

*Annex*  
This is Exhibit "1" referred to in the  
Affidavit of A.J. Gross  
sworn before me at Kelowna British  
Columbia this 31<sup>st</sup> day of January 2020.

**Catherine McGowan**  
Barrister & Solicitor  
#8-1638 Pandosy Street  
Kelowna, BC V1Y 1P8  
Tel: (250) 762-2345

## Penelakut Tribe Tumuhw Code

*(Land Code of the Penelakut Tribe)*

October 7, 2019

Certified a true copy  
this 9<sup>th</sup> day of October, 2019.

A Commissioner for taking Affidavits within British Columbia

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**Catherine McGowan**  
Barrister & Solicitor  
#8-1638 Pandosy Street  
Kelowna, BC V1Y 1P8  
Tel: (250) 762-2345

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Penelakut Tribe Tumuhw Code

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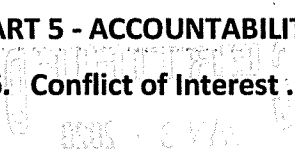
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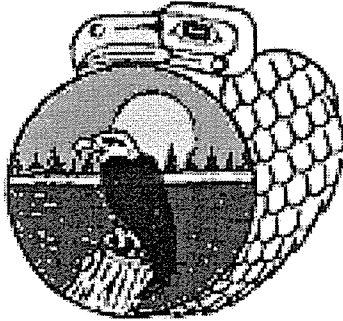
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## Penelakut Tribe Tumuhw Code Preamble

The Penelakut people plan and care for our lands based on Penelakut's distinct Indigenous laws.

As outlined through our *snuw'ey'ulh* and oral history, the Penelakut culture and our economic survival has been clearly tied to our relationship to our land and our resources, since time immemorial.

Penelakut peoples are immersed in the cyclical nature of our land and organize our trade, our living spaces, our hunting and gathering based upon these cycles. The cyclical nature of our land, our water and our resources affect us as we affect them. This relationship to our land is sacred in nature and difficult to define in a few words.

On February 14, 2017 Penelakut Tribe became a signatory to the Framework Agreement on First Nations Land Management, as the Penelakut Tribe wishes to govern our land and resources under the Penelakut Tribe Tumuhw Code, rather than having our land and resources managed on our behalf under the *Indian Act*.

Neither the Framework Agreement on First Nations Land Management, nor the Penelakut Tumuhw Code are intended to define or prejudice inherent rights, or any other rights, of Penelakut Tribe to control our reserve lands and resources or to preclude other negotiations in respect of those rights.

**THIS PENELAKUT TUMUHW CODE (LAND CODE) IS HEREBY ENACTED AS THE FUNDAMENTAL LAW FOR PENELAKUT TRIBE RESERVE LAND.**

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# PART 1 - PRELIMINARY MATTERS

## 1. Title

### *Title*

1.1 The title of this enactment is Penelakut Tribe Tumuhw Code.

## 2. Interpretation

### *Definitions*

2.1 In this *Tumuhw Code*, unless the context does not permit, these words have the following meanings:

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

**Allotment** means an Interest in Penelakut Tribe Land tentatively granting a Member possession of a part of Penelakut Tribe Lands under this *Tumuhw Code* or, prior to the date this *Tumuhw Code* comes into force, pursuant to section 20 of the *Indian Act, R.S.C. 1985, c 1-5*, and, for greater certainty, once an Allotment is confirmed by a Certificate of Possession duly issued under this *Tumuhw Code* and any Law, has similar legal force and effect and content as a Certificate of Possession issued by the Minister under the *Indian Act*;

**Band Land** means any Penelakut Tribe Land in which all Members have a common interest but does not include any land that is subject to an Allotment or Certificate of Possession;

**Certificate of Possession** or **CP** means a Member's right of possession to Penelakut Tribe Land created by:

- (a) a Certificate of Possession under section 20 of the *Indian Act* or equivalent Interest created under this *Tumuhw Code*; or
- (b) an Allotment, location ticket, or Custom Land Holding that has been confirmed by Council under this *Tumuhw Code* as a Certificate of Possession.

**Common-law Spouse** means a Person who has been living with another Person in a conjugal relationship for a continuous period of at least two years but who is not married to that other Person;

**Council** means the elected Chief and Council of Penelakut Tribe;

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**Custom Land Holding** means a potential but unconfirmed Interest in Penelakut Tribe Land that may grant a Member possession of a part of Penelakut Tribe Lands under this *Tumuhw Code* or, prior to the date this *Tumuhw Code* comes into force, under the *Indian Act*, and includes cardexes and traditional land holdings;

**Dispute Resolution Panel or Panel** means a panel as appointed under section 37 of this *Tumuhw Code*, to help resolve a land dispute between Members, if requested by the parties;

**Easement** means a non-exclusive Interest in Penelakut Tribe Land granted under this *Tumuhw Code* or, prior to the date of this *Tumuhw Code*, under the *Indian Act*, giving one Person (the grantee) the right to use the land of another (the grantor) for an Easement or right of way, or to provide utility or other services to the land of the grantor or other lands, and is limited to only such Interest as is necessary to give effect to the Easement granted;

**Eligible Voter** means, for the purpose of voting in respect of land matters under this *Tumuhw Code*, a Member who has attained the age of eighteen (18) years of age on or before the day of the vote;

**First Nations Land Registry System or Registry** means the First Nations Land Registry System established by Canada in accordance with clause 51.1 of the Framework Agreement;

**Framework Agreement** means the Framework Agreement on First Nations Land Management, entered into between Canada and the signatory First Nations on February 12, 1996, as amended from time to time;

**Heritage Site** means Penelakut Tribe Land, whether designated or not, including land covered by water, that has heritage value to Penelakut Tribe or the Members of the Penelakut Tribe;

**Immediate Relatives** in respect of a Person, means the Person's parent, Spouse, brother, sister, child and grandchild;

**Individual Agreement** means the Agreement entered into between Penelakut Tribe and the Government of Canada pursuant to section 6(3) of the First Nations Land Management Act and clause 6.1 of the Framework Agreement;

**Instrument** means a legal document in writing which purports to affect or to create, grant, assign, transfer or encumber an Interest in Penelakut Tribe Land;

**Interest** means an Interest in or relating to Penelakut Tribe Land or activities or uses on Penelakut Tribe Land, and without limiting the generality of Interests,

includes an Allotment, Certificate of Possession, Easement, Lease, Life Estate, Permit, statutory right-of-way, and all other Interests in or relating to land or activities or uses on Penelakut Tribe Land, but for greater certainty does not include title to that land;

**Lands Advisory Committee** means the Lands Advisory Committee established under section 24 of this *Tumuhw Code*;

**Land Use Plan** means a ratified plan addressing land use and other factors related to the use or development of Penelakut Tribe Land;

**Lands Department** means the department established by Council to govern Penelakut Tribe Land;

**Lands Manager** means the Person appointed by the Penelakut Tribe to oversee the day-to-day operations of the Penelakut Land Office and the administration of this *Tumuhw Code*;

**Law** means a law enacted pursuant to this *Tumuhw Code* including an amendment to a Law, but does not include a Resolution;

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

**Leasehold** means an Interest in Penelakut Tribe Land granted under this *Tumuhw Code* or, prior to the date of this *Tumuhw Code*, under the *Indian Act*, including a Sub-Lease, unless otherwise specified, giving a Person the exclusive right of use and possession of the lands, upon the agreed conditions, for a specified time, including any renewal or extension period;

**License** means approval that has been granted under this *Tumuhw Code* to have non-exclusive use of the Land or to carry out a use or activity. This also includes a permit issued by the Minister pursuant to subsection 28(2) of the *Indian Act* prior to the effective date of this *Tumuhw Code*, to use, develop, or extract specified Natural Resources from, or otherwise have non-exclusive use of, a specified parcel or parcels of Penelakut Tribe Land but which does not grant an Interest in, or possession to, Penelakut Tribe Land;

**Life Estate** means an Interest in an Allotment or Certificate of Possession to a Person, including a non-Member, that conveys to the individual a right to use and occupy a specified home or parcel of Penelakut Tribe Land for a time period which cannot exceed the life of the grantee;

**Meeting of Members** means a meeting under section 11 to which the Members are invited to attend;

**Member** means a Person whose name appears or is entitled to appear on the Penelakut Tribe membership list;

**Mortgage** means a charge or encumbrance on an Interest in Penelakut Tribe Land in favour of another as security for a debt;

**Natural Resources** means any minerals, oil, gas, substances, groundwater, water, vegetation or animals found on, under, or in Penelakut Tribe Land in their natural state which, when removed, has economic or other value;

**Penelakut Tribe** means the collective of those individuals who recognize each other as Members of a community connected to Penelakut Tribe Land and who are eligible to be a Member, which is also a First Nation within the meaning of the Framework Agreement;

**Penelakut Tribe Land** means the lands as described in "Annex G" of the Individual Agreement and any lands added in compliance with this *Tumuhw Code*. This includes:

the air space, water, beds underlying the water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable Natural Resources in and of the lands described directly above to the extent that those resources are under the jurisdiction of Canada or Penelakut Tribe;

**Penelakut Tribe Lands Registry** means the unofficial duplicate Registry maintained by Penelakut Tribe under Section 27 of this *Tumuhw Code*;

**Permit** means a limited authorization to carry out a use or activity, or an Interest in a specified area of Penelakut Tribe Land other than a Leasehold, Easement or Permit, granted under this *Tumuhw Code* or, prior to the date of this *Tumuhw Code*, under the *Indian Act*, giving a Person the right to use a specified area of Penelakut Tribe Land for a specified purpose or activity. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted;

**Person** means an individual, a body corporate, a partnership, a society or other entity, including the First Nation, and any Trustee, executor, administrator or other legal representative;

**Ratification Vote** means a vote of Eligible Voters in relation to this *Tumuhw Code* in a manner consistent with Section 12;

**Resolution** means a Resolution of the Council made in relation to this *Tumuhw Code* and pursuant to the consent of a majority of Council present at a duly convened meeting of the Council;

**Spouse** means a Person who is married to another Person, or who is a Common-law Spouse;

**Sub-Lease** means a portion of an Interest held under Lease;

**Trustee** means a Member who is nineteen (19) years of age or older and who holds a Certificate of Possession in trust on behalf of another Member, or as executor or administrator of the estate of a Member;

**Tumuhw Code** means this Penelakut Tribe *Tumuhw Code*; and

**Verifier** means an independent person appointed as a verifier in accordance with clause 8.1 of the Framework Agreement and who has the powers as set out in the Framework Agreement including deciding whether the proposed Land Code and the proposed community approval process conform with the Framework Agreement.

2.2 Unless otherwise defined herein, the definitions as set forth in the Framework Agreement and the *First Nations Land Management Act* will have the same meaning in this *Tumuhw Code*.

*Interpretation*

2.3 In this *Tumuhw Code*:

- (a) The use of the word “must” denotes an obligation that, unless this *Tumuhw Code* provides to the contrary, must be carried out as soon as practicable after this *Tumuhw Code* comes into effect or the event that gives rise to the obligation;
- (b) Where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next business day;
- (c) Where the time limited for the doing of an act in the Penelakut Tribe administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;
- (d) 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;
- (e) 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”.

- (f) 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;
- (g) Unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (h) The headings of parts and sections in this *Tumuhw Code* have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions;
- (i) 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;
- (j) A reference to a Part (e.g. Part 1), section (e.g. section 2.1), or paragraph (e.g. paragraph 3.4(a)) is a reference to the specified Part, section, or paragraph of this *Tumuhw Code*, except where otherwise stated; and

The principles outlined in the Preamble of this *Tumuhw Code* must be used when interpreting this *Tumuhw Code*.

*Paramountcy*

- 2.4 If there is an inconsistency or conflict between this *Tumuhw Code* and any other Law or Resolution relating to Penelakut Tribe Land, this *Tumuhw Code* prevails to the extent of the inconsistency or conflict.
- 2.5 If there is an inconsistency or conflict between this *Tumuhw Code* and the Framework Agreement, the Framework Agreement prevails to the extent of the inconsistency or conflict.

*Culture and Traditions*

- 2.6 The structures, organizations, Laws and procedures established by or under this *Tumuhw Code* must be interpreted in accordance with the culture, traditions and customs of Penelakut Tribe, unless otherwise provided.

*Non-Abrogation*

- 2.7 This *Tumuhw Code* does not abrogate or derogate from any Aboriginal right, treaty right or other right or freedom that pertains now or in the future to Penelakut Tribe or its Members.

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*Fair Interpretation*

2.8 This *Tumuhw Code* must be interpreted in a fair, large and liberal manner.

*Fiduciary Relationship*

2.9 This *Tumuhw Code* does not abrogate or derogate from the fiduciary relationships between Her Majesty the Queen in Right of Canada, Penelakut Tribe and Members of Penelakut Tribe.

*Access to Services not Affected*

2.10 This *Tumuhw Code* does not affect the eligibility of Penelakut Tribe or any Member to receive services or participate in such public or Aboriginal programs.

### **3. Authority to Govern**

*Source of Authority*

3.1 The snuw'ey'ulh of the Penelakut Tribe speaks of the obligation of the Penelakut people to care for and respect the land. By enacting this *Tumuhw Code*, the Penelakut Tribe is reasserting this relationship.

*Flow of Authority*

3.2 The authority of the Penelakut Tribe to govern its land, and resources flows from the Creator to the Members of the Penelakut Tribe, and from the Members to Council according to the culture, traditions, customs and laws of the Penelakut Tribe.

*Inherent Right to Govern*

3.3 By enacting this *Tumuhw Code*, Penelakut Tribe exercises our inherent right to govern that part of our territory which has been set aside as reserve land, within the meaning of the *Indian Act*, for the use and benefit of Penelakut Tribe.

*Administration*

3.4 Council will perform all the duties and functions and exercise all the powers of Penelakut Tribe that are not specifically assigned to an individual or body established under this *Tumuhw Code*.

*Delegation*

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3.5 Despite section 3.4, Council may, by Resolution or enacting a Law, delegate administrative authority to an individual or a body established or authorized under this *Tumuhw Code*.

## 4. Purpose

### *Purpose*

4.1 The purpose of this *Tumuhw Code* is to set out the principles, and legislative and administrative structures that apply to Penelakut Tribe Land and by which Penelakut Tribe will exercise authority over Penelakut Tribe Land, in accordance with the Framework Agreement.

## 5. Description of Penelakut Tribe Land

### *Penelakut Tribe Land*

5.1 The lands that are subject to this *Tumuhw Code* are those lands described in "Annex G" of the Individual Agreement and any other reserve lands of the Penelakut Tribe that are made subject to this *Tumuhw Code*.

### *Additional Lands*

5.2 The following lands may be made subject to this *Tumuhw Code* after the applicable condition is met:

any land obtained by Penelakut Tribe after this *Tumuhw Code* takes effect, whether by land claim, purchase, Specific Claim, negotiation or other process and the provided lands are set aside as a reserve.

### *Inclusion of Land or Interest*

5.3 Council must hold a Meeting of Members per the procedural requirements of section 11 prior to amendment of the description of Penelakut Tribe Land subject to this *Tumuhw Code*, and the Individual Agreement.

## PART 2 - PENELAKUT TRIBE AUTHORITY

## 6. Law-Making and Regulatory Instruments

### *Council May Make Laws*

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- 6.1 Council may, in accordance with this *Tumuhw Code*, make Laws respecting:
- (a) development, conservation, protection, management, regulation, occupation, servicing, use and possession of and planning for, Penelakut Tribe Lands;
  - (b) Interests or Licenses;
  - (c) establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, revenues, royalties or other monies in relation to Penelakut Tribe Lands;
  - (d) any matter necessary to give effect to this *Tumuhw Code*; and
  - (e) any matter necessary or ancillary to the making of a Law.
- 6.2 For greater certainty, in addition to Laws, Council may make other regulatory instruments, including rules, regulations, standards, codes and policies. Section 39 regarding liability applies to Council making Laws and other regulatory instruments.

*Examples of Laws*

- 6.3 For greater certainty, and without limiting the generality of sections 6.1 and 6.2, Council may make Laws or other regulatory instruments, respecting but not limited to any of the following:
- (a) the purchase, expropriation or sale of lands in accordance with the Act and this *Tumuhw Code*;
  - (b) regulation, control, authorization and prohibition of residency, access, occupation and development of Penelakut Tribe Land;
  - (c) zoning and land use planning;
  - (d) archaeological assessment and protection of archaeological and cultural resources, and heritage and sacred sites;
  - (e) regulation of development, building and construction, including the application of building codes, engineering standards and other standards;
  - (f) expropriation of Interests and Licenses;

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- (g) forms, procedures, application fees and related matters, including fees to be paid to Penelakut Tribe for applications or administrative procedures;
- (h) mortgages and secured interests relating to Interests and Licenses;
- (i) registration of Interests and Licenses, including priority of registration;
- (j) fees or charges to be paid to Penelakut Tribe for the granting or transfer of Interests or Licenses in Penelakut Tribe Land;
- (k) fees, regulations and processes for the certification or registration of Interests or Licenses;
- (l) creation or registration of priority Interests or priority agreements in relation to Interests or Licenses;
- (m) protection, regulation and granting of Interests or Licenses in Natural Resources and environmental assessment and protection;
- (n) fees, stumpage, or royalties to be paid to Penelakut Tribe for the removal or extraction of Natural Resources from Penelakut Tribe Land, including for removal or extraction of minerals, gravels, timber and water from Penelakut Tribe Land and from Allotments or CP lands;
- (o) provision of, installation of, and Interests or Licenses for, utilities, infrastructure and local services and imposition of user charges including development cost charges or their equivalent;
- (p) authorization and regulation of subdivisions and developments including requirements for contributions to community benefits, park dedications or grants in lieu or park dedications;
- (q) the conduct of surveys of lands or Interests or Licenses;
- (r) setting aside, designation, regulation or management of parks, parklands, green space and recreational lands;
- (s) rules and procedures for the receipt, management, expenditure, investment, and borrowing of monies relating to Penelakut Tribe Land and Interests or Licenses, and the establishment of administrative structure to manage such monies;
- (t) creation of management and administrative bodies or agencies;

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- (u) removal and punishment of persons trespassing upon Penelakut Tribe Land or frequenting Penelakut Tribe Land for prohibited purposes, including banishment of persons who may pose a threat to the community;
- (v) public nuisance and private nuisance;
- (w) growing, processing, use and sale of cannabis and cannabis products in relation to land uses and activities;
- (x) regulation of sanitary services in private premises and public places;
- (y) construction and maintenance of boundaries, screening and fences;
- (z) construction, maintenance, and management of roads, watercourses, water diversions, storm drains, bridges, dykes, ditches, and other local and public works;
- (aa) regulation of traffic and transportation, including designation and dedication of roads, and safety and insurance requirements;
- (bb) hunting, fishing, and management and protection of fish, wildlife and their habitat on Penelakut Tribe Land;
- (cc) all aspects of enforcement of Laws, including establishment of offences, penalties, fines, tickets, orders and other enforcement, reconciliation and traditional justice measures and the appointment of Justices of the Peace and enforcement officers;
- (dd) dispute resolution and adjudication of disputes; and
- (ee) use and storage of fireworks, firearms, weapons and hazardous materials or substances.

## 7. Law-Making Procedure

### *Proposal of Land Laws*

- 7.1 Any Eligible Voter or Penelakut Tribe staff member may propose a Law to a representative of the Lands Advisory Committee, or other body composed of Members authorized by Council to do so.

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7.2 Nothing in this section prevents an Eligible Voter from discussing a proposed Law with Chief and Council.

*Rationale for Proposed Land Law*

7.3 Any Person proposing a Law under section 7.1 must submit a written explanation of the rationale for the proposed Law, such as but not limited to: identifying the issue or concern that the proposed law is intended to address, and the section or sections of the *Tumuhw Code* which authorizes the proposed Law.

*Procedure Upon Receipt of Rationale for a Proposed Law*

7.4 Upon receipt of a rationale for a proposed Law, the Lands Advisory Committee may:

- (a) provide the proposed Law to Council to be considered for further review;
- (b) request that the proponent provide further information or attend a meeting of Council to speak to the proposed Law; or
- (c) reject the proposed Law.

*Introduction of Land Laws*

7.5 A proposed Law may be introduced at a duly convened meeting of Council by:

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

*Tabling and Posting of Proposed Laws*

7.6 Before a proposed Law may be enacted, Council must:

- (a) table the proposed Law at a duly convened meeting of Council;
- (b) post it in public places on Penelakut Tribe Land and publish it online, at least twenty-one (21) days before the Law is enacted;

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- (c) deposit the proposed Law with the Lands Advisory Committee at least thirty (30) days before the Law is to be enacted;
- (d) review comments and recommendations provided by the Lands Advisory Committee; and
- (e) take any other steps to give notice of the proposed Law that Council may consider appropriate.

*Urgent Matters*

7.7 Council may enact a Law without the preliminary steps required under section 7.6, if Council is of the opinion that the Law is needed urgently to protect Penelakut Tribe Land or Members, but the Law expires one hundred and twenty (120) days after its enactment, unless re-enacted in whole or in part in accordance with section 7.6.

*Approval of Law by Council*

7.8 A Law is enacted when approved by Resolution after Council has complied with sections 7.1 to 7.6 above, or for urgent matters, section 7.7.

*Certification of Laws*

7.9 A quorum of Council shall sign the original copy of a Law or Resolution.

*Coming into Force*

7.10 A Law comes into force on:

- (a) the date it is enacted; or
- (b) such other date as is set out in the Law.

*Repeal or Amendment*

7.11 A Law may be repealed or amended by following the procedure set out in this section, unless the Law to be amended specifies a different procedure, in which case the procedure set out in the Law applies.

## **8. Publication of Laws**

*Publication*

8.1 All Laws must be published.

*Posting Laws*

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8.2 Within seven (7) days after a Law has been enacted, Council will post a copy of the Law in the administrative offices of Penelakut Tribe and on Penelakut Tribes' website; however, failure to post a Law as required by this section does not invalidate the Law.

*Register of Laws*

8.3 All Laws and Resolutions passed in relation to this *Tumuhw Code* will be registered, including Laws and Resolutions that have been repealed or are no longer in force. Council may also direct the Lands Manager to keep copies in an unofficial duplicate registry at the Penelakut administrative office. Failure to register a Law or Resolution does not invalidate the Law or Resolution.

*Access and Copies for Any Person*

8.4 Any person may access and view the Laws and Resolutions referenced in section 8.3 through:

- (a) the Registry by following normal procedures for accessing the Registry; or
- (b) during regular business hours at the Penelakut Tribes administration office, if an unofficial duplicate registry is kept at the Penelakut Tribes administration office.

8.5 Any person may obtain a copy of a Law or Resolution referred to in section 8.4 upon payment of such reasonable fee, if any, as may be set by Council or the Lands Manager.

## **PART 3 - COMMUNITY MEETINGS AND APPROVALS**

### **9. Rights of Eligible Voters**

*Rights of Eligible Voters*

9.1 Subject to Penelakut Tribe Laws or a court order, each Eligible Voter is entitled to:

- (a) attend Meetings of Members called under this *Tumuhw Code*; and
- (b) vote in a Ratification Vote.

*Conduct of Meetings*

9.2 Council shall, in consultation with the Lands Advisory Committee, develop policies or procedures for the conduct of meetings under this *Tumuhw Code*.

## 10. Community Input

*Laws Requiring Community Input*

10.1 Council must convene a Meeting of Members to receive their input but not to be voted on prior to the enactment of a Law, such as but not limited to any of the following:

- (a) enacting a Law declaring Land or an Interest to be subject to this *Tumuhw Code*;
- (b) enacting a Law respecting a community plan or subdivision plan;
- (c) any development affecting a heritage site or an environmentally sensitive property;
- (d) enacting a Law respecting environmental assessment and protection;
- (e) enacting a Law respecting the transfer and assignment of rights and Interests in Penelakut Tribe Land;
- (f) enacting a Law respecting matrimonial real property on reserve;
- (g) enacting a Law respecting the rate and criteria for the payment of fees for Penelakut Tribe Land;
- (h) enacting a Law respecting the rights and procedures on the community expropriation of Land; and
- (i) any decision or class of decision that Council, by Resolution, declares to be subject to this section.

10.2 A Meeting of Members is not required in relation to grants or transfers of Certificates of Possession to Members in accordance with this *Tumuhw Code* or any Law or legal proceeding.

## 11. Procedure at a Meeting of Members

*Notice of Meeting*

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11.1 Council must provide written notice of the Meeting of Members and it must contain the following:

- (a) the date, time and place of the meeting;
- (b) a brief description of the matters to be discussed during the meeting;
- (c) the text to any Law or other document to be considered, if any; and
- (d) other information and material that Council considers appropriate.

*Manner of Notice*

11.2 The notice of a Meeting of Members must be given to the Members by posting the notice in a public place on Penelakut Tribe Land.

11.3 In addition to section 11.2, a notice of a Meeting of Members may be provided in any one or all of the following methods:

- (a) posting the notice on the Penelakut Tribe website at least fourteen (14) days before the meeting;
- (b) mailing or emailing the notice to Members for whom Penelakut Tribe has current mailing or email addresses;
- (c) publishing the notice in the community newsletter at least ten (10) working days before the meeting; or
- (d) such additional method(s) as Council may consider appropriate in the circumstances, including, but not limited to, hand delivery and distribution through social media.

*Who May Attend*

11.4 Unless otherwise prohibited, all Members have a right to attend a Meeting of Members.

*No Quorum Requirement*

11.5 There is no minimum number of Eligible Voters or Members who must attend a Meeting of Members for the meeting to be considered valid under this *Tumuhw Code*.

*Other Meetings*

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11.6 Council may schedule more than one Meeting of Members to discuss and receive input on a matter that requires a Meeting of Members.

*Laws or Policies on Meeting Procedures*

11.7 For greater certainty, Council may make Laws or policies respecting procedures for Meetings of Members provided they are in accordance with this *Tumuhw Code*.

## 12. Ratification Votes

*Community Approval by Ratification Vote*

12.1 Community approval by a Ratification Vote must be obtained for the following:

- (a) any voluntary exchange of Penelakut Tribe Land;
- (b) subject to section 41, an amendment to this *Tumuhw Code*;
- (c) enacting a Land Use Planning Law and the initial Land Use Plan;
- (d) any new grant or disposition of an Interest or License in any Penelakut Tribe Land exceeding thirty-five (35) years, except for grants of Interests or Licenses to utilities or other governments unless Council prescribes by Law that an Interest or License to a utility or other government requires a Ratification Vote;
- (e) any renewal of a grant or disposition of an Interest or License in any Penelakut Tribe Land that extends the original term beyond thirty-five (35) years;
- (f) any deletion of a heritage site;
- (g) any grant or disposition of any non-renewable Natural Resources on any Penelakut Tribe Land exceeding a term of five (5) years; and
- (h) any Law or class of Laws that Council, by Resolution, declares to be subject to this section.

*Lands Advisory Committee May Recommend Ratification Vote*

12.2 The Lands Advisory Committee may recommend that Council hold a Ratification Vote on any particular Law or decision, and Council will give reasonable consideration to any such recommendation.

*Ratification Process*

- 12.3 Any Ratification Vote required under this *Tumuhw Code* will be conducted in substantially the same manner as the Penelakut Tribe Community Ratification Process used to ratify this *Tumuhw Code*, with any modifications that are necessary in the circumstances.

*No Verifier*

- 12.4 A Verifier is not required in a Ratification Vote.

*Minimum Requirements for Approval*

- 12.5 A matter shall be considered approved at a Ratification Vote if a majority (fifty percent plus one (50%+1)) of participating Eligible Voters cast a vote in favour of the matter.

## **PART 4 - PROTECTION OF INTERESTS IN LAND**

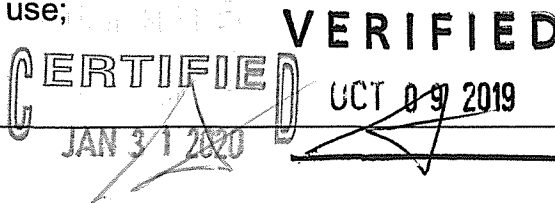
### **13. Expropriation of Land for Community Purposes**

*Rights and Interests that may be Expropriated for Community Purposes*

- 13.1 An Interest or License in Penelakut Tribe Land may only be expropriated by Penelakut Tribe in accordance with the Framework Agreement and a Law enacted under this *Tumuhw Code*.

*Community Purposes*

- 13.2 A community expropriation may only be made for a necessary community purpose or works of Penelakut Tribe, including but not limited to: a fire hall, sewage or water treatment facility, dyke, community center, public work, road, school, daycare facility, hospital, health-care facility, administrative office and a retirement home.
- 13.3 Council may only expropriate an Interest or License in Penelakut Tribe Land:
- (a) after Council has notified all holders of legal Interests or Licenses of Penelakut Tribe's needs for the land or Interests or Licenses and of the proposed use;



- (b) after Council commissions a report, which must include the reasons justifying the expropriation, and the report is made public;
- (c) after Council has made good faith efforts to try and obtain the Interest or License by mutual agreement through negotiations;
- (d) if no other similar and suitable land is reasonably available;
- (e) in the smallest amount of land and for the shortest period of time necessary to reasonably meet the need for which the land, Interest or License is required by Penelakut Tribe;
- (f) after a Meeting of Members to identify whether the proposed use is sufficiently compelling to justify expropriation;
- (g) after Penelakut Tribe has paid fair market value or provided fair and reasonable replacement compensation for the expropriation; and
- (h) after all of the other relevant requirements set out in this *Tumuhw Code* or Law have been followed.

*Expropriation Laws*

13.3 Before proceeding to make any community expropriations in accordance with this *Tumuhw Code*, Council must enact a Law respecting the rights and procedures for community expropriations, including provisions respecting the following:

- (a) the taking of possession of the Interest or License;
- (b) notice of expropriation and service of the notice of expropriation;
- (c) entitlement to compensation;
- (d) determination of the amount of compensation; and
- (e) the method of payment of compensation.

*Member Notification*

13.4 In the case of an expropriation of a Member's Interest in Penelakut Land, the affected Member or Members must receive written notification of the expropriation within a reasonable time, but it must be provided prior to the release of the public report.

*Compensation Calculations*

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13.5 The total value of the compensation under this clause must be based on the following factors:

- (a) the fair market value of the Interest or License 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;
- (d) damages for any reduction in the value of a remaining Interest; and
- (e) the fair market value of an expropriated Interest or License is equivalent to the amount that would have been paid for the Interest or License if it had been sold on Penelakut Tribe Land, with all of the rights, limits and restrictions that apply to Interests or Licenses and transactions on Penelakut Tribe Land, by a willing seller to a willing buyer.

*Neutral Evaluation*

13.6 A dispute concerning the right of Penelakut Tribe to expropriate an Interest or License in Penelakut Tribe Land will 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 will be applied, as appropriate in the circumstance, by the neutral evaluator.

*Arbitration to Resolve Disputes*

13.7 The resolution of the following disputes will be determined by arbitration, in the same manner as provided in the Framework Agreement:

- (a) disputes concerning the right of a Person who claims an Interest or License in expropriated Penelakut Tribe Land to compensation; and
- (b) disputes concerning the amount of the compensation to be paid to the Person who held an Interest or License in expropriated Penelakut Tribe Land.

## 14. Interim Environmental Protection of the Land

*Interim Protection of Penelakut Tribe Land*

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14.1 Until Penelakut Tribe enacts an environmental protection Law, Penelakut Tribe may adopt, apply and enforce any or all existing provincial environmental Laws and standards on Penelakut Tribe Land. For greater certainty, this section does not grant the provincial government jurisdiction to enforce provincial laws on Penelakut Tribe Land without Council's prior written consent.

14.2 Until Penelakut Tribe enacts an archeological and cultural resource protection Law, Council may adopt, apply and enforce the *BC Heritage Conservation Act, RSBC 1996, c.187*, on Penelakut Tribe Land. For greater certainty, this section does not grant the provincial government jurisdiction to enforce provincial laws on Penelakut Tribe Land without Council's prior written consent.

## 15. Voluntary Land Exchanges and Protections

### *Conditions for a Land Exchange*

15.1 Penelakut Tribe may agree with another party to exchange a parcel of Penelakut Tribe Land for a parcel of land from that other party in accordance with this *Tumuhw 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. The Ratification Vote must held be in accordance with this *Tumuhw Code*.

### *Land to be Received*

15.3 A proposed land exchange cannot proceed to a Ratification Vote unless the land to be received by Penelakut Tribe is:

- (a) of equal or greater area than the area of the Penelakut Tribe Land to be exchanged;
- (b) of a value at least comparable to the appraised value of the Penelakut Tribe Land to be exchanged;
- (c) eligible to become a reserve and to become Penelakut Tribe Land subject to this *Tumuhw Code*;
- (d) determined to be compliant with the intended use; and

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- (e) subject to an environmental assessment and has been declared safe for the intended use. This declaration must be completed by a competent professional with at least ten (10) years of professional experience. If the proposed land exchange is initiated by Canada, Penelakut Tribe will hold Canada accountable for the costs of the environmental assessment.

*Negotiators*

- 15.4 A Person who negotiates a land exchange agreement on behalf of Penelakut Tribe must be designated by Resolution to negotiate the agreement.

*Additional Compensation*

- 15.5 Penelakut Tribe 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, and any such additional land does not need to meet the requirements of section 15.3(c).

*Additional Land*

- 15.6 Such additional land under section 15.5 may be held by or in trust for Penelakut Tribe, in fee simple or otherwise.

*Federal Consent*

- 15.7 Before Penelakut Tribe concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Her Majesty the Queen in Right of Canada:
  - (a) consents to set apart lands received in the land exchange as reserve lands, as of the date of the land exchange or such later date as Council may specify by Resolution or as provided by an agreement with Canada;
  - (b) if applicable, agrees to expropriate and hold the land in trust for Penelakut Tribe until the land becomes reserve land subject to this *Tumuhw Code*;
  - (c) consents to the manner and form of the exchange as set out in the land exchange agreement; and
  - (d) agrees to amend the Individual Agreement and take all other steps to enable the land to become Penelakut Tribe Land subject to this *Tumuhw Code*.

*Community Notice*

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15.8 Once negotiations on the land exchange agreement are concluded, Council or their delegate must provide the following information to Eligible Voters at least twenty-one (21) days before the Ratification Vote:

- (a) a description of the Penelakut Tribe 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 15.7.

*Process of Land Exchange*

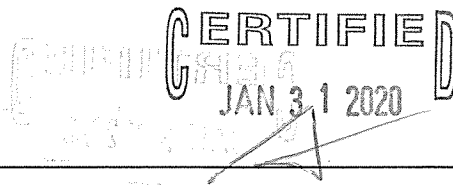
15.9 The land exchange agreement will provide that:

- (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) Council must pass a Resolution authorizing Canada to transfer title to the Penelakut Tribe Land being exchanged, in accordance with the exchange agreement;
- (c) a copy of the documents transferring title to the relevant parcels of land must be registered; and
- (d) the land to be set apart as a reserve has been subject to an environmental audit, and no clearance or remediation is necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation at no cost to Penelakut Tribe, and with full indemnification to Penelakut Tribe.

## **PART 5 - ACCOUNTABILITY**

### **16. Conflict of Interest**

*Application of Rules*



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16.1 The conflict of interest rules in this *Tumuhw Code* apply to:

- (a) a member of Council who is dealing with any matter before Council that is related to Penelakut Tribe Land;
- (b) a Person who is an employee of the Penelakut Tribe dealing with any matter that is related to Penelakut Tribe Land;
- (c) a member of the Dispute Resolution Panel; and
- (d) a Person who is a member of a board, committee or other body of the Penelakut Tribe dealing with any matter that is related to Penelakut Tribe Land.

*Duty to Report and Abstain*

16.2 If there is any actual or perceived financial, familial or Personal conflict of interest in the matter being dealt with, the Person:

- (a) must disclose in writing the interest to Council, their supervisor, and the board, committee or other body as the case may be;
- (b) must not take part in any deliberations or discussions on that matter;
- (c) must not take part in any votes, decisions or recommendations on that matter; and
- (d) must remove themselves from the proceedings.

*Perceived Conflict of Interest*

16.3 A Person has a perceived conflict of interest if there is a reasonable perception, which a reasonably well-informed Person could properly have, that the Person's ability to deliberate or decide on the matter has been affected by his or her private interest or the private interest of an Immediate Relative.

*Disputes*

16.4 The Dispute Resolution Panel has the jurisdiction to hear and decide on any matter concerning a conflict of interest.

*Other Laws*

16.5 For greater certainty, Council may develop a policy or enact laws to further implement this section.



*Common Interests Not a Conflict*

- 16.6 Section 16.1 does not apply to an interest that is held by a Member in common with every other Member. For example, an individual is not in conflict if a proposed decision will benefit that Member in the same way it will benefit all Members. For a second example, an individual is in conflict if a proposed decision will benefit that Member to a greater extent than it will benefit all Members.

*Council May Refer Matter to Meeting of Members*

- 16.7 If Council is unable to vote on a proposed Law or Resolution due to one or more conflicts of interest, Council may refer the matter to a Meeting of Members to be decided by a Ratification Vote.

*Committee May Refer Matter to Council*

- 16.8 If a board, committee or other body is unable to make a decision or recommendation due to one or more conflicts of interest, the board, committee or other body will refer the matter to Council for a final decision.

*Penalty*

- 16.9 In addition to any other penalty that may be prescribed by Council or by Law for breach of this section, an individual is liable to Penelakut Tribe for any benefit to himself, an Immediate Relative or a business in which that individual holds an interest resulting from a violation of this section.

## **17. Financial Management**

*Application*

- 17.1 For greater clarity, sections 17 through 21 apply only to financial matters relating to Penelakut Tribe Land and Natural Resources that are administered under this *Tumuhw Code*.

*Compliance with Penelakut Tribe Financial Policies*

- 17.2 Council will, in accordance with this *Tumuhw Code*, develop, adapt or adopt financial management laws or policies, including:
- (a) regulating the receipt, management and expenditure of monies, including transfer payments, all capital and revenue monies received from Canada, all land revenue, and moneys received from a grant or disposition of any Interest or License in relation to Penelakut Tribe Land and Natural Resources;

- (b) managing financial records and accounts;
- (c) preparing financial statements and audits;
- (d) preparing and implementing budgets and annual presentation of budgets;
- (e) determining the general investment strategy;
- (f) contract notes, loans and other indebtedness;
- (g) establishing fees, fines, charges and levies; and
- (h) establishing and maintaining a recordkeeping system that ensures confidentiality, security of records and document retention.

*Establishment of Bank Accounts*

17.3 Council will maintain one or more bank accounts in a financial institution and will deposit in those accounts:

- (a) transfer payments received from Canada for the management and administration of Penelakut Tribe Land;
- (b) monies received by Penelakut Tribe from the grant or disposition of any Interests or Licenses in Penelakut Tribe Land;
- (c) all fees, fines, charges and levies collected under a Law or related policy or Resolution;
- (d) all capital and revenue monies received from Canada from the grant or disposition of any Interests and Licenses in Penelakut Tribe Land; and
- (e) any other Penelakut Tribe Land revenue received by Penelakut Tribe.

*Adoption of Budget*

17.4 Council must, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt revised budgets for that fiscal year.

*Procedure*

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- 17.5 Council will inform Members of the land management budget or revised budget in a manner consistent with policies, procedures, or directions made for informing Members about Penelakut Tribe's annual budget.

*Financial Policy*

- 17.6 Penelakut Tribe may, in accordance with this *Tumuhw Code*, adopt a financial policy to further manage moneys related to Penelakut Tribe Land.

## 18. Financial Records

*Offences*

- 18.1 A Person may be guilty of an offence if that Person:
- (a) impedes or obstructs a Member or auditor from exercising their right to inspect the financial records of Penelakut Tribe; or
  - (b) has control of the account or financial records related to Penelakut Tribe and fails to give all reasonable assistance to a Member or auditor exercising their right to inspect the financial records.

*Preparation of Financial Statement*

- 18.2 At the end of each fiscal year, Council will prepare a financial statement in respect of monies related to Penelakut Tribe Land and Natural Resources 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 revised budget; and
  - (c) any other information necessary for a fair presentation of the financial position of Penelakut Tribe in relation to Penelakut Tribe Land and Natural Resources.

*Consolidated Accounts*

- 18.3 The accounting, auditing and reporting requirements of this *Tumuhw Code* may be done together with, and consolidated with, the other accounts, audits and reports of Penelakut Tribe provided that the statement and analysis relating to Penelakut Tribe Land is clearly distinguishable.

## 19. Audit

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*Appointment of Auditor*

- 19.1 The auditor appointed by Council must audit the financial statements of Penelakut Tribe relating to Penelakut Tribe Land.

*Duty of Auditor*

- 19.2 The auditor will provide an audit report to Council and the Lands Advisory Committee for its review and consideration not more than one hundred and fifteen (115) days after the fiscal year end for which the statements were prepared.

*Council Review of Audit*

- 19.3 Council must review and approve the audit report relating to Penelakut Tribe Land not more than one hundred and twenty (120) days after the fiscal year end for which the statements were prepared.

*Access to Records*

- 19.4 In order to prepare the audit report on Penelakut Tribe's Land and Natural Resources financial statement, the auditor must be authorized by Resolution to inspect the financial records of the Penelakut Tribe related to Penelakut Tribe Land and Natural Resources.

*Explanation of Auditor's Report*

- 19.5 Council will communicate the auditor's report to the Members in a manner consistent with policies, procedures and any directions created by Council.

**20. Annual Report**

*Publish Annual Report*

- 20.1 Council, on behalf of Penelakut Tribe, must publish an annual report on Penelakut Tribe Land administration within one hundred and eighty (180) days after the end of each fiscal year.

*Contents*

- 20.2 The annual report must include:
- (a) an annual review of Penelakut Tribe Land management activities;
  - (b) a copy and explanation of the audit as it applies to Penelakut Tribe Land and Natural Resources; and

- (c) any other matter as determined by Council or the Lands Advisory Committee.

## 21. Access to the Audit

### *Access*

21.1 Any Member may, during normal business hours at the main administrative office of Penelakut Tribe, have reasonable access to:

- (a) the auditor's report prepared under section 19; and
- (b) the annual report prepared under section 20.

### *Copies for Members*

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

### *Access to Records*

21.3 Any Member authorized by a Resolution may, at any reasonable time, inspect the financial records of Penelakut Tribe related to Penelakut Tribe Land.

### *Offences*

21.4 Any Person who has control of Penelakut Tribe financial records and who:

- (a) impedes or obstructs any Member or auditor from exercising a right to inspect those records; or
- (b) fails to give all reasonable assistance to any Member or auditor exercising a right to inspect those financial records,

is guilty of an offence under this *Tumuhw Code*.

## PART 6 - LAND ADMINISTRATION

### 22. Lands Manager

#### *Lands Manager*

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22.1 Council will hire a Lands Manager and shall make reasonable efforts that there is always a Lands Manager in place to:

- (a) manage and administer Penelakut Tribe Land in accordance with any Penelakut Tribe Land Laws and this *Tumuhw Code*; and
- (b) manage and oversee the day-to-day operations of the Lands Department.

### **23. Lands Department**

#### *Lands Department*

23.1 Council will establish a Lands Department for the purpose of carrying out all duties and responsibilities assigned or delegated to it under this *Tumuhw Code* and Laws.

23.2 The Lands Department will:

- (a) administer Penelakut Tribe Lands in accordance with this *Tumuhw Code* and Laws;
- (b) maintain and protect records in relation to Penelakut Tribe Lands; and

carry out any duty or responsibility delegated to the Lands Department under section 23.1 of this *Tumuhw Code*.

### **24. Lands Advisory Committee**

#### *Lands Advisory Committee Established*

24.1 Within a month after this *Tumuhw Code* becomes operational, Penelakut Tribe will establish a Lands Advisory Committee. The members of the committee who drafted and implemented the *Tumuhw Code* will form the interim Lands Advisory Committee until new members are appointed.

24.2 The Lands Advisory Committee is hereby established to:

- (a) advise Council and the Lands Manager on matters respecting the Penelakut Tribe Land administration system;
- (b) advise Council and staff on matters respecting Penelakut Tribe Land;

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- (c) make recommendations to Council on enacting and amending Laws, Resolutions, policies and practices respecting Penelakut Tribe Land;
- (d) hold regular and special Meetings of Members to discuss Penelakut Tribe Land issues;
- (e) review and make recommendations to Council concerning, applications for Interests and Licenses in Penelakut Tribe Land;
- (f) assist in the exchange of information on Penelakut Tribe Land issues between Members and Council;
- (g) oversee community input and approvals under this *Tumuhw Code*; and
- (h) perform such other duties as may be delegated or assigned by Resolution or Law under this *Tumuhw Code*.

*Implementation of Policies*

24.3 Laws, rules and procedures developed by the Lands Advisory Committee will be presented to Council for consideration and, if appropriate, implementation.

*Internal Procedures*

24.4 The Lands Advisory Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, provided that such rules are not inconsistent with any established Laws, Resolutions, rules or procedures.

## **PART 7 - INTERESTS AND LICENSES IN LAND**

### **25. Revenue from Land**

*Determination of Fees and Rent*

25.1 The Lands Department will, in consultation with the Lands Advisory Committee and subject to the approval of Council, establish the process and recommend any Laws, rules and policies for determining:

- (a) the fees or to be paid for or in relation to Interests and Licenses in Penelakut Tribe Land;

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- (b) the fees for services provided by Penelakut Tribe staff or contractors in relation to any Penelakut Tribe Land; and
- (c) the fees and royalties to be paid for the taking of Natural Resources from Penelakut Tribe Land.

## 26. Registration of Interests and Licenses

### *Enforcement of Interest and Licenses*

26.1 An Interest or License in Penelakut Tribe Land created or granted after this *Tumuhw Code* takes effect is not enforceable unless it is registered in the First Nations Land Registry in accordance with this *Tumuhw Code* and federal and Penelakut laws.

### *Duty to Deposit*

26.2 Every Person who receives, assigns, encumbers or transfers an Interest or License in Penelakut Tribe Land will deposit an original copy of the Instrument granting that Interest or License with Penelakut Tribe.

### *Duty of Penelakut Tribe to Deposit with Registry*

26.3 Council will direct the Lands Manager to ensure that a copy of the following documents is submitted for registration, provided the Lands Manager receives a copy and any required fees or authorizations:

- (a) a grant of an Interest or License in Penelakut Tribe Land;
- (b) a transfer or assignment of an Interest or License in Penelakut Tribe Land;
- (c) a Land Use Plan or subdivision plan; and
- (d) this *Tumuhw Code*, any amendments to this *Tumuhw Code* and any Laws.

### *Duty of Penelakut Tribe to Deposit with the First Nations Gazette*

26.4 Council or their authorized delegate must ensure that an original, or a copy of any of the following, if permitted by the First Nations Gazette, can be published:

- (a) any Law; and
- (b) this *Tumuhw Code* and any amendments.

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*Responsibility for Ensuring Accuracy of Instruments*

26.5 Persons or entities involved in registering Interests or Licenses are responsible for ensuring the validity and accuracy of their documents. Neither Penelakut Tribe, nor any employee or officer of Penelakut Tribe, will be responsible or liable for ensuring that a document which affects or purports to affect Penelakut Tribe Land:

- (a) is validly made;
- (b) complies with the *Tumuhw Code* or any Law;
- (c) should be or is registered or recorded; or
- (d) will be accepted for registration or recording in the First Nations Land Registry.

26.6 Valid and documented financial claims or other assertions of right which affect, or purport to affect, Penelakut Tribe Land or Interests or Licenses may, in accordance with all Laws and other applicable law, be recorded in the Registry.

26.7 The types of Instruments which may be recorded in the Registry under section 26.6 include, but are not limited to the following:

- (a) judgments;
- (b) court orders;
- (c) rights of first refusal;
- (d) certificates of pending litigation;
- (e) caveats (if there are sufficient Laws or legal infrastructure in place);
- (f) liens (if there are sufficient Laws or legal infrastructure in place);
- (g) assignments of rent;
- (h) options to purchase;
- (i) tax certificates;
- (j) licenses, permits or easements;

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- (k) Certificate of Possession documents;
- (l) priority registrations;
- (m) covenants; and
- (n) other lands instruments, as required.

*Registration of Consent or Approval*

26.8 An Instrument granting an Interest or License in Penelakut Tribe Land that requires the consent of Council, or community approval, must include a form of certificate indicating that the applicable consent or approval has been obtained.

## **27. Duplicate Lands Register**

*Duty to Maintain Duplicate Register*

27.1 In accordance with sections 51.1 and 51.2 of the Framework Agreement, Council may direct the Lands Manager to maintain an unofficial duplicate Penelakut Tribe Lands registry with the same content as the First Nations Land Registry.

## **28. Limits on Interests and Licenses**

*All Dispositions in Writing*

28.1 An Interest in, or License in relation to Penelakut Tribe Land may only be created, granted, disposed of, assigned, encumbered or transferred by an Instrument issued in accordance with this *Tumuhw Code*.

*Standards*

28.2 Council may establish mandatory standards, criteria and forms for Interests and Licenses in Penelakut Tribe Land.

*Improper Transactions Void*

28.3 An agreement of any kind, whether written or oral, by which Penelakut Tribe, a Member or any other Person purports to grant, dispose of, transfer, encumber or assign an Interest or License in Penelakut Tribe Land after the date this *Tumuhw Code* takes effect is void if it contravenes this *Tumuhw Code*.

*No Development without a Permit*

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28.4 Subject to this *Tumuhw Code* and any Law with more specific provisions, all of the following are prohibited without a Permit or authorization from Penelakut:

- (a) subdivision;
- (b) stratification or other division of legal Interests in lands or structures into strata units, sub-leases or shares;
- (c) development of any kind;
- (d) installation of roads, intersections, rip-rapping, erosion control, dyking, sewer, water, and other infrastructure;
- (e) construction, alteration, renovation, enlargement, addition, demolition or removal of industrial, commercial or residential structures, excluding minor structures on residential lots such as sheds;
- (f) anything that puts structures or people at risk within the flood plain or increases flood risks; and
- (g) anything that takes place in or within 30 metres of a water body or fish habitat.

*Non-Members*

28.5 Subject to this *Tumuhw Code* and any Laws, a Person who is not a Member may hold an Interest or License in Penelakut Tribe Land, but a Person who is not a Member cannot hold an Allotment or Certificate of Possession. For greater certainty, a Person who is not a Member may hold a Life Estate in a Certificate of Possession or an Allotment but has no right to transfer, assign, devise by will, rent out or otherwise deal with a Life Estate in relation to another individual.

*Ceasing to be a Member*

28.6 A Person who ceases to be a Member shall within six months of ceasing to be a Member transfer any Allotment or Certificate of Possession they hold to Penelakut Tribe or another Member.

28.7 Where a Person who ceases to be a Member does not transfer their Allotment or Certificate of Possession in accordance with section 28.6, Penelakut Tribe will provide written notice to the Person's Immediate Relatives that the Allotment or Certificate of Possession will be transferred to Penelakut Tribe twelve months and one day after the Person who held the Allotment or Certificate of Possession ceased to be a Member. Penelakut Tribe will hold the Allotment or Certificate of Possession in trust until twelve months and one day after the Person who held the Allotment or Certificate of Possession ceased to be a Member.

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28.8 Where a Member does not transfer their Allotment or Certificate of Possession in accordance with section 28.6 and no Immediate Relative disputes the transfer to Penelakut Tribe, the Allotment and any Certificate of Possession issued shall, twelve months and one day after the Person ceases to be a Member, be cancelled and the Penelakut Tribe Land described in the Allotment or Certificate of Possession shall be transferred to Penelakut Tribe as Band Land.

28.9 Where an Allotment reverts to Penelakut Tribe under section 28.8, the Person ceasing to be a Member shall remain liable for any obligations or liabilities, including environmental liabilities, or any monies owing pursuant to any Interests they held prior to the date the Allotment or Certificate of Possession reverts to Penelakut Tribe.

*Consent of Council*

28.10 Subject to section 28.4, and except for transfers occurring by operation of Law:

- (a) the written consent of Council by Resolution must be obtained for any grant, disposition, transfer, assignment or encumbrance of an Interest or License in Penelakut Tribe Land.
- (b) the grant of an Interest or License is deemed to include paragraph (a) as a condition of any subsequent transfers or assignments.

*Interests Granted in Error or by Fraud*

28.11 Council may, subject to any applicable ruling under PART 8 or by a court of competent jurisdiction, or upon receiving credible evidence or information, cancel or correct any Interest or License issued or Allotted in error or by fraud.

*Surveys*

28.12 The Land Department, or a holder of an Interest in Penelakut Tribe Lands, may cause surveys to be made of Penelakut Tribe Lands in accordance with the *Canada Lands Surveys Act, R.S.C 1985, c.L-6*, and the *Canada Lands Surveyors Act, S.C 1998, c14*. Council must approve survey instructions prior to any survey being carried out. The cost of the survey must be borne fully by the Interest holder, of the applicable parcel of land.

28.13 A survey respecting Penelakut Tribe Land is only effective upon being accepted by Natural Resources Canada and being registered in the Registry.

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## 29. Existing Interests and Licenses

### *Continuation of Existing Interests and Licenses*

- 29.1 Any legally valid Interest or License in Penelakut Tribe Land that existed when this *Tumuhw Code* takes effect will, subject to this *Tumuhw Code*, continue in force in accordance with its terms and conditions.
- 29.2 All new and pre-existing Interests or Licenses are subject to this *Tumuhw Code* and to any relevant Laws, Land Use Plan, policies and regulations passed in relation to this *Tumuhw Code* and for greater certainty, Penelakut Tribe is not liable for any decrease in value or use of an Interest or License arising in relation to a Law, Land Use Plan, regulation or policy duly passed under or in relation to this *Tumuhw Code*.
- 29.3 For greater certainty, legally valid Interests or Licenses previously issued under the *Indian Act* must continue in effect after the coming into force of this *Tumuhw Code*.

### *Custom Land Holdings*

- 29.4 Valid Custom Land Holdings that exist when this *Tumuhw Code* takes effect may:
- (a) continue, unless proven to be invalid or proven to be of a lesser area by a combination of documents, oral history and other information;
  - (b) grant the holders the right to occupy the land subject to this *Tumuhw Code*; and
  - (c) be passed on by gift or will but the holder can pass on no greater interest than the limited interest they hold under the Custom Land Holding.
- 29.5 Custom Land Holdings are subject to subsection 29.2 of this *Tumuhw Code*.
- 29.6 Council may grant a Certificate of Possession to one or more Members based on a Custom Land Holding, in accordance with this *Tumuhw Code* and any applicable laws provided that:
- (a) the holder applies for or requests a Certificate of Possession;
  - (b) the area of the land is confirmed and surveyed;
  - (c) the validity of the Custom Land Holding is confirmed by documentation, oral history or other reliable sources of information;

- (d) confirmation has been given to Council that any significant and valid competing claims or conflicts relating to the land are resolved;
- (e) the names of the holders for the Certificate of Possession are agreed to by the holders and the holders specify whether they wish to hold the land as joint tenants or tenants in common; and
- (f) the holders sign any necessary documents required by this *Tumuhw Code* or applicable laws.

*Replacing the Role of the Minister*

29.7 Immediately upon the coming into force of this *Tumuhw Code*, Canada transfers to Penelakut Tribe all the rights and obligations of Canada as grantor in respect of existing Interests and Licenses in or in relation to Penelakut Tribe Land.

*Unregistered Interest*

29.8 A policy must be established as soon as practical after the coming into force of the *Tumuhw Code* to address any valid unregistered Interests.

**30. New Interests and Licenses**

*Authority to Make Dispositions*

30.1 Council may grant, in accordance with this *Tumuhw Code*:

- (a) Interests and Licenses in Penelakut Tribe Land, including Certificates of Possession, Leasehold and Easements;
- (b) with the consent of the CP holder, any Interests and Licenses of the CP holder's land;
- (c) Licenses to take Natural Resources from the Penelakut Tribe Land, including, but not limited to, removing: timber, minerals, stone, sand, gravel, clay, soil or other substances. Any grant to remove Natural Resources from a CP holder's land must have the consent of the CP holder before they can be removed from the CP holder's land;
- (d) Certificates or other documentation to confirm ownership or another type of Interests in a home, structure or Interests;
- (e) Life Estates in Interests in Penelakut Tribe Land and

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- (f) Consent for mortgages.

*Conditional Grant*

30.2 The grant of an Interest or License under section 30.1 may be made subject to the satisfaction of written conditions, but any such conditions must be set out in the Instrument in respect of the grant of the Interest.

*Role of the Lands Advisory Committee*

30.3 The Lands Advisory Committee may make recommendations to Council on the granting of Interests and Licenses and may be authorized to act as a delegate of Council under this section.

### 31. Certificates of Possession

*Nature of Interest in Certificate of Possession*

31.1 Subject to this *Tumuhw Code* and any Laws, a Certificate of Possession in respect of a parcel of land is an Interest that entitles the Member holding it to:

- (a) share with Penelakut Tribe in the benefit from the Natural Resources arising from the Land;
- (b) grant subsidiary Interests and Licenses in Certificate of Possession land, including Leasehold, Life Estates, and Easements;
- (c) transfer, devise or otherwise dispose of the Certificate of Possession to another Member; and
- (d) any other rights, consistent with this *Tumuhw Code*, that are attached to Certificates of Possession under the *Indian Act*.

31.2 For certainty, a CP holder may grant a Leasehold to himself or herself in the same manner as to another Person notwithstanding any common law rule to the contrary.

### 32. Limits on Mortgages and Seizures

*Protections*

32.1 In accordance with the Framework Agreement, section 29, section 87 and subsections 89 (1) and (2) of the *Indian Act*, continue to apply to Penelakut Tribe Land.

*Mortgage of Allotment, Certificate of Possession or Leasehold*

32.2 Subject to this *Tumuhw Code* and complying with any Laws, the holder of an Allotment, Certificate of Possession or Leasehold may, in accordance with this section, grant a Mortgage of that Interest by registered document in the First Nation Lands Registry provided that:

- (a) The land is the sole lawful possession of the Member granting the Mortgage, or the Leaseholder granting the Mortgage holds the entire legal and beneficial Interest in the Leasehold or receives written consent from any other holders;
- (b) The granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, Certificate of Possession or Lease;
- (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; and
- (d) In the case of a Mortgage of a Leasehold, the Mortgage term complies with section 32.2.

*Time Limit*

32.3 The term of any charge or Mortgage of a Leasehold must not exceed the term of the Lease, as outlined below:

- (a) the term of the Leasehold will not exceed ninety-nine (99) years; and
- (b) the term of the mortgage will not exceed thirty-five (35) years. Any longer period will require Council's approval by Resolution.

*Default in Mortgage*

32.4 In the event of default in the terms of a charge or Mortgage of a Leasehold Interest, the Leasehold is not subject to possession by the charge 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 if required under this *Tumuhw Code* or any Law;
- (b) the charge or Mortgage received community approval if required under this *Tumuhw Code* or any Law;

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- (c) the charge or Mortgage was registered in the First Nations Land Registry; and
- (d) a reasonable opportunity to redeem the charge or Mortgage is given to Council on behalf of Penelakut Tribe.

32.4 Notwithstanding section 32.1, a Leasehold in Penelakut Tribe Land 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 Penelakut Tribe Land and onto the leasehold lands if necessary to deal with seizure, forfeiture or any related matter.

*Power of Redemption*

32.5 If Council exercises its power of redemption with respect to a Leasehold Interest, Penelakut Tribe becomes the lessee and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

### **33. Residency, Access and Trespass**

*Right of Residence*

33.1 The following Persons have a right to reside on Penelakut Tribe Land:

- (a) Members and their Spouses and children;
- (b) Members with a registered Interest in Penelakut Tribe Land;
- (c) any invitee of a Member referred to in clause (a) or (b);
- (d) lessees and permittees, in accordance with the provisions of the granting Instrument; and
- (e) a Person authorized in writing by Council, the Lands Advisory Committee or by a Penelakut Tribe Land Law.

*Right of Access*

33.2 The following Persons have a right of access to Penelakut Tribe Land:

- (a) a lessee and his or her invitees;
- (b) a Person granted a right of access under a Permit;

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- (c) Penelakut Tribe Members and their Spouses and children and his or her invitees;
- (d) a Person who is authorized by a government body or any other public body, established by or under an enactment of the Penelakut Tribe, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey provided that the Person received written authorization from Council; or
- (e) a Person authorized in writing by Council or the Lands Advisory Committee or by a Penelakut Tribe Land Law.

*Public Access*

33.3 Any Person may have access to Penelakut Tribe Land for any social or business purposes, if:

- (a) the Person does not trespass on occupied Land and does not interfere with any Interest in Land;
- (b) the Person complies with all applicable Laws; and
- (c) no Resolution has been enacted barring that Person.

*Use of Roads*

33.4 Any Person may have the right of access to Penelakut Tribe public roads, subject to this *Tumuhw Code* and Land Laws.

*Residency and Access Laws*

33.5 For greater certainty, Council may establish Laws, rules or procedures regarding rights of residence on, and rights of access to, Penelakut Tribe Land.

*No Financial Obligations*

33.6 No liability is imposed upon Penelakut Tribe in respect of any Person exercising a right of residency or access under this *Tumuhw Code* for injuries or damages suffered on account of the condition or state of Penelakut Tribe Land.

*Trespass*

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33.7 Any Person, who resides on, enters or remains on Penelakut Tribe Land other than in accordance with a residence or access right under this *Tumuhw Code* or a Law pursuant to this *Tumuhw Code* is guilty of an offence and may, in addition to other remedies, be evicted or removed by Resolution enforceable by any peace officer or enforcement official designated by Council by Resolution.

*Civil Remedies*

33.8 All civil remedies for trespass are preserved.

## 34. Transfers on Death

*Indian Act Application*

34.1 Until Penelakut Tribe exercises jurisdiction in relation to wills and estates, the provision of the *Indian Act* dealing with wills and estates must continue to apply with respect to Interests in Penelakut Tribe Land.

*Registration of Transfer*

34.2 A Person who receives an Interest in Penelakut Tribe Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that Interest registered in the First Nations Lands Registry.

*Transfer on Death or Mental Incompetence*

34.3 Subject to any applicable federal or provincial laws, if a Member holding an Interest in Penelakut Tribe Land dies and no provision has been made by the deceased Member for the disposition of that Interest to another Member, the following rules apply:

- (a) Council will take reasonable steps to notify the deceased's Immediate Relatives that the Interest held by the deceased is available;
- (b) If the deceased left no Immediate Relatives or heirs and no will, then the Interest will revert to Penelakut Tribe as Band Land, if nothing is transferred within two years from the death of the Member.

*Factors Council Must Consider*

34.4 In making any decision on its merits under this section, Council will consider:

- (a) all input, requests or recommendations of Immediate Relatives and the Lands Advisory Committee;
- (b) any outstanding loans or financial obligations in relation to the Interest in the Lands in question and may give priority to the arrangement that is most likely to result in ensuring these loans or financial obligations are paid out; and
- (c) All other relevant information.

*Right of Widow or Widower*

34.5 In the event that:

- (a) a Member holding an Interest in Penelakut Tribe Land dies intestate and is survived by a Spouse or dependent who does not hold a registered Interest in that land; or
- (b) a Member holding an Interest in Penelakut Tribe Land is declared incompetent due to mental incapacity,

subject to any order of the Minister or a court, the Member's Spouse and/or dependents may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's Interest is disposed of under this Part.

34.6 A Spouse or dependent referred to in section 34.5, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's Interests, and Council will, subject to this Land Code, evaluate the application on its merits and make a recommendation to the Minister.

*Notification*

34.7 Pursuant to this *Tumuhw Code*, in the event that:

- (a) no other provision has been made by a Member referred to in section 34.5 for the disposition of the Interest in Penelakut Tribe Land;
- (b) the Member's Spouse or dependent does not within 3 months make application under section 34.6; or

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- (c) an Immediate Relative of the Member disputes the continued residence on and use of the land by the Member's Spouse or dependent,

Council or the Lands Manager shall take reasonable steps to advise other Immediate Relatives of the Members that the land held by the Member is available for disposition or is in dispute.

*Optional Meeting of Members or Lands Advisory Committee*

- 34.8 If a Member's Immediate Relatives do not within three (3) months after the date of a Member's death or declaration of incompetence under section 34.5 recommend who is to receive the Interest, Council may refer the matter to the Lands Advisory Committee or call a Meeting of Members to provide advice on the disposition of the Interests.

*Land Goes to Penelakut Tribe if No Immediate Family*

- 34.9 Subject to the *Act* and the *Indian Act*, if no Immediate Relatives are interested and eligible to take the Interest in the Land within four (4) months of a death or declaration of mental incapacity under section 34.5, Council will pass a Resolution to transfer the Interest in the Land to Penelakut Tribe and, if the Interest is an Allotment or a CP, the Land will become Band Land.

*If Competing Members, Council Makes Recommendation*

- 34.10 If there is more than one Immediate Relative interested and eligible to take the Interest in the Land arising from section 34.5, Council will, after taking into account any information received under section 34.8, recommend to the Minister on the merits who should receive the Interest.

*Council May Comment on Outstanding Debts*

- 34.11 In making a recommendation under section 34.10, Council may include recommendations or comments on dealing with any outstanding debts or liabilities relating to the Interest to be transferred.

*Council to Make Best Efforts to Influence Minister*

- 34.12 Council will make best efforts to influence the Minister to implement recommendations made under this section

## **35. Spousal Property Law**

*Development of Rules and Procedures*

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35.1 Notwithstanding the *Family Homes on Reserve and Matrimonial Interests or Rights Act, SC 2013, c.20*, Council may enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage, to:

- (a) the use, occupancy and possession of Penelakut Tribe Land; and
- (b) the section of Interests in that land.

*Enactment of Rules and Procedures*

35.2 The rules and procedures contained in the spousal property law will be developed in consultation with the Members and the Lands Advisory Committee.

*General Principles*

35.3 For greater certainty, the rules and procedures developed by the Penelakut Tribe under this section must take into account the following general principles:

- (a) each Spouse should have an equal right to possession of their matrimonial home;
- (b) regard for the best interests of any child or children of the marriage;
- (c) each Spouse should be entitled to an undivided half interest in their matrimonial home;
- (d) the rules and procedures will not discriminate on the basis of sex; and
- (e) only Members are entitled to hold a Certificate of Possession or a charge against a Certificate of Possession.

## **PART 8 - DISPUTE RESOLUTION**

### **36. Dispute Resolution Procedure**

*Intent*

36.1 The intent of this Part is to ensure that all Persons entitled to possess, reside upon, use or otherwise occupy Penelakut Tribe Land do so

harmoniously with due respect to the rights of others and of Penelakut Tribe and with access to Penelakut Tribe procedures to resolve disputes.

*Purpose*

- 36.2 The purpose of these rules is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of a matter in dispute, taking into account the values which distinguish dispute resolution from litigation.

*Dispute Prevention*

- 36.3 The parties must use best efforts to prevent disputes from arising and may consider the use of dispute resolution processes at the earliest possible stage of any dispute, if they cannot resolve the dispute themselves.

*Disputes Prior to the Adoption of the Tumuhw Code*

- 36.4 Disputes that arose before the *Tumuhw Code* takes effect may also be referred to this part.

*Decision of Council or Lands Advisory Committee*

- 36.5 If a Member, or a non-Member with an Interest in Penelakut Tribe Land, has a dispute with respect to a decision of Council or the Lands Advisory Committee, the Person must first attempt to resolve that dispute with Council or the Lands Advisory Committee, before referring the dispute to the Panel.

*Settling a Dispute*

- 36.6 Nothing in this Part must be construed to limit the ability of any Person to reach an agreement to settle a dispute without recourse to this Part.

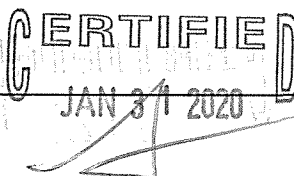
*Settlement Agreement*

- 36.7 Any settlement reached through dispute resolution must not be considered legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

*Variation of Rules*

- 36.8 The parties to a dispute to which these rules apply may to some degree modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing, of the agreed upon changes. This document must be signed by the parties in the dispute.

*Civil Remedies*



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36.9 For greater certainty, nothing in this Part must be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

*Challenge to the Validity of a Law*

36.10 For greater certainty, nothing in this part must be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

*Staged Processes*

36.11 Penelakut Tribe intends that a dispute in relation to Penelakut Tribe Land, except as otherwise provided, may progress through the following stages:

- (a) facilitated discussions;
- (b) negotiation;
- (c) mediation; and
- (d) final arbitration by the Dispute Resolution Panel or adjudication.

36.12 Each party to the dispute resolution process must pay 50% (50 percent) of the cost of the dispute.

36.13 The Land Department function in this case is to set up a Roster Panel that can be used by the parties in the dispute to assist on items in section 36.11.

*Procedure to File a Dispute*

36.14 A Person who wishes to resolve a dispute with another Person or Penelakut Tribe in relation to the use or occupation of Penelakut Tribe Land must file a written notice of the dispute, to the other party and provide a copy to the Land Department, setting out:

- (a) the nature of the dispute;
- (b) a statement outlining the facts and supporting arguments of the dispute claim; and
- (c) the relief that is sought.

*Termination of the Processes*

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36.15 Facilitated discussions, negotiations and mediations may be suspended upon any of the following occurrences:

- (a) the parties reach an agreement;
- (b) one of the parties refuses to continue with facilitated discussions, negotiations or mediation;
- (c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- (d) upon the written request of both parties.

*Notice of Termination*

36.16 A notice of termination is required when further facilitated discussions, negotiations or mediation shall not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

*Dispute Resolution Not Available*

36.17 Dispute resolution is not available for disputes in relation to:

- (a) administration or distribution of an estate;
- (b) decisions relating to housing allocations;
- (c) decisions of Council to grant or refuse to grant an Interest or License in Penelakut Tribe Land to a non-Member;
- (d) any dispute to which a Spousal Property Law applies;
- (e) decisions on expropriation under this *Tumuhw Code*; and
- (f) prosecution or conviction of an offence under a Law or under criminal law.

*Duty of Fairness*

36.18 All Persons involved in a dispute under this part must be:

- (a) treated fairly;
- (b) given a full opportunity to present their case; and
- (c) given reasons for a decision made under this part.

*Rules and Procedures*

36.19 Council may prescribe such Laws, resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this *Tumuhw Code*, as may be necessary to give effect to this part including:

- (a) facilitated discussions, negotiations, mediations and arbitrations;
- (b) terms of office for panelists;
- (c) remuneration of facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other Persons retained to assist in the resolution of disputes;
- (d) code of conduct for facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other Persons retained to assist in the resolution of disputes;
- (e) disclosure and confidentiality;
- (f) imposition of time limitations for submitting a notice of dispute and referring a matter or dispute to the Panel;
- (g) implementing recommendations of the Panel; and
- (h) any other matter necessary to give effect to this part.

*Waiver of Liability*

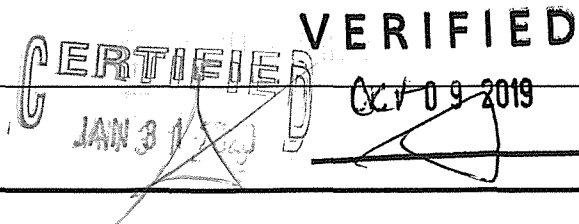
36.20 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists must not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

**37. Dispute Resolution Panel**

*Dispute Resolution Panel Established*

37.1 If requested in writing by the parties in the dispute, a Dispute Resolution Panel must be composed of a maximum of three (3) panelists, chosen as follows:

- (a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute; and



- (b) one (1) panelist, who is to be the Chair Person, must be chosen by the two panelists.

*Roster of Panelists Established*

- 37.2 The Lands Department will develop a roster of panelists that can be used by the parties to the dispute to assist them with facilitated discussion, negotiation and mediation.

*Ineligible*

- 37.3 Notwithstanding the general rules of conflict of interest in the *Tumuhw Code*, no Council member, employee of Penelakut Tribe, or Person already serving on another board, body, or committee related to Penelakut Tribe Land may sit on the Dispute Resolution Panel.

*Rules of Dispute Resolution Panel*

- 37.4 The Dispute Resolution Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

*Duty to Act Impartially*

- 37.5 The Panel must act impartially and without bias or favour to any party in a dispute.

*Offence*

- 37.6 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 the Application*

- 37.7 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.

**38. Powers of the Dispute Resolution Panel**

*Power of the Panel*

- 38.1 Notwithstanding section 36.6 above, the Panel may, after hearing a dispute:

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

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- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute back for a new decision; or
- (e) make an order to give effect to its decision, including any necessary order for the survey of an Interest in Penelakut Tribe Land, the registration of an Interest in Penelakut Tribe Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

*Recommendations by the Panel*

38.2 In addition to making a determination in respect to a particular dispute, the Panel may recommend to Council:

- (a) the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this *Tumuhw Code*; or
- (b) any other recommendation that it deems reasonable and necessary in the circumstances.

*Interim Decisions*

38.3 The Panel may, in relation to a dispute over which it has jurisdiction under this part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an Interest in Penelakut Tribe Land.

*Professional Services*

38.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it should make best efforts to use professional services available in the community, the cost of which will be shared evenly between the two parties conducting the dispute.

*Written Decisions*

38.5 Decisions of the Panel must be in writing, signed by the Person chairing the Panel or by an officer designated by the Panel to do so. Where requested, the written decision shall be provided to a party to the proceeding within fourteen (14) days after the date of the decision.

*Appeal of Decision*

- 38.6 A decision of the Panel is binding, but subject to review by a court of competent jurisdiction.

## **PART 9 - OTHER MATTERS**

### **39. Liability**

*Prior Acts of Canada*

- 39.1 Penelakut Tribe is not liable for anything done or omitted to be done by Canada or any Person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this *Tumuhw Code* comes into force.

*No Waiver*

- 39.2 This *Tumuhw Code* is not, nor must it be interpreted as being, a waiver by Penelakut Tribe in regard to any liability, acts or omissions of Canada.

*Liability Coverage*

- 39.3 Council must arrange, maintain and pay insurance coverage for its officers, employees, the Lands Advisory Committee and Council members engaged in carrying out any matter related to Penelakut Tribe Land to indemnify them against personal liability arising from the performance of those duties.

*Extent of Coverage*

- 39.4 The extent of the insurance coverage will be determined by Council.

*Bonding*

- 39.5 Every employee, officer and contractor of Penelakut Tribe whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.

### **40. Offences, Penalties and Enforcement**

*Application of the Criminal Code*

- 40.1 Unless another procedure is provided for by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code, R.S.C. 1985, c. C-46* apply to offences under this *Tumuhw Code* or under a Law.

*Penalties*

40.2 Any Person who commits an offence under this *Tumuhw Code* or a Law may be liable to a fine not to exceed \$1,000,000 and to a term of imprisonment not to exceed six months or to both fine and imprisonment; however, offences related to Penelakut Tribe environmental protection Laws may carry penalties consistent with similar environmental protection laws in force in Canada.

*Other Penalties*

40.3 Notwithstanding section 40.2:

- (a) a Law may provide for a penalty which is different than, and for greater certainty, which exceeds, the penalties referred to in section 40.2.
- (b) A Law may provide for an offence related environmental protection may include punishments, and costs for rehabilitation and remediation; and
- (c) A Law may provide for a variety of enforcement mechanisms including ticketing, stop work orders, administrative penalties, restorative orders, fines and imprisonment.

*Enforcement*

40.4 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this *Tumuhw Code* and Laws.

40.5 If no justice of the peace is appointed, this *Tumuhw Code* and Laws are to be enforced by a court of competent jurisdiction.

40.6 Council may enact Laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through community justice processes.

40.7 Council may enact any enforcement Law or procedures authorized under the Act or the Framework Agreement including any provisions consistent with federal law for inspections, searches, seizures and compulsory sampling, testing and the production of information.

*Other Enforcement Mechanisms*

40.8 Council may enact Laws to create ticketing processes or other enforcement mechanisms, such as restorative justice, or to incorporate

such processes or enforcement mechanisms from federal, provincial or local government sources.

## **41. Amendments to *Tumuhw Code***

41.1 Subject to this *Tumuhw Code*, amendments to this *Tumuhw Code* must receive community approval by a Ratification Vote. For greater certainty, a Ratification Vote is not required for amendments made to this *Tumuhw Code* that do not change the substance of this *Tumuhw Code*. Council may from time to time, arrange and revise this *Tumuhw Code*.

41.2 Amendments not requiring a Ratification Vote include:

- (a) an amendment of the description of the Penelakut Land subject to this *Tumuhw Code* and the Individual Agreement;
- (b) a reference in this *Tumuhw Code* to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this *Tumuhw Code* to an act or parts thereof that have expired, have been repealed or suspended;
- (d) changes in this *Tumuhw Code* as are required to reconcile seeming inconsistencies with other acts;
- (e) minor improvements in the language as may be required to bring out more clearly the intention of Penelakut Tribe without changing the substance of this *Tumuhw Code*; and
- (f) correct editing, grammatical or typographical errors.

### *Severability*

41.2 If any provision is determined by a court of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination.

## **42. Commencement**

### *Preconditions*

42.1 This *Tumuhw Code* will take effect if the community approves this *Tumuhw Code* and the Individual Agreement with Canada and this *Tumuhw Code* has been certified by the Verifier pursuant to the Framework Agreement.

*Commencement Date*

42.2 This *Tumuhw Code* will come into effect on the later of:

- (a) the first day of the month following certification of this *Tumuhw Code* by the Verifier under the Framework Agreement; or
- (b) the date the Individual Agreement is executed on behalf of Canada.

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