

Version: April 13<sup>th</sup>, 2019

# SKAWAHLLOOK FIRST NATION LAND CODE

Dated for Reference April 13<sup>th</sup>, 2019



*Skawahlook Land Code April 13<sup>th</sup>, 2019*

01569834



Chronological no. - N° consecutive 04 13 2019
File reference no. - N° de référence du dossier Land Code Amendment 04 13 2019

**BAND COUNCIL RESOLUTION  
RÉSOLUTION DE CONSEIL DE BANDE**

NOTE: The words "from our band funds" "capital" or "revenue" whichever is the case, must appear on all resolutions requesting expenditures from band funds.  
 NOTA: Les mots "des fonds de notre bande" "capital" ou "revenu" selon les cas doivent paraître dans tous les résolutions portant sur des dépenses à même les fonds des bandes.

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SKAWAHL00K FIRST NATION					\$
Date of duly convened meeting Date de l'assemblée dument convoquée	D-J 13	M 04	Y-A 2019	Province British Columbia	

DO HEREBY RESOLVE:  
DÉCIDE PAR LES PRESENTES:

The Chief and Council of Skawahlook First Nation in British Columbia, do hereby resolve as follows:

**WHEREAS:**

The Skawahlook First Nation Chief and Council in accordance to part 4: (78) recommended amendments to be made to the Skawahlook Land Code 28 days before amendments were voted on by the Skawahlook First Nation Members and;

**WHEREAS:**

The Skawahlook First Nation held a referendum on April 13, 2019 for the purpose of amending the Skawahlook First Nation Land Code, October 18, 2013, dated for reference and that the majority of Skawahlook First Nation Membership who voted in the referendum voted in favor to accept the recommended amendments to the Skawahlook First Nation Land Code.

**THEREFORE BE IT RESOLVED:**

The Skawahlook First Nation Chief and Council now enact the amended Skawahlook First Nation Land Code of April 13, 2019 dated for reference.

This resolution is supported by the undersigned and passed this **13th day of April 2019**.

A quorum for this Band consists of 2 (two) council members

Chief Maureen Chapman

Councillor Debra Schneider

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTÈRE					
Expenditure – Dépenses	Authority (Indian Act Section) - Autorité (Article sur la loi des Indiens)	Source of funds Sources des fonds ↑ Capital ↘ Revenue - Revenu	Expenditure – Dépenses	Authority (Indian Act Section) - Autorité (Article sur la loi des Indiens)	Source of funds Sources des fonds ↑ Capital ↘ Revenue - Revenu
Recommending officer – Recommandé par			Recommending officer – Recommandé par		
Signature		Date	Signature		Date
Approving officer – Approuvé par			Approving officer – Approuvé par		
Signature		Date	Signature		Date

# SUMMARY OF THE SKAWAHLLOOK FIRST NATION LAND CODE

## INTRODUCTION

The Land Code was drafted under the Framework Agreement on First Nation Land Management. The purpose of the Land Code is to set out the principles, procedures and structures that apply to Skawahlook First Nation lands and resources and by which First Nation will exercise authority to manage these lands and resources in accordance with the Framework Agreement.

## RATIFICATION

The Land Code has been developed by the Council with assistance from a community lands committee and the national Lands Advisory Board. It does not come into force unless both it and the Individual Agreement with Canada are ratified by the members of Skawahlook First Nation. If the Land Code is approved, Skawahlook First Nation will manage its own reserve lands. They will no longer be managed under the *Indian Act*.

## CONTENTS OF THE LAND CODE

**Authority** The Land Code states that the power of Skawahlook First Nation to govern and administer reserve lands flows from the Creator to the people of Skawahlook First Nation, and from the people to their Chief and Council, according to custom and law.

**Skawahlook First Nation Lands** All of Skawahlook IR #1(08074) and Ruby Creek IR #2 (08075) will be managed under the Land Code.

**Interests of Members in Land** Allotments of residential land, by lease or other disposition, to members in the future will be made by the Council under the Land Code.

**Transfer of Interests** All other transfers of interests in land must be approved by the Council.

**Natural Resources** The natural resources in Skawahlook First Nation lands are considered part of the land. Skawahlook First Nation has the right to manage the natural resources on the reserve and to collect the revenues from those resources. The Land Code does not apply to fisheries, migratory birds, endangered species and oil and natural gas.

**Law-Making Powers** The Council may, subject to the terms of the Land Code, make laws respecting most aspects of its lands. The law-making power is as comprehensive as possible in respect of land matters and replaces the powers set out in the *Indian Act*. Land laws would be made and published in the same way as by-laws and can be proposed to Council by a member of Council, a representative of the Land Management Advisory Committee or other such body composed of members that may be authorized by Council, or the Lands Manager.

**Conflict of Interest** There are rules for conflicts of interest that may arise in land management. These rules apply to the Council and anyone who is administering land or handling revenues from land. The basic rules are for the person to declare a conflict of interest and to refrain from voting on the issue.

**Financial Accountability of Council** The Council is accountable to members for the management of moneys and land under the Land Code. An annual financial report will be prepared and audited. The audited financial report will be presented to the members at an annual community meeting.

**Dispute Resolution** The Council will establish a panel made up of five panelists, to resolve any dispute relating to land where such a dispute cannot be resolved through informal discussion or the voluntary participation. A decision of the Panel may be appealed to the Federal Court (Trial Division)

**Expropriation** The Land Code allows expropriation of individual interests for community purposes in accordance with the Framework Agreement. Fair compensation must be given in every case. A community purpose includes: a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, day-care facility, hospitals, health-care facility, and retirement home. A land law would be enacted to establish the rights and procedures for expropriations.

**Mortgages** Leases may be mortgaged for financing purposes, but only with the written consent of Council. A mortgage can only be for as long as the lease and applies only to the leasehold interest. If the lessee ever defaulted on a mortgage, the Council can redeem the mortgage to prevent the bank from using the lease. Other interests can be mortgaged only to Skawahlook First Nation.

**Land Advisory Committee** A Land Advisory Committee will be established to advise the Council on land matters, e.g. laws and policies. Land management decisions are expected to be made by the Council but may in some circumstances be delegated to other bodies and will be administered by the Lands Manager and other staff.

**Voluntary Exchange of Land** The Framework Agreement enables Skawahlook First Nation to exchange a parcel of reserve land for another parcel of land, although this is not expected to happen in the near future. The Land Code sets out the procedure for how this would happen. The new land must be at least as big as the land being exchanged and must be at least of comparable value. If such a deal were ever negotiated in the future, it must be ratified by the community.

**Community Approvals** Certain land laws and other important land matters must be approved by the community before they can take effect. There are two methods of community approval: community meetings and ratification votes. Every member of Skawahlook First Nation who is 18 years of age or older, whether resident on or off the reserve, can participate in a community meeting and ratification vote to decide on matters such as the following:

- any expropriation of a member's interest in land;
- any grant or disposition of an interest or license in the land exceeding a term of twenty-five (25) years;
- enactment of a law or class of laws that Council, by resolution, declares to be subject to this section;
- any amendment to the Land Code;
- any voluntary exchange of Skawahlook First Nation land.

**Registration of Interests** To be protected, interests in land must be registered. The Council will keep a land register at its offices and will ensure that duplicate land documents are also registered in Ottawa.

**Funding** The Land Code does not deal with funding. Canada will provide funding for Skawahlook First Nation to manage its lands under the Individual Agreement that will be voted on at the same time as the Land Code.

Table of Contents

**TABLE OF CONTENTS ..... II**

**PREAMBLE ..... 1**

**PART 1: PRELIMINARY MATTERS ..... 1**

    SHORT TITLE ..... 1

    PARAMOUNTCY ..... 1

    NON-ABROGATION ..... 2

**PART 2: LAND ADMINISTRATION AND AUTHORITY ..... 2**

    COUNCIL AUTHORITY ..... 2

    DELEGATION ..... 2

    LAND ADVISORY COMMITTEE ..... 3

    DEVELOPMENT OF LAND RELATED RULES AND PROCEDURES ..... 4

**PART 3: LAND RULES ..... 4**

**DIVISION 1: GENERAL RULES ..... 4**

    RESERVE STATUS ..... 4

    INCLUDED LAND ..... 4

    HERITAGE SITES ..... 5

    DISPOSITIONS IN WRITING ..... 5

    EXISTING INTERESTS AND LICENSES ..... 5

    ADVERSE POSSESSION OR PRESCRIPTION ..... 5

    LIMITATIONS ..... 5

    TRANSFER AND ASSIGNMENT OF INTERESTS ..... 6

    REGISTRATION OF INTERESTS ..... 6

    FIRST NATION LAND REGISTER ..... 6

**DIVISION 2: CERTIFICATES OF POSSESSION ..... 7**

    GENERAL RULES ..... 7

    COUNCIL MAY GRANT ..... 7

    ENTITLEMENTS ..... 8

    INTERESTS TO SELF ..... 8

    ASSIGNMENT OR TRANSFER BY MEMBER ..... 8

    REGISTRATION ..... 8

    CEASING TO BE A MEMBER ..... 9

    TRANSFER ON DEATH ..... 9

    TRANSFER ON PURCHASE ..... 9

    ERRORS AND REVOCATION ..... 9

    NO EFFECT ON CERTIFICATES OF POSSESSION ..... 10

    GRANTING OF A LIFE INTEREST ..... 10

**DIVISION 3: INTERESTS AND LICENCES IN COMMUNITY LAND ..... 10**

    NEW INTERESTS ..... 10

    LEASES UNDER 50 YEARS ..... 10

    LEASES BETWEEN 50 AND 99 YEARS ..... 11

    EASEMENTS, STATUTORY RIGHTS OF WAY AND UTILITY LICENCES ..... 11

    LICENCES OF OCCUPATION ..... 11

    NATURAL RESOURCE LICENCES OF 10 YEARS OR LESS ..... 11

    NATURAL RESOURCE LICENCES BETWEEN 10 AND 25 YEARS ..... 12

    EASEMENTS ..... 12



<b>DIVISION 4: MORTGAGES AND CHARGES</b> .....	<b>12</b>
MORTGAGES AND CHARGES OF MEMBER INTERESTS .....	12
MORTGAGES AND CHARGES OF LEASEHOLD INTERESTS IN COMMUNITY LAND .....	13
PROTECTION.....	14
<b>DIVISION 5: EXPROPRIATION</b> .....	<b>14</b>
RIGHTS AND INTERESTS THAT MAY BE EXPROPRIATED .....	14
LIMITS ON EXPROPRIATION.....	14
<b>DIVISION 6: VOLUNTARY LAND EXCHANGES</b> .....	<b>15</b>
LAND EXCHANGE CONDITIONS .....	15
ADDITIONAL LAND .....	15
NOTICE .....	15
LAND EXCHANGE AGREEMENT .....	16
<b>PART 4: LAW ENACTMENTS AND LAND CODE AMENDMENTS</b> .....	<b>16</b>
<b>DIVISION 1: GENERAL RULES</b> .....	<b>16</b>
LAW-MAKING POWERS .....	16
ADMINISTRATION .....	17
DELEGATION.....	17
LAW-MAKING PROCEDURE.....	17
URGENT MATTERS .....	18
PUBLICATION OF LAWS.....	18
COMMENCEMENT OF LAWS.....	18
SPOUSAL PROPERTY LAW .....	18
<b>DIVISION 2: RULES REGARDING MEETINGS OF MEMBERS</b> .....	<b>19</b>
GENERAL RULES .....	19
NOTICE .....	19
RIGHTS OF ELIGIBLE VOTERS.....	20
<b>DIVISION 3: COMMUNITY INPUT</b> .....	<b>20</b>
COMMUNITY INPUT REQUIRED .....	20
<b>DIVISION 4: COMMUNITY APPROVAL</b> .....	<b>21</b>
COMMUNITY APPROVAL REQUIRED .....	21
<b>PART 5: MISCELLANEOUS</b> .....	<b>21</b>
SCHEDULES .....	21
LIABILITY .....	21
COMING INTO FORCE.....	22
<b>SCHEDULE A: RULES OF INTERPRETATION</b> .....	<b>23</b>
APPLICATION .....	23
WORDS AND EXPRESSIONS DEFINED .....	23
GENERAL RULES OF INTERPRETATION .....	26
<b>SCHEDULE B: DISPUTE RESOLUTION</b> .....	<b>28</b>
<b>PART 1: PANELISTS</b> .....	<b>28</b>
GENERAL RULES .....	28
IMPARTIALITY.....	28
PANELISTS.....	28



REMUNERATION .....	28
<b>PART 2: BRINGING DISPUTES .....</b>	<b>28</b>
WHO MAY BRING A DISPUTE .....	28
PANEL PROCEDURES .....	29
PRIOR TO BRINGING A DISPUTE .....	29
<b>PART 3: POWERS OF PANEL .....</b>	<b>29</b>
RULES OF PANEL .....	29
POWERS OF PANEL .....	29
WRITTEN DECISIONS .....	30
APPEAL OF DECISION .....	30
<b>SCHEDULE C: CONFLICT OF INTEREST .....</b>	<b>31</b>
APPLICATION .....	31
GENERAL DUTIES AND DEFINITIONS .....	31
PROCEDURE WHERE THERE IS A CONFLICT OF INTEREST OR APPEARANCE OF A CONFLICT OF INTEREST .....	32
COMPETITION WITH SKAWAHLLOOK OWNED BUSINESSES .....	33
USE OF COUNCIL PROPERTY OR INFORMATION .....	34
GIFTS .....	34
LIABILITY FOR VIOLATION OF CONFLICT OF INTEREST PROVISIONS .....	34
<b>SCHEDULE D:.....</b>	<b>35</b>
<b>FINANCIAL MANAGEMENT .....</b>	<b>35</b>
<b>PART 1: GENERAL RULES.....</b>	<b>35</b>
APPLICATION .....	35
ESTABLISHMENT OF BANK ACCOUNTS .....	35
SIGNING OFFICERS .....	35
BONDING .....	35
TWO SIGNATURES .....	35
FISCAL YEAR .....	36
ADOPTION OF BUDGET .....	36
PROCEDURE .....	36
IF NO BUDGET .....	36
BUDGET RULES .....	36
EXPENDITURES .....	36
FINANCIAL POLICY .....	36
<b>PART 2: FINANCIAL RECORDS.....</b>	<b>37</b>
FINANCIAL RECORDS .....	37
PREPARATION OF FINANCIAL STATEMENT .....	37
CONSOLIDATED ACCOUNTS .....	37
<b>PART 3: AUDIT .....</b>	<b>37</b>
APPOINTMENT OF AUDITOR .....	37
HOLDING OFFICE .....	37
VACANCY IN OFFICE .....	37
REMUNERATION .....	38
DUTY OF AUDITOR .....	38
ACCESS TO RECORDS .....	38
PRESENTATION OF AUDITOR'S REPORT .....	38
<b>PART 4: ANNUAL REPORT .....</b>	<b>38</b>



PUBLISH ANNUAL REPORT ..... 38  
CONTENTS ..... 38  
ACCESS TO INFORMATION ..... 38  
**SCHEDULE E: LAND ADVISORY COMMITTEE..... 40**  
    LAND ADVISORY COMMITTEE ESTABLISHED ..... 40  
    DETERMINATION OF FEES AND RENT..... 40  
    IMPLEMENTATION OF POLICIES..... 40  
    INTERNAL PROCEDURES ..... 40  
    COMPOSITION ..... 41  
    ELIGIBILITY ..... 41  
    INTERIM LAND ADVISORY COMMITTEE ..... 42  
    NO LIMIT ON TERMS IN OFFICE ..... 42  
    STAGGERED TERMS OF OFFICE ..... 42  
    VACANCY ON LAND MANAGEMENT COMMITTEE ..... 42  
    VACANCY IN TERM ..... 43  
    ATTRIBUTES OF COMMITTEE MEMBERS..... 43  
    CHAIR ..... 43  
    ALTERNATE CHAIR..... 43  
    DUTIES OF THE CHAIR ..... 43



## PREAMBLE

Skawahlook First Nation has occupied the land subject to this Land Code and the land within its traditional territory from time immemorial;

The authority of the Skawahlook to govern its lands and resources flows from the Creator to the people of, and from the people to Chief and Council according to the culture, traditions, customs and laws of the Skawahlook;

The Skawahlook managed the land until such time as Her Majesty asserted its control by way of the *Indian Act*;

The Skawahlook wishes to reclaim its authority to manage its lands and resources, rather than having its lands and resources managed on its behalf under the *Indian Act*;

The Skawahlook enacted the Skawahlook First Nation Land Code based on these values, effective August 3, 2010; and

At a community meeting on October 18, 2013, the Skawahlook First Nation Membership voted to repeal and replace the Skawahlook First Nation 2010 Land Code;

At a community meeting on April 13<sup>th</sup>, 2019, the Skawahlook First Nation Membership voted to repeal and replace the 2013 Land Code with this Skawahlook First Nation Land Code;

NOW THEREFORE THE SKAWAHLOOK FIRST NATION LAND CODE IS HEREBY AMENDED.

## PART 1: PRELIMINARY MATTERS

### Short Title

- 1 The Skawahlook First Nation Land Code, the effective date of which is October 18, 2013, is hereby repealed and replaced with this law. This enactment may be cited as the Skawahlook Land Code.

### Paramouncy

- 2 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.
- 3
  - (1) If there is any inconsistency or conflict between this Land Code and any other Skawahlook Law, this Land Code prevails to the extent of the inconsistency or conflict.



- (2) For the purposes of subsection 3(1), a Skawahlook Law is not inconsistent with this Land Code merely because it addresses a subject also addressed in this Land Code.

### **Non-abrogation**

- 4 This Land Code does not abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Skawahlook or its members.
- 5 This Land Code does not abrogate or derogate from the fiduciary relationship between Her Majesty and the Skawahlook or its members.
- 6 This Land Code is not intended to affect the eligibility of the Skawahlook or any member to receive services to participate in such public or aboriginal programs as may be established from time-to-time to the extent that the Skawahlook has not assumed responsibility for such services or programs.

## **PART 2: LAND ADMINISTRATION AND AUTHORITY**

### **Council Authority**

- 7 Except as otherwise provided in this Land Code, a law, or the *First Nations Land Management Act*, the Skawahlook acts through Council in exercising its powers and functions under this Land Code, a Skawahlook law, or the *First Nations Land Management Act*.
- 8 Council must exercise its powers and functions in accordance with this Land Code, Skawahlook Laws, and all other applicable laws.
- 9 Council may establish bodies, including committees, boards or commissions, and may incorporate corporations under federal or provincial laws to manage or administer, or to assist Council in the management or administration of the land.
- 10 Council may establish mandatory standards, criteria and forms in relation to interests and licences in the land.

### **Delegation**

- 11 Subject to section 12, Council may, by a law or by an instrument, including an agreement, delegate to any body or person, any power or function of Council relating to the management or administration of the land.
- 12 Council may not delegate to any body or person any of the following powers or functions of Council:
  - (1) to dispose of or approve an interest in or licence in relation to the land;



- (2) to enact a law; or
- (3) to delegate a power or function of Council under this Land Code or a law.

**13** For certainty,

- (1) a delegation by Council to a body or person under section 11
  - (a) may include all or any part of a power or function of Council relating to the management or administration of the land;
  - (b) may pertain to all or a limited area of the land;
  - (c) is subject to any terms or conditions established by Council under the law or instrument making the delegation; and
  - (d) does not restrict Council from delegating any additional powers or functions of Council to the body or person under another law or instrument, and
- (2) a body or person to which Council delegates a power or function under section 11 may only exercise the power or carry out the function in accordance with this Land Code, the law or instrument making the delegation, and all other applicable laws.

**Land Advisory Committee**

**14** The Land Advisory Committee is hereby established to:

- (1) assist with the development of an administration system in respect of the land;
- (2) advise Council on matters respecting the land;
- (3) recommend laws, resolutions, policies and practices respecting the land to Council;
- (4) convene meetings of members to receive their input or seek their approval on certain land matters as required in this Land Code;
- (5) assist in the exchange of information regarding land matters between members and Council; and
- (6) perform such other duties and functions as delegated to it by Council.

**15** The Land Advisory Committee shall operate pursuant to Schedule E of this Land Code.



## **Development of land related rules and procedures**

- 16 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the Land Advisory Committee, establish laws, rules, policies and procedures, as may be appropriate, consistent with this Land Code, that address the following matters:
- (1) the process and criteria for granting interests in the land;
  - (2) environmental protection and environmental assessment in relation to the land;
  - (3) land use planning and zoning;
  - (4) any outstanding issues on the resolution of disputes in relation to the land;
  - (5) the management and protection of heritage sites;
  - (6) residency and access;
  - (7) expropriation;
  - (8) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code;
  - (9) respecting spousal property and the policy upon which a spousal property law will be based; and
  - (10) any other matter Council, in consultation with the Land Advisory Committee, deems appropriate.

### **PART 3: LAND RULES**

#### **Division 1: General Rules**

##### **Reserve Status**

- 17 Title to the land is vested in Her Majesty.
- 18 The land is “land reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*, and are set apart by Her Majesty for the use and benefit of the Skawahlook.

##### **Included Land**

- 19 The land legally described in the Individual Agreement forms the land governed by the Land Code.



### **Heritage Sites**

- 20 No development shall be allowed on any site designated as a heritage site under the Skawahlook heritage site law, unless the development receives community approval pursuant to section 103.

### **Dispositions in Writing**

- 21 An interest in or licence in relation to the land may only be created, granted, disposed of, assigned or transferred by a written document in accordance with this Land Code.

### **Existing Interests and Licenses**

- 22 Subject to sections 23 and 24, interests in and licences in relation to the land that are listed in Annex C to the Individual Agreement continue in accordance with their terms and conditions until they expire, terminate, are surrendered or otherwise come to an end in accordance with their terms and conditions or otherwise in accordance with law or equity. Any interests in and licences in relation to the land that are not listed in Annex C to the Individual Agreement will, as of the Land Code effective date, not be enforceable.
- 23 As of the Land Code effective date Council may exercise any power and carry out any function in respect of the interests and licences referred to in section 22 that prior to the Land Code effective date was a power or function of Her Majesty as grantor.
- 24 Existing certificates of possession continue until they are surrendered or come to an end in accordance with this Land Code or otherwise in accordance with law or equity.

### **Adverse Possession or Prescription**

- 25 No rights may be acquired by any person to, in or over the land, including any interest in or licence in relation to the land, by way of adverse possession or prescription.

### **Limitations**

- 26 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Skawahlook, a member or any other person purports to grant, dispose of, transfer or assign an interest in the land after the date this Land Code takes effect must conform to the requirements of this Land Code and other applicable Skawahlook Law.
- 27 A person who is not a member may hold a life estate, mortgage, lease, license, easement or statutory right-of-way in the land, but may not hold a certificate of possession in accordance with this Land Code.



### **Transfer and Assignment of Interests**

- 28 A member may transfer or assign in writing an interest in the land held by that member to another member, non-member, or Skawahlook subject to this Land Code, other applicable Skawahlook Law, and the terms of the instrument the interest is granted under.
- 29 Except for transfers, assignments or mortgages under sections 28, 40(2) and 41, and transfers that occur by operation of law, including transfers of estates by testamentary disposition or in accordance with a Skawahlook Law enacted under section 76:
- (1) there will be no transfer or assignment of an interest in the land without the written consent of Council; and
  - (2) the grant of an interest or license is deemed to include subsection 29(1) as a condition of any subsequent transfer or assignment.

### **Registration of Interests**

- 30 Any interest in the land created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Land Register and any applicable registration fees have been paid.
- 31 Any instrument granting an interest in or licence in relation to the land that requires the consent of Council or community approval shall include a certificate issued by the Land Advisory Committee indicating that the applicable consent or approval has been obtained.
- 32 Any instrument registered in the First Nation Land Register which does not include the certificate referred to in section 31 is void.
- 33 An original copy of the following instruments must be deposited in the First Nation Land Register:
- (1) any grant of an interest in or licence in relation to the land;
  - (2) any transfer or assignment of an interest in or licence in relation to the land;
  - (3) every land use plan, subdivision plan or resource use plan; and
  - (4) this Land Code and any amendment to this Land Code.

### **First Nation Land Register**

- 34 (1) A person may apply for the registration or recording in the First Nation Land Register of an instrument or other document that affects or purports



to affect the land.

- (2) Nothing in this Land Code or any other Skawahlook Law constitutes a representation or warranty to any person that any instrument or other document is registrable or recordable in the First Nation Land Register.
- (3) Neither Council nor any Skawahlook representative, member of the Skawahlook administration or the Land Advisory Committee may make a representation or provide a warranty to any person that any instrument or other document is registrable or recordable in the First Nation Land Register and no act or omission of any of the foregoing constitutes such a representation or warranty.
- (4) Neither Council nor any Skawahlook representative, member of the Skawahlook administration or Land Advisory Committee has any obligation to determine, ensure or confirm for or on behalf of a recipient or holder of an interest in or licence in relation to the land, other than the Skawahlook, that:
  - (a) the interest or licence is valid, of force or effect, or in good standing, or
  - (b) the interest or licence has been submitted for registration or recording, or has been registered or recorded, in the First Nation Land Register.

## **Division 2: Certificates of Possession**

### **General Rules**

- 35 A Skawahlook certificate of possession in respect of a parcel of land may only be granted to a member.
- 36 Council may only grant a Skawahlook certificate of possession on land which does not hold any other registered interest.

### **Council May Grant**

- 37 Council may grant a Skawahlook certificate of possession to a member in accordance with the policies and procedures established by Council.
- 38 No community approval is required for the issuance of a Skawahlook certificate of possession to members.
- 39 Council shall, upon approval under the policies and procedures established pursuant to section 37, if any,



- (1) issue a Skawahlook certificate of possession to a member for a parcel of land allocated to that member; and
- (2) register a Skawahlook certificate of possession in the name of that member in the First Nation Land Register.

### **Entitlements**

- 40** A certificate of possession entitles the member holding it to:
- (1) possession of the land until a transfer, devising, reversion or disposition under sections 42, 44, 45, 47 and 48 below;
  - (2) grant subsidiary interests in the land, including life estates, leases, mortgages of leases, licenses, easements and right-of-ways;
  - (3) transfer, devise or otherwise dispose of the land to another member; and
  - (4) any other rights consistent with this Land Code and consistent with Skawahlook Laws, that are attached to certificates of possession under the *Indian Act*.

### **Interests to Self**

- 41** A member granting a subsidiary interest under section 40(2) may grant that subsidiary interest to himself or herself, provided that no such subsidiary interest may have a term exceeding 99 years.

### **Assignment or Transfer by Member**

- 42** A member may transfer or assign his or her certificate of possession to another member without community approval or the consent of Council by submitting, within thirty (30) days after the transfer or assignment, a statutory declaration, signed by the member transferring or assigning his or her certificate of possession, to Council and the Land Advisory Committee containing:
- (1) the full name of the new holder;
  - (2) the amount paid or any goods or services received as a result of the transfer or assignment;
  - (3) an acknowledgment that the transfer or assignment is permanent and may not be revoked; and
  - (4) a statement that such transfer or assignment was made freely.

### **Registration**

- 43** Following a transfer or assignment under section 42, Council shall register the certificate of possession in the name of that member receiving the
- Skawahlook Land Code April 13<sup>th</sup>, 2019*



certificate of possession in the First Nation Land Register.

### **Ceasing to be a Member**

- 44 A person who ceases to be a member shall, within six (6) months of ceasing to be a member, transfer any certificate to possession they hold to Skawahlook or to another member.
- 45 When a person who ceases to be a member who does not transfer their certificate of possession in accordance with section 44, the certificate of possession shall, six (6) months and one day after the person ceases to be a member, be cancelled and the land described in the certificate of possession shall become community land.
- 46 Where a certificate of possession reverts to Skawahlook under section 45, the person ceasing to be a member shall remain liable for any obligations or monies owing pursuant to the certificate of possession that the person who ceases to be a member held prior to the date the certificate of possession reverts.

### **Transfer on Death**

- 47 A member who claims to be entitled to a certificate of possession by testamentary disposition or succession pursuant to the *Indian Act* is not entitled to such certificate of possession until:
- (1) such member has filed with Council an instrument in a form prescribed by Council, duly executed by the personal representative of the estate of the deceased member transferring such certificate of possession to the member; and
  - (2) the instrument referred to in subsection (1) above is registered in the First Nation Land Register.

### **Transfer on Purchase**

- 48 A purchaser of a certificate of possession not entitled to such certificate of possession until:
- (1) the purchaser has filed with Council an instrument in a form prescribed by Council, duly executed by the person authorized to execute a transfer of the certificate of possession in accordance with this Land Code and other applicable Skawahlook Law; and
  - (2) the instrument referred to in paragraph (1) above is registered in the First Nation Land Register.

### **Errors and Revocation**

- 49 From time to time, Council may develop policies relating to the *Skawahlook Land Code April 13<sup>th</sup>, 2019*



correction of errors made in the granting of Skawahlook certificates of possession and the potential revocation of Skawahlook certificates of possession where certain errors are made.

**No effect on Certificates of Possession**

**50** Despite the transfer and expropriation provisions in this Land Code, nothing in this Land Code prevents a member with a certificate of possession from transferring all or a portion of their interest in the land to Skawahlook for fair market value or other agreed-upon compensation. Such transfers do not require community consultation or approval.

**Granting of a Life Interest**

**51** A member may grant a life interest in that member’s certificate of possession to that member’s spouse, including a spouse who is a non-member, in accordance with this Land Code and other applicable Skawahlook Law.

**Division 3: Interests and Licences in Community Land**

**New Interests**

**52** As of the effective date, Council may grant interests in and licences in relation to the community land, including the following, and the maximum term for such interest or licence that Council may grant is as follows:

<b>Interest</b>	<b>Maximum term</b>
Lease	99 years
Certificate of possession	no limit
Easement or statutory right-of-way	for as long as so required
Licence of occupation	10 years
Natural resource licence	25 years
Utility licence	for as long as so required
Mortgage of lease	term of lease
Mortgage of certificate of possession	no limit

**53** In granting the interests set out in section 52, Council may attach specific conditions to the grant of these interests, but such conditions must be set out in writing in the instruments granting the interests.

**Leases Under 50 Years**

**54** Council may grant a lease of community land for a term of up to forty-nine (49) years, provided that such grant must be recommended by the Land Advisory Committee.



### **Leases Between 50 and 99 Years**

- 55** Council may grant a lease of community land for a term of between fifty (50) years and ninety-nine (99) years, if the grant is first:
- (1) recommended by the Land Advisory Committee; and
  - (2) receives community approval pursuant to section 103 of this Land Code.

### **Easements, Statutory Rights of Way and Utility Licences**

- 56** Council may grant an easement, statutory right-of-way or utility licence over community land, if the grant is first recommended by the Land Advisory Committee and is made to any of the following:
- (1) the Skawahlook, an agency of the Skawahlook or a corporation owned by the Skawahlook;
  - (2) Her Majesty, an agency of Her Majesty or a corporation owned by Her Majesty;
  - (3) the Province, an agency of the Province or a corporation owned by the Province;
  - (4) a municipality, an agency of the municipality or a corporation owned by the municipality;
  - (5) a public utility; or
  - (6) a railway corporation (with respect to easements and statutory rights-of-way only).

### **Licences of Occupation**

- 57** Council may grant a licence of occupation over community land for a term of up to ten (10) years, if the grant is first recommended by the Land Advisory Committee.

### **Natural Resource Licences of 10 Years or Less**

- 58** Council may grant a natural resource licence over community land for a term of up to ten (10) years, if the grant is first:
- (1) recommended by the Land Advisory Committee; and
  - (2) presented to members for community input pursuant to section 100.



### **Natural Resource Licences Between 10 and 25 Years**

- 59 Council may grant a natural resource licence over community land for a term of between ten (10) and twenty-five (25) years, if the grant is first:
- (1) recommended by the Land Advisory Committee; and
  - (2) receives community approval pursuant to section 102.

### **Easements**

- 60 Council may grant an easement over community land in favour of the Skawahlook, a member or in favour of the holder of a lease on the land if the grant is first:
- (1) recommended by the Land Advisory Committee; and
  - (2) presented to members for community input pursuant to section 100.

## **Division 4: Mortgages and Charges**

### **Mortgages and Charges of Member Interests**

- 61 A certificate of possession may be subject to a mortgage or charge, but only in favour of the Skawahlook or a Skawahlook controlled entity and with the written consent of Council.
- 62 Except for a mortgage of a member's leasehold interest to himself or herself under section 41, a member's interest in land may only be subject to a mortgage in favour of the Skawahlook or a Skawahlook controlled entity and with the written consent of Council.
- 63 A mortgage of a member's leasehold interest may be granted by a document registered in the First Nation Land Register provided that:
- (1) the land is in the sole possession of the leaseholder granting the mortgage;
  - (2) the leaseholder holds the entire beneficial interest in the lease;
  - (3) the granting of the mortgage and the terms of the mortgage are permitted by the provision of the certificate of possession, and the lease;
  - (4) there is a proper legal description of the lands that are subject to the mortgage, and if required, the lands have been surveyed and the survey registered in the First Nation Land Register; and
  - (5) the term of the mortgage does not exceed the term of the lease.



## **Mortgages and Charges of Leasehold Interests in Community Land**

- 64** A leasehold interest in community land may be subject to mortgage or charge, in accordance with sections 64 and 105(9) of this Land Code provided;
- (1) the written consent of Council has been obtained;
  - (2) the granting of the mortgage or charge is permitted by the provisions of the lease; and
  - (3) community approval has been obtained, if applicable.
- 65** The term of any charge or mortgage of a leasehold interest in community land shall not exceed the lesser of
- (1) the term of the lease; or
  - (2) forty-nine (49) years, or such longer period as may receive community approval.
- 66** Subject to sections 63 and 64, a mortgage of a leasehold interest in community land may be granted by a document registered in the First Nation Land Register provided that:
- (1) the land is in the sole possession of the leaseholder granting the mortgage;
  - (2) the leaseholder holds the entire beneficial interest in the leasehold;
  - (3) the granting of the mortgage and the terms of the mortgage are permitted by the provision of the lease;
  - (4) there is a proper legal description of the lands that are subject to the mortgage, and if required, the lands have been surveyed and the survey registered in the First Nation Land Register; and
  - (5) in the event of default in the terms the mortgage, 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 community approval where required;
    - (c) the charge or mortgage was registered in the First Nation Land Register; and
    - (d) not less than 30 days to redeem the charge or mortgage is given to



Council on behalf of the Skawahlook.

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

#### **Protection**

- 68 In accordance with the Framework Agreement, section 29, 87, 89(1), 89(1.1) and 89(2) of the *Indian Act* continue to apply to the land.

### **Division 5: Expropriation**

#### **Rights and Interests that may be Expropriated**

- 69 Subject to the provisions of this Division 5, Council may expropriate all or part of an interest in or licence in relation to the land if, in the opinion of Council, it is necessary for community works or a community purpose.

#### **Limits on Expropriation**

- 70 Council may not expropriate all or a part of an interest in or licence in relation to the land unless:
- (1) such expropriation is made in accordance with the *Framework Agreement* and any Skawahlook Law enacted for the purpose of establishing the rights and procedures for community expropriations which addresses,
    - (a) a procedure governing the expropriation process, including the provision of reasonable notice to the holder of the interest or licence;
    - (b) a method of determining fair compensation to be paid to the holder of the interest or licence; and
    - (c) a procedure for the resolution of disputes regarding the amount of compensation to be paid to the holder of the interest or licence;
  - (2) the Skawahlook has provided written notice to the holder of the interest or licence in the land;
  - (3) the Skawahlook made a good faith effort to acquire, by mutual agreement, the holder's interest or licence in the land; and
  - (4) in the case of an expropriation of a member's interest, the expropriation has received community approval.

71 An interest of Her Majesty or an interest obtained under section 35 of the *Indian Skawahlook Land Code April 13<sup>th</sup>, 2019*



*Act* is not subject to expropriation by the Skawahlook.

### **Division 6: Voluntary Land Exchanges**

#### **Land Exchange Conditions**

- 72 The Skawahlook may exchange a parcel of the land for other land if the following conditions are satisfied:
- (1) such exchange is made in accordance with section 27(1) of the *First Nations Land Management Act*;
  - (2) the value of the third party exchange land is at least comparable to the appraised value of the Skawahlook exchange land;
  - (3) the third party exchange land is equal to or greater in size than the area of the Skawahlook exchange land;
  - (4) Her Majesty has:
    - (a) agreed that the third party exchange land shall be set aside as reserve land subject to this Land Code; and
    - (b) consented to the manner and form of exchange between the Skawahlook and the holder of the third party exchange land; and
  - (5) the land exchange receives community approval.

#### **Additional Land**

- 73 The Skawahlook may negotiate for other forms of compensation, such as money or one or more other parcels of land, in addition to the third party exchange land. Such other parcels of land may be held by the Skawahlook in fee simple or some other manner.

#### **Notice**

- 74 Once negotiations on the land exchange agreement are concluded, Council shall provide the following information to members eligible to vote at least twenty-one (21) days before the community vote to approve the exchange:
- (1) a description of the Skawahlook exchange land;
  - (2) a description of the third party exchange land;
  - (3) a description of any other compensation to be received by the Skawahlook;



- (4) a report of a certified land appraiser setting out that the conditions in section 71(2) have been met;
- (5) a copy or summary of the exchange agreement; and
- (6) a copy of the consent referred to in section 71(4).

### **Land Exchange Agreement**

**75** The land exchange agreement shall provide that:

- (1) the third party to the exchange must transfer to Her Majesty the title of the third party exchange land;
- (2) Council must pass a resolution authorizing Her Majesty to transfer title to the Skawahlook exchange land, in accordance with the exchange agreement; and
- (3) copies of the instruments transferring title to the third party exchange land and the Skawahlook exchange land must be registered in the First Nation Lands Register.

## **PART 4: LAW ENACTMENTS AND LAND CODE AMENDMENTS**

### **Division 1: General Rules**

#### **Law-making Powers**

- 76** Council may make laws, in accordance with this Land Code and the *First Nations Land Management Act*, including laws respecting the development, conservation, protection, management, use and possession of the land and interests and licenses in relation to the land. This power includes the power to make laws in relation to any matter necessary or ancillary to the making of laws respecting the land and the interests and licences in relation to the land.
- 77** Without limiting Section 76, and for further clarity, Council may make laws with respect to:
- (1) the authorization, regulation, control and prohibition of reserve land use, zoning, subdivision control, and reserve land development;
  - (2) the expropriation of interests on reserve lands;
  - (3) the setting aside and regulation of heritage sites;
  - (4) the creation, regulation, and prohibition of interests and licences in reserve land;
  - (5) environmental management, assessment, and protection;



- (6) the provision of local services in relation to reserve land and the imposition of equitable user charges;
- (7) the enforcement of Skawahlook Laws including the establishment of offenses and the setting of fines, imprisonment, restitution, community service, or alternate means of compliance;
- (8) the provision of services for the resolution, outside of courts, of disputes in relation to reserve land;
- (9) the removal and punishment of persons trespassing on reserve lands or accessing reserve lands for a prohibited purpose;
- (10) public nuisance and private nuisance including animal control and protection, the manufacture, sale, or use of fireworks, and excessive noise;
- (11) the regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (12) public safety including the control of outdoor fires;
- (13) the construction, maintenance, and management of roads, bridges, ditches, and fences within reserve lands; and
- (14) the regulation of traffic and transportation on reserve lands.

### **Administration**

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

### **Delegation**

- 79** Notwithstanding section 78, Council may, by enacting a law, delegate administrative authority in relation to a law enacted under section 76 to any body or person established or authorized under this Land Code.

### **Law-making Procedure**

- 80** A proposed law may be introduced at a duly convened meeting of Council by
- (1) the Chief or a Councilor; or
  - (2) a representative of the Land Advisory Committee or other body composed of members that may be authorized by Council to do so.

- 81** Before a proposed law may be enacted by Council:  
*Skawahlook Land Code April 13<sup>th</sup>, 2019*



- (1) Council must comply with the provisions in this Part 4 relating to the Land Advisory Committee and community input or approval, as applicable;
- (2) a proposed law must be tabled at a meeting of Council held at least twenty-eight (28) days before the law is to be voted upon; and
- (3) a proposed law must be posted in the band office and on the Skawahlook website at least twenty-one (21) days before the law is to be voted upon.

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

**83** The original copy of any law or resolution concerning the land shall be signed by a quorum of Council present at the meeting at which it was enacted.

### **Urgent Matters**

**84** Council may enact a law without the preliminary steps required under section 81, if Council is of the opinion that the law is needed urgently to protect Skawahlook land or the members.

**85** Any law enacted pursuant to section 84 shall expire one-hundred-twenty (120) days after its enactment, unless re-enacted in accordance with section 83.

### **Publication of Laws**

**86** All laws shall be published in the minutes of Council.

**87** Within seven (7) days after a law has been enacted, Council shall post a copy of the law in the administrative offices of the Skawahlook.

**88** Council shall cause to be kept, at the administrative offices of the Skawahlook, a register of the original copy of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force.

**89** Any person may obtain a copy of a law or resolution on payment of a reasonable fee set by Council.

### **Commencement of Laws**

**90** A law enacted by Council takes effect on the date of its enactment or such later date as specified by the law.

### **Spousal property Law**

**91** Council shall enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage relating to



- (1) the use, occupancy and possession of the land; and
  - (2) the division of interests in that land.
- 92 The rules and procedures contained in the spousal property law shall be developed by the Land Advisory Committee in consultation with members.
- 93 The spousal property law must be enacted within twelve (12) months from the effective date.

### **Division 2: Rules Regarding Meetings of Members**

#### **General Rules**

- 94 The Land Advisory Committee shall, within a reasonable time after this Land Code takes effect, enact procedures for the conduct of meetings of members.
- 95 Council may, in its sole discretion, schedule more than one meeting of members to discuss and decide on any matter referred to in sections 103 or 105, provided that any vote taken at a meeting of members will not be accumulated with any vote taken at a subsequent meeting of members.
- 96 Nothing precludes Council or the Land Advisory Committee from holding meetings with members concerning land matters in conjunction with any other meeting of members.

#### **Notice**

- 97 Council shall give written notice of the meeting of members
- (1) specifying the date, time and place of that meeting; and
  - (2) containing a brief description of the matters to be discussed and voted upon at that meeting.
- 98 The notice of a meeting of members must be given to the members by
- (1) posting the notice in a public place on the land at least twenty (21) days before the meeting;
  - (2) mailing the notice to members at their last known address at least twenty (21) days before the meeting;
  - (3) posting the notice on the Skawahlook's website at least twenty (21) days before the meeting; and
  - (4) such additional methods as Council may consider appropriate in the circumstances.



### **Rights of Eligible Voters**

- 99 The quorum for a meeting of members under this Land Code is ten percent (10%) of the members eligible to vote.
- 100 Each member who is eighteen (18) years of age or older as of the date of a vote is eligible to vote at a meeting of members.
- 101 Decisions at a meeting of members are to be made by a majority vote of the eligible voters present at the meeting.
- 102 All members have a right to attend a meeting of members and non-members may attend with the permission of Council.

### **Division 3: Community Input**

#### **Community input required**

- 103 The Land Advisory Committee shall convene a meeting of members to receive their input prior to:
- (1) the introduction of a law, or amendments thereto respecting,
    - (a) a community plan or subdivision plan;
    - (b) a heritage site or an environmentally sensitive property;
    - (c) environmental assessment;
    - (d) the transfer and assignment of interests in the land; and
    - (e) the rate and criteria for the payment of fees or rent for land; and
  - (2) any other law or class of law that Council, by resolution, declares to be subject to this section;
  - (3) any grant or disposition of any natural resources on the land for a term of ten (10) years or less; or
  - (4) any grant of an easement or other encumbrance over community land in favour of the Skawahlook, a member or in favour of the holder of a lease on the land.
- 104 Nothing in this Land Code precludes Council or the Land Advisory Committee from consulting with other advisors or representatives of other jurisdictions, including other First Nations, municipal corporations and regional districts, to develop and implement the laws referred to in section 76.



**Division 4: Community Approval**

**Community Approval Required**

- 105** The Land Advisory Committee shall convene a meeting of members to seek their approval which must be obtained in respect of the following matters:
- (1) any amendment to Parts 1 through 4 of this Land Code;
  - (2) any land use plan or amendments thereto;
  - (3) any expropriation of a member's interest in the land;
  - (4) any grant or disposition of an interest or licence in community land exceeding a term of forty-nine (49) years;
  - (5) any renewal of a grant or disposition of an interest or licence in community land that extends the original term beyond forty-nine (49) years;
  - (6) any grant or disposition of any natural resources on the land for a term of between ten (10) and twenty-five (25) years;
  - (7) any development of a heritage site referred to in section 20 of this Code;
  - (8) any voluntary exchange of the land;
  - (9) a charge or mortgage of a leasehold interest on community land exceeding a term of forty-nine (49) years
  - (10) any law on spousal property enacted pursuant to section 91 and amendments thereto; and
  - (11) any law or class of law that Council, by resolution, declares to be subject to this section.

**PART 5: MISCELLANEOUS**

**Schedules**

- 106** The Schedules to this Land Code form part of the Land Code.

**Liability**

- 107** Council shall arrange and maintain insurance coverage for its officers and employees engaged in carrying out in good faith any responsibilities related to the land to indemnify them against personal liability arising from the performance of



those duties.

- 108** The extent of the insurance coverage shall be determined by Council.
- 109** Every employee of the Skawahlook whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.
- 110** The Skawahlook is not liable for anything done or omitted to be done by Her Majesty or any person or body authorized by Her Majesty in the exercise of any federal rights, powers or responsibilities prior to the Land Code effective date.
- 111** The Land Code is not, and must not be interpreted as being, a waiver by the Skawahlook in respect of any liabilities, acts or omissions of Her Majesty.

**Coming into Force**

- 112** (1) This section comes into force on the day the validity of this Land Code is certified under section 14 of the *First Nations Land Management Act*. The remaining provisions of the Land Code come into force on the date on which Council brings those provisions into force by resolution.
- (2) The remaining provisions of this Land Code come into force on the date on which Council brings those provisions into force by resolution.



## Schedule A:

### RULES OF INTERPRETATION

#### Application

- 1 Every provision of this schedule applies to the Land Code or any amendment thereto, to any schedule, and to any law created pursuant to the Land Code.
- 2 The provisions of this schedule apply to this schedule.

#### Words and Expressions Defined

- 3 The following definitions apply in this Land Code and in any amendment thereto:

**“certificate of possession”** means documentary evidence issued under this Land Code or formerly issued under s. 20(2) of the *Indian Act* of a member’s allotment of the land described thereon;

**“community land”** means any land that is not subject to a certificate of possession;

**“community purpose”** means a purpose the achievement of which will directly or indirectly benefit the Skawahlook, members or persons residing on Skawahlook land;

**“community works”** means the establishment or continuation of works which will directly or indirectly benefit the Skawahlook, members or persons residing on Skawahlook land;

**“Council”** means the Chief and Council of the Skawahlook;

**“effective date”** means the date the Land Code is brought into force pursuant to 112(2) of the Land Code;

**“eligible voter”** means, for the purpose of voting in respect of any matter pursuant to this Land Code, a member who has attained the age of eighteen (18) years of age on the day of the vote;

**“fair compensation”** means, in the context of expropriation, compensation that takes into consideration the following:

- (1) the market value of the interest that is being expropriated;
- (2) the replacement value of any improvement to the land that is being expropriated;
- (3) the damages attributable to any disturbance; and



(4) damages for any reduction in the value of a remaining interest.

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

**“First Nations Land Register”** means the register maintained by the Department of Indian Affairs and Northern Development pursuant to the *Framework Agreement*;

**“Framework Agreement”** means the *Framework Agreement on First Nation Land Management* initially entered into between the Minister of Indian and Northern Affairs and the Chiefs of thirteen First Nations on February 12, 1996, as amended, and entered into by the Skawahlook on March 6, 2008;

**“function”** includes a responsibility, duty and obligation;

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

**“immediate family”** means a spouse, parent, grandparent, child (including adopted children or those living with you as your child), grandchild or sibling. Immediate family also includes the spouse of an immediate family member;

**“Indian Act”** means the *Indian Act*, R.S.C. 1985, c. I-5;

**“Individual Agreement”** means the Individual Agreement made between Skawahlook and Her Majesty the Queen in right of Canada under s. 6(3) of the *First Nations Land Management Act*, as amended or replaced from time to time;

**“interest”** means, in relation to the land, an interest as defined in the *First Nations Land Management Act*;

**“land”** means Skawahlook Indian Reserve No. 1 and Ruby Creek Indian Reserve No. 2 ;

**“Land Code”** means the Skawahlook Land Code and any amendment thereto;

**“Land Exchange”** means an exchange of land pursuant to Part 3, Division 6 of the Land Code;

**“Land Advisory Committee”** means the Land Advisory Committee established pursuant to section 14 of the Land Code;

**“licence”** means, in relation to Skawahlook land, a licence as defined in the *First Nations Land Management Act*;

**“licence of occupation”** means a licence for a primary purpose other than extracting or harvesting natural resources or providing utility services;

**“life estate”** means a non-transferable interest in a certificate of possession granted by the holder of the certificate of possession to that person’s spouse, including a non-Skawahlook Land Code April 13<sup>th</sup>, 2019



member spouse, that grants the spouse the right to use and occupy the parcel of land allotted under the certificate of possession for a time period which cannot exceed the life of the grantee;

“**majority**” means more than fifty (50%) percent of the votes cast;

“**market value**” means the amount that would have been paid for the interest if it had been sold on the reserve by a willing seller to a willing buyer under no duress;

“**meeting of members**” means any meeting under Part 4, Division 2 of the Land Code to which members are invited to attend;

“**member**” means a person whose name appears or is entitled to appear on Skawahlook band membership list;

“**Qwi:qwelstóm**” means the justice program established by the Stó:lo Nation Bands based on the principles of:

- (a) consensus decision making;
- (b) the interrelatedness of all things; and
- (c) sense of belonging and connection to family and community;

“**Qwi:qwelstóm panel**” means the panel established pursuant to Qwi:qwelstóm procedures, and utilized in Schedule B to resolve disputes under the Land Code;

“**Qwi:qwelstóm procedures**” means the procedures established by Qwi:qwelstóm from time to time, in relation to the hearing of and settlement of disputes;

“**power**” includes a right, privilege and authority;

“**Province**” means her Majesty the Queen in Right of the Province of British Columbia;

“**registered interest**” means an interest on the land registered in the First Nation Land Register;

“**resolution**” means a resolution of Council;

“**resources**” means all resources belonging to the land including, but not limited to, the water, beds underlying water, riparian rights, and renewable and non-renewable natural resources belonging to that land, to the extent that these are under the jurisdiction of Her Majesty;

“**Skawahlook**” means the Skawahlook First Nation, a band within the meaning given to “band” in subsection 2(1) of the *Indian Act*;

“**Skawahlook certificate of possession**” means documentary evidence of a certificate of possession issued under this Land Code of a member’s allotment of part of the land described thereon;



**“Skawahlook exchange land”** means the land to be transferred by the Skawahlook pursuant to Part 3, Division 6;

**“Skawahlook Law”** includes this Land Code and any other law, including any bylaw or code of the Skawahlook enacted by Council under authority of the *Indian Act* (Canada), the *First Nation Land Management Act* (Canada), the *First Nations Fiscal and Statistical Management Act* (Canada) or any other federal or provincial law;

**“spouse”** means in relation to a person, another person

- (a) to whom the first person is married; or
- (b) with whom the first person is, and has been for a period of at least one year, living in a marriage-like relationship;

**“third party exchange land”** means the land to be received by the Skawahlook pursuant to Part 3, Division 6.

### **General rules of interpretation**

- 4 The following rules apply in this Land Code and in any amendment thereto:
- (1) The definitions as set forth in the Framework Agreement and *First Nations Land Management Act* shall have the same meaning in this Land Code;
  - (2) Where the time limited for the completion of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be completed on the next day that is not a Saturday, Sunday or holiday;
  - (3) Where the time limited for the doing of an act in Skawahlook administration building falls on a day when the office is not open during regular business hours, the act may be completed on the next day that the office is open;
  - (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;
  - (5) The principles set out in the preamble to this Land Code may be used to interpret this Land Code; and
  - (6) In this Land Code:
    - (a) The use of the word “shall” 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, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- (c) Headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) A reference to a statute includes every amendment to it, every regulation made under it and any Law enacted in substitution for it or in replacement of it;
- (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, words importing any gender include all genders and modifications to the provisions of this Land Code may be made accordingly as the context requires.



**Schedule B:**

**DISPUTE RESOLUTION**

**PART 1: PANELISTS**

**General Rules**

- 1 Skawahlook intends that, wherever possible, a dispute in relation to Skawahlook land will be resolved through informal discussion by the parties to the dispute and nothing in this Schedule will be construed to limit the ability of any person to settle a dispute without recourse to this process.
- 2 Where the parties to a dispute cannot settle the dispute amongst themselves, the parties will refer the dispute to a panel using Qwi:qwelstóm procedures.

**Impartiality**

- 3 Panelists shall act impartially and without bias or favour to any party in a dispute.
- 4 Panelists may not act, or attempt to act, in a way to improperly influence a decision of the panel.

**Panelists**

- 5 Panelists shall be appointed on an ad hoc basis, under Qwi:qwelstóm procedures.

**Remuneration**

- 6 Nothing in section 5 requires that the panelists receive any remuneration.

**PART 2: BRINGING DISPUTES**

**Who May Bring a Dispute**

- 7 Any member or other person whose registered interest in the land is affected by a decision of Council or Land Advisory Committee may appeal the decision to a Qwi:qwelstóm panel.
- 8 Council may also bring a dispute to the panel when it asserts an interest in the land or when disputing the possession, use or occupation of the land.
- 9 If one person brings a dispute to a Qwi:qwelstóm panel, and if the panel accepts jurisdiction to hear the dispute, all other persons affected by that dispute are bound by the jurisdiction of the panel.



## **Panel Procedures**

- 10 Applications to a Qwi:qwelstóm panel must be made in accordance with the procedures established by the Qwi:qwelstóm procedures.

## **Prior to Bringing a Dispute**

- 11 If a member or non-member with an interest in First Nation land has a dispute with the Land Advisory Committee or with Council, including with any decision affecting the member's or non-member's registered interests in land taken by such bodies, the member or non-member must first attempt to resolve that dispute with Council or the Land Advisory Committee according to the dispute resolution rules set up by such bodies.
- 12 If Council or the Land Advisory Committee do not have dispute resolution rules, a member or non-member referred to in section 11 may bring an application for dispute resolution to a Qwi:qwelstóm panel under the Qwi:qwelstóm procedures.
- 13 An application to refer a dispute to a Qwi:qwelstóm panel shall be made:
- (1) within 30 days after the day that the decision, act or omission being referred was made; or
  - (2) in the case of a dispute with the Land Advisory Committee or Council, 30 days after the Land Advisory Committee or Council rejects the attempts at resolution made under section 11.

## **PART 3: POWERS OF PANEL**

### **Rules of Panel**

- 14 A Qwi:qwelstóm panel shall use the Qwi:qwelstóm procedures for its hearings and for the conduct of its affairs.

### **Powers of panel**

- 15 A Qwi:qwelstóm panel may, after hearing a dispute:
- (1) confirm or reverse the decision, in whole or in part;
  - (2) substitute its own decision for the decision in dispute;
  - (3) direct that an action be taken or ceased; or
  - (4) refer the matter or dispute back for a new decision.
- 16 In addition to any other sanction, a Qwi:qwelstóm panel may reject an



application without hearing it if the panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

- 17 A Qwi:qwelstóm panel may obtain the services of professionals to assist it in fulfilling its functions.

#### **Written Decisions**

- 18 Decisions of a Qwi:qwelstóm panel must be in writing in accordance with the Qwi:qwelstóm procedures.
- 19 A Qwi:qwelstóm panel may give reasons for its decision at its discretion.

#### **Appeal of Decision**

- 20 A decision of a Qwi:qwelstóm panel may be appealed to the Federal Court (Trial Division).



**Schedule C:**

**CONFLICT OF INTEREST**

**Application**

- 1 This part applies only to a conflict of interest relating to the management and administration of the land.

**General Duties and Definitions**

- 2 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.
- 3 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.
- 4 No conflict of interest or appearance of a conflict of interest arises where:
  - (1) 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;
  - (2) a 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 Skawahlook entering into a transaction with Council or having a matter determined by Council;
  - (3) a Council member or his or her immediate family holds an interest in the same manner and under the same conditions as other members of Skawahlook;
  - (4) a Council member guarantees repayment of or otherwise assumes liability to repay a loan made to Council or the Skawahlook;
  - (5) Council enacts a Skawahlook law setting reasonable remuneration, holidays, sick leave and benefits for services of Council members as elected officials of Skawahlook; or
  - (6) Council agrees to indemnify or reimburse 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.
- 5 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.



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

- 6 A Council member who has, or believes that they have, 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.
- 7 Where the interest of a Council member has not been disclosed as required by section 6 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 that next meeting of Council.
- 8 If a Council member is in doubt whether they are in a conflict of interest, they may request a decision of Council on whether there is a conflict of interest.
- 9 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.
- 10 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.
- 11 Every declaration of a conflict of interest and the general nature thereof shall be recorded in the minutes of the Council meeting.
- 12 Notwithstanding section 2, Council may approve a transaction by resolution where:
  - (1) any Council member with a conflict of interest has complied with sections 6 to 10 of this part; and
  - (2) Council determines the transaction is fair and reasonable.
- 13 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.
- 14 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 the Skawahlook or to safeguard the community's trust in the conduct of Council's activities.
- 15 Where as a result of a conflict of interest a quorum of Council cannot be established, the matter shall be brought before a membership meeting.
- 16 Notice of the membership meeting required under section 15 shall be provided to the



membership at least twenty-one (21) days before the meeting and shall include:

- (1) the date, time and place of the membership meeting;
- (2) a summary of the proposed transaction and the conflict of interest to be considered at the membership meeting;
- (3) notification that a full copy of a report on the transaction and conflict of interest can be obtained at the Skawahlook administration building; and
- (4) a statement that a determination of how to proceed on the proposed transaction will be made by a vote of eligible voters present at the membership meeting.

**17** Notice of the membership meeting required under section 15 shall be provided by:

- (1) mailing a written notice to eligible voters at their last known address at least twenty-one (21) days before the meeting;
- (2) posting the notice in a public place on the land at least twenty-one (21) days before the meeting; and
- (3) posting the notice on the Skawahlook's website at least twenty-one (21) days before the meeting.

**18** At the membership meeting Council shall explain the report on the transaction and conflict of interest and members may ask questions and provide comments.

**19** Upon completion of the discussion, the eligible voters, including those Council members not in conflict, 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.

**20** The decision of the majority of eligible voters 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.

### **Competition with Skawahlook owned businesses**

**21** 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 the Skawahlook, without first:

- (1) complying with the provisions of this part; and
- (2) obtaining a resolution, in accordance with this part, approving their

*Skawahlook Land Code April 13<sup>th</sup>, 2019*



participation in the business or activity that is similar to the one carried on by the Skawahlook.

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

- 22 A Council member shall not use property owned by the Skawahlook for personal or business purposes nor purchase property owned by the Skawahlook, unless such purposes or purchases are equally available to all members, and the transaction is approved in accordance with sections 6 to 20 of this part.
- 23 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.
- 24 A Council member shall not use his or her position for the 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.
- 25 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.

### **Gifts**

- 26 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.
- 27 Where a gift is given to a Council member in their capacity as a Council member they shall advise Council and the gift shall become the property of the Skawahlook.
- 28 Notwithstanding sections 26 and 27, gift giving or receiving is permitted in recognition of a Council member's service to the community or to aboriginal causes or institutions.

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

- 29 In addition to any other penalty or remedy, a Council member is liable to Skawahlook for any personal or business benefit to themselves or an immediate family member resulting from a violation of this part.



**Schedule D:**

**FINANCIAL MANAGEMENT**

**PART 1: GENERAL RULES**

**Application**

- 1 This section applies only to financial matters relating to the management and administration of Skawahlook land.

**Establishment of Bank Accounts**

- 2 Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts
  - (1) transfer payments received from Canada for the management and administration of Skawahlook land;
  - (2) moneys received by Skawahlook from the grant or disposition of any interests or licences in Skawahlook land;
  - (3) all fees, fines, charges and levies collected under a land law or land resolution;
  - (4) all capital and revenue moneys received from Canada from the grant or disposition of any interests and licences in Skawahlook land; and
  - (5) any other land revenue received by Skawahlook.

**Signing Officers**

- 3 Council shall authorize at least three persons, at least one of whom shall be a member of Council, to sign cheques and other bills of exchange or otherwise transact on the accounts.

**Bonding**

- 4 Every signing officer must be bondable.

**Two Signatures**

- 5 A cheque or other bill of exchange or transfer drawn on the account must be signed by two of the persons authorized to sign cheques and other bills of exchange or otherwise transact on the account pursuant to section 3.
- 6 A signing authority in section 3 shall not sign a cheque for which they are the payee.
- 7 Any signing authority who violates section 6 is subject to having the

*Skawahlook Land Code April 13<sup>th</sup>, 2019*



cheque signed in violation voided and is also personally liable for any costs incurred by Skawahlook as a result of the cheque being signed in violation.

### **Fiscal Year**

- 8 The fiscal year of the Skawahlook begins on April 1 of each year and ends on March 31 of the following year, unless otherwise fixed by Council.

### **Adoption of Budget**

- 9 Council shall, by resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year as a part of its regular budget process and may, if Council deems it necessary in the course of the fiscal year, adopt supplementary budgets for that fiscal year.
- 10 Prior to adopting a land management budget or supplementary budgets as referred to in section 9, Council will consult with the Land Advisory Committee.

### **Procedure**

- 11 After adopting the land management budget or a supplementary budget, Council shall, as soon as practicable:
  - (1) explain the budget or supplementary budget to the members at an annual community meeting; and
  - (2) have a copy of the budget or supplementary budget available at the Skawahlook administrative office for inspection by members at reasonable hours by appointment.

### **If No Budget**

- 12 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 budgets of the previous fiscal year apply until a new budget is adopted.

### **Budget Rules**

- 13 Subject to sections 8 and 9, Council may make rules respecting the preparation and implementation of land management budgets.

### **Expenditures**

- 14 Council may not expend moneys related to land or commit itself, by contract or otherwise, to expend moneys related to land, unless the expenditure is authorized by or under a law or an approved budget.

### **Financial Policy**

- 15 The Skawahlook may, in accordance with this Land Code, adopt a *Skawahlook Land Code April 13<sup>th</sup>, 2019*



financial policy to further manage moneys related to the land.

## **PART 2: FINANCIAL RECORDS**

### **Financial Records**

- 16 The Skawahlook shall keep financial records related to the land in accordance with generally accepted accounting principles.

### **Preparation of Financial Statement**

- 17 Within 90 days after the end of each fiscal year, Council, on behalf of the Skawahlook, shall prepare a financial statement in comparative form, containing at a minimum
- (1) a balance sheet;
  - (2) 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
  - (3) any other information necessary for a fair presentation of the financial position of the Skawahlook in relation to the land.

### **Consolidated Accounts**

- 18 The accounting, auditing and reporting requirements of this Land Code may be done together with, and consolidated with, the other accounts, audits and reports of the Skawahlook. .

## **PART 3: AUDIT**

### **Appointment of Auditor**

- 19 For each fiscal year, a duly accredited auditor shall be appointed to audit the land related financial records of the Skawahlook. This auditor will be the auditor appointed for the consolidated audit of the other accounts, audits and reports of the Skawahlook.

### **Holding Office**

- 20 The auditor appointed under section 19 holds office until reappointed, or replaced.

### **Vacancy in Office**

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



**Remuneration**

22 The auditor's remuneration shall be fixed by Council.

**Duty of Auditor**

23 The auditor shall, within 120 days after the end of the Skawahlook's fiscal year, prepare and submit to Council, a report on the Skawahlook's financial statement, stating whether, in the opinion of the auditor, the financial statement presents fairly the financial position of the Skawahlook in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

**Access to Records**

24 In order to prepare the report on the Skawahlook's financial statement, the auditor may at all reasonable times inspect any financial records of the Skawahlook and any person or body who administers money on behalf of the Skawahlook.

**Presentation of Auditor's Report**

25 Council shall present the auditor's report at a meeting of members.

**PART 4: ANNUAL REPORT**

**Publish Annual Report**

26 Council, on behalf of the Skawahlook, shall publish an annual report on the land issued within one month of receipt of the community's audit.

**Contents**

27 The annual report will include

- (1) a review of land management activities;
- (2) a copy and explanation of the audit as it applies to the land; and
- (3) any other matter as determined by Council or the Land Advisory Committee.

**Access to Information**

28 Any member may, during regular business hours at the Skawahlook administrative office, have reasonable access to:

- (1) the register of laws;
- (2) the auditor's report; and



(3) the annual report on the land.

**29** Any member may, during regular business hours at the Skawahlook administrative office, inspect the financial records of the Skawahlook related to the land, but must first make an appointment to do so.



**Schedule E:**

**LAND ADVISORY COMMITTEE**

**Land Advisory Committee Established**

- 1 The Land Advisory Committee shall:
  - (1) assist with the development of an administration system in respect of the land;
  - (2) advise Council on matters respecting the land;
  - (3) recommend laws, resolutions, policies and procedures respecting the land to Council;
  - (4) convene meetings of members to receive their input or seek their approval on certain land matters as required in this Land Code;
  - (5) assist in the exchange of information regarding land matters between members and Council; and
  - (6) perform such other duties and functions as delegated to it by Council.
- 2 The Land Advisory Committee will perform its work under the direction of Council.

**Determination of Fees and Rent**

- 3 The Land Advisory Committee will recommend to Council a process for determining:
  - (1) fees and rent for interests and licenses in the land;
  - (2) fees for services provided by the Skawahlook to members and non-members in relation to the land and compliance with this Land Code; and
  - (3) processes and criteria for managing the Skawahlook's obligations in relation to the land.

**Implementation of Policies**

- 4 Rules, procedures and processes developed in accordance with section 3 will be considered by Council for implementation as laws, resolutions, policies or amendments to this Land Code.

**Internal Procedures**

- 5 The Land Advisory Committee may establish rules and procedures for the conduct of



its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.

- 6 Subject to Council requirements in respect of financial obligations, the Land Advisory Committee may:
- (1) establish policies for the recovery of expenses incurred by Land Advisory Committee members; and
  - (2) establish programs for the orientation and education of Land Advisory Committee members.

### **Composition**

- 7 The Land Advisory Committee will have five committee members. These committee members will be selected and appointed by Council and may include Skawahlook staff who have responsibility for land management. Four or five of the committee members will be eligible voters. Council may select and appoint one non-member to the committee, provided that member lives on the land and has a long-term interest in the land.
- 8 Council, in its appointments, shall ensure that the Land Advisory Committee is comprised of an odd number of members and that no more than one member of the Land Advisory Committee is a member of Council.
- 9 The Land Advisory Committee may obtain the services of advisors and professionals to assist it in fulfilling its functions.

### **Eligibility**

- 10 Any eligible voter, whether or not resident on the land, and a non-member who lives on the land and has a long-term interest in the land, is eligible to be appointed to the Land Advisory Committee, except for:
- (1) an eligible voter or non-member convicted of an offence that was prosecuted by way of indictment;
  - (2) an eligible voter or non-member convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct;
  - (3) an eligible voter or non-member who is an undischarged bankrupt;
- an eligible voter or non-member found by a Court to have breached a fiduciary duty owed to the Skawahlook or defrauded the Skawahlook;
- (4) an eligible voter or non-member who is unable to regularly attend meetings due to living elsewhere; and



- (5) an eligible voter or non-member who is unfit by reason of mental incapacity.

### **Interim Land Advisory Committee**

- 11 The interim Land Advisory Committee as it exists on the date of the ratification vote will hold office and carry out the duties of the Land Advisory Committee until the first Land Advisory Committee appointed under section 14 takes office.
- 12 Council must appoint a Land Advisory Committee no more than six (6) months after the effective date of the Land Code to replace the interim Land Advisory Committee.

### **No Limit on Terms in Office**

- 13 Incumbent members of the Land Advisory Committee are eligible for reappointment to the Committee for a further term.

### **Staggered Terms of Office**

- 14 In the first appointments to the Land Advisory Committee made after this Land Code comes into effect, Council will appoint or reappoint:
  - (1) three eligible voters or two eligible voters and one non-member to the Land Advisory Committee to a two-year term; and
  - (2) two eligible voters to the Land Advisory Committee to a four-year term;and thereafter, on the expiry of the Land Advisory Committee members' terms of office, Council shall appoint or reappoint members to the Land Advisory Committee to fill the vacancies arising on the expiry of the members' terms to four-year terms.
- 15 Appointed Land Advisory Committee members shall hold office for a term commencing at midnight on the date of their appointment and terminating at midnight four years following that date.

### **Vacancy on Land Management Committee**

- 16 The office of a member of the Land Advisory Committee becomes vacant if the member, while holding office:
  - (1) is or becomes ineligible to hold office under section 10;
  - (2) ceases to be a member of the Skawahlook, if the member is one of the eligible voters appointed to the Land Advisory Committee;
  - (3) is absent for three consecutive meetings of the Land Advisory Committee for a reason other than illness or incapacity without being authorized to be absent by the Chair of the Land Advisory Committee;



- (4) dies or becomes mentally incompetent; or
- (5) resigns in writing.

### **Vacancy in Term**

- 17 Where the office of a member of the Land Advisory Committee becomes vacant more than 90 days before the date when that member's term would ordinarily be up, Council will appoint a replacement for the balance of the term in respect of which the vacancy occurred.

### **Attributes of Committee Members**

- 18 The members of the Land Advisory Committee will accept their appointment as members, 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.
- 19 Members of the Land Advisory Committee will endeavor to demonstrate the following attributes:
  - (1) impartiality, honesty and integrity;
  - (2) responsibility and accountability; and
  - (3) confidentiality.

### **Chair**

- 20 The members of the Land Advisory Committee will select a Chair from among their members.

### **Alternate Chair**

- 21 If the Chair is unavailable or unable to perform the functions of office, the Land Advisory Committee will appoint another member of the Land Advisory Committee to serve as Acting Chair.

### **Duties of the Chair**

- 22 The duties of the Chair are to:
  - (1) chair meetings of the Land Advisory Committee;
  - (2) ensure that financial statements relating to all activities of the Land Advisory Committee, including any applicable revenues and expenditures concerning Skawahlook lands, are prepared and tabled with Council;



- (3) report to Council and the members on the activities of the Land Advisory Committee; and
- (4) perform such other duties as Council or the Land Advisory Committee may reasonably prescribe.



