

Exhibit "1"

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WESTBANK FIRST NATION LAND CODE

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Verified  
May 2, 2003  
Date  
Mel W. Jacobs  
Mel W. Jacobs, Verifier

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## **PART I – Principles**

### **1. General**

- 1.1 These principles shall provide a vision and foundation to guide the social, economic, political and community development of Westbank.
- 1.2 These principles shall be used to assist the interpretation of this Land Code.

### **2. Aboriginal Rights and Title**

- 2.1 Westbank is part of the Okanagan Nation which has occupied and benefited from Okanagan traditional territory since time immemorial.
- 2.2 Westbank has never ceded, surrendered, or in any way relinquished aboriginal title and will continue to assert its interests and exercise its aboriginal rights over the traditional territory.
- 2.3 Westbank is committed to protect the aboriginal rights of Westbank and its Members.
- 2.4 Through this Land Code, the Members of Westbank exercise their inherent right of self-government and provide for governance that is accessible, stable, effective, accountable and transparent.

### **3. Preservation of Land, Resources and Culture for Future Generations**

- 3.1 Westbank shall work to promote a healthy and prosperous future to ensure the continued existence of Westbank as a strong political, social and cultural community.
- 3.2 Westbank honours its connection to the land, resources and elements of the natural world that provide for its Members' physical and spiritual needs.
- 3.3 Westbank recognizes its responsibility to protect the land and her resources for future generations.
- 3.4 Westbank Members value the need to respect, protect and promote their heritage, culture and traditions understanding that their traditions and practices change and that they continue to develop contemporary expressions of those traditions and practices.

## PART II – Definitions and Interpretation

### 4. Interpretation

#### 4.1 In this Land Code,

“Allotment” means an interest in Westbank Lands granting a Member lawful possession of a part of Westbank Lands under Part III of this Land Code or, prior to the date this Land Code comes into force granted pursuant to section 20 of the *Indian Act*;

“Arbitrator” means an independent third party appointed under this Land Code to hear appeals, Petitions or other matters to be determined by an Arbitrator;

“Certificate of Possession” means documentary evidence of a Member’s Allotment of part of Westbank Lands described thereon;

“Chief” means the lawfully elected Chief of Westbank;

“Community Lands” means any Westbank Lands in which no Allotment to a Member has been made or no Member has lawful possession on the date this Land Code comes into force;

“Community Purpose” means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Westbank Lands, and is limited to transportation and utility corridors and requirements related to transportation and utility corridors;

“Council” means the lawfully elected governing body of Westbank;

“Councillor” means a lawfully elected Councillor of Westbank;

“Devise” means the gift or disposition of an interest in Westbank Lands by a will;

“Director of Lands” means the person appointed by Resolution to oversee the day to day operations of the Westbank Lands Office;

“Director of Finance” means the person appointed by Resolution to oversee the day to day operations of the Department of Finance.

“Director of Operations” means the person appointed to hold the principal non-political management position for Westbank;

“Easement” means an interest in Westbank Lands granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, giving one person (the “grantee”) the right to use the land of another (the “grantor”) for a right of way or to provide utility or other services to the land of the grantee. An Easement does not confer any right of exclusive possession in the

land and does not restrict the rights of the grantor of the Easement beyond that required to give effect to the Easement granted;

"Elector" means a person who, as of the date of a referendum under Part IX of this Land Code or other vote provided for in this Land Code:

- (a) has attained the age of the eighteen (18);
- (b) is listed on the Membership Roll; and
- (c) is included on the Elector's List.

"Electoral Officer" means the person appointed under this Land Code to conduct referendums held under Part IX of this Land Code;

"Electors' List" means an alphabetical list of Electors, indicating the name, business address, e-mail address, business telephone and facsimile number of the Electoral Officer and the location of the polling stations where Electors may vote;

"Expropriation" means a taking of an interest or all interests in Westbank Lands for a Community Purpose through a process established by Westbank Law in accordance with section 23;

"Immediate Family" means a spouse (including a common-law spouse), parent, grandparent, child (including adopted children or those living with you as your child), grandchild or sibling. Immediate Family also includes the spouse (including common-law spouse) of an Immediate Family member;

"Individual Agreement" means the agreement entered into between Westbank and the Government of Canada pursuant to section 6(3) of the First Nations Land Management Act;

"Jurisdiction" means law-making authority;

"Land Use Plan" means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and development of Westbank Lands;

"Lease" means a written contract setting out terms and conditions of a Leasehold;

"Leasehold" means an interest in Westbank Lands granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, including a Sub-lease, giving a person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time of one (1) year or longer, calculated by including any renewal or extension period;

"Licence" means an interest in Westbank Lands granted under Part III of this Land Code, giving one person the right to use, develop or extract the Natural Resources on or under the land of another or on or under Community Lands;

"Long-term Debt Liability" means a loan, guarantee, bond, debenture or other form of financial obligation that exceeds five (5) years;

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

"Member" means a person registered on the Westbank Membership Roll;

"Membership" means the group of persons who constitute the Members of Westbank;

"Membership Roll" means the names on the Band List for Westbank maintained by Indian and Northern Affairs Canada;

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

"Mortgage" means an interest in Westbank Lands granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, in which a person with a registered Allotment, Leasehold or Licence, (the "mortgagor") transfers their interest to another person (the "mortgagee"), as security for a debt on conditions set out in a written mortgage agreement including a condition that if the debt is repaid by a specified time the transfer becomes void and the interest returns to the mortgagor;

"Natural Resources" means any materials on or under the land in their natural state which when extracted have economic value;

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

"Permit" means an interest in Westbank Lands other than a Leasehold, Easement or Licence, granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, giving one person the right to use the land of another for a specified purpose. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted;

"Petition" means a formal, signed, written request;

"Polling Site" means the building in which the polling station is located;

"Resolution" means a formal motion moved by a Council member, seconded by another Council member and passed by Council;

"Special Membership Meeting" means a meeting held as required for Members to consider a specific issue or issues or Westbank Laws;

"Sub-Lease" means a Leasehold in which the person transferring the interest is the lessee in a prior existing Lease;

"Westbank" means the Westbank First Nation;



"Westbank First Nation" means the body of people who comprise the entity formerly known as the Westbank Band of Indians under the *Indian Act* and for whose use and benefit in common Westbank Lands have been set apart by Her Majesty the Queen;

"Westbank Lands" means;

- (a) the following Westbank Indian Reserves:
  - i) Mission Creek Indian Reserve No. 8 in British Columbia,
  - ii) Tsinstikeptum Indian Reserve No. 9 in British Columbia,
  - iii) Tsinstikeptum Indian Reserve No. 10 in British Columbia,
  - iv) Medicine Hill Indian Reserve No. 11 in British Columbia, and
  - v) Medicine Creek Indian Reserve No. 12 in British Columbia;
- (b) lands set apart by Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Land Code Act, 1867* and section 2(1) of the *Indian Act*;

"Westbank Lands Office" means the Department established to assist in the management and administration of Westbank Lands;

"Westbank Lands Register" means the register of Westbank Lands established by Canada and held in Ottawa, Ontario;

"Westbank Law" means a law in relation to Westbank Lands enacted under Part IV of this Land Code:

"Written Instrument" means an instrument in writing, either in the approved form prepared by the Westbank Lands Office or such other form as may be agreed to by the Westbank Lands Office, which purports to create, grant, assign or transfer an interest in Westbank Lands or affect Westbank Lands;

- 4.2 Where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.
- 4.3 Where the time limited for the doing of an act in the Westbank 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.
- 4.4 Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.
- 4.5 Except as otherwise provided in this Land Code, in the event of a conflict between this Land Code and a Westbank Law, this Land Code shall prevail to the extent of the conflict.

- 4.6 Wherever the singular, or masculine or the term "person" is used in this Land Code, it shall be deemed to include the plural, feminine, body corporate, Westbank First Nation or other entity where the context so requires.

## PART III – Land Rules

### 5. General

- 5.1 The purpose of this Part is to set out the principles, rules and administrative structures pursuant to which Westbank will exercise authority and jurisdiction over Westbank Lands.
- 5.2 Westbank Lands are “lands reserved for the Indians” under subsection 91(24) of the *Land Code Act*, 1867, and are reserves set apart by Her Majesty the Queen in Right of Canada for the use and benefit of Westbank First Nation.
- 5.3 Title to all Westbank Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of Westbank.
- 5.4 For greater certainty the land that is subject to this *Land Code* is that land:
- (a) shown on a copy of the Reference Plans prepared by the Office of the Surveyor General of Canada, Natural Resources Canada attached to Annex “A” of the Individual Agreement; and
  - (b) described in Annex “A” to the Individual Agreement with reference to the original Order-in-Council of the Privy Council (OCPC) or Proclamation setting aside the lands for the benefit of Westbank, any subsequent OCPC’s adding lands to the reserve and any subsequent OCPC’s taking lands out of the reserve.
- 5.5 The use and development of Westbank Lands is subject to this Land Code, Westbank Law and other applicable laws.
- 5.6
- (a) Any instrument purporting to create, grant, assign or transfer an interest in Westbank Lands which restricts the application of, or is, in violation of Westbank Law or other applicable law, is void.
  - (b) Notwithstanding section 5.6(a) should an offending provision be capable of being severed from the instrument the remaining provisions shall not in any way be affected or impaired.
- 5.7 Council shall develop Westbank Laws, consistent with this Land Code, regarding the management, administration, use and protection of Westbank Lands.
- 5.8 Council shall, within two (2) years of the date this Land Code comes into force, refer a final draft Westbank Law to adopt a Land Use Plan to a Special Membership Meeting for enactment by Electors in accordance with section 31.3(e) of the Land Code.

### 6. Westbank Lands Office

- 6.1 The Westbank Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Part or by Westbank Law.

- 6.2 Without limiting the generality of the duties and responsibilities of the Westbank Lands Office, it shall:
- (a) administer Westbank Lands in accordance with this Part and Westbank Law;
  - (b) prepare forms of Written Instruments for use in registering interests in Westbank Lands where deemed necessary and advisable by the Westbank Lands Office;
  - (c) prepare forms of Written Instruments for use in registering instruments which affect, or purport to affect, Westbank Lands where deemed necessary and advisable by the Westbank Lands Office;
  - (d) receive Written Instruments sought to be registered in the Westbank Lands Register;
  - (e) review Written Instruments for compliance with this Part, Westbank Law and other applicable laws or policies;
  - (f) arrange for the execution of Written Instruments and related documentation on behalf of Westbank, the Minister and Her Majesty the Queen in Right of Canada;
  - (g) arrange for the registration of Written Instruments;
  - (h) maintain and protect records in relation to Westbank Lands;
  - (i) prepare and present regular reports to Council; and
  - (j) carry out such duties as are requested or required by Council consistent with this Land Code, Westbank Law and other applicable law.
- 6.3 The Director of Lands shall oversee the day-to-day operations of the Westbank Lands Office and perform such duties and responsibilities consistent with this Land Code and Westbank Law as are required under this Part and Westbank Law.
- 6.4 Without limiting the generality of section 6.2 and 6.3, the Director of Lands or his or her designate appointed in writing shall:
- (a) manage the Westbank Lands Office;
  - (b) execute such Written Instruments and carry out any action required to be taken by and on behalf of the Minister or Her Majesty the Queen in Right of Canada in relation to an interest in Westbank Lands described in section 7.1; and
  - (c) carry out any action required to be taken by the Minister or Her Majesty the Queen in Right of Canada in relation to an interest described in section 7.1 after the date this Land Code comes into force; and
  - (d) carry out any action or responsibility delegated to the Director of Lands under section 25.1.

## 7. Interests in Westbank Lands

- 7.1 Interests in Westbank Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the date this Land Code comes into force shall continue to have effect in accordance with their terms and conditions.
- 7.2 Where an interest described in section 7.1 includes an action to be taken by the Minister or Her Majesty the Queen in Right of Canada the responsibility for such action after the date this Land Code comes into force shall be with the Director of Lands or his or her designate.
- 7.3 The types of interests in Westbank Lands are:
- (a) Allotments;
  - (b) Leaseholds;
  - (c) Easements;
  - (d) Permits;
  - (e) Licences; and
  - (f) Mortgages.

## **8. No Interest Created**

- 8.1 Subject to section 7.1 an interest in Westbank Lands may only be created, granted, assigned or transferred by Written Instrument in accordance with this Part or a Westbank Law provided for in this Part.
- 8.2 No person may acquire an interest in Westbank Lands by use, occupation or any other means not authorized under this Part or a Westbank Law provided for in this Part.
- 8.3 A contract, instrument or agreement of any kind entered into after the date this Land Code comes into force, whether written or oral, by which a person purports to create, grant, assign or transfer an interest in Westbank Lands is void if it does not comply with this Part or a Westbank Law provided for in this Part.

## **9. Natural Resources**

- 9.1 Subject to applicable law all Natural Resources on Westbank Lands belong to Westbank.
- 9.2 The use and development of Natural Resources on or under Westbank Lands will be subject to this Land Code, Westbank Law and other applicable laws.
- 9.3 To the extent that Westbank has ownership or rights over water as recognized by federal or provincial legislation or Order-in-Council, or by operation of law, Westbank retains ownership and has jurisdiction to manage and regulate water use.

9.4 Subject to this section, unless specifically excluded by the instrument granting an Allotment of Westbank Lands, the Allotment includes all Natural Resources on or under that land to the extent they are under Westbank jurisdiction.

## **10. Allotment**

10.1 Only Members can hold or receive an Allotment.

10.2 Subject to section 10.4 no Allotment shall be granted until a Westbank Law has been enacted establishing policy, procedure and criteria for the granting of Allotments.

10.3 A Westbank Law referred to in section 10.2 shall be enacted by referendum under section 31.3(f) of this Land Code.

10.4 An Allotment may be granted by Resolution where the Allotment is required to fulfill an agreement lawfully entered into prior to the date this Land Code comes into force or to comply with an order of a court of competent jurisdiction.

## **11. Leasehold in Community Lands**

11.1 A Leasehold in Community Lands for a term or possible term of fifteen (15) years or less, calculated by including any renewal or extension period, may be granted by Resolution.

11.2 Where Westbank proposes to grant a Leasehold in Community Lands for a term or possible term of more than fifteen (15) years, calculated by including any renewal or extension period, but not more than forty-nine (49) years, Council shall schedule a Special Membership Meeting to decide whether the Leasehold should be granted.

11.3 Notice of the Special Membership Meeting shall be given to the Membership at least twenty (20) days before the meeting and shall include:

- (a) a summary of the proposed Lease;
- (b) notification that a full copy of the proposed Lease can be obtained by Members at the Westbank administration building;
- (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to grant the proposed Leasehold; and
- (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.

11.4 Notice of the Special Membership Meeting shall be provided to the Membership by:

- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
- (b) posting of the notice in a public area of the Westbank administration building.

- 11.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the proposed Lease and Members may ask questions and provide comments.
- 11.6 Upon completion of the discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to grant the proposed Leasehold.
- 11.7 The granting of a Leasehold described in section 11.2 shall be deemed authorized if a Majority of Electors present at the Special Membership Meeting vote in favour of granting the proposed Leasehold.
- 11.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall be evidence of the approval for granting the proposed Leasehold or rejecting the granting of the proposed Leasehold.
- 11.9 Where the proposed Leasehold is for a term or possible term longer than forty-nine (49) years, calculated by including any renewal or extension period, the proposed Leasehold must be approved by referendum held under Part IX of this Land Code.
- 11.10 The granting of a Leasehold for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved by the referendum vote.
- 11.11 The results of the referendum held under section 11.9 shall be evidence of approval for granting the proposed Leasehold or rejection of the proposed Leasehold.
- 11.12 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the land described in the Lease unless specifically included in the terms and conditions of the Lease.

## **12. Easements, Permits and Licences in Community Lands**

- 12.1 Council may, by Resolution, grant Easements and Permits in Community Lands.
- 12.2 Where Westbank proposes to grant a Licence in Community Lands for a term, or possible term, of more than fifteen (15) years, calculated by including any renewal or extension period, Council shall schedule a Special Membership Meeting to consider whether the proposed Licence should be granted.
- 12.3 Notice of the Special Membership Meeting shall be given to the Membership at least twenty (20) days before the meeting and shall include:
  - (a) a summary of the proposed Licence;
  - (b) notification that a full copy of the proposed Licence can be obtained by Members at the Westbank administration building;
  - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to grant the proposed Licence; and

- (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.
- 12.4 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
  - (b) posting of the notice in a public area of the Westbank administration building.
- 12.5 At the Special Membership Meeting, Council, or its designate, shall explain the purpose and provisions of the proposed Licence and Members may ask questions and provide comments.
- 12.6 Upon completion of the discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to grant the proposed Licence.
- 12.7 The granting of a Licence shall be deemed authorized if a Majority of Electors present at the Special Membership Meeting vote in favour of granting the proposed Licence.
- 12.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall be evidence of approval for granting the proposed Licence or rejecting granting the proposed Licence.
- 12.9 Where the proposed Licence is for a term, or possible term, longer than fifteen (15) years, calculated by including any renewal or extension period, the proposed Licence must approved by referendum held under Part IX of this Land Code.
- 12.10 The granting of a Licence for a term, or possible term, longer than fifteen (15) years shall be deemed authorized if approved by the referendum vote.
- 12.11 The results of the referendum held under section 12.9 shall be evidence of approval for granting the proposed Licence or rejecting the proposed Licence.

### **13. Creation of Sub-interests in Allotted Westbank Lands**

- 13.1 A Member holding an Allotment in Westbank Lands may grant a Leasehold, Easement, Permit or Licence in those lands by Written Instrument registered in the Westbank Lands Register provided that:
- (a) the Member is the sole lawful possessor of the land;
  - (b) there is a proper legal description of the lands, and, if required, the lands have been surveyed and the survey registered in the Westbank Lands Register; and
  - (c) the Member states in writing that the terms of the Written Instrument will not violate any agreement with a person who has, or will have, an interest in the lands affected, or any portion thereof, or the Member has obtained the written consent of the interest holder.



- 13.2 Subject to 7.1 a person holding a Leasehold in Westbank Lands may grant a Sub-lease, Easement, Permit or Licence in those lands by Written Instrument registered in the Westbank Lands Register provided that:
- (a) the interest to be granted is permitted by the terms of the Lease;
  - (b) there is a proper legal description of the lands and, if required, the lands have been surveyed and the survey registered in the Westbank Land Register; and
  - (c) the term of the interest granted does not exceed the duration of the Leasehold.
- 13.3 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease.
- 13.4 (a) In transactions under sections 13.1 and 13.2 neither the Westbank Lands Office nor the Director of Lands are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the person granting the interest.
- (b) For greater certainty, without restricting the generality of section 13.4(a), neither the Westbank Lands Office nor the Director of Lands shall be responsible for determining whether a Lease, Easement, Permit or Licence is in good standing or its terms have been complied with.

#### **14. Mortgages**

- 14.1 Subject to section 14.2 the holder of an Allotment, Leasehold or Licence may, in accordance with this section grant a Mortgage of that interest.
- 14.2 The holder of an Allotment may only grant a Mortgage of that interest to a Member or to Westbank.
- 14.3 The holder of a Permit or Easement cannot grant a Mortgage.
- 14.4 A Mortgage may be granted by Written Instrument registered in the Westbank Lands Register provided that:
- (a) the land is in the sole lawful possession of the Member granting the Mortgage or, the Leaseholder or Licence holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or Licence;
  - (b) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, Lease or Licence;
  - (c) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered in the Westbank Lands Register; and

(d) in the case of a Mortgage of a Leasehold or Licence, the Mortgage term does not exceed the duration of the Leasehold or Licence.

- 14.5 Neither the Westbank Lands Office nor the Westbank Director of Lands shall be responsible or liable for ensuring that the Lease or Licence permits the interest in the land to be mortgaged or that the Lease or Licence is in good standing or its terms have been complied with.
- 14.6 Except as modified in this section, the provisions of Section 89 of the *Indian Act* continue to apply.

## **15. Transfer of Interests**

- 15.1 Subject to section 15.2 and this Part, a Member may, by a Written Instrument registered in the Westbank Lands Register, transfer their Allotment.
- 15.2 A Member may only transfer their Allotment to another Member or Westbank.
- 15.3 Where an Allotment is transferred to Westbank other than in relation to the granting of a Mortgage, the Allotment and any Certificate of Possession issued are cancelled and the Westbank Lands described in the Allotment become Community Lands.
- 15.4 Subject to section 15.5 and this Part a person holding an interest in Westbank lands other than by way of Allotment may transfer, assign or devise their interest to any person or entity by a Written Instrument registered in the Westbank Lands Register.
- 15.5 A Member or Westbank holding a Mortgage of an Allotment can only transfer or assign that Mortgage to another Member or to Westbank.

## **16. Transfer on Death**

- 16.1 Until Westbank exercises jurisdiction in relation to wills and estates pursuant to the Agreement, the provisions of the *Indian Act* dealing with wills and estates shall continue to apply with respect to interests in Westbank Lands.
- 16.2 A person who receives an interest in Westbank Lands by testamentary disposition or succession in accordance with 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 Westbank Lands Register.

## **17. Ceasing to be a Member**

- 17.1 A person who ceases to be a Member shall within one year of ceasing to be a Member transfer their Allotment to Westbank or another Member.
- 17.2 Where a Member does not transfer their Allotment in accordance with section 17.1 the Allotment and any Certificate of Possession issued shall, one year after the person ceases to be a Member, be cancelled and the Westbank Lands described in the Allotment become Community Lands.

17.3 Where an Allotment reverts to Westbank under section 17.2 the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any interest they granted prior to the date the Allotment reverts to Westbank.

## **18. Westbank Lands Register**

- 18.1 Interests in, and registrable instruments which affect, or purport to affect, Westbank Lands shall be registered in the Westbank Lands Register.
- 18.2 Notwithstanding section 18.1 only those instruments that are in compliance with this Part can be registered in the Westbank Lands Register.
- 18.3 A copy of the Westbank Lands Register will be kept at the Westbank Lands Office.
- 18.4 Subject to this section, the Westbank Lands Register shall be administered in the same manner as the Reserve Land Register established under the *Indian Act*.
- 18.5 The Westbank Lands Register shall accommodate the registration of interests not accommodated specifically by the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and Westbank.
- 18.6 Transactions dealing with interests in Westbank lands shall be filed with the Westbank Lands office and once verified as complying with this Part and Westbank Law shall be forwarded to the Westbank Lands Register for registration.
- 18.7 No instrument that requires a Council Resolution, approval of the Westbank Lands Office, approval by Electors at a Membership meeting or in a referendum may be registered unless evidence of that Resolution, approval or referendum result is attached to the instrument.
- 18.8 Surveys prepared in accordance with section 21 may, subject to Westbank Law and other applicable law, be registered in the Westbank Lands Register subject to the approval of the form and content of same by the Westbank Lands Office.
- 18.9 Financial claims or other assertions of right which affect, or purport to affect, Westbank Lands may, in accordance with Westbank Law and other applicable law, be registered in the Westbank Lands Register subject to the approval of the form and content of same by the Westbank Lands Office.
- 18.10 The types of registerable instruments which may be registered in the Westbank Lands Register under section 18.9 include, but are not limited to, instruments relating to:
- (a) judgments;
  - (b) court orders;
  - (c) rights of first refusal;
  - (d) certificates of pending litigation;
  - (e) caveats;

- (f) liens;
  - (g) assignments of rent;
  - (h) options to purchase;
  - (i) tax certificates; and
  - (j) written decisions of the Minister or his or her designate referred to in section 16.2.
- 18.11 Registration under section 18.10 shall not be deemed to be support for the legal validity of any claims nor the ability to take execution or other proceedings as a result of registration.

## **19. Date of Grant or Transfer of Interests**

- 19.1 The grant, transfer or other disposition of an interest in Westbank Lands shall be effective on the date the documents are registered in the Westbank Lands Register.
- 19.2 An interest in Westbank Lands is not enforceable unless it is registered in the Westbank Lands Register.

## **20. Cancellation or Forfeiture of Interests**

- 20.1 Except as otherwise provided in this Land Code, Westbank Law or by operation of law no interest in Westbank Lands may be cancelled or forfeited unless:
- (a) all parties to the relevant Written Instrument have consented in writing to the cancellation or forfeiture as the case may be;
  - (b) a court of competent jurisdiction has ordered the cancellation or forfeiture of the interest and the time period for filing an appeal of the order has passed without an appeal having been taken; or
  - (c) an arbitrator or other person appointed to adjudicate a dispute pursuant to the Written Instrument in issue has ordered or declared the interest to be cancelled or forfeited and no appeal has been taken from that decision within the allotted time.
- 20.2 Notwithstanding section 20.1 no interest in Westbank Lands may be cancelled or forfeited if it will adversely affect:
- (a) an interest in those Westbank Lands held by a third party; or
  - (b) a claim against, or interest in, those Westbank Lands held by Westbank.

- 20.3 If an interest in Westbank Lands is cancelled or forfeited under section 20.1 the Westbank Land Register will be amended or rectified accordingly.

## 21. Surveys

- 21.1 Westbank may cause surveys to be made of Westbank Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 21.2 The holder of a registered interest in Westbank Lands may cause surveys to be made of those lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 21.3 All surveys of Westbank Lands prepared by the Surveyor General of Canada, or his or her designate, shall be deemed for all purposes to accurately describe and identify the boundaries of the lands covered by such survey.
- 21.4 All surveys respecting Westbank Lands only become effective upon registration in the Westbank Lands Register.

## 22. Exchange of Lands

- 22.1 Subject to federal expropriation, no part of Westbank Lands shall be sold so as to remove their status as Westbank Lands except for an exchange of lands in circumstances where:
- (a) Westbank receives land of greater or equivalent size or value in consideration for the exchange taking into account all of its interests involved;
  - (b) Canada is willing to set apart the lands received in exchange as a reserve as defined in section 2(1) under the *Indian Act* for the use and benefit of Westbank and as subsection 91(24) lands as set out in the *Land Code Act, 1867*;
  - (c) Council has made full disclosure to the Membership of all the circumstances surrounding the exchange. At least three Membership meetings shall be held where the proposed transactions are disclosed; and
  - (d) the exchange is approved in a referendum held under Part IX of this Land Code where at least fifty percent plus one (50% +1) of Electors participate by casting a vote and at least fifty percent plus one (50% +1) of those voting approve the exchange.

## 23. Expropriation for Community Purposes

- 23.1 Westbank may expropriate an interest in Westbank Lands for a Community Purpose provided that no expropriation may take place until the following conditions, in the order listed, have been met:
- (a) a Westbank Law has been enacted setting out:
    - i) a procedure governing the expropriation process;

- ii) a method of determining fair compensation to be paid to the interest holder; and
  - iii) the procedure for an Arbitrator to resolve disputes regarding the amount of compensation to be paid to the interest holder.
- (b) written notice has been given to the interest holder specifying the interest that is being considered for expropriation;
  - (c) Council has attempted in good faith to negotiate an agreement with the interest holder for the transfer of the interest that is being considered for expropriation but has failed to reach such an agreement; and
  - (d) Council has issued a report to the Membership setting out the Community Purpose for which the proposed expropriation is required and the necessity for the proposed expropriation.

## **24. Dispute Resolution**

24.1 Except as otherwise provided in this Part disputes in relation to Westbank Lands or interests in Westbank Lands 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.

## **25. Delegation**

25.1 Westbank may, by Resolution, delegate any authority under this Part to the Westbank Lands Office or the Director of Lands other than:

- (a) law making,
- (b) the adjudication of violations of Westbank Law; or
- (c) a matter required under this Part to be determined in a specific manner.

25.2 Westbank may, by Westbank Law, establish boards, tribunals, commissions or other bodies to carry out any duties or responsibility under this Part other than:

- (a) law-making;
- (b) adjudication of violations of Westbank Law; or
- (c) a matter required under this Part to be determined in a specific manner.

## **26. Treatment of Interests in Westbank Lands on Marriage Breakdown**

- 26.1 Westbank shall enact a law within twelve months of the date this Land Code comes into force setting out rules and procedures applicable to use, occupancy and possession of Westbank Lands and the division of interests in these lands on the breakdown of a marriage involving at least one Member.
- 26.2 For greater certainty, the Westbank Laws described in section 26.1 shall not discriminate on the basis of sex but may distinguish as between Members and non-Members for the purpose of determining what type of interest in Westbank Lands may be held by an individual.

**27. Review**

Council shall, within two (2) years of the date this Land Code comes into force conduct a review and consult with Members concerning the Land Rules in this Part, present a report to the Membership and if required propose amendments to this Part.

## PART IV – Law Enactment Procedures

### 28. Application

- 28.1 This Part applies to law enactment procedures for Westbank Laws relating to the management and administration of Westbank Laws.

### 29. Development of Westbank Laws

- 29.1 Council shall enact Westbank Laws in accordance with this Part consistent with this Land Code.
- 29.2 The process for development of a Westbank Law may be initiated by:
- (a) a Resolution, setting out the specific subject matter of the proposed law; or
  - (b) a Petition presented to Council signed by forty (40) Electors, setting out the request for development of a Westbank Law addressing a specific subject matter or issue.
- 29.3 Upon initiation of a proposed law, Council shall provide notice to the Membership of the subject matter of the proposed law and the general nature of provisions to be included in the proposed law.
- 29.4 Notice shall be provided to the Membership by:
- (a) publication of a notice in the Westbank newsletter mailed to Electors or by separate written notice, delivered or mailed to Electors; and
  - (b) posting of the notice in a public area of the Westbank administration building.
- 29.5 The notice shall request written comments from Members on the subject matter and content of the proposed law, and shall specify a date at least twenty (20) days from the date of the notice for Members to respond to Council.
- 29.6 Upon expiration of the time for submitting comments, Council shall take into consideration the comments received, the needs of the community and other relevant matters and shall prepare a draft law.
- 29.7 All Westbank laws shall be developed and considered under procedures set out in this Part.

### 30. First Reading: Acceptance in Principle

- 30.1 Upon completion of the draft law, Council shall table the draft law at a regular meeting of Council.



- 30.2 After considering the draft law at the Council meeting, Council shall, by Resolution:
- (a) accept the draft law in principle;
  - (b) reject the draft law; or
  - (c) request further work on the draft law and decide to re-table the draft law at a future Council meeting.

30.3 Upon the request of any Elector, Council shall explain the reasons for rejecting a draft law.

### **31. Second Reading: Special Membership Meeting**

31.1 Where Council has accepted the draft law in principle, it shall schedule a Special Membership Meeting for the purpose of considering the draft law, and shall provide notice to the Membership at least twenty (20) days before the date of the meeting.

31.2 The notice required under section 31.1 shall include:

- (a) the date, time and place of the Special Membership Meeting;
- (b) a summary of the draft law; and
- (c) notification that a full copy of the draft law can be obtained by Members at the Westbank administration building.

31.3 Notice shall be provided to the Membership by:

- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
- (b) posting of the notice in a public area of the Westbank administration building.

31.4 Copies of the draft law shall be made available to Members attending the Special Membership Meeting.

31.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the draft law, and Members may ask questions and provide comments.

### **32. Third Reading: Enactment of the Law**

32.1 After the Special Membership Meeting, Council shall consider the comments received from Members, the needs of the community and other relevant matters, and shall prepare a final draft law that will be considered for enactment at the next Council meeting.

32.2 Notice of the Council meeting where the final draft law will be considered shall be posted at least ten (10) days before the meeting in a public area of the Westbank administration building and shall include:

- (a) a summary of the final draft law;

- (b) notification that a full copy of the final draft law can be obtained by Members at the Westbank administration building;
  - (c) a statement that the final draft law will be considered for enactment at the Council meeting; and
  - (d) the date, time and place of the Council meeting.
- 32.3 At the Council meeting, Council shall consider the final draft law and, by Resolution:
- (a) enact the final draft law as a Westbank Law;
  - (b) make changes to the final draft law;
  - (c) reject the final draft law;
  - (d) decide to hold another Special Membership Meeting for further comment on the draft law;
  - (e) refer the final draft law to a Special Membership Meeting for enactment by Electors; or
  - (f) require a referendum, to be held in accordance with Part IX of this Land Code to enact the Law.
- 32.4 Council shall post notice in a public place of the Westbank administration building, setting out the decision reached by Council concerning a final draft law.
- 32.5 Where Council decides to make substantive changes to a final draft law, Council shall schedule a further Special Membership Meeting to consider the draft law and the procedure set out in section 31 shall be followed.
- 32.6 Where Council decides to refer the final draft law to a Special Membership Meeting for enactment by Electors present at such meeting, Council shall schedule a date for the Special Membership Meeting.
- 32.7 Notice of the Special Membership Meeting where the final draft law will be considered for enactment shall be given to the Membership at least twenty (20) days before the meeting and shall include:
- (a) a summary of the final draft law;
  - (b) notification that a full copy of the final draft law can be obtained by Members at the Westbank administration building;
  - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to enact the final draft law; and
  - (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.

- 32.8 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
  - (b) posting of the notice in a public area of the Westbank administration building.
- 32.9 At the Special Membership Meeting, copies of the final draft law shall be made available to Members in attendance.
- 32.10 At the Special Membership Meeting, the purpose and provisions of the final draft law shall be explained to the Members present at the meeting, and Members shall be entitled to ask questions and provide comments.
- 32.11 Upon completion of discussion on the final draft law the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on the final draft law.
- 32.12 The law shall be deemed enacted if a Majority of Electors present at the Special Membership Meeting vote in favour of enacting the law.
- 32.13 The decision at the Special Membership Meeting shall be recorded in the minutes and shall have the same effect as a Resolution enacting a Westbank Law.
- 32.14 The result of a referendum shall have the same effect as a Resolution enacting a Westbank Law.

### **33. Procedures Upon Enactment of a Westbank Law**

- 33.1 A Westbank Law enacted by Resolution, under section 32.3(a), shall be signed by the Council members signing the Resolution enacting the Westbank Law.
- 33.2 A Westbank Law enacted by vote of Electors at a Special Membership Meeting or enacted by referendum shall be signed by all Council members.
- 33.3 A Westbank Law enacted by Resolution shall come into effect on the date the Resolution was passed or on such date specified in the Resolution.
- 33.4 A Westbank Law enacted by vote of Electors at a Special Membership Meeting or enacted by a referendum shall come into effect on the date of the Special Membership Meeting or on the date of the referendum.
- 33.5 Notice of the enactment of a Westbank Law shall be posted in a public area of the Westbank administration building within seven (7) days of its enactment.
- 33.6 Where a Westbank Law has been enacted original copies of the Westbank Law shall be deposited in the register of Westbank Laws.
- 33.7 The register of Westbank Laws shall be accessible to the public.
- 33.8 A true copy of all Westbank Laws shall be kept in the Westbank administration building.

- 33.9 Copies of Westbank Laws shall be provided to Members and other persons, upon payment of a reasonable copying fee.
- 33.10 No Westbank Law shall be set aside or be declared invalid by reason only that a Council member at the time of the enactment of the Westbank Law subsequently ceases to be a member of Council.
- 33.11 The failure of a Council member to sign a validly enacted Westbank Law does not invalidate the enactment of the Westbank Law.

**34. Amendment**

Any Westbank Law may be repealed or amended by following the procedure set out in this Part under which the Westbank Law was enacted.

## **Part V – Officers and Employees**

### **35. General**

- 35.1 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 Westbank Law.

### **36. Appointment of Director of Lands**

- 36.1 There shall be a Director of Lands appointed by Resolution.
- 36.2 Westbank may, by Westbank Law, establish other officer positions with titles and responsibilities it considers appropriate and may by Resolution appoint persons to those positions.
- 36.3 For greater certainty,
- (a) Council may assign to an officer position powers, duties and functions in addition to those required to be assigned by this Land Code or Westbank Law; and
  - (b) the same person may be appointed to two (2) or more officer positions.

### **37. Affirmative Action**

- 37.1 Subject to 35.1, Council shall establish employment policies that reflect the principle of giving preference to qualified Members in the appointment of officers and the hiring of other employees.

## **PART VI – Special Membership Meetings**

### **38. Application**

38.1 This Part applies only to Special Membership Meetings held in accordance with the Land Code.

### **39. Special Membership Meetings**

39.1 A Special Membership Meeting shall be held:

- (a) where called by Resolution; or
- (b) upon request set out in a Petition signed by forty (40) Electors, presented to Council and the Director of Operations; or
- (c) as required under this Land Code.

39.2 The date, time and place for a Special Membership Meeting shall be determined by Council.

39.3 If a Special Membership Meeting has not been called by Council within seven (7) days of the receipt of a Petition calling for a Special Membership Meeting, the Director of Operations shall set the date, time and place for the meeting.

39.4 Notice of the date, time, place and subject matter of the Special Membership Meeting shall be provided to each Council member and posted by the Director of Operations in a public area of the Westbank administration building, at least five (5) days before the meeting.

39.5 All Special Membership Meeting shall take place on Westbank Lands.

### **40. Attendance at Special Membership Meetings**

40.1 Council members shall attend all Special Membership Meetings unless they have just cause for being absent.

40.2 A Council member shall notify Council at a Council meeting or notify the Director of Operations of any anticipated absence and the reasons for such absence.

40.3 Where notification under section 40.2 is given to the Director of Operations, the Director of Operations shall inform the other Council members of the absence and reasons.

40.4 If the Council member is absent from a Special Membership Meeting, the chairperson shall, if requested by an Elector, inform the meeting of the reason for the Council member's absence.

- 40.5 A quorum of Council is not required for Special Membership Meeting.
- 40.6 Council may, at a Council meeting prior to a Special Membership Meeting, by vote of Council members present, determine that in the community interest a Special Membership Meeting shall only be open to Members and to employees of Westbank whose attendance is requested by Council to inform the Membership on a specific matter.
- 40.7 Unless otherwise permitted by Council, only Members, non-Member spouses (including common-law spouses), and employees of Westbank whose attendance is requested by Council may attend Special Membership Meetings.
- 40.8 Where Council determines a Special Membership Meeting is only open to Members and employees of Westbank requested to present information at the meeting, this shall be set out in the notice of the Special Membership Meeting.

## **PART VII – Financial Management and Accountability**

### **41. Application**

- 41.1 This Part applies only to financial matters relating to the management and administration of Westbank Lands.

### **42. Duties of Council**

- 42.1 Council shall be responsible for the preservation and protection of Westbank assets and the prudent financial management and administration of Westbank funds, with due accountability to the Membership.
- 42.2 Council may, by Resolution, approve agreements with federal or provincial governments or with any other party for funding to Westbank, the Lands Department, agencies or other Westbank entities.
- 42.3 Council shall develop Westbank Laws and policies, consistent with this Land Code, regarding financial management and accountability.

### **43. Receipts and Deposits**

- 43.1 All monies received by Westbank in respect to the management and administration of Westbank Lands under this Land Code shall be fully deposited, without delay, in the financial institution designated by Council.
- 43.2 The monies held in trust by Council on behalf of Westbank shall be deposited in a separate Westbank trust account designated for that purpose.

### **44. Authorizing Officers**

- 44.1 Council shall, by Resolution, designate officers of Westbank to authorize payments and sign cheques on behalf of Westbank.
- 44.2 The officers authorized shall consist of no fewer than two (2) Council members and such other officers of Westbank as designated by Resolution.
- 44.3 All payments to be made on behalf of Westbank, or cheques to be issued on behalf of Westbank, shall be authorized or signed by at least two (2) authorized officers, one of whom shall be a member of Council.

### **45. Budget**

- 45.1 The budget year for Westbank shall begin on April 1 and end on March 31 of the following year.



- 45.2 Council shall adopt a Provisional Budget and Budget for each budget year.
- 45.3 The Provisional Budget and Budget shall describe all operations of Westbank for which Council is responsible and shall include, but not be limited to, the following:
- (a) all proposed expenditures;
  - (b) all sources of revenue;
  - (c) transfers between Departments; and
  - (d) repayment on account of debt.
- 45.4 The Budget shall be based on the principle of a balanced budget with no deficit, provided that where a deficit is anticipated in the Budget approval for the deficit must be approved in accordance with section 45.11.
- 45.5 Council shall, by Resolution, no later than December 15 of each year, adopt a Provisional Budget for the next budget year.
- 45.6 Council shall, on or before March 1 of each year, schedule a Membership meeting to present the Provisional Budget and any proposed changes, to the Membership.
- 45.7 Notice of the Membership meeting required under section 45.6 shall be provided to the Membership at least twenty (20) days before the Membership meeting and shall include:
- (a) the date, time and place of the Membership meeting;
  - (b) notification that the Provisional Budget and proposed changes can be obtained at the Westbank administration building; and
  - (c) notification that where there is a deficit proposed in the Budget there will be a vote by secret ballot of Electors present at the Membership meeting to make a decision whether or not to approve the proposed deficit.
- 45.8 Notice of the Membership meeting required under section 45.6 shall be provided by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
  - (b) posting of the notice in a public area of the Westbank administration building.
- 45.9 At the Membership meeting copies of the Provisional Budget and proposed changes shall be made available to Members in attendance.
- 45.10 At the Membership meeting, the Budget shall be presented by Council or its designate and Members may ask questions and provide comments.
- 45.11 Where a deficit is proposed in the Budget the Electors, including Council members, present at the Membership meeting shall vote by secret ballot on whether or not to approve the proposed deficit.

- 45.12 Where the vote by Electors at the Membership meeting held under section 45.11 does not approve the proposed deficit, the budget shall be revised to not include a deficit.
- 45.13 Council shall take into consideration the comments received from Members, the needs of the community and other relevant matters in preparing the Budget.
- 45.14 Council shall, by Resolution, no later than March 31 of each year adopt a Budget for the next budget year.
- 45.15 Notice of the Council meeting where the Budget will be presented for adoption shall be posted at least ten (10) days prior to the Membership meeting in a public area of the Westbank administration building.
- 45.16 Subject to section 45.15, where there is a substantial change in forecasted revenues, the Budget may be amended by Resolution at any time prior to June 30 of each year provided that any amendment of the Budget must be identified and explained in the periodic reports required to be presented under section 47.2.
- 45.17 Where a proposed amendment to the Budget would create or increase a deficit in the Budget the amendment must be approved by Electors in the same manner as under sections 45.7 to 45.11.
- 45.18 The Provisional Budget and Budget shall be made available during regular working hours for inspection by any Member, and copies shall be provided to any Member upon written request to the Department of Finance and upon payment of a reasonable copying fee.

#### **46. Expenditures**

- 46.1 Westbank revenues shall be used for the payment of Westbank expenditures under this Land Code, the Provisional Budget, the Budget or a Westbank Law provided for in this Part.
- 46.2 Council may approve an expenditure for an Emergency purpose not contemplated in the Provisional Budget or Budget.
- 46.3 Before the Budget is adopted, it is not lawful to make an expenditure unless the expenditure is authorized by the Provisional Budget, this Land Code or a Westbank Law provided for in this Part.

#### **47. Capital Expenditures over Five Hundred Thousand (\$500,000) Dollars**

- 47.1 Council shall not make a capital expenditure over five hundred thousand dollars (\$500,000), unless such expenditure is approved in accordance with this section.
- 47.2 Where Council proposes to authorize a capital expenditure over five hundred thousand dollars (\$500,000), Council shall schedule a Special Membership Meeting to consider the expenditure.
- 47.3 Notice of the Special Membership Meeting required under section 47.2 shall be given to the Membership at least twenty (20) days before the meeting and shall include:

- (a) a summary of the proposed expenditure;
- (b) provision that there will be a vote by secret ballot of Electors present at the Special Membership Meeting to make a decision on whether or not to approve the proposed expenditure;
- (c) the date, time and place of the Special Membership Meeting; and
- (d) the time period during the Special Membership Meeting when voting will take place.

47.4 Notice shall be provided to the Membership by:

- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
- (b) posting of the notice in a public area of the Westbank administration building.

47.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the proposed expenditure and the Members may ask questions and provide comments.

47.6 Upon completion of discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to approve the proposed expenditure.

47.7 The proposed expenditure shall be deemed authorized if a Majority of Electors present at the Special Membership Meeting vote in favour of the proposed expenditure.

47.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall have the same effect as a Resolution.

#### **48. Periodic Reporting**

48.1 The Director of Finance shall present to Council each month, a written financial report prepared in accordance with Canadian generally accepted accounting principles.

48.2 Council or its designate shall provide financial updates to Members at regularly scheduled Membership meetings.

#### **49. Financial Statements**

49.1 The Department of Finance shall, in accordance with Canadian generally accepted accounting principles, prepare consolidated financial statements for Westbank for each Budget year.

#### **50. Appointment of Auditor**

- 50.1 Council shall, by Resolution, appoint an auditor to audit the financial statements, records and inventories of Westbank at least once each year, prior to the commencement of each Budget year.
- 50.2 The auditor shall be a member in good standing or in a partnership whose partners are members in good standing with the Canadian Institute of Chartered Accountants or the Certified General Accountants' Association of British Columbia.

## **51. Access to Information by Auditors**

- 51.1 In exercising his or her duties and responsibilities, the auditor shall conduct all examinations necessary to prepare the reports described in section 52.
- 51.2 In carrying out his or her duties and responsibilities, the auditor shall have a right of access at all reasonable times to:
- (a) the records of Council, the Westbank Lands Office and Westbank;
  - (b) the records of any other body that exercises the powers of Westbank; and
  - (c) any computer, other data processing equipment and software that are owned or leased by Westbank or other body and used for financial recording or reporting purposes.
- 51.3 Upon request, Council members, Westbank officers, employees and agents, and other persons shall provide the auditor with information, reports or explanations the auditor deems necessary to carry out his or her duties and responsibilities.
- 51.4 An auditor shall abide by all applicable laws restricting the disclosure of information.

## **52. Auditor's Reports**

- 52.1 The auditor shall:
- (a) perform, in accordance with Canadian generally accepted auditing standards, a general review of accounting procedures and such tests of accounting records as he or she considers necessary under the circumstances;
  - (b) state in a report whether the consolidated financial statements present fairly the financial position of Westbank at the end of its Budget year, and the results of its operations for the year then ended;
  - (c) report whether the financial operations are in compliance with this Land Code and Westbank Laws; and
  - (d) make recommendations in the report for more effective financial management.
- 52.2 The auditor's report shall be prepared in accordance with the form and reporting standards recommended by the Canadian Institute of Chartered Accountants.

- 52.3 The auditor shall present the audit report to Council on or before June 30 for the budget year ending the preceding March 31.
- 52.4 The auditor's report and audited consolidated financial statement of Westbank shall be reviewed by Council and approved by Resolution.
- 52.5 Upon acceptance by Resolution, the audited consolidated financial statement shall be signed by the Chief and the Director of Operations and be recorded in the Council minutes as reviewed and approved.
- 52.6 Council shall ensure that, where appropriate, recommendations made by the auditor are implemented and that the audit report and any other relevant accounting records are made available to as required under funding agreement and to any other person designated by Council.

### **53. Annual Reporting on Westbank Finances to Members**

- 53.1 No later than July 30 of each year, Council shall schedule a Special Membership Meeting to present the audited financial statements of the preceding year.
- 53.2 Notice of the Special Membership Meeting shall be provided to the Membership at least twenty (20) days before the date of the meeting and shall:
- (a) specify the date, time and place of the Special Membership Meeting; and
  - (b) include a statement that the audited consolidated financial statements and any reports to be presented are available for inspection at the Westbank administration building.
- 53.3 The notice required under section 53.2 shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
  - (b) posting a notice in a public area of the Westbank administration building.
- 53.4 The most recent audited financial statements and reports shall be available for inspection by Members at the Westbank administration building during its regular office hours.
- 53.5 Copies of the most recent financial statements and reports shall be provided to Members upon payment of a reasonable copying fee.

### **54. Right of Elector to File a Complaint**

- 54.1 A complaint may be filed if an Elector believes that:
- (a) a disbursement, expenditure, liability or other transaction is not authorized by or under this Land Code or a Westbank Law provided for; or

- (b) there has been a theft, misuse, misappropriation, or irregularity in the funds, accounts, assets, liabilities and financial obligations of Westbank or the Westbank Lands Office.
- 54.2 If a written complaint concerning the matters under section 54.1 is filed with a Council member, it shall be forwarded immediately to the Director of Operations.
- 54.3 The Director of Operations shall forward a copy of the complaint to the Director of Finance, to Council and to the auditor.
- 54.4 The Director of Finance shall review the complaint and prepare a report concerning matters raised and provide a copy of his or her report to:
- (a) the Director of Operations;
  - (b) Council; and
  - (c) the auditor.
- 54.5 After review of the Director of Finance's report Council shall send a written response to the Elector filing the complaint.

## **55. Investment of Westbank Funds**

- 55.1 Funds held by Westbank that are not immediately required may only be invested or re-invested by Council in one or more of the following:
- (a) securities of Canada or of a Province;
  - (b) securities guaranteed for principal and interest by Canada or by a Province;
  - (c) deposits in a savings institution;
  - (d) investments guaranteed by a chartered bank or trust company;
  - (e) pooled investment funds of First Nations financial institutions;
  - (f) investment grade securities of First Nations financial institutions; and
  - (g) securities issued by a company incorporated under the laws of Canada or of a Province, the securities of which are rated in the highest rating category by at least two (2) recognized security rating institutions.

## **56. Borrowing**

- 56.1 Westbank shall not borrow money or provide monetary guarantees except in accordance with this Land Code.

## **57. Borrowing Against Identified Revenues**

57.1 Westbank may, by Resolution, borrow money that may be necessary to meet current Westbank expenditures authorized in the Provisional Budget, Budget provided that the debt incurred does not exceed the total of the money remaining due from transfers from other governments and monies owing to Westbank which can reasonably be expected to be collected in the current year.

## **58. Short-Term Capital Borrowing**

58.1 Westbank may, by Resolution, incur Short-Term Capital Debt, provided that the borrowing does not cause the total Short-Term Capital Debt to exceed five hundred thousand dollars (\$500,000).

58.2 The Resolution authorizing the borrowing must set out:

- (a) the amount of the debt intended to be assumed;
- (b) in brief and general terms, the capital purpose of the proposed borrowing; and
- (c) the total short-term capital debt after the proposed borrowing.

## **59. Long-Term Debt Liability and Guarantees**

59.1 Westbank may incur Long-Term Debt Liability in accordance with a Westbank Law which Law shall, at a minimum, set out:

- (a) the purposes for which Long-Term Debt Liability may be assumed;
- (b) the maximum cumulative Long-Term Debt Liability Westbank can hold at any time;
- (c) the maximum term allowable for repayment;
- (d) the mechanism for repayment;
- (e) restrictions on the use of money borrowed or guaranteed;
- (f) the currency of the borrowing;
- (g) the process by which the Membership will be informed concerning the proposed Long-Term Debt Liability; and
- (h) the approval process for incurring Long-Term Debt Liability.

59.2 Westbank may provide guarantees in accordance with a Westbank Law which Law shall, at a minimum, set out:

- (a) the permitted purposes for guarantees;
- (b) persons or entities for whom a guarantee may be provided;
- (c) conditions for granting a guarantee; and

- (d) requirements for reporting to the Membership.

## **60. Restrictions on the Use of Monies Borrowed**

- 60.1 Money borrowed by Westbank must not be used for a purpose other than that specified in the Resolution or the Westbank Law authorizing the borrowing.
- 60.2 If some of the money borrowed for a specified purpose remains unused after payment of the costs related to that purpose, Council shall apply the unused money to reduce or retire the debt owing.

## **61. Liabilities for Use of Money Contrary to the Land Code**

- 61.1 A Council member who votes for a Westbank Law or Resolution authorizing the expenditure, investment or other use of money contrary to this Land Code is personally liable to Westbank for the amount unless the Council member relied on information provided by an employee and the employee was guilty of dishonesty, gross negligence or malicious or willful misconduct in relation to the provision of the information.
- 61.2 In addition to any other penalty to which the person may be liable, a Council member who is liable to Westbank under section 61.1 is disqualified from holding elected office for ten (10) years from the date of the vote authorizing the expenditure.
- 61.3 Money due to Westbank under this section may be recovered for Westbank by:
  - (a) Westbank,;
  - (b) an Elector; or
  - (c) a person who holds a security under a borrowing made by Westbank.



## Part VIII – Conflict of Interest

### 62. Application

- 62.1 This Part applies only to a Conflict of Interest relating to the management and administration of Westbank Lands.

### 63. General Duties and Definitions

- 63.1 Council members shall avoid a conflict of interest or the appearance of a conflict of interest and shall not be involved in any transaction or matter where they are in a conflict of interest or appear to be in a conflict of interest.
- 63.2 A conflict of interest arises in any situation where a Council member or person in their Immediate Family has a personal or Business Interest in a transaction or matter under consideration by Council.
- 63.3 No conflict of interest or appearance of a conflict of interest arises where:
- (a) the only benefit derived by an Immediate Family member is as an employee of a person or business entering into a transaction with, or having a matter determined by, Council;
  - (b) the Council member or his or her Immediate Family member is a beneficiary or shareholder of a corporation, society or other entity owned or controlled by Westbank entering into a transaction with Council or having a matter determined by Council;
  - (c) the Council member or his or her Immediate Family holds an interest in the same manner and under the same conditions as other Members of Westbank;
  - (d) a Council member guarantees repayment of or otherwise assumes liability to repay a loan made to Council or Westbank;
  - (e) Council enacts a Westbank Law setting reasonable remuneration, holidays, sick leave and benefits for services of Council members as elected officials of Westbank; or
  - (f) Council agrees to indemnify or reimburse the Council member for expenses or liabilities reasonably incurred in their duties or arranges for insurance against risks undertaken in the carrying out of their duties.
- 63.4 A transaction which may give rise to a conflict of interest or the appearance of a conflict of interest may be approved by Resolution in accordance with this Part.

**64. Procedure where there is a Conflict of Interest or Appearance of a Conflict of Interest**

- 64.1 A Council member who has, or believes that he or she has, a conflict of interest shall disclose the nature and extent of the conflict at the first Council meeting after the conflict becomes known to the Council member. The disclosure must be made when the conflict first becomes known to the individual, whether or not the transaction or matter in question has already been concluded.
- 64.2 Where the interest of a Council member has not been disclosed as required by section 64.1 by reason of his or her absence from the meeting at which the matter was first raised, the Council member shall disclose the interest and comply with this Part at the next meeting of Council.
- 64.3 If a Council member is in doubt whether he or she is in a conflict of interest, he or she may request a decision of Council on where there is a conflict of interest.
- 64.4 After declaring the conflict of interest, the Council member shall leave the meeting where the matter is being considered, not be counted in the quorum, nor participate in the discussion or vote on the matter in question.
- 64.5 A Council member who has a conflict of interest, shall not attempt in any way, whether before or after the Council meeting, to influence the discussion or vote on the matter in question.
- 64.6 Every declaration of a conflict of interest and the general nature thereof shall be recorded in the minutes of the Council meeting.
- 64.7 Notwithstanding section 63.1, Council may approve a transaction by Resolution where:
- (a) the Council member has complied with sections 64.1 to 64.5 of this Part; and
  - (b) Council determines the transaction is fair and reasonable.
- 64.8 The failure of a Council member to provide Council with sufficient information to assess the nature of an interest involved in the transaction invalidates any authorization given under this section.
- 64.9 Any Resolution authorizing a transaction may make the authorization conditional upon the affected Council member taking steps or following procedures that may be necessary to protect the interests of Council or Westbank or to safeguard the community's trust in the conduct of Council's activities.
- 64.10 Where as a result of a conflict of interest a quorum of Council can never be established, the matter shall be brought before a Membership meeting.
- 64.11 Notice of the Membership meeting required under section 64.10 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the date, time and place of the Membership meeting;

- (b) a summary of the proposed transaction and the conflict of interest to be considered at the Membership meeting;
- (c) notification that a full copy of a report on the transaction and conflict of interest can be obtained at the Westbank administration building; and
- (d) a statement that a determination of how to proceed on the proposed transaction will be made by a vote of Electors present at the Membership meeting.

64.12 Notice of the Membership meeting required under section 64.10 shall be provided by:

- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
- (b) posting of the notice in a public area of the Westbank administration building.

64.13 At the Membership meeting Council shall explain the report on the transaction and conflict of interest and Members may ask questions and provide comments.

64.14 Upon completion of the discussion, the Electors, including Council members, present at the Membership meeting shall vote on whether to approve the transaction with or without conditions, reject the transaction or make such other decision as may be appropriate in the circumstances.

64.15 The decision of the Majority of Electors present at the Membership meeting shall be recorded in the minutes and shall have the same effect as a Resolution, where no conflict of interest had existed. If a Resolution is required for the transaction in question, a Resolution may be passed as if no conflict of interest had existed.

## **65. Competition with Westbank Owned Businesses**

65.1 No Council member shall, during the term of his or her office, engage either directly or indirectly in any manner as a partner, officer, director, shareholder, advisor, employee, or in any other capacity, in any business similar to one carried on by Westbank, without first:

- (a) complying with the provisions of this Part; and
- (b) obtaining a Resolution, in accordance with this Part, approving their participation in the business or activity that is similar to the one carried on by Westbank.

## **66. Use of Council Property or Information**

66.1 A Council member shall not use property owned by Westbank for personal or business purposes nor purchase property owned by Westbank, unless such purposes or purchases are equally available to all Members, and the transaction is approved in accordance with section 64.

66.2 A Council member shall not take personal advantage of an opportunity available to Council, unless Council clearly has decided against pursuing the opportunity and the opportunity is subsequently made equally available to all Members.

- 66.3 A Council member shall not use his or her position for their personal or business benefit of themselves or an Immediate Family member. This duty does not prevent a Council member or their Immediate Family members from transacting business with others who do business with Council, provided there is compliance with this Part.
- 66.4 A Council member shall not make use in any way of information received as a consequence of, or in the course of, his or her position as a Council member for their personal or business benefit or for the personal or business benefit of any Immediate Family member.

### **67. Gifts**

- 67.1 A Council member shall not solicit, receive or accept a gift or service where such action could reasonably be inferred to influence a Council member in the discharge of their duties.
- 67.2 Where a gift is given to a Council member in their capacity as a Council member, he or she shall advise Council and the gift shall become the property of Westbank.
- 67.3 Notwithstanding sections 67.1 and 67.2, gift giving or receiving is permitted in recognition of a Council member's service to the community or to aboriginal causes or institutions.

### **68. Liability for Violation of Conflict of Interest Provisions**

- 68.1 In addition to any other penalty or remedy a Council member is liable to Westbank for any personal or business benefit to themselves or an Immediate Family member resulting from a violation of this Part.

## **PART IX – Referendum Procedures**

### **69. Application**

69.1 This Part applies only to a referendum required by this Land Code or a referendum Council determines is advisable in relation to the management and administration of Westbank Lands.

### **70. Holding a Referendum**

70.1 Council shall hold a referendum by way of vote when so required by this Land Code or when it considers it advisable. A second referendum on any question cannot be held for at least one hundred and twenty (120) days after the first vote on that question.

70.2 Council shall, by Resolution at least ninety (90) days prior to the date on which the referendum is to be held:

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

70.3 Unless otherwise required by this Land Code, a question put to referendum shall be approved, if a Majority of the Electors who cast valid ballots vote "YES" to the question asked.

70.4 In order to be entitled to vote in a referendum, a person must be an Elector.

### **71. Electoral Officer and Deputy Electoral Officers**

71.1 If an Electoral Officer and an Arbitrator have not been appointed within the time set out in section 70.2, the Electoral Officer and Arbitrator shall be appointed by the Director of Operations as soon as possible.

71.2 A Deputy Electoral Officer or Officers shall be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.

71.3 The Deputy Electoral Officers shall have such powers as described in this Part and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.

71.4 The Deputy Electoral Officer shall not be a member of Council.

- 71.5 The Electoral Officer shall not be a Member or salaried officer or employee of Westbank or holder of other contracts of services for Westbank.
- 71.6 Every Electoral Officer and Deputy Electoral Officer shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office and shall file with the Director of Operations the sworn oath of office before assuming their office.
- 71.7 The Electoral Officer may make such order and issue such instructions consistent with the provisions of this Part, as he or she may from time to time deem necessary for the effective administration of the referendum.

## **72. Contact Addresses**

- 72.1 The Director of Operations shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of Members who will have attained the age of eighteen (18) as of the date of the referendum.
- 72.2 The contact address shall take the form of a mailing address.
- 72.3 The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Electors who are entitled to receive them under this Part. Except for these purposes, the contact address shall not be disclosed by the Electoral Officer without the consent of the Elector.
- 72.4 Electors shall be responsible for providing the Director of Operations or the Electoral Officer with current contact addresses.
- 72.5 A document shall be considered properly provided if it was mailed or delivered to the contact address of the Elector.

## **73. Electors' List**

- 73.1 The Electoral Officer shall prepare an Electors' List within thirty (30) days of assuming office. The Electors' List will be the official record of Electors for the referendum.
- 73.2 The Electoral Officer shall post the Electors' List in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer, no later than sixty (60) days prior to the date on which the referendum is to be held.
- 73.3 A person whose name does not appear or does not correctly appear on the Electors' List and who believes they are eligible to be an Elector, or an Elector acting on their behalf, may, no later than ten (10) days prior to the date on which the referendum is to be held, apply in writing to the Electoral Officer to have his or her name added to the Electors' List.

- 73.4 The application under section 73.3 shall set out the reasons why the person's name should be added to the Electors' List, together with any documents supporting the application.
- 73.5 Where the Electoral Officer believes or has information that a person whose name is on the Electors' List is not an Elector, or where an Elector applies in writing to the Electoral Officer to have another person's name removed from the Electors' List because that person does not qualify as an Elector, the Electoral Officer shall give written notice to the person whose eligibility is challenged at least twenty (20) days prior to the date on which the referendum is to be held.
- 73.6 The application by an Elector under section 73.5 shall set out the reasons why a person's name should be removed from the Electors' List together with any documents supporting the application and must be received by the Electoral Officer no later than twenty-one (21) days prior to the date on which the referendum is to be held.
- 73.7 The notice given under section 73.5, shall include the reasons for seeking removal of a name from the Electors List and any supporting documents, and shall, provide notice that a written reply may be sent to the Electoral Officer which must be received no later than ten (10) days prior to the date on which the referendum is to be held.
- 73.8 After consideration of all information and representations relating to amendments to the Electors' List, the Electoral Officer shall add or delete names to the Electors' List, based on whether persons qualify as Electors.
- 73.9 The Electoral Officer shall give a person whose name has been added to or deleted from the Electors' List written notice of the decision and shall post the decision in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer at least five (5) days prior to the date on which the referendum is to be held.
- 73.10 The decision of the Electoral Officer under section 73.8 is final and not subject to appeal.
- 73.11 The Electoral Officer shall, at least five (5) days prior to the date on which the referendum is to be held, post a final Electors' List in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer.
- 73.12 Any person whose name does not appear on the final Electors' List shall not be entitled to vote in the referendum.

#### **74. Preparation of Ballots**

- 74.1 The Electoral Officer shall prepare ballots setting out the question to be asked in the referendum.
- 74.2 The ballots shall indicate that the Elector is to signify his or her choice with an "X" or other mark under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot.

## **75. Entitlement to Vote by Mail-in Ballot**

- 75.1 At least sixty (60) days prior to the date on which the referendum is to be held, the Electoral Officer shall publish a notice in the Westbank newsletter sent to Electors or shall forward to Electors at their contact address a notice setting out the conditions for voting by mail-in ballot.
- 75.2 The notice shall include:
- (a) notification that a copy of this Land Code can be obtained at the Westbank administration building;
  - (b) the places where copies of the Electors' List shall be posted in a public area of the Westbank administration building;
  - (c) a statement that Electors Ordinarily Resident on Westbank Lands who are unable to vote in person on the date of the referendum may at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot;
  - (d) a statement that Electors who are not Ordinarily Resident on Westbank Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them unless they advise the Electoral Officer in writing that they do not want to receive a mail-in ballot at least forty (40) days prior to the date on which the referendum is to be held;
  - (e) the business address, telephone and facsimile number of the Electoral Officer; and
  - (f) the date of the notice.
- 75.3 Any Elector who is Ordinarily Resident on Westbank Lands and who is unable to vote in person on the date of the referendum is to be held may, at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in-ballot.
- 75.4 Any Elector who is not Ordinarily Resident on Westbank Lands and who has not been sent a mail-in ballot package in accordance with section 75.6 may, at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- 75.5 An Elector requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.
- 75.6 The Electoral Officer shall, at least thirty-five (35) days prior the date on which the referendum is to be held, mail to every Elector who is not Ordinarily Resident on Westbank Lands and to every Elector who is Ordinarily Resident on Westbank Lands whose application to vote by mail-in ballot has been received, a mail-in ballot a package consisting of:
- (a) a ballot initialed on the back by the Electoral Officer;



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

75.7 Upon receipt of an application to vote by mail-in ballot under subsections 75.3 and 75.4, the Electoral Officer shall mail a mail-in ballot package described in section 75.6 to the Elector whose name appears on the application.

## **76. Notice of Polls**

76.1 The Electoral Officer shall, at least thirty (30) days prior to the date on which the referendum is to be held, post a notice of polls in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer.

76.2 The notice of polls shall include:

- (a) the date of the referendum;
- (b) the time the polling stations will be open and closed;
- (c) the location of the polling stations;
- (d) the question or questions to be asked in the referendum; and
- (e) a statement that the Electors' List is posted in a public area of the Westbank administration building.

## **77. Voting by Mail-in Ballot**

77.1 An Elector shall vote by mail-in ballot by:

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

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

77.3 An Elector to whom a mail-in ballot was mailed or delivered may vote in person at a polling station if:

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

## **78. Voting at a Polling Station**

78.1 The polling station shall be open from eight o'clock (8:00) in the morning until eight o'clock (8:00) in the evening on the day on which the referendum is to be held.

78.2 The Electoral Officer shall, before the polling station is open, supply the polling station with:

- (a) ballot boxes;
- (b) a sufficient number of ballots;
- (c) the final Electors' List;
- (d) the necessary materials for marking ballots; and
- (e) a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.

- 78.3 The Electoral Officer shall provide a voting compartment inside the polling station where the Electors can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the Polling Site.
- 78.4 The Electoral Officer or Deputy Electoral Officer shall, immediately before the commencement of the poll:
- (a) open the ballot box and, in the presence of any appointed security and other Deputy Electoral Officers, confirm that it is empty and complete a written statement to that effect;
  - (b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
  - (c) place the ballot box in public view for the reception of the ballots.
- 78.5 Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or Deputy Electoral Officer identification issued by the Federal or Provincial government or by Westbank.
- 78.6 Where a person does not have identification they shall be deemed to be properly identified if they are known to the Electoral Officer or Deputy Electoral Officer.
- 78.7 Where a person is properly identified as an Elector, he or she shall sign the sign-in sheet presented by the Electoral Officer or Deputy Electoral Officer and list their membership number on the sign-in sheet.
- 78.8 Upon signing the sign-in sheet, the Elector shall receive a ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- 78.9 The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the Electors' List, a mark opposite the name of every Elector receiving a ballot.
- 78.10 The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
- 78.11 Voting at all referendums shall be by secret ballot.
- 78.12 No Elector may vote by proxy or authorize another person to vote on his or her behalf.
- 78.13 Notwithstanding section 78.12 and section 78.16 any Elector who requires assistance may request that the Electoral Officer or a Deputy Electoral Officer vote on their behalf in their presence in favour of, or against the question, as the Elector directs.
- 78.14 In the event that an Elector votes in the manner described in section 78.13, the Electoral Officer or Deputy Electoral Officer shall note on the Electors' List in the column for remarks opposite the name of such Elector, the fact that the ballot was marked by him or her in the presence of the Elector and the reasons therefore.
- 78.15 Except for voting in the manner provided in section 78.13, the Electoral Officer or Deputy Electoral Officer shall ensure the Elector's privacy while in the voting compartment.

- 78.16 Upon receiving the ballot, each Elector shall:
- (a) immediately proceed to the voting compartment and clearly mark the ballot with an (X) or other mark that clearly indicates the Elector's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
  - (b) fold the ballot, so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or Deputy Electoral Officer; and
  - (c) without unfolding the ballot, have the Electoral Officer or Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Deputy Electoral Officer in the polling station.
- 78.17 An Elector who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Elector with a new ballot initialled by the Electoral Officer or Deputy Electoral Officer.
- 78.18 An Elector who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word "declined" on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.
- 78.19 An Elector forfeits his or her right to vote at the referendum after being provided a ballot by the Electoral Officer or Deputy Electoral Officer if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.
- 78.20 Any Elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.
- 78.21 Save and except for the Electoral Officer, Deputy Electoral Officer or appointed security, no one other than the Electors who are in the process of voting, or in the case of an elderly or physically incapacitated person, an attendant, is permitted to be inside the polling station.
- 78.22 No person shall, on the day the referendum is held, on the premises of the polling site:
- (a) distribute any printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purposes of conducting the referendum;
  - (b) attempt to interfere with or influence any Elector in marking his or her ballot; or
  - (c) attempt to obtain information as to how an Elector is about to vote or has voted.
- 78.23 The Electoral Officer may request appointed security to remove any person from the Polling Site who is in violation of sections 78.22.

**79. Procedures After the Close of the Polls**

79.1 Immediately after the close of the polls, the Electoral Officer shall, in the presence of the Deputy Electoral Officer and any Electors who choose to be present, open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:

- (a) set aside the ballot if:
  - i) it was not accompanied by an Elector declaration form or the Elector declaration form is not signed or witnessed,
  - ii) the name of the person set out in the Elector declaration form is not on the Electors' List,
  - iii) the Electors' List shows that the Elector has already voted; and
- (b) deposit all remaining ballots in the ballot box and place a mark on the final Electors' List.

79.2 Immediately after all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall, examine the ballots and reject all ballots that:

- (a) have not been initialed by the Electoral Officer or Deputy Electoral Officer,
- (b) are marked in such a way that the Elector can be identified; or
- (c) are marked in such a way that the Elector's choice cannot clearly or unambiguously be determined;

79.3 Any rejected ballot shall not be counted as a vote cast.

79.4 The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.

79.5 The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in this Land Code.

79.6 The Electoral Officer shall:

- (a) count the votes given in favour of or against the question or questions submitted in the referendum; and
- (b) prepare and sign a statement in writing of the number of votes so given and of the number of ballots rejected.

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

- (a) publicly declare the results of the referendum;
- (b) prepare a statement in duplicate signed by himself or herself indicating:

- i) the number of Electors who voted,
  - ii) the number of votes cast in favour of and against the question or questions submitted in the referendum,
  - iii) the number of rejected ballots, and
- (c) deliver a copy of the statement to Council.

79.8 The Electoral Officer shall:

- (a) within three (3) days of the date on which the referendum is held post in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer, a written statement signed by the Electoral Officer, showing the number of votes cast in favour of and against the question or questions submitted in the referendum and the number of rejected ballots; and
- (b) publish a written statement, showing the number of votes cast in favour of and against the question or questions submitted in the referendum and the number of rejected ballots, in the Westbank newsletter mailed to Electors or in a separate written notice delivered or mailed to Electors.

## 80. Disposal of Ballots

80.1 The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it for one hundred and twenty (120) days after the date on which the referendum is held or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two witnesses.

## 81. Appeals

81.1 Any Elector may file an appeal in writing to the Director of Operations requesting that the referendum be declared invalid on one or more of the following grounds:

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

81.2 Every notice of appeal shall be filed with the Director of Operations within thirty (30) days from the date upon which the referendum was held together with a non-refundable filing fee of seventy-five dollars (\$75).

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

- 81.4 The Elector appealing the result of the referendum shall deposit with the Director of Operations, together with the appeal, security for costs in the amount of five hundred dollars (\$500).
- 81.5 Upon receipt of the referendum appeal, supporting documents and security for costs, the Director of Operations shall forward the appeal and supporting documents to Council.
- 81.6 Council shall have seven (7) days from the receipt of the material described in section 81.5 to file with the Director of Operations a written reply to the appeal.
- 81.7 Upon expiration of the time to file a reply, the Director of Operations shall forward the appeal, supporting documents and any reply to the Arbitrator to hear and determine the appeal.
- 81.8 The Arbitrator may, at his or her discretion, give directions for:
- (a) fixing the date, time and place for the hearing of the appeal;
  - (b) designating the method of taking evidence, either by sworn declaration or written testimony or both;
  - (c) designating what persons are to be notified and how they are to be served; and
  - (d) dealing with any matter or other thing not otherwise provided for in this section.
- 81.9 No witness shall be required to divulge how he or she voted in the referendum.
- 81.10 The Arbitrator shall provide a written decision together with reasons, confirming or invalidating the referendum results.
- 81.11 The result in the referendum shall not be declared invalid by reason only of any irregularity or non-compliance with the referendum procedures, or any mistake in the use of forms, if it appears to the Arbitrator that the referendum was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the referendum.
- 81.12 The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs of the appeal shall be paid. The Arbitrator shall make disposition of the security for costs furnished under this section, in accordance with their order.
- 81.13 The Arbitrator shall give the person appealing the referendum and Council written notice of the decision and shall post the decision in a public area of the Westbank administration building and other conspicuous place or places on Westbank Lands, as may be determined by the Arbitrator.
- 81.14 The determination of the Arbitrator is final and not subject to appeal.

## 82. Penalty

82.1 In addition to any other penalty or liability, any person who violates any provision of this Part is guilty of an offence and liable upon summary conviction to a fine not exceeding ten thousand dollars (\$10,000).



## PART X - Amendment of Land Code

### 83. Procedure

- 83.1 The process for development and passage of amendments to this Land Code may be initiated by:
- (a) Resolution; or
  - (b) a Petition presented to Council by at least forty (40) Electors, setting out the specific area in this Land Code requested to be amended.
- 83.2 Upon receipt of the Petition or passage of the Resolution under section 83.1, Council shall develop proposed amendments to this Land Code.
- 83.3 Upon completion of the proposed amendments to this Land Code, Council shall schedule a Special Membership Meeting for the purpose of considering the proposed amendments and shall provide notice the Membership.
- 83.4 The notice of the Special Membership Meeting required under section 83.3 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the date, time and place of the Special Membership Meeting;
  - (b) a summary of the proposed amendments to this Land Code; and
  - (c) notification that the full copy of the proposed amendments to this Land Code and this Land Code can be obtained at the Westbank administration building.
- 83.5 Notice shall be provided to the Membership by:
- (a) publication of the notice in the Westbank newsletter, delivered or mailed to Electors or by separate notice delivered or mailed to Electors; and
  - (b) posting of the notice in a public area of the Westbank administration building and such other places as Council may direct.
- 83.6 At the Special Membership Meeting, copies of the proposed amendments to this Land Code and this Land Code shall be available to Members present.
- 83.7 At the Special Membership Meeting, the purpose and provisions of the proposed amendments shall be explained by Council, and Members may ask questions and provide comments.
- 83.8 After the Special Membership Meeting held to consider the proposed amendments to this Land Code, Council shall, within sixty (60) days of the date on which the Special Membership Meeting was held, prepare a final draft of the proposed amendments, taking

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

- 83.9 The proposed amendments to this Land Code must be approved by referendum held under Part IX of this Land Code.
- 83.10 Proposed amendments to this Land Code approved in accordance with this Part come into effect on the date of the referendum.

## **PART XI – General**

### **84. Liability**

- 84.1 Westbank is not liable for anything done or omitted to be done by Canada or any person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.
- 84.2 The Land Code is not, nor shall be interpreted as being, a waiver by Westbank in regard to any liabilities, acts or omissions of Canada.

### **85. Coming into Force**

- 85.1 The provisions of this Land Code come into force on the 1<sup>st</sup> day of July 2003 or the date that the Minister signs the Individual Agreement whichever is later.