



**TSAWOUT FIRST NATION
LAND CODE**

Dated for Reference June 8, 2005

**Section 5.1 revised to include
final legal descriptions dated December 20, 2005**

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PREAMBLE

WHEREAS the Members of the STÁUTW First Nation have a profound and sacred relationship with the islands, points, land, boulders, four winds, trees, birds, animals, fishes, fire and water of its territorial homeland, encompassing all spiritual places, medicine and fruit gathering places, fishing stations, hunting and trapping areas, winter and summer homesites, burial sites, meditation places and all territories in between;

AND WHEREAS the STÁUTW First Nation is a member of the Saanich Nation and a party to a Douglas Treaty;

AND WHEREAS the traditional teachings of the Saanich Peoples speak of the obligation of the people of STÁUTW First Nation to care for and respect each other, future generations, the land and the other living things of the land, and by enacting this Land Code, the First Nation is continuing this special responsibility;

AND WHEREAS the authority of the STÁUTW First Nation to govern its lands and resources flows from XALS, the Creator to the people of the First Nation, and from the people to the Chief and Council according to the culture, traditions, customs and laws of the First Nation;

AND WHEREAS the STÁUTW First Nation wishes to enhance opportunities for its members to participate in governance matters and to benefit equitably from its lands and resources;

AND WHEREAS the Members of the STÁUTW First Nation wish to include and give effect to their customary laws, interests and traditions in discharging their governing jurisdiction and authority;

AND WHEREAS the STÁUTW First Nation wishes to reassume management of its lands and resources, rather than having them managed on its behalf under the *Indian Act*, thereby enabling the First Nation to become more accountable and economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, cultural and social development;

AND WHEREAS the STÁUTW First Nation wishes to reassume management of its lands and resources by entering into the Framework Agreement on First Nation Land Management concluded between Her Majesty in right of Canada and fourteen first nations on February 12, 1996, as amended;

NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE STÁUTW FIRST NATION.

PART 1 PRELIMINARY MATTERS

1. Title

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

2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

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

“Band Land” means any First Nation Land that is not subject to a Certificate of Possession or Permanent Interest created under this Land Code;

“Common-law Marriage” means a man and woman not married to each other, who have lived together as husband and wife for a period of not less than two years;

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

“Douglas Treaty” means the Douglas Treaty for South Saanich of February 1852;

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

“Extended Family” means, in respect of an individual, the individual’s Immediate Family, grandparent, parent, uncle, aunt, sister, or brother;

“First Nation” means the Tsawout First Nation as named in the Act;

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

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development in accordance with clause 51.1 of the Framework Agreement;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen first nations on February 12, 1996, as amended;

“Immediate Family” means, in respect of an individual, the individual’s child, Spouse or grandchild;

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

“Individual Agreement” means the Individual First Nation Agreement made between the Tsawout First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Instrument” means a formal legal document;

“Land Code” means this *Tsawout First Nation Land Code*;

“Land Management Committee” means the Land Management Committee established under section 22.1;

“Lands Manager” means the Tsawout First Nation employee responsible for the administration of Tsawout First Nation Land;

“Law” means a Law enacted under this Land Code but does not include a Resolution;

“Meeting of Members” means a meeting of First Nation Members under Part 3;

“Member” means an individual whose name appears or is entitled to appear on the Tsawout First Nation membership list;

“Panel” means the Dispute Resolution Panel established under section 37.1;

“Person” includes a body corporate;

“Permanent Interest” means a Certificate of Possession issued under section 20(2) of the *Indian Act* or equivalent tenure issued under this Land Code;

“Ratification Vote” means a vote under section 13;

“Registered Interest” means an interest in First Nation Lands registered under section 25;

“Resolution” means a resolution of Council enacted under this Land Code;

“Spouse” means an individual who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by Common-law Marriage;

“STÁUTW” means the Tsawout First Nation;

“Tsawout Lands Register” means the register maintained by the First Nation under section 25.1; and

“Verifier” means a verifier appointed in accordance with clause 8.1 of the Framework Agreement.

Paramountcy

- 2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the First Nation, this Land Code will prevail to the extent of the inconsistency or conflict.
- 2.3 If there is an inconsistency or conflict between this Land Code and the Douglas Treaty, the Douglas Treaty will prevail to the extent of the inconsistency or conflict.
- 2.4 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.

Culture and Traditions

- 2.5 The structures, organizations and procedures established by or under this Land Code will be interpreted in accordance with the culture, traditions and customs of the Tsawout First Nation, unless otherwise provided.

Interpretation

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

- (f) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

Language

- 2.8 The language of the Saanich Nation may be used to clarify the meaning of any provision of this Land Code, if the meaning of that provision is not clear in English.

Non-abrogation

- 2.9 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the First Nation or its Members.
- 2.10 This Land Code is not intended to affect the eligibility of the First 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 the First Nation has not assumed responsibility for such services or programs.

Fiduciary Relationship

- 2.11 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the First Nation and its Members.

Lands and Interests Included

- 2.12 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and includes all rights and resources in and of First Nation land, including:
 - (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada or the First Nation; and
 - (b) all the interests and licenses granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

3. Authority to Govern

Source of Authority

- 3.1 The authority of the First Nation to govern its land and resources flows from its inherent right of self-government and its rights, including aboriginal title and those rights defined in the Douglas Treaty.

4. Purpose

Purpose

- 4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to First Nation Land and through which Tsawout First Nation will exercise authority over those lands.

Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when the First Nation approves this Land Code.

5. Description of First Nation Land

First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code is:

- (a) East Saanich Indian Reserve No. 2, being the whole of those Reserve Lands within the Province of British Columbia, Canada in the South Saanich District, more particularly described as:

All that portion of land bounded by the exterior rectilinear boundaries as shown on Plan 58751 recorded in the Canada Lands Surveys Records (CLSR), and the ordinary high water mark (OHWM) of Cordova Channel and Saanichton Bay as shown on Plan 89661 CLSR.

Excepting thereout and therefrom;

All that portion required for road as shown on Plan RD1599 having a width of 4.572 metres (15 feet).

Total lands, excluding mines and minerals, containing 238 hectares, (588 acres) more or less.

The above described Reserve Lands are subject to:

An easement in favour of Vancouver Island Power Co., registered in the Indian Lands Registry (ILR) as Nos. 1030-2, 53730, 53731 and 53732;

An easement in favour of Public Works Canada, registered in the ILR as Nos. 1031-2 and 248898;

An easement agreement with the Capital Regional District, registered in the ILR as No. 124326 and modified by Document No. 298951, assigned to the Tsawout First Nation by Document No. 298955.

The rights and reservations contained in provincial Order in Council 1938-1036, registered in the ILR as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

- (b) Fulford Harbour Indian Reserve No. 5, being the whole of those Reserve Lands within the Province of British Columbia, Canada in the Cowichan District, more particularly described as:

All that portion of land bounded by the exterior rectilinear boundaries as shown on Plan 74885 recorded in the Canada Lands Surveys Records (CLSR), and the ordinary high water mark of Fulford Harbour as shown on Plan 88602 CLSR.

Total lands, excluding mines and minerals, containing 21 hectares, (51 acres) more or less.

The above described Reserve Lands are subject to:

The rights and reservations contained in provincial Order in Council 1938-1036, registered in the Indian Lands Registry (ILR) as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

Additional Lands

5.2 The following lands may be made subject to this Land Code if they are, or become, reserve lands and the relevant conditions are met:

- (a) lands owned jointly or in common by the First Nation and another First Nation, if the First Nations agree upon a joint management scheme for those lands, including:
- i. Indian Reserve 06835, Saturna Island No. 7, Cowichan District, E. half of section 12, and west half of section 13 on easterly point of Saturna Island, south entrance to Strait of Georgia;
 - ii. Indian Reserve 06836, Pender Island No. 8, Cowichan District on Hay Point west side of South Pender Island;
 - iii. Indian Reserve 06837, Bare Island No. 9, Cowichan District, the whole of Mandarte Island, at the head of Haro Strait; and

- iv. Indian Reserve 06838, Goldstream No. 13, Goldstream and Highland Districts, at south end of Finlayson Arm and mouth of the Goldstream River; and
 - (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use.
- 5.3 Section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 15.1.
- 5.4 If the relevant conditions in section 5.2 are met, Council will call a Meeting of Members and, after receiving input at that meeting, may enact a Law declaring the land or interest to be subject to this Land Code.

PART 2 FIRST NATION LEGISLATION

6. Law-Making Powers

Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) the development, conservation, protection, management, use and possession of First Nation Land;
 - (b) interests and licenses in relation to First Nation Land;
 - (c) any matter necessary to give effect to this Land Code; and
 - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to First Nation Land including:
- (a) zoning and land use planning;
 - (b) economic development of Band Land;
 - (c) regulation, control, authorization and prohibition of the occupation and development of land;
 - (d) creation, regulation and prohibition of interests and licenses;

- (e) environmental assessment and protection;
- (f) provision of local services and the imposition of user charges;
- (g) provision of services for the resolution, outside the courts, of disputes;
- (h) administrative appeals from a decision to grant or refuse to grant an interest in First Nation Land;
- (i) authorization and regulation of subdivisions and the conduct of surveys;
- (j) setting aside, protection and regulation of parks, parklands and recreational lands;
- (k) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, spiritual sites and wildlife refuges;
- (l) rules and procedures for the receipt, management, expenditure, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;
- (m) creation of management and administrative bodies or agencies;
- (n) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (o) public nuisance and private nuisance;
- (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (q) construction and maintenance of boundary and internal fences;
- (r) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (s) setting aside of lands for community purposes or works;
- (t) regulation of traffic and transportation; and
- (u) procedures that apply to the transfer, by testamentary disposition or succession, of an interest in First Nation Land.

Administration

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

Delegation

- 6.4 Notwithstanding section 6.3 Council may by enacting a Law, delegate administrative authority in relation to a Law enacted under section 6.1 to an individual or body established or authorized under this Land Code.

7. Law-Making Procedure

Introduction of Laws

- 7.1 A proposed Law may be introduced at a meeting of Council by:
- (a) a representative of the Land Management Committee or other body composed of Members that may be authorized by Council to do so;
 - (b) a member of Council; or
 - (c) the Lands Manager.

Tabling and Posting of Proposed Laws

- 7.2 A proposed Law will be:
- (a) deposited with the Chair of the Land Management Committee at least 30 days before the proposed Law is voted upon;
 - (b) posted in the First Nation administration offices and other public places on First Nation Land at least 28 days before the proposed Law is voted upon; and
 - (c) tabled at a meeting of Council at least 21 days before the proposed Law is voted upon.
- 7.3 Council in consultation with the Land Management Committee will develop and enact a Law establishing a process that will require approval from the Land Management Committee prior to Council enacting a Law in respect of:
- (a) a grant or disposition of an interest or license in Band Land for a term of twenty-five years or more;
 - (b) renewal of a grant or disposition of an interest or license in Band Land for a term of twenty-five years or more, or that would have the effect of extending the original grant or disposition for a term exceeding twenty-five years;
 - (c) a grant or disposition of natural resources on Band Land;

- (d) a charge or mortgage of a leasehold interest on Band Land for a term exceeding twenty-five years;
- (e) development on a heritage site, cultural site, traditional site, spiritual site or wildlife refuge; and
- (f) any Law or class of Law that Council, by Resolution, declares to be subject to this section.

7.4 The process developed under section 7.3 will address:

- (a) the authority of Council to review a decision of the Land Management Committee and to substitute its own decision for the decision of the Land Management Committee; and
- (b) dispute resolution.

7.5 For greater certainty, an interest under section 7.3(b) includes a Permanent Interest.

7.6 The Law enacted under section 7.3 may include provisions delegating authority under section 6.4.

Urgent Matters

7.7 Council may enact a Law without the preliminary steps required under section 7.2 if Council is reasonably of the opinion that the Law is needed urgently to protect First Nation Land or Members.

7.8 A Law enacted under section 7.7 will be deemed to be repealed and will have no force and effect twenty-eight days after it is enacted, but may be re-enacted in accordance with section 7.2.

Approval of Law by Council

7.9 A Law is enacted if it is approved by Council.

Certification of Laws

7.10 The original copy of a Law or Resolution relating to First Nation Land will be signed by the members of Council present at the meeting at which the Law is enacted.

Law Coming Into Force

7.11 A Law comes into force on:

- (a) the date it is enacted; or

- (b) such other date as may be set by the Law.

8. Publication of Laws

Publication

- 8.1 All Laws will be published in the minutes of Council.

Posting Laws

- 8.2 Within seven days after a Law has been enacted, Council will post a copy of the Law in the First Nation administration offices.

Register of Laws

- 8.3 Council will cause to be kept at the First Nation administration offices a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are otherwise no longer in force.
- 8.4 Any person may, during regular business hours at the First Nation administration offices, have reasonable access to the register of Laws.

Copies for Any Person

- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.

PART 3 COMMUNITY CONSULTATION AND APPROVALS

9. Rights of Eligible Voters

Rights of Eligible Voters

- 9.1 An Eligible Voter has the right to vote at a Meeting of Members and in a Ratification Vote.

10. Community Input

Prior Meeting of Members

- 10.1 Council will call a Meeting of Members to receive input prior to voting upon a Law in respect of:
 - (a) a land use plan;
 - (b) a subdivision plan;

- (c) declaring land or an interest in land referred to in section 5.2 to be subject to this Land Code;
- (d) a heritage site, cultural site, traditional site, spiritual site or wildlife refuge;
- (e) an environmentally sensitive property;
- (f) environmental assessment;
- (g) the transfer or assignment of interests in First Nation Land;
- (h) spousal property under section 35;
- (i) any other matter or class of matters that Council by Resolution declares to be subject to this section.

Process to Implement Laws

- 10.2 Council will, in consultation with the Land Management Committee and within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Laws referred to in section 10.1.
- 10.3 Nothing in this Land Code precludes Council or the Land Management Committee from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts, to develop and implement the Laws referred to in section 10.1

11. Approval at a Meeting of Members

Approval at Meeting

- 11.1 Approval at a Meeting of Members must be obtained for:
 - (a) a land use plan;
 - (b) amendment of a land use plan;
 - (c) a spousal property law under section 35; and
 - (d) a Law or class of Law that Council, by Resolution, declares to be subject to this section.

12. Procedure at a Meeting of Members

Voting

12.1 Decisions at a Meeting of Members will be made by a majority vote of the Eligible Voters present at the meeting.

Quorum

12.2 The quorum for a Meeting of Members is ten percent of the Eligible Voters.

Notice of Meeting

12.3 Council will give written notice of a Meeting of Members that:

- (a) specifies the date, time and place of the meeting; and
- (b) contains a brief description of the matters to be discussed and decided at the meeting.

Manner of Notice

12.4 Written notice of a Meeting of Members under section 12.3 will be given by:

- (a) posting the notice in public places on First Nation Land at least 21 days before the meeting;
- (b) mailing the notice to Eligible Voters at their last known address at least 21 days before the meeting;
- (c) publishing the notice in a community newsletter or local newspaper at least ten days before the meeting; or
- (d) such other methods as Council may consider appropriate.

Who May Attend

12.5 A Member has a right to attend a Meeting of Members.

12.6 A person other than a Member may attend a Meeting of Members with permission of Council.

Other Meetings

12.7 Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members, provided that any vote taken at a Meeting of

Members will not be accumulated with any vote taken at a subsequent Meeting of Members.

Procedural Laws

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

12.9 A Law enacted under section 12.8 may provide that, in the event that a Meeting of Members does not achieve quorum or otherwise fails to decide a matter, or as an alternative to a Meeting of Members, the matter that requires a Meeting of Members may be decided by the Eligible Voters by means of:

- (a) referendum; or
- (b) Ratification Vote.

12.10 A matter that is to be decided by a referendum under section 12.9 will be approved if:

- (a) twenty-five per cent of the Eligible Voters vote in the referendum; and
- (b) a majority of the Eligible Voters voting in the referendum vote to approve the matter.

13. Ratification Votes

Approval by Ratification Vote

13.1 Approval by a Ratification Vote must be obtained for:

- (a) a voluntary exchange of First Nation Land under section 15.1;
- (b) amendment of the Individual Agreement that reduces the amount of funding provided by Canada;
- (c) amendment of this Land Code;
- (d) creation of a Permanent Interest in Band Land;
- (e) expropriation of a Member's interest under section 14.9; and
- (f) enactment of a Law or class of Laws that Council, by Resolution, declares to be subject to this section.

Individual Agreement with Canada

- 13.2 For greater certainty, an amendment to, or renewal of, the Individual Agreement will not require approval by a Ratification Vote unless the amendment or renewal reduces the amount of funding provided by Canada.

Ratification Process

- 13.3 A Ratification Vote required under this Land Code will be conducted, with any necessary modifications appropriate in the circumstances, in substantially the same manner as that provided in the Tsawout First Nation Community Ratification Process that was used to ratify this Land Code.

Minimum Requirements for Approval

- 13.4 A matter will be considered approved by a Ratification Vote if a majority of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote in favour of the matter.

No Verifier

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

PART 4 PROTECTION OF LAND

14. Expropriation by First Nation

Rights and Interests That May Be Expropriated

- 14.1 An interest or license in First Nation Land or in any building or other structure on such land may be expropriated by the First Nation in accordance with the Framework Agreement and a Law enacted in accordance with section 14.5.

Community Purposes

- 14.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.
- 14.3 Notwithstanding section 14.2, an interest granted by a Member in First Nation Land may be expropriated if:
- (a) the interest to be expropriated is determined to be fraudulent or to have been granted for an illegal purpose; or

- (b) the interest is determined to be not in the best interests of the First Nation.

14.4 No expropriation may be made under section 14.3 unless:

- (a) the holder of the interest is given a reasonable opportunity to address and rectify the concerns of the Member or the First Nation and fails within a reasonable time to do so;
- (b) the Member consents to the expropriation;
- (c) the expropriated interest reverts to the Member; and
- (d) the expropriation is carried out in accordance with this Part.

Expropriation Law

14.5 Council will enact a Law respecting rights and procedures for expropriations, including provisions in respect of:

- (a) taking possession of the expropriated interest or license;
- (b) transfer of the expropriated interest or license;
- (c) notice of expropriation;
- (d) service of the notice of expropriation;
- (e) entitlement to compensation;
- (f) determination of the amount of compensation; and
- (g) the method of payment of compensation.

Public Report

14.6 Before the First Nation expropriates an interest or license, Council will:

- (a) prepare a report on the reasons for the expropriation;
- (b) post a copy of the report in the First Nation administration offices; and
- (c) mail a copy of the report to each Eligible Voter at their last known address.

Rights That May Not Be Expropriated

14.7 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the First Nation.

Acquisition By Mutual Agreement

14.8 The First Nation may expropriate an interest or license only after a good faith effort to acquire, by mutual agreement, the interest or license.

Approval by Ratification Vote

14.9 Expropriation of a Member's interest is of no force and effect unless the proposed expropriation has received prior approval by a Ratification Vote.

Compensation for Rights and Interests

14.10 The First Nation will, in accordance with its Laws and the Framework Agreement:

- (a) serve reasonable notice of expropriation on each affected holder of an interest or license to be expropriated; and
- (b) pay fair and reasonable compensation to the holder of the interest or license to be expropriated.

Compensation Calculations

14.11 The total value of compensation payable under section 14.10(b) will be based on:

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

Fair Market Value

14.12 The fair market value of an expropriated interest or license will be deemed to be equivalent to the amount that would have been paid for the interest or license if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

14.13 Subject to section 14.15, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.

14.14 The sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

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

- (a) a dispute concerning the right of the holder of an expropriated interest or license to compensation; and
- (b) a dispute concerning the amount of compensation.

15. Voluntary Land Exchange and Protection

Conditions for a Land Exchange

15.1 The First Nation may by agreement with another party exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

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

Land To Be Received

15.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:

- (a) is of equal or greater area than the First Nation Land to be exchanged;
- (b) is of a value comparable to the appraised value of the First Nation Land to be exchanged; and
- (c) is eligible to become a reserve under the *Indian Act* and First Nation Land subject to this Land Code.

Negotiators

15.4 A person who negotiates a land exchange agreement on behalf of the First Nation must be designated by Resolution.

Additional Compensation

15.5 The First Nation may receive additional compensation, including money or other land, in addition to the land referred to in section 15.3.

15.6 Such other land may be held by the First Nation in fee simple or otherwise.

Federal Consent

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

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

Notice

15.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in section 15.2, Council or the Land Management Committee will provide the following information to Members:

- (a) a description of the First Nation Land to be exchanged;
- (b) a description of the land to be received by the First Nation;
- (c) a description of any additional compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in sections 15.3 (a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the statement referred to in section 15.7.

Process of Land Exchange

- 15.9 A land exchange agreement will provide that:
- (a) the other party to the exchange will transfer to Canada the title to the land that is to be set apart as a reserve;
 - (b) Council will pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and
 - (c) a copy of the instruments transferring title to the relevant parcels of land will be registered in the Tsawout Lands Register and the First Nation Lands Register.

**PART 5
CONFLICT OF INTEREST**

16. Conflict of Interest

Application of Rules

- 16.1 Section 16.2 applies to:
- (a) a member of Council who is dealing with any matter before Council that is related to First Nation Land;
 - (b) an employee of the First Nation who is dealing with any matter that is related to First Nation Land; and
 - (c) a member of a board, committee, Panel or other body of the First Nation that is dealing with any matter that is related to First Nation Land.

Duty to Report and Abstain

- 16.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, an individual's Immediate Family or a business in which an individual holds an interest, that individual will:
- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
 - (b) take no part in any deliberations on the matter; and
 - (c) take no part in a vote on the matter.

Common Interests

16.3 Section 16.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Eligible Voters

16.4 If Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, Council may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Law or Resolution.

Inability to Act

16.5 If a board, committee or other body is unable to act due to a conflict of interest, the matter will be referred to Council and Council may decide the matter.

Disputes

16.6 Determination of whether a breach of this Part has occurred may be referred to the Panel.

**PART 6
LAND ADMINISTRATION**

17. Financial Management

Application

17.1 This part applies only to financial matters in relation to First Nation Land that is administered under this Land Code.

Establishment of Bank Accounts

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

- (a) transfer payments received from Canada for the management and administration of First Nation Land;
- (b) moneys received by the First Nation from the grant or disposition of interests or licenses in First Nation Land;
- (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licenses in First Nation land;

- (e) monies held in trust for a Member in respect of a current lease managed by the First Nation, provided that nothing prevents Council and such Member from agreeing in writing that the Member will assume management of the lease and release the First Nation from further obligation under this section; and
- (f) any other land revenue received by the First Nation.

17.3 Council will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which Council, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to the Members in accordance with clause 5.2(d) of the Framework Agreement.

Signing Officers

17.4 Council will authorize the signing officers of the First Nation to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under section 17.2.

Fiscal Year

17.5 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

17.6 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.

17.7 Prior to adopting a budget referred to in section 17.6, Council will consult with the Land Management Committee.

Procedure

17.8 After adopting a land management budget or supplementary budget, Council will as soon as practicable:

- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and
- (b) post a copy of the budget or supplementary budget at the First Nation administration offices for inspection by Members during ordinary business hours.

If No Budget

17.9 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

Expenditures

17.10 Council may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an approved budget.

Financial Policy

17.11 Council may, in accordance with this Land Code, adopt financial policies and rules to further manage moneys related to First Nation Land.

18. Financial Records

Financial Records

18.1 Council will keep financial records in accordance with generally accepted accounting principles.

Offences

18.2 Any person who has control of the financial records of the First Nation and who:

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

is guilty of an offence under this Land Code.

Preparation of Financial Statement

18.3 Within ninety days after the end of each fiscal year Council 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 land management budget and any supplementary budget; and
- (c) any other information necessary for a full and fair presentation of the financial position of the First Nation in relation to First Nation Land.

Consolidated Accounts

18.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

19. Audit

Appointment of Auditor

19.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.

19.2 The auditor appointed under section 19.1 will be the auditor appointed for the consolidated audit of the other accounts, audits and reports of the First Nation.

Duty of Auditor

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

Access to Records

19.4 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

19.5 Council will present the auditor's report at a Meeting of Members.

19.6 Where practicable Council will distribute the auditor's report to Members in advance of the Meeting of Members.

20. Annual Report

Publish Annual Report

20.1 Council will, within thirty days after receiving an audit report under section 19.3, prepare and table with the Land Management Committee an annual report on First Nation Land management.

20.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;

- (b) a copy and explanation of the audit report as it applies to First Nation Land;
- (c) a report on any proceedings and decisions under the Dispute Resolution provisions of Part 8; and
- (d) such other matters as may be directed by Council or reasonably requested by the Land Management Committee.

21. Access to Financial Information

Copies for Members

- 21.1 Any person may, during normal business hours at the First Nation administration offices, have reasonable access to:
- (a) the auditor's report; and
 - (b) the annual report.
- 21.2 A Member may, during normal business hours at the First Nation administration office, upon payment of a reasonable fee set by Resolution, obtain a copy of the auditor's report, annual report on First Nation Land management, budget or supplementary budget.

22. Land Management Committee

Land Management Committee Established

- 22.1 A Land Management Committee is hereby established to:
- (a) assist with the development of the First Nation Land administration system;
 - (b) advise Council and First Nation staff on matters respecting First Nation Land;
 - (c) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
 - (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to Council on the resolution of such issues;
 - (e) assist in the exchange of information regarding First Nation Land matters between Members and Council;
 - (f) oversee community consultations and approvals under this Land Code;
 - (g) conduct the resolution of disputes under section 43.1; and

- (h) perform such other duties and functions as Council may direct.

Development of Land Related Rules and Procedures

22.2 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the community and the Land Management Committee, establish rules and procedures that address the following matters:

- (a) the process and criteria for granting interests in First Nation Land;
- (b) environmental protection and environmental assessment in relation to First Nation Land;
- (c) resolution of disputes in relation to First Nation Land;
- (d) First Nation Land use planning and zoning;
- (e) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code; and
- (f) section 35 respecting spousal property and the policy upon which that section is based.

Determination of Fees and Rent

22.3 The Land Management Committee will recommend to Council a process for determining:

- (a) fees and rent for interests and licenses in First Nation Land;
- (b) fees for services provided in relation to First Nation Land and compliance with this Land Code; and
- (c) processes and criteria for managing the First Nation's obligations in relation to revenue from lands.

Implementation of Policies

22.4 Rules, procedures and processes developed in accordance with section 22.2 and 22.3 will be considered by Council for implementation as Laws, Resolutions, policies or amendments to this Land Code.

Internal Procedures

22.5 The Land Management Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.

- 22.6 Subject to Council requirements in respect of financial obligations, the Land Management Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by Land Management Committee members; and
 - (b) establish programs for the orientation and education of Land Management Committee members.

23. Land Management Committee Membership

Composition

- 23.1 The Land Management Committee will be made up of seven Eligible Voters selected as follows:
- (a) one member appointed by Council; and
 - (b) six members elected by the Eligible Voters.

Eligibility

- 23.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be elected to the Land Management Committee, except for:
- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment;
 - (b) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct; and
 - (c) an Eligible Voter who is a salaried staff member of the First Nation or member of Council unless that Eligible Voter resigns as a staff member or member of Council upon being elected to the Land Management Committee.

Interim Land Management Committee

- 23.3 The interim Land Management Committee as it exists on the date of the Ratification Vote and as set out in Schedule A to this Land Code will hold office and carry out the duties of the Land Management Committee until the first Land Management Committee elected under section 23.1(b) takes office.
- 23.4 The first election for members of the Land Management Committee after this Land Code comes into effect will be held no more than fourteen days after the next election of a Council, and no more than fourteen days after each election of Council thereafter.

No Limit on Terms in Office

23.5 Nothing precludes an incumbent member of the Land Management Committee from being nominated and elected for a further term.

Staggered Term of Office

23.6 In the first election held after this Land Code comes into effect:

- (a) the nominees receiving the highest, second highest and third highest number of votes will hold office for a term commencing at midnight on the date of the vote and expiring at midnight four years thereafter, or upon being replaced in a subsequent election, whichever occurs first; and
- (b) the nominees receiving the fourth highest, fifth highest and sixth highest number of votes will hold office for a term commencing at midnight on the date of the vote and expiring at midnight two years thereafter, or upon being replaced in a subsequent election, whichever occurs first;

and thereafter, the elected members of the Land Management Committee will hold office for a term commencing at midnight on the date of their election and expiring at midnight four years thereafter, or upon being replaced in office in a subsequent election, whichever occurs first.

Election Law

23.7 Council will enact a Law to establish the procedure for Land Management Committee elections.

23.8 A Law enacted under section 23.7 may include:

- (a) such additional transitional rules as may be necessary for the first Land Management Committee;
- (b) revision of the term of membership in the Land Management Committee to be consistent with a revised term of Council; and
- (c) a process to increase the number of members of the Land Management Committee to reflect representation of one member per one hundred Eligible Voters, provided that the Land Management Committee will be comprised of an odd number of members.

Vacancy on Land Management Committee

23.9 The office of a member of the Land Management Committee becomes vacant if the member, while holding office:

- (a) is or becomes ineligible to hold office under section 23.2;
- (b) ceases to be a Member;
- (c) is elected to Council or accepts employment as an employee of the First Nation;
- (d) is absent for three meetings of the Land Management Committee for a reason other than illness or incapacity without being authorized to be absent by the Chair of the Land Management Committee;
- (e) dies or becomes mentally incompetent; or
- (f) resigns in writing.

Vacancy in Term

23.10 Where the office of an elected member of the Land Management Committee becomes vacant more than 90 days before the date when another election of members would ordinarily be held:

- (a) the nominee, if any and if willing to serve on the Land Management Committee, having the next highest count of votes without being declared elected at the immediately preceding Land Management Committee election will be declared elected to the Land Management Committee; or
- (b) a special election may be held in accordance with this Land Code.

23.11 Where the office of the member of the Land Management Committee appointed under section 23.1(a) becomes vacant, Council will forthwith appoint a replacement.

Balance of Term of Office

23.12 The term of a member of the Land Management Committee selected under section 23.10 or 23.11 will be the balance of the term in respect of which the vacancy occurred.

Attributes of Committee Members

23.13 The members of the Land Management Committee will accept their selection as members, accept the duties and obligations of membership and agree to observe and carry out those duties and obligations according to the terms and conditions of this Land Code.

23.14 Members of the Land Management Committee will endeavor to demonstrate the following attributes:

- (a) impartiality, honesty and integrity;

- (b) responsibility and accountability; and
- (c) confidentiality.

24. Chair of the Land Management Committee

Chair

24.1 The members of the Land Management Committee will select a Chair from among their members.

Alternate Chair

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

Duties of the Chair

24.3 The duties of the Chair are to:

- (a) chair meetings of the Land Management Committee;
- (b) ensure that financial statements relating to all activities of the Land Management Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with Council;
- (c) report to Council and the Members on the activities of the Land Management Committee;
- (d) monitor the presentation of the audited annual financial statements under section 19.5 ; and
- (e) perform such other duties as Council or the Land Management Committee may reasonably prescribe.

25. Registration of Interests and Licenses

Tsawout Lands Register

25.1 Council will maintain a Tsawout Lands Register in, at a minimum, the same form and with the same content as the First Nation Lands Register.

25.2 An interest or license in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Tsawout Lands Register.

- 25.3 No instrument that requires the consent of Council or approval by the Members may be registered in the Tsawout Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.
- 25.4 Every person who receives an interest or license in First Nation Land from a Member will deposit an original copy of the instrument in the Tsawout Lands Register.

First Nation Lands Register

- 25.5 Council will ensure that a duplicate copy of the following instruments is deposited in the First Nation Lands Register:
- (a) a grant of an interest or license in First Nation Land;
 - (b) a transfer or assignment of an interest in First Nation Land;
 - (c) a land use plan or subdivision plan; and
 - (d) this Land Code and any amendment to this Land Code.
- 25.6 Notwithstanding section 25.1, nothing precludes Council from enacting a Law providing for maintenance of the Tsawout Lands Register in such other land register system or facility as may meet the requirements of the Tsawout Lands Register.

**PART 7
INTERESTS AND LICENSES IN LAND**

26. Limits on Interests and Licenses

All Dispositions in Writing

- 26.1 An interest in, or license to use, First Nation Land may only be created, granted, disposed of, assigned or transferred by an instrument issued in accordance with this Land Code.

Standards

- 26.2 Council may, after full and fair consideration of any recommendations made by the Land Management Committee, establish mandatory standards, criteria and forms for interests and licenses in First Nation Land.

Improper Transactions Void

- 26.3 A deed, lease, contract, document, agreement or other instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an interest or license in relation to First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

Non-Members

- 26.4 A person who is not a Member may hold a lease, license or permit in First Nation Land.
- 26.5 A person who is not a Member may not hold a Permanent Interest in First Nation Land.

Grants to Non-Members

- 26.6 The written consent of Council must be obtained for any grant or disposition of a lease, license or permit in First Nation Land to a person who is not a Member.

27. Existing Interests

Continuation of Existing Interests

- 27.1 An interest or license in First Nation Land that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or license.
- 27.2 Subject to section 44.1, section 27.1 applies to a Member with a Permanent Interest in First Nation Land.
- 27.3 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any interest or license issued or allotted in error, by mistake or by fraud.

28. New Interests and Licenses

Authority to Make Dispositions

- 28.1 Council may under this Land Code grant:
 - (a) interests and licenses in Band Land; and
 - (b) permits and licenses to take resources from Band Land.

Conditional Grant

- 28.2 The grant of an interest, license or permit may be made subject to conditions.

Role of the Land Management Committee

- 28.3 The Land Management Committee will advise Council on the granting of interests, licenses and permits and may be authorized to act as a delegate of Council under section 6.4 in the granting of interests, licenses and permits.

29. Permanent Interests

Application

- 29.1 This section applies to Certificates of Possession allocated under the *Indian Act* and to equivalent tenures that create a Permanent Interest under this Land Code.
- 29.2 Subject to section 26, a Permanent Interest in respect of a parcel of land is an interest that entitles the Member holding that interest to:
- (a) permanent possession of the land;
 - (b) develop and benefit from the resources of the land;
 - (c) grant subsidiary interests and licenses in the land, including leases, permits, easements and rights of way;
 - (d) transfer, devise or otherwise dispose of the land to another Member;
 - (e) grant permits to take resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances; and
 - (f) any other rights, consistent with this Land Code, that are attached to certificates of possession under the *Indian Act*.
- 29.3 Prior to a grant of a Permanent Interest in First Nation Land, the Land Management Committee will review the proposed interest and advise Council and the proposed grantee of the proposed interest as to measures that may be necessary or desirable to:
- (a) protect the interests of the First Nation in respect of the proposed Permanent Interest; or
 - (b) protect the interests of the proposed grantee of the Permanent Interest.

30. Allocation of Land

Allocation of Residential Lots

- 30.1 Council may, by lease, rental arrangement or other disposition in accordance with this Land Code, allocate lots of available Band Land to Members for residential purposes.
- 30.2 A person who is not a member may not be allocated a residential lot.
- 30.3 Council may enact Laws providing for interests in First Nation Land that entitle a Member holding such an interest to:
- (a) benefit from the resources in and of that land;

- (b) grant subsidiary interests and licenses in that land, including leases, permits, easements and rights-of-ways; and
- (c) transfer, devise or otherwise dispose of that land to another Member.

30.4 Council may issue a certificate of the interest to a Member for a lot allocated to that Member.

31. Transfer and Assignment of Interests

Transfer of Interests

31.1 A Member may transfer or assign in writing an interest held by that Member in First Nation Land to another Member or the First Nation.

Consent of Council

31.2 Except for transfers or assignments under section 31.1 and transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under section 35:

- (a) there will be no transfer or assignment of an interest in First Nation Land without the written consent of Council; and
- (b) the grant of an interest or license is deemed to include section 31.2(a) as a condition of any subsequent transfer or assignment.

31.3 For greater certainty, section 31.2 does not apply to a Permanent Interest.

32. Limits on Mortgages, Seizures and Tax

Protections

32.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to First Nation Land.

Mortgage of Member's Interest

32.2 The Permanent Interest of a Member in First Nation Land under section 29 may be subject to a mortgage or charge only to the First Nation.

Mortgages of Leasehold Interests with Consent

32.3 A leasehold interest may be subject to charge or mortgage only with the written consent of Council.

Time Limit

- 32.4 The term of a charge or mortgage of a leasehold interest will not exceed the lesser of:
- (a) the term of the lease;
 - (b) 25 years; or
 - (c) such other period as may receive Land Management Committee approval under section 7.3(d).

Default in Mortgage

- 32.5 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 received approval by the Members where required;
 - (c) the charge or mortgage was registered in the Tsawout Lands Register; and
 - (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.
- 32.6 For greater certainty, section 32.5 applies to a charge or mortgage between Members.

Power of Redemption

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

33. Residency and Access Rights

Civil Remedies

- 33.1 Subject to a Law enacted under section 6.2(n) all civil remedies for trespass are preserved.

No Obligation on the First Nation

- 33.2 A right of residence or access does not imply any financial obligation on the part of the First Nation.

No Liability on the First Nation

- 33.3 No liability is imposed upon the First Nation in respect of any person exercising a right of access in accordance with this Land Code for injuries or damages suffered on account of the condition or state of First Nation Land.

34. Transfers on Death or Mental Incompetence

Right of Widow or Widower

34.1 In the event that:

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

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's interest is disposed of under this section.

- 34.2 A Spouse or dependant referred to in section 34.1, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's interest, and Council will, subject to this Land Code, decide the application on its merits.

Recommendation of Family Members

34.3 In the event that:

- (a) no other provision has been made by a Member referred to in section 34.1 for the disposition of the interest in the First Nation Land;
- (b) the Member's Spouse or dependant does not within a reasonable time make application under section 34.2; or
- (c) a member of the Member's Immediate Family disputes the continued residence on or use of the land by the Member's Spouse or dependant,

Council will take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Panel if requested, recommend who among them is to receive the interest in the land.

- 34.4 If a Member referred to in section 34.1 has no Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the interest, Council will decide who is to receive the interest and may consult the Member's Extended Family or call a Meeting of Members to provide advice on the disposition of the interest.
- 34.5 Subject to this Land Code, Council will make best efforts to implement a recommendation made under section 34.3 or 34.4.
- 34.6 For greater certainty, nothing in sections 34.1 to 34.5, both inclusive, is intended to affect the ability of a Member's spouse or dependant to dispose of assets or improvements other than the Member's interest in First Nation Land.

35. Spousal Property Law

Development of Rules and Procedures

- 35.1 Within twelve months after the date this Land Code comes into effect Council will enact a spousal property Law prescribing rules and procedures applicable on the breakdown of a marriage to:
- (a) the use, occupancy and possession of First Nation Land; and
 - (b) the division of interests in that land.

Enactment of Rules and Procedures

- 35.2 The rules and procedures contained in the spousal property Law will be developed by the Land Management Committee in consultation with the community.

General Principles

- 35.3 The rules and procedures developed by the Land Management Committee under section 35.2 will take into account the following general principles:
- (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home;
 - (b) the Spouses should resolve spousal property matters by contract or agreement;
 - (c) each Spouse should have an equal right to possession of the matrimonial home;
 - (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
 - (e) the rules and procedures will not discriminate on the basis of sex; and

- (f) only Members are entitled to hold a spousal interest in First Nation Land or a charge against a spousal interest in First Nation Land.

Interim Law

- 35.4 Council may enact an interim spousal property Law at any time within the twelve month period prescribed in section 35.1.
- 35.5 A Law enacted under section 35.4 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 35.1.

**PART 8
DISPUTE RESOLUTION**

36. Intent

- 36.1 The intent of this Part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy First Nation Land:
 - (a) do so harmoniously with due respect for the rights of others and of the First Nation; and
 - (b) have access to First Nation procedures to resolve disputes.

Informal Discussions

- 36.2 The First Nation intends that wherever possible, a dispute in relation to First Nation Land 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.

Staged Processes

- 36.3 The First Nation further intends that a dispute in relation to First Nation Land 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;
 - (c) hearing by the Dispute Resolution Panel; and
 - (d) arbitration.

Who May File A Dispute

36.4 The following persons may file a Notice of Dispute under this Part:

- (a) a Member who claims an interest in First Nation Land based on a registered interest;
- (b) a person who has a dispute with another person or with the First Nation in relation to the possession, use or occupation of First Nation Land;
- (c) the First Nation when asserting an interest in First Nation Land; and
- (d) the First Nation when disputing the possession, use or occupation of First Nation Land.

36.5 For greater certainty, disputes that originated before this Land Code comes into effect may be decided under this Part.

Dispute Resolution
Not Available

36.6 Dispute resolution is not available under this Part for disputes in relation to:

- (a) decisions relating to housing allocation; or
- (b) decisions of Council to grant or refuse to grant an interest or license in First Nation Land.

Duty of Fairness

36.7 All persons involved in a dispute under this Part must be:

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

Rules and
Procedures

36.8 Council may prescribe such rules, policies, procedures, forms and reasonable fees not inconsistent with this Land Code, as may be necessary to give effect to this Part including implementation of recommendations of the Panel made under section 41.6;

Civil Remedies
Preserved

36.9 Nothing in this Part will be construed to prevent a party to a dispute from applying to have the dispute resolved in a court of competent jurisdiction.

36.10 A party to a dispute may not commence proceedings under section 36.9 unless:

- (a) proceedings under this Part have been completed; or
- (b) the parties to the dispute have consented.

Challenge to
Validity of Law

36.11 Nothing in this Part will be construed to prevent a party to a dispute from challenging the validity of a Law in a court of competent jurisdiction.

Appeal of Decision

36.12 Subject to any exception established by Law a decision of the Panel may be appealed to the Federal Court of Canada.

37. Dispute Resolution Panel

Panel to be
Established

37.1 Council will within 60 days of the coming into effect of this Land Code establish a Dispute Resolution Panel.

Panel Members

37.2 The Panel will be composed of seven Members, no less than four of whom must be Eligible Voters and no more than three of whom must be non-Members.

37.3 Council and the Land Management Committee may, for the purpose of identifying members of a Panel, establish an eligibility list from which members of a Panel may be appointed to hear a dispute.

Chair of the Dispute
Resolution Panel

37.4 The Panel will select one of its members to act as Chair of the Panel.

Term of Office

- 37.5 For the first Panel established under this Part, Council will, upon the recommendation of the Land Management Committee, appoint three members for a term of two years and four members for a term of four years.
- 37.6 Thereafter, appointments to the Panel will be for a term of four years provided that if an appointment is made to replace a Panel member who is unable or unwilling to complete a term, the appointment will be made for the remainder of the term of the Panel member being replaced.
- 37.7 Council will, upon the recommendation of the Land Management Committee, appoint or re-appoint members of the Panel at least thirty days prior to the expiry of the term of the member of the Panel whose term is the subject of the appointment or re-appointment.

Advisors, Mediators
and Arbitrators

- 37.8 Council, upon the recommendation of the Land Management Committee may appoint or contract with expert advisors, mediators, arbitrators, professionals or other Persons to assist in resolving disputes under this Part.

38. Procedure to File a Dispute

- 38.1 A person who wishes to resolve a dispute with another person or the First Nation in relation to the possession, use or occupation of First Nation Land may file a written Notice of Dispute with the Lands Manager setting out:
 - (a) the nature of the dispute;
 - (b) the facts and supporting arguments upon which the Person filing the Notice of Dispute relies; and
 - (c) the relief that is sought.

Limitation Period

- 38.2 A Notice of Dispute must be filed within thirty days of the Person filing the Notice of Dispute becoming aware of the decision, act or omission being disputed.
- 38.3 Section 38.2 does not apply to disputes under section 36.5.

39. Facilitated Discussions

First Stage Procedure

- 39.1 Within 30 days of receiving a Notice of Dispute under section 38.1 the Lands Manager will prepare and deliver a report on the dispute and a copy of the Notice of Dispute to the Chair of the Panel.
- 39.2 As soon as practicable after receiving a report and Notice of Dispute under section 39.1 the Chair of the Panel or, at the request of the Chair of the Panel, another person not affected by the dispute and designated by the Chair of the Panel for that purpose, will make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

Timing

- 39.3 In setting the date and time of the meeting referred to in section 39.2 the Chair of the Panel or other person appointed for the purposes of section 39.2 may consider any need to:
- (a) obtain further information;
 - (b) give notice of the dispute to others who have or may have an interest in the dispute; or
 - (c) obtain professional advice in relation to the dispute.
- 39.4 Where the Chair of the Panel or other person appointed under section 39.2 concludes that the dispute cannot be resolved through facilitated discussions, he may in his sole discretion direct that the dispute proceed to mediation or hearing by the Panel.

40. Mediation

Appointment

- 40.1 A mediator will be selected jointly by the parties to the dispute and the Panel.
- 40.2 If the parties to the dispute and the Panel are unable to agree on a mediator, the Panel will hear the dispute.

Authorities

- 40.3 A mediator has no jurisdiction to decide the dispute without the agreement of the parties to the dispute.

40.4 At the conclusion of mediation, the mediator will submit a written report on the mediation proceedings to the parties to the dispute and the Panel.

41. Hearing by Dispute Resolution Panel

Hearing of Disputes

41.1 If a dispute is not resolved by mediation, the Panel will hear the dispute at a place and time to be determined by the Panel.

Hearing Procedures

41.2 Unless otherwise provided in this Part, the Dispute Resolution Panel will establish procedures consistent with this Land Code for hearing disputes by the Dispute Resolution Panel.

Hearing by Three Members

41.3 A dispute will be heard by three members of the Panel who have no interest or conflict of interest in the dispute, selected as follows:

- (a) one Panelist appointed by each of the primary parties to the dispute from among the Eligible Voters listed on the eligibility list; and
- (b) one Panelist selected by the Panelists appointed under section 41.3(a) from among the non-Members listed on the eligibility list, who will act as the chair of the Panel.

41.4 Where the Parties to a dispute are unable to agree on an appointment under section 41.3(a) or the appointees are unable to agree on a chair under section 41.3(b), the appointment or chair, as the case may be, will be decided by an Arbitration Panel under this Part.

Decision-making Authority

41.5 The Panel may, after hearing a dispute:

- (a) confirm in whole or in part the decision that is the subject of the dispute;
- (b) reverse in whole or in part the decision that is the subject of the dispute;
- (c) substitute its own decision for the decision in dispute;
- (d) direct that an action be taken or ceased;
- (e) refer the subject of the dispute for reconsideration by the decision maker;

- (f) make an order to give effect to its decision, including any necessary order for the survey of an interest in First Nation Land, the registration of an interest in First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order; or
- (g) refer the matter to arbitration under section 42.1.

Recommendations
By Panel

41.6 In addition to making a determination under section 41.5, the Panel may:

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

Interim Decisions

41.7 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers necessary to preserve the rights of the parties to the dispute or to preserve or protect an interest in First Nation Land.

Decisions in Writing

41.8 Decisions of the Panel will be in writing.

Decisions Final
And Binding

41.9 Subject to section 36.12, a decision of the Panel is final and binding.

Improper Influence

41.10 Any attempt by a person who has filed a Notice of Dispute to improperly influence a decision of the Panel will, in addition to any other remedies which may be available, result in the termination of proceedings under this Part and the matter being disputed will remain in effect as originally decided.

42. Arbitration Panel

Referral to Arbitration Panel

42.1 The Panel may refer a matter to an Arbitration Panel where:

- (a) the Dispute Resolution Panel is unable to decide the dispute; or
- (b) the parties to the dispute request that non-Members resolve the dispute.

Conditions

- 42.2 The Panel may not refer a matter to an Arbitration Panel unless all parties to the dispute agree:
- (a) to share equally in the costs of the Arbitration Panel; and
 - (b) to be bound by the decision of the Arbitration Panel.

Arbitration Panel

- 42.3 An Arbitration Panel will consist of three panel members selected as follows:
- (a) one panel member selected by each party to the dispute, or where there are more than two parties to a dispute, by the two principal parties to the dispute;
 - (b) one panel member agreed to by all parties to the dispute, who will sit as the Chair of the Panel.

Other Evidence

- 42.4 An Arbitration Panel may hear and consider evidence from an expert advisor, professional or other Person.

Decision-making
Authority

- 42.5 The Arbitration Panel may, after hearing a dispute:
- (a) make any decision that the Panel may make under section 41.5; and
 - (b) make any recommendation that the Panel may make under section 41.6.

Reasons for Decisions

- 42.6 The Arbitration Panel will give written reasons for their decision within thirty days after the date of the decision.

Binding
Decisions

- 42.7 Subject to section 36.12, a decision of the Arbitration Panel is final and binding.

43. Disputes by the First Nation

Lands Management Committee

43.1 Where the First Nation disputes the possession, use or occupation of First Nation Land, the Land Management Committee will conduct the dispute resolution proceedings under this Part.

Land Management
Committee to report

43.2 Upon conclusion of proceedings under this Part, the Land Management Committee will report upon the proceedings and decisions to a Meeting of Members in the annual report.

Civil Proceedings Only

43.3 For greater certainty, the authority of the Land Management Committee under section 43.1 relates only to proceedings under this Part and not to the prosecution of an offence under a Law.

No time limit

43.4 Section 38.2 does not apply to the First Nation in a dispute under section 43.1.

Costs

43.5 Unless otherwise ordered or provided in this Land Code the Parties to a dispute will bear their own costs.

44. Disputes in Relation to Permanent Interests

Member Disputes Validity

44.1 Where a Member disputes the validity of a Permanent Interest that is in effect at the time this Land Code comes into effect, whether on the basis of a claimed pre-existing customary interest or other interest, that Member will, within 120 days of the coming into effect of this Land Code, file a Notice of Dispute under this Part.

Deemed Disputes

44.2 Subject to confirmation in writing by the Member disputing the validity of a Permanent Interest under section 44.1 that the Member wishes to proceed under this Part:

- (a) any dispute that has been recorded in the process reported by Anthony R. Newman as “Tsawout First Nation Report on Outstanding Land Issues East Saanich Indian Reserve #2” dated March 16, 2004 will be deemed to be the subject of a Notice of Dispute under this Part; and

- (b) the Lands Manager or Chair of the Land Management Committee on behalf of the Land Management Committee will be deemed to have filed the Notice of Dispute.

No Registration

- 44.3 No Permanent Interest that is the subject of judicial proceedings or a dispute under section 44.1 will be registered in the Tsawout Lands Register or the First Nation Lands Register as a Permanent Interest under this Land Code until the judicial proceedings or proceedings under this Part are complete.
- 44.4 No interest held or granted under section 29.2, other than renewal of an interest that is in effect at the time this Land Code comes into effect, will be registered in the Tsawout Lands Register or the First Nations Land Register in respect of First Nation land that is the subject of a dispute under section 44.1 until proceedings under this part are complete.

Notice to Members

- 44.5 Within 30 days of the coming into effect of this Land Code, the Chair of the Land Management Committee will give written notice of the provisions of this Part to each Eligible Voter at their last known address.

**PART 9
OTHER MATTERS**

45. Liability

Liability Insurance

- 45.1 Council will arrange for, maintain and pay insurance coverage for:
 - (a) liability of the First Nation in relation to First Nation Land; and
 - (b) the First Nation's officers and employees engaged in carrying out any matter related to First Nation Land to indemnify them against personal liability for acts done in good faith arising from those activities.

Extent of Coverage

- 45.2 Council will determine the extent of insurance coverage under section 45.1.
- 45.3 Every employee of the First Nation whose responsibilities include administration of First Nation Land or collecting or accounting for revenue from First Nation Land must be bondable.

46. Offences

Application of the Criminal Code

46.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code and under a Law.

Justices of the Peace

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

Courts

46.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or the British Columbia Supreme Court, as the case may be.

47. Amendment

Meeting of Members

47.1 Amendment of this Land Code must receive approval by Ratification Vote.

48. Commencement

Coming into Effect

48.1 This Land Code will come into effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada by a Ratification Vote; and
- (b) this Land Code has been certified by the verifier in accordance with the Framework Agreement.

Effective Date

48.2 This Land Code will come into effect on the later of:

- (a) the first day of the month following certification of this Land Code by the verifier; or
- (b) the date the Individual Agreement is executed by Canada.

SCHEDULE A

**INTERIM LAND MANAGEMENT COMMITTEE
(Section 23.3)**

CHAIR

Helen JACK

FAMILY REPRESENTATIVES

VOTING REPRESENTATIVES

ALTERNATES

Lou CLAXTON
Vernon HARRY
Richard HORNE
Helen JACK
Irvine JIMMY
Herb PELKEY
Jeannie SAM
Willie THOMAS
Harvey UNDERWOOD
Tony UNDERWOOD
Ralph UNDERWOOD
Joey PELKEY, Sr.

Belinda CLAXTON (Co-chair)
Ernie HARRY
Karen HARRY
Samantha ETZEL
Kevin WILSON
Frank PELKEY
Stan SAM
Cecelia THOMAS
Floyd UNDERWOOD
Gus UNDERWOOD
Bruce UNDERWOOD
Joey PELKEY, Jr.

EX-OFFICIO

Chief Allan CLAXTON