



Metlakatla First Nation Land Code

Dated for Reference
June 28, 2016

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- In Accordance with-
The Framework Agreement on
First Nations Land Management

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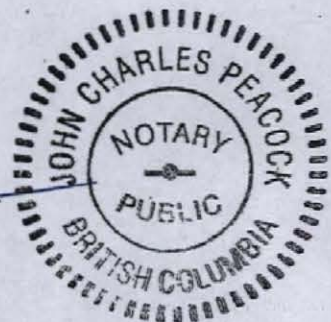
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July 19, 2016
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Certified A True Copy
this 19th day of JULY 2016

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Preamble

We, the people of Metlakatla First Nation, are descendants of the nine-tribes of Metlakatla and Lax Kw'alaams. We are Tsimshian and the founding people in our traditional territory. We have our ayaaxw and the adawx which are our laws and true tellings that guide us in making decisions about our lands, waters and resources.

Metlakatla First Nation heritage, including our language and spiritual beliefs, are tied to the lands and waters of our traditional territory. As such, we have a profound relationship with our land, waters and its resources, and we are committed to respecting and protecting our Tsimshian cultural heritage, a responsibility passed down through the generations.

We are stewards of our lands, waters, and resources and have an obligation to pass our responsibilities, intact, to our future generations. It is an important objective of the Metlakatla First Nation to preserve, protect, and enhance the Metlakatla First Nation land, waters, resources, heritage, language and culture.

Now Therefore this Metlakatla First Nation Land Code is hereby enacted as the fundamental land law of the Metlakatla First Nation in relation to Metlakatla First Nation Reserve Lands as defined in this Land Code.

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PART 1 PRELIMINARY MATTERS

1. Title

1.1 The title of this enactment is the *Metlakatla First Nation Land Code*.

2. Definitions

2.1 The following definitions apply in this Land Code:

“Allotment” means an Interest in Metlakatla First Nation Reserve Lands, in combination with a Certificate of Possession, granting a Member possession of a part of Metlakatla First Nation Reserve Lands under Part 7 of this Land Code or, prior to the date this Land Code comes into force, in combination with a Certificate of Possession pursuant to section 20 of the *Indian Act*;

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

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

“Committee” means the Lands Management Advisory Committee established under Part 6 of this Land Code;

“Common-Law Partnership” means the relationship between two (2) individuals who are cohabiting in a conjugal relationship that has been in place for at least three (3) years or such other time period as set out in Metlakatla First Nation Law or determined by a court;

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

“Council” means the Chief and Council of the Metlakatla First Nation or any successor elected government of the Metlakatla First Nation;

“Easement” means a Licence that provides a right to use another person’s property for a limited purpose;

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

“Expropriation” means a taking of an Interest or all Interests in portions of the Nation’s Land for a community purpose through a process established by a Law of the MFN, in accordance with Part 4;

“FAL” means the *Metlakatla First Nation Financial Administration Law, 2015*, as amended;

“First Nations Land Register” means the register established pursuant to clause 51 of the *Framework Agreement* and maintained by the Department of Indigenous and Northern Affairs Canada;

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

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

“Interest”, in relation to MFN Reserve Land, means any Interest, right or estate of any nature in or to a specific parcel or area of MFN Reserve Land, including a Certificate of Possession, but does not include title to that Land;

“Instrument” means a formal legal written document that provides evidence of an Interest, Licence or transaction in relation to Metlakatla First Nation Reserve Lands;

“Land Code” means this *Metlakatla First Nation Land Code*, and sets out the basic provisions regarding the exercise of the Metlakatla First Nation’s rights and powers over Metlakatla First Nation Reserve Land;

“Lands Department” consists of the Director of Lands and any other employees required to undertake the implementation of this Land Code.

“Land Law” means a law, including, but not limited to, policies, regulations, standards, restricted to Metlakatla First Nation Reserve Lands, enacted in accordance with this Land Code;

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“Licence” in relation to Metlakatla First Nation Reserve Lands, means any right of use or occupation of that Land or any right or permit to carry out an activity, other than an Interest in the Land;

“Meeting of Members” means a meeting held in accordance with Part 3 of this Land Code, where Metlakatla First Nation Members are invited to attend;

“Member” means an individual whose name appears on the Metlakatla First Nation Band Membership List;

“Metlakatla First Nation (MFN)” means the Metlakatla First Nation and its Members;

“Metlakatla First Nation Reserve Land” or “MFN Reserve Land” means any Metlakatla reserve land that is subject to this Land Code;

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

“Register” or “Registration” means to register in the First Nations Land Register established by Canada in accordance with section 51.1 of the *Framework Agreement* and in accordance with this Land Code and any Metlakatla Land Law;

“Resolution” means a Band Council Resolution passed by a quorum of Council at a duly convened meeting of Council;

“Riparian Rights” means the legal right of owners of land bordering on a river or other body of water, and any law that pertains to use of the water for that land; and

“Spouse” means an individual who is married to another, whether by a traditional, religious or civil ceremony, and includes a Spouse by Common-Law Partnership.

2.2 Any words or terms used in this Land Code which are defined in the *Framework Agreement* shall have the same meaning as in the *Framework Agreement*, unless the context otherwise requires.

3. Interpretation

3.1 In this Land Code:

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- (a) the Land Code shall be interpreted in a fair, large and liberal manner;
- (b) the word "shall" signifies an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (c) 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";
- (d) a reference to an enactment includes any amendment or replacement of it and every regulation made under it;
- (e) 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;
- (f) titles and headings of Parts and provisions have been inserted in the Land Code for convenience of reference only, and are not interpretive aids;
- (g) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (h) all references to a time period of days means consecutive days and not business days;
- (i) where the time limited for the doing of an act expires or falls on a Saturday or Sunday, or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (j) where the time limited for the doing of an act in the Metlakatla First Nation 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;

- (k) 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; and
 - (l) the principles set out in the Preamble to this Land Code may be used to interpret this Land Code.
- 3.2 The structures, organizations and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of the Metlakatla First Nation, unless otherwise provided.
- 3.3 If there is an inconsistency or conflict between this Land Code and any other enactment of the Metlakatla First Nation, including a by-law enacted under section 81 of the *Indian Act*, this Land Code prevails to the extent of the inconsistency or conflict.
- 3.4 If there is an inconsistency or conflict between this Land Code and the *Framework Agreement*, the *Framework Agreement* will prevail to the extent of the inconsistency or conflict.
- 3.5 This Land Code does not abrogate, derogate from, define, limit or suspend any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the Metlakatla First Nation or its Members.
- 3.6 This Land Code does not affect the eligibility of the Metlakatla First Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time.
- 3.7 This Land Code does not change:
- (a) the remaining by-law powers of Council pursuant to the *Indian Act*;
 - (b) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Metlakatla First Nation or its Members; or
 - (c) the fiduciary relationship between Canada and Metlakatla First Nation and its Members.
- 3.8 A reference to Land in this Land Code means all rights and resources in and of that MFN Reserve Lands, and includes:

- (a) the water, beds underlying water, riparian rights to the extent that these are included in the Reserve;
- (b) renewable and non-renewable natural resources in and of that MFN Reserve Land, to the extent that these are under the jurisdiction of Canada or are not validly under the jurisdiction of the Province of British Columbia;
- (c) all the Interests and Licences granted by Canada listed in the Individual Agreement; and
- (d) all the Interests and Licences granted by Metlakatla First Nation after this Land Code comes into effect.

3.9 Only land that has reserve status is eligible to be governed under this Land Code.

4. Authority to Govern

4.1 By enacting this Land Code, the Metlakatla First Nation is affirming our responsibility to care for and respect our MFN Reserve Lands.

4.2 The authority of Metlakatla First Nation to govern our lands and resources flows from our Aboriginal rights and title and our inherent right of self-government.

4.3 For any purpose related to MFN Reserve Lands, Metlakatla First Nation shall have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise our powers and to perform our duties.

5. Purpose

5.1 The purpose of this Land Code is to set out the principles, rules and administrative structures that apply to Metlakatla First Nation Reserve Land and by which the Metlakatla First Nation will exercise authority over those reserve lands.

6. Description of Metlakatla First Nation Reserve Lands

6.1 The MFN Reserve Lands that are subject to this Land Code are the lands as described in the Individual Agreement and any lands added in

compliance with this Land Code and include the following MFN Reserve Lands:

- S ½ Tsimpsean Indian Reserve No. 2 (07754)
- Wilnaskancaud Indian Reserve No. 3 (07755)
- Shoowahtlans Indian Reserve No. 4 (07756)
- Tugwell Island Indian Reserve No. 21 (07760)
- Tuck Inlet Indian Reserve No. 89 (07765)
- Rushton Island Indian Reserve No. 90 (07766)
- Squaderee Indian Reserve No. 91 (07767)
- Avery Island Indian Reserve No. 92 (07768)
- Edye Indian Reserve No. 93 (07769)
- Grassy Bay Reserve (10023).

- 6.2 The MFN Reserve Lands includes all reserve lands listed in the Individual Agreement and such other lands as may be described in the Individual Agreement as amended from time to time.
- 6.3 Subject to applicable law, all natural resources on or under MFN Reserve Lands belong to the Metlakatla First Nation.
- 6.4 The use and development of natural resources on or under MFN Reserve Lands will be subject to this Land Code and all MFN Land Laws, and Land Use Plans.
- 6.5 For greater certainty, reserve lands that are jointly held with the Lax Kw'alaams are not subject to this Land Code at this point in time.
- 6.6 Council shall consult with Members prior to the amendment of the description of MFN Reserve Land or addition of reserve lands to the Land Code.
- 6.7 For greater certainty, community approval or a ratification vote is not required for amending the description of reserve land in the Land Code and Individual Agreement.
- 6.8 Council may, by Resolution, declare land or an interest to be subject to this Land Code, provided the requirements of this Land Code and the *First Nations Land Management Act* are met.

**PART 2
FIRST NATION LEGISLATION**

7. Law-Making Powers

7.1 In accordance with this Land Code, Council will, within a reasonable period of time, make Land Laws respecting:

- (a) the development, conservation, protection, management, use and possession of MFN Reserve Lands;
- (b) Interests and Licences in relation to MFN Reserve Lands; and
- (c) any matter necessary or ancillary to the making of Land Laws in relation to the MFN Reserve Lands.

7.2 For greater certainty, without limiting section 7.1, Council may make Land Laws, and associated regulations in relation to MFN Reserve Lands, including, but not limited to:

- (a) archaeological assessment and protection of archaeological and cultural resources;
- (b) authorization and regulation of subdivisions;
- (c) conduct of surveys;
- (d) construction, installation, maintenance, regulation and management of any utilities, including roads, pipelines, power lines, communication lines, roads, water courses, water diversions, storm drains, bridges, ditches, dykes and other local and public works;
- (e) construction and maintenance of landscaping, boundaries, screenings, boundary and internal fences;
- (f) creation of management and administrative bodies or agencies;
- (g) creation, regulation and prohibition of Interests and Licences;
- (h) economic development;
- (i) enforcement of the Laws of the Metlakatla First Nation;
- (j) environmental assessment and protection;

- (k) expropriation of Interests and Licences;
- (l) forms, procedures, application fees and related matters;
- (m) hunting, fishing, management and protection of fish, wildlife and their habitat on MFN Reserve Lands;
- (n) mortgages, secured interests and priorities relating to Interests;
- (o) provision of local services and the imposition of user charges, including development cost charges or other similar charges;
- (p) provision of services for the resolution, outside the courts, of disputes;
- (q) public nuisance and private nuisance;
- (r) purchase, acquisition or sale of lands in accordance with the *Indian Act* and this Land Code;
- (s) regulation, control, authorization and prohibition of residency, access and the occupation and development of land;
- (t) removal of, and enforcement and prosecution against persons trespassing upon MFN Reserve Lands or frequenting MFN Reserve Lands or areas of MFN Reserve Lands for prohibited purposes;
- (u) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, and spiritual sites and wildlife refuges;
- (v) setting aside, protection and regulation of parks, parklands, trails and recreational lands;
- (w) registration of Interests and Licences, including priority of registration;
- (x) regulation of development, building and construction, including the application of building codes, engineering standards and other standards;
- (y) regulation of roads, intersections, traffic and transportation, including safety and insurance requirements;
- (z) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;

- (aa) setting of fees, rents royalties and charges for Interests and Licences in MFN Reserve Lands;
 - (bb) setting aside of lands for community purposes or works;
 - (cc) use and storage of firearms, fireworks, weapons and hazardous materials or substances on MFN Reserve Lands;
 - (dd) zoning, land use planning and development, including requirements for contributions to the community; and
 - (ee) any related matter as deemed necessary by the Council.
- 7.3 For greater certainty, in addition to Land Laws, Council may pass other enactments and policies, including, but not limited to, rules, regulations, standards, codes and policies.
- 7.4 The Lands Management Advisory Committee, in consultation with Members, will propose a legislative framework, which will contain a schedule, to prioritize the development of Land Laws for recommendation to Council.

8. Law-Making Procedure

- 8.1 In accordance with the law-making procedure in this Land Code, and any process or Law established under Section 8, a proposed Land Law may be introduced at a duly convened meeting of Council by:
- (a) the Chief or a Councilor; or
 - (b) the Metlakatla Executive Director.
- 8.2 It shall be incumbent upon any individual mentioned in Section 8.1 to submit a written explanation of the reason for the proposed Land Law and the authority for it.
- 8.3 Upon receipt of a Land Law proposal, Council may:
- (a) introduce the Land Law proposal for further review or for enactment;
 - (b) request that the individual in 8.1 who introduced the Land Law provide further information or attend before a future meeting of Council to speak to the Land Law proposal;

- (c) undertake or direct the preparation of a draft Land Law concerning matters raised in the Land Law proposal, for consideration by Council; or
 - (d) decline the Land Law proposal and shall provide a written rationale.
- 8.4 Except for urgent laws passed under section 8.7, before a proposed Land Law may be enacted by Council, it shall first:
- (a) be introduced at a duly convened meeting of Council held at least forty-two (42) days before the Land Law is to be enacted;
 - (b) be deposited with the Lands Management Advisory Committee at least thirty-five (35) days before the Land Law is to be enacted;
 - (c) be provided to the Members (where possible via email or mail upon request) and posted in public places on MFN Reserve Land and publically available online at least thirty-five (35) days before the Land Law is to be enacted; and
 - (d) meet any necessary community input requirements set out in Part 3 of this Land Code.
- 8.5 In consideration of all items in Section 8.4, Members may provide written comments on the proposed Land Law to Council, via the Lands Management Advisory Committee, prior to the Land Law being considered for Council approval. Council shall give full consideration of such comments.
- 8.6 For matters requiring a referendum, in addition to Section 8.4, a written certificate of a successful ratification vote approval must be obtained before the Land Law may be enacted by Council.
- 8.7 Council may enact a Land Law without the preliminary steps required under subsection 8.4, if Council is of the opinion that the Land Law is needed urgently for public health and safety or to protect MFN Reserve Land or the Members.
- 8.8 A Land Law enacted under subsection 8.7 expires one hundred and twenty (120) days after its enactment unless re-enacted in accordance with subsections 8.1 to 8.6.
- 8.9 A Land Law is enacted if it is approved by a quorum of Council at a duly convened meeting of Council.

- 8.10 The original copy of any approved Land Law concerning MFN Reserve Lands shall be signed by a quorum of Council present at the meeting at which it was enacted.
- 8.11 A Land Law enacted by Council takes effect on the date of its enactment or such later date as specified by the Land Law.
- 8.12 If a Land Law provides for the enactment of regulations on specific topics:
- (a) Council may initiate the development of a regulation by Resolution;
 - (b) Council may, in any manner that Council considers advisable, consult with Members regarding a proposed regulation; and
 - (c) Unless otherwise stated in the regulation, a regulation is enacted and comes into force on the date that it is approved and adopted by Resolution.
- 8.13 Council may, in consultation with the Lands Management Advisory Committee, establish a more detailed law-making process to develop, gather community input, enact and implement Land Laws.

9. Publication of Land Laws

- 9.1 Land Laws pursuant to this Land Code shall be:
- (a) included in the minutes of the Council meeting at which they were enacted;
 - (b) posted in a location within the administrative office of MFN accessible to all Members, as soon as practicable after enactment and for a period of not less than thirty (30) days thereafter;
 - (c) made publicly available on the Metlakatla First Nation website;
 - (d) registered in the First Nations Land Register and may be also registered in the *First Nations Gazette*; and
 - (e) posted or publicized by any other additional method as Council may consider appropriate.
- 9.2 The Metlakatla Lands Department shall keep, at the administrative buildings of the Metlakatla First Nation, a register of the original copy of all Land Laws, including Land Laws that have been repealed or are no longer in force.

- 9.3 Any person may obtain a copy of a Land Law on payment of a reasonable fee set by Council or a designate. Fees may be amended from time to time.

**PART 3
MEETING OF MEMBERS AND APPROVALS**

10. Participation of Eligible Voters

- 10.1 Every Eligible Voter is entitled to participate in the Member approval process set out in Part 3 of this Land Code.

11. Meeting of Members

- 11.1 Council shall, in consultation with the Lands Management Advisory Committee, develop Laws, policies or procedures for the conduct of Meetings of Members under this Land Code.

- 11.2 Council shall give written notice of the Meeting of Members that shall include:

- (a) the date, time and place of the meeting;
- (b) a brief description of the matters to be discussed; and
- (c) such other information and material that Council may consider appropriate.

- 11.3 Council shall notify Members at least fourteen (14) days before the Meeting of Members.

- 11.4 A person, other than a Member, may attend a Meeting of Members, but only with the permission of Council.

- 11.5 Council shall call a Meeting of Members prior to:

- (a) enacting a Land Law respecting the allotment of MFN Reserve Lands to Members;
- (b) enacting a Land Law respecting environmental assessment or protection;
- (c) enacting a Land Law respecting the protection and management of cultural heritage resources;

- (d) enacting a Land Law respecting matrimonial real property on reserve under Section 32;
- (e) declaring Land or an Interest to be subject to this Land Code;
- (f) enacting a Land Law respecting a community plan or subdivision plan;
- (g) enacting a Land Law respecting the transfer and assignment of Interests or Licences;
- (h) developing a parcel of land that has been designated or identified as culturally or environmentally sensitive property;
- (i) enacting a Land Law respecting the rights and procedures on Expropriation; and
- (j) enacting a Land Law or class of law that Council, by Resolution, declares to be subject to this section.

12. Member Approval and Ratification

12.1 Member approval by ratification vote shall be required for the following:

- (a) enacting a Land Use Planning Law setting out the process and key requirements for Land Use Plans and the initial Land Use Plan, but, for greater certainty, not for subsequent Land Use Plans or amendments;
- (b) any voluntary exchange of MFN Reserve Lands referred to in Section 14 of this Land Code;
- (c) a major amendment to this Land Code; or
- (d) any Land Law, class of law, or matter that Council, by Resolution, declares to be subject to this section.

12.2 Member approval by ratification may be obtained by a ratification vote duly carried out by one or more of the following methods, including:

- (a) establishing polling locations;
- (b) mail-in ballot; or
- (c) alternative voting methods, such as electronic and telephone voting.

12.3 Subject to Section 12.4, any ratification vote required under this Land Code shall be conducted in substantially the same manner as the *Metlakatla First Nation Community Ratification Process* which was used to ratify this Land Code but, with any necessary modifications, and, for greater certainty, a verifier is not required.

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- 12.4 For greater certainty, an independent ratification officer is required to conduct votes under Section 12.1.
- 12.5 A matter or Land Law set out in paragraph 12.1(a) to (d) is approved by a ratification vote where a majority of those Eligible Voters who vote, in accordance with the procedures approved by Council, vote in favour of the matter or Law.
- 12.6 For a vote on a voluntary exchange of MFN Reserve Land referred to in paragraph 12.1 (a) and Section 14, for which the land exchange would result in a reduction of the total quantity of MFN Reserve Lands, the exchange shall only be approved if more than sixty percent (60%) of the Eligible Voters who vote, vote in favour of the land exchange.

PART 4 PROTECTION OF LAND

13. Environment and Cultural Heritage Resources

- 13.1 Metlakatla First Nation Council shall enact environmental and cultural heritage resource Land Laws relating to the conducting of assessments and protection of MFN Reserve Lands.
- 13.2 Until Council enacts environmental assessment and protection laws, it shall conduct an assessment process in respect of every project on MFN Reserve Lands that requires an assessment under the *Canadian Environmental Assessment Act* consistent with the requirements set out in Annex 'F' of the Individual Agreement.
- 13.3 Until Council enacts a cultural heritage resource protection Law, it may follow the British Columbia *Heritage Conservation Act*.
- 13.4 Subject to any Land Law with more specific provisions, or Council approval, all of the following are prohibited on MFN Reserve Lands:
 - (a) dumping of any waste, garbage, debris or similar material anywhere outside of a garbage can or authorized bin or garbage area; and



- (b) dumping, spilling, discharging, releasing or depositing any substance, liquid or gas, that is noxious, hazardous, polluting, deleterious or harmful to human health or the environment.

14. Expropriation – Taking Land for Community Purposes

14.1 The right of Metlakatla First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement with the Interest or Licence holder, the Interest or Licence in MFN Reserve Lands rather than by Expropriation.

14.2 An Interest or Licence in MFN Reserve Lands, or in any building or other structure on that Land, may only be expropriated by Metlakatla First Nation in accordance with:

- (a) any Metlakatla Land Law enacted for the purpose of establishing the rights and procedures for Expropriations; and
- (b) the *Framework Agreement*.

14.3 An Expropriation by MFN shall only be carried out for MFN community works or other Metlakatla First Nation community purposes, including but not limited to such things as a fire hall, sewage or water treatment facility, community center, public works, utilities, roads, schools, daycare facility, hospitals, health-care facility, or retirement home.

14.4 Before proceeding to make any Expropriations in accordance with this Land Code and the *Framework Agreement*, Council shall, in consultation with the Lands Management Advisory Committee, enact a Land Law respecting the rights and procedures for Expropriations, including provisions respecting:

- (a) the taking of possession of the Interest or Licence;
- (b) transfer of the Interest or Licence;
- (c) notice of Expropriation and service of the notice of Expropriation;
- (d) ensuring that no other similar and suitable land is reasonably available;
- (e) ensuring that any taking is in the smallest amount of land and for the shortest period of time necessary to reasonably meet the need for which the land or Interest is required;
- (f) entitlement to compensation;

- (g) determination of the amount of compensation; and
- (h) the method of payment of compensation.

- 14.5 In the case of an Expropriation of a Member's Interest in MFN Reserve Land, the affected Member or Members shall receive notification of the Expropriation within a reasonable time prior to the release of the public notice referred to in Section 14.6.
- 14.6 Before MFN expropriates an Interest or Licence, it shall provide a report to all potentially affected individuals and holders of potentially affected Interests or Licences setting out the reasons justifying the Expropriation.
- 14.7 MFN shall, in accordance with its Land Laws and the *Framework Agreement* pay fair and reasonable compensation to the holders of the Interest or Licence being expropriated.
- 14.8 The resolution of disputes concerning the right of the MFN to expropriate shall be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, with any modifications necessary to fit the parties involved in the Expropriation, and the sixty (60) day period referred to in clause 32.6 of the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.
- 14.9 The solution of the following disputes shall be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*, with any modifications necessary to fit the parties involved in the Expropriation:
- (a) disputes concerning the right of a holder of an expropriated Interest or Licence to compensation; and
 - (b) disputes concerning the amount of the compensation.

15. Voluntary Exchange of MFN Reserve Land

- 15.1 The MFN may agree with another party to exchange a parcel of MFN Reserve Land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.
- 15.2 A land exchange is of no effect unless it receives Member's approval in accordance with Part 3 of this Land Code and with subsection 14.2 of the *Framework Agreement*.

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- 15.3 The Lands Management Advisory Committee will oversee the land exchange process.
- 15.4 No land exchange may occur unless the land to be received in the exchange meets the following conditions:
 - (a) it shall be equal to or greater than the area of the MFN Reserve Land to be exchanged; or
 - (b) it shall be at least comparable to the value of the MFN Reserve Land; and
 - (c) it shall become a reserve and MFN Reserve Land subject to this Land Code.
- 15.5 The person, or entity, who will have authority to negotiate the terms of a land exchange agreement on behalf of the MFN shall be designated by Council Resolution.
- 15.6 The Metlakatla First Nation may negotiate to receive other compensation, such as money or additional parcels of lands, in addition to the parcel referred to in subsection 15.1 which is intended to become Reserve lands. Such other parcels of land may be held by the Metlakatla First Nation in fee simple or some other manner.
- 15.7 Any funds received from a land exchange agreement will be used for future land acquisitions.
- 15.8 Once negotiations on the land exchange agreement are concluded, before the vote outlined in Section 12, the Committee shall provide Eligible Voters with an information package that describes the land exchange.

**PART 5
FINANCIAL ADMINISTRATION AND
CONFLICT OF INTEREST**

16. Financial Administration

- 16.1 All financial matters, relating to MFN Reserve Lands administered under this Land Code shall be conducted in accordance with the Land Code and the Metlakatla Financial Administration Law, and with all policies or procedures established under it.

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17. Conflict of Interest

- 17.1 In the event of any real, perceived or potential conflict of interest that arises in any matter related to Metlakatla Reserve Land, a Land Law, or this Land Code, the Metlakatla First Nation Conflict of Interest Rules set out in the Financial Administration Law shall apply.

**PART 6
METLAKATLA FIRST NATION RESERVE LAND ADMINISTRATION**

18. Exercise of Duties

- 18.1 Any power, authority or discretion exercised by the Council, the Lands Management Advisory Committee, the Lands Department, the Director of Lands, or other individual or body established or authorized under this Land Code must be exercised on behalf of, and for the benefit and protection of, the Metlakatla First Nation.

19. Responsibilities of Council

- 19.1 The Council is responsible for all matters relating to the management and administration of MFN Reserve Lands whether or not the responsibilities have been assigned or delegated to an individual or body by or under this Land Code.
- 19.2 Despite Section 19.1, and subject to this Land Code and the *Framework Agreement*, the Council may assign or delegate to the Lands Department, the Director of Lands, or the Lands Management Advisory Committee any of its functions under this Land Code except:
- (a) the granting of Interests in MFN Reserve Lands;
 - (b) the negotiation of amendments to the Individual Agreement;
 - (c) Expropriation of MFN Reserve Lands;
 - (d) the establishment of the Lands Management Advisory Committee;
 - (e) the enactment of Land Laws; and

- (f) the approval of budgets and financial statements of the Lands Department.

20. Director of Lands

20.1 Subject to available budget and qualified candidates, Council shall hire and retain a Director of Lands.

20.2 A Director of Lands shall oversee the day-to-day operation of the Lands Department and perform such duties and responsibilities consistent with this Land Code and subsequent Land Laws.

20.3 Without limiting the generality of Section 20.2, the Director of Lands shall:

- (a) manage the Lands Department;
- (b) coordinate with the Committee;
- (c) assist with the development of a MFN Reserve Land administration system;
- (d) maintain and protect records in relation to MFN Reserve Lands;
- (e) administer MFN Reserve Lands in accordance with this Land Code and Land Laws;
- (f) recommend to the Council Laws, Resolutions, policies and procedures in relation to MFN Reserve Land;
- (g) liaise with other Metlakatla entities as necessary; and
- (h) carry out such additional duties as are requested or directed by Council or the Executive Director consistent with the Land Laws and this Land Code.

20.4 The Director of Lands will comply with the MFN Conflict of Interest Rules for staff as established in the Financial Administration Law.

21. Lands Management Advisory Committee

21.1 Council shall establish a Lands Management Advisory Committee consisting of 5-9 members.

- 21.2 Council shall appoint or confirm Members to the Lands Management Advisory Committee within a year of the date the Land Code comes into effect.
- 21.3 Until Council approves a Terms of Reference and appoints a new Lands Management Advisory Committee, the committee members in place on the date the Land Code comes into effect will serve as the first Lands Management Advisory Committee.
- 21.4 The Director of Lands, in consultation with the Executive Director, will develop and recommend to Council, a Terms of Reference for the Lands Management Advisory Committee which will have provisions that set out:
- (a) the composition of the Committee, including quorum;
 - (b) eligibility criteria and process for selecting members of the Committee;
 - (c) the term of office for Committee members;
 - (d) the process for selecting a Chair;
 - (e) the duties of the Chair; and
 - (f) policies for remuneration and recovery of expenses incurred by Committee members.
- 21.5 The Lands Management Advisory Committee will have the following responsibilities:
- (a) assist with the development of the MFN Reserve Land administration system;
 - (b) advise Council and its staff on matters respecting MFN Reserve Lands including the granting of Interests and Licences;
 - (c) recommend Land Laws, regulations, policies and practices respecting MFN Reserve Lands to Council;
 - (d) consult with Members and non-Members on MFN Reserve Lands issues, and to make recommendations on the resolution of those issues to Council;
 - (e) oversee Meetings of Members and ratification votes;
 - (f) oversee the implementation of the Land Code and Land Laws; and
 - (g) perform such other duties as may be delegated or assigned by Resolution or Land Law under this Land Code.

- 21.6 The Lands Management Advisory Committee will comply with the MFN Conflict of Interest Rules for committees as established in the Financial Administration Law.
- 21.7 Unless otherwise directed by Council and subject to 21.5 (c), within a reasonable time after this Land Code takes effect, the Lands Management Advisory Committee shall, in consultation with the Members, ensure that Land Laws, rules and procedures, as may be appropriate, in relation to MFN Reserve Lands, are developed for Council approval, that address the following matters:
- (a) Land use planning, zoning and development process;
 - (b) a Member engagement and approval process to develop and implement Land Laws;
 - (c) environmental protection and assessment in relation to MFN Reserve Land;
 - (d) protection and management of cultural heritage resources;
 - (e) matrimonial real property on reserve under Section 32;
 - (f) the Allotment of available MFN Reserve Lands to eligible Members;
 - (g) monitoring and enforcement processes; and
 - (h) any other matter referred by Council.
- 21.8 The Committee shall establish rules, consistent with those established by Council, for the procedure at its meetings and for the general conduct of its affairs. These rules shall be provided to Council for approval and added as an Appendix to the Committee's terms of reference.

PART 7 INTERESTS AND LICENCES IN LAND

22. Existing Interests

- 22.1 Any legally valid Interest or Licence in MFN Reserve Lands that existed when this Land Code takes effect will, subject to this Land Code and any Land Laws passed under it, continue in force in accordance with its terms and conditions.

- 22.2 For greater certainty, MFN is not liable for any decrease in value or use of any existing or new Interest or Licence arising in relation to a Land Law, land use plan or regulation duly passed in relation to this Land Code.
- 22.3 Council may by Resolution, upon receiving compelling evidence or subject to an applicable ruling by a court of competent jurisdiction, confirm, cancel, discharge, amend or correct any Interests or Licence issued or allotted in error or by fraud or that has expired.

23. New Interests and Licences

- 23.1 Any new Interest and Licence must comply with this Land Code, Land Laws, policies and environmental assessment requirements or laws.
- 23.2 Council may, on behalf of Metlakatla First Nation, grant:
- (a) Interests and Licences in MFN Reserve Lands, including Certificates of Possession, Member Allotments, and leases, permits, easements and rights-of-ways;
 - (b) Interests, Licences and permits to carry out activities, occupy or take Natural Resources from MFN Reserve Lands;
 - (c) certificates or other documentation to confirm ownership or another type of Interest in a home, structure or other Interest;
 - (d) life estates in Interests in MFN Reserve Lands;
 - (e) permits, easements, statutory rights-of-way and any Interests or Licences for utilities for MFN Reserve Lands;
 - (f) consent for mortgages including consent to priorities; and
 - (g) With the written consent from a CP-holder, Interests or Licences in CP lands including permits or Licences to occupy or take Natural Resources from CP lands.
- 23.3 The grant of an Interest or Licence may be made subject to the satisfaction of written conditions.

23.4 Subject to any Law with more specific provisions, all of the following require a permit or written authorization from Council or Council's designate:

- (a) subdivision or division of an Interest;
- (b) any Natural Resource extraction;
- (c) installation of roads, intersections, rip-rapping, erosion control, dyking, sewer, water, and other infrastructure;
- (d) construction of new homes or other buildings or major renovations of an existing homes or other buildings;
- (e) any development or construction that puts structures or people at risk within the flood plain or increases flood risks;
- (f) any development or construction that takes place in or within 30 metres of a fresh water body or fresh water fish habitat;
- (g) any development or construction affecting MFN infrastructure (i.e. sewer and roads);
- (h) deposit or removal of more than 10 cubic metres (approximately one dump truck load) of soil, gravel or other materials per year per parcel of land, with any such soil, gravel or other materials required to be clean and non-contaminated; and
- (i) cutting, removal or alteration of any tree over 15 feet tall.

24. Limits on Interests and Licences

24.1 An Interest or Licence in MFN Reserve Lands may only be created, granted, disposed of, assigned or transferred by a written Instrument made in accordance with this Land Code and any relevant Land Law.

24.2 Council shall, after considering recommendations from the Lands Management Advisory Committee, establish mandatory standards, criteria and forms for written instruments, Interests and Licences in MFN Reserve Lands.

24.3 A deed, lease, contract, Instrument, document or agreement of any kind, whether written or oral, by which the Metlakatla First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an

Interest or Licence in MFN Reserve Lands after the date this Land Code takes effect is void if it contravenes this Land Code or any applicable Land Laws.

- 24.4 A non-Member may hold an easement, lease, Licence, mortgage or permit in MFN Reserve Lands but may never hold an Allotment or Certificate of Possession.
- 24.5 An individual 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 MFN or another Member.
- 24.6 Where an individual ceases to be a Member and does not transfer their Allotment or CP within the time period set out in subsection 24.5, the Allotment and any CP issued within six months and one day after the individual ceases to be a Member, the Interest shall automatically be cancelled and the MFN Reserve Lands described in the Allotment or CP shall automatically become Community Lands.

25. Certificates of Possession and Allotments of Land

- 25.1 Subject to the provisions of this Land Code, Council upon recommendations from the Lands Management Advisory Committee, shall establish an Allotment Law, policies and procedures for the Allotment of available MFN Reserve Land to Members.
- 25.2 Council may, in accordance with this Land Code and any Metlakatla Law:
- (a) provide an Allotment of Land to Members; or
 - (b) issue a Certificate of Possession to a Member for Land allotted to that Member.
- 25.3 Only Members and the MFN are entitled to receive an Allotment and to hold a Certificate of Possession in MFN Reserve Lands.

26. Transfer and Assignment of Interests

- 26.1 A Member may transfer or assign an Interest or Licence in MFN Reserve Lands to another Member in compliance with MFN Land Laws.

26.2 All transfers or assignments of an Interest or Licence in MFN Reserve Lands require the written consent of Council, except for;

- (a) transfers under subsection 26.1;
- (b) transfers that occur by operation of law, including transfers of estate by testamentary disposition; and
- (c) transfers in accordance with the matrimonial real property on reserve law enacted pursuant to section 32.

26.3 For transactions under this Section,

- (a) neither Council, the Director of Lands, nor the Lands Management Advisory Committee are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions for any representation or warranty made by the individual granting the Interest or Licence; and
- (b) without restricting the generality of 26.3 (a), neither MFN, the Lands Department, MFN staff, nor the Lands Management Advisory Committee shall be responsible for determining whether an Interest or Licence is in good standing or the terms have been complied with.

27. Limits on Mortgages and Seizures

27.1 In accordance with the *Framework Agreement*, the following provisions of the *Indian Act*, as amended from time to time, continue to apply to the MFN Reserve Lands:

- (a) section 29;
- (b) section 87;
- (c) sub-section 89(1); and
- (d) sub-section 89(2).

27.2 The Interest of a Member in MFN Reserve Land may be subject to a mortgage or charge, but only:

- (a) to a Member,

- (b) to the Metlakatla First Nation with the express written consent of Council, or
 - (c) in accordance with MFN Land Laws on leases and mortgages.
- 27.3 A leasehold Interest may be subject to charge or mortgage, but only with the express written consent of Council.
- 27.4 The term of any charge or mortgage of a leasehold Interest shall not exceed the term of the lease.
- 27.5 In the event of default in the terms of a charge or mortgage of a leasehold Interest, the leasehold Interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the charge or mortgage received the written consent of Council;
 - (b) the charge or mortgage was Registered in the First Nations Lands Register; and
 - (c) a reasonable opportunity to redeem the charge or mortgage is given to Council on behalf of Metlakatla First Nation.
- 27.6 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgagor in possession and shall thereupon acquire all the rights and Interests of the charger or mortgagor and of the lessee or Member for all purposes after the date of the redemption.
- 27.7 Council may, by Resolution, waive the requirements of subsection 27.6 for any charge or mortgage of a leasehold Interest or Licence.

28. Registration of Interests and Licences

- 28.1 All Interests and Licences must be Registered in the First Nations Land Register.
- 28.2 An Interest or Licence in MFN Land created or granted after this Land Code takes effect is not valid and not enforceable unless it is Registered in the First Nation Lands Register with the approval of MFN.

28.3 Every person who receives an Interest or Licence or a purported Interest or Licence in MFN Reserve Lands shall:

- (a) submit the written Instrument to the Metlakatla Lands Department, together with:
 - (i) a written request to Register or record the written Instrument in the First Nations Land Registry,
 - (ii) a filing fee if applicable, and
 - (iii) a signed waiver of liability.

28.4 Upon receiving the items under paragraph 28.3 (a), the Director of Lands shall confirm if the written Instrument is in compliance with this Land Code, all relevant Laws and the First Nations Land Register Regulations, and, if it is in compliance, submit the written instrument and supporting documentation for Registration or recording in the First Nations Land Register.

28.5 An Instrument granting an Interest or Licence in MFN Reserve Land that requires the consent of Council, or Member approval, shall include a certified copy of the document indicating that the applicable consent or approval has been obtained.

28.6 An Instrument Registered in the First Nations Land Register which does not include the certificate referred to in subsection 28.5 is void.

28.7 The Director of Lands shall ensure that a true copy of the following is Registered in the First Nation Lands Register:

- (a) every Land Law, land use plan, subdivision plan or natural resource use plan; and
- (b) this Land Code and any amendment to this Land Code.

29. Surveys

29.1 Metlakatla First Nation may cause surveys to be made of MFN Reserve Lands. Unless otherwise directed by Council Resolution, all surveys must be carried out in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.

- 29.2 The holder of an Interest or Licence in MFN Reserve Lands may only cause surveys to be made of those lands with prior written consent of Metlakatla and on such terms and condition as Metlakatla may specify.
- 29.3 Any survey of MFN Reserve Lands made under sections 29.1 and 29.2, must be done in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act* unless otherwise directed by Council in writing.
- 29.4 Unless otherwise directed by Council in writing, all surveys of MFN Reserve Lands approved or confirmed by the Surveyor General of Canada and his or her designate shall be deemed for all purposes to accurately describe and identify the extent of the lands covered by each survey.
- 29.5 Any surveyor must be a licenced member in good standing with the Association of Canada Lands Surveyors.
- 29.6 With written permission from MFN, the surveyor has the right to enter any MFN Reserve land for the purpose of installing control survey markers. A person entering occupied lands under this section must provide written notice to the person occupying the land.
- 29.7 Council must approve any survey made of MFN Reserve Lands prior to the plan being submitted for recording the Canada Lands Survey Records and the First Nations Land Register.
- 29.8 A survey respecting MFN Reserve Lands shall only become effective upon being registered in the First Nations Land Register.

30. Residency, Access and Trespass

- 30.1 Council shall, in consultation with the Lands Management Advisory Committee, develop a Land Law that addresses in greater detail, the provisions regarding residency, access and trespass in relation to MFN Reserve Lands.
- 30.2 A right of residence or access to MFN Reserve Lands does not create any financial obligation on the part of the MFN.
- 30.3 Subject to any MFN Laws, any person who resides on, enters, remains on, or solicits on MFN Reserve Lands, or an area of MFN Reserve Lands,

other than in accordance with a residence or access right under this Land Code or a Land Law or legally valid Interest, License or agreement:

- (a) is guilty of an offence, punishable by summary conviction or in accordance with MFN Laws, and
- (b) is subject to immediate eviction from MFN Reserve Lands, or the area of MFN Reserve Lands.

30.4 Subject to any Laws or bylaws, all civil remedies for trespass are preserved.

30.5 No liability is imposed upon MFN in respect of any person exercising a right of residency or access under this Land Code for injuries or damages suffered on account of the condition or state of MFN Reserve Lands.

31. Transfers on Death

31.1 Unless Metlakatla First Nation is provided jurisdiction in relation to wills and estates, the provisions of the *Indian Act* dealing with wills and estates shall continue to apply with respect to Interests in MFN Reserve Lands.

31.2 A person who receives an Interest in MFN Reserve Lands by testamentary disposition or succession in accordance with the law, or 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 Land Register.

32. Matrimonial Real Property on Reserve Law

32.1 Council shall enact a matrimonial real property on reserve law providing rules and procedures applicable on the breakdown of a marriage, to:

- (a) the use, occupancy and possession of MFN Reserve Lands;
- (b) if appropriate, the division of Interests in that Land; and
- (c) the division of the value of improvements in that Land.

32.2 The rules and procedures contained in the matrimonial real property on reserve law shall be developed and implemented by the Lands Management Advisory Committee in consultation with the Members and approved by Council.

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- 32.3 The matrimonial real property on reserve law shall be enacted within twenty-four (24) months from the date this Land Code takes effect.
- 32.4 For greater certainty, the rules and procedures developed by the Lands Management Advisory Committee under this section shall respect the following general principles:
- (a) the rules and procedures shall not discriminate on the basis of sex; and
 - (b) only Members are entitled to hold an Allotment or CP in MFN Reserve Lands or a charge against an Allotment or CP in MFN Reserve Lands.

33. Revenue from Land and Natural Resources

- 33.1 The Lands Department shall, in consultation with the Committee and subject to the approval of Council, establish the process and recommend any Land Laws, rules and policies for determining:
- (a) the fees, charges, royalties, rents or other payments for Interests and Licences in MFN Reserve Lands;
 - (b) the fees, charges or other payments for services provided in relation to any MFN Reserve Lands; and
 - (c) the fees, charges, royalties, rents or other payments to be paid for the taking or use of Natural Resources from MFN Reserve Lands.

PART 8 DISPUTE RESOLUTION

34. Dispute Resolution

- 34.1 Except as otherwise provided in this Part, disputes in relation to MFN Reserve Lands or Interests or Licences in MFN Reserve Lands shall be determined as follows:
- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration, or other dispute resolution process agreed to by the parties; or

(b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute may be determined by a court of competent jurisdiction.

34.2 Nothing in this Part precludes the Council from establishing additional processes or Laws for resolving disputes involving the MFN Reserve Land, or restricts the parties' right to pursue remedies in a court of competent jurisdiction at any time.

35. Costs

35.1 Subject to any ruling by an arbitrator, all parties to a dispute must bear their own costs in any dispute resolution process they undertake.

35.2 For greater certainty, MFN is not liable or responsible for the costs of any dispute resolution process under this Part where MFN is not a party.

PART 9 OFFENCES AND ENFORCEMENT OF LAND LAWS

36. Offences and Enforcement of Land Laws

36.1 To enforce our Land Code and its Land Laws, MFN shall have the power to:

- (a) establish offences that are punishable on summary conviction;
- (b) provide for a variety of enforcement mechanisms including fines, tickets, stop work orders, administrative penalties, mitigative or restorative orders, imprisonment, restitution, community services, and other alternate means for achieving compliance; and
- (c) establish comprehensive enforcement procedures consistent with federal and provincial law, including inspections, searches, stop work orders, seizures and compulsory sampling, testing and the production of information.

36.2 A Law may provide for fines consistent with federal law, including fines of up to \$100,000 for violations for specified provisions of the Law.

- 36.3 A Law relating to environmental protection may include punishments at least equivalent in their effect to any standards established and punishments imposed by laws of the Province of British Columbia or the Federal Government.
- 36.4 The Council may enact Laws respecting the use of the Metlakatla Justice Tribunal or the appointment of justices of the peace for the purposes of enforcing this Land Code and the Laws.
- 36.5 If no justice of the peace is appointed or available, then this Land Code and the Laws shall be enforced through the provincial courts.
- 36.6 Council may enact laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through a relevant tribal or community justice process.

PART 10 OTHER MATTERS

37. Liability

- 37.1 MFN is not liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to MFN Reserve Lands that occurred before this Land Code came into effect.

38. Land Code Amendments

- 38.1 As per Section 12, Member approval by ratification vote shall be obtained for any major amendment to this Land Code.

39. Minor Revisions to Land Code

- 39.1 Despite section 38, a ratification vote is not required for revisions made to this Land Code that do not change the substance of this Land Code. Council may, from time to time, arrange and revise this Land Code. Revisions may be made as a result of, but are not limited to:
- (a) an amendment of the description of MFN Reserve Lands subject to this Land Code and Individual Agreement;

- (b) a reference in this Land Code to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this Land Code to an act, or parts thereof, that have expired, have been repealed or suspended;
- (d) changes in this Land 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 the Metlakatla First Nation without changing the substance of this Land Code; and
- (f) correct editing, grammatical or typographical errors.

40. Commencement

40.1 This Land Code shall take effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada as per the Metlakatla Community Ratification Process; and
- (b) this Land Code has been certified by the verifier pursuant to the Framework Agreement.

40.2 This Land Code shall take effect on the first day of the month following:

- (a) certification of this Land Code by the verifier; and
- (b) the signing of the Individual Agreement by Canada.

41. Metlakatla Land Code Review

41.1 At least every 3 years, the Metlakatla Lands Advisory Committee shall conduct a review of this Land Code to identify and recommend any improvements to Council.