notice by the title of the draft Homalco Land Law being discussed.
- 17.5 At a Community Meeting, Council or its designated representative shall:
- (a) explain the purpose and nature of the Homalco Land Laws or Homalco Lands matter to Members; and
  - (b) provide Members an opportunity to ask questions and provide comments regarding the Homalco Land Law or Homalco Lands matter.
- 17.6 Council may schedule as many Community Meetings as is necessary to ensure that Members are well informed about a proposed Homalco Land Law or Homalco Lands matter.
- 17.7 A Community Meeting for input purposes does not require a quorum of those present at the Community Meeting.

## 18.0 Special General Meetings

- 18.1 The purpose of a Special General Meeting is to:
- (a) inform and discuss with Members a Homalco Land Law or Homalco Lands matter; and/or
  - (b) seek the approval of Members on a proposed Homalco Land Law or Homalco Lands matter.
  - (c) to inform, discuss and seek approval on such other matters as may be requested, from time to time, by the Lands Governance Director, the Lands Governance Committee, or Council.
- 18.2 A Special General Meeting shall be held in respect to the following matters:
- (a) any matter or Homalco Land Laws or class of law that Council, by Resolution, declares to be subject to this section; and
  - (b) as and when otherwise required under this *Land Code*.
- 18.3 The date, time and place of the Special General Meeting shall be determined by Council, or if the Special General Meeting has not been called within seven (7) days of the determination of the meeting, then the Band Administrator or the Lands Governance Director shall set the date, time and place of the meeting on Homalco Lands.
- 18.4 All Special General Meetings shall take place on Homalco Lands.

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18.5 At least twenty (20) days prior to a Special General Meeting, Council shall ensure a written notice of that Special General Meeting is:

- (a) either:
  - (i) delivered or mailed to all eligible voters at their last known addresses, and
  - (ii) publicised in a Homalco newsletter that is delivered or mailed to all eligible voters at their last known address;
- (b) or, on:
  - (i) the Homalco website,
  - (ii) Homalco social media pages, and
  - (iii) any other public areas of Homalco Lands and Homalco Administration Offices as determined by Council.

18.6 A notice of the Special General Meeting shall include:

- (a) a summary of the proposed Homalco Land Laws or Homalco Lands 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 community approval of either a proposed Homalco Land Law or Homalco Lands matter;
- (f) details regarding the manner in which voting shall take place and instructions for how Members living off Homalco Lands may vote; and
- (g) the date, time and place of the Special General Meeting.

18.7 An individual, other than a Member, may attend and participate in a Special General Meeting with the written permission of Council but only an eligible voter may vote.

18.8 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 Members residing off Homalco Lands to vote:

- (a) ballots cast in-person by secret ballot at the Special General Meeting;
- (b) a show of hands at the Special General Meeting;
- (c) electronic ballots; or
- (d) mail-in-ballots.

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- 18.9 A proposed Homalco Land Law or Homalco Lands matter is deemed approved at a Special General Meeting if a Majority of those eligible voters who participate in the Special General Meeting cast a vote in favour of the Homalco Land Laws or Homalco Lands matter.
- 18.10 The results of a vote at a Special General Meeting, and the decision made by such vote, shall be recorded in the Minutes of the Special General Meeting.

## **19.0 Attendance at Special General Meetings**

- 19.1 Members of Council shall make best efforts to attend all Special General Meetings unless he or she has just cause for being absent.
- 19.2 Members of Council shall notify Council at a Council meeting, or notify the Band Administrator, of any anticipated absence and the reasons for such absence.
- 19.3 Where notification under section 19.2 of this *Land Code* is given to the Band Administrator, the Band Administrator shall inform the other members of Council of the absence of any member of Council ("Absentee Council Member") and that Absentee Council Member's reason for such absence, subject to section 19.4 of this *Land Code*.
- 19.4 If a member of Council is absent from a Special General Meeting, the Chairperson shall, if requested by an eligible voter inform the attendees at the Special General Meeting of the reason for the member of Council's absence, save and except if the disclosure of such information is or may be a breach of privacy of such member of Council under the laws of British Columbia and Canada and that member of Council has not consented to such disclosure.
- 19.5 Council may, at a meeting of Council, prior to a Special General Meeting, by vote of a majority of those members of Council present, determine that a Special General Meeting shall only be open to Members and to employees of, or consultants to, Homalco.
- 19.6 A quorum of Council is not required for a Special General Meeting to be held and members of Council in attendance may vote as Members unless a conflict of interest is declared by any member of Council.

## **PART 4 – ADMINISTRATION OF HOMALCO LANDS**

### **20.0 General**

- 20.1 The purpose of this Part 4 is to set out the principles, rules, procedures, policies, practices and administrative structures by which Homalco shall govern and manage Homalco Lands.
- 20.2 Any and all use and development of Homalco Lands is subject to this *Land Code*, Homalco Land Laws and other laws as applicable.

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- 20.3 An Interest in Homalco Lands created or granted after this *Land Code* comes into effect is not enforceable unless it is registered or recorded in the First Nation Land Register.
- 20.4 Council shall develop Homalco Land Laws consistent with this *Land Code* regarding the management, administration, use, occupancy and protection of Homalco Lands.

## 21.0 Appointment of Lands Governance Director

- 21.1 Council shall, by Resolution, appoint a Lands Governance Director to administer this *Land Code* in an effective and fiscally responsible manner in accordance with this *Land Code* and Homalco Land Laws.
- 21.2 Council may, by Resolution, appoint an alternate Lands Governance Director to act in the position and role of the Lands Governance Director when the Lands Governance Director is absent for a lengthy period of time with reasonable cause, including but expressly not limited to reasons of personal health, welfare and family related matters.
- 21.3 Council may assign powers, duties and functions to the Lands Governance Director in addition to those required to be assigned by this *Land Code* or Homalco Land Laws.
- 21.4 The Lands Governance Director shall oversee the day-to-day operations of the Lands Governance Office and perform such duties and responsibilities consistent with this *Land Code* and any related Homalco Land Laws.
- 21.5 Without limiting the generality of section 21.2 of this *Land Code*, the Lands Governance Director, or a designate appointed by Resolution of Council, shall:
- (a) carry out any action required to be taken by and on behalf of the Minister or Her Majesty the Queen in right of Canada in relation to an Interest in Homalco Lands described in effect at the time this *Land Code* comes into force and effect;
  - (b) manage the Lands Governance Office; and
  - (c) carry out any action or responsibility delegated to the Lands Governance Director under section 45.0 of this *Land Code*.

## 22.0 Lands Governance Office

- 22.1 The Lands Governance Office, under the authority and direction of the Council and the Lands Governance Director, shall:
- (a) administer Homalco Lands in accordance with this *Land Code* and any other laws as applicable, regulations, procedures, policies or practices of Homalco;
  - (b) administer fee simple lands owned by Homalco;
  - (c) upon request by Council, assist with the matters related to territorial lands management off reserve;

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- (d) develop forms of written instruments for use in registering or recording of any Interest or Interests in Homalco Lands in the First Nation Land Register;
- (e) process applications for the registration or recording of written instruments and documents in the First Nation Land Register in relation to any Interest or Interests in Homalco Lands;
- (f) provide electronic copies of applications for the registration and recording of written instruments and documents in relation to any Interest or Interests in Homalco Lands to the First Nation Land Register;
- (g) arrange for the execution of written instruments and documents on behalf of Homalco;
- (h) maintain and protect records in relation to Homalco Lands;
- (i) prepare and present regular reports to Council regarding Homalco Lands matters; and
- (j) carry out such duties as are requested or required by Council consistent with this *Land Code*, any Homalco Land Laws and/or other laws applicable.

## **PART 5 – LANDS GOVERNANCE COMMITTEE**

### **23.0 Establishment of Lands Governance Committee**

23.1 A Lands Governance Committee shall be established by Council Resolution:

- (a) to assist with the development and implementation of a Homalco Lands administration system;
- (b) to advise Council and staff of the Lands Governance Office on matters in relation to Homalco Lands;
- (c) to recommend to Council Homalco Land Laws, Resolutions, rules, policies, practices and procedures in relation to Homalco Lands;
- (d) to hold regular Land Governance Committee Meetings and Community Meetings to discuss Homalco Lands issues and, where appropriate, to make recommendations to Council in respect to those issues;
- (e) assist in the exchange of information in relation to Homalco Lands issues between Members and Council;
- (f) monitor community approvals under this *Land Code*; and
- (g) perform other such duties and functions as Council or the Lands Governance Director may direct.

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- 23.2 The Lands Governance Committee shall perform its work under the direction of Council.
- 23.3 The Lands Governance Committee may establish rules, policies, practices and procedures, for the conduct of its meetings and the Committee's general affairs that are consistent with any rules, policies, practices and procedures established by Council.
- 23.4 Subject to any requirements and approvals of Council in relation to financial obligations, the Lands Governance Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by members of the Lands Governance Committee acting pursuant to its mandate, jurisdiction and authority under this *Land Code*; and
  - (b) establish programs for the orientation and education of members of the Lands Governance Committee.
- 23.5 The Lands Governance Committee shall consist of one (1) member of Council and a minimum of three (3) and a maximum of five (5) other individuals.
- 23.6 A majority of the Lands Governance Committee must be Homalco Members.
- 23.7 Any Member is eligible for appointment to the Lands Governance Committee, unless such Member:
- (a) has been convicted of an offence that was prosecuted by way of indictment for which they have not been pardoned;
  - (b) is an undischarged bankrupt;
  - (c) has been convicted or plead guilty to a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct;
  - (d) has been found by a court to have defrauded or breached a fiduciary duty owed to Homalco;
  - (e) is, due to living elsewhere, unable to participate in regular meetings either in-person, by conference call or over the internet;
  - (f) has been found to be incapable or unfit by reason of Incapacity; or
  - (g) has been convicted or plead guilty to fraud or breach of fiduciary duty professionally or within the commercial mainstream.
- 23.8 Subject to section 23.7 of this *Land Code*, appointments to the Lands Governance Committee shall be made by Council.
- 23.9 Subject to section 23.12 of this *Land Code*, those appointed to the Lands Governance Committee hold office for staggered terms.
- 23.10 In order to establish staggered terms those appointed to the Lands Governance Committee shall be divided as equally as possible into two (2) groups. One group shall serve an initial term of two (2) years. The other group shall serve an initial term of four

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- (4) years. Thereafter, Council shall appoint individuals to the Lands Governance Committee to fill expiring terms for a term of four (4) years.
- 23.11 The appointment of the first Lands Governance Committee shall be made when Council deems necessary, after the coming in force and effect of this *Land Code*.
- 23.12 Council shall establish the procedure for Lands Governance Committee appointments, including such additional transitional rules as may be necessary for appointments to the first Lands Governance Committee.
- 23.13 The position as an appointee of the Lands Governance Committee shall become vacant if the appointee:
- (a) resigns;
  - (b) is or becomes ineligible to be a Lands Governance Committee appointee pursuant to section 23.7 of this *Land Code*;
  - (c) is absent from three (3) consecutive meetings of the Lands Governance Committee for a reason other than illness or without being authorized to be absent by the Chair of the Lands Governance Committee;
  - (d) dies or becomes incapable or unfit by reason of Incapacity; or
  - (e) the member of Council appointed as the Council representative ceases to be a member of Council.
- 23.14 Where a position on the Lands Governance Committee becomes vacant more than ninety (90) days prior to the expiration of the term, Council may appoint an individual to fill the vacant position for the remainder of the term.
- 23.15 The Lands Governance Committee Chair shall be the Lands Governance Director.
- 23.16 The Lands Governance Committee shall select its Vice-Chair from its appointees.
- 23.17 If the Chair of the Lands Governance Committee is unable to perform the functions of office, the Vice-Chair shall act in the capacity of the Chair.
- 23.18 The duties of the Chair of the Lands Governance Committee are to:
- (a) chair meetings of the Lands Governance Committee;
  - (b) table any Lands Governance Committee financial statements with Council;
  - (c) report to the Council and Members on the activities of the Lands Governance Committee; and
  - (d) perform such other duties as Council may reasonably prescribe.
- 23.19 Notwithstanding section 23.10 of this *Land Code*, the Lands Governance Director shall be a member of the Lands Governance Committee so long as that Director holds this position.

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## **PART 6 – INTERESTS IN HOMALCO LANDS**

### **24.0 Interests in Homalco Lands**

- 24.1 Interests in Homalco Lands that are approved, created, granted or issued pursuant to the *Indian Act* and registered in the First Nations Land Register as of the date this *Land Code* comes into force shall continue to have effect in accordance with their terms and conditions.
- 24.2 Where an Interest described in section 24.1 of this *Land Code* includes an action to be taken by the Minister or Her Majesty the Queen in right of Canada, the responsibility for such action after the date this *Land Code* comes into force shall be with the Lands Governance Director or his or her designate.
- 24.3 The types of Interests in Homalco Lands include:
- (a) Allotments;
  - (b) Certificates of Possession;
  - (c) Certificates of Occupancy;
  - (d) Leaseholds;
  - (e) Location (or Locatee) Ticket;
  - (f) Easements;
  - (g) Rights of way;
  - (h) Permits;
  - (i) Natural Resource Licences or Permits
  - (j) Air and/or airspace Licences or Permits;
  - (k) Mortgages;
  - (l) or others Interests in existence prior to the enactment of this *Land Code*, or as may be created under this *Land Code*.

### **25.0 No Interest Created**

- 25.1 No Person may acquire an Interest or Interests in Homalco Lands by use, occupation, possession or by any other means that is not authorized under this *Land Code* or a law duly enacted by Council in connection with or pursuant to this *Land Code*.

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## 26.0 Limits on Interests

- 26.1 An Interest in Homalco Lands may only be created, granted, disposed of, assigned to or transferred by a written instrument and in accordance with this *Land Code*.
- 26.2 The Lands Governance Office may establish mandatory standards, criteria and forms for any Interests in Homalco Lands.
- 26.3 Any written deed, Lease, contract, instrument, document or agreement of any kind by which Council, a Member or any other Person purports to grant, dispose of, assign or transfer any Interests in Homalco Lands after the date this *Land Code* takes force and effect is void if it contravenes this *Land Code*.
- 26.4 An individual who is not a Member may not hold a Certificate of Possession or Allotment in and to Homalco Lands, but may hold an Interest or Interests in and to Homalco Lands subject to this *Land Code* and other laws as applicable.
- 26.5 An individual who is not a Member cannot enter into a trust agreement with a Member so that a non-Member benefits from a Certificate of Possession or Allotment in and to Homalco Lands.
- 26.6 The written consent of Council is required for any grant, disposition, assignment or transfer of any Interest or Interests in and to Homalco Lands to an individual who is not a Member.

## 27.0 Heritage Site Designation

- 27.1 Development on a site designated as a Heritage Site under Homalco Land Laws, Land Use Plan or this *Land Code* shall not be permitted unless the development receives approval at a Special General Meeting.
- 27.2 No amendment may be made to a Homalco Land Laws, Land Use Plan or this *Land Code* to remove a Heritage Site designation unless the amendment receives approval at a Special General Meeting.

## 28.0 Natural Resources

- 28.1 Subject to Homalco Land Laws and other Laws enacted by Council, all Natural Resources and revenue from Natural Resources in, on, over and under Homalco Lands belong to Homalco.
- 28.2 The use and development of Natural Resources in, on, over and under Homalco Lands shall be subject to this *Land Code*.
- 28.3 No Person may interfere with Homalco Lands or remove or permit anyone to remove from Homalco Lands, without written consent of Council by way of Resolution, any:
- (a) minerals, stone, sand, gravel, clay or soil;

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- (b) trees, saplings, shrubs, underbrush, timber, cordwood or hay located on any unallotted or unoccupied piece or parcel of Homalco Lands;
  - (c) air and air space;
  - (d) water and water use; or
  - (e) similar type materials.
- 28.4 To the extent that Homalco has or may have ownership or rights:
- (a) over water as recognized or maybe recognized by federal or provincial legislation or by operation of Law, Homalco retains ownership and has jurisdiction to manage and regulate water and water use; and/or
  - (b) to the air or air space on or over Homalco Lands, as recognized or may be recognized by Federal or Provincial legislation, Homalco retains ownership and has jurisdiction to manage and regulate the air and air space over or on Homalco Lands.
- 28.5 No Person may interfere with, encumber or use, possess or occupy the water, air or air space as set out in section 28.4 of this Land Code without written consent of Council.
- 28.6 Subject to section 28.8 of this *Land Code*, an Easement, Lease, Licence, Right of way or Permit in and to Homalco Lands does not grant any interests in the Natural Resources in, on, over or under Homalco Lands, unless expressly consented to by Council and expressly included in the terms of such written legal instrument.
- 28.7 Subject to section 28.8 of this *Land Code*, unless expressly consented to by Council and expressly included in a written legal instrument granting an Allotment, the Allotment does not include any right in or to the Natural Resources in, on, over or under the lands being allotted.
- 28.8 Before Council grants an Interest which has, as its primary purpose, the removal, disposal or taking of Natural Resources from Homalco Lands, the Lands Governance Director shall:
- (a) present to the Lands Governance Committee, if then constituted, a summary of the terms of the proposed grant for the purpose of seeking and considering their comments and advice; and
  - (b) ensure the proposed grant is consistent with any applicable Land Use Plan approved by Members and adopted by Council; and
  - (c) present such summary and proposed grant to members of Council for Council's approval and consent by Resolution.

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## 29.0 Allotments

- 29.1 Only Members can hold or receive an Allotment of a parcel of Homalco Lands pursuant to sections 20 and 24 of the *Indian Act*.
- 29.2 Subject to section 29.3 of this *Land Code*, no Allotment shall be granted until a Homalco Land Law has been enacted establishing the criteria for granting Allotments of Homalco Lands.
- 29.3 Notwithstanding section 29.2 of this *Land Code*, Council may grant an Allotment by Resolution where the Allotment is required either:
- (a) to fulfill a written agreement lawfully entered into between Members in relation to a purchase and sale of an Allotment, an assignment of an Allotment or a transfer of an Allotment prior to the date this *Land Code* comes into force and effect; or
  - (b) to comply with a Ministerial Order issued by the Minister of Indigenous Services Canada or an order of a court of competent jurisdiction.

## 30.0 Leaseholds in Community Lands

- 30.1 Subject to sections 30.2 to 30.5 of this *Land Code*, Council may grant a Leasehold in Community Lands by Resolution.
- 30.2 A Leasehold in Community Lands for a term of twenty-five (25) years or less, calculated by including any renewal or extension period, may be granted by Resolution without community approval.
- 30.3 A Leasehold in Community Lands for a term of more than twenty-five (25) years but not more than nine-nine (99) years, calculated by including any renewal or extension period, shall be approved:
- (a) by Members at a Special General Meeting held in accordance with sections 18 and 19 of this *Land Code*, if a Homalco Land Law to regulate development on Homalco Lands has not been enacted and a Land Use Plan has not been approved under this *Land Code*; or
  - (b) by Resolution where a Homalco Land Law to regulate development on Homalco Lands has been enacted and permits the proposed uses and term of the Leasehold in Community Lands and a Land Use Plan has been approved under this *Land Code*.
- 30.4 A notice of a Special General Meeting to seek Member approval on a Leasehold shall include:
- (a) a summary of the proposed Lease; and
  - (b) notification that a full copy of the proposed Leasehold can be obtained by Members at the Lands Governance Office.

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- 30.5 At a Special General Meeting to seek Members approval on a Leasehold, Council, or its designate, shall:
- (a) explain the purpose and provisions of the Leasehold to Members; and
  - (b) provide Members an opportunity to ask questions and provide comments regarding the Leasehold.

### **31.0 Easements, Rights of Way and Permits in Community Lands**

31.1 Subject to section 31.2 and 31.3 of this *Land Code*, Council may grant Easements, Rights of way and/or Permits in relation to Community Lands by Resolution unless Council determines that a Community Meeting, Special General Meeting or Referendum is required.

31.2 If Council determines that a Special General Meeting is required to seek Members approval on an Easement, Right of way or Permit, the written notice of that Special General Meeting shall include:

- (a) a summary of the proposed Easement, Right of way or Permit; and
- (b) notification that a full copy of the proposed Easement, Right of way or Permit can be obtained by Members at the Lands Governance Office.

31.3 At a Special General Meeting to seek Members approval on an Easement, Right of way or Permit, Council, or its designate shall:

- (a) explain the purpose and provisions of the Easement, Right of way or Permit to Members; and
- (b) provide Members an opportunity to ask questions and provide comments regarding the Easement, Right of way, or Permit.

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

32.1 Subject to the consent of Council, a Member holding an Allotment (the "Allotting Member") may grant an Easement, Lease, Licence, Right of way or Permit in a parcel or parcels of Homalco Lands to a Person, which consent:

- (a) must not be arbitrarily withheld by Council; and
- (b) may be granted by Council on condition that the Allotting Member provide Council with an assignment of the consideration or compensation that is set out in writing in the Easement, Lease, Licence, Right of way or Permit documents up to an amount equal to any debt amount owed by the Allotting Member to Homalco.

32.2 A Member may grant a Lease to himself or herself in the same manner as to any other Person

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- 32.3 A Person holding a Leasehold in an Allotment may grant a Sublease in relation to that Leasehold without the consent of Council provided that:
- (a) the Interest to be granted is permitted under the terms of the Lease agreement; and
  - (b) the term of the Sublease granted does not exceed the duration of the Lease.
- 32.4 Where a Member holding an Allotment grants an Easement, Lease, Licence, Right of way or Permit in that Allotment to a Person, Homalco shall not be obligated to undertake any investigations or due diligent steps with regard to that Easement, Lease, Licence, Right of way or Permit and shall not be responsible or liable for any breaches of that Easement, Lease, Licence, Right of way or Permit or for any representation or warranty made by the Person granting the Easement, Lease, Licence, Right of way or Permit.
- 32.5 Without restricting the generality of section 32.4 of this *Land Code*, Homalco shall not be responsible for determining whether an Easement, Lease, Licence, Right of way or Permit granted by an Allotting Member is in good standing or whether the terms of such Interest being granted by the Allotting Member has been complied with.

### **33.0 Mortgages of Allotments and Leaseholds**

- 33.1 Pursuant to section 15.3 of the *Framework Agreement*, a land code may provide that some or all of section 89(1.1) of the *Indian Act* are applicable to other Leasehold interests or Leases in relation to First Nation lands, including Homalco Lands, whether or not the Homalco Lands were designated before this *Land Code* came into effect.
- 33.2 Subject to section 33.3 of this *Land Code*, the Member holding an Allotment or a Member holding a Leasehold Interest may, pursuant to this section, grant a Mortgage of that interest.
- 33.3 The Member holding an Allotment may grant a Mortgage of a Leasehold interest to a Member or to Homalco.
- 33.4 The holder of an Allotment who has been granted a Lease over such Allotment pursuant to section 32.2 of this *Land Code*, may grant a Mortgage of the Leasehold Interest to any Person as defined in this *Land Code*.
- 33.5 In accordance with section 33.1 of this *Land Code*:
- (a) a Leasehold Interest held by an Indian, as defined in section 1 of the *Indian Act*, is subject to charge, pledge, Mortgage, attachment, levy, seizure, distress and execution and any Mortgage of that Leasehold interest has all the same legal and equitable rights it would have if the Leasehold interest was held by a non-Indian; and
  - (b) a Leasehold interest in Community Lands is subject to charge, pledge, Mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

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- 33.6 The holder of an Easement, Licence, Right of way or Permit cannot grant a Mortgage over such interest in Homalco Lands.
- 33.7 A Leasehold interest may be subject to charge or Mortgage, provided that, in the event of a default, Homalco shall have first right of refusal.
- 33.8 The term of any charge or Mortgage of a Leasehold interest shall not exceed the term of the Lease.
- 33.9 A written instrument granting a Mortgage shall:
- (a) if it relates to a Mortgage over a Leasehold, be permitted by the provisions of the Lease and shall not exceed the duration of the Leasehold; and
  - (b) set out a legal description of the Homalco Lands that are to be subject to the Mortgage.
- 33.10 Homalco shall not be responsible or liable for ensuring that a Lease authorizes or permits the Leasehold interest in the Homalco Lands to be Mortgaged, that the Lease is in good standing or that the terms of the Lease have been complied with.
- 33.11 In the event of default in the terms of a charge or Mortgage of a Leasehold interest, the Leasehold interest shall not be subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure unless:
- (a) the charge or Mortgage was registered in the First Nation Land Register; and
  - (b) the chargee or mortgagee has given the Council, acting in its representative capacity on behalf of Homalco, ninety (90) days on which to redeem such charge or Mortgage.
- 33.12 If Council exercises its power of redemption with respect to a Leasehold interest, Homalco becomes the lessee of the land and takes the position of the charger or mortgager for all purposes after the date of the redemption, and, has full and immediate rights to access to the Leasehold interest and eviction.

#### **34.0 Transfer of Interest**

- 34.1 A Member may, by a written instrument registered in the First Nation Land Register, transfer their Allotment to another Member or to Homalco.
- 34.2 Where an Allotment is transferred to Homalco, the Allotment shall be cancelled and the Homalco Lands described in the Allotment shall become Community Lands subject to any terms of a Mortgage guarantee by a duly authorized third party which requires Homalco to re-issue the Allotment upon discharge of the Mortgage and fulfillment of the terms of the guarantee.
- 34.3 Subject to sections 34.1 and 34.2 of this *Land Code*, a Person holding an Interest in Homalco Lands other than by way of Allotment may transfer, assign or devise their

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Interest to any Person by a written instrument registered or recorded in the First Nation Land Register.

### 35.0 Transfer on Death or Incapacity

35.1 A Member who receives an Interest in Homalco Lands from another Member by testamentary disposition, succession, or following a declaration of Incapacity is entitled to have that Interest registered in the First Nation Land Register provided that the written instrument transferring the Interest is duly executed either by:

- (a) an individual appointed under the *Indian Act* as the administrator or executor of the estate of the deceased Member;
- (b) an individual declared by a court to be the administrator or executor of the estate of the deceased Member; or
- (c) an individual appointed as the personal representative of the mentally incompetent Member or a person under the Age of Majority in British Columbia, being 19 years of age:
  - (i) under Homalco Land Laws; or
  - (ii) under sections 51 and 52 of the *Indian Act*, respectively.

### 36.0 Ceasing to be a Member

36.1 An individual who ceases to be a Member shall, within six (6) months, or such further period as the Lands Governance Director may direct, from the date their name is removed from the Membership list, transfer their Allotment to Homalco or another Member.

36.2 Where an individual ceases to be a Member and does not transfer their Allotment in accordance with section 36.1 of this *Land Code*, lawful possession of that Allotment shall revert to Homalco and become Community Lands six (6) months plus one (1) day after the date the individual's name is removed from the Membership list.

36.3 Where an Allotment reverts to Homalco pursuant to section 36.2 of this *Land Code*, the individual ceasing to be a Member shall remain liable for any obligations or monies owing, prior to the date the Allotment reverts to Homalco, pursuant to any Interest they granted.

36.4 Where the individual ceasing to be a Member has made improvements on or to their Allotment, the Lands Governance Director shall, acting reasonably, compensate the individual for such improvements prior to the date the Allotment reverts to Homalco.

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## 37.0 Registration of Interests

- 37.1 Written instruments which affect or purport to affect Homalco Lands shall be registered or recorded in the First Nation Land Register.
- 37.2 Notwithstanding section 37.1 of this *Land Code*, only those written instruments that are in compliance with this Part shall be registered or recorded in the First Nation Land Register.
- 37.3 A copy of all written instruments that are submitted for registration or recording in the First Nation Land Register shall be kept at the Lands Governance Office.
- 37.4 Subject to section 37.5 of this *Land Code*, Interests in Homalco Lands that are deposited with the Lands Governance Office shall be forwarded by the Lands Governance Office to the First Nation Land Register for registration.
- 37.5 Where a written instrument requires a Resolution, the consent of Council or approval of eligible voters, the Lands Governance Office must not submit it, or forward it, to the First Nation Land Register to be registered or recorded, unless evidence of that approval is attached to the written instrument.
- 37.6 Surveys prepared in accordance with section 41 of this *Land Code* that are deposited with the Lands Governance Office shall be forwarded by the Lands Governance Office to the First Nation Land Register for registration.
- 37.7 Financial claims or other assertions of right which affect, or purport to affect, Homalco Lands may be recorded in the First Nation Land Register.
- 37.8 The types of instruments which may be recorded in the First Nation Land Register include written instruments relating to:
- (a) judgments;
  - (b) court orders;
  - (c) rights of first refusal;
  - (d) certificates of pending litigation;
  - (e) caveats;
  - (f) citations;
  - (g) liens;
  - (h) assignments of rent;
  - (i) options to purchase; and/or
  - (j) tax certificates.

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

### **38.0 Effective Date of Written Instruments**

38.1 The grant, transfer or other disposition of an Interest in Homalco Lands shall be effective on the date the written instrument is registered or recorded in the First Nation Land Register.

38.2 An Interest in Homalco Lands is not enforceable under this *Land Code* unless it is registered or recorded in the First Nation Land Register and Homalco shall not by any manner or means whatsoever be liable for an unregistered interest.

38.3 Section 38.2 of this *Land Code* is not meant to preclude a Person with an unregistered interest from pursuing rights or causes of action against another party in connection with an unregistered interest in Homalco Lands.

38.4 Subject to sections 38.7 and 38.8 of this *Land Code*, registered or recorded Interests that affect the same parcel of Homalco Lands have priority according to the time and date of their registration and not according to the time and date of their execution.

38.5 A registered interest is entitled to priority over an unregistered interest in connection with the same parcel of Homalco Lands.

38.6 A registered Mortgage has a priority over a subsequently registered interest that affects the same Homalco Lands to the extent of the money actually advanced under the Mortgage, to a maximum of the amount secured by the Mortgage, even if all or part of the money was advanced after the registration of the subsequently registered interest.

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

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

### **39.0 Cancellation or Forfeiture of An Interest**

39.1 Except as otherwise provided in this *Land Code*, or by operation of law or contract, no Interest in Homalco Lands may be cancelled or forfeited unless:

- (a) all parties to the written instrument have consented in writing to the cancellation or forfeiture as the case may be;
- (b) a court of competent jurisdiction has ordered the cancellation or forfeiture of the Interest and the time period for filing an appeal of the order has passed without an appeal having been taken; or

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- (c) an arbitrator or other individual appointed to adjudicate a dispute pursuant to the written instrument in issue has ordered or declared the Interest to be cancelled or forfeited and no appeal has been taken from the decision within the allotted time.
- 39.2 Notwithstanding section 39.1 of this *Land Code* no Interest in Homalco Lands may be cancelled or forfeited if it adversely affects or negatively impacts upon:
- (a) an Interest in those Homalco Lands held by a third party; or
  - (b) a claim against, or Interest in, those Homalco Lands that is held by Homalco.
- 39.3 Whenever an Allotment is, in the opinion of the Council, issued to or in the name of the wrong Member through mistake or contains any clerical error or inadvertence or misnomer or a wrong description of any material fact, the Council may cancel the Allotment and issue a corrected Allotment in lieu thereof.
- 39.4 Council may cancel any Allotment that, in its opinion and acting reasonably, was issued through proven fraud or in error.
- 39.5 Council may, with the consent of an Allotment holder, cancel any Allotment.
- 39.6 If an Interest in Homalco Lands is cancelled or forfeited under sections 39.1, 39.3, 39.4 or 39.5 of this *Land Code*, such cancellation shall be registered in the First Nation Land Register.

#### **40.0 Residency and Access Rights**

- 40.1 Any Person who resides on, enters or remains on Homalco Lands other than in accordance with a residency or access right under this *Land Code* or under Homalco Land Laws is guilty of an offence.
- 40.2 Subject to any laws passed under this *Land Code*, all civil remedies for trespass are preserved.
- 40.3 The following Persons have a right to reside on Homalco Lands:
- (a) Members and their Immediate Family; and
  - (b) any Person who holds a valid Interest that grants to that Person the right to reside on Homalco Lands, provided that the Person complies with Homalco Land Laws and this *Land Code* and the Person is not subject to any Resolution barring such Person from Homalco Lands.
- 40.4 The following Persons have a right to access Homalco Lands:
- (a) Members and their Immediate family and invitees;
  - (b) Interest holders and their invitees;
  - (c) those granted a right of access;

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- (d) Persons authorized by a government body or any other public body established by or under an enactment of Homalco or British Columbia to establish, operate or administer a public service, to operate a public institution or to conduct a technical survey;
- (e) Persons authorized by Law; or
- (f) a Person, for a valid social or business purpose,
  - (i) Provided that the Person:
    - A. does not enter onto occupied land or interfere with any Interest on, over, in and to Homalco Lands, except to the extent that it is reasonably necessary;
    - B. complies with this *Land Code*; and
    - C. is not subject to a Resolution barring the Person from Homalco Lands.

40.5 No right of residency or access to Homalco Lands implies or creates any financial obligation or imposes any liability of whatsoever kind, manner or means on the part of Homalco under any Homalco Land Laws including this *Land Code*.

## 41.0 Surveys

- 41.1 Council may cause surveys to be made of Homalco Lands in accordance with the *Canada Lands Surveys Act*.
- 41.2 The holder of an Interest in Homalco Lands may, with written consent of Council and on terms specified by Council, cause surveys to be made of their Allotment in accordance with the *Canada Lands Surveys Act*.
- 41.3 A surveyor shall be a licensed member in good standing with the Association of Canada Lands Surveyors.
- 41.4 A surveyor shall provide a copy of the written permission granted by Council to the Person occupying the Homalco Lands upon commencement of any survey work.
- 41.5 All surveys of Homalco Lands approved or confirmed by the Surveyor General of Canada or his, her or its designate shall be deemed for all purposes to accurately describe and identify the extent of the Homalco Lands covered by such survey.
- 41.6 A survey made of Homalco Lands shall be approved in writing by Council prior to being submitted for recording in the Canada Lands Surveys Records or registered in the First Nation Land Register.

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## 42.0 Exchange of Homalco Lands

- 42.1 Subject to federal expropriation under the Act or expropriation for a Community Purpose under this *Land Code*, no part of Homalco Lands shall be alienated unless:
- (a) the Minister has approved of the form of the exchange; and
  - (b) Council has made full disclosure to its Members of all the circumstances surrounding the exchange;
  - (c) at least three (3) Community Meetings are held where the proposed exchange is disclosed to and discussed with Members; and
  - (d) the exchange is approved by Members in a Referendum held under Part 9 of this *Land Code*.

## 43.0 Expropriation for Community Purposes

- 43.1 An Interest in Homalco Lands, including any improvements, buildings or other structures on Homalco Lands, may be expropriated by Homalco in accordance with section 17 of the *Framework Agreement* and any laws enacted by Council for the purpose of establishing the rights and procedures for expropriation.
- 43.2 An expropriation may be made only for the necessary Community Purpose, including but expressly not limited to a fire hall, utility or transportation corridors, community centers, public work facilities, schools, daycare facilities, hospitals, health-care facilities, and retirement homes.
- 43.3 Homalco may expropriate an Interest in Homalco Lands for a Community Purpose once the following conditions, in the order as listed under this section of this *Land Code*, have been met:
- (a) an expropriation law has been enacted by Council setting out:
    - (i) a procedure governing the expropriation process,
    - (ii) a method of determining fair compensation to be paid to the Interest holder,
    - (iii) evidence of the fact that the Council has attempted in good faith to negotiate an agreement with the Interest holder for the transfer or cancellation of that Interest that is being considered for expropriation, but has failed to reach such as agreement; and
    - (iv) the procedure for an arbitrator to resolve disputes regarding the amount of compensation to be paid to any Interest holder;
  - (b) written notice has been given to the Interest holder specifying the Interest that is being considered for expropriation or cancellation as a result of an expropriation; and

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- (c) Council has issued a report to Members setting out the Community Purpose for which the proposed expropriation is required and the necessity for the proposed expropriation.

#### **44.0 Interests on Marriage Breakdown**

- 44.1 Homalco may enact a Matrimonial Real Property Law under this *Land Code* or the *Family Homes on Reserves and Matrimonial Interests or Rights Act* that sets out the rules, policies, practices and procedures applicable to the use, occupancy and possession of Homalco Lands and the division of Interests in these Homalco Lands on the breakdown of a marriage.
- 44.2 The Homalco Land Laws referred to in section 42.1 of this *Land Code* shall not discriminate on the basis of gender, but may distinguish as between Members and non-Members for the purpose of determining what type of Interests in Homalco Lands may be held by an individual.

### ***PART 7 – DISPUTE RESOLUTION***

#### **45.0 General Information**

- 45.1 Except as otherwise provided in this Part 7 of this *Land Code*, disputes in relation to Homalco Lands or an Interest in Homalco Lands shall be determined as follows:
  - (a) the parties to the dispute may agree the dispute may be determined by mediation, arbitration or other dispute Resolution mechanism agreed to and paid for by all parties to the dispute; or
  - (b) if the parties to the dispute do not agree on a dispute Resolution mechanism, the dispute may be determined by a court of competent jurisdiction.
- 45.2 Council may enact Homalco Land Laws regarding Homalco Lands disputes in accordance with Part 2 of this *Land Code*.

#### **46.0 Informal Resolution of Disputes**

- 46.1 Homalco intends that, whenever possible, a dispute in relation to Homalco Lands shall be resolved through informal discussion by the parties to the dispute and nothing in Part 7 of this *Land Code* shall be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to Part 7 of this *Land Code*.
- 46.2 Homalco further intends that a dispute in relation to Homalco Lands that is not resolved by informal discussion shall be resolved by the parties through the alternative dispute resolution mechanisms outlined in Part 7 of this *Land Code*.

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46.3 Nothing in Part 7 of this *Land Code* precludes Council from establishing additional processes or Homalco Land Laws for resolving disputes involving Homalco Lands or restricts parties' right to pursue remedies in a court of competent jurisdiction at any time

## 47.0 Application

47.1 Part 7 of this *Land Code* applies to:

- (a) disputes involving a Member who claims an Interest based on a registered Interest;
- (b) disputes involving a Person who has a dispute with another Person or with Homalco in relation to the possession, use or occupation of Homalco Lands;
- (c) Homalco when asserting an Interest in Homalco Lands;
- (d) Homalco when disputing the possession, use or occupation of Homalco Lands;
- (e) a dispute over the amount of compensation in relation to an Interest being expropriated by Homalco;
- (f) disputes about whether a Person is in a conflict of interest as set out in this *Land Code* or Homalco policies, procedures and practices.

47.2 Dispute resolution is not available under Part 7 of this *Land Code* for disputes of decisions:

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

47.3 Disputes that originated before this *Land Code* came into force and effect may be decided under Part 7 of this *Land Code*.

## 48.0 Mediation

48.1 Parties that have been unable to resolve a dispute through informal resolution of the dispute in accordance with section 46.1 of this *Land Code* 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;
- (b) if the parties are unable to agree on a Mediator, the parties may request the British Columbia Arbitration and Mediation Institute to appoint a Mediator;
- (c) the Mediator to the dispute shall set the rules and procedure for the mediation.

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## 49.0 Arbitration

- 49.1 If the parties are unable to resolve the dispute through mediation, or the parties are not able to agree on a mediation process, the parties may attempt to resolve the dispute through arbitration, in accordance with the following procedure:
- (a) the parties to the dispute shall jointly select an Arbitrator;
  - (b) if the parties are unable to agree on an Arbitrator, the parties may request the British Columbia Arbitration and Mediation Institute to appoint an Arbitrator;
  - (c) the Arbitrator of the dispute shall set the rules and procedure for the arbitration.
- 49.2 Subject to section 49.3 of the *Land Code*, the decision of the Arbitrator shall be final and binding on the parties.
- 49.3 Notwithstanding section 49.2 of the *Land Code*, where there is an exception by Law, the decision of the Arbitrator may be repealed to a court of competent jurisdiction.

## PART 8 - DELEGATION

### 50.0 Delegation

- 50.1 Council may, by Resolution, delegate any authority under Part 8 of this *Land Code* to the Lands Governance Committee or the Lands Governance Director, including the approvals and consents, except for:
- (a) law making;
  - (b) adjudication of violations of Homalco Land Laws; or
  - (c) a matter required under this *Land Code* to be determined in a specified manner.
- 50.2 Homalco may, by Homalco Land Laws establish boards, tribunals, commissions or other bodies to carry out any duties or responsibilities under this *Land Code* other than:
- (a) law making; or
  - (b) a matter required under this *Land Code* to be determined in a specified manner.

## PART 9 – FINANCIAL ADMINISTRATION AND CONFLICT OF INTEREST

### 51.0 Financial Administration

- 51.1 The financial administration of Homalco funds expended in relation to Homalco Lands administered under this *Land Code* shall be conducted in accordance with the *Homalco*

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*Financial Administration Law No 1, 2011* and all regulations, policies or procedures enacted or approved under it.

## **52.0 Conflict of Interest**

52.1 In the event of any real, perceived or potential conflict of interest that arises in any matter related to Homalco Lands, a Homalco Land Laws or this *Land Code*, the provisions relating to conflict of interest in the *Homalco Financial Administration Law 2011*, and any other Homalco rule, policies, practices and procedures currently in force and effect, shall apply.

## **53.0 Revenue from Homalco Lands and Natural Resources**

53.1 Council shall, as it deems necessary, establish any rules, policies, practices and procedures for determining:

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

## **54.0 Annual Report**

54.1 The Lands Governance Director, on behalf of Council, shall publish an annual report for distribution to Members that includes the following:

- (a) an annual review of Homalco Lands and Natural Resources management;
- (b) the annual budget for the Lands Governance Office;
- (c) a copy and explanation of the audit as it applies to Homalco Lands and Natural Resources; and
- (d) any other matter as determined by Council or the Homalco Lands Advisory Committee.

## **55.0 Access to Information**

55.1 A Member may, during normal business hours of the Lands Governance Office, have reasonable access to:

- (a) the register of Homalco Land Laws:

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- (b) the auditor's report; and
  - (c) an annual report published under section 54.1 of this *Land Code*.
- 55.2 A Member may obtain a copy of the auditor's report or annual report published under section 54.1 of this *Land Code* from the Lands Governance Office upon payment of a reasonable fee set by Resolution.
- 55.3 An individual authorized by Council may, at any reasonable time, inspect the financial records of Homalco related to Homalco Lands.
- 55.4 Access to information may be obtained at the Land Governance Office Monday to Friday between the hours of 9:00 a.m. to 4:00 p.m.

## **PART 10 – REFERENDUM PROCEDURES**

### **56.0 General**

- 56.1 The following matters shall be approved by Members at a Referendum:
- (a) subject to section 57.2 of this *Land Code*, amendments to this *Land Code*;
  - (b) as deemed necessary under this *Land Code*; and
  - (c) as required by a Resolution of Council, matters relating to the governance, management or administration of Homalco Lands.
- 56.2 A Referendum shall be:
- (a) conducted in substantially the same manner as that set out in the *Homalco Community Ratification Process* that is used to ratify this *Land Code*; and
  - (b) considered approved if:
    - (i) at least ten percent (10%) of eligible voters participate in the Referendum; and
    - (ii) a Majority of those eligible voters who participate in the Referendum cast a vote in favour of the matter.
- 56.3 A verifier shall not be required for a Referendum under this *Land Code*.

## **PART 11 – LAND CODE REVISIONS AND AMENDMENTS**

### **57.0 General and Procedures**

- 57.1 Subject to section 57.2 of this *Land Code* an amendment to this *Land Code* shall be approved by Members at a Referendum.

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- 57.2 The following revisions and amendments do not require a Referendum and may be approved by Council, by Resolution:
- (a) changes to the description of Homalco Lands that are subject to this *Land Code* and Individual Agreement;
  - (b) a reference in this *Land Code* to a clause in another act or document that was amended and resulted in clause renumbering;
  - (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* to reconcile seeming inconsistencies with other acts or changes in the law;
  - (e) changes in this *Land Code* to permit electronic and online voting;
  - (f) minor improvements in the language to bring out more clearly the intention of the Homalco without change the substance of this *Land Code*;
  - (g) changes required to correct an internal inconsistency in the *Land Code*; and
  - (h) changes to correct editing, grammatical or typographical errors.
- 57.3 The process for development and passage of amendments to this *Land Code* may be initiated by Resolution of Council.
- 57.4 Upon receipt of a petition Council may, or upon passage of the Resolution under section 57.3 of this *Land Code*, Council shall develop proposed amendments to this *Land Code*.
- 57.5 Upon completion of the proposed amendments to this *Land Code*, Council shall schedule and hold a Community Meeting for the purpose of discussing the proposed amendments with Members.
- 57.6 The notice of a Community Meeting as referred to in section 17 of this *Land Code* and as required under section 57.5 of this *Land Code* shall include:
- (a) a summary of the proposed amendments to this *Land Code*; and
  - (b) notification that the full copy of the proposed amendments to this *Land Code* and a copy of this *Land Code* can be obtained at the Lands Governance Office.
- 57.7 At a Community Meeting to discuss an amendment to this *Land Code* with Members, Council, or its designate shall:
- (a) explain the purpose and nature of the amendment to Members; and
  - (b) provide Members an opportunity to ask questions and provide comments regarding the amendments.
- 57.8 No later than sixty (60) days following a Community Meeting held to discuss proposed amendment to this *Land Code* with Members, Council shall prepare a final draft of the

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proposed amendments, taking into consideration the comments received from Members, the needs of the community and other relevant matters.

- 57.9 Proposed amendments to this *Land Code* approved in accordance with Part 11 of this *Land Code* come into force and effect on the date of community approval by way of Referendum under Part 10 of this *Land Code*.

## **PART 12 – OTHER MATTERS**

### **58.0 Liability**

- 58.1 Homalco is not nor shall it be held liable for the acts or omissions of Her Majesty the Queen in Right of Canada, or any Person authorized by Her Majesty the Queen in Right of Canada in relation to Homalco Lands that occurred before this *Land Code* came into force and effect.
- 58.2 Every employee of Homalco whose responsibilities include land administration or collecting or accounting for Homalco Lands revenue shall be bondable.
- 58.3 Council shall arrange, maintain and pay insurance coverage for:
- (a) liability of Homalco in relation to Homalco Lands; and
  - (b) personal liability of its officers and employees for acts done in good faith while carrying out their duties in relation to Homalco Lands.
- 58.4 The extent of the insurance coverage under section 54.3 of this *Land Code* shall be determined by Council.

### **59.0 Offences**

- 59.1 Unless some other procedure is provided for in Homalco Land Laws, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this *Land Code* or under Homalco Land Laws.
- 59.2 Notwithstanding section 59.1 of this *Land Code*, any Law under this *Land Code* may provide for a variety of enforcement mechanisms including ticketing, stop work orders, restorative orders, fines, community services, and other alternative means for achieving compliance.
- 59.3 Subject to section 59.3 of this *Land Code*, any Person who commits an offence under this *Land Code* or a Homalco Land Laws is liable to a fine not to exceed \$100,000 and to a term of imprisonment not to exceed six (6) months or to both fine and imprisonment, provided however, that offences related to Homalco environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.
- 59.4 Homalco Land Laws may provide for a penalty which is different than the penalties referred to in sections 59.1, 59.2 and 59.3 of this *Land Code*.

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- 59.5 Council may enact Homalco Land Laws respecting the appointment of justices of the peace for the purposes of enforcing the *Land Code* and Homalco Land Laws.
- 59.6 If a justice of the peace is not appointed or available, then this *Land Code* and Homalco Land Laws shall be enforced through a court of competent jurisdiction.
- 59.7 For the purpose of prosecuting offences, Homalco may enter in an agreement with:
- (a) Her Majesty the Queen in Right of Canada and British Columbia to arrange for a provincial prosecutor; or
  - (b) Her Majesty the Queen in Right of Canada to arrange for a federal agent to prosecute these offences.
- 59.8 If no agreement is made under section 59.4 of this *Land Code*, Homalco may retain a private prosecutor for the purpose of prosecuting offences.
- 59.9 Council may enact laws to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms for provincial or local government sources.

## **60.0 Commencement**

- 60.1 The *Land Code* is approved by a ratification vote, held pursuant to the *Homalco Community Ratification Process*.
- 60.2 This *Land Code* shall take effect on the first day of the month following the date that both:
- (a) Members approve this *Land Code* and the Individual Agreement with Canada in accordance with the *Homalco Community Ratification Process*; and
  - (b) this *Land Code* is certified by a verifier pursuant to the *Framework Agreement*.

## **61.0 Review**

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

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