

ST. MARY'S INDIAN BAND

LAND CODE

dated for reference December 5, 2013

Certified true copy of original Land Code document dated for reference December 5, 2013:

Date: December 5, 2013

Signature:

Jeanie Lanine, Barrister & Solicitor

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ST. MARY'S INDIAN BAND AMENDED LAND CODE

DECLARATION OF THE ST. MARY'S INDIAN BAND

We are known collectively as the St. Mary's Indian Band and through this Land Code, we declare our sovereignty and jurisdiction.

Since the beginning of time, our people have lived on the lands that the Creator provided for our Ancestors. They lived by our traditional system of governance that sustained us and our lands and resources for thousands of years. Our society governed all forms of environmental, social and political relations through a sophisticated system of traditional laws, as is our traditional way.

It is from this proud history that St. Mary's Indian Band derives our inherent right of self-government. With jurisdiction and responsible leadership, we will create economic and employment opportunities to sustain and improve the quality of life for present and future generations.

PREAMBLE

WHEREAS the St. Mary's Indian Band, as it has always done, continues to occupy its lands and based on its traditional teachings, it will empower its Members to be healthy, self-governing stewards of its lands and resources, today and always;

AND WHEREAS the St. Mary's Indian Band honours its connection to the land, resources and elements of the natural world that provide for its physical and spiritual needs;

AND WHEREAS the St. Mary's Indian Band recognizes its responsibility to protect the land and its resources for future generations and to protect the rights of the St. Mary's Indian Band and its Members;

AND WHEREAS the Members of the St. Mary's Indian Band are a proud, united people whose purpose is to promote a healthy and prosperous future that ensures the continued existence of the St. Mary's Indian Band as a strong political, social and cultural community that aspires to move ahead as an organized, highly-motivated, determined and self-reliant nation;

AND WHEREAS the St. Mary's Indian Band values the need to respect, protect and promote its heritage, culture and traditions as the driving force of its success and destiny while understanding that these practices may change and require contemporary expression;

AND WHEREAS St. Mary's Indian Band wished to manage its land and resources under First Nation Land Management by entering into the Framework Agreement and Individual Agreement

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with Canada;

AND WHEREAS the *St. Mary's Indian Band Land Code* is hereby enacted as a law of the St. Mary's Indian Band.

NOW THEREFORE, THE ST. MARY'S INDIAN BAND LAND CODE IS HEREBY ENACTED.

**PART 1
PRELIMINARY MATTERS**

1. Title

The title of this enactment is the *St. Mary's Indian Band Land Code*.

2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

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

“Adjudicator” means the person appointed by Council to the Office of the Adjudicator;

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

“Chief” means the lawfully elected Chief of St. Mary's Indian Band;

“Community Lands” means any St. Mary's Indian Band Lands in which all Members have a common interest;

“Community Land Code Meeting” means a Community Land Code Meeting convened in accordance with sections 11.2 or 11.3 of Part 3;

“Council” means the lawfully elected government of the St. Mary's Indian Band and includes the Chief;

“Cultural Resource” means an object, site or location of a traditional or cultural practice that has past and ongoing importance and this is of historical, cultural or archaeological significance to the St. Mary's Indian Band;

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"Eligible Voter" means a Member who has attained the age of 18 years on or before the day of the vote;

"First Nation Land Register" means the First Nation Land Register established by the Minister under subsection 25(1) of the Act;

"Framework Agreement" means the *Framework Agreement on First Nation Land Management* entered into between Canada and fourteen First Nations on February 12, 1996, and includes any amendments to the agreement;

"Immediate Family", means father, mother, sister, brother, husband, wife, common-law spouse, son or daughter, including adopted.;

"Indian Act" means the *Indian Act*, RSC 1985, c.I-5;

"Individual Agreement" means the Individual Transfer Agreement entered into between the St. Mary's Indian Band and Canada in accordance with clause 6.1 of the Framework Agreement and subsection 6(3) of the Act;

"Land Code" means this *St. Mary's Indian Band Land Code*;

"Lands Authority" means the Lands Authority established under the *St. Mary's Indian Band Land Code*;

"Lands Committee" means the Lands Committee established under section 28.1;

"Lands Manager" means the person appointed by Council to manage the St. Mary's Indian Band Lands Office;

"Law" means a law enacted under this Land Code but does not include a Resolution;

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

"Meeting of Members" means a Meeting of Members convened in accordance with sections 13.5 and 13.6 of Part 3;

"Member" means a person registered on the Membership List;

"Membership List" means the list of names of Members maintained by St. Mary's Indian Band;

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

“Office of the Adjudicator” is the Office of Adjudicator established under section 40.1 of Part 8;

“Ratification Vote” means a Ratification Vote convened in accordance with section 14.3 of Part 3;

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

“St. Mary's Indian Band” means the St. Mary's Indian Band within the meaning of the *Indian Act* for whose use and benefit in common the St. Mary's Indian Band Lands has been set apart by Canada;

“St. Mary's Indian Band Lands” means the lands described in section 5.1;

“St. Mary's Indian Band Lands Office” means the office established by Council to assist in the management and administration of St. Mary's Indian Band Lands;

“St. Mary's Indian Band Lands Register” means the register of St. Mary's Indian Band Lands maintained by the St. Mary's Indian Band Lands Office;

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by civil and common-law marriage; and

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

Paramourncy

2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the St. Mary's Indian Band, this Land Code shall prevail to the extent of the inconsistency or conflict.

2.3 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.

Culture and Traditions

2.4 The structures, organizations, laws and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of the St. Mary's Indian Band, unless otherwise provided.

Non-abrogation

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- 2.5 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other right or freedom that pertains now or in the future to the St. Mary's Indian Band or its Members including:
- (a) any rights or freedoms that have been recognized by section 35 of the *Constitution Act, 1982*;
 - (b) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
 - (c) any rights or freedoms that may be acquired by the St. Mary's Indian Band or its Members by way of land claims settlement.
- 2.6 This Land Code is not intended to affect the eligibility of the St. Mary's Indian Band or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the St. Mary's Indian Band has not assumed responsibility for such services or programs.

Interpretation

- 2.7 This Land Code shall be interpreted in a fair, large and liberal manner.
- 2.8 The principles set out in the Preamble to this Land Code may be used to interpret this Land Code.
- 2.9 In this Land Code:
- (a) the use of the word "shall" denotes an obligation that, unless this Land Code provides to the contrary, shall be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
 - (b) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
 - (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
 - (d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

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- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- (f) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

Fiduciary Relationships

2.10 This Land Code is not intended to abrogate the fiduciary duty between Canada, the St. Mary's Indian Band and its Members.

Land and Interests Affected

2.11 A reference to "land" in this Land Code is, unless the context otherwise requires, a reference to St. Mary's Indian Band Lands and all rights and resources of the St. Mary's Indian Band Lands, including:

- (a) the water;
- (b) beds underlying water;
- (c) riparian rights, including to lands acquired through accretion;
- (d) minerals and subsurface resources;
- (e) and all other renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada or the St. Mary's Indian Band; and
- (f) all the interests and licences granted to the St. Mary's Indian Band by Canada listed in the Individual Agreement.

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3. Authority to Govern

Origin of Authority

3.1 By enacting this Land Code the St. Mary's Indian Band is giving effect to its aboriginal title to that portion of its territories comprised of St. Mary's Indian Band Lands.

Flow of Authority

3.2 The authority of the St. Mary's Indian Band to govern its land and resources flows from its aboriginal title and inherent right of self-government.

3.3 Through this Land Code, the St. Mary's Indian Band will exercise its inherent right of self-government and provide for effective and accountable governance as a self-determining community.

4. Purpose

Purpose

4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to St. Mary's Indian Band Lands and by which the St. Mary's Indian Band shall exercise authority over that land.

5. Description of St. Mary's Indian Band Lands

St. Mary's Indian Band Lands

5.1 The St. Mary's Indian Band Lands that are subject to this Land Code have the same meaning as "first nation land" in the Act and more specifically means the lands described in the Individual Agreement and any lands added in compliance with this Land Code. This includes:

- (a) Kootenay Indian Reserve No. 1 (07422);
- (b) Isidore's Ranch No. 4 (07423);
- (c) Cassimayooks No. 5 (07424);
- (d) Bummer's Flat No. 6 (07425); and
- (e) lands set apart by Canada in the future as lands reserved for the use and benefit of the St. Mary's Indian Band, within the meaning of subsection 91(24) of the

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Constitution Act, 1867 and section 2(1) of the Indian Act.

Additional Land

- 5.2 The following lands may be made subject to this Land Code if they are, or become, reserve land and the following conditions are met:
- (a) any land owned jointly by the St. Mary's Indian Band and one or more other First Nations, when the First Nations agree upon a joint management scheme for that land; and
 - (b) any land or interest acquired by the St. Mary's Indian Band after this Land Code comes into force, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for St. Mary's Indian Band use.

Land Exchange

- 5.3 For greater certainty, section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 17.

Inclusion of Land or Interest

- 5.4 If the relevant conditions in section 5.2 are met, Council shall call a Community Land Code Meeting in accordance with sections 11.3 and 11.14 and, after receiving input from Members, Council may, by Resolution, declare the land or interest to be subject to this Land Code.

**PART 2
ST. MARY'S INDIAN BAND LEGISLATION**

6. Law-Making Powers

General

- 6.1 Council shall develop laws consistent with this Land Code regarding the management, administration, use and protection of St. Mary's Indian Band Lands.

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Council May Make Laws

- 6.2 Without limiting the generality of section 6.1, Council may make laws in relation to:
- (a) development, conservation, protection, management, use and possession of St. Mary's Indian Band Lands;
 - (b) interests in and licences to use St. Mary's Indian Band Lands;
 - (c) any matter necessary to give effect to this Land Code; and
 - (d) any matter necessary or ancillary to a law in relation to St. Mary's Indian Band Lands.
- 6.3 Council may make regulations authorized to be made under a law.

Examples of Laws

- 6.4 For greater certainty, Council may make laws in relation to St. Mary's Indian Band Lands including:
- (a) zoning and land use planning;
 - (b) regulation, control, authorization and prohibition of the occupation and development of land;
 - (c) creation, disposition, regulation and prohibition of interests and licences;
 - (d) environmental assessment and environmental protection;
 - (e) archaeological assessment and protection of archaeological and Cultural Resources;
 - (f) provision of local services and imposition of user charges;
 - (g) enforcement of laws;
 - (h) provision of services for the resolution, outside the courts, of disputes;
 - (i) setting aside and regulation of parks, parklands and recreational lands;
 - (j) setting aside and regulation of heritage lands;

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- (k) rules and procedures for the receipt, management, expenditure, investment and borrowing of moneys, including the establishment of administrative structures to manage such moneys;
- (l) creation of management and administrative bodies or agencies;
- (m) removal and punishment of persons trespassing upon St. Mary's Indian Band Lands or frequenting St. Mary's Indian Band Lands for prohibited purposes;
- (n) public nuisance and private nuisance;
- (o) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (p) construction and maintenance of boundary and internal fences;
- (q) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works; and
- (r) regulation of traffic and transportation.

6.5 Council shall perform all the duties and functions, and exercise all the powers, of the St. Mary's Indian Band that are not specifically assigned to an individual or body established under this Land Code.

6.6 Notwithstanding section 6.5, Council may, by Resolution, delegate administrative authority to an individual or body established or authorized under this Land Code.

7. Law-Making Procedure

General

7.1 Council shall enact laws under this Land Code in accordance with this part.

Development of Laws

7.2 The development of a draft law shall be initiated by a Resolution, setting out the specific subject matter of the proposed law.

First Reading: Draft Law

7.3 Upon completion of the draft law, Council shall table it at a regular meeting of Council for consideration.

Decision on Draft Law

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7.4 After considering the draft law, Council shall, by Resolution:

- (a) accept the draft law in principle;
- (b) reject the draft law;
- (c) direct further work on the draft law and specify a return date to re-table the draft law at a future Council meeting.

Explanation for Rejection

7.5 Council shall explain the reasons for rejecting a draft law at a Community Land Code Meeting.

Second Reading: Community Land Code Meeting on Draft Law

7.6 If Council has accepted the draft law in principle, Council shall schedule a Community Land Code Meeting in accordance with sections 11.3 and 11.14 for the purpose of consulting with Members on the draft law.

Written Notice of Meeting

7.7 The notice of the Community Land Code Meeting shall include:

- (a) a summary of the draft law;
- (b) notification that a full copy of the draft law may be obtained by Members at the St. Mary's Indian Band administration building;
- (c) an invitation for Members to provide written comments to Council on the draft law; and
- (d) the return date by which Members shall provide written comments to Council, which date shall be at least twenty (20) days from the date of the Community Land Code Meeting.

Conduct of Meeting

7.8 Copies of the draft law shall be made available to Members attending the Community Land Code Meeting.

7.9 At the Community Land Code Meeting, Council or its delegate shall explain the purpose and provisions of the draft law, and invite questions and comments by Members.

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Council Shall Consider Comments

- 7.10 After the expiry of the time specified under subsection 7.7(d) for written comments from Members, Council shall consider any comments received, the needs of the community and any other relevant matters, and shall prepare or cause to be prepared a final draft law.

Third Reading: Final Draft Law

- 7.11 Upon completion of the final draft law, Council shall table it at a regular meeting of Council for consideration.

Decision on Final Draft

- 7.12 Subject to section 12.1 (*Matters Requiring Approval at Meeting of Members*) and section 14.1 (*Matters Requiring Approval by Ratification Vote*), after considering the final draft law Council shall, by Resolution:

- (a) enact the final draft law;
- (b) make changes to the final draft law;
- (c) reject the final draft law;
- (d) schedule a Community Land Code Meeting in accordance with sections 7.6 and 7.7 for consideration of the final draft law by Members; or
- (e) refer the final draft law for approval by Eligible Voters at a Meeting of Members or in a Ratification Vote.

Written Notice of Approval Meeting

- 7.13 If a Meeting of Members or a Ratification Vote is called under subsection 7.12(e), section 12.1 or section 14.1 to approve the final draft law, the notice of the meeting or vote shall include:

- (a) a summary of the final draft law; and
- (b) notification that a full copy of the final draft law may be obtained by Members at the St. Mary's Indian Band administration building

Enactment of Law by Council

- 7.14 A law is enacted on the date that it is approved and adopted by Resolution of Council.

Enactment of Law by Eligible Voters

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7.15 If a law is approved by Eligible Voters at a Meeting of Members or in a Ratification Vote, the law shall be deemed to be enacted on the date of its approval and it shall have the same force and effect as a law enacted by Resolution of Council.

Enactment of Law on Urgent Matters

7.16 Council may enact a law without calling a Community Land Code Meeting, Meeting of Members or a Ratification Vote if Council is reasonably of the opinion that the law is required urgently to protect St. Mary's Indian Band Lands or Members.

7.17 A law enacted under section 7.16 shall be deemed to have been repealed and to have no force and effect as of twenty-eight (28) days after its enactment, but it may be re-enacted in accordance with this part.

Amendments

7.18 A law may be repealed or amended by following the procedure specified in the law.

7.19 If a law does not specify a procedure for its repeal or amendment, the law may be repealed or amended by the same procedure that was followed to enact it.

Commencement Date

7.20 If the date of commencement is not specified in a law, the law shall come into force on the date of its enactment.

8. Regulation-Making Procedure

8.1 Council may initiate the development of a regulation by Resolution.

8.2 Council may, at any time and in any manner Council considers advisable, consult with Members regarding a proposed regulation.

8.3 A regulation is enacted on the date that it is approved and adopted by Resolution.

9. Publication of Laws and Regulations

Publication

9.1 All laws and regulations enacted by Resolution shall be published in the minutes of Council meeting.

Posting Laws

- 9.2 Within seven (7) days after a law or regulation has been enacted, Council shall:
- (a) post a copy of the law or regulation in a public area of the St. Mary's Indian Band administration offices; and
 - (b) deposit an original copy of the law or regulation in the register of laws referred to in section 9.3.

Register of Laws

- 9.3 Council shall cause to be kept, at the St. Mary's Indian Band administration offices, a register of laws containing the original copy of all laws and regulations, including any that have been repealed or that are no longer in force.
- 9.4 Any person may have, during regular business hours at the St. Mary's Indian Band administration offices, reasonable access to the register of laws.

Copies for Any Person

- 9.5 Any person may obtain a copy of a law or regulation upon payment of such reasonable fee as may be set by Council.
- 9.6 Section 9.5 does not preclude Council from making copies of a law or regulation available to Members without a fee.

**PART 3
MEMBER INPUT AND APPROVALS**

10. Rights of Eligible Voters

Rights of Eligible Voters

10.1 Every Eligible Voter may vote at a Meeting of Members and in a Ratification Vote.

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11. Community Land Code Meetings

Community Consultations

- 11.1 The Council, Lands Manager and Lands Committee may hold Community Land Code Meetings to consult with Members on matters relating to St. Mary's Indian Band Lands.
- 11.2 If a Community Land Code Meeting is called under section 11.1, notice shall be given to Members by any method that the Council, Lands Manager or Lands Committee may consider appropriate in the circumstances.

Written Notice of Community Land Code Meeting

- 11.3 If a Community Land Code Meeting is required to be held under this Land Code, written notice of the meeting shall be provided to Eligible Voters at least ten (10) business days before the date of the meeting by:
 - (a) a notice delivered or mailed to Eligible Voters at their last known address; or
 - (b) publication of a notice in the St. Mary's Indian Band newsletter delivered or mailed to Eligible Voters at their last known address; and
 - (c) posting of a notice in a public area of the St. Mary's Indian Band administration offices.
- 11.4 The written notice of a Community Land Code Meeting shall:
 - (a) specify the date, time and place of the meeting; and
 - (b) include a summary of the matter to be discussed at the meeting.

Who May Attend a Community Land Code Meeting

- 11.5 Any Member may attend a Community Land Code Meeting.

12. Meeting of Members

Matters Requiring Approval by Members

- 12.1 Approval at a Meeting of Members shall be obtained for:
 - (a) subject to section 16, any land use plan or amendment to a land use plan;
 - (b) a law enacted under section 38;
 - (c) an amendment to this Land Code; and

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- (d) any law or class of law that Council, by Resolution, declares to be subject to this section.
- 12.2 Subject to section 12.3, any matter requiring approval at a Meeting of Members shall receive a Majority vote in favour of the matter in accordance with section 13.3.
- 12.3 Council may, by Resolution, provide that any matter that requires approval at a Meeting of Members may instead be decided by:
 - (a) mail-in ballots and phone-in ballots in accordance with the same standards of quorum and approval that apply under section 13.3; or
 - (b) a Ratification Vote.

13. Procedure at a Meeting of Members

Quorum for a Meeting of Members

13.1 The quorum for a Meeting of Members is ten percent (10%) of Eligible Voters.

Voting at a Meeting of Members

13.2 Voting at a Meeting of Members shall be conducted by a combination of ballots cast in person at the meeting, by phone-in ballot and by mail-in ballots in substantially the same manner as that set out in the *St. Mary's Indian Band Custom Election Regulation*.

Requirements for Approval at a Meeting of Members

- 13.3 A matter shall be considered to be approved at a Meeting of Members if:
- (a) at least 10% of Eligible Voters cast a ballot either in person at the meeting or by mail-in ballot; and
 - (b) the Majority of Eligible Voters who cast a ballot vote in favour of the matter.

13.4 Voting in person at a Meeting of Members shall be by secret ballot.

Written Notice of a Meeting of Members

- 13.5 Written notice of a Meeting of Members shall be given to Eligible Voters at least ten (10) business days before the meeting by:
- (a) a notice delivered or mailed to Eligible Voters at their last known address; or

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- (b) publication of a notice in the St. Mary's Indian Band newsletter delivered or mailed to Eligible Voters at their last known address; and
- (c) posting of a notice in a public area of the St. Mary's Indian Band administration offices.

13.6 The written notice of a Meeting of Members shall:

- (a) specify the date, time and place of the meeting; and
- (b) include a summary of the matter to be discussed and decided at the meeting.

Who May Attend a Meeting of Members

13.7 Any Member may attend a Meeting of Members.

13.8 Council may, by Resolution, declare a Meeting of Members to be a closed meeting that only Members and any other persons identified in the Resolution may attend.

Council May Schedule More Meetings

13.9 Council may schedule more than one Meeting of Members to discuss and decide a matter that requires approval at a Meeting of Members.

14. Ratification Votes

Matters Requiring Approval by Ratification Vote

14.1 Approval by a Ratification Vote shall be obtained for:

- (a) development on a heritage site designated in a land use plan;
- (b) voluntary exchanges of lands as part of the addition to reserve process of St. Mary's Indian Band Lands;
- (c) amendment to the Individual Agreement that reduces the amount of funding provided by Canada; and
- (d) any law or class of law that Council, by Resolution, declares to be subject to this section.

Individual Agreement

14.2 For greater certainty, an amendment to, or renewal of, the Individual Agreement shall not

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require approval by a Ratification Vote unless the amendment or renewal reduces the amount of funding provided by Canada.

Ratification Vote Process

14.3 Subject to sections 14.4 and 14.3, a Ratification Vote under this Land Code shall be conducted in substantially the same manner as that set out in the *St. Mary's Indian Band Community Ratification Process* that was used to ratify the *St. Mary's Indian Band Land Code*.

No Verifier Required

14.4 A Verifier is not required for a Ratification Vote under this Land Code.

Phone-in Voting Permitted

14.5 Phone-in voting is permitted for a Ratification Vote under this Land Code.

Requirements for Approval by Ratification Vote

- 14.6 A matter shall be considered approved by a Ratification Vote if:
- (a) at least the Majority of Eligible Voters participate in the vote; and
 - (b) the Majority of those participating in the vote cast a vote in favour of the matter.

**PART 4
EXPROPRIATION AND LAND EXCHANGE**

15. Expropriation by St. Mary's Indian Band

Rights and Interests That May be Expropriated

15.1 An interest or licence in St. Mary's Indian Band Lands or in any building or other structure on such land may only be expropriated by the St. Mary's Indian Band in accordance with the Framework Agreement and a law enacted in accordance with section 15.3.

Community Purposes

15.2 The St. Mary's Indian Band may expropriate only for a necessary community purpose or works of the St. Mary's Indian Band, including a fire hall, sewage or water treatment facility, community center, public work, road, school, day-care facility, hospital, health-

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care facility or retirement home.

Expropriation Laws

15.3 Council shall enact a law setting out the rights and procedures for expropriation, including provisions in relation to:

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

Public Report

15.4 Before the St. Mary's Indian Band may expropriate an interest or licence, Council shall:

- (a) prepare a report on the reasons for the expropriation; and
- (b) post a copy of the report in the St. Mary's Indian Band administration offices.

Rights that May Not be Expropriated

15.5 An interest of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the St. Mary's Indian Band.

Mutual Agreement

15.6 St. Mary's Indian Band may expropriate only after a good faith effort to acquire, by mutual agreement, the interest or licence in St. Mary's Indian Band Lands.

Limitation

15.7 The law enacted under section 15.3 shall include provisions having the following effect:

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- (a) an expropriation shall be made only for the smallest interest necessary and for the shortest time necessary; and
- (b) where less than a full interest is expropriated, a person whose interest is expropriated may continue to use and occupy the land for purposes that are not inconsistent with the expropriation.

Notice and Compensation

15.8 The St. Mary's Indian Band shall, in accordance with a law enacted under section 15.3 and the Framework Agreement:

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

Compensation Calculation

15.9 The total value of compensation under subsection 15.8(b) shall be based on:

- (a) the fair market value of the interest or licence being expropriated;
- (b) the replacement value of any improvement to the land being expropriated;
- (c) the damages attributable to any disturbance; and
- (d) damages for any reduction in the value of a remaining interest.

Market Value

15.10 The fair market value of an expropriated interest or licence is equal to the amount that would have been paid for the interest or licence if it had been sold on St. Mary's Indian Band Lands by a willing seller to a willing buyer.

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Dispute Resolution

15.11 The resolution of disputes concerning the right of the St. Mary's Indian Band to expropriate shall be determined in accordance with Part 8.

16. Heritage Sites

Approval of Amendments

16.1 No amendment may be made to a land use plan to develop or delete from the land use plan a heritage site designated under that plan unless the amendment receives prior approval by a Ratification Vote.

17. Voluntary Land Exchange

Conditions for a Land Exchange

17.1 The St. Mary's Indian Band may agree with another party to exchange St. Mary's Indian Band Lands for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

17.2 A land exchange is of no effect unless it approved by a Ratification Vote.

Land to be Received

17.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the St. Mary's Indian Band:

- (a) is of equal or greater area than the St. Mary's Indian Band Lands to be exchanged;
- (b) is of a value comparable to the appraised value of the St. Mary's Indian Band Lands to be exchanged; and
- (c) is eligible to become a reserve under the *Indian Act* and St. Mary's Indian Band Lands subject to this Land Code.

Negotiators

17.4 A person who negotiates a land exchange on behalf of the St. Mary's Indian Band shall be designated by Resolution.

Additional Land

- 17.5 The St. Mary's Indian Band may receive additional compensation, including money or other land in addition to the land referred to in section 17.3.
- 17.6 Such other land may be held by the St. Mary's Indian Band in fee simple or other manner.

Federal Consent

- 17.7 Before the St. Mary's Indian Band concludes a land exchange agreement, it shall receive a written statement from Canada stating that Canada:
- (a) consents to set aside as a reserve the land to be received in the land exchange under section 17.3, as of the date of the land exchange or such later date as Council may specify by Resolution; and
 - (b) consents to the manner and form of the exchange as set out in the land exchange agreement.

Community Notice

- 17.8 At such time as negotiation of a land exchange agreement is concluded, and at least twenty-one (21) days before the Ratification Vote provided for in section 17.2, Council shall provide the following information to the Members:
- (a) a description of the St. Mary's Indian Band Lands to be exchanged;
 - (b) a description of the land to be received by the St. Mary's Indian Band;
 - (c) a description of any other compensation to be received;
 - (d) a report of a certified land appraiser stating that the conditions in subsections 17.3(a) and (b) have been met;
 - (e) a copy of the land exchange agreement; and
 - (f) a copy of the statement from Canada referred to in section 17.7.

Process of Land Exchange

- 17.9 A land exchange agreement shall provide that:
- (a) the other party to the exchange shall transfer to Canada the title to the land that is

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to be set aside as a reserve;

- (b) Council shall pass a Resolution authorizing Canada to transfer title to the St. Mary's Indian Band Lands being exchanged, in accordance with the land exchange agreement; and
- (c) a copy of the instruments transferring title to the relevant parcels of land shall be registered in the St. Mary's Indian Band Lands Register and the First Nation Land Register.

**PART 5
ACCOUNTABILITY**

18. Application

18.1 This part applies only to conflicts of interest and financial matters in relation to the management and administration of St. Mary's Indian Band Lands under this Land Code.

19. Conflict of Interest

Rules

19.1 In the event of real, perceived and potential conflicts of interest arising in relation to the management and administration of St. Mary's Indian Band Lands under this Land Code, the *St. Mary's Indian Band Financial Administration Law 2013, Schedule - Avoiding and Mitigating Conflicts Of Interest* shall apply.

20. Disclosure of Conflict of Interest

Procedure for Disclosure of a Conflict of Interest or Appearance of a Conflict of Interest

20.1 The procedure for the disclosure of any real, perceived or potential conflict of interest that arise to the management and administration of St. Mary's Indian Band Lands under this Land Code, shall be the procedure set out in the *St. Mary's Indian Band Financial Administration Law 2013, Schedule - Avoiding and Mitigating Conflicts Of Interest*.

21. Competition with St. Mary's Indian Band Businesses

21.1 No Member of Council shall, during their term of office, engage as a partner, officer, director, shareholder, advisor, employee, or in any other capacity, in any business that is in competition with a business carried on by the St. Mary's Indian Band, without first complying with the conflict of interest rules and procedures developed under sections 19.1 and 20.1.

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22. Financial Management

Financial Management and Policy

22.1 All financial matters in relation to the St. Mary's Indian Band's Land administered under this Land Code shall be conducted in accordance with the *St. Mary's Indian Band Financial Administration Law, 2013*, and all regulations, policies or procedures enacted or approved under it.

Establishment of Bank Accounts

22.2 Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts:

- (a) transfer payments received from Canada for the management and administration of St. Mary's Indian Band Lands;
- (b) moneys received by the St. Mary's Indian Band from the grant or disposition of interests or licences in St. Mary's Indian Band Lands;
- (c) all fees, fines, charges and levies collected under a law or Resolution;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licences in St. Mary's Indian Band Lands; and
- (e) any other land revenue received by the St. Mary's Indian Band.

Other Laws and Policies

22.3 Council shall establish a process for determining:

- (a) fees and rents for interests and licences in St. Mary's Indian Band Lands; and
- (b) fees for services provided in relation to St. Mary's Indian Band Lands and compliance with this Land Code.

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23. Financial Records

Financial Records

23.1 The St. Mary's Indian Band shall keep financial records in accordance with generally accepted accounting principles and in compliance with the *St. Mary's Indian Band Financial Administration Law, 2013*.

Offences

23.2 A person who has control of the financial records of the St. Mary's Indian Band and who impedes or obstructs anyone from exercising a right to inspect those records is guilty of an offence.

24. Audit

Appointment of Auditor

24.1 For each fiscal year, Council shall appoint a duly accredited auditor to audit the financial records of the St. Mary's Indian Band in relation to St. Mary's Indian Band Lands.

25. Annual Report

Publish Annual Report

25.1 Council shall ensure, within thirty (30) days of receiving the annual audit report, that an annual report on St. Mary's Indian Band Land management is prepared.

25.2 The annual report prepared under section 25.1 shall include:

- (a) an annual review of land management activities;
- (b) a copy and explanation of the audit report as it applies to St. Mary's Indian Band Lands; and
- (c) such other matters as may be directed by Council or reasonably requested by the Lands Manager.

26. Access to Financial Information

Access Law

26.1 Council shall develop policies and procedures setting out the rights and procedures by which Members and other persons may exercise access to St. Mary's Indian Band

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financial information.

PART 6
ADMINISTRATION OF ST. MARY'S INDIAN BAND LANDS

27. St. Mary's Indian Band Lands Office

- 27.1 The St. Mary's Indian Band Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Land Code and any other applicable law.
- 27.2 Without limiting the generality of section 27.1, the St. Mary's Indian Band Lands Office shall:
- (a) administer St. Mary's Indian Band Lands in accordance with this Land Code and any other applicable law or regulation;
 - (b) develop forms of written instruments for use in registering or recording interests or licences in the St. Mary's Indian Band Lands in the St. Mary's Indian Band Lands Register if it is deemed necessary and advisable by the St. Mary's Indian Band Lands Office;
 - (c) process applications for the registration or recording of written instruments and documents in the St. Mary's Indian Band Lands Register in relation to interests or licences in St. Mary's Indian Band Lands;
 - (d) provide electronic copies of applications for the registration and recording of written instruments and documents in the St. Mary's Indian Band Lands Register in relation to interests or licences in St. Mary's Indian Band Lands to the First Nation Land Register;
 - (e) arrange for the execution of written instruments and documents on behalf of St. Mary's Indian Band;
 - (f) maintain and protect records in relation to St. Mary's Indian Band Lands; and
 - (g) perform such other duties and functions consistent with this Land Code as Council may direct.

Lands Manager

- 27.3 The Lands Manager shall manage the St. Mary's Indian Band Lands Office and perform such duties and responsibilities delegated or assigned to the Lands Manager under this Land Code or any other applicable law.

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- 27.4 In consultation with Council, the Lands Manager may develop policies and procedures required for the proper administration and management of the St. Mary's Indian Band Lands Office and the St. Mary's Indian Band Lands Register.
- 27.5 Without limiting the generality of sections 27.1, 27.3 and 27.4, the Lands Manager shall:
- (a) oversee the day-to-day operations of the St. Mary's Indian Band Lands Office;
 - (b) advise the Lands Committee and Council on matters in relation to St. Mary's Indian Band Lands;
 - (c) make recommendations to the Lands Committee and Council on the development of laws, policies and procedures in relation to St. Mary's Indian Band Lands;
 - (d) subject to Part 8 (Dispute Resolution), hold regular and special meetings with Members to discuss issues related to St. Mary's Indian Band Lands, and make recommendations to the Lands Committee and Council on the resolution of such issues;
 - (e) assist in the exchange of information between Members and Council regarding St. Mary's Indian Band Lands issues;
 - (f) oversee community consultations under this Land Code;
 - (g) schedule and oversee Land Committee elections;
 - (h) monitor community approvals under this Land Code; and
 - (i) perform such other duties and functions consistent with this Land Code as Council may direct.

28. Lands Committee

Lands Committee Established

28.1 The Lands Authority is hereby dissolved and the Lands Committee is established.

28.2 The Lands Committee shall:

- (a) assist the Lands Manager with administrative decisions in relation to St. Mary's Indian Band Lands;

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- (b) review draft laws and provide comments to Council;
- (c) recommend to Council laws, policies and procedures in relation to St. Mary's Indian Band Lands;
- (d) consult with Members on land issues; and
- (e) perform such other duties and functions as Council or the Lands Manager may direct.

Composition

28.3 The Lands Committee shall be composed of:

- (b) one member of Council appointed by Council; and
- (c) four Members appoint by Council.

Eligibility for Appointment to Lands Committee

28.4 Any Eligible Voter who resides within twenty (20) kilometers from St. Mary's Indian Band Lands, shall be eligible for appointment to the Lands Committee, except for the following:

- (a) a person convicted of an offence by way of indictment or felony conviction within five (5) years prior to the date of the election; and
- (b) any person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

Terms of Office

28.5 Subject to section 28.8, Lands Committee members shall hold the following terms of office:

- (a) Council shall appoint a member of Council as soon as practicable following Council elections and that member shall sit on the committee until the next Council election;
- (b) appointed members shall sit on the committee for a maximum of four (4) years, but they are not precluded from being appointed for further terms.

Vacancies

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- 28.6 The office of a Lands Committee member shall become vacant if that member:
- (a) resigns;
 - (b) is convicted of an offence under the *Criminal Code*;
 - (c) ceases to be an Eligible Voter;
 - (d) is an appointed member of Council who ceases to be a member of Council;
 - (e) dies or becomes mentally incapacitated.; or
 - (f) is terminated under section 28.9.

Terminations

- 28.9 The Council may, by Resolution, terminate the remaining term of a Lands Committee member if:
- (a) the member is absent from three (3) consecutive Lands Committee meetings for a reason other than illness or incapacity without being authorized to be absent by the chairperson; or
 - (b) the member fails to perform any of his or her duties in good faith and in accordance with the terms of this Land Code.

Council Fills Vacancies

- 28.10 Council may appoint a new member to the Lands Committee to fill a vacancy under section 28.8.
- 28.11 The member appointed under section 28.10 shall serve out the balance of the term of the member whose office was vacated.
- 28.12 The Council may develop policies regarding the eligibility criteria for appointments to the Lands Committee

Chairperson of Lands Committee

- 28.13 The Lands Committee shall appoint a chairperson of the Lands Committee by majority vote.

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28.14 The Lands Committee shall select an alternate chairperson to perform the functions of the chairperson if the chairperson is unavailable.

Rules and Procedures of Lands Committee

28.16 The Lands Committee may recommend policies, rules and procedures governing committee meetings and the administration of the general affairs of the committee for approval by Council.

29. Officers, Employees and Contractors

General

29.1 Council shall provide for the appointment of officers and the hiring of other employees to administer this Land Code in an effective and fiscally responsible manner in accordance with this Land Code and any other applicable law.

Appointment of Lands Manager

29.2 Council shall, by Resolution, appoint a Lands Manager and an alternate to act in the place of the Lands Manager when he or she is absent.

30. Registration of Interests and Licences

St. Mary's Indian Band Lands Register

30.1 The St. Mary's Indian Band Lands Office shall maintain the St. Mary's Indian Band Lands Register in substantially the same form and with the same content as the First Nation Land Register.

Enforcement of Interests and Licences

30.2 An interest or licence in St. Mary's Indian Band Lands created or granted after this Land Code comes into effect, is not enforceable unless it is registered or recorded in the St. Mary's Indian Band Lands Register.

Duty to Deposit

30.3 The St. Mary's Indian Band Lands Office shall ensure that an original copy of the following instruments received is registered or recorded in the St. Mary's Indian Band Lands Register and the First Nation Land Register:

- (a) an interest or licence in St. Mary's Indian Band Lands granted by St. Mary's Indian Band;

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- (b) an interest in St. Mary's Indian Band Lands transferred or assigned by St. Mary's Indian Band; and
 - (c) this Land Code and any amendment to this Land Code.
- 30.4 Every person who receives an interest or licence in St. Mary's Indian Band Lands shall register or record an original copy of the relevant instrument in the St. Mary's Indian Band Lands Register.
- 30.5 The deposit of an instrument in the St. Mary's Indian Band Lands Register and the First Nation Lands Register does not imply that the instrument is validly made or that it has been registered as opposed to having been recorded.

Registration of Consent or Approval

- 30.6 No instrument that requires the consent of Council, approval of the St. Mary's Indian Band Lands Office, or approval of Members at a Meeting of Members or in a Ratification Vote may be registered or recorded in the St. Mary's Indian Band Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.
- 30.7 Notwithstanding section 30.1, nothing in this Land Code precludes Council from enacting a law providing for the maintenance of the St. Mary's Indian Band Lands Register in such other land registry system or facility as may meet the requirements of the St. Mary's Indian Band.

Registration Fees

- 30.8 The St. Mary's Indian Band Lands Office may establish and charge reasonable fees for services provided to the public including processing applications for the registration or recording of instruments in the St. Mary's Indian Band Lands Register.
- 30.9 Section 30.8 does not preclude the St. Mary's Indian Band Lands Office from providing services to Members without a fee.

PART 7
INTERESTS AND LICENCES IN ST. MARY'S INDIAN BAND LANDS

31. Interests and Licences

General

- 31.1 The occupation, use and development of St. Mary's Indian Band Lands is subject to this

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Land Code and any other applicable law.

No Interest or Licence Created

31.2 No person may acquire an interest or licence in St. Mary's Indian Band Lands by use, occupation or by any other means that is not authorized under this Land Code or a law enacted under it.

All Dispositions in Writing

31.3 An interest or licence in St. Mary's Indian Band Lands may only be created, granted, disposed of, assigned or transferred by a written instrument issued in accordance with this Land Code.

Non-Members

31.4 A person who is not a Member may hold a lease, licence, easement, mortgage or permit in St. Mary's Indian Band Lands.

Grants to Non-Members

31.5 The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in St. Mary's Indian Band Lands to a person who is not a Member.

31.6 Notwithstanding section 31.5, if Council has consented to the original grant of a lease in St. Mary's Indian Band Lands to a person who is not a Member, that leasehold interest may be subsequently mortgaged, transferred or assigned without the consent of Council or approval of Members.

32. Existing Interests

Continuation of Existing Interests

32.1 An interest or licence in St. Mary's Indian Band Lands, whether held by a Member or a person other than a Member, that is in effect on the date this Land Code comes into force shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.

32.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction:

- (a) cancel or correct any interest or licence in St. Mary's Indian Band Lands issued or allotted in error, by mistake or by fraud; and
- (b) issue a replacement instrument if required.

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33. New Interests and Licences

Authority to Make Grants

33.1 Subject to this Land Code, Council may grant:

- (a) interests in Community Lands; and
- (b) licences and permits to take resources from Community Lands.

Conditional Grant

33.2 The grant of an interest, licence or permit in Community Lands may be made subject to conditions.

Role of Lands Manager

33.3 The Lands Manager may advise Council on the granting of interests, licences and permits in Community Lands and may be authorized to act as a delegate of Council under this part.

34. Permanent Interests of Members

Nature of Interest

34.1 Council may enact laws providing for an interest in St. Mary's Indian Band Lands that entitles a Member holding that interest to:

- (a) permanent possession of the land;
- (b) benefit from the resources in and of the land;
- (c) grant subsidiary interests, licences and permits in the land;
- (d) transfer, devise or otherwise dispose of the land to another Member; and
- (e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

34.2 For greater certainty, no interest under section 34.1 may be granted to or held by a person who is not a Member.

Transfer and Assignment of Interests

34.3 Members may transfer or assign their interest in St. Mary's Indian Band Lands to the St. Mary's Indian Band or a Member without the consent of Council or approval of Members.

34.4 For greater certainty, Members may transfer their interest to themselves.

35. Limits on Mortgages and Seizures

Protections

35.1 In accordance with the Framework Agreement and the Act, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to St. Mary's Indian Band Lands.

35.2 The St. Mary's Indian Band Lands Office and the Lands Manager shall not be responsible or liable for ensuring that a lease in St. Mary's Indian Band Lands permits the leasehold interest to be mortgaged or charged, that the lease is in good standing or that the leaseholder is in compliance with the terms of the lease.

35.3 Disputes in relation to mortgages of leases shall be determined as follows:

- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or
- (b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.

Mortgage of a Leasehold Interest in St. Mary's Indian Band Lands Held by a Person Who is Not a Member

35.4 A leasehold interest in St. Mary's Indian Band Lands held by a person who is not a Member is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members.

Mortgage of Leasehold Interests in Community Lands or in St. Mary's Indian Band Lands Held by a Member

35.5 The interest of a Member in St. Mary's Indian Band Lands which is not a leasehold interest may be subject to a mortgage or charge only to the St. Mary's Indian Band or a Member.

35.6 An Indian, as that term is defined in the *Indian Act*, including a Member, may grant a lease to him or herself in the same manner as to another person.

35.7 The leasehold interest in St. Mary's Indian Band Lands of an Indian, as that term is

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defined in the Indian Act, including a Member, may be subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members, and the mortgagee has the same legal and equitable rights it would have if the leasehold interest was held by a non-Indian.

35.8 A leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by the mortgagee.

Default in Mortgage

35.9 In the event of default in the terms of a mortgage or charge of a leasehold interest in St. Mary's Indian Band Lands, the leasehold interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the mortgage or charge was registered in the St. Mary's Indian Band Lands Register; and
- (b) reasonable notice of the foreclosure was provided to Council.

Power of Redemption

35.10 If Council exercises an option to redeem with respect to a leasehold interest under subsection 35.8(b), the St. Mary's Indian Band becomes the lessee of the leasehold lands and, with the consent of the lender, takes the position of the mortgagor or chargor for all purposes after the date of redemption.

36. Residency and Access Rights

Right of Residence

36.1 Subject to a law of the St. Mary's Indian Band, stating otherwise, the following persons may reside on St. Mary's Indian Band Lands:

- (a) a Member;
- (b) a Member who has been allocated a residential lot by Council;
- (c) a Spouse and child of a Member referred to in subsection (b);
- (d) a Member with a registered interest in St. Mary's Indian Band Lands;
- (e) a lessee or permittee, in accordance with the provisions of the instrument granting the lease or permit.

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36.2 A right of residence under section 36.1 does not imply any financial obligation on the part of the St. Mary's Indian Band.

Right of Access

36.3 Subject to a law of the St. Mary's Indian Band, stating otherwise, the following persons have a right of access to St. Mary's Indian Band Lands:

- (a) a lessee or mortgagee of St. Mary's Indian Band Lands;
- (b) an invitee of a lessee of St. Mary's Indian Band Lands;
- (c) a permittee and any person who is granted a right of access under the permit;
- (d) a Member;
- (e) a Member's Spouse and children;
- (f) a person who is authorized by a government body or any other public body, established by or under an enactment of the St. Mary's Indian Band, Canada or British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey;
- (g) a person authorized in writing by Council or the Lands Manager; or
- (h) a person authorized by any applicable law.

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Public Access

- 36.4 A person may have access to St. Mary's Indian Band Lands in areas designated as public in the land use plan if that person:
- (a) does not trespass on occupied land;
 - (b) does not interfere with an interest or licence in land;
 - (c) complies with all applicable laws; and
 - (d) no Resolution has been enacted prohibiting that person from having access to St. Mary's Indian Band Lands.

Trespass

- 36.5 Any person who resides on, enters or remains on St. Mary's Indian Band Lands other than in accordance with a right of residence or access under this Land Code is guilty of an offence.

Civil Remedies

- 36.6 Subject to any law enacted under this Land Code, all civil remedies for trespass are preserved.

37. Transfers on Death or Mental Incompetence

- 37.1 A Member who receives an interest in St. Mary's Indian Band Lands by testamentary disposition, succession or through a declaration of mental incompetence is entitled to have that interest registered in the St. Mary's Indian Band Lands Register provided that the written instrument transferring the interest is duly executed by the person duly appointed under the *Indian Act* as the personal representative of the estate of the deceased or the mentally incompetent Member.
- 37.2 A Member who purchases an interest in St. Mary's Indian Band Lands under subsection 50(2) of the *Indian Act* is entitled to have that interest registered in the St. Mary's Indian Band Lands Register provided that:
- (a) the written instrument transferring the interest is duly executed by the person duly authorized under the *Indian Act* to transfer the interest; and
 - (b) Council has, by Resolution, consented to the written instrument transferring the interest to the purchasing Member.

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- 37.3 Council may, by Resolution, authorize the Lands Manager to act as a delegate of Council under section 37.2.
- 37.4 An interest in St. Mary's Indian Band Lands that reverts to St. Mary's Indian Band under subsection 50(3) of the *Indian Act* shall become Community Lands on the date of reversion or on such other date that the Minister or the Minister's duly authorized delegate may specify.

38. Spousal Property Law

Development of Rules and Procedures

- 38.1 Council shall enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage of a Member to:
 - (a) the use, occupancy and possession of an interest in St. Mary's Indian Band Lands held by the Member; and
 - (b) the division of that interest in land.

Enactment of Rules and Procedures

- 38.2 The rules and procedures contained in the spousal property law shall be developed by the Lands Manager in consultation with Members.

General Principles

- 38.3 The rules and procedures developed under section 38.2 shall take into account the following general principles:
 - (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of the children;
 - (b) each Spouse should have an equal right to possession of the matrimonial home;
 - (c) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
 - (d) the rules and procedures shall not discriminate on the basis of sex;
 - (e) a mortgage of lease of spousal property shall not be set aside if the mortgagee acquired it for value and acted in good faith; and

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- (f) only Members are entitled to hold a permanent interest in St. Mary's Indian Band Lands or a charge against a permanent interest in St. Mary's Indian Band Lands.

**PART 8
DISPUTE RESOLUTION**

39. Informal Resolution of Disputes

Intent

- 39.1 The St. Mary's Indian Band intends that whenever possible, a dispute in relation to St. Mary's Indian Band Lands shall be resolved through informal discussion by the parties to the dispute and nothing in this part shall be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this part.

40. Adjudicator Established

Office of the Adjudicator

- 40.1 The Office of the Adjudicator is hereby established to hear and resolve disputes in relation to St. Mary's Indian Band Lands in accordance with this Land Code and any other applicable laws and policies.
- 40.2 The Adjudicator shall be a Barrister and Solicitor and a member of the Law Society of British Columbia who is independent of the parties to a dispute and to other interests in the dispute.

41. Application Procedure

Reference to Adjudicator

- 41.1 The following persons may notify the Lands Manager that they wish to refer the dispute to the Adjudicator for resolution under this part:
 - (a) a Member who claims an interest in St. Mary's Indian Band Lands based on a registered interest;
 - (b) a person who has a dispute with another person or with the St. Mary's Indian Band in relation to the possession, use or occupation of St. Mary's Indian Band Lands;
 - (c) the St. Mary's Indian Band when asserting an interest in St. Mary's Indian Band Lands; and

- (d) the St. Mary's Indian Band when disputing the possession, use or occupation of St. Mary's Indian Band Lands.

Dispute Resolution Not Available

41.2 Dispute resolution processes under this Land Code are not available under this part for disputes in relation to:

- (a) mortgages of lease;
- (b) decisions relating to housing allocation; or
- (c) decisions of Council to grant or refuse to grant an interest or licence in St. Mary's Indian Band Lands.

Disputes Originating Prior to Land Code

41.3 Disputes that originated before the date this Land Code comes into force may be decided under this part.

Demonstration of Reasonable Effort to Resolve

41.4 Persons applying for adjudication under section 41.1 shall demonstrate that they have made reasonable efforts to resolve the dispute.

Limitation Period

41.5 Parties may request a referral to the Adjudicator no later than:

- (a) 60 days after the day the decision, act or omission that is the subject of the dispute occurred; or
- (b) 30 days after an attempt to resolve the dispute informally, in accordance with section 41.4, has failed.

42. Referral to Adjudicator

Lands Manager Shall Establish Procedures

- 42.1 In consultation with the Lands Committee and Council, the Lands Manager shall establish procedures for referring disputes to an Adjudicator.
- 42.2 Subject to section 42.3, the Lands Manager shall, in a timely manner as required to settle the dispute, appoint the Adjudicator in accordance with the procedures established by Council.

Agreement to be Bound

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42.3 The Lands Manager shall not refer a dispute to the Adjudicator unless all parties to the dispute agree to be bound by the decision of the Adjudicator, in a form prescribed by Council in consultation with the Lands Manager.

43. Duties and Powers of the Adjudicator

Duty to Act Impartially

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

Offense

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

Rejection of Application

43.3 In addition to any other penalty provided for an offence under section 43.2, the Adjudicator may refuse to hear or decide an application if, regardless of whether a person has been found to have committed an offence under section 43.2, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision.

Rules of Adjudicator

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

Professional Services

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

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

43.7 The Adjudicator may refuse to hear or decide an application if one or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

43.8 The Adjudicator may, after hearing a dispute:

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- (a) confirm or reverse the decision in dispute, in whole or in part;
- (b) substitute the Adjudicator's own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute for reconsideration by the decision-maker; or
- (e) refer the matter to a court of competent jurisdiction or other forum.

Decisions

- 43.9 The Adjudicator shall give written reasons for a decision and shall sign the written reasons.
- 43.10 Subject to section 45.1 (Appeal of Decision) a decision of the Adjudicator is binding.
- 43.11 An order from an Adjudicator may be entered into court and enforced through the court of competent jurisdiction.

44. Costs

Costs

- 44.1 Unless otherwise ordered by the Adjudicator under section 44.2 or by an appellate court, the parties to a dispute shall bear their own costs and an equal share of the costs of the adjudication process.
- 44.2 The Adjudicator has the authority to order one, both or all of the parties to pay some or all of the costs of the adjudication process, including but not limited to the costs of the Adjudicator and any professionals retained, taking into account:
 - (a) the reasonableness of the parties in their positions;
 - (b) the conduct of the parties;
 - (c) the result of the adjudication;
 - (d) the use of professional services; and
 - (e) any other relevant factor.

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44.3 For greater certainty, the St. Mary's Indian Band shall not be liable or responsible for the costs of adjudication under this part, or of any dispute resolution process, where the St. Mary's Indian Band is not a party.

45. Appeals and Alternate Forums

Appeal of Decision

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

Alternate Forums

45.2 Nothing in this part precludes Council from establishing additional processes or laws for resolving disputes, which processes may include facilitated discussion, mediation, administrative appeals, or referral to another forum.

**PART 9
OTHER MATTERS**

46. Liability

Liability Coverage

46.1 Council shall arrange for, maintain and pay insurance coverage for:

- (a) liability of the St. Mary's Indian Band in relation to St. Mary's Indian Band Lands; and
- (b) personal liability of the St. Mary's Indian Band's officers and employees for acts done or omitted to be done in good faith while engaged in carrying out duties in relation to St. Mary's Indian Band Lands.

Extent of Coverage

46.2 Council shall determine the extent of insurance coverage under section 46.1.

47. Offences

Application of Criminal Code

47.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code and offences under a Law.

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Justices of the Peace

47.2 Council may enact Laws in relation to appointment of justices of the peace for the enforcement of this Land Code and Laws.

Provincial Courts

47.3 If no justice of the peace is appointed, this Land Code and Laws shall be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court or any court of competent jurisdiction as the case may require.

48. Amendments to Land Code

48.1 Amendments to this Land Code shall be approved at a Meeting of Members.

49. Commencement

49.1 This Land Code shall come into effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada through the community ratification process dated for reference December 5, 2013; and
- (b) this Land Code has been certified by the Verifier in accordance with the Framework Agreement.

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49.2 This Land Code shall come into effect on the first day of the month following certification of this Land Code by the Verifier.

THIS LAW IS HEREBY DULY APPROVED by the Council on the ____ day of _____, 2014, at Cranbrook, in the Province of British Columbia.

A quorum of Council consists of three (3) members of Council.

Chief Jim Whitehead

Councillor Joseph Pierre

Councillor Corrie Walkley

Councillor Marty Williams

Councillor Codie Andrew

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