

**ANNEX # 1**

**TS'KW'AYLAXW FIRST NATION  
LAND CODE**

**December 14, 2003**

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**Certified**  
*April 26, 2004*  
Date  
*Mel W. Jacobs*  
Mel W. Jacobs, Verifier

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**PREAMBLE**

**WHEREAS** the people of Ts'kw'aylaxw First Nation are represented by the Council of the Ts'kw'aylaxw First Nation;

**AND WHEREAS** the Ts'kw'aylaxw First Nation has a profound relationship with the land;

**AND WHEREAS** the traditional teachings of the Ts'kw'aylaxw First Nation speak of the special obligation for people to care for and respect the land and the wonders of nature created on the land;

**AND WHEREAS** the Ts'kw'aylaxw First Nation wishes to manage its lands and resources, thereby enabling the First Nation to become economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, spiritual, cultural and social development within the context of the Canadian society, rather than having its lands and resources managed on its behalf by Canada under the *Indian Act*;

**AND WHEREAS** the Ts'kw'aylaxw First Nation wishes to manage its lands and resources in accordance with the *Framework Agreement on First Nation Land Management* entered into between Her Majesty in right of Canada and fourteen First Nations on February 12, 1996, as amended;

**NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE TS'KW'AYLAXW FIRST NATION.**

**PART 1  
PRELIMINARY MATTERS**

**1. Title**

1.1 The title of this enactment is the *Ts'kw'aylaxw First Nation Land Code*.

**2. Interpretation**

Definitions

2.1 The following definitions apply in this Land Code:

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

“Community Land” means First Nation Land in which all Members have a common interest;

“Common-law Marriage” means two individuals not married to each other that have lived together as Spouses for a period of not less than five years;

“Council” means the Chief and Council of the First Nation;

“Eligible Voter” means, for the purpose of voting in relation to matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“First Nation” means the Ts'kw'aylaxw First Nation as named in the Act;

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

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51.1 of the Framework Agreement;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between the Government of Canada and fourteen First Nations on February 12, 1996, as amended;

“Immediate Family”, means, in relation to an individual, the individual’s parent, sister, brother, grandchild, child or Spouse;

“Individual Agreement” means the Individual First Nation Agreement made between the First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

"Land Code" means this *Ts'kw'aylaxw First Nation Land Code*;

"Land Management Committee" means the Land Management Committee established under section 14.1;

"Lands Manager" means the employee responsible for the administration of First Nation Land;

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

"Meeting of Members" means a meeting under section 22;

"Member" means an individual whose name appears or is entitled to appear on the First Nation membership list;

"Panel" means the Dispute Resolution Panel established under section 37.1;

"Ratification Vote" means a vote under section 23;

"Resolution" means a resolution of Council enacted under this Land Code;

"Spouse" means an individual who is married to another, whether by custom, religious or civil ceremony, and includes a Spouse by Common-law Marriage;

"Ts'kw'aylaxw Lands Register" means the register maintained by the First Nation under section 17.1; and

"Verifier" means the verifier appointed in accordance with clause 8.1 of the Framework Agreement.

Paramountcy

- 2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the First Nation, this Land Code will prevail to the extent of the inconsistency or conflict.
- 2.3 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement will prevail to the extent of the inconsistency or conflict.

Culture and Traditions

- 2.4 The structures, organizations and procedures established by or under this Land Code will be interpreted in accordance with the culture, traditions and customs of the First Nation, unless otherwise provided.

## Language

- 2.5 The language of the First Nation may be used to clarify the meaning of any provision of this Land Code, if the meaning of that provision is not clear in English.

## Non-abrogation

- 2.6 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the First Nation or to its Members.
- 2.7 This Land Code is not intended to affect the eligibility of the First Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the First Nation has not assumed responsibility for such services or programs.

## Fair Interpretation

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

## Fiduciary Relationships

2.10 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the First Nation and its Members.

## Lands and Interests Included

2.11 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and all rights and resources in and of such land, including:

- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land, to the extent that those resources are under the jurisdiction of Canada or the First Nation; and
- (b) all the interests and licenses granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

2.12 Without limiting the generality of section 2.11, a reference to "land" or "Land" in this Land Code includes:

- (a) any land rights associated with the fishery rights confirmed in *Minute and Resolution of the 6<sup>th</sup> June 1916 of the Report of the Royal Commission on Indian Affairs for the Province of British Columbia*, to the extent to which the allotting Commissioners had authority to allot such fishery rights by Minute of Decision of August 4<sup>th</sup>, 1881 constituting Marble Canyon Reserve No. 3: "The exclusive right of fishing on both banks of Fraser River from Leon Creek downstream to one-quarter mile above 11 Mile Creek on the Lillooet Road"; and
- (b) any water rights reserved or set aside as confirmed in *Minute and Resolution of the 15<sup>th</sup> June, 1916 of the Report of the Royal Commission on Indian Affairs for the Province of British Columbia*, to the extent to which the allotting Commissioners had authority to allot such water rights by Minute of Decision of August 4<sup>th</sup>, 1881:
  - (i) constituting Pavilion Reserve No. 1: "one hundred inches of water from Pavilion Creek";
  - (ii) constituting Leon Creek Reserve No. 2: "the waters of Leon Creek and a small creek a mile lower down the river"; and
  - (iii) constituting Marble Canyon Reserve No. 3: "the waters of two small creeks flowing through this land".

### 3. Authority to Govern

#### Source of Authority

- 3.1 The authority of the First Nation to govern its lands and resources flows from:
- (a) the Creator to the people of the First Nation;
  - (b) from the people of the First Nation to the Council according to the culture, traditions, customs and laws of the First Nation; and
  - (c) from the First Nation's inherent right of self-government and its existing aboriginal rights, including aboriginal title.

### 4. Purpose

#### Purpose

- 4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to First Nation Land and by which the First Nation will exercise authority over those lands.

#### Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when the First Nation approves this Land Code.

### 5. Description of First Nation Land

#### First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code is that land described on a provisional basis according to the Act by the Department of Indian Affairs and Northern Development for the purposes of the First Nation ratification vote on this Land Code and the Individual Agreement as follows:

#### Pavilion Indian Reserve No. 1

- (a) Pavilion Indian Reserve No. 1, being reserve Lands within the Province of British Columbia, Canada In Lillooet District, described as follows:

Lands: Firstly, a parcel bounded by the exterior rectilinear boundaries of Pavilion Indian Reserve No. 1, as shown on Plan 60236 recorded in the Canada Lands Surveys Records, and the ordinary high water mark of the Fraser River and Pavilion Creek as shown on Plan BC145 Canada Lands Surveys Records.

Secondly, that portion of the old Highway No. 12B shown as Parcels D and E on Plan 64598 Canada Lands Surveys Records.

Excepting thereout and therefrom:

- (i) All that portion required for a railway right of way as shown on Plan 1356A Canada Lands Surveys Records;
- (ii) All that portion required for railway as shown on Plan 76837 Canada Lands Surveys Records;
- (iii) A highway right of way shown on Plan 64598 Canada Lands Surveys Records, including that portion of the old road contained within the right of way; and
- (iv) The unsurveyed old Cariboo Wagon Road, also known as the Pavilion – Clinton Road No. 11.

Total lands containing 887 hectares, (2192 acres) more or less.

The above described Reserve Lands are subject to:

- (i) An easement in favour of British Columbia Hydro and Power Authority, registered in the Indian Lands Registry as No. 10677, and as shown on Plan M4062 Canada Lands Surveys Records;
- (ii) An easement in favour of British Columbia Hydro and Power Authority, registered in the ILR as No. 3307-88, and as shown on Plan 53121 Canada Lands Surveys Records;
- (iii) An easement in favour of British Columbia Hydro and Power Authority, registered in the ILR as No. 62241, and as shown on Plan 56508 Canada Lands Surveys Records; and
- (iv) The rights and reservations contained in provincial Order in Council 1938-1036, registered in the Indian Lands Registry as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

Pavilion Indian Reserve No. 1A

- (b) Pavilion Indian Reserve No. 1A, being reserve Lands within the Province of British Columbia, Canada, in the Lillooet District, described as follows:

Lands: a parcel bounded by the exterior boundaries of Pavilion Indian Reserve No. 1A, as shown on Plan 67809 recorded in the Canada Lands Surveys Records.

Excepting thereout and therefrom all that portion required for a road as shown on Plan 51103 Canada Lands Surveys Records.

Total lands containing 15.37 hectares, (37.98 acres) more or less.

The above described Reserve Lands are subject to the rights and reservations contained in the provincial Crown Grant for District Lot 2983, Group 1, Lillooet District.

Leon Creek Indian Reserve No. 2

- (c) Leon Creek Indian Reserve No. 2, being reserve Lands within the Province of British Columbia, Canada in Lillooet District, described as follows:

Lands: a parcel bounded by the exterior rectilinear boundaries of Leon Creek Indian Reserve No. 2, as shown on Plan BC145 recorded in the Canada Lands Surveys Records, partially resurveyed on Plan 68898 Canada Lands Surveys Records and Plan BC335, and the ordinary high water mark of the Fraser River shown on Plan BC145 Canada Lands Surveys Records.

Total lands containing 453 hectares, (1119 acres) more or less.

The above described Reserve Lands are subject to the rights and reservations contained in provincial Order in Council 1938-1036, registered in the Indian Lands Registry as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

Leon Creek Indian Reserve No. 2A

- (d) Leon Creek Indian Reserve No. 2A, being reserve Lands within the Province of British Columbia, Canada in Lillooet District, described as follows:

Lands: a parcel bounded by the exterior rectilinear boundaries of Leon Creek Indian Reserve No. 2A, as shown on Plan BC335 recorded in the Canada Lands Surveys Records, partially resurveyed on Plan 68898 Canada Lands Surveys Records.

Total lands containing 176 hectares, (436 acres) more or less.

The above described Reserve Lands are subject to the rights and reservations contained in provincial Order in Council 1938-1036, registered in the Indian Lands Registry as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

Marble Canyon Indian Reserve No. 3

- (e) Marble Canyon Indian Reserve No. 3, being reserve Lands within the Province of British Columbia, Canada in the Kamloops Division of Yale District, described as follows:

Lands: a parcel bounded by the exterior boundaries of Marble Canyon Indian Reserve No. 3, as shown on Plan BC145 recorded in the Canada Lands Surveys Records, partially resurveyed on Plan 68008 Canada Lands Surveys Records, Plan 36329 Canada Lands Surveys Records, and Plan 36366 Canada Lands Surveys Records.

Excepting thereout and therefrom:

- (i) A highway right of way shown on Plan 58334 Canada Lands Surveys Records, including that portion of the old road contained within the right of way; and
- (ii) An unsurveyed old road shown on Plan 58334 Canada Lands Surveys Records as Parcels 1 to 4 inclusive.

Total lands containing 249 hectares, (615 acres) more or less.

The above described Reserve Lands are subject to:

- (i) An easement in favour of British Columbia Hydro and Power Authority, registered in the Indian Lands Registry as No. 10677, and as shown on Plan M4017 Canada Lands Surveys Records; and
- (ii) The terms and conditions set out Federal Order in Council 1930-208, registered in the Indian Lands Registry as No 15203, describing how Indian Reserves within the Railway Belt were to be excluded from the transfer of the Railway Belt to the Province of BC.

Pavilion Indian Reserve No. 3A

- (f) Pavilion Indian Reserve No. 3A, being reserve Lands within the Province of British Columbia, Canada in Kamloops Division of Yale District, described as follows:

Lands: a parcel bounded by the exterior rectilinear boundaries of Pavilion Indian Reserve No. 3A, as shown on Plan 36329 recorded in the Canada Lands Surveys Records, partially resurveyed on Plan 68008 Canada Lands Surveys Records.

Excepting thereout and therefrom a highway right of way shown on Plan 58334 Canada Lands Surveys Records.

Total lands containing 256 hectares, (633 acres) more or less.

The above described Reserve Lands are subject to the terms and conditions set out Federal Order in Council 1930-208, registered in the Indian Lands Registry as No 15203, describing how Indian Reserves within the Railway Belt were to be excluded from the transfer of the Railway Belt to the Province of BC.

Pavilion Indian Reserve No. 4

- (g) Pavilion Indian Reserve No. 4, being reserve Lands within the Province of British Columbia, Canada, in the Kamloops Division of Yale District, described as follows:

Lands: a parcel bounded by the exterior boundaries of Pavilion Indian Reserve No. 4, as shown on Plan 36366 recorded in the Canada Lands Surveys Records, partially resurveyed on Plan 68008 Canada Lands Surveys Records.

Excepting thereout and therefrom:

- (i) A highway right of way shown on Plan 58334 Canada Lands Surveys Records, including that portion of the old road contained within the right of way; and
- (ii) An unsurveyed old road shown on Plan 58334 Canada Lands Surveys Records as Parcels 5.

Total lands containing 43 hectares, (105 acres) more or less.

The above described Reserve Lands are subject to:

- (i) An easement in favour of British Columbia Hydro and Power Authority, registered in the Indian Lands Registry as No. 10677, and as shown on Plan M4017 Canada Lands Surveys Records; and
- (ii) The terms and conditions set out Federal Order in Council 1930-208, registered in the Indian Lands Registry as No 15203, describing how Indian Reserves within the Railway Belt were to be excluded from the transfer of the Railway Belt to the Province of BC.

Ts'kw'aylaxw Indian Reserve No. 5

- (h) Ts'kw'aylaxw Indian Reserve No. 5, being reserve Lands within the Province of British Columbia, Canada, in Lillooet District, described as follows:

Lands: a parcel bounded by the exterior boundaries of Ts'kw'aylaxw Indian Reserve No. 5, shown as Lot 5263 on Plan 67719 recorded in the Canada Lands Surveys Records.

Total lands containing 16 hectares, (40 acres) more or less.

The above described Reserve Lands are subject to the rights and reservations contained in the provincial Crown Grant for District Lot 5263, Lillooet District.

#### Additional Lands

- 5.2 The following additional lands may be made subject to this Land Code if they are, or become, reserve lands and the following conditions are met:
- (a) lands owned jointly by the First Nation and one or more other First Nations, if the First Nations agree upon a joint management scheme for those lands; and
  - (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for First Nation use.
- 5.3 Section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 25.1.
- 5.4 If the relevant conditions of section 5.2 are met, Council will call a Meeting of Members and after receiving input at that meeting may enact a Law declaring the land or interest to be subject to this Land Code.

## PART 2 FIRST NATION LEGISLATION

### 6. Law-Making Powers

#### Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) development, conservation, protection, management, use and possession of First Nation Land;
  - (b) interests and licenses in relation to First Nation Land;
  - (c) any matter necessary to give effect to this Land Code; and
  - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

#### Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to First Nation Land including:

- (a) zoning and land use planning;
- (b) regulation, control, authorization and prohibition of access to, and the occupation and development of land;
- (c) creation, regulation and prohibition of interests and licenses;
- (d) environmental assessment and protection;
- (e) provision of local services and the imposition of user charges;
- (f) provision of services for the resolution, outside the courts, of disputes;
- (g) authorization and regulation of subdivisions and the conduct of surveys;
- (h) setting aside and regulation of parks, parklands, and recreational lands;
- (i) setting aside and regulation of heritage land;
- (j) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;
- (k) creation of management and administrative bodies or agencies;
- (l) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (m) public nuisance and private nuisance;
- (n) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (o) construction and maintenance of boundary and internal fences;
- (p) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (q) regulation of traffic and transportation; and
- (r) culture and harvest of medicinal plants and food plants.

**Administration**

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

**Delegation**

- 6.4 Notwithstanding section 6.3 Council may by enacting a Law, delegate administrative authority in relation to a Law enacted under section 6.1 to an individual or a body established or authorized under this Land Code.
- 6.5 Any power, authority or discretion exercised by Council, the Land Management Committee or other individual or body established or authorized under this Land Code:
- (a) will be exercised on behalf of, and for the benefit and protection of, the First Nation; and
  - (b) does not represent any adoption or acceptance of a duty to act for the benefit or protection of an individual or holder of rights or interests.

**7. Law-Making Procedure****Introduction of Laws**

- 7.1 A proposed Law may be introduced at a meeting of Council by:
- (a) a member of Council;
  - (b) a representative of the Land Management Committee; or
  - (c) a representative of any other body composed of Members, that may be authorized by Council to do so.

**Tabling and Posting of Proposed Laws**

- 7.2 At least 15 working days before a proposed Law is voted upon by Council, the proposed Law will be:
- (a) tabled at a meeting of Council;
  - (b) deposited with the Chair of the Land Management Committee; and
  - (c) posted in the First Nation administration offices and other public places on First Nation Land.

Urgent Matters

- 7.3 Council may enact a Law without the preliminary steps required under section 7.2 if Council is reasonably of the opinion that the Law is required urgently to protect First Nation Land or Members.
- 7.4 A Law enacted under section 7.3 will be deemed to have been repealed and to have no force and effect 28 days after its enactment, but may be re-enacted in accordance with section 7.2.

Approval of Law by Council

- 7.5 A Law is enacted if it is approved by Council.

Certification of Laws

- 7.6 The original copy of a Law or Resolution relating to First Nation Land will be signed by the quorum of Council present at the meeting at which the Law is enacted.

Law Coming Into Force

- 7.7 A Law comes into force on:
- (a) the date it is enacted; or
  - (b) such other date as may be set by the Law.

**8. Publication of Laws**

Publication

- 8.1 All Laws will be published in the minutes of Council.

Posting Laws

- 8.2 Within 10 working days after a Law has been enacted, Council will post a copy of the Law in the First Nation administration offices.

Register of Laws

- 8.3 Council will cause to be kept at the First Nation administration offices a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed and are no longer in force.
- 8.4 Any person may, during regular business hours at the First Nation administration offices, have reasonable access to the register of Laws.

Copies for Any Person

- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.
- 8.6 Section 8.5 does not preclude Council or a body designated by Council from making a copy of a Law or Resolution available to Members without fee.

### **PART 3 LAND ADMINISTRATION**

#### **9. Financial Management**

Application

- 9.1 This part applies only to financial matters in relation to First Nation Land administered under this Land Code.

Establishment of Bank Accounts

- 9.2 Council will maintain one or more financial accounts in a financial institution and will deposit in those accounts:
- (a) transfer payments received from Canada for the management and administration of First Nation Land;
  - (b) moneys received by the First Nation from the grant or disposition of interests or licenses in First Nation Land;
  - (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
  - (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licenses in First Nation land; and
  - (e) any other land revenue received by the First Nation from First Nation Land.
- 9.3 Council will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which Council, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to the Members within the meaning of clause 5.2(d) of the Framework Agreement.

Financial Policy

- 9.4 The First Nation may, in accordance with this Land Code, adopt a financial policy to further manage moneys related to First Nation Land.

Signing Officers

- 9.5 Council will authorize at least three persons, at least one of whom will be a member of Council and one of whom will be the Lands Manager, to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under section 9.2.
- 9.6 A cheque or other bill of exchange or transfer drawn on a financial account maintained under section 9.2 must be signed by two persons authorized under section 9.5.
- 9.7 A payee will not be a signor under section 9.6.
- 9.8 Prior to an authorization under section 9.5 taking effect, every signing officer will complete such security screening process as may be prescribed by Council.

Fiscal Year

- 9.9 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

- 9.10 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 9.11 Prior to adopting a budget referred to in section 9.10, Council will consult with the Land Management Committee.

Procedure

- 9.12 After adopting a land management budget or supplementary budget, Council will as soon as practicable:
- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and
  - (b) make a copy of the budget or supplementary budget available at the First Nation administration offices for inspection by Members during regular business hours.

## If No Budget

- 9.13 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

## Expenditures

- 9.14 Council may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an adopted budget.

## Determination of Revenues

- 9.15 Council will establish a process for determining:
- (a) fees and rent for interests and licenses in First Nation Land; and
  - (b) fees for services provided in relation to First Nation Land and compliance with this Land Code.

**10. Financial Records**

## Financial Records

- 10.1 The First Nation will keep financial records in accordance with generally accepted accounting principles.

## Offences

- 10.2 Any person who has control of the financial records of the First Nation and who:
- (a) impedes or obstructs anyone from exercising a right to inspect those records; or
  - (b) fails to give all reasonable assistance to anyone exercising a right to inspect those financial records,
- is guilty of an offence under this Land Code.

## Preparation of Financial Statement

- 10.3 Not more than 90 days after the end of each fiscal year Council will prepare a financial statement in comparative form containing:
- (a) a balance sheet;

- (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
- (c) any other information necessary for a full and fair presentation of the financial position of the First Nation in relation to First Nation Land.

#### Consolidated Accounts

- 10.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

### 11. Audit

#### Appointment of Auditor

- 11.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.
- 11.2 An auditor appointed for other First Nation audits may be appointed under section 11.1.

#### Vacancy in Office

- 11.3 If a vacancy occurs during the term of an auditor, Council will forthwith appoint a new auditor for the remainder of the former auditor's term.

#### Remuneration

- 11.4 An appointment under section 11.1 will contain a statement approving the remuneration to be paid to the auditor.

#### Duty of Auditor

- 11.5 The auditor will, within 120 days after the end of the First Nation's fiscal year, prepare and submit to Council an audit report on the First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the First Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

#### Access to Records

- 11.6 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

11.7 Council will present the auditor's report at a Meeting of Members.

**12. Annual Report**

Publish Annual Report

12.1 Council will prepare and table with the Land Management Committee an annual report on First Nation Land management.

12.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;
- (b) a copy and explanation of the audit report as it applies to First Nation Lands; and
- (c) such other matters as may be directed by Council or reasonably requested by the Land Management Committee.

**13. Access to Financial Information**

Copies for Members

13.1 A Member may, during normal business hours at the First Nation administrative offices, have reasonable access to:

- (a) the auditor's report; and
- (b) the annual report.

13.2 A Member may, during normal business hours at the First Nation administration offices, upon payment of a reasonable fee set by Resolution, obtain a copy of the auditor's report or annual report.

**14. Land Management Committee**

Land Management Committee Established

14.1 A Land Management Committee is hereby established to:

- (a) assist with the development of a First Nation Land administration system;
- (b) advise Council and First Nation staff on matters respecting First Nation Land;

- (c) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
- (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to Council on the resolution of such issues;
- (e) assist in the exchange of information regarding First Nation Land matters between Members and Council;
- (f) oversee community consultations under this Land Code; and
- (g) perform such other duties and functions as Council may direct.

#### Development of Land Related Rules and Procedures

- 14.2 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the Members and the Land Management Committee, establish rules and procedures to address the following matters:
- (a) environmental protection and assessment;
  - (b) resolution of disputes in relation to First Nation Land;
  - (c) land use planning and zoning; and
  - (d) section 36 respecting spousal property and the policy upon which that section is based.

#### Implementation of Policies

- 14.3 Rules and procedures developed in accordance with section 14.2 will be given full and fair consideration by Council for implementation as Laws, policies or amendments to this Land Code.

#### Internal Procedures

- 14.4 The Land Management Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 14.5 Subject to Council requirements in relation to financial obligations, the Land Management Committee may:
- (a) establish policies for the remuneration of, and recovery of expenses incurred by, Land Management Committee members; and

- (b) establish programs for the orientation and education of Land Management Committee members.

14.6 The Land Management Committee will take reasonable measures to consult with elders and youth in the conduct of its meetings and general affairs.

## 15. Land Management Committee Membership

### Composition

15.1 The Land Management Committee will be comprised of a minimum of seven Eligible Voters.

### Eligibility

15.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be elected to the Land Management Committee, except for an Eligible Voter convicted of a corrupt practice in connection with an election.

### Selection of Land Management Committee Members

15.3 The members of the Land Management Committee are to be selected as follows:

- (a) a member of Council appointed by Council; and
- (b) six members elected by the Members.

15.4 Council will enact a Law to establish the procedure for election of Land Management Committee members, including such transitional rules as may be necessary for the members of the first Land Management Committee.

### Term of Office and Vacancy

15.5 A member of the Land Management Committee will serve in office until that member:

- (a) resigns in writing;
- (b) becomes ineligible to hold office under section 15.2;
- (c) ceases to be a Member;
- (d) is absent from three consecutive meetings of the Land Management Committee for a reason other than illness or incapacity without being authorized in writing to be absent by the Chair of the Land Management Committee; or
- (e) dies or becomes mentally incompetent.

- 15.6 The members of the Land Management Committee will accept the duties and obligations of membership and agree to observe and carry out those duties and obligations according to the terms and conditions of this Land Code.
- 15.7 The members of the Land Management Committee will make best efforts to demonstrate the following attributes:
- (a) commitment to the First Nation, its lands and its Members;
  - (b) impartiality, honesty and integrity;
  - (c) knowledge of land management issues; and
  - (d) confidentiality.

Filling of Vacancy

- 15.8 Where the office of an elected member of the Land Management Committee becomes vacant more than 90 days before the date when another election of members would ordinarily be held:
- (a) The nominee, if any and if willing to serve on the Land Management Committee, having the next highest count of votes without being declared elected at the immediately preceding Land Management Committee election will be declared elected to the Land Management Committee; or
  - (b) a special election may be held in accordance with this Land Code.
- 15.9 Where the office of the member of the Land Management Committee appointed under section 15.3(a) becomes vacant, Council will forthwith appoint a replacement.

**16. Chair of the Land Management Committee**

Chair

- 16.1 The member of the Land Management Committee will select a Chair from among their members.

Co-chair

- 16.2 The members of the Land Management Committee will appoint a Co-chair from among their members who will perform the functions of the Chair if the Chair is unavailable or unable to perform the functions of office.

Alternate

- 16.3 If the Chair and Co-chair are unavailable or unable to perform the functions of office, the Land Management Committee will appoint another member of the Land Management Committee to serve as interim Chair.

Duties of the Chair

- 16.4 The duties of the Chair are to:
- (a) chair meetings of the Land Management Committee;
  - (b) ensure that financial statements relating to all activities of the Land Management Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with Council;
  - (c) report to Council and the Members on the activities of the Land Management Committee;
  - (d) monitor the presentation of audited annual financial statements under section 11.7;
  - (e) ensure compliance with the requirements of clause 15.5(d); and
  - (f) perform such other duties as Council or the Land Management Committee may reasonably prescribe.

**17. Registration of Interests and Licenses**

Ts'kw'aylaxw Lands Register

- 17.1 Council will maintain a Ts'kw'aylaxw Lands Register in, at a minimum, the same form and with the same contents as the First Nation Lands Register.
- 17.2 An interest or license in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Ts'kw'aylaxw Lands Register.

Registration of Consent or Approval

- 17.3 No instrument that requires the consent of Council or approval by the Land Management Committee may be registered in the Ts'kw'aylaxw Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.

## Duty to Deposit

- 17.4 Every person who receives a grant of an interest or license in First Nation Land from a Member will deposit an original copy of the instrument in the Ts'kw'aylaxw Lands Register.
- 17.5 Council will ensure that a copy of the following instruments is deposited in the Ts'kw'aylaxw Lands Register:
- (a) a grant of an interest or license in First Nation Land;
  - (b) a transfer or assignment of an interest in First Nation Land;
  - (c) a land use plan or subdivision plan; and
  - (d) this Land Code and any amendment to this Land Code.
- 17.6 Notwithstanding section 17.1, nothing precludes Council from enacting a Law providing for maintenance of the Ts'kw'aylaxw Lands Register in such other land registry system or facility as may meet the requirements of the Ts'kw'aylaxw Lands Register.
- 18. First Nation Lands Register**
- 18.1 Council will ensure that a duplicate copy of any instrument deposited in the Ts'kw'aylaxw Lands Register is deposited in the First Nation Lands Register.

**PART 4  
COMMUNITY CONSULTATION**

**19. Rights of Eligible Voters**

## Rights of Eligible Voters

- 19.1 An Eligible Voter is eligible to vote in a Ratification Vote.

**20. Approval by Land Management Committee**

Approval by Land Management  
Committee

- 20.1 Approval by majority vote of the Land Management Committee must be obtained for:
- (a) a land use plan;
  - (b) amendment of a land use plan;

- (c) a grant or disposition of an interest or license in First Nation Land for a term exceeding 25 years;
- (d) renewal of a grant or disposition of an interest or license in First Nation Land for a term exceeding 25 years, or that would have the effect of extending the original grant or disposition for a term exceeding 25 years;
- (e) a grant or disposition of natural resources on First Nation Land exceeding a term of one year;
- (f) a charge or mortgage of a leasehold interest on Community Land for a term exceeding 25 years;
- (g) a law enacted under section 36; and
- (h) any Law or class of Law that Council, by Resolution, declares to be subject to this section.

20.2 Council will, in consultation with the Land Management Committee develop laws, policies or procedures for:

- (a) approvals under section 20.1, including timelines for decision-making; and
- (b) regular review of grants or dispositions issued under section 20.1(c), (d) and (e).

## 21. Community Consultation

### Meeting with Land Management Committee

21.1 Council will call a meeting of the Land Management Committee to receive input prior to introducing a Law in relation to:

- (a) a land use plan;
- (b) a subdivision plan;
- (c) declaring land or an interest in land referred to in section 5.2 or 5.3 to be subject to this Land Code;
- (d) heritage land;
- (e) environmentally sensitive property;
- (f) environmental assessment;

- (g) the transfer or assignment of interests in First Nation Land;
- (h) spousal property under section 36; and
- (i) any other matter or class of matters that Council by Resolution declares to be subject to this section.

#### Process to Implement Laws

- 21.2 Council will, in consultation with the Land Management Committee and within a reasonable time after this Land Code takes effect, establish a process to develop and implement the Laws referred to in section 21.1.
- 21.3 Nothing in this Land Code precludes Council or the Land Management Committee from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts.

## 22. Meeting of Members

#### Notice of Meeting

- 22.1 Council will give written notice of a Meeting of Members that:
- (a) specifies the date, time and place of the meeting; and
  - (b) contains a brief description of the matters to be discussed at the meeting.

#### Manner of Notice

- 22.2 Written notice of a Meeting of Members under section 22.1 will be given by:
- (a) posting the notice in public places on First Nation Land at least 15 working days before the meeting;
  - (b) mailing the notice to Eligible Voters at their last known address at least 15 working days before the meeting; and
  - (c) such additional methods as Council may consider appropriate.

## 23. Ratification Votes

#### Approval by Ratification Vote

- 23.1 Approval by a Ratification Vote must be obtained for:
- (a) voluntary exchange of First Nation Land under section 25;

- (b) amendment of the Individual Agreement that reduces the amount of funding provided by Canada;
- (c) amendment of this Land Code;
- (d) expropriation of a Member's interest under section 24.7; and
- (e) enactment of a Law or class of Laws that Council, by Resolution, declares to be subject to this section.

Individual Agreement with Canada

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

Ratification Process

23.3 A Ratification Vote required under this Land Code will be conducted, with any appropriate modifications necessary in the circumstances, in the same manner as that provided in the *Ts'kw'aylaxw First Nation Community Ratification Process* dated for reference December 14, 2003 that was used to ratify this Land Code.

Minimum Requirements for Approval

23.4 A matter will be approved by a Ratification Vote if a majority of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote in favour of the matter.

No Verifier

23.5 A Verifier is not required in a Ratification Vote.

## PART 5 PROTECTION OF LAND

### 24. Expropriation by the First Nation

Rights and Interests That May Be Expropriated

24.1 An interest or license in First Nation Land or in any building or other structure on such land may be expropriated by the First Nation in accordance with:

- (a) the Framework Agreement; and
- (b) any Law enacted in accordance with section 24.3 of this Land Code.

## Community Purposes

- 24.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.

## Expropriation Law

- 24.3 Council will enact a Law respecting the rights and procedures for expropriation, including provisions in relation to:
- (a) taking possession of an expropriated interest or license;
  - (b) transfer of an expropriated interest or license;
  - (c) notice of an expropriation;
  - (d) service of a notice of expropriation;
  - (e) entitlement to compensation;
  - (f) determination of the amount of compensation; and
  - (g) the method of payment of compensation.

## Public Report

- 24.4 Before the First Nation expropriates an interest or license, Council will:
- (a) prepare a public report on the reasons for the expropriation;
  - (b) post a copy of the report in the First Nation administration offices; and
  - (c) mail a copy of the report to each Eligible Voter at their last known address.

## Rights That May Not Be Expropriated

- 24.5 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the First Nation.

## Acquisition by Mutual Agreement

- 24.6 The First Nation may expropriate only after a good faith effort to acquire, by mutual agreement, the interest or license in First Nation Land.

Approval by Ratification Vote

24.7 An expropriation of a Member's interest has no effect unless the proposed expropriation receives prior approval by a Ratification Vote.

Compensation for Rights and Interests

24.8 The First Nation will, in accordance with its Laws and the Framework Agreement:

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

Compensation Calculation

24.9 The total value of compensation payable under section 24.8(b) will be based on:

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

Fair Market Value

24.10 The fair market value of an expropriated interest or license is equivalent to the amount that would have been paid for the interest or license if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

24.11 Subject to section 24.13, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.

24.12 The sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

24.13 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

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

## 25. Voluntary Land Exchange and Protection

### Conditions for a Land Exchange

25.1 The First Nation may agree with another party to exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

### No Effect

25.2 A land exchange is of no effect unless it receives approval by a Ratification Vote.

### Land to be Received

25.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:

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

### Negotiators

25.4 A person who negotiates a land exchange agreement on behalf of the First Nation will be designated by Resolution.

### Additional Compensation

25.5 The First Nation may receive additional compensation, including money or other land in addition to the land referred to in section 25.3.

25.6 Such other land may be held by the First Nation in fee simple or otherwise.

### Federal Consent

25.7 Before the First Nation concludes a land exchange agreement, it must receive a written statement from Canada stating that Her Majesty in right of Canada:

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

Information to Members

25.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in section 25.2, Council or the Land Management Committee will provide the following information to Members:

- (a) a description of the First Nation Land to be exchanged;
- (b) a description of the land to be received by the First Nation;
- (c) a description of any additional compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in sections 25.3(a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the statement from Canada required under section 25.7.

Process of Land Exchange

25.9 A land exchange agreement will provide that:

- (a) the other party to the exchange will transfer to Canada the title to the land that is to be set apart as a reserve;
- (b) Council will pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and
- (c) a copy of the instruments transferring title to the land will be registered in the Ts'kw'aylaxw Lands Register and the First Nation Lands Register.

**PART 6  
CONFLICT OF INTEREST**

**26. Conflict of Interest**

Application of Rules

26.1 This Part applies to:

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

Duty to Report and Abstain

26.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
- (b) take no part in any deliberations on the matter; and
- (c) take no part in a vote on the matter.

Common Interests

26.3 Section 26.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Members

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

Inability to Act

- 26.5 If a board, committee or other body is unable to act upon a matter due to a conflict of interest, the matter will be referred to Council and Council may decide the matter.

Disputes

- 26.6 Determination of whether a breach of this section has occurred may be referred to the Panel.

**PART 7  
INTERESTS AND LICENSES IN LAND**

**27. Limits on Interests and Licenses**

All Dispositions in Writing

- 27.1 An interest in, or license to use, First Nation Land may only be created, granted, disposed of, assigned or transferred by an instrument issued in accordance with this Land Code.

Standards

- 27.2 Council may, after full and fair consideration of any recommendations made by the Land Management Committee, establish mandatory standards, criteria and forms for interests and licenses in First Nation Land.

Improper Transactions Void

- 27.3 A deed, lease, contract, document, agreement or instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an interest or license in First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

Non-Members

- 27.4 A person who is not a Member may hold a lease, license or permit in relation to First Nation Land.

Grants to Non-Members

- 27.5 The written consent of Council is a requirement of a grant or disposition of a lease, license or permit in relation to First Nation Land to a person who is not a Member.

**28. Existing Interests**

## Continuation of Existing Interests

- 28.1 An interest or license in First Nation Land, whether held by a Member or a person other than a Member, that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or license.
- 28.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any interest or license issued or allotted in error, by mistake or by fraud.

**29. New Interests and Licenses**

## Authority to Make Dispositions

- 29.1 Subject to this Land Code, Council may grant:
- (a) interests and licenses in Community Land; and
  - (b) permits and licenses to take resources from Community Land.

## Conditional Grant

- 29.2 The grant of an interest, license or permit may be made subject to conditions.

**30. Permanent Interests**

## Application

- 30.1 This section applies to Certificates of Possession allotted under the *Indian Act* and to equivalent tenures that create a permanent interest under this Land Code.
- 30.2 Subject to section 27, a permanent interest in relation to First Nation Land is an interest that entitles a Member holding that interest to:
- (a) permanent possession of the land;
  - (b) develop and benefit from the resources of the land;
  - (c) grant subsidiary interests and licenses in the land, including leases, permits, easements and rights of way;
  - (d) transfer, devise or otherwise dispose of the land to another Member;

- (e) grant permits to take resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances; and
- (f) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

30.3 No person other than a Member may hold a permanent interest in First Nation Land.

### **31. Allocation of Land**

#### Allocation of Residential Lots

31.1 Council may, by lease, rental arrangement or other disposition, allocate lots of available land to Members for residential purposes in accordance with Laws enacted by Council.

31.2 Council may not allocate a residential lot to a person who is not a Member.

### **32. Transfer and Assignment of Interests**

#### Transfer of Interests

32.1 Council may enact Laws providing that a Member holding an interest in First Nation Land may transfer, devise or otherwise dispose of that interest to another Member.

32.2 Except for transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under section 35:

- (a) there will be no transfer or assignment of an interest in First Nation Land without the written consent of Council; and
- (b) the grant of an interest or license is deemed to include section 32.2(a) as a condition of any subsequent transfer or assignment.

### **33. Limits on Mortgages and Seizures**

#### Protections

33.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply on First Nation Land.

#### Mortgage of Member's Interest

33.2 The interest of a Member in First Nation Land other than a leasehold interest may be subject to a mortgage or charge only to the First Nation.

**Mortgages of Leasehold Interests with Consent**

33.3 A leasehold interest may be subject to a charge or mortgage only with the written consent of Council.

**Default in Mortgage of Leasehold**

33.4 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the charge or mortgage received the written consent of Council;
- (b) the charge or mortgage received Land Management Committee approval where required under section 20.1(f);
- (c) the charge or mortgage was registered in the First Nation Lands Register; and
- (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.

**Power of Redemption**

33.5 If Council exercises its power of redemption with respect to a leasehold interest, the First Nation becomes the lessee of the land and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

**34. Residency and Access Rights****Right of Residence**

34.1 The following persons have a right to reside on First Nation Lands:

- (a) a Member;
- (b) a Member who has been allocated a residential lot by Council;
- (c) a Spouse and children of a Member referred to in section 34.1(b);
- (d) a Member with a registered interest in First Nation Land; and
- (e) a lessee or permittee in accordance with the provisions of the instrument granting the lease or permit.

34.2 Notwithstanding section 34.1, a right of residence under that section does not imply any financial obligation on the part of the First Nation.

## Right of Access

34.3 The following persons have a right of access to First Nation Land:

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

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

## Trespass

34.5 It is an offence for any person to enter, reside or remain on First Nation Land other than in accordance with a right of residence or access under this Land Code.

## Civil Remedies

34.6 Subject to a Law under section 6.2(1), all civil remedies for trespass are preserved.

**35. Transfers on Death or Mental Incompetence**

## Right of Widow or Widower

35.1 In the event that:

- (a) a Member holding an interest in First Nation Land dies intestate and is survived by a Spouse or dependant who do not hold a registered interest in that land; or

- (b) a Member holding an interest in First Nation Land is declared incompetent due to mental incapacity,

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's interest is disposed of under this section.

- 35.2 A Spouse or dependant referred to in section 35.1, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's interest, and Council will, subject to this Land Code, decide the application on its merits.

#### Location of Family Members

- 35.3 In the event that:

- (a) no other provision has been made by a Member referred to in section 35.1 for the disposition of the interest in the First Nation Land;
- (b) the Member's Spouse or dependant does not within a reasonable time make application under section 35.2; or
- (c) a member of the Member's Immediate Family disputes the continued residence on and use of the land by the Member's Spouse or dependant,

Council will take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Panel if requested, recommend who is to receive the interest in the land.

#### Meeting of Members

- 35.4 If a Member referred to in section 35.1 has no other Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the interest, Council will decide who is to receive the interest and may call a Meeting of Members to provide advice on the disposition of the interest.
- 35.5 Subject to this Land Code, Council will make best efforts to implement a recommendation made under section 35.3 or 35.4.

### **36. Spousal Property Law**

#### **Development of Rules and Procedures**

36.1 Within twelve months after this Land Code comes into effect Council will enact a spousal property Law providing rules and procedures applicable on the breakdown of a marriage to:

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

#### **Enactment of Rules and Procedures**

36.2 The rules and procedures contained in the spousal property Law will be developed in consultation with the Members and the Land Management Committee.

#### **General Principles**

36.3 The rules and procedures developed under section 36.2 will take into account the following general principles:

- (a) a child of the Spouses should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of that child;
- (b) the Spouses should resolve spousal property matters by contract or agreement;
- (c) each Spouse should have an equal right to possession of the matrimonial home;
- (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common; and
- (e) the rules and procedures will not discriminate on the basis of sex.

#### **Interim Law**

36.4 Council may enact an interim spousal property Law at any time within the twelve month period prescribed in section 36.1.

36.5 An interim Law enacted under section 36.4 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 36.1.

**PART 8  
DISPUTE RESOLUTION**

**37. Dispute Resolution Panel**

Panel Established

37.1 A Dispute Resolution Panel is hereby established to hear and resolve disputes in relation to First Nation Land.

Representation

37.2 Council will, for the purpose of identifying eligible members of a Panel, establish an eligibility list containing the names of Eligible Voters who are representative of the community, including non-resident Members.

No Remuneration

37.3 Unless Council by Resolution provides otherwise, members of a Panel will receive no remuneration.

**38. Dispute Resolution Procedure**

Disputes

38.1 A dispute related to First Nation Land may be referred by the parties to the dispute to a Panel for resolution or opinion.

Prior Disputes

38.2 For greater certainty, disputes that originated before this Land Code comes into effect may be referred to the Panel.

Optional Process

38.3 Referral of a dispute to the Panel is optional and all other civil remedies will continue to be available to a party to the dispute.

Informal Resolution of Disputes

38.4 The First Nation intends that wherever possible, a dispute in relation to First Nation Land will be resolved through informal discussion by the parties to the dispute and nothing in this part will be construed to limit the ability of any person to settle a dispute without recourse to this Part.

**Application Procedures**

38.5 Referral of a dispute to the Panel will be made in accordance with procedures established by Council in consultation with the eligible members of a Panel and the Land Management Committee.

**Limitation Period**

38.6 The limitation period for referring a dispute to a Panel is:

- (a) thirty days after the date the decision, act or omission that is the subject of the dispute occurred; or
- (b) in the case of a dispute under section 35, 12 months after the date of the final decision of Council under that section.

38.7 A Panel will be made up of three panelists selected by lot.

38.8 The Chair of the Land Management Committee will make the selection referred to in section 38.7.

38.9 The panelists selected under section 38.7 will select a chair from among themselves.

**39. Impartiality****Duty to Act Impartially**

39.1 The Panel will act impartially and without bias or favour to any party in a dispute.

**Offence**

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

**Rejection of Application**

39.3 In addition to any other penalty provided for an offence under section 39.2, the Panel may refuse an application to hear a dispute if the Panel reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Panel's decision.

**40. Powers of Panel****Powers of Panel**

40.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;

- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased; or
- (d) refer the matter or dispute for reconsideration.

Rules of Panel

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

Professional Services

~~40.3 The Panel may retain the services of professionals to assist it in fulfilling its functions, in which case it will make best efforts to use professional services available in the community.~~

Decisions

40.4 The Panel will give written reasons for a decision.

40.5 Written decisions of the Panel will be signed by the chair of the Panel.

40.6 Subject to section 40.7, a decision of the Panel is binding.

Appeal of Decision

40.7 Subject to any exception established by a Law a decision of the Panel may be appealed to the Federal Court of Canada.

Costs

40.8 Unless otherwise ordered by a Panel or an appellate court, the parties to a dispute will bear their own costs.

Alternate Forums

40.9 Nothing in this part precludes Council or the Land Management Committee from establishing additional processes for resolving disputes under this Part, which processes may include facilitated discussion, mediation or arbitration.

**PART 9  
OTHER MATTERS**

**41. Liability**

Liability Insurance

41.1 Council will arrange for, maintain and pay insurance coverage for:

- (a) liability of the First Nation in relation to First Nation Land; and
- (b) personal liability of the First Nation's officers and employees for acts done in good faith while engaged in carrying out duties related to First Nation Land.

Extent of Coverage

41.2 Council will determine the extent of insurance coverage under section 41.1.

**42. Enforcement**

Application of the Criminal Code

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

Justices of the Peace

42.2 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

Provincial Courts

42.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court as the case may require.

**43. Amendments to Land Code**

Ratification Vote

43.1 An amendment of this Land Code must receive prior approval by Ratification Vote.

**44. Commencement**

Ratification

44.1 This Land Code will be ratified if:

- (a) the Members approve this Land Code and the Individual Agreement by a Ratification Vote; and
- (b) this Land Code has been certified by the Verifier in accordance with the Framework Agreement.

Effective Date

- 44.2 This Land Code will take effect on the first day of the month following certification of this Land Code by the Verifier.