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THE MALAHAT NATION LAND CODE  
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5 OF November 2014



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## MALAHAT NATION LAND CODE

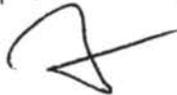
Dated for Reference  
October 16, 2014

- In accordance with -

*The Framework Agreement on  
First Nations Land Management*

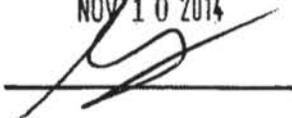
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# MALAHAT NATION LAND CODE

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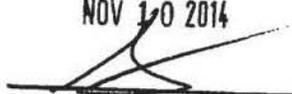
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## PREAMBLE

Whereas the people of Malahat Nation have a profound relationship with the land and its resources since time immemorial;

Whereas the Council of Malahat Nation, as the elected government of Malahat Nation, has the jurisdiction and responsibility for land and resource laws of Malahat Nation;

Whereas the Council of Malahat Nation is committed to providing dependable and efficient land management services to the Members of Malahat Nation;

Whereas Malahat Nation traditions and cultural beliefs are the driving force of our success and destiny;

Whereas Malahat Members hold and exercise their aboriginal rights and title for their own benefit and for the benefit of future generations;

Whereas Malahat Nation has entered into the *Framework Agreement on First Nation Land Management*, as amended, and which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*; and

Whereas Malahat Nation wishes to manage its lands and resources on Malahat Nation reserve lands, rather than having its lands and resources managed on its behalf under the *Indian Act*;

**NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF MALAHAT NATION.**

## PART 1: PRELIMINARY MATTERS

### 1.0 Title

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

### 2.0 Interpretation

2.1 The following definitions apply in this Land Code:

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

“Allocation” means an Interest that entitles a Member to use and occupy a parcel or area of Malahat Nation Lands under this Land Code exclusively for residential purposes and only for the period of time during which the Member, or the Member’s heirs or beneficiaries, use the land for residential purposes, after which the Interest is cancelled;

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“Arbitrator” means a Person who:

- (a) is a practicing member in good standing of the British Columbia Arbitration and Mediation Institute, its successor, or a similar body, or
- (b) has been designated as an acceptable Arbitrator in accordance with section 44.1 of the Framework Agreement;

“Certificate of Possession” means an exclusive right of possession to a parcel of Malahat Nation Lands allotted to a Member in accordance with section 20(1) or section 20(3) of the *Indian Act* prior to the enactment of this Land Code;

“Child” means:

- (a) a biological child,
- (b) an adopted child, whether by law or by custom,
- (c) a stepchild,
- (d) a foster child, or
- (e) a child over whom a Person has guardianship;

“Community Land” means any Malahat Nation Lands in which all Members have a common interest, and which is not subject to an Allocation or a Certificate of Possession;

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

“Easement” means a non-exclusive interest in Malahat Nation Lands giving the “grantee” the right to use the land of another (the “grantor”) for a right of way or to provide utility or other services to the land of the grantee, and which is limited to only such interest as is necessary to give effect to the Easement granted;

“Eligible Voter” means a Member who, as of the date of the Ratification Vote or other vote provided for in this Land Code, has attained the age of 18 years;

“Environmentally Sensitive Property” means an area of natural and scientific interest (life science or earth science) identified by Malahat Nation or its representatives;

“Expropriation” means a taking of an Interest or all Interests in portions of the Malahat Nation Lands for community purposes through a process established by a Law, in accordance with PART 6: EXPROPRIATION AND PROTECTION OF LAND;

“First Nations Land Registry” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51 of the Framework Agreement;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between Canada and the Chiefs of 14 First Nations on February 12, 1996, as amended;

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"Heritage Site" means a site on Malahat Nation Lands that is of particular cultural, historical, archaeological, anthropological or spiritual importance to Malahat Nation and the Members;

"Immediate Family", in respect of a Person, means the Person's Spouse, parent(s), grandparent(s), siblings, child(ren), grandchild(ren) and any relative permanently residing with a Person.

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

"Individual Agreement" means the Individual First Nation Agreement made between Malahat Nation and Her Majesty in Right of Canada in accordance with clause 6.1 of the Framework Agreement;

"Interest", means any interest, right or estate of any nature in or to Malahat Nation Lands including an Allocation, Certificate of Possession, Lease, Easement, Mortgage, right of way or Permit, but does not include title to that land;

"Land Code" means this *Malahat Nation Land Code*;

"Land Use Plan" means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environmental and other needs in the use and development of Malahat Nation Lands;

"Lands Management Advisory Committee" means the Lands Management Advisory Committee established under Section 9.0;

"Lands Department" means the department established under PART 2: LAND ADMINISTRATION of this Land Code;

"Lands Manager" means the Person who is responsible for the day-to-day administration of the Lands Department;

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

"Lease" means a Written Instrument granting a Leasehold Interest;

"Leasehold Interest" means an Interest in Malahat Nation Lands granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, including a Sublease, that grants a Person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, which time includes any renewal or extension period;

"License", in relation to Malahat Nation Lands, means any right of use or occupation of Malahat Nation Lands other than an Interest in that land;

"Mediator" means a Person who:

- (a) is a practicing member in good standing of the British Columbia Mediator Roster Society, its successor, or a similar body, or
- (b) has been designated as an acceptable mediator in accordance with section 44.1 of the Framework Agreement;

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“Meeting of Members” means a meeting under sections 18.0 and 19.0 to which the Members are invited;

“Member” means a Person whose name appears or is entitled to appear on the Malahat Nation Band Membership List;

“Mortgage” means a charge on an Interest in Malahat Nation Lands in favor of another as security for a debt;

“Malahat Nation” means a band within the meaning of subsection 2(1) of the *Indian Act*;

“Malahat Nation Lands” means any reserve or portion thereof that is subject to this Land Code;

“Malahat Nation Law Registry” means the register which contains a copy of all Laws, by-laws, Resolutions and other enactments of Malahat Nation;

“Community Ratification Process” means the *Malahat Nation Community Ratification Process* used to ratify this Land Code;

“Nation Manager” means the employee appointed by Council to manage the day-to-day activities of Malahat Nation;

“Natural Resources” means any materials or substances on, under or in Malahat Nation Lands which, when removed, have economic or other value;

“Permit” means an Interest in a specified area of Malahat Nation Lands other than a Lease, Easement or License, that gives a Person the right to non-exclusive use of a specified area of Malahat Nation Lands for a specified purpose;

“Person” includes a partnership, syndicate, association, corporation, society and the personal or other legal representatives of a Person;

“Ratification Vote” means a vote carried out in relation to this Land Code in a manner consistent with PART 4: MEMBER INPUT AND APPROVALS;

“Registered Voter” means an Eligible Voter who has registered to vote in accordance with the Malahat Nation Community Ratification Process;

“Residential Use” means use of an Allocation or Certificate of Possession by a Member, as a principal residence, and does not include use of land or buildings for renting out, or industrial, commercial or other uses except in accordance with Malahat Nation Laws, including Laws for home-based businesses;

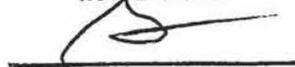
“Resolution” means a written resolution in relation to Malahat Nation Lands passed by a majority of Council at a duly convened Council meeting;

“Spouse” means either of two (2) persons who are married to each other, or who have lived with each other in a marriage-like relationship for a period of at least two (2) years and includes persons of the same gender;

“Sublease” means a Leasehold Interest in which the Person transferring the Interest is the holder of a Lease;

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“Verifier” means a Person appointed to monitor and verify the process of Malahat Nation opting in to the Act, in accordance with section 8.1 of the Framework Agreement; and

“Written Instrument” means a written document, in the form approved by the Lands Manager, which purports to create, grant, assign or transfer an Interest or License in Malahat Nation Lands or charge Malahat Nation Lands.

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

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

- (a) the water, beds underlying water, the foreshore to the high water mark, aquifers, and riparian rights;
- (b) minerals, subsurface resources and all renewable and non-renewable Natural Resources belonging to that land, to the extent that these are under the jurisdiction of Canada or Malahat Nation; and
- (c) all the Interests granted to Malahat Nation by Her Majesty the Queen in Right of Canada listed in the Individual Agreement.

2.4 In this Land Code,

- (a) the use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable;
- (b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) a reference to a statute or Law includes every amendment to it, every regulation made under it and any statute enacted in substitution for it or in replacement of it; and
- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

2.5 The provisions under this Land Code shall be interpreted in accordance with the language, culture, traditions and customs of Malahat Nation, unless otherwise provided.

2.6 If there is an inconsistency or conflict between this Land Code and any other Malahat Nation enactment, or with any regulation made under section 42 or 73 of the *Indian Act*, this Land Code shall prevail to the extent of the inconsistency.

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- 2.7 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.
- 2.8 This Land Code does not abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to Malahat Nation or its Members.
- 2.9 This Land Code is not intended to affect the eligibility of Malahat Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that Malahat Nation has not assumed responsibility for such services or programs.
- 2.10 This Land Code does not abrogate the fiduciary relationship now or in the future between Her Majesty the Queen in Right of Canada and the Malahat Nation or between Her Majesty and Malahat Nation Members.

### **3.0 Authority to Govern**

- 3.1 By enacting this Land Code, Malahat Nation is reaffirming its special responsibility to care for and respect Malahat Nation Lands, which has been the obligation of Members and their ancestors since time immemorial.
- 3.2 The authority of Malahat Nation to govern its lands and resources flows from its Aboriginal title and its inherent right of self-government.
- 3.3 For any purpose related to Malahat Nation Land, Malahat Nation has the legal capacity necessary to exercise its powers and perform its duties and functions and, in particular, may:
- (a) acquire and hold property;
  - (b) borrow money;
  - (c) enter into contracts;
  - (d) expend and invest money; and
  - (e) be a party to legal proceedings.

### **4.0 Purpose**

- 4.1 The purpose of this Land Code is to set out the principles, rules and administrative structures that apply to Malahat Nation Lands and by which Malahat Nation shall exercise its authority over Malahat Nation Lands.

### **5.0 Description of Malahat Nation Lands**

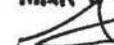
- 5.1 The Malahat Nation Lands that are subject to this Land Code are all the lands legally described in the Individual Agreement and any lands added in compliance with this Land Code. This includes:
- (a) the Indian Reserve known as Malahat Indian Reserve #11 (06814); and

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- (b) lands set apart by Her Majesty the Queen in Right of Canada in the future as lands reserved for the use and benefit of Malahat Nation.
- 5.2 The following lands may be made subject to this Land Code after the applicable condition is met:
- (a) any land owned jointly by Malahat Nation and another First Nation, where Malahat Nation and the other First Nation involved agree upon a joint management scheme for those lands;
  - (b) subject to section 5.4, any land acquired by Malahat Nation after this Land Code takes effect, whether by land claim, treaty settlement, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use, and provided that the lands are set aside as a reserve; and
  - (c) existing reserve lands that were omitted or expressly excluded from the description of the relevant lands in the Individual Agreement.
- 5.3 Subject to s. 5.4, if the relevant conditions in section 5.2 are met, Council must call a Meeting of Members and, after receiving input at that meeting, may enact a Law or pass a Resolution declaring the land to be subject to this Land Code.
- 5.4 For greater certainty, sections 5.2 and 5.3 do not apply to land acquired by land exchange, which is governed by the process set out at section 32.0.
- 5.5 The definition of "Malahat Nation Lands" in section 2.1 and the description of Malahat Nation Lands in section 5.1 are not intended, and should not be construed, as an admission by Malahat Nation that those lands are the only lands to which Malahat Nation is entitled under its aboriginal title or treaty rights.

## PART 2: LAND ADMINISTRATION

### 6.0 Responsibilities of Council

- 6.1 Council has ultimate authority over all matters relating to the management and administration of Malahat Nation Lands whether or not matters have been assigned or delegated to an individual or body by or under this and Code.
- 6.2 Notwithstanding section 6.1, and subject to the Act, the Framework Agreement and this Land Code, Council may assign or delegate to the Lands Manager, the Lands Department, or a body established by or under this Land Code any of its functions under this Land Code except:
- 6.3
- (a) the granting of Interests and Licenses in Malahat Nation Lands;
  - (b) the negotiation of amendments to the Individual Agreement;
  - (c) Expropriation of Malahat Nation Lands;
  - (d) the establishment of the Lands Management Advisory Committee;

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- (e) the enactment of Laws; and
- (f) the approval of budgets and financial statements of the Lands Department.

**7.0 Lands Manager**

7.1 The Lands Manager must not be a Person who is a member of Council and must comply with any conflict of interest policies and procedures adopted by Malahat Nation from time to time.

7.2 The Lands Manager has the authority to:

- (a) manage and administer Malahat Nation Lands in accordance with Laws and this Land Code;
- (b) manage and oversee the day-to-day operations of the Lands Department; and
- (c) perform such duties and responsibilities as are required and consistent with this Land Code and Laws.

7.3 Without limiting the generality or scope of the duties and responsibilities of the Lands Manager, the duties of the Lands Manager may include:

- (a) preparing and presenting regular reports to Council;
- (b) approving all forms of Written Instruments developed or adapted for use by the Lands Department;
- (c) making recommendations to Council regarding the fees and rent for Interests in Community Land;
- (d) determining the fees for services provided by the Lands Department;
- (e) executing such Written instruments and carry out any action required to be taken by and on behalf of Canada in relation to an Interest described in section 22.1;
- (f) carrying out any action required to be taken by Canada in relation to an Interest described in section 22.1 after the date this Land Code comes into force; and
- (g) carrying out any duty or responsibility delegated to the Lands Manager under section 7.2.

7.4 The Lands Manager may assign his or her duties or functions to an individual or body, but any such assignment does not relieve the Lands Manager of the responsibility to ensure that these duties or functions are carried out properly.

**8.0 Lands Department**

8.1 The Lands Department is hereby established for the purpose of carrying out all duties and responsibilities assigned or delegated to it under this Land Code or by Law.

8.2 Without limiting the generality of the duties and responsibilities of the Lands Department, it shall:

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- (a) administer Malahat Nation Lands in accordance with this Land Code and Laws;
- (b) prepare forms of Written Instruments for use in creating, granting, transferring or assigning Interests and Licenses in Malahat Nation Lands, where deemed necessary and advisable by the Lands Manager;
- (c) prepare forms of Written Instruments for use in registering documents which affect or purport to affect Malahat Nation Lands, where deemed necessary and advisable by the Lands Manager;
- (d) arrange for the execution of Written instruments and related documents on behalf of Malahat Nation and Her Majesty the Queen in Right of Canada;
- (e) maintain and protect records in relation to Malahat Nation Lands;
- (f) under the direction of the Lands Manager, carry out any duty or responsibility delegated to the Lands Manager under section 7.2; and
- (g) carry out such additional duties as are requested by the Lands Manager consistent with Laws and this Land Code.

## 9.0 Lands Management Advisory Committee

9.1 Council may, by Law, establish a Lands Management Advisory Committee to serve in an advisory capacity to Council and the Lands Department.

9.2 A Law that establishes a Lands Management Advisory Committee must include provisions that set out:

- (a) the composition of the Lands Management Advisory Committee, including quorum, and the composition of the Lands Management Advisory Committee must include at minimum the Nation Manager, the Lands Manager, 1 Member of Council and 1 Member at large;
- (b) eligibility criteria and process for selecting members of the Lands Management Advisory Committee;
- (c) the term of office for members of the Lands Management Advisory Committee;
- (d) the process for selecting a chair;
- (e) the duties of the chair; and
- (f) the role of the Lands Management Advisory Committee.

## 10.0 Exercise of Duties

10.1 Any power, authority or discretion exercised by Council, the Lands Manager, the Lands Department, or other individual or body established or authorized under this Land Code shall be exercised on behalf of, and for the benefit and protection of Malahat Nation.

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### PART 3: MALAHAT NATION LAWS

#### 11.0 Law-Making Powers

11.1 Council may, in accordance with this Land Code, make Laws respecting:

- (a) the development, conservation, protection, management, use and possession of, and planning for Malahat Nation Lands;
- (b) Interests or rights in and Licenses in relation to Malahat Nation Lands;
- (c) any matter necessary to give effect to this Land Code; and
- (d) any matter necessary or ancillary to a Law respecting Malahat Nation Lands.

11.2 For greater certainty, and without limiting the generality of section 11.1, Council may make Laws on matters in relation to Malahat Nation Lands including but not limited to:

- (a) the regulation, control or prohibition of zoning, land use and development, including zoning and subdivision control;
- (b) economic development;
- (c) setting aside lands for community purposes or works;
- (d) procedures that apply to the transfer, testamentary disposition or succession of an Interest in Malahat Nation Lands;
- (e) rules, procedures and rights respecting the Expropriation of Interests in Malahat Nation Lands;
- (f) creation, regulation and prohibition of Interests and Licenses in Malahat Nation Lands;
- (g) environmental assessment and protection;
- (h) provision of services for the resolution, outside the courts, of disputes in relation to Malahat Nation Lands;
- (i) regulation, control, authorization and prohibition of residency, access and occupation and development of land;
- (j) to provide for community health and safety;
- (k) regulation of construction standards for buildings, structures and facilities on Malahat Nation Lands;
- (l) fees, stumpage or royalties to be paid to Malahat Nation for the removal or extraction of Natural Resources from Malahat Nation Lands;

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- (m) the purchase, acquisition or sale of lands in accordance with the *Indian Act* and this Land Code;
- (n) setting of fees and rents to be paid to Malahat Nation for Permit or License applications or for administrative processes;
- (o) provision of local services and the imposition of user charges, including development cost charges or other similar charges;
- (p) conduct of surveys;
- (q) setting aside and regulation of parks, parklands and recreational lands;
- (r) setting aside and regulation of heritage sites, cultural sites, traditional sites, spiritual sites, sacred sites and wildlife refuges;
- (s) creation of management and administrative bodies or agencies;
- (t) removal, punishment and prosecution of persons trespassing upon Malahat Nation Lands or frequenting Malahat Nation Lands for prohibited purposes;
- (u) public nuisance and private nuisance;
- (v) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (w) construction, maintenance and management of roads, water courses, storm drains, water diversions, bridges, fences, ditches, and other local and public works;
- (x) construction and maintenance of boundary and internal fences;
- (y) regulation of traffic and transportation;
- (z) hunting, fishing, management and protection of fish, wildlife and their habitat on Malahat Nation Lands;
- (aa) use and storage of fireworks, firearms, weapons and hazardous materials or substances on Malahat Nation Lands;
- (bb) archaeological assessment and protection of archaeological and cultural resources;
- (cc) enforcement of the Laws of the Nation; and
- (dd) administrative appeals from a decision to grant or refuse to grant Interests in Malahat Nation Lands.

11.3 All Laws enacted by Malahat Nation shall be:

- (a) published in accordance with section 14.1; and

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- (b) included in the Malahat Nation Law Registry in accordance with section 14.2.

**12.0 Matrimonial Real Property Law**

12.1 Council shall, following the community consultation process set out in Part 4, develop rules and procedures applicable on the breakdown of a relationship between Spouses to the

- (a) use, occupation and possession of Malahat Nation Lands; and
- (b) division of Interests or rights in Malahat Nation Lands.

12.2 Within 12 months from the date this Land Code comes into force, Council shall enact a Matrimonial Real Property Law incorporating the rules and procedures developed in accordance with section 12.1.

12.3 For greater certainty, the rules and procedures in the Matrimonial Real Property Law enacted under section 12.2 shall respect the following general principles;

- (a) the rules and procedures shall not discriminate on the basis of sex; and
- (b) consideration shall be given to the best interests of any children of the relationship.

**13.0 Law-Making Procedure**

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

- (a) the Chief or a Councilor;
- (b) the Lands Manager;
- (c) a representative of a body or authority authorized by the Council to do so; or
- (d) a written request to Council, signed by at least 10 Eligible Voters, that sets out the specific subject matter or issue for which a Law is requested.

13.2 A Member who wishes to propose a Law to Council shall submit their request to the Lands Manager, who shall determine whether to bring the proposal to Council based on whether the requirements in paragraph 13.1(d) have been met.

13.3 Before a proposed Law may be enacted by Council, it shall first be

- (a) approved in principle at a duly convened meeting of Council at least 30 days before the Law is to be enacted; and
- (b) posted at the Malahat Nation administration office, at least 21 days before the Law is to be enacted.

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- 13.4 Council may enact a Law without the preliminary steps required under section 13.3, if the Council, acting reasonably, believes that the Law is needed urgently to protect Malahat Nation Lands or the Members.
- 13.5 A Law enacted under section 13.4 shall be deemed to have been repealed and to have no force and effect 120 days after its enactment, but may be re-enacted in whole or as amended in accordance with section 13.3
- 13.6 A Law is enacted if it is approved by a majority of Council at a duly convened meeting of Council after Council has complied with sections 13.1 – 13.4.
- 13.7 The original copy of any Law or Resolution concerning Malahat Nation Lands shall be signed by a quorum of Council present at the meeting at which the Law was enacted or the Resolution was passed.
- 14.0 Publication of Laws**
- 14.1 Within seven days after a Law has been enacted, the Lands Manager must:
- (a) post a copy of the Law at the band administration office; and
  - (b) post a copy of the Law on Malahat Nation's website.
- 14.2 Council shall ensure that a copy of each Law and Resolution is deposited in the Malahat Nation Law Registry.
- 14.3 Any Person may review the Malahat Nation Law Registry at the Malahat Nation main administration office during normal office hours, upon request.
- 14.4 Any Person may obtain a hard copy of a Law or Resolution upon written request accompanied by payment of a reasonable fee set by the Lands Manager.
- 15.0 Commencement and Amendment of Laws**
- 15.1 A Law enacted by Council takes effect on the date of its enactment or such later date as specified by the Law.
- 15.2 A Law may be repealed or amended by following the procedures for enactment set out in section 13.0.

#### **PART 4: MEMBER INPUT AND APPROVALS**

**16.0 Rights of Eligible Voters**

16.1 An Eligible Voter is entitled to:

- (a) attend a Meeting of Members called under this Land Code; and

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- (b) if there is a vote, vote at a Meeting of Members called under this Land Code.

**17.0 Community Input**

17.1 Council must call a Meeting of Members to receive input prior to any Council vote on whether to approve a Law in relation to:

- (a) matrimonial real property under section 12.1;
- (b) a Land Use Plan;
- (c) a community plan or subdivision plan;
- (d) declaring land or an Interest referred to in section 5.2 or 5.3 be subject to this Land Code;
- (e) a Heritage Site;
- (f) an Environmentally Sensitive Property;
- (g) environmental assessment;
- (h) the grant, transfer or assignment of an Interest in Malahat Nation Lands;
- (i) any other matter or class of matters that Council, by Resolution, declares to be subject to this section.

17.2 Within a reasonable time after this Land Code takes effect, the Council must establish a community process to develop and implement the Laws referred to in section 17.1.

**18.0 Approval at Meeting of Members**

18.1 Community approval at a Meeting of Members must be obtained for the following:

- (a) a Land Use Plan;
- (b) amendment of a Land Use Plan;
- (c) a charge or Mortgage of a Leasehold in Community Land exceeding a term of 25 years;
- (d) a Matrimonial Real Property Law under section 12.1;
- (e) a voluntary exchange of Malahat Nation Lands in accordance with section 32.0; and
- (f) a Law or class of Law, or any matter in relation to Malahat Nation Lands that Council, by Resolution, declares to be subject to this section.

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**19.0 Procedures for a Meeting of Members**

19.1 In addition to the public notice procedures set out in section 46.1, Council shall give written notice of a Meeting of Members by:

- (a) mailing the notice to Eligible Voters at their last known address at least 21 days before the meeting;
- (b) publishing the notice in a community newsletter or local newspaper and on Malahat Nation's website at least ten days before the meeting; and
- (c) such other methods as Council may consider appropriate.

19.2 All Members have the right to attend a Meeting of Members, but other persons may attend only with the permission of Council.

19.3 The quorum at a Meeting of Members is 20 Eligible Voters, subject to section 19.4.

19.4 Council may, by Resolution, set a higher quorum for a Meeting of Members.

19.5 A matter or Law is approved, or a decision made, at a Meeting of Members if there is a quorum in attendance and a simple majority (50% plus 1) of the Eligible Voters in attendance votes by secret ballot in favour of the matter, Law or decision.

19.6 Council may schedule more than one Meeting of Members for consideration and voting on a matter or Law that requires a Meeting of Members provided that any vote taken at a Meeting of Members must not be accumulated with any vote taken at a subsequent Meeting of Members.

19.7 Council may make Laws respecting procedures for Meetings of Members.

**20.0 Ratification Votes**

20.1 Member approval by a Ratification Vote must be obtained for:

- (a) an amendment of the Individual Agreement that reduces the amount of funding provided by Canada by 10% or more;
- (b) an amendment to this Land Code under section 50.0; and
- (c) the enactment of a Law or class of Laws that the Council, by Resolution, declares to be subject to this section.

20.2 A Ratification Vote required under this Land Code shall be conducted, with any necessary modifications appropriate in the circumstances, in the same manner as that provided in the Malahat Nation Community Ratification Process that was used to ratify this Land Code.

20.3 A matter shall be considered approved in a Ratification Vote if a majority of the Eligible Voters who vote cast a vote in favour of the matter.

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20.4 A Verifier is not required in a Ratification Vote under this Part.

## **PART 5: INTERESTS IN LAND**

### **21.0 Limits on Interests and Licenses**

- 21.1 An Interest or License in Malahat Nation Lands may be created, granted, disposed of, assigned or transferred only by a Written Instrument and in accordance with this Land Code.
- 21.2 The Lands Department may establish mandatory standards, criteria and forms for Interests and Licenses in Malahat Nation Lands.
- 21.3 Any written deed, Lease, contract, instrument, document or agreement of any kind, by which Malahat Nation, a Member or any other Person purports to grant, dispose of, transfer or assign an Interest or License in Malahat Nation Lands after the date this Land Code takes effect is void if it contravenes this Land Code.
- 21.4 A Person who is not a Member may not hold a Certificate of Possession or Allocation in Malahat Nation Lands, but may hold a Lease, License, Easement, Permit, Mortgage or similar Interest in Malahat Nation Lands subject to this Land Code and any relevant Laws.
- 21.5 For greater certainty, a Person who is not a Member cannot enter into a trust agreement with a Member so that a non-member benefits from a Certificate of Possession or Allocation in Malahat Nation Lands.
- 21.6 The written consent of Council is required for any grant or disposition of an Interest or License in Malahat Nation Lands to a Person who is not a Member.

### **22.0 Existing Interests and Licenses**

- 22.1 Any Interest or License in Malahat Nation Lands that exists when this Land Code takes effect shall, subject to this Land Code, continue in force in accordance with its terms and conditions and any relevant Laws or Land Use Plans passed in relation to this Land Code.
- 22.2 For greater certainty, Malahat Nation is not liable for any decrease in value or use of an Interest arising in relation to a Law or Land Use Plan duly passed in relation to this Land Code.

### **23.0 New Interests, Licenses and Allocations**

- 23.1 The Lands Manager may:
- (a) set criteria for issuing Interests and Licenses; and
  - (b) make recommendations to Council regarding the granting of Interests and Licenses in Malahat Nation Lands.
- 23.2 Council may by Law or Resolution grant an Interest or License subject to the requirements of this Land Code and to the satisfaction of written conditions.

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**24.0 Allocations**

- 24.1 Council may by Resolution grant an Allocation from available Malahat Nation Lands to a Member for Residential Use in accordance with policies and procedures established by Council.
- 24.2 No community approval or Ratification Vote is required for the granting of an Allocation to a Member for Residential Use provided Council grants the Allocation by Resolution and in compliance with this Land Code and any Allocation Laws, Land Use Plans and policies approved by Resolution.
- 24.3 Subject to this Land Code and any Laws, Land Use Plans or regulations, Resolutions or policies passed under it, a Member who has been granted an Allocation has the following rights and responsibilities:
  - (a) exclusive possession of the land for Residential Use;
  - (b) the right to transfer, devise or otherwise dispose of their Allocation to another Member; and
  - (c) any other rights and responsibilities set out in the Land Code or Laws.
- 24.4 If a Member who holds an Allocation abandons the land or uses the land for a purpose other than for Residential Use for a period of more than 8 consecutive weeks, the Allocation is automatically cancelled and the lands subject to the Allocation shall become Community Land and any structures affixed thereto vest in Malahat Nation.
- 24.5 In addition to the automatic cancellation of an Allocation set out in section 24.4, Council may, by Resolution, cancel an Allocation that was issued under this Land Code in error or in violation of this Land Code provided that Council gives the holder at least 30 days written notice of an intention to cancel the Allocation and provides the holder with an opportunity to make submissions and arguments.

**25.0 Transfer and Assignment of Interests and Licenses**

- 25.1 All transfers and assignments of Interests shall
  - (a) comply with this Land Code and all Laws; and
  - (b) be registered in the First Nations Land Registry, in accordance with section 28.0.

**26.0 Limits on Mortgages and Seizures**

- 26.1 In accordance with the Framework Agreement, section 29, section 87 and subsections 89(1), (1.1) and (2) of the *Indian Act* continue to apply to Malahat Nation Lands, whether or not the Malahat Nation Lands were designated before this Land Code came into effect.
- 26.2 The duration of any charge or Mortgage of a Leasehold Interest must not exceed the duration of the Lease.
- 26.3 In the event of default on a Mortgage of an Interest, the Interest will not be subject to possession by foreclosure, power of sale or any other form of execution or seizure, unless:
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- (a) the Mortgage was registered in the First Nations Land Registry; and
  - (b) the mortgagee has given the Council, acting on behalf of Malahat Nation, 120 days in which to redeem the Mortgage.
- 26.5 If Council exercises its power of redemption with respect to a Leasehold Interest, Malahat Nation becomes the lessee of the land and takes the position of the mortgagee for all purposes after the date of the redemption, and, for greater certainty has full and immediate rights of access and eviction.
- 27.0 Surveys**
- 27.1 The Lands Department, or a holder of an Interest in Malahat Nation Lands upon the approval of the Lands Department, may cause surveys to be made of Malahat Nation Lands in accordance with the *Canada Lands Surveys Act*, R.S.C. 1985, c. L-6, the *Canada Lands Surveyors Act*, S.C. 1998, c. 14, the *First Nations Land Management Act*, S.C. 1999, c. 24 and the *First Nations Land Registry Regulations*, S.O.R./2007 231.
- 27.2 A survey respecting Malahat Nation Lands shall only become effective upon being registered in the First Nations Land Registry.
- 27.3 Notwithstanding sections 27.1 and 27.2, surveys determining boundaries of Malahat Nation Lands shall not abrogate or derogate from MN's Aboriginal rights and title or treaty rights.
- 28.0 Registration of Interests**
- 28.1 An Interest or License in Malahat Nation Lands created or granted after this Land Code takes effect is void and not enforceable unless it is registered or recorded in the First Nations Land Registry.
- 28.2 Every Person who has or is granted an Interest in Malahat Nation Lands, under this Land Code, shall:
- (a) submit the Written Instrument creating, transferring or assigning the Interest for registration or recording in the First Nations Land Registry; or
  - (b) submit the Written Instrument to the 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.
- 28.3 Upon receiving the items under paragraph 28.2(b), the Lands Manager shall confirm if the form of the Written Instrument is in compliance with this Land Code, all relevant Laws, the Act and the *First Nations Land Registry Regulations*, and, if it is in compliance, submit the Written Instrument and supporting documentation for registration or recording in the First Nations Land Registry.

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- 28.4 A Written Instrument granting an Interest or License in Malahat Nation Lands that requires the consent of Council, or approval at a Meeting of Members, shall include a certificate issued by the Lands Manager indicating that the applicable consent or approval has been obtained.
- 28.5 Provided the Lands Manager receives the documents, the Lands Manager shall ensure that an original copy of the following documents is deposited in the First Nations Land Registry:
- (a) every Land Use Plan, subdivision plan or resource use plan; and
  - (b) this Land Code and any amendment to this Land Code.
- 28.6 Neither Malahat Nation, Council, the Lands Manager or any Malahat Nation employee shall be liable for ensuring that a Written Instrument that affects or purports to affect Malahat Nation Lands:
- (a) is validly made;
  - (b) complies with the Land Code or any Law;
  - (c) should be registered or recorded; or
  - (d) will be accepted for registration or recording in the First Nations Land Registry.

## 29.0 Transfers on Death

- 29.1 A Member who claims to be entitled to a Certificate of Possession or Allocation, by testamentary disposition or succession pursuant to the *Indian Act*, is not entitled to such Certificate of Possession or Allocation until:
- (a) the Member has filed with the Lands Department a Written Instrument in a form prescribed by the Lands Manager, duly executed by the personal representative of the estate of the deceased Member transferring such Certificate of Possession or Allocation to the Member; and
  - (b) the Written Instrument referred to in subsection (a) is registered in the First Nations Land Registry.
- 29.2 Subject to any applicable federal or provincial laws, if a Member holding an Interest in Malahat Nation Lands 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 shall take reasonable steps to notify the deceased's Immediate Family that the Interest held by the deceased is available;
  - (b) the deceased's Immediate Family may decide who among them should receive the Interest, provided that Person is a Member, and may make a recommendation to Aboriginal Affairs and to Council; and

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- (c) if the deceased left no Immediate Family or heirs, the Interest will revert to Malahat Nation as Community Land and if it is an Allocation or Certificate of Possession, will go back into the pool of lands available for Allocation to Members.
- 29.3 A purchaser of an Allocation or Certificate of Possession pursuant to subsection 50(2) of the *Indian Act* is not entitled to such Allocation or Certificate of Possession until:
- (a) for an Allocation, the purchaser has filed with the Lands Department a Written Instrument in a form prescribed by the Lands Manager or any policy of Malahat Nation and duly executed by the Lands Manager;
  - (b) for a Certificate of Possession, the purchaser has filed with the Lands Department a Written Instrument in a form prescribed by the Lands Manager, duly executed by the Person authorized under the *Indian Act* to execute a transfer of a Certificate of Possession acquired pursuant to section 50(2) of the *Indian Act*; and
  - (c) the Written Instrument referred to in subsections (a) and (b) is registered in the First Nations Land Registry.
- 29.4 Council may enact Laws or approve policies related to granting Members or non-Members a grieving period for dealing with Immediate Family member's Interests in Malahat Nation Lands, and such Laws or policies may include granting Immediate Family a specified time before having to vacate the Malahat Nation Lands over which the deceased Member had an Interest.

### 30.0 Residency and Access Rights

- 30.1 Any Person who resides on, enters or remains on Malahat Nation Lands other than in accordance with a residence or access right under this Land Code or under a Law is guilty of an offence.
- 30.2 Subject to any Laws passed under this Land Code, all civil remedies for trespass are preserved.
- 30.3 The following persons have a right to reside on Malahat Nation Lands:
- (a) Members and their Immediate Family; and
  - (b) any Person who holds a valid Lease or other Interest that grants to that Person the right to reside on Malahat Nation Lands
- provided that the Person complies with all applicable Laws and is not the subject of any Resolution barring the Person from Malahat Nation Lands.
- 30.4 The following persons have a right of access to Malahat Nation Lands:
- (a) Members and their Immediate family and invitees;
  - (b) Interest holders and their invitees;
  - (c) Licensees and those granted a right of access under the License;

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- (d) persons authorized by a government body or any other public body, established by or under an enactment of Malahat Nation or British Columbia to establish, operate or administer a public service, to operate a public institution or to conduct a technical survey;
- (e) persons authorized by law; or
- (f) any Person, for a valid social or business purpose,

provided that the Person:

- (g) does not enter onto occupied land or interfere with any Interest in land except to the extent that it is reasonably necessary;
- (h) complies with all applicable Laws; and
- (i) is not the subject of a Resolution barring the Person from Malahat Nation Lands.

30.5 A right of residence on or access to Malahat Nation Lands does not imply or create any financial obligation on the part of Malahat Nation.

30.6 No liability is imposed upon Malahat Nation, in respect of any Person exercising a right of residency or access under this Land Code.

## PART 6: EXPROPRIATION AND PROTECTION OF LAND

### 31.0 Expropriation

31.1 An Interest or License in Malahat Nation Lands or in any building or other structure on Malahat Nation Lands may be expropriated by Malahat Nation in accordance with the Framework Agreement and any Law enacted for the purpose of establishing the rights and procedures for Expropriations.

31.2 An Expropriation may be made only for a necessary community purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Malahat Nation Lands, including but not limited to: a fire hall, utility or transportation corridors, community centers, public works facilities, schools, daycare facilities, hospitals, health-care facilities, and retirement homes.

31.3 Notwithstanding section 31.2, an Interest or License granted by a Member in Malahat Nation Lands may be expropriated if:

- (a) the Interest or License to be expropriated is determined to be fraudulent or to have been granted for an illegal purpose; or
- (b) the Interest or License is determined to be not in the best interests of Malahat Nation.

31.4 No Expropriation may be made under section 31.0 unless:

- (a) the holder of the Interest is given a reasonable opportunity to address and rectify the concerns of the Member or Malahat Nation and fails within a reasonable time to do so;

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- (b) the Member consents to the Expropriation;
  - (c) the expropriated Interest or License reverts to the Member; and
  - (d) the Expropriation is carried out in accordance with this Part.
- 31.5 Malahat Nation will only expropriate an Interest or License:
- (a) after notifying the Interest-holders of the purpose for Expropriation, and making a good faith effort to acquire, by mutual agreement, the Interest in Malahat Nation Lands; and
  - (b) if no other similar and suitable Malahat Nation Lands is reasonably available.
- 31.6 Before Malahat Nation decides to expropriate an Interest or License, it shall post a public notice, in accordance with section 46.0.
- 31.7 An Interest of Her Majesty the Queen in Right of Canada is not subject to Expropriation by Malahat Nation.
- 31.8 Malahat Nation shall, in accordance with its Laws and the Framework Agreement,
- (a) serve reasonable notice of the Expropriation on each affected holder of the Interest or License to be expropriated; and
  - (b) pay fair and reasonable compensation to the holders of the Interest or License being expropriated.
- 31.9 In determining the "market value" of the compensation under this section, Malahat Nation shall apply the rules set out in the *Expropriation Act*, R.S.C. 1985, c. E-21 with such modifications as the circumstances may require.
- 31.10 In determining compensation under the preceding section 31.0 the "market value" of an expropriated Interest is equal to the amount that would have been paid for the Interest if it had been sold on the reserve by a willing seller to a willing buyer under no duress.
- 31.11 Disputes concerning the:
- (a) right of a Person who claims an Interest in expropriated Malahat Nation Lands to compensation; and
  - (b) amount of the compensation to be paid to the Person who held an Interest or License in expropriated Malahat Nation Lands,
  - (c) shall be determined in accordance with PART 8: DISPUTE RESOLUTION.
- 31.12 No Expropriation of an Interest in Malahat Nation Lands or in any building or other structure on Malahat Nation Lands, by Malahat Nation, shall take effect earlier than:
- (a) the date the notice of Expropriation is registered in the First Nations Land Registry; or

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- (b) the 30<sup>th</sup> day after the day the last copy of the notice is served on the Interest-Holder.

### 32.0 Voluntary Land Exchanges and Protections

- 32.1 Malahat Nation may agree with another party to exchange a parcel of Malahat Nation Lands for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.
- 32.2 A land exchange is of no effect unless it receives approval at a Meeting of Members in accordance with section 18.1.
- 32.3 No land exchange may occur unless:
  - (a) the land to be received in the exchange is
    - i. equal to or greater than the area of the Malahat Nation Lands to be exchanged,
    - ii. at least comparable to the appraised value of the Malahat Nation Lands, and
    - iii. eligible to become a reserve under the *Indian Act* and Malahat Nation Lands subject to this Land Code; and
  - (b) Malahat Nation receives from Her Majesty the Queen in Right of Canada a written statement clearly stating that Her Majesty the Queen in Right of Canada consents to
    - i. set apart as a reserve the land to be received in exchange, as of the date of the land exchange or such later date as Council may specify by Resolution or as provided by an agreement with Her Majesty the Queen in Right of Canada, and
    - ii. the manner and form of the exchange as set out in the exchange agreement.
- 32.4 Council may, by Resolution, delegate to another Person the authority to negotiate a land exchange agreement on behalf of Malahat Nation.
- 32.5 In addition to the land described at section 32.3, Malahat Nation may negotiate to receive other compensation, such as money, or other parcels of land which may be held by Malahat Nation in fee simple or in some other manner.
- 32.6 Once negotiations on the land exchange agreement are concluded, Council shall, at least 21 days before the Meeting of Members on this matter, provide to Eligible Voters a:
  - (a) description of the Malahat Nation Lands to be exchanged;
  - (b) description of the land to be received in the exchange;
  - (c) description of any other compensation to be exchanged;

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- (d) report of a certified land appraiser setting out that the conditions in paragraph 32.3(a) have been met;
- (e) copy or summary of the exchange agreement; and
- (f) copy of the consent referred to in paragraph 32.3(b).

**32.7 Any land exchange agreement shall provide that**

- (a) the other party to the exchange shall transfer to Her Majesty the Queen in Right of Canada the title to the land which is to be set apart as a reserve;
- (b) Council shall pass a Resolution authorizing Her Majesty the Queen in Right of Canada to transfer title to Malahat Nation Lands being exchanged, in accordance with the exchange agreement; and
- (c) a copy of the instruments transferring title to the relevant parcels of land shall be registered in the First Nations Land Registry.

**33.0 Natural Resources**

33.1 All Natural Resources and revenues from Natural Resources are the property of Malahat Nation, unless otherwise stated in a License or Interest.

**34.0 Heritage Sites Designations**

34.1 Development on a site designated as a Heritage Site under a Law or Land Use Plan shall not be permitted, unless the development receives approval at a Meeting of Members.

34.2 No amendment may be made to a Law or Land Use Plan to remove a Heritage Site designation unless the amendment receives approval at a Meeting of Members.

**PART 7: ACCOUNTABILITY AND FINANCIAL MANAGEMENT**

**35.0 Conflicts of Interest and Financial Management;**

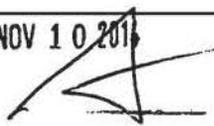
**Application of Rules**

35.1 The rules in section 35.2 apply to the following persons when dealing with a matter, Interest or decision relating to Malahat Nation Lands:

- (a) each Member of Council including the Chief;
- (b) each member of any Board of Directors of any Malahat Nation-owned corporation, to the extent that the corporation is carrying out oversight, management or administration duties in relation to the Land Code;

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- (c) each Person who is an employee or contractor of Malahat Nation; and
- (d) each Person who is a member of a board, committee or other body of Malahat Nation.

**Duty to Report and Abstain**

- 35.2 If there is any interest, financial, personal, political or otherwise, in the matter being dealt with that might involve the Person or his or her Immediate Family, the Person shall:
- (a) disclose in writing the interest to Council, and, if appropriate, to their employment supervisor, the board, the Committee, or the other body;
  - (b) take no part in deliberations or discussions on the matter; and
  - (c) take no part in any votes, Resolutions, decisions or recommendations on the matter.

**Common Interests**

- 35.3 Section 35.2 does not apply to any 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.

**Meeting of Eligible Voters**

- 35.4 If Council is unable to vote on a proposed Law or Resolution due to a lack of quorum arising from conflicts of interest, the Council may refer the matter to a Meeting of Members for approval.

**Disputes**

- 35.5 Questions about whether a breach of this section has occurred may be referred by any Person to Council or may be dealt with under the dispute resolution process in PART 8: DISPUTE RESOLUTION.

**Penalties**

- 35.6 In addition to any other penalty that may be prescribed by Council, by federal or provincial law or by Malahat Nation Law for breach of this Part, an individual is liable to the Malahat Nation to repay any benefit received to himself or herself, an Immediate family member or a business in which that individual holds an Interest, resulting from a violation of this Part.

**36.0 Financial Management**

**Application**

- 36.1 This section applies only to financial matters relating to Malahat Nation Lands. This Part is subject to the Malahat Nation Financial Administration Law, enacted on October 28<sup>th</sup> 2014, and if there is any conflict between this Land Code and the Financial Administration Law, the Financial Administration Law will be paramount to the extent that it is not inconsistent with the Framework Agreement.

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**Establishment of Bank Accounts**

- 36.2 All monies received by Malahat Nation or its corporations from Malahat Nation Lands, relating to lands or Natural Resources excluding property tax under this Land Code must be receipted and fully deposited, on day of receipt, in an account or accounts designated for Malahat Nation Lands and Natural Resources revenues separate from other Malahat Nation revenue in a financial institution designated by Council by Resolution. This includes:
- (a) transfer payments received from Her Majesty the Queen in Right of Canada for the management and administration of Malahat Nation Lands;
  - (b) moneys received by Malahat Nation from the grant or disposition of any Interests in Malahat Nation Lands;
  - (c) all fees, fines, royalties, charges and levies collected under a Law related to Malahat Nation Lands;
  - (d) all capital and revenue moneys received from Her Majesty the Queen in Right of Canada from the grant or disposition of any Interests in Malahat Nation Reserve Land; and
  - (e) any other land or Natural Resources revenue received by Malahat Nation excluding property tax.

**Signing officers**

- 36.3 Council must authorize by Resolution at least two persons as signing officers to sign cheques and other bills of exchange or transfer drawn on the account set out in subsection 36.2

**Bonding**

- 36.4 Every signing officer must be bondable.

**Two Signatures**

- 36.5 To be valid, a cheque or other bill of exchange or transfer drawn on the account set out in paragraph 36.2 must be authorized by Council and signed by two authorized signing officers as prescribed in section 36.3.

**Fiscal Year**

- 36.6 Unless otherwise declared by Resolution, the fiscal year of Malahat Nation begins on April 01 of each year and ends on March 31 of the following year.

**Preparation of Budget**

- 36.7 The Lands Manager, or another Person designated by Council by Resolution, shall prepare Malahat Nation lands management budget before the commencement of the fiscal year and shall provide a summary of anticipated revenues from Malahat Nation Lands and Natural Resources and proposed expenditures for those funds.

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**Adoption of Budget**

36.8 The Lands Manager will recommend a lands management budget prior to the beginning of each fiscal year, and Council will, by Resolution, review and adopt or amend and adopt the budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt by Resolution one or more supplementary lands management budgets for that fiscal year.

**Supplementary Budget**

36.9 Prior to adopting a supplementary budget referred to in section 36.8 Council will request the Nation Manager to prepare and comment on the supplementary budget.

**Procedure**

36.10 After adopting the lands management budget or supplementary lands management budget, Council must, without undue delay make a copy of the budget or supplementary budget available at the administrative office of Malahat Nation for inspection by Members at reasonable hours.

**If No Budget**

36.11 If Council does not adopt a budget for a fiscal year prior to the beginning of that fiscal year, the most recent budget or the most recent supplementary budget from the previous fiscal year shall apply until a new budget is adopted.

**Expenditures Must be Authorized by Budget**

36.12 Neither Council nor contractors or staff are permitted to expend revenues related to Malahat Nation Lands or Natural Resources, excluding property tax revenues, or to commit, by contract or otherwise, to expend these revenues, unless the expenditure is authorized by an approved budget.

**Financial Policy**

36.13 Council may by Resolution, in accordance with this Land Code, adopt a financial policy not inconsistent with the Malahat Nation Financial Administration Law and this Land Code to further manage revenues related to Malahat Nation Lands and Natural Resources.

**37.0 Financial Records**

**Financial Records**

37.1 Malahat Nation shall keep financial records related to budgets, revenues, and expenditures in accordance with generally accepted accounting principles and public policy.

**Access**

37.2 Malahat Nation is committed to openness and transparency and no Person should:

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- (a) impede or obstruct a Member from inspecting relevant financial records of Malahat Nation in accordance with the Land Code; or
- (b) impede or obstruct a Member from inspecting relevant financial records relevant to Malahat Nation Lands.

**Preparation of Financial Statement**

- 37.3 Within 90 days after the end of each fiscal year, the Lands Manager will prepare a financial statement in comparative form containing:
- (a) a balance sheet;
  - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the budget and any duly approved supplementary budget; and
  - (c) any other information necessary for a fair presentation of the financial position of Malahat Nation in relation to Malahat Nation Lands and Natural Resources.

**Consolidated Accounts, Etc.**

- 37.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports provided that the statement and analysis relating to Malahat Nation Lands are clearly distinguished and documented.

**38.0 Audit Appointment of Auditor**

- 38.1 For each fiscal year, Council shall appoint by Resolution, a duly accredited auditor to audit the financial records of Malahat Nation relating to Malahat Nation Lands and Natural Resources.

**Holding Office**

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

**Vacancy in Office**

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

**Remuneration**

- 38.4 All appointments of auditors in relation to this Land Code will contain a statement approving the remuneration to be paid to the auditor.

**Duty of Auditor**

- 38.5 The auditor shall, within 6 months after the end of Malahat Nation's fiscal year, prepare and submit to Council, a report on Malahat Nation's financial statement, stating whether, in the opinion of the auditor, the financial statement presents fairly the financial position of Malahat Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the

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### Access to Records

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

### Explanation of Auditor's Report

38.7 Council shall present the auditor's report to the Members at a Meeting of Members.

### 39.0 Annual Report Publish

#### Annual Report

39.1 The Council, on behalf of the Malahat Nation, shall publish an annual report on lands issues prepared by the Lands Manager within one month of receipt of the audit by Council under subsection 38.5.

#### Contents

39.2 The annual report will include:

- (a) an annual review of Malahat Nation Lands management activities;
- (b) a copy and explanation of the audit as it applies to Malahat Nation Lands; and
- (c) any other matter as may be directed by Council or reasonably requested by the Lands Manager.

### 40.0 Access to Information

40.1 The following documents will be kept at the Lands Department and any Member may have reasonable access to view them during normal business hours:

- (a) the register of Laws;
- (b) the auditor's report in section 38.0 above; and
- (c) the annual report on lands issues in section 39.0 above.

## PART 8: DISPUTE RESOLUTION

### 41.0 Informal Resolution of Disputes

41.1 Malahat Nation intends that whenever possible, a dispute in relation to Malahat Nation Lands shall be resolved through informal discussion by the parties to the dispute and nothing in this part shall be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this Part.

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41.2 Malahat Nation further intends that a dispute in relation to Malahat Nation Lands that is not resolved by informal discussion shall be resolved by the parties through the alternative dispute resolution mechanisms outlined in this Part.

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

**42.0 Application of this Part**

42.1 Malahat Nation intends that wherever possible, a dispute in relation to Malahat Nation Lands will be resolved through informal discussion by the parties to the dispute and nothing in this Part will be construed to limit the ability of any Person to settle a dispute without recourse to this Part.

42.2 This Part applies to all disputes arising under or in respect of this Land Code, except any dispute to which a Matrimonial Real Property Law enacted under section 12.0 applies.

42.3 Disputes in relation to Malahat Nation Lands that originated before this Land Code came into effect may, with consent of Council, be decided under this Part.

42.4 Malahat Nation intends that a dispute in relation to Malahat Nation Lands that is not resolved by informal discussion will, except as otherwise provided, progress in sequence through the following stages provided for in this Part:

- (a) facilitated discussions;
- (b) mediation; and
- (c) arbitration.

**43.0 Mediation**

43.1 Parties that have been unable to resolve a dispute through informal discussion in accordance with section 41.0 may attempt to resolve the dispute through mediation, in accordance with the following procedure:

- (a) the parties to the dispute shall jointly select a Mediator;
- (b) if the parties are unable to agree on a Mediator, the parties may request the British Columbia International Commercial Arbitration Centre to appoint a Mediator; and
- (c) the Mediator to the dispute shall set the rules and procedures for the mediation.

**44.0 Arbitration**

44.1 If the parties are unable to resolve the dispute through mediation, or the parties are not able to agree on a mediation process, the parties may attempt to resolve the dispute through arbitration, in accordance with the following procedure:

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- (a) the parties to the dispute shall jointly select an Arbitrator;
  - (b) if the parties are unable to agree on an Arbitrator, the parties may request the British Columbia International Commercial Arbitration Centre to appoint an Arbitrator; and
  - (c) the Arbitrator of the dispute shall set the rules and procedures for the arbitration.
- 44.2 Subject to section 44.3, the decision of the Arbitrator shall be final and binding on the parties.
- 44.3 Notwithstanding section 44.2, where there is an exception established by Law, the decision of the Arbitrator may be appealed to a court of competent jurisdiction.

**45.0 Costs**

- 45.1 Subject to any ruling by an Arbitrator, all parties to a dispute shall bear their own costs in any dispute resolution process they undertake.
- 45.2 For greater certainty, Malahat Nation is only liable or responsible for the costs of any dispute resolution process under this Part where Malahat Nation is a party and Malahat Nation is only responsible for its share of the expenses for the dispute resolution process.

**PART 9: OTHER MATTERS**

**46.0 Public Notice**

- 46.1 Unless expressly provided otherwise, public notice under this Land Code shall:
- (a) specify the time, date and location of the meeting or vote, if applicable;
  - (b) contain a brief description of the matter at issue;
  - (c) be posted conspicuously in the reception area of the Malahat Nation administration office at least 21 days prior to the event that is the subject of the public notice; and
  - (d) at the discretion of Council, be
    - i. published in Malahat Nation's newsletter,
    - ii. published on Malahat Nation's website,
    - iii. posted in public places, or
    - iv. by any such additional method as Council may consider appropriate in the circumstances.

**47.0 Liability**

- 47.1 Malahat Nation is not liable for acts or omissions of Her Majesty the Queen in Right of Canada or any Person or entity authorized by Her Majesty the Queen in Right of Canada to act in relation to Malahat

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Nation Lands that occurred before this Land Code came into effect.

- 47.2 Council shall arrange, maintain and pay insurance coverage for:
- (a) liability of Malahat Nation in relation to Community Land and Malahat Nation assets; and
  - (b) personal liability of Malahat Nation Council members, officers and employees for acts done in good faith while engaged in carrying out duties related to Malahat Nation Lands under this Land Code.
- 47.3 Council shall determine the extent of the insurance coverage reasonably required under section 47.2.
- 47.4 Every employee of Malahat Nation whose responsibilities include land administration or collecting or accounting for land revenue shall be bondable.
- 48.0 Offences**
- 48.1 Unless some other 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 Land Code or under a Law.
- 48.2 Despite section 48.1, a Law under this Land Code may provide for a variety of enforcement mechanisms including ticketing, stop work orders, restorative orders, fines, community service, and other alternative means for achieving compliance.
- 48.3 Council may enact Laws respecting the appointment of justices of the peace for the purposes of enforcing this Land Code and the Laws.
- 48.4 If no justice of the peace is appointed or available, then this Land Code and the Laws shall be enforced through by a court of competent jurisdiction.
- 48.5 For the purposes of prosecuting offences, Malahat Nation may enter into an agreement with:
- (a) Her Majesty the Queen in Right of Canada and British Columbia to arrange for a provincial prosecutor; or
  - (b) Her Majesty the Queen in Right of Canada to arrange for a federal agent to prosecute these offences.
- 48.6 If no agreement is made under section 48.5, Malahat Nation may retain a private prosecutor for the purpose of prosecuting offences.
- 48.7 Council may enact Laws to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

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49.1 This Land Code shall take effect after:

- (a) Members approve this Land Code and the Individual Agreement with Her Majesty the Queen in Right of Canada by Ratification Vote held in accordance with the Malahat Nation Community Ratification Process dated for reference September 15, 2014 ; and
- (b) this Land Code has been certified by the Verifier pursuant to the Framework Agreement.

49.2 The Framework Agreement is ratified and confirmed when this Land Code takes effect.

**50.0 Amendments to the Land Code**

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

50.2 All major amendments to this Land Code must receive community approval by Ratification Vote.

50.3 Council may adopt minor amendments to this Land Code following the procedure set out in section 13.0 of this Land Code for the enactment of Laws.

50.4 For greater clarity, minor amendments include administrative amendments to this Land Code that are minor in nature and that have no effect on the substance of the Land Code, such as:

- (a) corrections to grammatical or typographical errors;
- (b) minor improvements to the language of the Land Code that bring out more clearly the intent of Malahat Nation without changing the substance of any provision;
- (c) changes as may be required to reconcile seemingly inconsistent provisions; and
- (d) amendments ordered by any court of competent jurisdiction.

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