

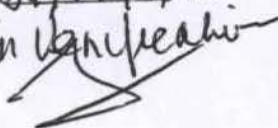
This is ^{Anney} Exhibit "A" referred to in the
Affidavit of A.J. Gross
sworn before me at Kelowna, British
Columbia this 18th day of November 2019.



DITIDAHT FIRST NATION LAND CODE

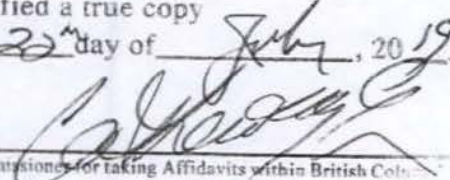
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Dated: July 11, 2019.

Signed _____

Certified a true copy
this 20th day of July, 2019

A Commissioner for taking Affidavits within British Columbia

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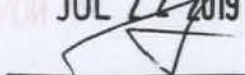
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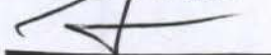
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PREAMBLE

Ditidaht has a deep respect for the territory, lands and resources, which Ditidaht has used and occupied since time immemorial. We are stewards of our lands, waters, and resources and have an obligation to pass our responsibilities, intact, to our future generations.

We strive to foster unity within our community, create opportunities for our members to return to the territories and build a healthy local economy to support the long-term growth of our community now and into the future.

We continue to assert our right to enact and enforce our own laws on our reserve lands, which will be drafted in consideration of our unique culture and history.

Ditidaht First Nation entered into the *Framework Agreement on First Nation Land Management* on May 24, 2017 thereby reassuming our right to exercise control over our lands and resources through the creation of a Land Code.

Based on our principles of caring for and maintaining our physical and spiritual linkages with our lands, waters and resources for all generations, Ditidaht is hereby enacting the Ditidaht First Nation Land Code as the fundamental land law of Ditidaht First Nation.

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PART 1 - PRELIMINARY MATTERS

Title

1.1 The title of this enactment is the *Ditidaht First Nation Land Code*.

Definitions

1.2 The following definitions apply in this Land Code:

“**Canada**” means Her Majesty the Queen in Right of Canada;

“**Certificate of Possession**” means an interest in Ditidaht First Nation Land issued under section 20(2) of the *Indian Act* prior to the date this Land Code comes into force;

“**Chair**” means the chairperson of the Land Management Advisory Committee designated under section 7.21 [*Chair of the Land Management Advisory Committee*];

“**Chief**” means the duly elected Chief of Ditidaht First Nation;

“**Common-law Marriage**” means a relationship between two individuals not married to each other but who have lived together as Spouses for a period of not less than 12 consecutive months;

“**Community Purpose**” means a purpose which is intended to provide a facility, benefit, or support for the Members or persons residing on Ditidaht First Nation Land. A community purpose may include utility or transportation corridors and requirements related to transportation and utility corridors, public works, cemeteries, schools, day-care facilities, administrative buildings and facilities, seniors housing facilities, hospitals, fire halls, sewage and water treatment facilities, playgrounds, community centres and other similar facilities and the protection of heritage sites on Ditidaht First Nation Land;

“**Community Ratification Process**” means the process developed pursuant to the *Framework Agreement on First Nations Lands Management* and the *First Nations Lands Management Act* for the purpose of ratifying this Land Code;

“**Council**” means the governing body of Ditidaht First Nation, comprised of the Chief and Councillors of Ditidaht First Nation;

“**Councillor**” means a duly elected Councillor of Ditidaht First Nation;

“**Custom Allocation**” means a Licence in relation to Ditidaht First Nation Land pursuant to which a Member is entitled to lawful use or occupation of a portion of Ditidaht First Nation Land in accordance with the customs and traditions of the Ditidaht First Nation granted under section 5.27 [*Authority to grant Custom Allocations*];

“**Custom Allocation Holder**” means the holder of a Custom Allocation;

“Ditidaht First Nation Community Land” means any Ditidaht First Nation Land not the subject of a current Interest;

“Ditidaht First Nation Land” means any portion of a reserve of Ditidaht First Nation that is subject to this Land Code;

“Ditidaht law” means any law validly enacted by the Ditidaht First Nation or Council, including Laws enacted in accordance with this Land Code;

“Eligible Recipient” means

- (a) a Member,
- (b) the Ditidaht First Nation, or
- (c) a housing service provider designated by Council in accordance with section 5.3 [*Housing service providers*];

“Eligible Voter” means, for the purpose of voting in respect to any matter pursuant to this Land Code, a Member who has attained the age of eighteen (18) years of age on the date of the vote;

“Environmental Audit” means an environmental assessment report conducted in accordance with the standards of either the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 19, s. 52 and regulations thereunder, as amended or restated from time to time, or the *British Columbia Environmental Assessment Act*, SBC 2002, Chapter 43, whichever imposes the more stringent assessment standards in the opinion of the Land Management Advisory Committee;

“Environmental Consultant” means a reputable firm of environmental consultants, qualified to do business in British Columbia and qualified to conduct investigation and remediation of soil, water and vapour contamination, employing consultants qualified as professional engineers registered and in good standing with the Association of Professional Engineers and Geoscientists of British Columbia and maintaining professional liability and errors and omissions insurance in the amount of not less than \$1 million per occurrence;

“Expropriation” means a taking of an Interest in or Licence in respect of Ditidaht First Nation Land for a Community Purpose through a process established by a Law and in accordance with this Land Code;

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

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

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“First Nations Land Registry Regulations” means the *First Nations Land Registry Regulations* SOR/2007-231 established pursuant to 25(3) of the *First Nations Land Management Act*;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between the Minister and 14 First Nations on February 12, 1996, as amended from time to time;

“Immediate Family” means, in respect of an individual, a Spouse, parent, grandparent, child (including children adopted pursuant to Ditidaht law or the laws of the Province of British Columbia), grandchild, sibling, or any other person living as a member of the same household;

“Indian Act” means the *Indian Act* (Canada), R.S.C., 1985, c. I-5, as amended from time to time;

“Individual Agreement” means the individual transfer agreement made between the Ditidaht First Nation and Canada pursuant to section 6(1) of the Framework Agreement and section 6(3) of the *First Nations Land Management Act*;

“Interest” means an interest, right or estate of any nature in or to a specific parcel or area of Ditidaht First Nation Land, including a Residential Interest or Certificate of Possession, but does not include title to that Ditidaht First Nation Land;

“Land Code” means this *Ditidaht First Nation Land Code*, including any amendments as may be made from time to time;

“Land Management Advisory Committee” or **“Committee”** means the committee established under section 7.4 [*Land Management Advisory Committee*];

“Land Use Plan” means a plan that addresses housing, transportation, parks, economic development, infrastructure, social, cultural, environmental and other needs related to the use and development of Ditidaht First Nation Land;

“Lands Department” means the department of the Ditidaht First Nation that administers the day to day operations of Ditidaht First Nation Land and this Land Code;

“Lands Director” means the person employed or otherwise engaged by Ditidaht First Nation to oversee the day to day operations of the Lands Department and the administration of this Land Code;

“Law” means any law enacted pursuant to Part 2 [*Ditidaht First Nation Law*];

“Licence” means any right of use or occupation in Ditidaht First Nation Land or any right or permit to carry out an activity on Ditidaht First Nation Land, other than an Interest in the land;

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

“Member” means an individual whose name appears on the Ditidaht First Nation membership list;

“Member Approval” means an approval made by Eligible Voters in accordance with Part 4 [*Member Approval*];

“Member Information Session” means a meeting of the Members convened under section 3.1 [*Member Information Session*];

“Minister” means the Minister of Indigenous Services Canada, as representative of Canada;

“Minor Amendment” means an amendment of the kind referred to in section 9.9 [*Amendments by Council and Land Management Advisory Committee*];

“Natural Resource Licence” means a Licence granted under section 5.8 [*Natural Resource Licences of 10 years or less*], 5.9 [*Natural Resource Licences of between 10 and 25 years*] or 5.10 [*Natural Resource Licences of 25 years or more*];

“Natural Resources” means any materials, substances, vegetation or animals found on, under or in Ditidaht First Nation Land, which, when removed, have economic or other value;

“Notice” means a notice given in accordance with sections 3.6 [*Notice*] to 3.10 [*Time required for Notice*];

“Ratification Officer” means the person who has received the appropriate training to act as a Ratification Officer and has been appointed by Council to conduct Member Approval votes;

“Referendum” means a referendum conducted amongst the Eligible Voters pursuant to Part 4 [*Member Approval*];

“Register” or **“Registration”** means to register in the First Nations Land Registry;

“Registrable Instrument” means any written document, certificate, conveyance, deed, mortgage, encumbrance or plan relating to transferring, charging or otherwise dealing with or affecting an Interest in, or Licence in relation to, Ditidaht First Nation Land or evidencing ownership to it, including a will, grant of probate or administration, or an enactment;

“Register of Laws” means the register of Laws created and kept in accordance with section 2.25 [*Register of Laws*];

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“Regulatory Instrument” means any regulation, policy, procedure, rule, standard, terms of reference or code enacted or approved by Council under the Land Code or Laws;

“Residential Interest” means the interest in Ditidaht First Nation Land pursuant to which a Member is entitled to lawful exclusive possession of a parcel of Ditidaht First Nation Land granted under section 5.1 [*Grant of Residential Interest*] or, prior to the date this Land Code comes into force, a Certificate of Possession granted pursuant to section 20 of the *Indian Act*;

“Residential Interest Holder” means the registered holder of a Residential Interest;

“Resolution” means a resolution of Council passed under this Land Code;

“Special Members Meeting” means a meeting that is called for the purpose of holding a Member Approval vote on a matter relating to this Land Code, as described in Part 4 [*Member Approval*];

“Spouse” means an individual who is married to another individual, whether by a traditional, religious or civil ceremony, and includes an individual who is cohabiting in a Common-law Marriage;

“Verifier” means the person appointed as Verifier under the Framework Agreement; and

“Voting Law” means procedures for the conduct of Member Approval votes established through a Regulatory Instrument under section 4.2 [*Voting policies*].

Interpretation

1.3 In this Land Code:

- (a) the use of the word “will” denotes an obligation that, unless this Land Code provides to the contrary, will be carried out as soon as practicable after this Land Code comes into effect or in the event that gives rise to the obligation;
- (b) the word “or” is not exclusive and is used in its inclusive sense, meaning A or B, or both A and B and the word “and” is used in its joint sense, meaning A and B, but not either alone;
- (c) where the time limited for doing an act expires or falls on a Saturday, Sunday, June 21 (Aboriginal Day) or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday, June 21 or holiday;
- (d) where the time limited for doing an act in the Ditidaht First Nation administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;

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- (e) where there is a reference to a number of days or a number of days between the two events, in calculating that number of days, the days on which the events happen are excluded;
- (f) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of plural includes the singular;
- (g) 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;
- (h) unless it is otherwise clear from the context, including means including, but not limited to, and includes means includes, but not limited to;
- (i) the headings of parts and sections in this Land Code have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions;
- (j) this Land Code will be interpreted in a fair, large and liberal manner;
- (k) the principles set out in the Preamble to this Land Code may be used to interpret this Land Code; and
- (l) if the meaning of any provision is not clear in English, the Ditidaht language may be used to assist in clarifying its meaning.

Division of Land Code

1.4 This Land Code is divided into the following divisions represented by the number or letter as indicated in ascending order:

- 1. PARTS;
 - 1.1 sections;
 - (a) subsections;
 - (i) paragraphs; and
 - (A) subparagraphs.

Culture and traditions

1.5 The structure, bodies and procedures established by or under this Land Code will be interpreted in accordance with the culture, traditions, and customs of Ditidaht First Nation.

Paramountcy

1.6 If there is an inconsistency or conflict:

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

Non-abrogation

- 1.7 This Land Code does not abolish, repeal or otherwise abrogate, or detract, diminish or otherwise derogate from, any Aboriginal, treaty or other right or freedom that may pertain now or in the future to the Ditidaht First Nation or its Members, including, without limitation, rights to land, water, air and Natural Resources.

Rights to services not affected

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

Fiduciary responsibility

- 1.9 This Land Code does not abolish, repeal or otherwise abrogate the fiduciary relationship between Canada and Ditidaht First Nation and its Members.

Rights not affected

- 1.10 Nothing in this Land Code, nor in any of the Laws, policies, procedures or decisions made in accordance with it, is intended to change:
- (a) the by-law making powers of Council pursuant to section 81 or 83 of the *Indian Act*; or
 - (b) any Aboriginal, treaty, inherent or other rights or freedoms that pertain now or in the future to Ditidaht First Nation or its Members.

Lands and Interests affected

- 1.11 A reference to 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, air rights, minerals and subsurface resources, and all other renewable and non-renewable Natural Resources in and of that land, water or air to the extent that these are under the jurisdiction of Canada; and

- (b) all the Interests and Licences granted by Canada listed in the Individual Agreement.

Authority to govern

Aboriginal rights and title

- 1.12 The Ditidaht First Nation has never ceded, surrendered, or in any way relinquished Aboriginal title to our territory and continue to assert our interests and exercise our Aboriginal rights over our territory.

Protection of Aboriginal rights

- 1.13 Ditidaht First Nation is committed to protecting the Aboriginal rights of the Ditidaht First Nation and its Members.

Origin of authority

- 1.14 Ditidaht traditional teachings speak of the obligation of the people to care for and respect the land and the magnificent wonders of nature created on the land. By enacting this Land Code, the Ditidaht First Nation further confirms this special responsibility.

Confirmation of authority over Ditidaht First Nation Land

- 1.15 (a) By enacting this Land Code, the Ditidaht First Nation gives effect, to the extent possible under the Framework Agreement, to our Aboriginal title to that portion of the territory comprised of Ditidaht First Nation Land.
- (b) For greater certainty, this confirmation of authority over Ditidaht First Nation Land is not an admission or acknowledgement that the authority assumed by enacting this Land Code represents the full scope of authority of the Ditidaht First Nation over Ditidaht First Nation Land or the rest of our territory, nor is it intended to otherwise affect Ditidaht First Nation's Aboriginal title to the rest of our territory.

Flow of authority

- 1.16 The authority of the Ditidaht First Nation to govern its lands and resources is an integral part of our Aboriginal title and our inherent right of self-government that flows from the Creator to the people of the Ditidaht First Nation, and from the people to the Chief and Council according to the culture, traditions, customs and laws of the Ditidaht Nation.

Legal capacity

- 1.17 For any purpose related to Ditidaht First Nation Land, Ditidaht First Nation will have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise our powers and perform our duties.

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Purpose

Purpose

- 1.18** The purpose of this Land Code is to set out the principles and administrative structures that apply to Ditidaht First Nation Land and by which Ditidaht First Nation will exercise authority over those lands in accordance with the Framework Agreement.

Ratification

- 1.19** The Framework Agreement will be ratified and confirmed when this Land Code comes into effect.

Description of Ditidaht First Nation Land

Ditidaht First Nation Land

- 1.20** The Ditidaht First Nation Land that is subject to this Land Code consists of the Ditidaht First Nation Land identified in the Individual Agreement.

Additional lands

- 1.21** The following lands may be made subject to this Land Code in accordance with section 1.23 [*Inclusion of lands or Interest*] if they are, or become, reserve lands and the following applicable conditions are met:
- (a) any lands owned jointly by Ditidaht First Nation and another First Nation or other First Nations, when all the First Nations agree upon a joint management scheme for those lands; and
 - (b) any land or Interest acquired by Ditidaht First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, after an Environmental Audit prepared by an Environmental Consultant expresses the view that the land does not pose a significant risk to human health or the environment.

Land exchange

- 1.22** For greater certainty, section 1.21 [*Additional Lands*] applies to land acquired by land exchange in accordance with section 5.14 [*Voluntary replacement of existing Interests or Licences*].

Inclusion of Lands or Interest

- 1.23** (a) When the relevant conditions in section 1.21 [*Additional Lands*] are met, Council may, by passing a Resolution, declare the lands or Interest to be subject to this Land Code.

- (b) For greater certainty, neither Member Approval nor a ratification vote is required for amending the description of Ditidaht First Nation Land in section 1.20 [*Ditidaht First Nation Land*] and in the Individual Agreement.

Notice of inclusion of lands

1.24 Before Council intends to consider a Resolution declaring any lands set out in section 1.21 [*Additional Land*] to be subject to this Land Code, Council will post a Notice in accordance with Ditidaht law of the proposed inclusion of those lands, which will include:

- (a) a description of the lands proposed to be included; and
- (b) information about how Members may make submissions to Council with respect to the proposed inclusion.

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PART 2 - DITIDAHT FIRST NATION LAWS

Law-Making Powers

Council Powers

- 2.1 (a) Council, following a reasonable amount of time after the Land Code takes effect, may make all Laws that the Framework Agreement empowers Council, as a council of a First Nation, to enact including in respect of:
- (i) the development, conservation, protection, management, use and possession of Ditidaht First Nation Land;
 - (ii) creating and granting Interests and Licences in relation to those lands; and
 - (iii) any matter necessary or ancillary to the exercise of the law-making powers afforded under the Framework Agreement.
- (b) Council will, as soon as is reasonably practicable after this Land Code take effect, enact a dispute resolution law establishing a fair and efficient process consistent with the principles of fundamental justice for resolving disputes that may arise under this Land Code or a Law or Regulatory Instrument enacted under this Land Code.

Example of Laws

- 2.2 For greater certainty, without limiting section 2.1 [*Council Powers*], the Laws and Regulatory Instruments that Council may make in relation to Ditidaht First Nation Land include:
- (a) archaeological assessment and protection of archaeological and cultural resources;
 - (b) authorization and regulation of subdivisions;
 - (c) conduct of surveys;
 - (d) construction, installation, maintenance, regulation and management of any utilities, including roads, pipelines, power lines, telecommunications lines, roads, water courses, water divisions, storm drains, bridges, ditches, dykes and other local and public works;
 - (e) construction and maintenance of landscaping, boundaries, screenings, boundary and internal fences;
 - (f) creation of management and administrative bodies or agencies;
 - (g) creation, regulation and prohibition of Interests and Licences;

- (h) economic development;
- (i) enforcement of the laws of the Ditidaht First Nation;
- (j) environmental assessment and protection;
- (k) expropriation of Interests and Licences;
- (l) forms, procedures, application fees and related matters;
- (m) hunting, fishing, management and protection of fish, wildlife and their habitat on Ditidaht First Nation Land;
- (n) mortgages, secured interests and priorities relating to Interests;
- (o) provision of local services and the imposition of user charges, including development cost charges or other similar charges;
- (p) provision of services for the resolution, outside the courts, of disputes;
- (q) public nuisance and private nuisance;
- (r) purchase, acquisition or sale of lands in accordance with the *Indian Act* and this Land Code;
- (s) regulation, control, authorization and prohibition of residency, access and the occupation and development of land;
- (t) removal of, and enforcement and prosecution against persons trespassing upon Ditidaht First Nation Land or frequenting Ditidaht First Nation Land or areas of Ditidaht First Nation Land for prohibited purposes;
- (u) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, and spiritual sites and wildlife refuges;
- (v) setting aside, protection and regulation of parks, parklands, trails and recreational lands;
- (w) registration of Interests and Licences, including priority of registration;
- (x) regulation of development, building and construction, including the application of building codes, engineering standards and other standards;
- (y) regulation of roads, intersections, traffic and transportation, including safety and insurance requirements;
- (z) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;

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- (aa) setting of fees, rents royalties and charges for Interests and Licences;
- (bb) setting aside of lands for Community Purposes or works;
- (cc) use and storage of firearms, fireworks, weapons and hazardous materials or substances on Ditidaht First Nation Land;
- (dd) zoning, land use planning and development, including requirements for contributions to the community; and
- (ee) any related matter as deemed necessary by Council.

Regulatory Instruments

2.3 For greater certainty, in addition to the proposed Laws referred to in section 2.2 [*Example of Laws*], Council may make other Regulatory Instruments, including rules, regulations, standards, codes and policies.

Framework for legislative development

- 2.4**
- (a) The Land Management Advisory Committee, in consultation with the Lands Department, will create an annual work plan for the development of Laws and Regulatory Instruments.
 - (b) A work plan created under subsection (a) will be presented to Council for comment and approval, if acceptable to Council.
 - (c) For greater certainty, a work plan prepared under subsection (a) may be amended from time to time in the same manner it was developed and approved.

Law-Making Procedure

Proposal of Laws to Council

- 2.5** The development of a Law may be proposed at a duly convened meeting of Council by:
- (a) the Chief;
 - (b) a Councillor; or
 - (c) a representative of the Land Management Advisory Committee.

Laws proposed to the Land Management Advisory Committee

- 2.6** (a) Any Member or member of the Ditidaht First Nation staff may, in accordance with a Regulatory Instrument, propose a Law to the Land Management Advisory Committee for consideration.

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- (b) Following consideration of a Law proposed under subsection (a), the Land Management Advisory Committee may identify a representative to propose that Law to Council in accordance with section 2.5 [*Proposal of Laws to Council*].

Rationalization of proposal

2.7 Any proponent bringing forward a proposed Law under section 2.5 [*Proposal of Laws to Council*] or section 2.6 [*Laws proposed to the Land Management Advisory Committee*] will submit a written explanation of the rationale for the proposed Law, which at a minimum:

- (a) identifies an issue or concern that the proposed Law is intended to address; and
(b) identifies the potential benefits of the proposed Law to Ditidaht First Nation.

Procedure upon receipt of proposal by the Land Management Advisory Committee

2.8 Upon receipt of a proposed Law, the Land Management Advisory Committee may:

- (a) table the Law proposal for further review by the Land Management Advisory Committee;
(b) agree that the proposed Law is ready for the consideration of Council and identify a representative from the Land Management Advisory Committee to present the proposed Law to Council;
(c) request that the proponent provide further information or attend a future meeting of the Land Management Advisory Committee to speak to the Law proposal; or
(d) decline the Law proposal and provide a written rationale in accordance with section 2.9 [*Procedure upon Land Management Advisory Committee declining a Law proposal*].

Procedure upon Land Management Advisory Committee declining a law proposal

2.9 If the Land Management Advisory Committee acts under section 2.8 [*Procedure upon receipt of proposal by the Land Management Advisory Committee*] and declines a proposal, a written rationale will be prepared, which will, at a minimum:

- (a) identify reasons why the Land Management Advisory Committee decided to decline the Law proposal; and
(b) where possible, identify any modifications or changes that could be made to the Law proposal that would increase the likelihood of the Land Management Advisory Committee direction to proceed with development of the proposed Law.

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- 2.10** For greater certainty, the proponent of a proposed Law that is declined by the Land Management Advisory Committee under section 2.9 [*Procedure upon Land Management Advisory Committee declining a law proposal*] may choose to make amendments to the proposal and take the revised Law proposal to the Land Management Advisory Committee.

Procedure upon receipt of Law proposal by Council

- 2.11** Upon receipt of a proposal, Council may:

- (a) table the Law proposal for further review by Council;
- (b) if the proposed Law is in draft form, and has been presented to Council in accordance with section 2.5 [*Proposal of Laws to Council*], direct that the Land Management Advisory Committee review the Law proposal in accordance with section 2.14 [*Development of draft Laws by the Land Management Advisory Committee*];
- (c) if the proposed Law is in draft form, and has been presented to Council in accordance with section 2.5 [*Proposal of Laws to Council*], either accept the Law for enactment, or if the Law requires Member Approval, initiate the process for gaining Member Approval;
- (d) request that the proponent provide further information or attend a future meeting of Council to speak to the law proposal;
- (e) direct the development of a draft Law concerning matters raised in the law proposal in accordance with section 2.13 [*Direction to develop draft Laws*]; or
- (f) decline the Law proposal and provide a written rationale in accordance with section 2.12 [*Procedure upon Council declining a Law proposal*].

Procedure upon Council declining a Law proposal

- 2.12** (a) If Council acts under section 2.11 [*Procedure upon receipt of Law proposal by Council*] and declines the proposal, the written rationale will, at a minimum:
- (i) identify reasons why Council decided to decline the Law proposal; and
 - (ii) where possible, identify any modifications or changes that could be made to the Law proposal that would increase the likelihood of Council direction to proceed with development of the proposed Law.
- (b) For greater certainty, the proponent of a proposed Law having been declined by Council under section 2.11 [*Procedure upon receipt of Law proposal by Council*] may choose to make amendments to the proposal and take the revised Law proposal to Council.

Direction to develop draft Laws

- 2.13** If Council decides under section 2.11 [*Procedure upon receipt of proposal by Council*] to direct the development of a draft Law, Council will:
- (a) assign an individual with appropriate training and experience to work with the Land Management Advisory Committee to support the process of preparing a draft Law; and
 - (b) ensure that the Land Management Advisory Committee has the appropriate information to oversee the creation of the draft Law.

Development of draft Laws by the Land Management Advisory Committee

- 2.14** (a) While overseeing the development of draft Laws, the Land Management Advisory Committee will:
- (i) review any available examples of similar Laws from other First Nations;
 - (ii) take reasonable measures to ensure traditional Ditidaht law is reflected in the draft Laws, where appropriate; and
 - (iii) consider oral history and traditional use study database records where appropriate to assist in meeting its obligations under this section.
- (b) Despite subsection (a) when the sole or primary effect of a proposed law is to repeal an existing Law, the Land Management Advisory Committee may base its recommendations on the utility or desirability of the Law that is to be repealed without resort to the measures set out in subsection (a).

Presentation to Council

- 2.15** Once a draft Law has been developed, the Land Management Advisory Committee will consider whether to approve the draft Law for presentation to Council, taking into account the matters set out in section 2.14 [*Development of draft Laws by the Land Management Advisory Committee*].

Tabling and posting of draft Laws

- 2.16** Before a draft Law may be enacted by Council:
- (a) it will be approved for presentation to Council by a Majority of the Land Management Advisory Committee in accordance with section 2.15 [*Presentation to Council*];
 - (b) it will be tabled at a duly convened meeting of Council held at least forty-two (42) days before the Law is to be enacted; and

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- (c) Notice will be posted in accordance with Ditidaht law of Council's intended consideration of the Law, including a copy of the draft Law, before the Law is to be enacted.

Urgent matters

- 2.17** Council may enact a Law without the involvement of the Land Management Advisory Committee, or the preliminary steps required under section 2.16 [*Tabling and posting of proposed Laws*], if Council is of the opinion that the Law is needed urgently for public health and safety or to protect Ditidaht First Nation or Members.

Expiration

- 2.18** A Law enacted under section 2.17 [*Urgent matters*] expires one hundred and twenty (120) days after its enactment unless it is re-enacted by Resolution of Council following tabling and posting of the Law in accordance with section 2.16 [*Tabling and posting of draft Laws*].

Approval of Law

- 2.19** A Law is enacted if it is approved by a Majority of Council at a duly convened meeting of Council after the requirements of section 2.16 [*Tabling and posting of draft Laws*], 2.17 [*Urgent matters*] or 2.18 [*Expiration*], as applicable, have been complied with.

Certification of Laws

- 2.20** The original copy of any Law or Resolution will be signed by a quorum of Council present at the meeting at which the Law was enacted or the Resolution was passed.

Coming into force

- 2.21** A Law takes effect on the date of its enactment or such date as may be specified in the Law.

Regulations and Regulatory Instruments

- 2.22** If a Law provides for the enactment of regulations or other Regulatory Instruments on specific topics:
- (a) Council may, by Resolution, initiate the development of a regulation or other Regulatory Instruments;
 - (b) Council may, in any manner that Council considers advisable, consult with Members regarding a proposed regulation or other Regulatory Instruments;
 - (c) Council may direct that the Land Management Advisory Committee oversee the development of any regulation or other Regulatory Instruments;

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- (d) Council may seek a recommendation from the Land Management Advisory Committee with respect to any draft regulations or other Regulatory Instruments; and
- (e) unless otherwise stated in the regulation, a regulation or other Regulatory Instrument is enacted and comes into force on the date that it is approved and adopted by Resolution.

Publication of Laws

Publication of Laws

2.23 Laws enacted in accordance with this Land Code will:

- (a) be included in the minutes of the Council meeting at which they were enacted;
- (b) be posted in a location within the administrative office of Ditidaht First Nation accessible to all Members, as soon as practicable after enactment and for a period of not less than thirty (30) days thereafter;
- (c) be made publicly available on the Ditidaht First Nation website;
- (d) have a Notice published in accordance with Ditidaht law in at least one (1) local newspaper of that Law's enactment;
- (e) be registered in the First Nations Land Registry and may be also registered in the First Nations Gazette; and
- (f) be posted or publicized by any other additional method as Council may consider appropriate.

Notification to adjacent jurisdictions

2.24 Upon a Law being enacted in accordance with this Land Code, the Lands Department will deliver a Notice in accordance with Ditidaht law of that Law's enactment to the Alberni-Clayoquot Regional District and the Cowichan Valley Regional District.

Register of Laws

2.25 The Lands Department will keep, at the administrative buildings of Ditidaht First Nation, the original copy of all Laws and Regulatory Instruments, including Laws that have been repealed or are no longer in force, and provide a certified copy of a Law or Regulatory Instrument upon the reasonable request of any person for the applicable fee provided for in a Regulatory Instrument.

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PART 3 - MEMBER INFORMATION SESSIONS AND COMMUNICATION REQUIREMENTS

Member Information Sessions

Member Information Sessions

3.1 A Member Information Session is a meeting that is duly convened in accordance with section 3.3 [*Convening a Member Information Session*] for purposes including:

- (a) information sharing with Members; and
- (b) discussion with, or gathering input from, Members.

Procedures for Member Information Sessions

3.2 As soon as is practicable after this Land Code comes into effect, Council will, in consultation with the Land Management Advisory Committee, establish a Law in respect of the conduct of Member Information Sessions under this Land Code.

Convening a Member Information Session

3.3 Before holding a Member Information Session, Council will post a Notice in accordance with Ditidaht law of its intent to hold the Member Information Session, which will include:

- (a) the date, time and place of the meeting;
- (b) a brief description of the matters to be discussed; and
- (c) such other information and material as Council may consider appropriate.

Emergency meeting

3.4 Despite section 3.7 [*Notices posted in accordance with Ditidaht law*], in the case of emergency or special circumstances where a delay in consideration of the matter is not in the best interests of Ditidaht First Nation, Council may call a meeting with less than the twenty-one (21) days' notice, provided:

- (a) a Notice is delivered to Members in as many ways as is reasonably practicable under section 3.9 [*Alternative Notice methods*]; and
- (b) direct phone calls are made to all Members living on Ditidaht First Nation Land who are 65 years or older for whom Ditidaht First Nation administration has phone numbers.

*When Member Information Session is required***3.5** Council will call a Member Information Session prior to:

- (a) enacting a Law respecting:
 - (i) a community plan or subdivision requirements;
 - (ii) Residential Interests on Ditidaht First Nation Land;
 - (iii) matrimonial real property on Ditidaht First Nation Land;
 - (iv) the transfer and assignment of Interests;
 - (v) the rate and criteria for the payment of fees or rent for Ditidaht First Nation Land; and
 - (vi) environmental assessment and protection; or
 - (vii) Expropriation;
- (b) enacting a Land Use Plan;
- (c) approving any development affecting a heritage site or environmentally sensitive land;
- (d) a vote on any matter for which Member Approval or Referendum is required; or
- (e) respecting any other matter, Law or class of Law that the Council, by Resolution, declares to be subject to this section.

Notice*Notices delivered in accordance with Ditidaht law*

- 3.6** (a) To satisfy a requirement in a Law or Regulatory Instrument to “deliver in accordance with Ditidaht law” a Notice or other information, or that a Notice or other information be “delivered in accordance with Ditidaht law” to a person, that Notice or other information must be in writing and delivered
- (i) by hand to that person,
 - (ii) by mail to the last known address of that person or, in the case of a corporation, to the registered office of the corporation, or
 - (iii) by facsimile to the last known facsimile number of that person.

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- (b) A Notice or other information delivered under subsection (a) is deemed to have been received
 - (i) on the date on which it was delivered, if delivered by hand,
 - (ii) seven (7) days after the date on which it was deposited at a Canada Post office, if delivered by mail, or
 - (iii) on the date on which the sender obtained written confirmation that the facsimile has been transmitted, if delivered by facsimile.
- (c) If the person responsible for delivering the Notice or other information has reason to believe that a Notice or other information delivered under subsection (a) has not been received by the person to whom it was addressed, that person will make reasonable attempts to deliver the Notice or other information to that person through one or more of the following alternative means:
 - (i) leaving the Notice or other information with an adult at that person's residence or place of business or any other place thought to be frequented by that person; or
 - (ii) publishing the Notice in one or more newspapers of general circulation in the area where the person was last known or is thought to be.
- (d) A Notice or other information delivered under subsection (c) is deemed to have been received on the date the Notice or other information was first delivered and, for certainty, if the Notice or other information was first delivered by mail or facsimile, the Notice or other information is deemed to have been received on the date contemplated in subsection (b).

Notices posted in accordance with Ditidaht law

- 3.7** To satisfy a requirement in a Law or Regulatory Instrument to "post in accordance with Ditidaht law" a Notice or other information, or that a Notice or other information be "posted in accordance with Ditidaht law", that Notice or other information must be
- (a) headed "NOTICE IN ACCORDANCE WITH DITIDAHT LAW", and
 - (b) subject to section 3.10 [*Time required for Notice*], posted in a conspicuous place accessible to the public at the Ditidaht First Nation administrative office for twenty-one (21) days.

Notices published in accordance with Ditidaht law

- 3.8** To satisfy a requirement in a Ditidaht enactment to "publish in accordance with Ditidaht law" a Notice or other information or that a Notice or other information be "published in accordance with Ditidaht law", that Notice or other information must be

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- (a) headed "NOTICE IN ACCORDANCE WITH DITIDAHT LAW", and
- (b) subject to section 3.10 [*Time required for Notice*], published for twenty-one (21) days,
 - (i) by posting that Notice or other information on the Ditidaht First Nation website;
 - (ii) by posting on social media accounts owned by the Ditidaht First Nation; or
 - (iii) in at least one newspaper of general circulation on Ditidaht First Nation Community Lands or, if there is no newspaper of general circulation on Ditidaht First Nation Land at the time the Notice or other information is required to be published, in at least one newspaper of general circulation on land adjacent to Ditidaht First Nation Land.

Alternative Notice methods

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

- (a) written notice posted in community buildings on Ditidaht First Nation Land;
- (b) where the Ditidaht First Nation administration has a phone number for a Member, by direct or automated phone call to that number;
- (c) information packages sent by mail to Members;
- (d) where the Ditidaht First Nation administration has an email address for a Member, by email to that email address;
- (e) where the Ditidaht First Nation administration has a mailing address, and where the individual Member has not opted out from receiving mail from the administration, by mail, and;
- (f) information distributed door-to-door on Ditidaht First Nation Land.

Time required for Notice

3.10 If a Notice is in regards to any matter requiring Member Approval or any changes to a Law or Regulatory Instrument that required Member Approval, a minimum of forty-two (42) days' Notice will be provided.

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PART 4 - MEMBER APPROVAL

Member Approvals

Participation of Eligible Voters

- 4.1 Every Eligible Voter is entitled to participate in the Member Approval process set out in this Part of this Land Code.

Voting policies

- 4.2 Council may, in consultation with the Land Management Advisory Committee or Lands Department, establish a Regulatory Instrument in respect of the conduct of Member Approval votes conducted under this Land Code, providing these procedures do not conflict with a minimum requirement set out in this Land Code.

Member Approval

- 4.3 (a) Member Approval will be obtained for the following:
- (i) enacting or making an amendment to a Land Use Plan, except a Minor Amendment;
 - (ii) any voluntary exchange of Ditidaht First Nation Land referred to in sections 6.14 [*Voluntary exchange of Ditidaht First Nation Land*] to 6.21 [*Use of funds from land exchange*];
 - (iii) making an amendment to this Land Code, except a Minor Amendment in accordance with section 9.9 [*Amendments to Land Code*];
 - (iv) granting an Interest or a Licence, or the extension of an Interest or Licence, for a term of greater than 10 years, including any right of renewal or extension of the term;
 - (v) enacting a Law that includes provisions setting a period of greater than 10 years, including any right of renewal or extension of the term, as the term of any Interest or Licence that may be granted to non-Members;
 - (vi) the enactment of any Law relating to environmentally sensitive lands, cultural heritage protection, traditional use areas, or related classes of Laws; and
 - (vii) the enactment or amendment of any Law or class of Laws that Council, by Resolution, declares to be subject to this section.
- (b) Subsection (a)(iv) does not apply to:

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- (i) the granting of a Residential Interest or other Interest or Licence available only to a Member; or
- (ii) an easement or right-of-way for a Community Purpose, wherein the term is specified to be "so long as required" for the purpose for which the easement or right of way is granted.

Ratification Officer

- 4.4 (a) Council will appoint a Ratification Officer to conduct Member Approval votes in accordance with a Voting Law.
- (b) The Ratification Officer is responsible for overseeing the conduct of any Member Approval vote in accordance with this Land Code and a Voting Law and has all the powers necessary to carry out that responsibility.

Acceptable voting methods

- 4.5 Member Approval may be obtained by a vote duly carried out by one of the following methods, in accordance with a Voting Law:
- (a) show of hands at a Special Members Meeting called for the purpose of holding a vote;
 - (b) secret ballot at a Special Members Meeting called for the purpose of holding a vote; or
 - (c) Referendum.

Council identification of a method of approval

- 4.6 Prior to issuing a Notice of a Member Approval vote, Council will, by Resolution, identify the method of vote to be used to conduct a Member Approval vote in accordance with a Voting Law and the minimum requirements set out in this Land Code.

Approval by vote

- 4.7 A matter is approved by a Member Approval vote as required in section 4.10 [*Quorum for a Special Members Meeting*] where a quorum of Eligible Voters vote and a Majority of those Eligible Voters who vote, vote in favour of the matter or Law.

Informed decision

- 4.8 (a) Council will ensure that all Eligible Voters are able to make an informed decision when participating in a Member Approval vote.
- (b) In order to ensure Eligible Voters may make an informed decision, Council may:

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- (i) schedule more than one (1) Member Information Session as determined to be necessary to ensure that Members are well informed before making a decision on a matter requiring Member Approval;
- (ii) provide information through online channels such as the Ditidaht First Nation website or social media;
- (iii) deliver print materials door-to-door or through the mail; and
- (iv) use any other method it deems appropriate to communicate with Eligible Voters.

Special Members Meeting

Application

- 4.9** This section applies only to a Special Members Meeting called for the purpose of holding a vote on a matter relating to this Land Code.

Quorum for a Special Members Meeting

- 4.10** To achieve quorum for a Member Approval vote held at a Special Members Meeting, at least 25 Eligible Voters who are not members of Council or the Land Management Advisory Committee at the time of the Special Members Meeting must vote at that Special Members Meeting.

Methods of voting during a Special Members Meeting

- 4.11** A Member Approval vote held at a Special Members Meeting may be conducted using one (1) of the following methods, as deemed appropriate by Council:
- (a) show of hands; or
 - (b) secret ballot.

Notice for a Special Members Meeting

- 4.12** A Notice posted in accordance with Ditidaht law will be given for a Special Members Meeting and that Notice will include the:
- (a) date of the Special Members Meeting;
 - (b) time of the Special Members Meeting;
 - (c) location of the Special Members Meeting; and
 - (d) question on which Eligible Voters will be asked to cast a vote.

Referendum procedures

Application

- 4.13** This section applies only to a Referendum required by this Land Code, or a Referendum that Council deems necessary in relation to the management and administration of Ditidaht First Nation Land.

Policies relating to the conduct of a Referendum

- 4.14** As soon as is practicable after this Land Code takes effect, and prior to any Referendum occurring under this Land Code, Council will establish Regulatory Instruments in respect of the conduct of a Referendum under this Land Code.

Methods for conducting a referendum

- 4.15** A Referendum may be conducted using one or more of the following methods, as deemed appropriate by Council:
- (a) secret ballot at established polling locations;
 - (b) mail-in ballot; or
 - (c) one or more alternative voting methods, such as phone voting or electronic voting.

Quorum for a Referendum

- 4.16** A Regulatory Instrument referred to in section 4.14 must set out the quorum and approval threshold required in a Referendum.

Matters requiring Referendum

- 4.17** For greater certainty, the following matters will be approved by Referendum:
- (a) any voluntary exchange of Ditidaht First Nation Land referred to in sections 6.14 [*Voluntary exchange of Ditidaht First Nation Land*] to 6.21 [*Use of funds from land exchange*];
 - (b) granting an Interest or a Licence, or the extension of an Interest or Licence for a term of greater than 25 years, including any right of renewal or extension of the term;
 - (c) making an amendment to this Land Code, except a Minor Amendment in accordance with section 9.9 [*Amendments to Land Code*]; and
 - (d) the enactment or amendment of any Law or class of Laws that Council, by Resolution, declares to be subject to this section.

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PART 5 - INTERESTS AND LICENCES IN LAND

Residential Interests

Grant of Residential Interest

- 5.1 (a) Subject to subsection (c), Council may, by Resolution, grant a Residential Interest to an Eligible Recipient.
- (b) For certainty, no person may acquire a Residential Interest by grant under subsection (a) except an Eligible Recipient.
- (c) A grant of a Residential Interest by Council under subsection (a) is not effective until the Registrable Instrument conveying the Residential Interest is registered in the First Nations Land Registry.
- (d) Unless otherwise provided in this Part, only an Eligible Recipient may hold a Residential Interest.

Establishment of Residential Interest Law

- 5.2 Council will, in consultation with the Lands Management Advisory Committee, establish Regulatory Instruments in respect of the granting of Residential Interests on Ditidaht First Nation Land to Eligible Recipients.

Housing service providers

- 5.3 Council may, by Resolution, designate, or remove the designation of, an entity approved to provide services to the Ditidaht First Nation and Members in relation to housing on Ditidaht First Nation Land, including acquisition, construction or financing.

Leases of Ditidaht First Nation Community Land

Leases of 10 years or less

- 5.4 Council may grant a lease of Ditidaht First Nation Community Land for a term or possible term of 10 years or less, including any right of renewal or extension of the term, only if
- (a) Council has not previously granted a lease of that Ditidaht First Nation Community Land to the grantee or a member of the grantee's Immediate Family,
- (b) the term or possible term of the proposed lease, when added to the term of all previous leases of that Ditidaht First Nation Community Land granted by Council to the grantee or a member of the grantee's Immediate Family since the last occasion, if any, on which such a grant was publicized at an Member Information Session totals 10 years or less, or

- (c) the proposed grant is first publicized at a Member Information Session.

Leases of between 10 and 25 years

- 5.5** Council may grant a lease of Ditidaht First Nation Community Land for a term or possible term of more than 10 years but not more than 25 years, including any right of renewal or extension of the term, only if the proposed grant is first publicized at a Member Information Session and obtains Member Approval at a Special Member Meeting.

Leases of between 25 and 99 years

- 5.6** Council may grant a lease of Ditidaht First Nation Community Land for a term or possible term of more than 25 years but not more than 99 years, including any right of renewal or extension of the term, only if the proposed grant is first publicized at two Member Information Sessions and approved by a Referendum.

Other Interests and Licences

Easements and rights-of-way

- 5.7** (a) Council may grant an easement over Ditidaht First Nation Land.
- (b) Council may grant or reserve a statutory right-of-way over Ditidaht First Nation Land to any of the following:
- (i) the Ditidaht First Nation or a corporation wholly owned, directly or indirectly, by the Ditidaht First Nation;
 - (ii) Canada, an agency of Canada or a corporation wholly owned by Canada;
 - (iii) British Columbia, an agency of British Columbia or a corporation wholly owned by British Columbia;
 - (iv) a local government, an agency of a local government or a corporation wholly owned by a local government;
 - (v) a public utility;
 - (vi) a strata corporation established under the *Strata Property Act*, SBC 1998, c 43 (British Columbia);
 - (vii) a homeowner's association incorporated under the *Societies Act*, SBC 2015, c 18 (British Columbia);
 - (viii) a housing cooperative incorporated under the *Cooperative Association Act*, SBC 1999, c 28 (British Columbia); or

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- (ix) a railway corporation.
- (c) The holder of an Interest may, by grant or otherwise, in favour of the Ditidaht First Nation or a person listed in subsection (b), as grantor, encumber the Interest with an easement called a statutory right-of-way, without a dominant tenement, for any purpose necessary for the operation and maintenance of the grantee's undertaking, including the right to flood.
- (d) To the extent necessary to give effect to this section, the rule requiring an easement to have a dominant and servient tenement is abrogated.
- (e) The requirement that a statutory right of way be for a purpose necessary for the operation and maintenance of a grantee's undertaking does not apply if the grantee is the Ditidaht First Nation.
- (f) A statutory right-of-way registrable under this section is binding on the grantor and the grantor's successors in ownership, even though the instrument or other disposition has not been signed by the grantee.
- (g) No person who enters into a statutory right-of-way under this section is liable for a breach of the statutory right-of-way occurring after the person has ceased to be the owner of the Interest in the land encumbered by that statutory right-of-way.

Natural Resource Licences of 10 years or less

5.8 Council may grant a Natural Resource Licence in relation to Ditidaht First Nation Community Land for a term or possible term of 10 years or less only if

- (a) Council has not previously granted a Natural Resource Licence in relation to that Ditidaht First Nation Community Land to the grantee or a member of the grantee's Immediate Family,
- (b) the term or possible term of the proposed Natural Resource Licence, when added to the term of all previous Natural Resource Licences in relation to that Ditidaht First Nation Community Land granted by Council to the grantee or a member of the grantee's Immediate Family since the last occasion, if any, on which such a grant was publicized at Member Information Sessions, totals 10 years or less, or
- (c) the proposed grant is first publicized at a Member Information Session.

Natural resources Licences of between 10 and 25 years

5.9 Council may grant a Natural Resource Licence in relation to Ditidaht First Nation Community Land for a term or possible term of more than 10 years but not more than 25 years only if the proposed grant is first publicized at a Member Information Session and obtains Member Approval at a Special Member Meeting.

Natural Resource Licences of between 25 and 50 years

- 5.10** Council may grant a Natural Resource Licence in relation to Ditidaht First Nation Community Land for a term or possible term of more than 25 years but not more than 50 years only if the proposed grant is first publicized at two Member Information Sessions and approved by a Referendum.

Utility Licences

- 5.11** Council may grant a utility Licence in relation to Ditidaht First Nation Community Land to any of the following:
- (a) the Ditidaht First Nation or a corporation wholly owned by Ditidaht First Nation;
 - (b) Canada, an agency of Canada or a corporation wholly owned by Canada;
 - (c) British Columbia, an agency of British Columbia or a corporation wholly owned by British Columbia;
 - (d) a local government, an agency of a local government or a corporation wholly owned by a local government; or
 - (e) a public utility.

Standards and Registrable Instruments*Establishing legislation for standards and Regulatory Instruments*

- 5.12** Council will, in consultation with the Land Management Advisory Committee, establish Regulatory Instruments in respect of policies, processes and criteria for:
- (a) granting Interests and Licences in Ditidaht First Nation Land; and
 - (b) forms, including Registrable Instruments, in respect of Interests and Licences.

Existing Interests*Continuation of existing Interests*

- 5.13** Any legally valid Interest or Licence in relation to Ditidaht First Nation Land existing when this Land Code takes effect will, subject to this Land Code and any Laws passed under it, continue in force in accordance with its terms and conditions.

Voluntary replacement of existing Interests or Licences

- 5.14** For greater certainty, Interests or Licences previously issued under the *Indian Act* will continue in effect after the coming into force of this Land Code unless the Member or

non-Member voluntarily agrees to have the Interest or Licence replaced by a new Interest or Licence in accordance with this Land Code.

No liability

- 5.15** For greater certainty, Ditidaht First Nation is not liable for any change in value or use of any existing or new Interest or Licence arising in relation to a Law, Land Use Plan or regulation duly passed in relation to this Land Code.

New Interests and Licences

Standards of compliance

- 5.16** Any new Interest or Licence will comply with this Land Code, all Laws and Regulatory Instruments, and applicable environmental assessment requirements or laws.

Authority to grant Interests and Licences

- 5.17** Council may, subject to this Land Code, grant on behalf of Ditidaht First Nation:
- (a) Interests and Licences in Ditidaht First Nation Community Land;
 - (b) a Custom Allocation in accordance with section 5.27;
 - (c) life estates in Interests in Ditidaht First Nation Land;
 - (d) Interests or Licences for utilities for or on Ditidaht First Nation Land;
 - (e) consent for mortgages including consent to priorities; and
 - (f) with the written consent from the applicable Residential Interest Holder, Interests or Licences in the applicable Ditidaht First Nation Land forming a Residential Interest.

Conditions may be imposed

- 5.18** Council may, in writing, impose conditions when granting an Interest or Licence.

Written authorization required

- 5.19** Subject to any Law with more specific provisions, all of the following require a permit or written authorization from Council or Council's designate:
- (a) subdivision or division of an Interest;
 - (b) installation of roads, intersections, rip-rapping, erosion control, dyking, sewer, water, and other infrastructure;

- (c) construction of new homes or other buildings or major renovations of existing homes or other buildings;
- (d) any development or construction that puts structures or people at risk within the flood plain or increases flood risks;
- (e) any development or construction that takes place in or within 30 metres of a fresh water body or fresh water fish habitat;
- (f) any development or construction affecting Ditidaht First Nation infrastructure (i.e. sewer and roads);
- (g) deposit of any soil, gravel or other materials per year per parcel of land, with any such soil, gravel or other materials required to be clean and non-contaminated; and
- (h) cutting, removal or alteration of any tree that has a width of 20 cm, or a circumference of approximately 64 cm, or greater, measured at 1.4 m above the ground.

Limits on Interests and Licences

Limiting Interests and Licences

5.20 An Interest or Licence in Ditidaht First Nation Land may only be created, granted, disposed of, assigned or transferred by a Registrable Instrument made in accordance with this Land Code and any applicable Law or other Regulatory Instrument.

Improper transactions void

5.21 A Registrable Instrument, document or agreement of any kind, whether written or oral, by which the Ditidaht First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence after the date this Land Code takes effect is void if it contravenes this Land Code.

Eligibility to hold an Interest

5.22 A non-Member may never hold an Residential Interest, but may hold other Interests or Licences in accordance with this Land Code and applicable Laws and Regulatory Instruments.

Unregistered instrument

5.23 (a) Except as against the person making it, an agreement or instrument of any kind made or entered into after the effective date of this Land Code by which a person intends to dispose of an Interest or Licence does not operate to pass that Interest

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or Licence, either at law or in equity, unless it is registered or recorded in the First Nations Lands Registry.

- (b) Subsection (a) does not apply to a lease or rental agreement not exceeding three (3) years.

Liability for Registrable Instrument

5.24 Neither Council nor any member of the Ditidaht First Nation administration or Land Management Advisory Committee has any obligation to determine, ensure or confirm for or on behalf of a recipient or holder of an Interest or Licence, other than the Ditidaht First Nation, that

- (a) the Interest or Licence is valid, of force or effect or in good standing, or
- (b) the Interest or Licence has been submitted for Registration or recording, or has been registered or recorded, in the First Nations Lands Registry.

Transfer of Residential Interest

- 5.25** (a) An individual who ceases to be a Member may, within six (6) months of ceasing to be a Member, transfer any Residential Interest they hold to Ditidaht First Nation or another Eligible Recipient.
- (b) Where an individual ceases to be a Member and fails to transfer their Residential Interest within six (6) months in accordance with subsection (a), the Residential Interest issued will automatically be cancelled and that land will automatically become Ditidaht First Nation Community Land.

Cancellation

Cancellation of Interests and Licences

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

Custom Allocations

Authority to grant Custom Allocations

5.27 Council may, in accordance with this Land Code and any applicable Law and Regulatory Instrument:

- (a) grant a Custom Allocation to a Member; and

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- (b) issue a Licence by means of a Registrable Instrument to a Member for the land licenced to that Member in that Custom Allocation.

Eligibility for Custom Allocations

- 5.28** Only Members are entitled to receive a Custom Allocation of Ditidaht First Nation Land.

Establishment of Custom Allocation Law

- 5.29** Council will, in consultation with the Lands Management Advisory Committee, establish Regulatory Instruments in respect of the granting of Custom Allocations of Ditidaht First Nation Land to Members.

Natural Resources

Ownership of Natural Resources

- 5.30** Subject to applicable Laws and more specific provisions in this Land Code, all Natural Resources on or under Ditidaht First Nation Land belong to Ditidaht First Nation.

Development of Natural Resources

- 5.31** The use and development of Natural Resources on or under Ditidaht First Nation Land will be subject to this Land Code, and other applicable Laws and Regulatory Instruments.

Management of Natural Resources

- 5.32** To the extent that Ditidaht First Nation has ownership or rights over water as recognized by federal or provincial legislation or by operation of law, Ditidaht First Nation retains ownership and has jurisdiction to manage and regulate air, water and Natural Resource use.

Natural Resources and Interests in land

- 5.33** Unless specifically included by a Registrable Instrument granting a Residential Interest or other Interest, the Interest does not include any right to any non-renewable Natural Resources on or under that Ditidaht First Nation Land.

Prohibition on removal of Natural Resources

- 5.34** No person may remove, or permit anyone to remove from Ditidaht First Nation Land, without written consent of Council or in accordance with a Regulatory Instrument any Natural Resources or any:

- (a) minerals, stone, sand, gravel, clay or soil;
- (b) trees, saplings, shrubs, underbrush, timber, cordwood or hay;

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- (c) water; or
- (d) similar type materials.

Exceptions

- 5.35** (a) Despite section 5.34 [*Prohibition on removal of Natural Resources*] Members may, on Ditidaht First Nation Community Lands for non-commercial purposes:
- (i) engage in reasonable extraction of renewable Natural Resources such as berries, medicines, small plants and spring water; and
 - (ii) catch fish.
- (b) Residential Interest Holders may, on the lands subject to their Residential Interests, for non-commercial purposes:
- (i) engage in reasonable extraction of renewable Natural Resources such as berries, medicines, small plants and spring water; and
 - (ii) cut and remove trees that have a width of 20 cm, or a circumference of approximately 64 cm, or greater measured at 1.4 m above the ground, saplings, shrubs, underbrush, grass and similar materials.

Use and occupancy of Ditidaht First Nation Land

- 5.36** A person will only use or occupy Ditidaht First Nation Land in accordance with all applicable Laws and Regulatory Instruments and any Interest or Licence in relation to those lands.

Transfer and assignment of Interests

Transfer and assignment of Interests or Licences

- 5.37** A Member may transfer or assign an Interest or Licence to another Member in compliance with this Land Code and applicable Laws.

Consent of Council

- 5.38** All transfers or assignments of an Interest or Licence require the written consent of Council, except for:
- (a) transfers under section 5.37 [*Transfer and assignment of Interests or Licences*];
 - (b) transfers that occur by operation of law, including transfers of estate by testamentary disposition; and

- (c) transfers in accordance with the matrimonial real property Law enacted pursuant to section 5.73 [*Development of matrimonial real property law*].

Transfer from deceased

- 5.39** (a) If a Residential Interest Holder is deceased, the person or court with authority to carry out the terms of the deceased's will or administer the deceased's estate, as the case may be, may apply to the Lands Department in the prescribed form to transfer that interest into the name of the applicant.
- (b) An application made under subsection (a) will be accompanied by
- (i) a certified copy of the grant of probate or letters of administration issued by the applicable jurisdiction naming the applicant the personal representative of the deceased, or
 - (ii) if no grant of probate or letters of administration have been obtained,
 - (A) a certified copy of the last will of the deceased naming the applicant the executor of the deceased's estate, and
 - (B) an affidavit sworn by the applicant stating that matters set out in subsection (c),
 - (iii) any other supporting documents or information the Lands Department may reasonably require, and
 - (iv) any prescribed application fee.
- (c) An affidavit referred to in subsection (b)(ii)(B) will state
- (i) to the best of the applicant's knowledge, the certified copy of the will accompanying the application is the last will of the deceased and it was not revoked by the deceased prior to the deceased's death,
 - (ii) the applicant is the individual identified in that will as the executor of the deceased's estate,
 - (iii) the applicant is not seeking, and will not seek, a grant of probate of the will of the deceased, and
 - (iv) the reasons why the applicant is not seeking, and will not seek, a grant of probate of the will of the deceased,
- (d) A transfer of a Residential Interest into the name of the applicant under subsection (a) is not effective until

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- (i) the applicant delivers the completed application in the prescribed form and the documents required under subsection (b) to the Lands Department, and
 - (ii) the application in the prescribed form is registered in the First Nations Land Registry.
- (e) On the delivery of a completed application in the prescribed form and the documents required under subsection (b), the Lands Department may register the completed application in the First Nations Land Registry and record the name of the applicant in trust for the estate of the deceased as the holder of the Residential Interest for the appurtenant lands.

Transfer from estate

- 5.40** (a) Subject to subsection (c), if the estate of a deceased individual includes a Residential Interest, the person or court with authority to carry out the terms of the deceased's will or administer the deceased's estate, as the case may be, may transfer that Residential Interest to a Member by executing and delivering to the Member the Registrable Instrument of transfer.
- (b) For certainty, no person may acquire a Residential Interest by transfer under subsection (a) except a Member.
- (c) A transfer of a Residential Interest under subsection (a) is not effective until
- (i) the transferor executes the form of Registrable Instrument and the transferee delivers that executed Registrable Instrument to the Lands Department, and
 - (ii) the Registrable Instrument is registered in the First Nations Land Registry.
- (d) On the delivery in accordance with subsection (c) of a Registrable Instrument transferring a Residential Interest, the Lands Department may register that Registrable Instrument in the First Nations Land Registry and record the transferee as the holder of the Residential Interest for the appurtenant lands.

Sale if beneficiary or heir ineligible

- 5.41** (a) If a Residential Interest is intended to pass by devise or by distribution from the estate of an intestate to a person other than a Member or the Ditidaht First Nation, the Lands Department will
- (i) publish a Notice in accordance with Ditidaht law offering the Residential Interest for sale to Members and the Member who makes the highest bid within six (6) months after the publication of that Notice, or within any further period that the Lands Department may specify, is entitled to purchase that Residential Interest,

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- (ii) sell the Residential Interest to that highest bidder for the amount of the bid, and
- (iii) pay the proceeds of that sale to the beneficiary or heir.
- (b) For certainty, no person may acquire a Residential Interest by purchase under subsection (a) except a Member.
- (c) A transfer of a Residential Interest upon a sale under subsection (a) is not effective until
 - (i) an authorized signatory of the Lands Department signs the Registrable Instrument of transfer and the highest bidder under subsection (a), as transferee, delivers that executed form to the Lands Department, and
 - (ii) the Registrable Instrument of transfer is registered in the First Nations Land Registry.
- (d) On the delivery in accordance with subsection (c) of a Registrable Instrument of transfer of a Residential Interest, the Lands Department may register that Registrable Instrument in the First Nations Land Registry and record the transferee as the holder of the Residential Interest for the appurtenant lands.

Reversion if no bid received

- 5.42** (a) If the Lands Department does not receive a bid from any Member within six (6) months after the publication of a Notice of sale under section 5.41 [*Sale if beneficiary or heir ineligible*] or within any further period specified by the Lands Department under section 5.41 [*Sale if beneficiary or heir ineligible*], the Residential Interest vests in the Ditidaht First Nation.
- (b) If a Residential Interest reverts to the Ditidaht First Nation under this section,
- (i) the Lands Department will publish a Notice in accordance with Ditidaht law of reversion, and
 - (ii) the Residential Interest vests in the Ditidaht First Nation free and clear of
 - (A) any other right or interest, including any mortgage, and
 - (B) any claim by the estate of the former holder of the Residential Interest or any other person.
- (c) On the publication of a Notice in accordance with Ditidaht law of reversion of a Residential Interest in accordance with subsection (b), the Lands Department will register that Notice of reversion in the First Nations Land Registry and record the

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Ditidaht First Nation as the holder of the Residential Interest for the appurtenant lands.

Review of Interests or Licences

5.43 For transactions under this section:

- (a) neither Council, the Lands Department, nor the Land Management Advisory Committee are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions for any representation or warranty made by the individual granting or receiving the Interest or Licence; and
- (b) without restricting the generality of section 5.43(a) [*Review of Interests or Licences*], neither Ditidaht First Nation, the Lands Department, Ditidaht First Nation staff, nor the Land Management Advisory Committee will be responsible for determining whether an Interest or Licence is in good standing or the terms have been complied with.

Limits on Mortgages and Seizures

Protections

5.44 The *Indian Act* continues to apply to Ditidaht First Nation Land to the extent provided for in the Framework Agreement and the *First Nations Land Management Act*.

Mortgage of Member's Interest

5.45 The Interest of a Member in Ditidaht First Nation Land may be subject to a mortgage or charge, but only:

- (a) to a Member;
- (b) to Ditidaht First Nation with the express written consent of Council; or,
- (c) in accordance with applicable Laws.

Consent to charge or mortgage

5.46 An Interest of a non-Member may be subject to charge or mortgage, but only with the express written consent of Council.

Term of charge or mortgage

5.47 The term of any charge or mortgage of an Interest will not exceed the term of the Interest.

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Default in mortgage

- 5.48** In the event of default in the terms of a charge or mortgage of an Interest, the Interest is not subject to possession by the charge 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 Council;
 - (b) the charge or mortgage was registered in the First Nations Land Registry; and
 - (c) a reasonable opportunity to redeem the charge or mortgage is given to Council on behalf of Ditidaht First Nation.

Power of redemption

- 5.49** Subject to prior redemption by the Interest-holder or Member, Council may redeem the charge or mortgage from the charger or mortgagee in possession and will thereupon acquire all the rights and Interests of the charger or mortgagee and of the Interest-holder or Member for all purposes after the date of the redemption.

Waiving charges or mortgages

- 5.50** Council may, by Resolution, waive the requirements of section 5.49 [*Power of redemption*] for any charge or mortgage of a leasehold Interest or Licence.

Registration of Interests and Licences*Requirement for Registration*

- 5.51** (a) All Interests and Licences will be Registered in the First Nations Land Registry.
- (b) An Interest or Licence created or granted after this Land Code takes effect is not valid and not enforceable unless it is registered in the First Nation Lands Registry with the approval of Council.

Registration policies

- 5.52** Council will, in consultation with the Land Management Advisory Committee, establish a Regulatory Instrument in respect of the Registration of Interests and Licences.

Application to Register a Registrable Instrument

- 5.53** Every person who receives an Interest or Licence or a purported Interest or Licence may submit to the Lands Department an application to Register the Registrable Instrument in accordance with the First Nation Land Registry Regulations, which will include:

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- (a) a written request to Register or record the Registrable Instrument in the First Nations Land Registry; and
- (b) a filing fee if applicable.

Lands Department to submit Registrable Instrument for Registration

5.54 Upon receipt by the Lands Department of the items under section 5.53 [*Application to Register a Registrable Instrument*] and any other items required under the First Nations Land Registry Regulations, the Lands Department will confirm if the Registrable Instrument is in compliance with this Land Code, all relevant Laws and the First Nations Land Registry Regulations and, if it is in compliance, submit the Registrable Instrument and any required supporting documentation for Registration or recording in the First Nations Land Registry.

Evidence of consent

5.55 A Registrable Instrument granting an Interest or Licence that requires the consent of Council or of a Member will include a certified copy of the document indicating that the applicable consent or approval has been obtained.

Requirement for certificate

5.56 A Registrable Instrument registered in the First Nations Land Registry, which does not include the certificate referred to in section 5.55 [*Evidence of consent*], is void.

Duties of the Lands Department

5.57 The Lands Department will ensure that a true copy of each of the following is Registered in the First Nation Lands Registry:

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

Surveys

Conduct of surveys

5.58 Ditidaht First Nation may cause surveys to be made of Ditidaht First Nation Land.

5.59 All surveys will be carried out in accordance with the *Canada Land Surveys Act*, RSC 1985, c L-6 and the *Canada Lands Surveyors Act*, SC 1998, c 14.

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Initiation of Surveys

- 5.60** The holder of an Interest or Licence may only cause surveys to be made of those lands subject to their Interest or Licence with the prior written consent of Ditidaht First Nation and on such terms and condition as Ditidaht First Nation may specify.

Approved surveys deemed accurate

- 5.61** All surveys of Ditidaht First Nation Land approved or confirmed by the Surveyor General of Canada or his or her designate will be deemed for all purposes to accurately describe and identify the extent of the lands covered by each survey.

Selection of surveyor

- 5.62** Any surveyor will be a licenced member in good standing with the Association of Canada Lands Surveyors.

Authority of surveyor

- 5.63** With written permission from Ditidaht First Nation, the surveyor has the right to enter any Ditidaht First Nation Land for the purpose of conducting a survey. A person entering lawfully occupied lands under this section will provide notification of the surveying as soon as is reasonably practicable to the person occupying the land.

Approval of surveys

- 5.64** Council will approve any survey made of Ditidaht First Nation Land prior to the plan being submitted for recording in the Canada Lands Survey Records.

Residency, access and trespass*Laws relating to residency, access and trespass*

- 5.65** Council will, in consultation with the Land Management Advisory Committee, establish a Regulatory Instrument in respect of residency, access and trespass in relation to Ditidaht First Nation Land.
- 5.66** For greater certainty, the Law developed in accordance with this section may include provisions to address:
- (a) fines for trespassing on Ditidaht First Nation Land;
 - (b) requirements for non-Members accessing or residing on Ditidaht First Nation Lands to identify themselves at the Ditidaht First Nation office;
 - (c) procedures for removing any individual found to be using an illegal substance from Ditidaht First Nation Land; and

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- (d) procedures for removing any individual found to be conducting illegal activities on Ditidaht First Nation Land.

Financial obligations

- 5.67** A right of residence or access to Ditidaht First Nation Land does not create any financial obligation on the part of the Ditidaht First Nation.

No liability for state of Ditidaht First Nation Land

- 5.68** No liability is imposed upon Ditidaht First Nation in respect of any person exercising a right of residency or access under this Land Code for injuries or damages suffered on account of the condition or state of Ditidaht First Nation Land.

Prohibition on unauthorized entry

- 5.69** Subject to any Laws, any person who resides on, enters, remains on or solicits on Ditidaht First Nation Land, other than in accordance with a residency or access right under this Land Code or a Law or legally valid Interest, Licence or agreement:
- (a) is guilty of an offence, punishable by summary conviction or in accordance with applicable Laws, and,
 - (b) is subject to immediate eviction from Ditidaht First Nation Land, or the area of Ditidaht First Nation Land.

Civil remedies preserved

- 5.70** Subject to any Law or Regulatory Instrument, all civil remedies for trespass are preserved.

Transfers on Death

Wills and estates

- 5.71** Unless and until the Ditidaht First Nation is recognized with jurisdiction in relation to wills and estates, the provisions of the *Indian Act* dealing with wills and estates will continue to apply with respect to Interests in Ditidaht First Nation Land.

Transfer of Interest

- 5.72** A person who receives an Interest in Ditidaht First Nation Land, other than a Residential Interest or a Customary Allocation, by testamentary disposition or succession in accordance with any applicable law, or a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that Interest registered in the First Nations Land Registry.

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Matrimonial real property Law*Development of matrimonial real property Law*

5.73 As soon as is practicable after this Land Code takes effect, Council will, in consultation with the Land Management Advisory Committee, establish a Regulatory Instrument in respect of matrimonial real property setting out rules and procedures applicable on the breakdown of a marriage with respect to:

- (a) the use, occupancy and possession of Ditidaht First Nation Land;
- (b) if appropriate, the division of Interests in that land; and
- (c) the division of the value of improvements in that land.

Principles of matrimonial real property Law

5.74 For greater certainty, the Law developed under this section will respect the following general principles:

- (a) the rules and procedures will not discriminate on the basis of sex; and
- (b) only Members are entitled to hold a Residential Interest or a charge against a Residential Interest.

Revenue from land and Natural Resources*Process for generating revenue on Ditidaht First Nation Land*

5.75 The Lands Department will, in consultation with the Land Management Advisory Committee and subject to the approval of Council, establish the process and recommend any Laws or Regulatory Instruments for determining:

- (a) the fees, charges, royalties, rents or other payments for Interests and Licences;
- (b) the fees, charges or other payments for services provided in relation to any Ditidaht First Nation Land; and
- (c) the fees, charges, royalties, rents or other payments to be paid for the taking or use of Natural Resources.

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PART 6 - PROTECTION OF LAND

Environment and cultural heritage resources

Interim use of Canadian Environmental Assessment Act

- 6.1** Until Council enacts environmental assessment and protection laws, it will conduct an assessment process in respect of every project on Ditidaht First Nation Land that requires an assessment under the *Canadian Environmental Assessment Act* consistent with the requirements set out in Annex 'F' of the Individual Agreement.

Interim use of Heritage Conservation Act

- 6.2** Until Council enacts a cultural heritage resource protection Law, it may, by Resolution, apply the requirements of the *Heritage Conservation Act*, RSBC 1996, c 187 (British Columbia) to Ditidaht First Nation Land.

Prohibited activities

Prohibited activities

- 6.3** Subject to any Law with more specific provisions, all of the following are prohibited on Ditidaht First Nation Land:
- (a) dumping of any waste, garbage, debris or similar material anywhere outside of a garbage can or authorized bin or garbage disposal area;
 - (b) dumping, spilling, discharging, releasing, burning or depositing any substance, liquid or gas, that is noxious, hazardous, polluting, deleterious or harmful to human health or the environment; and
 - (c) any other activities resulting in contamination on Ditidaht First Nation Land or contaminants affecting the Natural Resources.

Unightly premises

- 6.4** As soon as possible after the Land Code takes effect, Council or any other authorized delegated authority, will enact a Law or Regulatory Instrument in regards to unsightly premises.

Expropriation – taking land for Community Purposes

Rights to Expropriation

- 6.5** The right of Ditidaht First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement with the Interest or Licence holder, the Interest or Licence rather than by Expropriation.

Guidelines for Expropriation

- 6.6 An Interest in or Licence in respect of Ditidaht First Nation Land, or in any building or other structure on that land, may only be expropriated by Ditidaht First Nation in accordance with:
- (a) any Law enacted for the purpose of establishing the rights and procedures for Expropriations; and,
 - (b) the Framework Agreement.

Situations allowing for Expropriation

- 6.7 An Expropriation by the Ditidaht First Nation may only be carried out for Ditidaht First Nation community public works or other Community Purposes.

Rules and procedures for Expropriation

- 6.8 Before proceeding to make any Expropriations in accordance with this Land Code and the Framework Agreement, Council will, in consultation with the Land Management Advisory Committee, enact a Law respecting the rights and procedures for Expropriations, including provisions respecting:
- (a) the taking of possession of the Interest or Licence;
 - (b) transfer of the Interest or Licence;
 - (c) requirements regarding notice of Expropriation and service of the notice of Expropriation in addition to those set out in sections 6.9 [*Notification of Expropriation*] and 6.10 [*Notice of Expropriation*];
 - (d) ensuring that no other similar and suitable land is reasonably available;
 - (e) ensuring that any taking is in the smallest amount of land and for the shortest period of time necessary to reasonably meet the need for which the land or Interest is required;
 - (f) entitlement to compensation;
 - (g) determination of the amount of compensation; and
 - (h) the method of payment of compensation.

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Notification of Expropriation

- 6.9** (a) In the case of an Expropriation of an Interest, any affected person or persons will receive notification of the Expropriation, including the specific Interests to be expropriated and the reasons for the Expropriation.
- (b) The notification of Expropriation will be delivered:
- (i) as soon as practicable following confirmation of the need for Expropriation by Council; and
- (ii) within reasonable time prior to the release of the Notice referred to in section 6.10 [*Notice of Expropriation*].

Notice of Expropriation

- 6.10** A Notice delivered in accordance with Ditidaht law of an Expropriation will be given not less than twenty-four (24) hours after the person(s) whose Interests or Licences are being expropriated have been notified, and in accordance with the following:
- (a) not less than thirty (30) days for any Expropriation that does not result in the displacement of persons, or in a change in the use of a parcel(s) of Ditidaht First Nation Land; and
- (b) not less than ninety (90) days for any Expropriation that results in the displacement of persons, or in a change in the use of a parcel(s) of Ditidaht First Nation Land.

Compensation for Expropriation

- 6.11** Ditidaht First Nation will, in accordance with its Laws and the Framework Agreement pay fair, and reasonable compensation to the holders of the Interest or Licence being expropriated.

Resolution of disputes

- 6.12** The resolution of disputes concerning the right of the Ditidaht First Nation to expropriate will be determined by neutral evaluation, in the same manner as provided in Part IX of the Framework Agreement, with any modifications necessary to fit the parties involved in the Expropriation, and the sixty (60) day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstance, by the neutral evaluator.
- 6.13** The resolution of the following disputes will be determined by arbitration, in the same manner as provided in Part IX of the Framework Agreement, with any modifications necessary to fit the parties involved in the Expropriation:

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- (a) disputes concerning the right of a holder of an expropriated Interest or Licence to compensation; and
- (b) disputes concerning the amount of the compensation.

Voluntary exchange of Ditidaht First Nation land

Voluntary exchange of land

- 6.14** The Ditidaht First Nation may agree with another party to exchange a parcel of Ditidaht First Nation Land for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.

Member Approval of land exchange

- 6.15** A land exchange is of no effect unless it receives Member Approval in accordance with Part 4 [Member Approval] and with section 14.2 of the Framework Agreement.

Oversight of land exchange

- 6.16** The Land Management Advisory Committee and the Lands Department will oversee any land exchange process.

Consideration of land exchange

- 6.17** No land exchange may occur unless the land to be received in the exchange meets the following conditions:
- (a) it will be equal to or greater than the area of the Ditidaht First Nation Land to be exchanged;
 - (b) it will be at least comparable to the value of the Ditidaht First Nation Land; and
 - (c) it will become a reserve and Ditidaht First Nation Land subject to this Land Code as soon as is reasonably practicable after the exchange.

Appointment of negotiator for land exchange

- 6.18** Council will, after considering the recommendation of the Land Management Advisory Committee and Lands Department, designate, by Resolution, a person or entity with authority to negotiate the terms of a land exchange agreement on behalf of Ditidaht First Nation.

Negotiation of land exchange

- 6.19** Ditidaht First Nation may negotiate to receive other compensation, such as money or additional parcels of lands, in addition to the parcel referred to in section 6.14 [Voluntary

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exchange of land] which is intended to become reserve lands. Such other parcels of land may be held by the Ditidaht First Nation in fee simple or some other manner.

Notice to Eligible Voters

- 6.20** (a) Once negotiations on the land exchange agreement are concluded, before the vote required under section 6.15 [*Member Approval of land exchange*], the Land Management Advisory Committee will provide Eligible Voters with an information package that describes the proposed land exchange.
- (b) A Notice delivered in accordance with Ditidaht law of the vote required in section 6.15 [*Member Approval of land exchange*], including the information package required under subsection (a), will be delivered to Members at least thirty-five (35) days prior to the vote.

Use of funds from land exchange

- 6.21** Following consideration of the recommendations of the negotiator appointed in accordance with section 6.18 [*Appointment of negotiator for land exchange*], Council will allocate any funds received from a land exchange agreement towards the future acquisition of land for Ditidaht First Nation.

Planning

Land Use Plan

- 6.22** Within a reasonable time after this Land Code comes into effect, Council will, in consultation with the Land Management Advisory Committee, establish a Regulatory Instrument in respect of land use planning.

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PART 7 - LAND ADMINISTRATION

General

Administration

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

Delegation

7.2 Notwithstanding section 7.1 [*Administration*], Council may, by enacting a Law or Regulatory Instrument or by Resolution, delegate administrative authority in relation to this Land Code or a Law to an individual or body established or authorized under this Land Code or pursuant to a Law.

Exercise of duties

7.3 Any power, authority or discretion exercised by Council, the Land Management Advisory Committee or other individual or body established or authorized under this Land Code will be exercised on behalf of, and for the benefit and protection of, the Ditidaht First Nation.

Land Management Advisory Committee

Committee established

7.4 The Land Management Advisory Committee is hereby established as a standing committee of the Ditidaht First Nation for the purposes set out in section 7.5 [*Purposes*].

Purposes

7.5 The purposes of the Land Management Advisory Committee are to:

- (a) assist with the development of the Ditidaht First Nation land administration system;
- (b) advise Council and Ditidaht First Nation staff on matters respecting Ditidaht First Nation Land;
- (c) recommend to Council Laws, Resolutions and Regulatory Instruments respecting Ditidaht First Nation Land;
- (d) hold Members Information Sessions to discuss land issues and make recommendations to Council on the resolution of these land issues;

- (e) assist in the flow of information on land issues between Members and Council;
- (f) oversee the development of Laws created under this Land Code in accordance with section 2.15 [*Presentation to Council*];
- (g) oversee Member Approvals under this Land Code;
- (h) oversee other consultations under this Land Code; and
- (i) perform other duties and functions that are ancillary to the powers, duties and functions set out in this Land Code or Regulatory Instrument or as Council may direct.

Internal procedures

- 7.6 The Land Management Advisory Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with this Land Code or any rules and procedures established by Council.

Membership of the Land Management Advisory Committee

Composition

- 7.7 The Land Management Advisory Committee will be composed of an uneven number of no less than five (5) and no more than seven (7).

Lands Department as ex officio Committee member

- 7.8 The Lands Department, or another member of the Ditidaht First Nation Lands Department, may serve as an ex officio member of the Land Management Advisory Committee.

Councillor as ex officio Committee member

- 7.9 One member of Council designated by a motion of Council may serve as an ex officio member of the Lands Management Advisory Committee to observe and report to the rest of Council.

Role of ex officio Committee members

- 7.10 For greater certainty, an ex officio member is not included in the number of Land Management Advisory Committee members referred to in section 7.7 [*Composition*], counted for the purposes of establishing quorum and is not entitled to vote on Committee matters.

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Eligibility

- 7.11** (a) Any Eligible Voter, whether resident on or off Ditidaht First Nation Land, is eligible for appointment to the Land Management Advisory Committee, except for the following:
- (i) any Eligible Voter convicted of an offence that was prosecuted by way of indictment within the previous fifteen (15) years, except for a conviction for an offence where the person was involved in the practice, support or defence of an Aboriginal right or title;
 - (ii) any undischarged, bankrupt or any individual that owes money to Ditidaht First Nation and has not entered into a structured repayment plan; and
 - (iii) any Eligible Voter convicted of a corrupt practice in connection with an election, including but not limited to, accepting a bribe, dishonesty or wrongful conduct.
- (b) In the case of subsection (a)(ii), where an individual would like to participate as a member of the Land Management Advisory Committee and that individual owes money to the Ditidaht First Nation, they can be appointed, except for their honoraria for time spent on the Committee will go towards their arrears outstanding.

Committee candidates

- 7.12** (a) As soon as practicable following enactment of this Land Code, Council will post a Notice in accordance with Ditidaht law of a call for Land Management Advisory Committee members.
- (b) The Notice will include a description of eligibility requirements and information regarding how interested Members may submit an expression of interest.
- (c) Members who are interested in sitting on the Land Management Advisory Committee may provide written expressions of their interest in participating to Council for consideration.

Appointment

- 7.13** The members of the Land Management Advisory Committee will be appointed by Council, in consultation with the Lands Department and any other relevant staff, from amongst those who submit an expression of interest submitted under section 7.12 [*Committee candidates*] with at least one individual who is ordinarily resident on Ditidaht First Nation Land and one individual who is not ordinarily resident on Ditidaht First Nation Land.

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7.14 In the absence of a sufficient number of candidates meeting the composition guidelines set out in section 7.7 [*Composition*] submitting expressions of interest, Council may appoint any eligible Member(s) to the Land Management Advisory Committee.

Term of office

7.15 The term of office of a member of the Land Management Advisory Committee appointed by Council under sections 7.13 and 7.14 [*Appointment*] will not exceed four (4) years, but a Committee member may be appointed for further consecutive terms.

Staggered terms

7.16 In the first appointment of Land Management Advisory Committee members under this Land Code:

- (a) the Majority of the Committee members initially appointed will be appointed for a term commencing at midnight of the appointment date and terminating at midnight four (4) years following the appointment date; and
- (b) the remaining Committee members initially appointed will hold office for a term commencing at midnight of the appointment date and terminating at midnight two (2) years following the appointment date.

7.17 In all appointments subsequent to the first appointment of Committee members, appointees under sections 7.13 and 7.14 [*Appointment*] will hold office for a term commencing at midnight on the date of their appointment and terminating no later than four (4) years following that date.

Vacancy on Land Management Advisory Committee

7.18 The office of a member of the Land Management Advisory Committee becomes vacant if the member, while holding office:

- (a) is or becomes ineligible to hold office under section 7.11 [*Eligibility*];
- (b) is absent for three (3) consecutive meetings of the Land Management Advisory Committee for a reason other than illness or incapacity without being authorized to be absent by a Majority vote of the Land Management Advisory Committee and, for greater certainty, an authorization to be absent from a meeting of the Land Management Advisory Committee may be approved after the absence has already occurred;
- (c) dies or becomes mentally incompetent;
- (d) is dismissed by Council for contravention of conflict of interest rules established under this Land Code, a Law or Regulatory Instrument; or

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- (e) resigns in writing.

Vacancy in term

- 7.19** Where the office of a member of the Land Management Advisory Committee becomes vacant more than ninety (90) days before the date when another appointment would be made, an appointment will be made by Council in accordance with section 7.13 [*Appointment*] to fill the vacancy.

Balance of term of office

- 7.20** The term of an appointee to the Land Management Advisory Committee filling a vacancy under section 7.19 [*Vacancy in term*] is the balance of the term in respect of which the vacancy occurred or such other period as may be determined by Council, so long as the term of office does not exceed four (4) years.

Chair of the Land Management Advisory Committee

Appointment of Chair

- 7.21** The Lands Director will serve as the Chair of the Land Management Advisory Committee.

Alternate Chair

- 7.22** If the Chair is unable to perform the functions of office, either temporarily or on a long-term basis, the Land Management Advisory Committee will appoint a member of the Land Management Advisory Committee to act as the Chair.

Duties of the Chair

- 7.23** The Chair will:
- (a) chair meetings of the Land Management Advisory Committee;
 - (b) ensure that there is an agenda prepared and circulated to Committee members in advance of each meeting and that the agenda is followed at each meeting; and
 - (c) perform such other duties as may be reasonably prescribed by Council or established under section 7.6 [*Internal procedures*].

Administration of the Land Management Advisory Committee

Administration of Land Management Advisory Committee

- 7.24** The Lands Department or assigned staff-designate will fulfill administration responsibilities for the Land Management Advisory Committee.

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Decision-making by the Land Management Advisory Committee*Quorum of the Land Management Advisory Committee*

7.25 Quorum of the Land Management Advisory Committee requires that over half (50% + 1) of the Committee members are present.

Requirement of quorum

7.26 Quorum of the Land Management Advisory Committee is required when the Committee is making a decision, including but not limited to, decisions relating to:

- (a) any recommendation to Council; and
- (b) any decision-making required by this Land Code or any Law or Regulatory Instrument.

7.27 For greater certainty, quorum of the Land Management Advisory Committee is not required for meetings where Laws are being developed, or other matters are being discussed, so long as no decisions are to be made at the meeting.

Committee will strive for consensus

7.28 The Land Management Advisory Committee will strive to reach consensus with respect to its decisions.

Reporting

7.29 The Land Management Advisory Committee will be responsible for reporting on its activities to both Council and Members.

Revenue from lands*Determination of fees and rent*

7.30 The Land Management Advisory Committee will, subject to the approval of Council, determine:

- (a) any application, grant of Interest, payment, fees, rent, royalty or other amount relating to a Law, Regulatory Instrument, Licence, process or grant under this Land Code;
- (b) fees for services provided in relation to any Ditidaht First Nation Land and compliance with this Land Code; and
- (c) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code.

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Consideration of obligation

- 7.31** The Land Management Advisory Committee will recommend to Council processes and criteria for managing Ditidaht First Nation's obligations in relation to revenue from Ditidaht First Nation Land.

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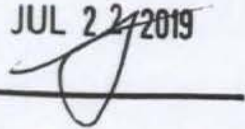
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PART 8 - ACCOUNTABILITY

Conflict of interest or appearance of conflict of interest

Application of rules

- 8.1** The conflict of interest rules in this Land Code apply to the following persons:
- (a) each member of Council who is dealing with any matter before Council that is related to Ditidaht First Nation Land;
 - (b) each person who is an employee of the Ditidaht First Nation dealing with any matter that is related to Ditidaht First Nation Land; and
 - (c) each person who is a member of a board, committee or other body of the Ditidaht First Nation dealing with any matter that is related to Ditidaht First Nation Land.

Conflict of interest definition

- 8.2** In this section:
- (a) A person to whom the conflict of interest rules apply:
 - (i) has a conflict of interest when the person is being asked to deliberate or decide on a matter where there is the opportunity to further his or her private interest or the private interest of a member of his or her Immediate Family;
 - (ii) has an apparent conflict of interest if there is a reasonable perception, which a reasonably well-informed person could properly have, that the person's ability to deliberate or decide on the matter may have been affected by his or her private interest or the private interest of a member of his or her Immediate Family.
 - (b) "private interest" does not include an interest that a person or a member of his or her Immediate Family has in a matter by virtue of the fact that the person or a member of his or her Immediate Family member is a Member.

Duty of individuals to report and abstain

- 8.3** If a person has an actual or apparent conflict of interest in the matter being dealt with, the person:
- (a) will disclose the interest to Council, or the board, committee or other body as the case may be;
 - (b) will not take part in any deliberations on that matter or vote on that matter; and

- (c) will remove themselves from the proceedings.

Report to Administrator

- 8.4** If a person becomes aware of an actual or apparent conflict of interest for another member of Council, or a board, committee, or other body as the case may be, that person will bring attention to this conflict to the most senior administrator of the Ditidaht First Nation.

Inability to act

- 8.5** If a body is unable to act due to a conflict of interest, the matter will be referred to Council.

Special Members Meeting

- 8.6** Where, as a result of a conflict of interest under this section, a quorum of Council can never be established, the matter will be referred to a Special Members Meeting for a Member Approval vote.

Specific conflict situations

- 8.7** Not more than two (2) members from the same Immediate Family may be concurrent members of an appointed board, appointed committee or other appointed body dealing with any matter that is related to Ditidaht First Nation Land.

Disputes

- 8.8** The individual, body or bodies appointed under a dispute resolution Law created in accordance with this Land Code will have the jurisdiction to hear and decide on any matter concerning a conflict of interest.

Financial Management

Application

- 8.9** This section applies only to financial matters relating to Ditidaht First Nation Land and Natural Resources.

Financial policies

- 8.10** Council will, in consultation with the Land Management Advisory Committee, establish a Regulatory Instrument in respect financial management, which will include:
- (a) regulating the receipt, management and expenditure of moneys, including transfer payments, all capital and revenue moneys received from Canada, all Ditidaht First

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Nation Land revenue, and moneys received from a grant or disposition of any Interest or Licence;

- (b) managing financial records and accounts;
- (c) preparing financial statements and audits;
- (d) preparing and implementing budgets and annual presentation of budgets;
- (e) determining the general investment strategy;
- (f) contract notes, loans and other indebtedness;
- (g) establishing fees, fines, charges and levies;
- (h) establishing and maintaining a recordkeeping system that ensures confidentiality, security of records and document retention.

Administrative structure

8.11 Council will establish an administrative structure:

- (a) to implement all financial policies and procedures;
- (b) to oversee the day to day operational responsibilities for managing moneys;
- (c) to ensure the accuracy of the accounting records;
- (d) to reconcile, review and approve bank statements;
- (e) to present the annual budgets to Members;
- (f) to present annually an audit of the financial statements to the Members; and
- (g) to prepare the annual report to Members.

Annual Report

Publish annual report

8.12 Council, on behalf of the Ditidaht First Nation, will publish an annual report on land matters.

Contents

8.13 The annual report will include:

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- (a) an annual review of Ditidaht First Nation Land and Natural Resources management;
- (b) an annual budget in respect of land matters;
- (c) a copy and explanation of the audit prepared in accordance with the financial management Law as it applies to Ditidaht First Nation Land and Natural Resources; and
- (d) any other matter as determined by Council or Land Management Advisory Committee.

Access to Information

Access

8.14 Any person may, during normal business hours at the main administrative office of the Ditidaht First Nation, have reasonable access to:

- (a) the Register of Laws;
- (b) any reports of the auditor prepared in accordance with the financial management Law; and
- (c) the annual reports on Ditidaht First Nation Land and Natural Resources.

Copies for Members

8.15 Any Member may, upon payment of reasonable copying expenses, obtain a copy of any auditor's report, annual report or Law.

Access to records

8.16 Any person authorized by Council may inspect the financial records of Ditidaht First Nation related to Ditidaht First Nation Land and Natural Resources.

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PART 9 - OTHER MATTERS

Liability

Liability coverage

- 9.1 Council will arrange, maintain and pay, out of the transfer payments received from Canada or other source, insurance coverage for:
- (a) liability of Ditidaht First Nation in relation to Ditidaht First Nation Land; and
 - (b) members of Council, members of the Land Management Advisory Committee and officers and employees engaged in carrying out any matter related to Ditidaht First Nation Land to indemnify them against personal liability arising from those activities.

Extent of coverage

- 9.2 The extent of the insurance coverage will be determined from time to time by Council.

Bonding

- 9.3 Every employee, officer or contractor of Ditidaht First Nation whose responsibilities include collecting or accounting for land revenue will be bondable.

Offences and enforcement

Application of the Criminal Code

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

Fines and imprisonment

- 9.5 Unless some other procedure is provided for by a Law, any person who commits an offence under this Land Code or a Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six (6) months or to both fine and imprisonment, provided however, that offences related to Ditidaht First Nation environmental protection Laws may carry penalties consistent with similar environmental protection laws in force in Canada.

Other offences and penalties

- 9.6 Despite section 9.4 [*Application of the Criminal Code*]:
- (a) a Law may provide for fines for violation of specified provision of the Law; and,

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

Justices of the peace; alternative enforcement mechanisms

9.7 For greater certainty, Council may enact Laws:

- (a) respecting appointment of Justices of the Peace for the enforcement of this Land Code and Laws;
- (b) to enable appropriate enforcement issues and disputes to be dealt with through a community justice process; and
- (c) to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

Courts

9.8 If no Justice of the Peace is appointed, or no applicable community justice process is established, this Land Code and Laws are to be enforced by a court of competent jurisdiction.

Amendments

Amendments by Council and Land Management Advisory Committee

- 9.9 (a) This Land Code, or a Law approved by Eligible Voters under section 4.3 [*Member Approval*], may be amended by Council, after having consulted with legal counsel for the Ditidaht First Nation, if the amendment is made to improve the administrative efficiency of Ditidaht First Nation Land, provided that the amendment will not
- (i) change a right of Members under this Land Code or that Law,
- (ii) a right or interest of a holder of an Interest or Licence, or
- (iii) amend, vary or alter this section, and
- that it is confirmed by legal counsel for the Ditidaht First Nation in writing.
- (b) The Land Management Advisory Committee may, after having consulted with legal counsel for the Ditidaht First Nation, amend this Land Code, a Law or a Regulatory Instrument to correct
- (i) a typographical error or other error of a minor or clerical nature, or

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(ii) an obvious error or omission, and

if such correction is confirmed by legal counsel for the Ditidaht First Nation in writing.

Amendments by Eligible Voters

9.10 Any other amendment to this Land Code or a Law approved by Eligible Voters under section 4.3 [*Member Approval*], must be approved by Eligible Voters in a Referendum held in accordance with a Voting Law.

Verifier

9.11 A Verifier is not required in relation to Member Approval for an amendment to this Land Code.

Commencement

Preconditions

9.12 This Land Code will not come into effect unless:

- (a) the Eligible Voters approve this Land Code and the Individual Agreement with Canada by vote in accordance with the Community Ratification Process; and
- (b) this Land Code has been certified by the Verifier pursuant to the Framework Agreement.

Commencement date

9.13 Subject to section 9.12 [*Preconditions*] this Land Code will come into effect on the first day of the month following the certification of this Land Code by the Verifier.

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