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Shxw'ówhámel First Nation

LAND CODE

[October 23, 2014]

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This is Exhibit " 1 " referred to in the
Affidavit of BRIAN JONES
Sworn before me at Sechelt
in the Province of British Columbia
this 24th day of October, 2014.
[Handwritten signature]
A Commissioner for taking Affidavits
within British Columbia

TRACY D. PARKER
Commissioner for taking Affidavits
in and for British Columbia

Exhibit #1
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PREAMBLE

Whereas:

- A. The Shxw'ówhámél First Nation, being a member of the Tit Tribe, continue to maintain our aboriginal rights and title to our lands and resources within S'ólh Temexw, our traditional Sto:lo Territory;
- B. Our aboriginal rights and title and stewardship are expressed in our Halq'eméylem language as:
S'ólh temexw te ikw' elo. Xolhmet te mekw'stam it kwelat:
"This is our land. We have to take care of everything that belongs to us";
- C. We honour our past, present and future generations: Xwel mi ay sta:xwelh;
- D. Shxw'ówhámél First Nation has a unique relationship with our Sxoxo:mes (our gifts) lands and resources which is expressed in our Sxwoxwiyam, Sqwelqwel and our Shxweli;
- E. Shxw'ówhámél First Nation has entered into the Framework Agreement on First Nation Land Management with Canada on March 25th , 2013, as amended, and which was ratified on behalf of the Government of Canada by the First Nations Land Management Act; and
- F. Shxw'ówhámél First Nation is committed to taking back management of our lands and resources.

NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE
FUNDAMENTAL LAND LAW FOR THE RESERVE LAND OF THE
SHXW'ÓWHÁMÉL FIRST NATION.

PART 1
PRELIMINARY MATTERS

1. Title

1.1 The title of this enactment is the Shxw'owhamel Land Code.

2. Interpretation

Definitions

1.2 The following definitions apply in this Land Code:

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

“Allotment” means an interest in Shxw'owhámel Lands granting a Member possession of a part of Shxw'owhámel Lands under Part 7 of this Land Code or, prior to the date this Land Code comes into force, pursuant to section 20 of the *Indian Act*;

“Certificate of Possession” or “CP” means an official document issued under this Land Code or formerly issues under section 20 of the *Indian Act* to confirm a Member's Allotment;

“Committee” means the Lands Advisory Committee;

“Community Land” means any Shxw'owhamel Lands in which all Members have a common interest and which is not the subject of an Allotment or Certificate of Possession;

“eligible voter” means, for the purpose of voting in respect of land matters under this Land Code, a Member who has attained the age of eighteen (18) years of age on the day of the vote.

“First Nation” means the Shxw'owhámel;

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

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Minister of Indian Affairs and Northern Development and the Chiefs of eight First Nations on March 27, 2013, as amended, including the amendment to add Shxw'owhámel First Nation;

“immediate relatives”, in respect of a person, means the person's parent, sister, brother, child, spouse or common law spouse;

“Individual Agreement” “Transfer Agreement” means the Individual Agreement and transfer of administration made between Shxw’owhámel First Nation and Her Majesty in right of Canada in relation to this Land Code;

“Interest” means an interest in Shxw’owhámel Lands, including an Allotment, Lease, License, Mortgage, Permit, Life Estate, and Sublease;

“Law” means a law enacted pursuant to this Land Code;

“Lands Advisory Committee” means the Shxw’owhámel Lands Committee established under this Land Code under Part 6;

“Lands Manager” means the individual appointed by Si:ya:m Council to oversee the administration of Shxw’owhámel Lands, this Land Code and related Laws and policies;

“Life Estate” means an interest in an Allotment, CP or home granted to any natural person, including a non-Member, that grants the individual a right to use and occupy a specified home, structure or area or parcel of land for a specified time period which cannot exceed the life of the person;

“Member” means a person whose name appears or is entitled to appear on the Shxw’owhámel First Nation Band Membership List;

“Natural Resources” means any minerals, oil, gas, substances, groundwater, water, vegetation or animals found on, under or in Shxw’owhámel Lands which, when removed or used, have economic or other value;

“Panel” means the Dispute Resolution Panel established under section 40.

“Ratification Vote” means a vote of eligible voters under this Land Code and unless otherwise required by this Land Code, a question put to referendum shall be approved, if fifty percent (50%) plus 1 of the eligible voters who cast valid ballots vote “YES” to the question asked;

“Register” means to register in the Registry;

“Registry” means the First Nations Land Registry (“FNLRS”) created and maintained by the federal Aboriginal Affairs and Northern Development Canada under the Act or another registry designated by Si:ya:m Council by Resolution;

“Resolution” means a resolution of the Council enacted under this Land Code by a quorum of Si:ya:m Council at a duly convened meeting;

“Shxw’owhámel Lands” means any portion of a Shxw’owhámel Reserve that is subject to this Land Code under section 5;

“Siya:m” means a respected Member who is the main leader of a family or a spokesperson appointed by families to represent the families or Memberships interests at the Si:ya:m Council;

“Siya:m Alternate” means a selected Si:yam Council Member who represents the family of Members on the Si:ya:m Council when the main Si:yam is not available for the Council meeting;

“Si:ya:m Council” means the appointed Si:ya:m Council of Shxw’owhamel First Nation Leadership Governing Body as defined in Shxw’owhamel First Nations Governance Policy;

“Special Meeting of Members” means a special meeting of Members required or called under section 5, 6, 8, 13 or 16 of this Land Code or under a related Law;

“spouse” means a person who is married to another person, whether by a traditional, religious or civil ceremony, and includes a common law spouse as defined by Shxw’owhamel law;

“Traditional Holdings” means a portion of Shxw’owhámel Lands that:

- (a) was cleared historically and occupied by a Member or family of Members,
- (b) has surveyed, marked or discernable boundaries,
- (c) was or is recognized by other Shxw’owhámel Members, families of Members or Si:ya:m Council as a legitimate Traditional Holding, and
- (d) Meets the requirements set out in this Land Code and any applicable Laws or policies as a Traditional Holding.

Paramountcy

1.3 If there is an inconsistency between this Land Code and any other law of Shxw’owhámel, this Land Code prevails to the extent of the inconsistency.

Culture and traditions

1.4 The structures, organizations and procedures established by this Land Code shall be interpreted in accordance with the culture, traditions and customs of Shxw’owhámel, unless otherwise provided.

Language

2.2 The language of Shxw’owhámel may be used to clarify the meaning of any provision in this Land Code, if the meaning of that provision is not otherwise clear in English.

Non-abrogation

2.3 This Land Code does not abrogate or derogate from any Aboriginal rights and title or freedoms that pertain to the Shxw’owhámel First Nation or its Members.

Fair Interpretation

2.4 This Land Code shall be interpreted in a fair, large and liberal manner.

Fiduciary Relationship Continued

2.5 This Land Code does not abrogate the fiduciary relationship between Her Majesty and the Shxw'ōwhámel First Nation and its Members and the fiduciary relationship is continued in accordance with the Framework Agreement, the Act and the common law.

Lands and interests affected

2.6 A reference to “land” in this Land Code means all rights and resources that belong to the land, and includes:

- (a) 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 Canada; and
- (b) all the Interests s granted to the Shxw'ōwhámel First Nation by her Majesty in right of Canada listed in the Individual Agreement.

3. Authority to Govern

Origin of authority

3.1 Our aboriginal rights and title flow from our Sxwoxwiyam, Sqwelqwel and our Shxweli. When our leaders met historically to discuss the Land Question, their opening comment was:

S'olh temexw te ikw' elo. Xolhmet te mekw' stam it kwelat.

This statement of ownership and stewardship will be reflected in the Shxw'ōwhámel Land Code.

Flow of authority

3.2 The authority of Shxw'ōwhámel to govern our lands and resources flows from Chichelh Siya:m.

4. Purpose

Purpose

4.1 The purpose of this Land Code is to set out the principles, administrative structures and law-making authority that apply to Shxw'ōwhámel Lands s and by which the Shxw'ōwhámel First Nation will exercise authority over those lands.

Protection of lands and resources, preservation of culture

4.2 Shxw'ōwhámel is committed to the preservation of lands, resources and culture for future generations:

- a) Shxw'ōwhámel shall work to achieve a healthy, educated and prosperous future to ensure the continued existence of Shxw'ōwhámel as a strong political, social, economic and cultural community.

- b) Shxw'ōwhámel honors our connection to the lands, natural resources and elements of the natural world that provides for its Members physical and spiritual needs.
- c) Shxw'ōwhámel recognizes its responsibility to protect our lands and natural resources for future generations.
- d) Shxw'ōwhámel values the need to respect, protect and promote their Culture, Heritage and Traditions.
- e) Shxw'ōwhámel will continue to support Memebbers in working towards a healthy, educated, cultural and self-sufficient community.

5. Description of Shxw'ōwhámel land

First Nation land

5.1 The Shxw'ōwhámel Lands that is subject to this Land Code are the following Indian Reserves, as further described in the Individual Agreement:

- (a) Shxw'ōwhámel Indian Reserve 1,
- (b) Wahleach Island Indian Reserve 2 and
- (c) Kuthlalth Indian Reserve 3.

Excluded lands

5.2 Despite section 5.1, the land described as follows is excluded from the application of this Land Code: none.

Additional lands

5.3 The following lands may be made subject to this Land Code after the applicable condition is met:

- (a) any land owned jointly by the Shxw'ōwhámel and another First Nation, where Shxw'ōwhámel and the other First Nation or First Nations agree upon a joint management scheme for those lands that allows for Land Code application; and
- (b) any land or interest acquired by the Shxw'ōwhámel after this Land Code takes effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use, provided the lands are set aside as a reserve.

Land exchange

5.4 For greater certainty, section 5.3 does not apply to land acquired by land exchange, which is governed by the process in section 17.

Inclusion of land or Interest

5.5 Si:ya:m Council shall call a Special Meeting of Members to obtain the views of Members, but not to hold a Ratification Vote, on any proposed inclusion of lands before Si:ya:m Council makes any law or Resolution to include lands referred to in sections 5.2 and 5.3 in this Land Code.

PART 2

FIRST NATION LEGISLATION

6. Law-Making Powers and Procedures

Council may make laws

- 6.1 Si:ya:m Council may, in accordance with this Land Code, make Laws in relation to Shxw'ōwhámél Lands in areas such as:
- (a) Development, conservation, protection, management, regulation, zoning, occupation, use and possession of and planning for lands and Interests;
 - (b) Interests;
 - (c) Establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, royalties, revenues, or other monies;
 - (d) Any matter necessary to give effect to this Land Code; and
 - (e) Any matter necessary or ancillary to a Law.

Examples of laws

- 6.2 For greater certainty, and without limiting the generality of section 6.1, Si:ya:m Council may make Laws respecting the following in relation to Shxw'ōwhámél Lands:
- (a) the purchase, acquisition or sale of lands in accordance with the Act and this Land Code;
 - (b) regulation, control, authorization and prohibition of residency, access, occupation and development of Shxw'ōwhámél Lands;
 - (c) zoning and land use planning;
 - (d) protection, regulation and granting of Interests, including for Interests in Natural Resources;
 - (e) fees or charges to be paid to Shxw'ōwhámél for the granting, transfer or registration of Interests in Community Lands;
 - (f) fees, stumpage, or royalties to be paid to Shxw'ōwhámél for the removal, extraction or use of Natural Resources from Shxw'ōwhámél Lands, including for removal, extraction or use of minerals, gravels, timber and water from Community Lands and from Allotments or CP lands;
 - (g) fees to be paid to Shxw'ōwhámél for permits, licenses, and other Interests and for applications and administrative processes including registrations;
 - (h) provision of local services and the imposition of user charges including development cost charges or their equivalent;
 - (i) authorization and regulation of subdivisions including requirements for contributions to community benefits, park dedications or grants in lieu of park dedications;
 - (j) the conduct of surveys of lands or Interests;
 - (k) setting aside, designation, regulation or management of parks, parklands, trails and recreational lands;

- (l) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys relating to Shxw'ōwhámel Lands and Interests, and the establishment of administrative structure to manage such moneys;
- (m) creation of management and administrative bodies or agencies;
- (n) removal, banning and punishment of persons trespassing upon Shxw'ōwhámel Lands or frequenting Shxw'ōwhámel Lands for prohibited purposes;
- (o) public nuisance and private nuisance;
- (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (q) construction, maintenance and regulation of boundary and internal fences;
- (r) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (s) regulation of traffic and transportation;
- (t) hunting, fishing, and management and protection of fish, wildlife and their habitat on Shxw'ōwhámel Lands;
- (u) use and storage of fireworks, firearms, weapons and hazardous materials or substances;
- (v) management and control of domestic and agricultural animals; and
- (w) laws on the provision of services for the resolution, outside the courts, of disputes in relation to Shxw'ōwhámel Lands.

Laws requiring no community consultation

6.3 Si:ya:m Council may pass laws relating to Property Taxation and simple administrative and regulatory matters at any Si:ya:m Council meeting without any requirement for three readings or any notification of or consultation with Members.

Laws requiring community consultation

6.4 For greater certainty, and without limiting the generality of sections 6.1 or 6.2, Si:ya:m Council may make Laws respecting the following but only after completing three readings and holding a Special Meeting of Members as set out below:

- (a) Land use plan major amendments or re-zonings;
- (b) creation, regulation and prohibition of Interests;
- (c) environmental assessment and environmental protection;
- (d) expropriation;
- (e) a law affecting a heritage site or an environmentally sensitive property;
- (f) a law declaring land or an interest referred to in section 5.2 or 5.3 to be subject to this Land Code; and
- (g) any other law or class of law that Si:ya:m Council, by Resolution, declares to be subject to this section.

Laws requiring notice and mail-in comment opportunities for off-Reserve Members

6.5 In addition to the requirements set out above in subsection 6.4, Si:ya:m Council is also required to provide mailed or e-mailed notices and an opportunity to provide written comments to all off-Reserve Members for the following laws, Interests and transactions:

- (a) The creation of a land use plan;

- (b) any permit or license or grant or disposition of natural resources that is for longer than five (5) years;
- (c) leases of Community Lands for longer than fifteen (15) years;
- (d) leases of CP lands for longer than fifteen (15) years;
- (e) land exchange or sale of land;
- (f) laws relating to the recognition of traditional land holdings;
- (g) Matrimonial property;
- (h) a charge or mortgage of a leasehold interest in Community Lands exceeding a term of 15 years or a dollar amount of \$1 million in 2014 Canadian dollars;
- (i) setting aside and regulation of heritage lands and sacred sites; and
- (j) any law or class of law that Council, by Resolution, declares to be subject to this section.

No development shall be allowed on any site designated as a heritage site under the land use plan, unless the development receives community approval by a Ratification Vote

Laws or decisions requiring a Ratification Vote

6.6 In addition to the requirements set out above in subsection 6.4 above, Si:ya:m Council shall ensure that a Ratification Vote of Members is carried out before a final Resolution is passed by Si:ya:m Council for the following laws, Interests and transactions:

- (a) The development of on any site designated as a heritage site under a land use plan;
- (b) An amendment to a land use plan to delete a heritage site; and
- (c) A land exchange for Shxw'ōwhámel Lands.

Introduction of Laws

6.7 A proposed draft Law may be presented by:

- (a) a member of Si:ya:m Council;
- (b) a representative on behalf of the Committee, or other body composed of Members as may be authorized by Si:ya:m Council; or
- (c) the Lands Manager.

7. First Reading

First Reading: Proposal of Law

7.1 Upon completion of a draft law or receiving a properly prepared draft law under section 6.6 above, Si:ya:m Council shall table the draft law at a regular meeting.

7.2 After considering and discussing the draft law and reviewing the attached materials and recommendations from the Committee or the Lands Manager, if any, Si:ya:m Council shall, by Resolution:

- (a) Accept the draft law in principle and direct that it be taken to community consultation if required;
- (b) Reject the draft law; or

- (c) Request further work, analysis or information on the draft law so it can be re-tabled at a future meeting.

8. Second Reading

Second Reading: Membership Meetings if Required

- 8.1 For laws which do not require a Special Meeting of Members or mail-in comment opportunity, Council may proceed to a second reading of the law at the same Council meeting at which the first reading occurred or at any Council meeting thereafter.
- 8.2 For laws which require a Special Meeting of Members or a mail-in comment opportunity, Council shall provide notice to Members at least thirty (30) days before the date of the meeting at which the second reading will take place.

Notices

- 8.3 Notices under section 8.2 shall include:

- (a) The date, time and place of the Special Meeting of Members;;
- (b) A summary of the draft law and, if appropriate, maps, flow charts or other material;
- (c) Notification that a copy of the full draft of the law is available at the Shxw'ōwhámel Administration Office; and
- (d) Any other information that may be required by Council or set out in a Shxw'ōwhámel Law.

- 8.4 Notices for Special Meeting of Members for second reading shall be

- (a) Posted in the Shxw'ōwhámel Administration Office;
- (b) Posted on the Shxw'ōwhámel web-site; and
- (c) Included in the Shxw'ōwhámel newsletter if publication deadlines are met.

Meetings May be Combined

- 8.5 Council may decide to combine a Special Meeting of Members with any other Shxw'ōwhámel meeting provided that the requirements of this law are met.

Mail-in Comment Opportunity

- 8.6 In addition to the notice requirements set out in section 8.4 above, notices for draft laws which require a mail-in comment opportunity shall also be mailed to all Members living off the Reserve for whom Shxw'ōwhámel has a current address.

- 8.7 Notices under section 8.6 shall be posted and mailed at least thirty (30) days in advance of the Special Meeting of Members and shall include:

- (a) The date, time and place of the Special Meeting of Members;
- (b) A summary of the draft law and, if appropriate, maps, flow charts or other material;

- (c) Notification that a copy of the full draft of the law is available at the Shxw'ōwhámel Administration Office;
- (d) A short form or questionnaire for Members to provide written comments;
- (e) A deadline date for written comments which, unless otherwise specified, shall be midnight on the date of the Special Meeting of Members; and
- (f) Any other information that may be required by Council or set out in a Shxw'ōwhámel Law.

8.8 Notices and comment forms under section 8.6 shall also be made available to any Member who requests them, and shall be available at the Special Meeting of Members for all Members to fill out, regardless of where they live.

Procedure at Special Meeting of Members

8.9 At the Special Meeting of Members, Si:ya:m Council, the Lands Manager or a designate, shall explain the purpose and a verbal summary of the draft law and Council will provide opportunities for Members to ask questions or provide comments.

Second Reading After the Special Meeting of Members

8.10 After the Special Meeting of Members, Si:ya:m Council, Lands Manager, or a designate, shall prepare a revised or repeat draft of the proposed law and a summary of comments received and responses to them.

8.11 No sooner than three (3) days after the Special Meeting of Members, Si:ya:m Council shall hold a Council meeting and:

- (a) Review and give full and fair consideration to comments and questions from Members, including mail-in comments;
- (b) If necessary, at the sole discretion of Si:ya:m Council, request further work, analysis or information on the draft law so it can be re-tabled for second reading at a future meeting; and
- (c) If Si:ya:m Council is satisfied it has sufficient information and analysis to make a decision:
 - (i) pass a Resolution to accept the revised draft law, with or without amendments, as having passed second reading, and direct it to be prepared for third and final reading; or
 - (ii) pass a Resolution to reject the revised draft law.

9. Third and Final Reading

Meeting for Third and Final Reading

9.1 Si:ya:m Council may hold a meeting for third and final reading of a draft law at any time that is at least seven (7) days after second reading.

9.2 At the Si:ya:m Council meeting for third reading, Si:ya:m Council shall:

- (a) Review and give full and fair consideration to comments and questions from Members, including mail-in comments;
- (b) Review and consider any comments or recommendations from staff or the Committee;
- (c) If necessary, at the sole discretion of Si:ya:m Council, request further work, analysis or information on the draft law so it can be re-tabled for third reading at a future meeting; and
- (d) If Si:ya:m Council is satisfied it has sufficient information and analysis to make a decision:
 - (i) Pass a Resolution to accept the law, with or without amendments, as having passed third reading, and direct it to be prepared for signature; or
 - (ii) Reject the revised draft law.

9.3 Si:ya:m Council shall provide a written explanation to Shxw'owhámel Community Members for any law that was rejected at any stage.

9.4 If Si:ya:m Council pass a Resolution to approve the draft law after third reading, a quorum of Si:ya:m Council shall sign the law and the law shall be an official Shxw'owhámel law.

10. Urgent Matters

Urgent Matters

10.1 Si:ya:m Council may enact a Law without the preliminary steps required above if Si:ya:m Council, acting reasonably, believes that the Law is required urgently to protect Shxw'owhámel Lands or Members.

10.2 A Law enacted under section 10.1 will be deemed to have been repealed and to have no force and effect 60 days after its enactment, but may be re-enacted in whole or as amended in accordance with section 11.5.

11. Enactment and Administration

Enactment of Laws

11.1 A Law is enacted when approved by Si:ya:m Council Resolution at a duly convened meeting after Si:ya:m Council has complied with sections 6 to 9 above.

Administration

11.2 Si:ya:m Council shall perform all the duties and functions, and exercise all the powers of Shxw'owhámel that are not specifically assigned to an individual or body established under this Land Code.

Delegation

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11.3 Notwithstanding section 11.2, Si:ya:m Council may, by enacting a Law, delegate administrative authority to an individual or a body established or authorized under this Land Code.

Certification of Laws

11.4 A quorum of Si:ya:m Council shall sign the original copy of a Law or Si:ya:m Council Resolution.

Amendments

11.5 Any Shxw'ōwhámel Law may be repealed or amended by following the procedure set out in the provisions under which the Law was enacted.

Law Coming Into Force

11.6 A Law comes into force on:

- (a) the date it is enacted; or
- (b) such other reasonable date as may be set by Si:ya:m Council Resolution or Law.

11.7 No Shxw'ōwhámel Law shall be set aside or be declared invalid by reason only that a Si:ya:m Council member at the time the law was passed later ceases to be a member of Si:ya:m Council.

11.8 The failure of any Si:ya:m Council member to sign a validly passed Shxw'ōwhámel Law does not invalidate the law.

Publication

11.9 All Laws shall be published in the minutes of Si:ya:m Council meetings.

Posting Laws

11.10 Within seven (7) days after a Law has been enacted, Si:ya:m Council shall post a copy of the Law in the Shxw'ōwhámel administration office.

Register of Laws

11.11 Si:ya:m Council and the Lands Manager shall:

- (a) ensure the registration in the Registry of all Laws, including those that have been repealed or are otherwise no longer in force, and including the Si:ya:m Council Resolutions approving the Laws; and
- (b) ensure that copies of all of the Laws and Resolutions referenced in subsection 11.11(a) directly above are retained in the Shxw'ōwhámel Lands or Administration Office.

11.12 Any person may, during regular business hours at the Shxw'ōwhámel administration office, have reasonable access to the Laws and Resolutions referenced in subsection 11.11(b).

Copies for Any person

11.13 Any person may obtain a copy of a Law or Si:ya:m Council Resolution relating to Shxw'ōwhámel Lands upon payment of such reasonable fee, if any, as may be set

by Si:ya:m Council or the Lands Manager.

11.14 Despite subsection 11.14, Si:ya:m Council may designate a Resolution as confidential and deny or regulate access to the Resolution for up to six (6) months if Si:ya:m Council determines, in its sole discretion, that such a designation is necessary for legal reasons or to protect business interests.

12. Offences, Penalties and Enforcement

12.1 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.

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

- (a) If no justice of the peace is appointed, this Land Code and Laws are to be enforced by a court of competent jurisdiction; and
- (b) Council may enact Laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through community justice process.

12.3 Council may enact Laws to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

PART 3

COMMUNITY CONSULTATION AND INVOLVEMENT

13. Community Consultation and Involvement

Rights of Eligible Voters

13.1 Each Shxw'ōwhámel First Nation Member who is at least 18 years of age is eligible to receive notice and to participate in Special Meeting of Members or comment processes as set out in this Land Code.

Who may attend meetings

13.2 All Shxw'ōwhámel Members have a right to attend Special Meeting of Members, but other persons may attend with the permission of the Si:ya:m Council.

PART 4

PROTECTION OF LAND

14. Expropriation

Limits on expropriation

- 14.1 An Interest in Shxw'ówhámel Lands, or in any building or other structure on those lands, may only be expropriated by Shxw'ówhámel First Nation in accordance with the Framework Agreement and any land Law enacted for the purpose of establishing the rights and procedures for community expropriations.
- 14.2 An interest of Her Majesty the Queen in Right of Canada or the province is not subject to expropriation by the Shxw'ówhámel First Nation.

Community purposes

- 14.3 A community expropriation may only be made for a necessary community purpose or works of the Shxw'ówhámel First Nation, including but not limited to: a fire hall, sewage or water treatment facility, community center, public works, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

Expropriation laws

- 14.4 Before proceeding to make any community expropriations in accordance with this Land Code, Si:ya:m Council shall enact a Law respecting the rights and procedures for community expropriations, including provisions respecting:
- the taking of possession of the Interest;
 - transfer of the Interest;
 - notice of expropriation and service of the notice of expropriation;
 - entitlement to compensation;
 - determination of the amount of compensation; and
 - the method of payment of compensation.

Public report

- 14.5 Before Shxw'ówhámel First Nation decides to expropriate an Interest, it shall provide a written report to Members setting out the reasons justifying the expropriation.

Acquisition by mutual agreement

- 14.6 The right of Shxw'ówhámel First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest in Shxw'ówhámel First Land.

Community approval

- 14.7 In the case of an expropriation of a Certificate of Possession, the expropriation must first receive community approval by Ratification Vote.

Compensation for rights and interests

14.8 Shxw'owhámel First Nation shall, in accordance with its laws and the Framework Agreement,

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

Compensation calculations

14.9 The total value of the compensation under this section will be based on the following:

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

Market value

14.10 The "market value" of an expropriated Interest is equal to the amount that would have been paid for the Interest if it had been sold on Shxw'owhámel Lands in an arm's length transaction by a willing seller to a willing buyer under no duress.

Neutral evaluation

14.11 A dispute concerning the right of Shxw'owhámel First Nation to expropriate an Interest in Shxw'owhámel Lands shall be reviewed by neutral evaluation, in the same manner as provided in Part IX of the Framework Agreement, and the 60 day period referred to in clause 32.6 of the Framework Agreement shall be applied, as appropriate in the circumstance, by the neutral evaluator.

Arbitration to resolve Disputes

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

- (a) disputes concerning the right of a person who claims an Interest in expropriated First Nation lands to compensation; and
- (b) disputes concerning the amount of the compensation to be paid to the person who held an Interest in expropriated Shxw'owhámel Lands.

15. Voluntary Land Exchanges and Protections

Conditions for a land exchange

15.1 The Shxw'owhámel First Nation may agree with another party to exchange a parcel of Shxw'owhámel Land and for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.

No effect

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

Land to be received

15.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:

- (a) it must be equal to or greater than the area of the Shxw'ówhámel Land to be exchanged;
- (b) it must be at least comparable to the appraised value of the Shxw'ówhámel Land; and
- (c) it must become a reserve and Shxw'ówhámel Land subject to this Land Code.

Negotiators

15.4 The persons who will have authority to negotiate a land exchange agreement on behalf of the Shxw'ówhámel First Nation must be designated by Resolution.

Additional land

15.5 The Shxw'ówhámel First Nation may negotiate to receive other compensation, such as money or one or more other parcels of land, in addition to the parcel referred to above which is intended to become a reserve. Such other parcels of land may be held by the Shxw'ówhámel First Nation in fee simple or some other manner.

Federal Consent

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

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

Community notice

15.7 Once negotiations on the land exchange agreement are concluded, the Si:ya:m Council shall provide the following information to eligible voters at least 30 days before the Ratification Vote:

- (a) a description of the Shxw'ówhámel Land to be exchanged;
- (b) a description of the land to be received in the exchange;
- (c) a description of any other compensation to be exchanged;
- (d) a report of a certified land appraiser setting out that the conditions in section 15.3 have been met;
- (e) a copy or summary of the exchange agreement; and
- (f) a copy of the consent referred to in section 15.6.

Process of land exchange

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- 15.8 The land exchange agreement shall provide that:
- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
 - (b) the Si:ya:m Council must pass a Resolution authorizing Canada to transfer title to the Shxw'ówhámél Land being exchanged, in accordance with the exchange agreement; and
 - (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nations Lands Register.

PART 5

ACCOUNTABILITY

16. Conflict of Interest

Application of rules

- 16.1 The rules in section 16.2 apply to the following persons:
- (a) each member of the Council who is dealing with any matter before Si:ya:m Council that is related to Shxw'ówhámél Land;
 - (b) each person who is an employee of the Shxw'ówhámél First Nation dealing with any matter that is related to Shxw'ówhámél Land;
 - (c) each person who is a member of a board, committee or other body of the Shxw'ówhámél First Nation dealing with any matter that is related to Shxw'ówhámél Land.

Duty to report and abstain

- 16.2 Any person who has any interest, financial or otherwise, in the matter being dealt with that might involve the person or his or her immediate relatives:
- (a) shall disclose the interest to the Committee or the Si:yam Council, or other body as the case may be; and
 - (b) shall not take part in any deliberations on that matter or vote on that matter.
- 16.3 Section 16.2 does not apply to any Interest that is held by a Member in common with every other Member, for example, a shared interest in any Community Land in any Reserve or part of a Reserve that is Shxw'ówhámél Land.

Meeting of eligible voters

- 16.4 If the Si:ya:m Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, the Si:ya:m Council may refer the matter to a Special 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 land Law or land Resolution.

Inability to act

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16.5 If the board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to the Si:ya:m Council.

Disputes

16.6 Questions about whether a breach of this section has occurred may be referred to the Panel.

Other laws

16.7 For greater certainty, the Si:ya:m Council may enact laws to further implement this section.

17. Financial Management

Application

17.1 This section applies only to financial matters relating to Shxw'ówhámel Land.

*Establishment of
Bank accounts*

17.2 The Si:ya:m Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts:

- (a) transfer payments received from Canada for the management and administration of Shxw'ówhámel Land;
- (b) moneys received by Shxw'ówhámel First Nation from the grant or disposition of any Interest in Shxw'ówhámel Land;
- (c) all fees, fines, charges and levies collected under a land law or land Resolution;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of any Interests in Shxw'ówhámel Land; and
- (e) any other land revenue received by Shxw'ówhámel First Nation

Signing officers

17.3 The Si:ya:m Council shall authorize at least four persons, one of whom shall be a designated cheque signor from Si:ya:m Council, to sign cheques and other bills of exchange or transfer drawn on the account.

17.4 All cheques in relation to land transactions and budgets shall follow Shxw'ówhámel policies and laws for cheque requisitions, cheque signing and financial administration.

Fiscal year

17.5 The fiscal year of the Shxw'ówhámel First Nation begins on April 1 of each year and ends on March 31 of the following year.

Adoption of budget

17.6 The Si:ya:m Council shall, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if the Si:ya:m Council deems it necessary in the course of the fiscal year, adopt supplementary budgets for that fiscal year.

Procedure

17.7 After adopting the land management budget or supplementary budget, the Si:ya:m Council shall, without undue delay:

- (a) explain the budget or supplementary budget to the Members at an annual community meeting or other meeting of Members; and
- (b) make a copy of the budget or supplementary budget available at the administrative office of Shxw'ówhámel First Nation for inspection by Members at reasonable hours.

If no budget

17.8 If the Si:ya:m 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

17.9 The Si:ya:m Council may make rules respecting the preparation and implementation of land management budgets.

Expenditures

17.10 The Si:ya:m Council may not expend moneys related to land or commit itself, by contract or otherwise, to expend moneys related to Shxw'ówhámel Land, unless the expenditure is authorized by or under a law or an approved budget.

Financial Policy

17.11 The Shxw'ówhámel First Nation may, in accordance with this Land Code, adopt a financial policy to further manage moneys related to Shxw'ówhámel Land.

18. Financial Records

Financial records

18.1 Shxw'ówhámel First Nation shall keep financial records related to Shxw'ówhámel Land in accordance with generally accepted accounting principles.

Offences

18.2 A person is guilty of an offence if the person:

- (a) impedes or obstructs anyone from exercising their right to inspect the financial records of Shxw'ówhámel First Nation; or
- (b) has control of the books or account or financial records of Shxw'ówhámel First Nation and fails to give all reasonable assistance to anyone exercising their right to inspect the financial records.

Preparation of financial statement

18.3 Within 120 days after the end of each fiscal year, the Si:ya:m Council on behalf of the Shxw'ówhámel First Nation shall prepare a financial statement for finances relating to Shxw'ówhámel Lands in comparative form, containing at a minimum:

- (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 fair presentation of the financial position of Shxw'ówhámel First Nation.

Consolidated Accounting

18.4 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 Shxw'ówhámel First Nation.

19. Audit

Appointment of Auditor

19.1 For each fiscal year, a duly accredited auditor shall be appointed to audit the financial records of Shxw'ówhámel First Nation relating to Shxw'ówhámel Land.

Holding Office

19.2 The auditor appointed under this section holds office until reappointed, or replaced.

Vacancy in office

19.3 Where a vacancy occurs during the term of an auditor, the Si:ya:m Council shall, without delay, appoint a new auditor for the remainder of the former auditor's term.

Remuneration

19.4 The auditor's remuneration shall be fixed by the Si:ya:m Council.

Duty of auditor

19.5 The auditor shall, within 90 days after the end of the Shxw'ówhámel First Nation's fiscal year, prepare and submit to the Si:ya:m Council, a report on the Shxw'ówhámel First Nation's financial statement, stating whether, in the opinion of the auditor, the financial statement presents fairly the financial position of the Shxw'ówhámel 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

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

Explanation of

Auditor's report

19.7 The Si:ya:m Council shall present the auditor's report to the Members at a meeting of Members.

20. Annual Report

Publish annual report

20.1 The Si:ya:m Council, on behalf of the Shxw'ówhámel First Nation, shall publish an annual report on Shxw'ówhámel Lands issues within one month of receipt of the audit report.

Contents

20.2 The annual report will include:

- (a) an annual review of land management;
- (b) a copy and explanation of the audit as it applies to lands; and
- (c) any other matter as determined by the Si:ya:m Council or Lands Committee.

21. Access to Information

Access

21.1 Any person may, during normal business hours at the main administrative office of the Shxw'ówhámel First Nation, have reasonable access to:

- (a) the Register of laws;
- (b) the auditor's report; and
- (c) the annual report on Shxw'ówhámel Lands.

Copies for Members

21.2 Any Member may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under Resolution of the Council.

Access to records

21.3 Any person authorized by the Si:ya:m Council may, at any reasonable time, inspect the financial records of Shxw'ówhámel First Nation related to Shxw'ówhámel Lands.

PART 6

LAND ADMINISTRATION

22. Lands Advisory Committee

*Lands Advisory Committee
established*

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- 22.1 The Lands Committee is hereby established to:
- (a) advise Si:ya:m Council, the Land Manager, and Administration on the Shxw'ōwhámel Land administration system;
 - (b) draft and recommend laws, Resolutions, policies and procedures, to Shxwowhamel Si:yam Council respecting Shxw'ōwhámel Lands;
 - (c) hold meetings of Members and other meetings to discuss Dispute Resolution issues relating to Shxw'ōwhámel Land and make recommendations to Si:ya:m Council on the Resolution of such issues;
 - (d) assist in the exchange of information between Members and Si:ya:m Council regarding Shxw'ōwhámel Land matters;
 - (e) oversee other consultations under this Land Code;
 - (f) review applications, requests and other information relating to proposed Interests or transactions involving Shxw'ōwhámel Lands;
 - (g) advise Si:ya:m Council on the granting of Interests under this Land Code; and
 - (h) perform such other duties and functions as Si:ya:m Council may direct.

Development of land-related rules and procedures

22.2 Within a reasonable time after this Land Code takes effect, the Lands Committee shall, in consultation with Members, ensure that laws, rules and procedures, as may be appropriate, are developed and approved by Si:ya:m Council to address the following matters:

- (a) environmental protection and assessment in relation to Shxw'ōwhámel Land ;
- (b) any outstanding issues on the resolution of disputes in relation to Shxw'ōwhámel Land ;
- (c) land use planning and zoning;
- (d) section 37 respecting spousal separation and whether any change should be made to the policy upon which that section is based; and,
- (e) any other matter referred by Si:ya:m Council.

Implementation of Policies

22.3 The rules and procedures, once developed, shall be presented to the Si:ya:m Council for consideration and implementation as policies, laws or amendments to this Land Code, whichever is most appropriate.

Internal procedures

22.4 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established by this Land Code and the Si:ya:m Council.

23. Membership of the Lands Committee

Composition

23.1 The Lands Committee shall be composed of up to seven (7) members, all of who must be eligible voters.

*Eligibility to be Nominated
as a Committee Member*

23.2 Any eligible voter, whether resident on or off Shxw'ōwhámel Land, is eligible for appointment or election to the Lands Committee, except for the following persons:

- (a) any person convicted of an offence that was prosecuted by way of indictment;
or
- (b) any person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

*Selection of Lands
Committee members*

23.3 Si:ya:m Council shall ensure that the following individuals from the following positions or groups are appointed to the Lands Committee:

- (a) Up to three (3) Lands Technical Staff as non-voting *ex officio* members;
- (b) One (1) Youth representative;
- (c) One (1) Elders representative;
- (d) One (1) Si:ya:m councilor;
- (e) The Lands Portfolio holder from Council; and
- (f) The Cultural Portfolio holder.

Term of office

23.4 The length of the term of office shall be set by Si:ya:m Council.

*Vacancy on Lands
Committee*

23.5 The seat of a member of the Lands Committee becomes vacant if the person, while holding office:

- (a) resigns;
- (b) is or becomes ineligible to hold office under section 23.2;
- (c) transfers his or her of Membership to another First Nation; or
- (d) is absent for 3 consecutive meetings of the Lands Committee for a reason other than illness or incapacity, and without being authorized in writing to do so by the chair of the Lands Committee.

Vacancy in term

23.6 Where a seat becomes vacant, Council will appoint a replacement Committee member as soon as possible.

24. Chairperson of the Lands Committee

Chairperson

24.1 The Chairperson of the Lands Committee shall be alternated between the Committee members every six (6) months or as otherwise determined by the Si:ya:m Council, with the Lands Manager keeping track of whose turn it is to be

the Chairperson.

24.2 The First Chairperson of the Committee shall be the Lands Portfolio holder from Si:ya:m Council.

Alternate Chairperson

24.3 The Si:ya:m Council will appoint an alternate Chairperson at the same time the first Chairperson and any future Chairpersons are appointed.

*Functions of
Chairperson*

24.4 The duties of the Chairperson are to:

- (a) Chair meetings of the Committee;
- (b) Works with the Lands Manager to ensure that there is an agenda prepared and circulated to Committee members in advance of each meeting and that the agenda is followed, as amended, if necessary, at each meeting; and
- (c) Perform such other duties as Council or the Committee may reasonably prescribe.

25. Lands Manager

Council shall appoint Land Manager

25.1 Si:ya:m Council shall appoint or hire, and ensure that Shxw'ōwhámél maintains a Lands Manager.

Functions of Land Manager

25.2 The functions of the Land Manager include:

- (a) Administering Shxw'ōwhámél Lands in accordance with this Land Code and Shxw'ōwhámél Laws;
- (b) Preparing or signing off forms and written instruments for use in Registering Interests;
- (c) Receiving and reviewing for technical compliance forms and written instruments relating to Shxw'ōwhámél Lands as submitted under this Land Code or Shxw'ōwhámél Laws;
- (d) Registering forms and written instruments if they comply with this Land Code and Shxw'ōwhámél Laws;
- (e) Reviewing documents, forms or written instruments relating to the proposed approval of any of these by Si:ya:m Council which would have formerly been carried out by her Majesty the Queen in Right of Canada in relation to Shxw'ōwhámél Lands;
- (f) Maintaining and protecting records in relation to Shxw'ōwhámél Lands;
- (g) ensuring the preparation of financial statements as required under this Land Code, including the revenues and expenditures concerning Shxw'ōwhámél Land ;
- (h) Working with administration, Si:ya:m Council and the auditor to ensure that the audited annual financial statements are prepared and presented in accordance with this Land Code;

- (i) Preparing and presenting reports regularly and as required by this Land Code or by Laws, or as requested by Si:ya:m Council; and
- (j) Carrying out other related duties requested or required by Si:ya:m Council, this Land Code or related Laws.

26. Revenue from Lands

Determination of Fees, and rent

- 26.1 The Lands Committee shall, establish the process and recommend any Laws, rules and policies for approval by Si:ya:m Council for determining:
- (a) the fees and rent for Interests in Community Land or, where appropriate, CP lands;
 - (b) the fees for services provided in relation to any Shxw'ōwhámél Lands; and,
 - (c) the fees and royalties to be paid for the taking or use of Natural Resources from Shxw'ōwhámél Lands.

27. Registration of Interests

Registration and Enforcement of Interests

- 27.1 An Interest in Shxw'ōwhámél Lands created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nations Land Registry.
- 27.2 Every person who purports to receive, assign, encumber, transfer or deal with an Interest in Shxw'ōwhámél Land shall bring or send an original copy of the relevant written instruments and documents to the Shxw'ōwhámél Lands Office for review and Registration.

Registration of Consent or approval

- 27.3 A written instrument granting an Interest in Shxw'ōwhámél Land that requires the consent of the Si:ya:m Council, or community approval by Ratification Vote, shall not be Registered without a certificate issued by the Lands Manager indicating that the applicable consent or approval has been obtained.
- 27.4 A written instrument registered in the First Nations Land Registry which does not include the certificate referred to in clause 27.3 is void.

Duty to deposit

- 27.5 Provided that the Shxw'ōwhámél Lands Office receives a registerable copy of the following written instruments, the Lands Manager shall ensure that a copy of the following written instruments is Registered in the Registry:
- (a) any grant of an Interest in Shxw'ōwhámél Land ;
 - (b) any transfer or assignment of an Interest in Shxw'ōwhámél Land ;
 - (c) every land use plan, subdivision plan or resource use plan; and

(d) this Land Code and any amendment to this Land Code.

28. Duplicate Lands Register

*May maintain
duplicate register*

28.1 The Si:ya:m Council may direct the Lands Manager to maintain a Duplicate Land Register in the same form and with the same content as the First Nations Land Registry.

PART 7

INTERESTS IN LAND

29. Limits on Interests

*All dispositions
in writing*

29.1 An Interest in Shxw'ówhámél Lands may only be created, granted, disposed of, assigned or transferred by a written instrument made in accordance with this Land Code.

Standards

29.2 The Si:ya:m Council may establish mandatory standards, criteria and forms for Interests in Shxw'ówhámél Lands.

*Improper
Transactions void*

29.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Shxw'ówhámél First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest in Shxw'ówhámél Land after the date this Land Code takes effect is void if it contravenes this Land Code.

Non-Members

29.4 A person who is not a Member may only hold a lease, license or Life Estate in Shxw'ówhámél Lands.

Grants to non-Members

29.5 The written consent of the Si:ya:m Council by Resolution must be obtained for any grant or disposition of a lease or license in Shxw'ówhámél Lands to a person who is not a Member.

30. Existing Interests

*Continuation of
Existing Interests*

30.1 Any validly granted and registered Interest in Shxw'ówhámel Lands that existed when this Land Code takes effect will, subject to this Land Code, continue in force in accordance with its terms and conditions.

31. Community Lands

Lands are Community Lands

31.1 All Shxw'ówhámel Lands are Community Lands subject to any CPs in existence at the time the Land Code comes into effect and any CPs issued in accordance with this Land Code.

32. New Interests

*Authority to make
dispositions*

32.1 Subject to section 6, the Si:ya:m Council may grant, on behalf of Shxw'ówhámel:

- (a) Interests in Community Lands, including Certificates of Possession, leases, permits, easements and rights-of-ways;
- (b) Life Estates in Community Lands;
- (c) Life Estates in a CP but only with the written consent of each CP-holder registered on that CP; and
- (d) Licenses to take Natural Resources from Community Lands, including cutting timber or removing minerals, stone, sand, gravel, clay, soil, water or other substances.

Conditional grant

32.2 The grant of an Interest may be made subject to the satisfaction of written conditions.

33. Allocation of Land

33.1 The Si:ya:m Council may allocate a lot from available Shxw'ówhámel Lands to a Member in accordance with this Land Code and Laws, policies and procedures established by the Si:ya:m Council.

33.2 No Special Meeting of Members or community approval is required for:

- (a) the allocation of lots to Members;
- (b) the issuance of CPs to Members; or
- (c) The granting of Life Estates.

*No allocation of lots
to non-Members*

33.3 A person who is not a Member is not entitled to be allocated a lot or to hold a CP or permanent interest in Shxw'ówhámel Lands.

Issuance of CP

33.4 Subject to any limits or conditions set out in the granting of an allocation, the Si:ya:m Council shall direct the Lands Manager to issue a CP to a Member for a lot allocated to that Member.

34. Traditional Holdings

*Requirement to develop
Laws or policies for
Traditional Holdings*

34.1 Council shall work with the Lands Manager, the Committee and Members to develop, within two years of the date this Land Code comes into effect, Laws or policies to set out options for respecting and taking into account Traditional Holdings in the development of Community Lands.

35. Transfer and Assignment of Interests; Sub-Interests

Transfer of CPs

35.1 Subject to this Land Code and First Nation laws, a Member who is the sole holder of a Certificate of Possession may transfer, devise, or will their CP to one or more Members without community approval or the consent of the Si:ya:m Council.

- (a) A Member who is a joint or shared holder of a CP may also transfer, devise or will their CP to one or more Members without community or approve or the consent of Si:ya:m Council provided that each lawful possessor of the Allotment signs off on the written document.

Granting of Sub-Interests

35.2 Subject to this Land Code and Shxw'ówhámel laws, a Member or Members holding a CP may grant, transfer, devise, or transfer or grant by way of a matrimonial real property agreement, a leasehold, Life Estate, easement, permit, license in those lands by a written document registered in the Registry provided that:

- (a) The Member or Members are the sole lawful possessor of the Allotment or that any other Member with an interest in the Allotment states in writing that they do not oppose the granting of the sub-Interest;
- (b) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey Registered or recorded in the Registry;
- (c) The Member receives a letter from the Lands Manager or, if required by Law or regulation, a Council Resolution, stating that the sub-Interest complies with this Land Code and all Shxw'ówhámel laws, Land Use Plans and bylaws;

- (d) The term of any sub-interest based on a lease does not exceed the term of the lease; and
- (e) The Member states in writing that the terms of the document creating the sub-Interest will not violate any agreement with a person who has, or will have, an interest in the lands affected, or any portion thereof, or the Member has obtained the written consent of the other interest holder or holders.

35.3 A Member who is the sole holder of a CP may grant a lease, Life Estate, easement, permit or license sub-Interest to himself or herself.

- (a) A Member who holds a joint or shared interest in a CP, may only grant an Interest to himself under this subsection 35.3 if all other Members listed on the CP state in writing that they do not oppose the granting of the sub-Interest.

*Does not include
Natural Resources*

35.4 Unless explicitly specified in the grant, transfer or testamentary disposition, leases, easements, permits, licenses and other Interests and sub-Interests, do not create or include any rights to Natural Resources.

Limits on Life Estates

35.5 Unless explicitly specified in the grant, transfer or testamentary disposition creating the Life Estate, a Life Estate does not create or include any rights to:

- (a) Natural Resources;
- (b) create or transfer any sub-Interests; or
- (c) to receive rents or other revenues from the home, Allotment or CP.

Consent of Council

35.6 Except for the transfers under section 35.1 and 35.3, and transfers that occur by operation of law,

- (a) there shall be no transfer or assignment of an Interest in Shxw'ōwhámél Land without the written consent of the Si:ya:m Council; and
- (b) the grant of an Interest is deemed to include section 35.7 (a) as a condition on any subsequent transfers or assignments.

36. Mortgages

Protections

36.1 Subject to this Land Code, section 29, section 87 and subsections 89(1) and (2) of the *Indian Act* continue to apply to Shxw'ōwhámél Land.

Mortgage of CP

36.2 Except for a mortgage of a Member's Lease to himself or herself under section 35.3, the Interest of a Member in Shxw'ōwhámél Lands may be subject to a mortgage or charge only with the written consent of the Si:ya:m Council by Resolution.

- 36.3 The holder of an Allotment who has granted himself or herself a Leasehold under section may grant a Mortgage of this Leasehold to any person.
- 36.4 Subject to this Land Code and any Laws, a Mortgage in a parcel of Shxw'ōwhámel Lands may be granted by Registered document provided that:
- (a) the land is:
 - (i) Community Lands,
 - (ii) a CP in the sole lawful possession of the Member granting the Mortgage or,
 - (iii) a CP, which is jointly held and every Member whose name is Registered on the CP signs off on the written document.
 - (b) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the CP;
 - (c) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey Registered;
 - (d) the Mortgage term does not exceed the duration of the leasehold;
 - (e) Si:ya:m Council approves the mortgage by Resolution; and
 - (f) Shxw'ōwhámel has a right to receive copies of any notice, default, or foreclosure proceedings.

Rights of Mortgagees

- 36.5 A Leasehold in Shxw'ōwhámel Lands, including allotted lands, that is held by an Indian as that term is defined in the Indian Act, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights it would have had if the Leasehold were held by a non-Indian and, for greater certainty, the mortgagee has a right of access onto Shxw'ōwhámel Lands and onto the leasehold lands if necessary to deal with seizure, forfeiture or any related matter.
- 36.6 A Leasehold in Shxw'ōwhámel Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.
- 36.7 The holder of a Permit, License or Easement cannot grant a Mortgage unless approved by Council by Resolution.
- 36.8 Neither Shxw'ōwhámel, Si:ya:m Council, the Shxw'ōwhámel Lands Office, nor the Shxw'ōwhámel Lands Manager shall be responsible or liable for ensuring that the Interest being mortgages permits a mortgage, is in good standing, or that its terms have been complied with.

Default in mortgage

- 36.9 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 charge or mortgagee, by way of foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the charge or mortgage received the written consent of the Si:ya:m

- Council; and
- (b) the charge or mortgage was registered in the Shxw'ówhámel First Nations Land Register.

Power of redemption

36.10 If the Si:ya:m Council exercises a power of redemption with respect to a leasehold interest, the Shxw'ówhámel First Nation becomes the lessee of the land and takes the position of the charger or mortgagor for all purposes after the date of the redemption.

37. Trespass

Trespass

37.1 Any person, who resides on, enters or remains on Shxw'ówhámel Lands other than in accordance with a residence or access right under this Land Code or any applicable Shxw'ówhámel Law, policy or Interest, is guilty of an offence.

Civil remedies for Trespass

37.2 All civil remedies for trespass are preserved.

38. Transfers on Death

38.1 A Member who claims to be entitled to an allotment or CP by testamentary disposition or succession pursuant to the *Indian Act* is not entitled to such allotment until:

- (a) such Member has filed with Si:ya:m Council, or such person or body as may be designated by Si:ya:m Council, an instrument in a form prescribed by Si:ya:m Council, duly executed by the personal representative of the estate of the deceased Member transferring such allotment to the Member; and
- (b) the instrument referred to in subsection (a) is registered in the FNLRs.

38.2 A Member who purchases an allotment or CP pursuant to subsection 50(2) of the *Indian Act* is not entitled to such allotment until:

- (a) the purchaser has filed with Si:ya:m Council or the Lands Manager, an instrument in a form prescribed by Si:ya:m Council, duly executed by the person authorized under the *Indian Act* to execute a transfer of an Allotment acquired pursuant to section 50(2) of the *Indian Act*; and
- (b) the instrument referred to in subsection (a) is registered in the FNLRs.

39. Spousal Property Law

*Development of rules
and procedures*

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- 39.1 The Si:yam Council shall enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage, to:
- (a) the use, occupancy and possession of family homes or CPs within Shxw'ōwhámel Land; and
 - (b) the division of assets relating to those Interests.

Enactment of rules and procedures

- 39.2 The rules and procedures contained in the spousal property law shall be developed by the Lands Committee in consultation with the community.

Enactment deadline

- 39.3 The spousal property law shall be enacted within 12 months from the date this Land Code takes effect.

General principles

- 39.4 For greater certainty, the rules and procedures developed by the Lands Committee under this section must respect the following general principles:
- (a) each spouse should have an equal right to possession of their matrimonial home;
 - (b) the best interests of any children of the marriage shall be taken into account;
 - (c) the rules and procedures shall not discriminate on the basis of sex; and
 - (d) only Members are entitled to hold a CP or a permanent interest in Shxw'ōwhámel Lands or a charge against a CP or permanent interest in Shxw'ōwhámel Lands.

Interim law

- 39.5 Si:yam Council may enact an interim spousal property law at any time within the twelve (12) month period set out in section 40.3.
- 39.6 An interim law enacted under section 40.5 will be deemed to be re-appealed twelve (12) months after the coming into force of this land code but may be reenacted in whole or as amended, in accordance with section 40.1

PART 8

DISPUTE RESOLUTION

40. DISPUTE RESOLUTION PANEL

Panel established

- 40.1 The Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to Shxw'ōwhámel Lands.

*Appointment of
Panel*

40.2 Within one (1) year of the date this Land Code comes into effect, or sooner if needed to resolve a dispute, Si:ya:m Council shall appoint three (3) panelists to the Panel, all of whom must be eligible voters.

Representation

40.3 The Lands Committee shall recommend appointments to the Panel, and the Committee and Council shall try to ensure that the Panel represents the various elements of the community, including Elders, youth, professionals and non-resident Members.

Term of office

40.4 The panelists hold office for a term of two (2) years.

*No remuneration
Unless set by Council*

40.5 The Si:ya:m Council shall determine the remuneration to be paid to the Members of a Panel which may be any form of remuneration including a regular honorarium or an honorarium or fee paid only when the Panel is required to meet to deal with disputes.

41. Dispute Resolution Procedure

Disputes

41.1 Any person whose Interest in Shxw'ōwhámél Land is affected by a decision of the Si:ya:m Council may appeal the decision to the Panel.

*Must try informal
Dispute Resolution*

41.2 Before applying for Dispute Resolution with the Panel, a person with an interest in Shxw'ōwhámél Lands, who wishes to dispute a decision of Si:ya:m Council must:

- (a) Send a written notice of the dispute to Si:ya:m Council or the Lands Manager;
- (b) Attend a meeting at a mutually agreed-upon date; and
- (c) Attempt in good faith to resolve the dispute with the assistance of Si:ya:m Council, the Committee or the Lands Manager.

41.3 Upon receiving a written notice of dispute, Si:ya:m Council or the Lands Manager shall work with the disputant to arrange a meeting within thirty (30) days and to respond to the disputant with a formal written decision, proposal or comments within sixty (60) days.

41.4 If the Si:ya:m Council and the Lands Manager do not meet the deadlines in subsection 42.3 or if the disputant is unsatisfied with the written decision, proposal or comments, the disputant may apply to the Panel.

*Application
Procedures*

41.5 Applications to the Panel shall be made in accordance with the procedures established by the Panel or approved by Si:ya:m Council by Resolution.

Limitation period

41.6 An application to refer a dispute with respect to a decision of the Si:ya:m Council to the Panel shall be made within thirty (30) days after the date of the written decision, proposal or comment provided by Si:ya:m Council or the Lands Manager under subsection 43.3.

41.7 A person who misses the 30-day limitation period set out in subsection 43.6 has no right or recourse to apply to the Panel.

42. Costs

Parties to share costs

42.1 Unless otherwise ordered by the Panel, the disputant and Shxw'ōwhámél shall share equally in the costs of the Panel process for that dispute.

43. Impartiality

*Duty to act
Impartially*

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

Offence

43.2 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*

43.3 In addition to any other sanction, the 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.

44. Powers of Panel

Powers of Panel

44.1 The Panel may, after hearing both sides in a dispute, reviewing all available information and, if necessary, seeking legal advice:

- recommend to Si:ya:m Council that a decision be confirmed or reversed, in whole or in part, or that an action be taken or ceased;
- refer the matter or dispute back for a new decision; and
- may order parties to pay costs for the dispute resolution process.

Rules of Panel

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44.2 The Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

Professional services

44.3 The Panel may obtain the service of legal counsel and other professionals to assist it in fulfilling its functions, in which case it shall make best efforts to use professional services available in the community.

Written decisions

44.4 Decisions of the Panel shall:

- (a) Be in writing,
- (b) Include written reasons, and
- (c) Be signed by the person chairing the Panel or by an officer designated by the Panel to do so.

Appeal of decision

44.5 A decision of the Panel is subject review by the Federal Court (Trial Division).

PART 9

OTHER MATTERS

45. Liability

Liability Coverage

45.1 The Si:ya:m Council shall arrange, maintain and pay insurance coverage for its officers and employees, and, if necessary Committee members, engaged in carrying out any matter related to Shxw'ōwhámel Lands to indemnify them against personal liability arising from the performance of those duties.

46. Offences

Application of the Criminal Code

46.1 Unless some other procedure is provided for by a law, the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time, apply to offences under this Land Code or under Shxw'ōwhámel Law.

46.2 Any person who commits an offence under this Land Code or a related Shxw'ōwhámel Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both fine and imprisonment, provided however, that offences related to Shxw'ōwhámel environmental protection laws

may carry penalties consistent with similar environmental protection laws in force in Canada.

46.3 A Shxw'ōwhámel Law may provide for a penalty which is different than the penalties referred to in clause 47.2.

46.4 A Shxw'ōwhámel Law may provide for a variety of enforcement mechanisms including but not limited to ticketing, stop work orders, restorative orders, and fines.

47. Amendments to Land Code

47.1 This Land Code may be amended from time to time.

47.2 Si:ya:m Council may make minor amendments including correction of typos and clarification of provisions of this Land Code by passing a Resolution.

47.3 For major amendments:

- (a) All major amendments to this Land Code must be approved by a Ratification Vote; and
- (b) Si:ya:m Council or the Lands Manager will provide written notice to Members at least thirty (30) days before the date of the Ratification Vote.

48. Ratification and Coming into Force

Ratification

48.1 This Land Code will be ratified if:

- (a) the eligible voters who cast a ballot approve this Land Code and the Individual Agreement by a Ratification Vote in accordance with the Community Ratification Procedures dated for reference August 26th, 2014; and
- (b) This Land Code has been certified by the Verifier in accordance with the Framework Agreement.

Operational Date

48.2 This Land Code shall come into force on the later of the date:

- (a) the Individual Agreement is executed on behalf of Canada; and
- (b) the Land Code is certified by the Verifier.

48.3 The Verifier shall provide documentation to Shxw'ōwhámel and Canada confirming the date upon which this Land Code has come into force.