



HENVEY INLET FIRST NATION

LAND CODE

9/9/9

THIS IS EXHIBIT L, REFERRED
TO IN THE AFFIDAVIT OF Henvey Inlet
First Nation Community Ratification
DATED THIS 22 DAY OF Oct 1999
BCF

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PREAMBLE

Whereas Henvey Inlet First Nation has a profound relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator;

Whereas Henvey Inlet First Nation has entered into the *Framework Agreement* on First Nation Land Management with Canada on February 12, 1996, as amended and which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*; and

Whereas Henvey Inlet First Nation wishes to manage its lands and resources, rather than having its lands and resources managed on its behalf under the *Indian Act*;

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

**PART I
PRELIMINARY MATTERS**

1 Title

TITLE

1.01 The title of this enactment is the Henvey Inlet First Nation Land Code.

2 Interpretation

FAIR INTERPRETATION

2.01 This Land Code *shall* be interpreted in a manner that is consistent with the *Framework Agreement*, and *shall* be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

DEFINITIONS

2.02 The following definitions apply in this Land Code:

"Abrogate" means to abolish by authoritative action, annul;

"Canada" and "Crown" means Her Majesty the Queen in right of Canada;

"Certificate of Entitlement" means a permanent interest in land granted to members in accordance with the Henvey Inlet First Nation Land Code;

"Certificate of Possession" means a permanent interest in land issued to members in accordance with the *Indian Act*;

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

"Community Lands" means any Henvey Inlet First Nation land in which all members have a common interest;

"Community Meeting of Members" means a meeting under Part 3 of this Code to which the members are invited to attend.

"Council" means the Chief and Council of Henvey Inlet First Nation or any successor elected government of the Henvey Inlet First Nation;

"Derogate" means to take away a part so as to impair, detract;

"Duplicate Lands Register" means the duplicate register maintained by Henvey Inlet First Nation pursuant to Part 6 of this Code for the purpose of registering interests in First Nation land;

"Eligible voter" means a person whose name appears on the band list of Henvey Inlet First Nation and who, at the time of voting, will have attained the age of eighteen years;

"Extended Family", in respect of a person, means the person's grandparent, uncle, aunt, first degree cousin, grandchild and/or any other relation or relationship that Council may add by law;

"First Nation Lands Register" means the register maintained by the Department of Indian Affairs and Northern Development pursuant to the *Framework Agreement* to register interests in First Nation land;

"First Nation law" means a law, including, but not limited to, policies, regulations, standards, enacted by the Council of Henvey Inlet First Nation in accordance with this Land Code;

"Framework Agreement" means the *Framework Agreement on First Nation Land Management* concluded between Her Majesty in right of Canada and certain First Nations on 12 February 1996, as amended, which was ratified by Canada by the *First Nations Land Management Act*, S.C. 1999 c. 24.

"Henvey Inlet First Nation" means the Henvey Inlet First Nation and its Members;

"Henvey Inlet First Nation Land" means any Reserve land that is subject to this Land Code;

"Immediate Relatives", in respect of a person, means the person's parent, sister, brother, child, Spouse, and includes persons falling within such relationships by customary law including custom adoption;

"Individual Agreement" means the Individual Transfer Agreement or Transfer Agreement made between Henvey Inlet First Nation and her Majesty in right of Canada, in accordance with section 6.1 of the *Framework Agreement*, as amended from time to time.

"Interest", in relation to First Nation land, means any interest, right or estate of any nature in or to that land, including a certificate of possession, certificate of entitlement, lease, easement, right of way, servitude, or *profit à prendre*, but does not include title to that land.

"Land Code" means the Henvey Inlet First Nation Land Code;

"Land law" means a law, restricted to Henvey Inlet First Nation Land, enacted by the Council of Henvey Inlet First Nation in accordance with this Land Code;

"Lands Committee" means the committee established under Part 6 of this Code.

"Licence", in relation to First Nation land, means any right of use or occupation of that land, other than an interest in the land.

"Member" means a person whose name appears on the band list of Henvey Inlet First Nation or who is entitled to have his or her name appear on that list.

"Minister" means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of the *Framework Agreement*.

"Panel" means the Dispute Resolution Panel / the Panel established under section 46 of this Code.

"Ratification vote" means a vote of eligible voters under section 15 of this Code.

"Riparian Rights" means the legal rights of owners of land bordering on a river or other body of water. Also, law that pertains to use of the water for that land;

"Roster Panel" means the list of Panelists established under section 41 of this Code from which the Panel is chosen.

"Spousal Property" means any interest in First Nation Land belonging to one or both persons who are spouses of one another.

"Spouse" means a person who is married to another, whether by a traditional customary, religious or civil ceremony, and includes a Spouse by Common-Law Partnership.

DEFINITIONS IN LAWS

2.03 For greater certainty, if context requires, Henvey Inlet First Nation laws, policies and regulations may prescribe different definitions than those provided in this Land Code.

CLARIFICATION

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

USE OF THE WORD "SHALL"

2.05 The word "*shall*" signifies an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation.

USE OF MASCULINE OR FEMININE

2.06 Unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

TITLES AND HEADINGS

2.07 Titles and headings of Parts and provisions have been inserted in the Code for convenience of reference only, and are not interpretive aids.

LAND AND INTERESTS AFFECTED

2.08 A reference to Henvey Inlet First Nation Land in this Land Code means all rights and resources in and of the Land, and includes:

- a) the water, beds underlying water, riparian rights, and renewable, and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada; and
- b) all the interests and licenses granted to Henvey Inlet First Nation by Canada listed in the Individual Agreement.

3 Authority to Govern

ORIGIN OF AUTHORITY

3.01 The traditional teachings of Henvey Inlet First Nation speak of the obligation of the people of Henvey Inlet First Nation to care for and respect the land and the magnificent wonders of Nature created on the land. By enacting this Land Code, Henvey Inlet First Nation is renewing this special responsibility.

FLOW OF AUTHORITY

3.02 The authority of Henvey Inlet First Nation to govern its lands and resources flows from the Creator to the people of Henvey Inlet First Nation, and from the people to the Council.

4 Conflict of Laws

PARAMOUNTCY

4.01 This Land Code prevails over any inconsistent provision in any other enactment of Henvey Inlet First Nation, to the extent of the inconsistency.

NON-ABROGATION, NON-DEROGATION

4.02 Nothing in this Land Code abrogates or derogates from:

- a) the by-law powers of the Council of Henvey Inlet First Nation pursuant to the *Indian Act*;
- b) the aboriginal title or the aboriginal, or treaty or inherent rights of Henvey Inlet First Nation; or
- c) the special relationship between Canada and Henvey Inlet First Nation and its members.

5 Purpose

PURPOSE

5.01 The purpose of this Land Code is to set out the principles, guidelines and processes by which Henvey Inlet First Nation will exercise control over its lands and resources pursuant to the *Framework Agreement on First Nation Land Management*, as amended.

RATIFICATION

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

6 Lands that are subject to this Code

LANDS AND INTERESTS TO WHICH CODE APPLIES

6.01 The Henvey Inlet First Nation Land that is subject to this Land Code is that land known as the French River Indian Reserve #13 as shown on the CLSR plan # FA 376 43.

ADDITIONAL LANDS

6.02 Henvey Inlet First Nation Land includes all Reserve lands listed in the Individual Agreement and such other lands as may be included in the Individual Agreement as amended from time to time.

6.03 For greater certainty, Henvey Inlet First Nation may consider adding the Henvey Inlet Indian Reserve #2 to the Individual Agreement upon the approval by the First Nation of a completed Land Description Report.

PART 2
FIRST NATION LEGISLATION

7 Law-making authority

COUNCIL MAY MAKE LAND LAWS

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

- a) the development, conservation, protection, management, use and possession of Henvey Inlet First Nation Land;
- b) interests and licenses in relation to Henvey Inlet First Nation Land; and
- c) any matter necessary or ancillary to the making of Land Laws in relation to Henvey Inlet First Nation Land.

EXAMPLES OF LAND LAWS

7.02 For greater certainty, Council may make Land Laws including, but not limited to:

- a) regulation, control and prohibition of zoning, land use, subdivision control and land development;
- b) creation, regulation and prohibition of interests and licenses in relation to Henvey Inlet First Nation Land;
- c) environmental assessment and protection;
- d) provision of local services in relation to Henvey Inlet First Nation Land and the imposition of equitable user charges;
- e) enforcement of Henvey Inlet First Nation Land Laws; and
- f) provision of services for the resolution, outside the courts, of disputes in relation to Henvey Inlet First Nation Land.

7.03 For greater certainty, in addition to Land Laws and First Nation Laws, Council may also develop the following documents including, but not limited to, regulations, standards, codes, and policies.

8 Law-making Procedure

INTRODUCTION OF LAWS

8.01 A proposed law may be introduced at a duly convened meeting of the Council by:

- a) the Chief or a Councilor; or
- b) the representative of any body or authority composed of members that may be authorized by Council to do so; or
- c) any eligible voter.

CONTENT OF LAND LAW PROPOSAL

8.02 A land law proposal *shall* contain a statement of the purposes and benefits to the First Nation of the proposed law.

COUNCIL PROCEDURE UPON RECEIPT OF LAND LAW PROPOSAL

8.03 Upon receipt of a land law proposal, Council may:

- a) table the land law proposal for further review or for enactment;
- b) request that the proposer provide further information or attend before a future meeting of Council to speak to the land law proposal;
- c) undertake or direct the preparation of a draft law concerning matters raised in the land law proposal, for consideration by Council; or
- d) decline the land law proposal.

LANDS COMMITTEE REVIEW AND REPORT

8.04 The Council *shall* provide the proposal to the Lands Committee. The Lands Committee *shall* review a land law proposal and produce a written report to Council, which *shall* be made available to the proposer and to the community generally.

TABLING AND POSTING OF PROPOSED LAND LAWS

8.05 A proposed land law *shall* not be enacted by Council unless:

- a) a draft of the land law has been tabled at a meeting of the Council held at least 42 days before the land law is to be enacted;
- b) the draft land law has been posted in the administrative offices of Henvey Inlet First Nation, in a location accessible to any eligible voter, at least 35 days before the land law is to be enacted; and

- c) the draft land law has been distributed to eligible voters and published on a website maintained by Henvey Inlet First Nation and open to access by any eligible voter, at least 35 days before the land law is to be enacted; and
- d) a notice of the Council meeting at which the land law will be considered for enactment, including a brief description of the purpose of the proposed land law, has been published in a newsletter having circulation to all Henvey Inlet First Nation members at least 35 days prior to the Council meeting.

APPROVAL OF LAW BY COUNCIL.

8.06 A law is enacted if it is approved by a majority of the Council at a meeting of the Council open to the members.

CERTIFICATION OF LAND LAWS

8.07 Two official true copies of any land law or land resolution concerning First Nation lands *shall* be signed and witnessed by a quorum of the Council present at the meeting at which it was enacted and delivered to the Lands Committee.

OFFICIAL TRUE COPIES OF LAND LAWS

8.08 An official true copy of a land law certified by and duly authorized by resolution of Council for such purpose *shall* be an official copy for all purposes of this Code.

EMERGENCY LAND LAWS

8.09 Notwithstanding any other provision of this Code, the Council may enact a law without the preliminary steps required under section 8.05, if the Council is of the opinion that the law is needed urgently to protect First Nation land or the members, but the law expires 120 days after its enactment, unless re-enacted in accordance with section 8.05.

9 Commencement and Publication of Land Laws

LAWS TAKING EFFECT

9.01 A land law enacted by the Council takes effect on the date of its enactment or such later date as specified by or under the law.

PUBLICATION

9.02 Land laws enacted pursuant to this Code *shall* be published:

- a) in the minutes of the Council meeting at which it was enacted;
- b) by the Lands Committee in minutes of the Lands Committee meeting at which an official true copy of the land law is noted as received;
- c) by posting an official true copy of the land law in a location within the administrative offices of Henvey Inlet First Nation accessible to all band members, as soon as practical after enactment and for a period of not less than thirty days thereafter.

LAND LAW REGISTRY

9.03 Council *shall* cause to be established and maintained, at the administrative offices of Henvey Inlet First Nation, a registry of official true copies of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force.

ACCESS TO LAND LAW REGISTRY

9.04 Any person may attend at the registry during normal business hours and may view or obtain a copy of any land law.

FEEs

9.05 Council may from time to time by resolution set fees for viewing or obtaining copies of land laws.

10 Enforceability of Land Laws

ENFORCEABILITY OF LAND LAWS

10.01 To enforce its Land Code and its Land Laws, Henvey Inlet First Nation *shall* have the power to:

- a) establish offences that are punishable on summary conviction;
- b) provide for fines, imprisonment, restitution, community service, and alternate means for achieving compliance; and
- c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

**PART 3
COMMUNITY INVOLVEMENT**

11 Participation of Members

PARTICIPATION OF MEMBERS

11.01 Every Member is entitled to participate in the community consultation processes set out in Part 3 of this Land Code.

PARTICIPATION OF ELIGIBLE VOTERS

11.02 Every Eligible Voter is entitled to participate in the community approval processes set out in Part 3 of this Land Code.

12 Community Input

COMMUNITY INPUT OF MEMBERS

12.01 The Council *shall* consult with Members at a Community Meeting of Members prior to the enactment of a Land Law:

- a) respecting a community plan or subdivision plan;
- b) affecting a heritage site or an environmentally sensitive property;
- c) respecting environmental assessment and protection;
- d) respecting the transfer and assignment of rights and interests in Henvey Inlet First Nation Land;
- e) respecting spousal real property on Henvey Inlet First Nation Land under section 38;
- f) respecting the rate and criteria for the payment of fees or rent for Henvey Inlet First Nation Land;
- g) respecting the rights and procedures on community expropriation; and
- h) respecting any other matter, law or class of law that Council, by Resolution, declares to be subject to this section.

NO QUORUM

12.02 For greater certainty, community input for consultation purposes does not require a quorum.

PROCESS TO IMPLEMENT LAND LAWS

12.03 The Lands Committee, within a reasonable time after this Land Code takes effect, *shall* advise Council on establishing a community process to develop and implement the Land Laws referred to in section 12.01.

13 Community Approval

COMMUNITY APPROVAL OF MEMBERS

13.01 Community approval at a Community Meeting of Members must be obtained for the following:

- a) any Master Land use plan;
- b) any new grant or disposition of an interest or license to a non-member in any Henvey Inlet First Nation Land exceeding a term of thirty-five (35) years;
- c) any renewal of a grant or disposition of an interest or license to a non-member in any Henvey Inlet First Nation Land that extends the original term beyond thirty-five (35) years;
- d) any grant or disposition of any non-renewable natural resources on any Henvey Inlet First Nation Land exceeding a term of five (5) years;
- e) any deletion of a heritage site referred to in section 17 of this Land Code;
- f) any voluntary exchange of Henvey Inlet First Nation Land referred to in section 18 of this Land Code; and
- g) any law or class of law that Council, by Resolution, declares to be subject to this section.

METHOD OF VOTING

13.02 Community approval may be obtained by various methods, including but not limited to:

- a) secret ballot;
- b) show of hands;
- c) mail in ballot; or
- d) any other method outlined in voting policies.

13.03 For greater certainty, Council may determine that the Community Approval vote may be achieved by calling for a Community Meeting of Members, by calling for a vote and establishing voting days and polling locations, by calling for a mail-in ballot community vote, or any other method outlined in 13.02.

QUORUM

13.04 For Community Approval under this Land Code, the quorum is ten percent (10%) of Eligible Voters.

VOTING

13.05 For Community Approval, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters casting a ballot, provided that a quorum of Eligible Voters participate in the vote.

SECOND COMMUNITY APPROVAL VOTE

13.06 If a quorum was not obtained pursuant to section 13.04 a second Community Approval vote *shall* be called.

REDUCED QUORUM FOR SECOND COMMUNITY APPROVAL VOTE

13.07 For a second attempt at Community approval under this Land Code, the quorum is five percent (5%) of Eligible Voters.

VOTING

13.08 For a quorum of Eligible Voters for a second attempt at Community Approval, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters casting a ballot.

THIRD COMMUNITY APPROVAL VOTE:

13.09 If a quorum was not obtained pursuant to section 13.07 a third Community Approval vote *shall* be called without any quorum requirement.

VOTING

13.10 For a third Community Approval vote, decisions may be made by a majority vote of fifty percent plus one (50%+1) of the Eligible Voters casting a ballot.

14 Procedure for a Community Meeting of Members

NOTICE OF MEETING FOR COMMUNITY MEETING OF MEMBERS

14.01 The Council *shall* give written notice for a Community Meeting of Members that *shall* include:

- a) the date, time and place of the meeting;
- b) a brief description of the matters to be discussed and decided on at the meeting;
- c) the name and telephone number of a contact person;
- d) a feedback form which any person entitled to participate may submit to the Lands Committee for review, and forwarded to Council in lieu of or in addition to attending at the meeting; or
- e) feedback by such additional methods, if any, as Council and Lands Committee may consider appropriate.

✓ MANNER OF NOTICE

14.02 The notice for a Community Meeting of Members must be given to the Members by:

- a) posting the notice in public places on Henvey Inlet First Nation Land at least forty two (42) working days before the meeting;
- b) mailing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve at least forty two (42) working days before the meeting;
- c) posting the notice on a website maintained by Henvey Inlet First Nation that is open and accessible by any person who may be entitled to attend the meeting at least forty two (42) working days before the meeting;
- d) publishing the notice in the community newsletter or local newspaper at least thirty five (35) working days before the meeting; and
- e) such additional method as Council may consider appropriate in the circumstances.

PERMISSION OF COUNCIL

14.03 A person, other than a Member, may attend a Community Meeting of Members only with permission of Council.

OTHER MEETINGS

14.04 The Council may schedule more than one Community Meeting of Members to discuss and decide on a matter that requires a Community Meeting of Members.

OTHER LAND LAWS

14.05 For greater certainty, the Council may make laws respecting Community Meeting of Members.

15 Ratification Votes

COMMUNITY APPROVAL BY RATIFICATION VOTE:

15.01 Community approval by a Ratification Vote must be obtained for the following:

- a) any amendment to the Individual Agreement that reduces the amount of funding provided by Canada:

- b) any amendment to this Land Code; or
- c) any law or class of law that Council, by Resolution, declares to be subject to this section.

INDIVIDUAL AGREEMENT WITH CANADA

15.02 For greater certainty, an amendment to, or renewal of, the Individual Agreement does not require community approval by a Ratification Vote, unless the amendment or renewal reduces the amount of funding provided by Canada.

RATIFICATION PROCESS

15.03 Any Ratification Vote required under this Land Code *shall* be conducted in substantially the same manner as the *Henvey Inlet First Nation Community Ratification Process*, which was used to ratify this Land Code.

EXCEPTION

15.04 For greater certainty, revisions made pursuant to section 51.01 do not require community approval by a Ratification Vote.

NO VERIFIER

15.05 A verifier is not needed in any Ratification Vote under this Land Code.

QUORUM

15.06 In order to obtain a quorum for community approval by Ratification Vote under this Land Code at least twenty five (25%) of Eligible Voters must register.

MINIMUM REQUIREMENTS FOR APPROVAL

15.07 If a quorum of Eligible Voters register, a matter *shall* be considered approved at a Ratification Vote if a majority of the registered Eligible Voters cast a vote in favour of the matter.

PROPOSED LAW REJECTED BY MAJORITY VOTE

15.08 If a quorum of Eligible Voters register, a matter *shall* be considered not approved at a Ratification Vote if a majority of the registered Eligible Voters cast a vote in opposition of the matter.

NO SECOND RATIFICATION VOTE IF LAW REJECTED

15.09 If the matter is rejected pursuant to section 15.08, the amendment to the Individual Agreement or the amendment to the Land Code *shall* not be executed, *shall* have no effect and *shall* not be submitted for a second Ratification Vote. The document may be re-submitted for a Ratification Vote under section 15.06 provided additional community consultation occurs, community direction is obtained to re-draft and the document is re-drafted accordingly.

SECOND RATIFICATION VOTE

15.10 If a quorum was not obtained pursuant to section 15.06 a second Ratification Vote *shall* be called.

REDUCED QUORUM FOR SECOND RATIFICATION VOTE

15.11 In order to obtain a quorum for community approval by a second Ratification Vote under this Land Code at least ten (10%) of Eligible Voters must register.

MINIMUM REQUIREMENTS FOR APPROVAL

15.12 If a quorum of at least 10 % of Eligible Voters register, a matter *shall* be considered approved at a second Ratification Vote if a majority of the registered Eligible Voters cast a vote in favour of the matter.

NO THIRD RATIFICATION VOTE

15.13 If the required quorum pursuant to section 15.11 is not obtained, the amendment to the Individual Agreement or the amendment to the Land Code *shall* not be executed, *shall* have no effect and *shall* not be submitted for a third Ratification Vote. The document may be re-submitted for a Ratification Vote under section 15.06 provided additional community consultation occurs, community direction is obtained to re-draft and the document is re-drafted accordingly.

OTHER LAWS

15.14 For greater certainty, the Council may make laws respecting Ratification Votes.

PART 4
PROTECTION OF LAND

16 Expropriation

ACQUISITION BY MUTUAL AGREEMENT

16.01 The right of Henvey Inlet First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the interest or license in Henvey Inlet First Nation Land.

RIGHTS AND INTEREST THAT MAY BE EXPROPRIATED

16.02 An interest or license in Henvey Inlet First Nation Land, or in any building or other structure on those Lands, may only be expropriated by Henvey Inlet First Nation in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community expropriations.

COMMUNITY PURPOSES

16.03 A community expropriation *shall* only be made for a necessary community purpose or works of Henvey Inlet First Nation, including but not limited to: a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, day-care facility, hospitals, health-care facility, and retirement home.

EXPROPRIATION LAWS

16.04 Before proceeding to make any community expropriations in accordance with this Land Code, the Council *shall* enact a Land Law respecting the rights and procedures for community expropriations, including provisions respecting:

- a) the taking of possession of the interest or license;
- b) transfer of the interest or license;
- c) notice of expropriation and service of the notice of expropriation;
- d) entitlement to compensation;
- e) determination of the amount of compensation; and
- f) the method of payment of compensation.

MEMBER NOTIFICATION

16.05 In the case of an expropriation of a Member's interest in Henvey Inlet First Nation Land, the affected Member or Members must receive notification of the expropriation within a reasonable time prior to the release of the public report referred to in section 16.06.

PUBLIC REPORT

16.06 Before Henvey Inlet First Nation decides to expropriate an interest or license, it *shall* make a public report on the reasons justifying the expropriation.

COMPENSATION FOR RIGHTS AND INTERESTS

16.07 Henvey Inlet First Nation *shall*, in accordance with its Laws and the *Framework Agreement*:

- a) serve reasonable notice of the expropriation on each affected holder of the interest or license to be expropriated; and
- b) pay fair and reasonable compensation to the holders of the interest or license being expropriated.

COMPENSATION CALCULATIONS

16.08 Henvey Inlet First Nation *shall* calculate the total value of the compensation under this section based on the heads of compensation set out in the *Expropriation Act (Canada)*.

MARKET VALUE

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

NEUTRAL EVALUATION TO RESOLVE DISPUTES

16.10 The resolution of disputes concerning the right of Henvey Inlet First Nation to expropriate *shall* be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the sixty (60) day period referred to in clause 32.6 of the *Framework Agreement shall* be applied, as appropriate in the circumstances, by the neutral evaluator.

ARBITRATION TO RESOLVE DISPUTES

16.11 The resolution of the following disputes *shall* be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*:

- a) disputes concerning the right of the holder of an expropriated interest or license to compensation; and
- b) disputes concerning the amount of the compensation.

17 Heritage Sites

COMMUNITY INPUT ON DEVELOPMENT

17.01 No development *shall* be allowed on any site designated as a heritage site under the land use plan, unless the community is consulted on the development plan, provided however that no development *shall* be permitted on any site designated by land law as a permanently protected site.

COMMUNITY APPROVAL FOR AMENDMENT TO LAND USE PLAN

17.02 No amendment may be made to a land use plan to delete a heritage site unless the amendment receives confirmation by community approval.

18 Voluntary Land Exchanges and Protections

CONDITIONS TO A LAND EXCHANGE

18.01 Henvey Inlet First Nation may agree with a third party to exchange a parcel of Henvey Inlet First Nation Land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.

NO EFFECT

18.02 A land exchange is of no effect unless it receives community approval at a Community Meeting of Members.

LAND TO BE RECEIVED

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

- a) it must be equal to or greater than the area of Henvey Inlet First Nation Land to be exchanged;
- b) it must be at least comparable to the appraised value of the Henvey Inlet First Nation Land for which it is to be exchanged; and
- c) it must receive Reserve status and become Henvey Inlet First Nation Reserve Land subject to this Land Code.

NEGOTIATORS

18.04 The person or persons who *shall* have authority to negotiate a land exchange agreement on behalf of Henvey Inlet First Nation must be designated by Resolution.

ADDITIONAL LAND

18.05 Henvey Inlet First Nation may negotiate to receive other compensation, such as money or one or more other parcels of land, in addition to the parcel referred to in section 18.03 above which is intended to become a Reserve. Such other parcels of land may be held by Henvey Inlet First Nation in fee simple or some other manner.

FEDERAL CONSENT

18.06 Before Henvey Inlet First Nation concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Canada:

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

COMMUNITY NOTICE

18.07 Once negotiations on the land exchange agreement are concluded, the Council/Lands Committee *shall* provide the following information to Eligible Voters at least forty two (42) consecutive days before the vote:

- a) a description of the Henvey Inlet First Nation Land to be exchanged;
- b) a description of the land to be received in the exchange;
- c) a description of any other compensation to be received;
- d) a report of a certified land appraiser setting out that the conditions in section 18.03 have been met;
- e) a copy or summary of the exchange agreement; and
- f) a copy of the consent referred to in section 18.06.

PROCESS OF LAND EXCHANGE

18.08 The land exchange agreement *shall* provide that:

- a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a Reserve;
- b) the Council must pass a Resolution authorizing Canada to transfer title to the Henvey Inlet First Nation Land being exchanged, in accordance with the exchange agreement;
- c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the Henvey Inlet Land Register and a copy sent to the First Nation Lands Register; and

- d) the Land to be set apart as a Reserve has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provision has been made for such clearance or remediation at no cost to Henvey Inlet First Nation and with full indemnification to Henvey Inlet First Nation.

PART 5
ACCOUNTABILITY

19 Conflict of Interest

APPLICATION OF RULES

19.01 The rules in section 19.02 apply to the following persons:

- a) each member of the Council who is dealing with any matter before Council that is related to Henvey Inlet First Nation Land;
- b) each person who is an employee of Henvey Inlet First Nation dealing with any matter that is related to Henvey Inlet First Nation Land; and
- c) each person who is a member of a board, committee or other body of Henvey Inlet First Nation dealing with any matter that is related to Henvey Inlet First Nation Land.

DUTY TO REPORT AND ABSTAIN

19.02 If there is any financial, familial or personal conflict of interest in the matter being dealt with, the person:

- a) *shall* disclose the interest to the Council, or the board, committee or other body as the case may be;
- b) *shall* not take part in any deliberations on that matter or vote on that matter; and
- c) *shall* remove themselves from the proceedings.

COMMON INTERESTS

19.03 Section 19.02 does not apply to any interest that is held by a Member in common with every other Member.

INABILITY TO ACT

19.04 If the board, committee or other body is unable to act due to a conflict of interest, the matter *shall* be referred to the Council.

MEETING OF ELIGIBLE VOTERS

19.05 If the Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, the Council may refer the matter to a Community Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Land Law or Land Resolution.

SPECIFIC CONFLICT SITUATIONS

19.06 No Immediate Relatives and not more than two (2) Members from the same Extended Family *shall* be concurrent Members of an appointed board, committee or other body dealing with any matter that is related to Henvey Inlet First Nation Land.

ELECTED BODY

19.07 For greater certainty, the Council or any other elected board, committee or body is not included under the rule set out in 19.06.

DISPUTES

19.08 Questions about whether a breach of this section has occurred may be referred to the Roster Panel.

OTHER LAWS

19.09 For greater certainty, the Council may enact laws to further implement this section.

20 Financial Management

APPLICATION

20.01 This section applies only to financial matters relating to Henvey Inlet First Nation Land.

ESTABLISHMENT OF BANK ACCOUNTS

20.02 The Council *shall* maintain one or more financial accounts in a financial institution and shall deposit in those accounts:

- a) transfer payments received from Canada for the management and administration of Henvey Inlet First Nation Land;
- b) monies received by Henvey Inlet First Nation from the grant or disposition of any interests or licenses in Henvey Inlet First Nation Land;
- c) all fees, fines, charges and levies collected under a Land Law or Land Resolution;
- d) all capital and revenue monies received from Canada from the grant or disposition of any interests and licenses in Henvey Inlet First Nation Land; and
- e) any other Land revenue received by Henvey Inlet First Nation.

ADOPTION OF BUDGET

20.03 The Council *shall*, by Resolution, prior to the beginning of each fiscal year, adopt a Land management budget for that fiscal year and may, if the Council deems it necessary in the course of the fiscal year, adopt supplementary budgets for that fiscal year.

PROCEDURE

20.04 After adopting the Land Management budget or supplementary budget, the Council *shall*, without undue delay:

- a) explain the budget or supplementary budget to the Members at an annual Community Meeting of Members; and
- b) make a copy of the budget or supplementary budget available at the administrative offices of Henvey Inlet First Nation for inspection by Members at reasonable hours.

IF NO BUDGET

20.05 If the Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budgets of the previous fiscal year apply until a new budget is adopted.

BUDGET RULES

20.06 The Council may make rules respecting the preparation and implementation of Land management budgets.

EXPENDITURES

20.07 The Council *shall* not expend monies related to Land or commit itself, by contract or otherwise, to expend monies related to Land, unless the expenditure is authorized by or under a Land Law or an approved budget.

FINANCIAL POLICY

20.08 The Henvey Inlet First Nation may, in accordance with this Land Code, adopt a financial policy to further manage monies related to Henvey Inlet First Nation Land.

21 Audit

HOLDING OFFICE

21.01 The auditor appointed under this section holds office until reappointed, or replaced by resolution of Council.

VACANCY IN OFFICE

21.02 Where a vacancy occurs during the term of an auditor, the Council *shall*, without delay, appoint a new auditor for the remainder of the former auditor's term.

REMUNERATION

21.03 The auditor's remuneration *shall* be fixed by the Council.

ACCESS TO RECORDS

21.04 The auditor may at all reasonable times inspect any financial records of Henvey Inlet First Nation and any person or body who administers money on behalf of Henvey Inlet First Nation.

22 Annual Report

CONTENTS

22.01 The annual report will include:

- a) an annual review of land management;
- b) a financial statement and the most recent auditor's report;
- c) a copy and explanation of the audit as it applies to lands; and
- d) any other matter which Council or the Lands Committee deems relevant to members in relation to the Code.

PRESENTATION OF ANNUAL REPORT TO MEMBERS

22.02 Within 90 days of publication of the annual report, Council *shall* convene a Community Meeting of Members for the purpose of presenting the annual report, including the auditor's report, to the members, for information purposes.

23 Access to information

ACCESS

23.01 Any member may, during normal business hours at the main administrative office of Henvey Inlet First Nation, have reasonable access to:

- a) the register of land laws;
- b) the most-recent auditor's report;
- c) the most-recent annual report; and
- d) the auditor's report and annual reports for each of the previous six years.

COPIES FOR MEMBERS

23.02 Any member, upon written request and proof of membership, may obtain a copy of the auditor's report or annual report, subject to such reasonable fees for retrieval and copying as may be set by resolution of Council.

ACCESS TO RECORDS

23.03 Any person who is not a member, with the authorization of Council, may at any reasonable time inspect the financial records of Henvey Inlet First Nation related to First Nation land.

PART 6
LAND ADMINISTRATION

24 Lands Staff

ADMINISTRATION

24.01 Council may delegate administrative authority to staff to carry out functions necessary for day to day administrative operations of lands and resources.

25 Lands Committee

LANDS COMMITTEE ESTABLISHED

25.01 The Lands Committee is hereby established for the following purposes:

- a) assist with the development of the land administration system;
- b) advise the Council and its staff on matters respecting Henvey Inlet First Nation land;
- c) to recommend laws, resolutions, policies and practices respecting First Nation land to the Council;
- d) to consult with the individuals and the community on land issues, and to make recommendations on the resolution of those issues to Council;
- e) to manage and oversee ratification votes, community approvals, and community input meetings; and
- f) to perform such other duties as may be assigned to the Lands Committee by Resolution or Land Law enacted under this Code;

NUMBER OF MEMBERS

25.02 The Lands Committee *shall* be composed of 5 or 7 eligible voters.

COMPOSITION

25.03 The Lands Committee *shall* be appointed or selected in accordance with this Code, according to the following rules:

- a) at least one member of the Lands Committee *shall* be a member of Council appointed by resolution of Council;
- b) additional eligible voters selected by Council, whether resident on First Nation land or otherwise, provided that Council *shall* not select any person who:
 - i) is found to be of unsound mind by a court in Canada or elsewhere;
 - ii) has the status of a bankrupt;
 - iii) has been convicted of an offence that was prosecuted by way of indictment;
 - iv) has been convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty, or wrongful conduct.

CHAIR AND DEPUTY CHAIR

25.04 The Lands Committee *shall* appoint one of the committee members to be Chair of the Lands Committee, for such term as the committee deems appropriate, and one or more Deputy Chairs who may perform the duties of the Chair in her absence.

FUNCTIONS OF THE CHAIR

25.05 The Chair *shall*

- a) chair meetings of the Lands Committee
- b) may present the information to the members at a Community Meeting of Members under Part 3 of this Code;
- c) provide quarterly written reports to Henvey Inlet First Nation on the activities of the Lands Committee; and
- d) *shall* have such other powers and duties as may from time to time be assigned by resolution of the Lands Committee or Council.

26 Implementation of Lands Committee

FIRST LANDS COMMITTEE

26.01 Immediately upon the coming into effect of this Code, Council *shall* select a Lands Committee to serve for a term of three years until a land law governing elections or appointments to the Lands Committee comes into force.

LAW GOVERNING SUCCESSORS TO THE FIRST LANDS COMMITTEE

26.02 As soon as possible after the coming into force of this Code, Council, in consultation with the Lands Committee, *shall* develop a land law providing for community involvement in the selection, election, or appointment of eligible voters to serve on the Lands Committee, and dealing with such matters as term of office, remuneration, conditions of service, termination of membership, vacancies arising during term and such other matters as Council deems appropriate to the operation of the Lands Committee.

LANDS COMMITTEE WORK-PLAN

26.03 Within a reasonable time after this Land Code takes effect, the Lands Committee *shall*, in consultation with Council and the community, ensure that rules and procedures are developed that address the following matters:

- a) Terms of Reference for the procedure for meetings of the Lands Committee, and generally for the conduct of its affairs, not inconsistent with those established by the Council;
- b) the process for determining the fees and rent for interests, rights and licenses in Community Lands, and the fees for services provided in relation to First Nation land;
- c) the process for determining the fees and royalties for the taking of natural resources on First Nation Land;
- d) environmental protection and assessment in relation to First Nation land;
- e) any outstanding disputes in relation to First Nation land;
- f) land use planning and zoning; and
- g) respecting spousal and real property policy and whether any change should be made to the policy upon which that section is based; and
- h) any other matter referred by Council.

HOW POLICIES WILL BE GIVEN EFFECT

26.04 Rules and procedures developed by the Lands Committee *shall* be presented to Council for consideration and implementation as policies, laws or amendments to this Land Code, whichever is most appropriate.

27 Registration of Interests and Licences

ENFORCEMENT OF INTERESTS AND LICENCES

27.01 An interest or licence in First Nation land created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Lands Register.

REGISTRATION OF CONSENT OR APPROVAL

27.02 No instrument that requires the consent of the Council, or community approval, *shall* be registered unless a certified copy of the document that indicates the consent or approval is attached.

DUTY TO DEPOSIT

27.03 The Council *shall* ensure that an original copy of the following instruments is deposited in the First Nation Lands Register:

- a) any grant of an interest or licence in First Nation land;
- b) any transfer or assignment of an interest in First Nation land;
- c) every land use plan, subdivision plan or resource plan; and
- d) this Land Code and any amendment to this Land Code.

28 Duplicate Lands Register

DUTY TO MAINTAIN DUPLICATE REGISTER

28.01 The Council may maintain a Duplicate Lands Register in the same form and with the same content as the First Nation Lands Register.

DUTY TO DEPOSIT

28.02 Every person who receives an interest or licence in First Nation land *shall* deposit an original copy of the relevant instrument in the Duplicate Lands Register, if a Register is established.

PART 7
INTERESTS AND LICENCES IN LAND

29 Formalities of Grants, Transfers, and other Transactions

LAND TRANSACTIONS TO BE IN WRITING

29.01 An interest in, or licence to use, First Nation land *shall* only be created, granted, disposed of, assigned, transferred or otherwise affected only by an instrument in writing in accordance with this Land Code.

FORMS AND PROCEDURES

29.02 Council, on the advice of the Lands Committee, may prescribe forms and procedures for the creation, granting, transfer, assignment or other disposition of interests, rights and licences in First Nation land.

NON-CONFORMING TRANSACTIONS VOID

29.03 After the date that this Land Code takes effect, any deed, lease, contract, instrument, document, or agreement of any kind, whether written or oral, by which Henvey Inlet First Nation, a member or any other person purports to grant, dispose of, transfer or assign an interest or licence in First Nation land is void unless it complies with this Land Code.

30 Existing Interests

CONTINUATION OF EXISTING INTERESTS

30.01 Interests and licences in relation to First Nation land that exist on the coming into force of this Land Code continue in accordance with their terms and conditions.

30.02 A policy *shall* be established as soon as practical after the coming into force of the Land Code to accommodate unregistered land interests.

31 New Interests and Licences

AUTHORITY TO MAKE DISPOSITIONS

31.01 Subject to the provisions of this Code, Council on behalf of Henvey Inlet First Nation may grant:

- a) interests and licenses in Community Lands, including certificates of entitlement, leases, permits, easements, rights-of-ways, etc. ;
- b) permits to take resources from Community Lands, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

CONDITIONAL GRANT

31.02 The grant of an interest, license or permit may be made subject to the satisfaction of written conditions.

32 Interests of non-members

NON-MEMBERS

32.01 A person who is not a member of Henvey Inlet First Nation *shall* not hold any interest in Henvey Inlet First Nation land except a lease, licence, or permit.

GRANTS TO NON-MEMBERS

32.02 A transfer or other disposition of all or any part of a lease, licence or permit in First Nation land to a person who is not a member *shall* not be effective unless and until it is confirmed by a resolution of Council, adopted with the advice of the Lands Committee.

33 Certificates of Possession or other Member Interests

APPLICATION

33.01 For greater certainty, certificates of possessions or Member interests previously issued under the *Indian Act shall* continue to exist after the coming into force of this Land Code unless the Member agrees to have the certificate of possession or interest replaced with the issuance of a new interest document developed pursuant to the coming into force of this Land Code.

34 Allocation of Lots to Members

POLICIES AND PROCEDURES FOR ALLOCATION OF LOTS

34.01 Subject to the provisions of this Code, Council in consultation with the Lands Committee may establish policies and procedures for the allocation of lots to members.

ALLOCATION

34.02 Council may, in accordance with this Code:

- a) allocate lots to members; or

b) issue a certificate of entitlement to a member for a lot allocated to that member.

NATURE OF INTEREST IN CP OR CE

34.03 Subject to this Land Code and First Nation laws, a certificate of possession or certificate of entitlement in respect of a parcel of land is an interest that *shall* entitle the member holding it to:

- a) exclusive possession of the land in perpetuity;
- b) benefit from the resources arising from the land;
- c) transfer, devise or otherwise dispose of the CP or CE to another member;
- d) any other rights consistent with this Land Code that Council may grant by way of Land Law or Resolution.

NO ALLOCATION OF LOTS TO NON-MEMBERS

34.04 A person who is not a member is not entitled to be allocated a lot or to hold a permanent interest in First Nation land.

35 Transfer and Assignment of Interests

CONSENT OF COUNCIL AND EXCEPTIONS

35.01 No interest in First Nation land may be transferred or assigned without the consent in writing of Council, except:

- a) a transfer or assignment of a certificate of possession or certificate of entitlement from one member to another in accordance with this Code;
- b) a transfer that occurs by operation of law, including transfer of estate by testamentary disposition;
- c) a transfer pursuant to the interim spousal property rules in section 38 of this Code, or pursuant to a spousal property law enacted by Henvey Inlet First Nation as provided in this Code; and
- d) every grant of an interest or licence in First Nation land, other than those stated herein to be an exception, *shall* be deemed to include such consent as a condition of subsequent transfers or assignments.

36 Limits on Mortgages and Seizures

PROTECTIONS

36.01 In accordance with the *Framework Agreement*, section 29, section 87 and subsections 89(1) and (2) of the *Indian Act* continue to apply to First Nation land.

MORTGAGE OF CERTIFICATE OF POSSESSION OR CERTIFICATE OF ENTITLEMENT

36.02 The interest of a member in First Nation land may be subject to a mortgage or charge, but only to Henvey Inlet First Nation with the written consent of the Council.

MORTGAGES OF LEASEHOLD INTERESTS WITH CONSENT

36.03 A leasehold interest may be subject to charge or mortgage, but only where authorized by a resolution of Council with the advice of the Lands Committee.

TIME LIMIT

36.04 The term of any charge or mortgage of a leasehold interest *shall* not exceed the lesser of:

- a) the term of the lease; or
- b) 35 years, or such longer period as may receive community approval.

DEFAULT IN MORTGAGE

36.05 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not 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 received the written consent of the Council;
- b) the charge or mortgage received community approval where required;
- c) the charge or mortgage was registered in the First Nations Land Register; and
- d) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of Henvey Inlet First Nation.

POWER OF REDEMPTION

36.06 Subject to prior redemption by the lessee, Council on behalf of Henvey Inlet First Nation may redeem the charge or mortgage from the chargee or mortgagee in possession and *shall* thereupon acquire all the rights and interests of the chargee or mortgagee and of the lessee.

37 Residency and Access Rights

RIGHTS OF RESIDENCE

37.01 The following persons have a right to reside on First Nation lands:

- a) members, who have been allocated a residential lot by Council, and their spouses and children;
- b) members with a registered interest in First Nation land;
- c) any invitee of a member referred to in clause a) or b);
- d) lessees and permittees, in accordance with the provisions of the instrument granting the lease or permit; and
- e) a person authorized in writing by the Council/Lands Committee or by a Henvey Inlet First Nation law.

RIGHT OF ACCESS

37.02 The following persons have a right of access to First Nations lands:

- a) a lessee and his or her invitees to a leasehold;
- b) permittees and those granted a right of access under a permit, to the lands subject to the permit;
- c) Henvey Inlet First Nation members, their spouses and their minor or dependent children entitled to reside on the lands of Henvey Inlet First Nation for residential, educational, social and employment or business purposes;
- d) a member's invited guests;
- e) a person who authorized by a government body or any other public body, established by or under an enactment of Henvey Inlet First Nation, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- f) a person authorized in writing by the Council/Lands Committee or by a Henvey Inlet First Nation law.

PUBLIC ACCESS

37.03 Any person who is not a member may have access to First Nation land for any social or business purposes, if:

- a) the person does not trespass on occupied land and does not interfere with any interest in land;
- b) the person complies with all applicable laws including any restrictions contained in written authorization from Council; and
- c) no resolution has been enacted barring that person.

USE OF ROADS

37.04 Any person having a right of access to First Nation land may have the right to access such land over First Nation roads, subject to this Code and First Nation laws.

TRLSPASS

37.05 Any person who resides on, enters or remains on First Nation land other than in accordance with a residence or access right under this Land Code is guilty of an offence.

CIVIL REMEDIES

37.06 All civil remedies for trespass are preserved.

38 Spousal Property Law

ENACTMENT OF RULES AND PROCEDURES

38.01 The Council *shall* enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage and spousal relationships concerning:

- a) the use, occupancy and possession of First Nation land; and
- b) the division of interests in that land.

DEVELOPMENT OF RULES AND PROCEDURES

38.02 The rules and procedures contained in the spousal property law *shall* be developed by the Lands Committee in consultation with the community.

ENACTMENT DEADLINE

38.03 The spousal property law *shall* be drafted and enacted 12 months from the date this Land Code takes effect.

GENERAL PRINCIPLES

38.04 For greater certainty, the rules and procedures developed by the Lands Committee under this section must respect the following general principles:

- a) each spouse should have an equal right to possession of their spousal home;
- b) each spouse should be entitled to an undivided half interest in their spousal home, as a tenant in common;
- c) the rules and procedures *shall* not discriminate on the basis of gender; and
- d) only members are entitled to hold a permanent interest in First Nation land or a charge against a permanent interest in First Nation land.

INTERIM SPOUSAL PROPERTY RULES

38.05 In order that members benefit immediately from the legislative authority of the Council to address the issue of spousal property:

- a) Council may enact Interim Spousal Property Rules to govern the rights of spouses in relation to First Nation land in event of a breakdown of marriage or spousal relationships.
- b) The Interim Spousal Property Rules *shall* be consistent with the principles provided in this Code to govern the development of a spousal property law.
- c) Interim Spousal Property Rules enacted by Council *shall* come into force as a land law pursuant to this Code immediately upon enactment by Council, or on the later effective date provided therein, and *shall* remain in force for not more than 12 months or such shorter period of effect as may be stated therein, unless re-enacted, amended or replaced by new Interim Spousal Property Rules, in each case to remain in force for not more than 12 months.

- d) Council's authority to enact Interim Spousal Property Rules *shall* be independent of the state of completion of the work of the Lands Committee and the community consultation process relating to the development of a spousal property law.

PART 8
DISPUTE RESOLUTION

39 Purpose

INTENT

39.01 The intent of this Part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Henvey Inlet First Nation Land do so harmoniously with due respect to the rights of others and of Henvey Inlet First Nation and with access to Henvey Inlet First Nation procedures to resolve disputes.

PURPOSE:

39.02 The purpose of these rules is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matters in dispute, taking into account the values which distinguish dispute resolution from litigation.

40 Processes

DISPUTE PREVENTION

40.01 The parties *shall* use best efforts to prevent disputes from arising and *shall* consider the use of dispute resolution processes at the earliest possible stage of any conflict.

DISPUTE PRIOR TO THE LAND CODE

40.02 Disputes that arose before the Land Code takes effect could also be referred to this Part.

SETTLE A DISPUTE

40.03 Nothing in this Part *shall* be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

SETTLEMENT AGREEMENT

40.04 Any settlement reached through dispute resolution *shall* not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

STAGED PROCESSES

40.05 Henvey Inlet First Nation intends that a dispute in relation to Henvey Inlet First Nation Land, except as otherwise provided, progress in sequence through the following stages provided for in this Part:

- a) negotiation;
- b) facilitated discussions;
- c) mediation; and
- d) final arbitration by the Dispute Resolution Panel.

TERMINATION OF PROCESSES

40.06 Negotiations, facilitated discussions and mediations may be suspended upon any of the following occurrences:

- a) the parties reach an agreement;

- b) one of the parties refuses to continue with the negotiation, facilitated discussion or mediation;
- c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- d) upon the request of both parties.

NOTICE OF TERMINATION

40.07 A notice of termination is required when further facilitated discussions or mediation *shall* not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

DISPUTE RESOLUTION NOT AVAILABLE

40.08 Dispute resolution is not available under this Part for disputes in relation to:

- a) administration or distribution of an estate;
- b) decisions relating to housing allocations;
- c) decisions of Council to grant or refuse to grant an interest or license in Henvey Inlet First Nation Land to a non-Member;
- d) decisions on expropriation under section 16 of this Land Code; and
- e) prosecution or conviction of an offence under a Land Law or under criminal law.

DUTY OF FAIRNESS

40.09 All persons involved in a dispute under this Part *shall* be:

- a) treated fairly;
- b) given a full opportunity to present their case; and
- c) given reasons for a decision made under this Part.

RULES AND PROCEDURES

40.10 Council may prescribe such laws, Resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this Land Code, as may be necessary to give effect to this Part including but not limited to:

- a) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- b) disclosure and confidentiality;
- c) implementing recommendations of the Dispute Resolution Panel made under section 48.02; and
- d) any other matter necessary to give effect to this Part.

CODE OF CONDUCT

40.11 Council *shall* establish a code of conduct for facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part.

WAIVER OF LIABILITY

40.12 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists *shall* not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

MANDATORY APPLICATION

40.13 Council may establish a Land Law that sets out the mandatory application of this Part in certain circumstances.

CONTRACTUAL AGREEMENT

40.14 Subject to any Land Law enacted under section 40.13, a contractual agreement made under this Land Code may establish that the dispute resolution outlined in this Land Code and its Land Laws may be mandatory or may to some degree prescribe for alternate arbitration process if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract *shall* be treated as an agreement independent of the other terms of the contract.

VARIATION OF RULES

40.15 Subject to any Land Law enacted under section 40.13, the parties to a dispute to which these rules apply may to some degree modify, vary or amend these rules by consensual agreement in writing, and notify the Roster Panel in writing.

CIVIL REMEDIES

40.16 Notwithstanding section 40.13 and 40.14, nothing in this Part *shall* be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

CHALLENGE TO VALIDITY OF LAW

40.17 Nothing in this Part *shall* be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

41 Roster Panel Established

APPOINTMENTS TO ROSTER PANEL

41.01 The Roster Panel *shall* be composed of a maximum of twenty (20) Panelists, all of whom must be Eligible Voters.

INELIGIBLE

41.02 Notwithstanding section 19.06, in order to avoid conflict of interest, no Council member, or employee of Henvey Inlet First Nation or person already serving on another board, body, or committee of Henvey Inlet First Nation *shall* sit on the Roster Panel.

REPRESENTATION

41.03 The Lands Committee *shall* appoint the Roster Panelists, and *shall* ensure that the Roster Panelists represent the various elements of the community.

TERM OF OFFICE

41.04 The Roster Panelists hold office for a term of three (3) years, at which time the term of office may be renewed.

NO REMUNERATION

41.05 Unless Council by Resolution or law provides otherwise, the Panelists are to act on a volunteer basis and receive no remuneration for their services.

RULES OF ROSTER PANEL

41.06 The Roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

42 Negotiation

INFORMAL DISCUSSIONS

42.01 Henvey Inlet First Nation intends that wherever possible, a dispute in relation to Henvey Inlet First Nation Land *shall* be resolved by negotiation through informal discussion by the parties to the dispute prior to entering the dispute resolution process by filing a notice of dispute.

43 Procedure to File a Dispute

PROCEDURE TO FILE A DISPUTE

43.01 A person who wishes to resolve a dispute with another person or Henvey Inlet First Nation in relation to the use or occupation of Henvey Inlet First Nation Land may file a written notice of dispute with the Lands Department setting out:

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

LIMITATION PERIOD

43.02 The limitation period for submitting a notice of dispute and referring a matter or dispute to the Roster Panel is:

- a) 6 months after the day the decision, act or omission being referred was made;
- b) thirty (30) consecutive days after the breakdown of negotiation; or
- c) in the case of a breakdown and termination of facilitated discussions or mediation, thirty (30) consecutive days after the notice of termination.

44 Facilitated Discussions

PROCEDURE

44.01 Within thirty (30) consecutive days of receiving a notice of dispute under section 43.01, the Lands Department *shall* prepare and deliver a report on the dispute and a copy of the notice of dispute to the Chair of the Roster Panel.

NOTICE OF DISPUTE

44.02 As soon as practicable after receiving a report and notice of dispute under section 44.01 the Chair of the Roster Panel or another person not affected by the dispute and designated by the Henvey Inlet First Nation Lands Committee for that purpose, *shall* make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

SET MEETING DATE AND TIME

44.03 In setting the date and time of the meeting referred to in section 44.02 the Chair of the Roster Panel or other person appointed for the purposes of section 44.02 may consider any need to:

- a) obtain further information;
- b) give notice of the dispute to others who have or may have an interest in it; or
- c) obtain professional advice in relation to the dispute.

OTHER MECHANISMS

44.04 Where the Chair of the Roster Panel or other person appointed for the purposes of section 44.02 concludes that the dispute cannot be resolved through facilitated discussions, she may in her sole discretion direct that the dispute proceed to mediation or final arbitration hearing by the Dispute Resolution Panel.

45 Mediation

APPOINTMENT

45.01 A mediator *shall* be selected jointly by the parties to the dispute and the Roster Panel.

UNABLE TO AGREE

45.02 If the parties to the dispute and the Roster Panel are unable to agree on a mediator, the Dispute Resolution Panel *shall* hear the dispute.

AUTHORITIES

45.03 The mediator has no authority to decide the dispute without the agreement of the parties to the dispute.

REPORT

45.04 At the conclusion of mediation, the mediator *shall* submit a written report on the mediation proceedings to the parties to the dispute and the Roster Panel.

46 Final Arbitration by the Dispute Resolution Panel

DISPUTES

46.01 Any matter or dispute related to Henvey Inlet First Nation Land may be referred to the Roster Panel for resolution.

PANEL OF THREE CHOSEN FROM ROSTER PANEL

46.02 Disputes referred to the Roster Panel are to be heard by three (3) Panelists chosen as follows:

- a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute;
- b) one (1) panelist, who is to be the chairperson, shall be chosen by the rest of the Panel; and
- c) in the case of situations not adequately covered by section (a) or (b), all three (3) panelists *shall* to be chosen by the Roster Panel as a whole.

PANEL ESTABLISHED

46.03 The Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to Henvey Inlet First Nation Land.

47 Impartiality of the Dispute Resolution Panel

DUTY TO ACT IMPARTIALLY

47.01 The Panel *shall* act impartially and without bias or favour to any party in a dispute.

OFFENCE

47.02 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

REJECTION OF APPLICATION

47.03 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

48 Powers of the Dispute Resolution Panel

POWERS OF PANEL

48.01 The Panel may, after hearing a dispute:

- a) confirm or reverse the decision, in whole or in part;
- b) substitute its own decision for the decision in dispute;
- c) direct that an action be taken or ceased;
- d) refer the matter or dispute back for a new decision; or
- e) make an order to give affect to its decision, including any necessary order for the survey of an interest in Henvey Inlet First Nation Land, the registration of an interest in Henvey Inlet First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

RECOMMENDATIONS BY PANEL

48.02 In addition to making a determination under section 48.01, the Dispute Resolution Panel may:

- a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this Land Code; or
- b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

INTERIM DECISIONS

48.03 The Dispute Resolution Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an interest in Henvey Inlet First Nation Land.

PROFESSIONAL SERVICES

48.04 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it *shall* make best efforts to use professional services available in the community.

WRITTEN DECISIONS

48.05 Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so.

REASONS

48.06 The Panel *shall* give reasons for its decision, and *shall* do so in writing if a party to the proceedings requests them before, or within fourteen (14) consecutive days after, the date of the decision.

APPEAL OF DECISION

48.07 A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the Federal Court (Trial Division).

PART 9
OTHER MATTERS

49 Liability

LIABILITY COVERAGE

49.01 The Council *shall* arrange, maintain and pay for insurance coverage for its officers and employees engaged in carrying out any matter related to First Nation land to indemnify them against personal liability arising from the performance of those duties.

EXTENT OF COVERAGE

49.02 The extent of the insurance coverage *shall* be determined by the Council.

BONDING

49.03 Every employee of Henvey Inlet First Nation whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.

50 Offences

APPLICATION OF THE CRIMINAL CODE

50.01 Unless some other procedure is provided for by a law, the summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under this Land Code or under a law.

51 Revisions to Land Code

REVISIONS

51.01 A Ratification Vote is not required for revisions made to this Land Code that do not change the substance of this Land Code. The Council *shall*, from time to time, arrange and revise this Land Code. Revisions may be made as a result of, but are not limited to:

- a) a reference in this Land Code to a clause in another act or document that was amended and resulted in clause renumbering;
- b) a reference in this Land Code to an Act or parts thereof that have expired, have been repealed or suspended;
- c) minor improvements in the language as may be required to bring out more clearly the intention of Henvey Inlet First Nation without changing the substance of the Land Code;
- d) changes in this Land Code as are required to reconcile seeming inconsistencies with other acts; and
- e) corrections of editing, grammatical or typographical errors.

52 Commencement

PRECONDITIONS

52.01 This Land Code *shall* not take effect unless the community approves this Land Code and the Individual Agreement with Canada and this Land Code has been certified by the verifier pursuant to the *Framework Agreement*.

COMMENCEMENT

52.02 Subject to section 52.01, this Land Code *shall* take effect on the first day of the month following the certification of this Land Code by the verifier.