



NOTE: This document is not final

It is a draft Land Code prepared for community consultation. It will change as comments from Members are received and improvements made.

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PREAMBLE

Whereas the *First Nation* has a profound relationship with the land;

Whereas the *First Nation* has entered into the *Framework Agreement on First Nation Land Management* with Canada on February 12, 1996, as amended, and which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*.

And Whereas the *First Nation* wishes to manage its lands and resources, 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 THE FIRST NATION.**

PART 1

PRELIMINARY MATTERS

1. Title

Title

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

2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

“Lands Committee” means the Lands Committee established under this Land Code.

“community land” means any *First Nation* land in which all members have a common interest and which have not been allocated.

“Council” means the Chief and Council of *the First Nation*.

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

“extended family”, in respect of a person, means the person’s grandparent, parent, uncle, aunt, cousin, sister, brother, child, grandchild, spouse or common law spouse.

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

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management* entered into between the Minister of Indian Affairs and Northern Development and the Chiefs of fourteen First Nations,[including the First Nation,] on February 12, 1996, as amended.

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

“law” means a law enacted pursuant to this Land Code.

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

“meeting of members” means a meeting under section 13 to which the members are invited to attend.

“Member” means a person whose name appears or is entitled to appear on the *First Nation Band Membership List*.

Comment: Member includes any person whose name is listed on the Band List.
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“First Nation” means the *First Nation*.

“*First Nation* land” means any portion of a reserve that is subject to this Land Code under section 5.

“ratification vote” means a vote of eligible voters under section 14.

“resolution” means a resolution of the Council enacted under this Land Code.

spouse” means a person who is married to another person, whether by a traditional, religious or civil ceremony.

Comment: This definition does not include a common law spouse. First Nations should consider this definition in developing a matrimonial real property regime for the community

“Transfer Agreement” means the Individual Transfer Agreement made between First Nation and Her Majesty in right of Canada, dated _____.

Paramouncy

2.2 If there is an inconsistency between this Land Code and any other enactment of the First Nation, this Land Code prevails to the extent of the inconsistency.

Culture and traditions

2.3 The structures, organizations and procedures established by or under its Land Code shall be interpreted in accordance with the culture, traditions and customs of the First Nation, unless otherwise provided.

Language

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

Non-abrogation

2.5 This Land Code does not abrogate or derogate from any Aboriginal rights or freedoms that pertain to the First Nation or its members.

Fair Interpretation

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

Fiduciary
Relationship

2.7 This Land Code does not abrogate the fiduciary relationship between Her Majesty and the First Nation and its members.

Lands and interests
affected.

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

- (a) the water, beds underlying water, riparian rights, and renewable and non-renewable natural resources belonging to that land, to the extent that these are under the jurisdiction of Canada; and
- (b) all the interests and licenses granted to the First Nation by her Majesty in right of Canada listed in the Transfer Agreement.

Comment: Only reserve lands are subject to a Land Code.

3. Authority to Govern

Comment: The provisions of this section are a suggestion only. They may be changed to suit the particular needs of the *First Nation*.

Origin of authority

- 3.1 The traditional teachings of the *First Nation* speak of the obligation of the people of the *First Nation* to care for and respect the land and the magnificent wonders of Nature created on the land. By enacting this Land Code, the *First Nation* is [**re-assuming or renewing**] this special responsibility.

Flow of authority

- 3.2 The authority of the *First Nation* to govern its lands and resources flows from 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 our *First Nation*.

4. Purpose

Purpose

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

Ratification

- 4.2 The *Framework Agreement* is ratified and confirmed when this Land Code takes effect.

5. Description of *First Nation* land

First Nation land

- 5.1 The *First Nation* land that is subject to this Land Code is the Indian Reserve [number(s), as described on CLSR Plan Nos.____].

Excluded lands

- 5.2 Despite section 5.1, the land described as follows is excluded from the application of this Land Code [e.g., and may only be included after it is cleaned up and a full

environmental site assessment declares it to be free of environmental hazard and safe for community use];

Comment

- Clause 5.2 is to be used only if a portion of reserve lands are excluded from the Land Code
- Insert legal description of any land to be excluded as referred to in a survey plan
- Note section 4.4 of the Framework Agreement for the grounds on which lands can be excluded: environmental pollution; litigation; natural disaster; or, other reason as may be agreed by the First Nation and Canada

Additional lands

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

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

Comment: A First Nation can own fee simple lands, in which case the lands are not reserve lands and are not governed by a Land Code.

Land exchange

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

Inclusion of land or Interest

5.5 Council shall call a meeting of members under section 11 to obtain the views of members on any proposed inclusion of lands before Council makes any law or resolution to include lands referred to in sections 5.2 and 5.3 in this Land Code.

PART 2

FIRST NATION LEGISLATION

6. Law-Making Powers

Council may make laws

- 6.1 The Council may, in accordance with this Land Code, make laws respecting the development, conservation, protection, management, use and possession of *First Nation* lands, and interests and licenses in relation to those lands. This power includes the power to make laws in relation to any matter necessary or ancillary to the making of laws in relation to the *First Nation* land.

Examples of laws

- 6.2 The following examples illustrate some of the laws that may be enacted:
- (a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;
 - (b) laws on the creation, regulation and prohibition of interests and licenses in relation to *First Nation* land;
 - (c) laws on environmental assessment and protection;
 - (d) laws on the provision of local services in relation to *First Nation* land and the imposition of equitable user charges; and
 - (e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to *First Nation* land.

7. Law-Making Procedure

Comment: If there is already a First Nation process for making First Nation laws or by laws, then the First Nation may wish to harmonize the suggested process below with existing procedures.

Introduction of laws

- 7.1 A proposed law may be introduced at a duly convened meeting of the Council by
- (a) the Chief or a Councilor; or
 - (b) the representative of any body or authority composed of members that may be authorized by Council to do so.

Tabling and posting
of proposed laws

- 7.2 Before a proposed law may be enacted by the Council, it must first be
- (a) tabled at a meeting of the council held at least 28 days before the law is to be enacted; and
 - (b) posted in public places on *First Nation* land at least 21 days before the law is to be enacted.

Urgent matters

- 7.3 The Council may enact a law without the preliminary steps required under section 7.2, if the Council is of the opinion that the law is needed urgently to protect *First Nation* land or the members, but the law expires 120 days after its enactment, unless re-enacted in accordance with section 7.2.

Approval of law by Council

- 7.4 A law is enacted if it is approved by a majority of the Council at a meeting of the Council open to the members.

Certification of laws

- 7.5 The original copy of any law or resolution concerning *First Nation* land shall be signed by a quorum of the council present at the meeting at which it was enacted.

8. Publication of Laws

Publication

- 8.1 All laws shall be published in the minutes of the Council.

Posting laws

- 8.2 Within 7 days after a law has been enacted, the Council shall post a copy of the law in the administrative offices¹ of the *First Nation*.

Registry of laws

- 8.3 The Council shall cause to be kept, at the administrative offices of the *First Nation*, a register of the original copy of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force.

Copies for any Person

¹ Copies would be posted at all the administrative offices of the *First Nation*.

- 8.4 Any person may obtain a copy of a law or resolution on payment of a reasonable fee set by the Council.

9. Commencement of Laws

Laws taking effect

- 9.1 A law enacted by the council takes effect on the date of its enactment or such later date as specified by the law.

PART 3

COMMUNITY APPROVALS

10. Rights of Eligible Voters

Rights of eligible
Voters

- 10.1 Each member who is at least 18 years of age is eligible to vote at a meeting of members and at a ratification vote.

11. Community Input

Prior meeting of
Members

- 11.1 The Council shall convene a meeting of members to receive their input prior to the introduction of the following laws:
- (a) a law respecting a community plan or subdivision plan;
 - (b) a law declaring land or an interest referred to in section 5.2 or 5.3 to be subject to this Land Code;
 - (c) a law affecting a heritage site or an environmentally sensitive property
 - (d) a law respecting environmental assessment;
 - (e) a law respecting the transfer and assignment of interest in land;

- (f) a law respecting the rate and criteria for the payment of fees or rent for land; and
- (g) any other law or class of law that Council, by resolution, declares to be subject to this section.

Comment: This list of items may be changed to suit the needs of the First Nation. Note Section 39, on spousal separation, contains a special provision for community participation in the making of rules and procedures on how to deal with interests in *First Nation* land if there is a marriage breakdown.

Process to
Implement Laws

- 11.2 The Lands Committee shall, within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the laws referred to in section 11.1.

12. Community Approval at a Meeting of Members

Community approval
By meeting

- 12.1 Community approval at a meeting of members must be obtained for the following:
- (a) any land use plan;
 - (b) any grant or disposition of an interest or licence in any *First Nation* land exceeding a term of 25 years²;
 - (c) any renewal of a grant or disposition of an interest or licence in any *First Nation* land that extends the original term beyond 25 years;
 - (d) any grant or disposition of any natural resources on any *First Nation* lands exceeding a term of 5 years;
 - (e) a charge or mortgage of a leasehold interest exceeding a term of 25 years;
 - (f) any law on spousal separation that may be enacted under section 39; and

² Community approvals are not needed for grants of lots or CP's to members or transfers among members.

- (g) any law or class of law that Council, by resolution, declares to be subject to this section.

Comment: This list of items may be changed to suit the needs of the *First Nation*.

13. Procedure at a Meeting of Members

Comment: If there is already a First Nation process for meetings of members, then the First Nation may wish to harmonize the suggested process below with existing procedures.

Voting

13.1 Decisions at a meeting of members are to be made by a majority vote of the eligible voters present at the meeting.

Notice of meeting

13.2 The Council shall give written notice of the 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 on at the meeting.

Manner of notice

13.3 The notice of a meeting of members must be given to the members by

- (a) posting the notice in a public place on *First Nation* land at least 21 days before the meeting;
- (b) mailing the notice to members;
- (c) publishing the notice in the community newsletter at least 10 working days before the meeting; and
- (d) such additional method as the Council may consider appropriate in the circumstances.

Who may attend

13.4 All members have a right to attend a meeting of members, but other persons may attend with the permission of the Council.

Quorum

13.5 The quorum for a meeting of members under this Land Code is [insert reasonable number] eligible voters.³

Other meetings

13.6 The Council may schedule more than one meeting of members to discuss and decide on a matter that requires a meeting of members.

14. Ratification Votes

Community approval
By ratification vote

14.1 Community approval by a ratification vote must be obtained for the following:

- (a) any development on a heritage site referred to in section 16;
- (b) any voluntary exchange of *First Nation* land;
- (c) any amendment to this Land Code; and
- (d) any law or class of law that Council, by resolution, declares to be subject to this section.

Comment: This list of items may be changed to suit the needs of the *First Nation*.

Ratification process

14.2 Any ratification vote required under this Land Code shall be conducted in substantially the same manner as the *First Nation Community Ratification Process*, which was used to ratify this Land Code.

No verifier

14.3 A verifier is not needed in any ratification vote, except a vote on an amendment to this Land Code.

Minimum
Requirements for
Approval

14.4 A matter shall be considered approved at a ratification vote if a majority of the registered voters cast a vote in favour of the matter.

³ The quorum of x number of members includes both on and off reserve members.

Comment: The *First Nation* can make provision for a minimum participation threshold to make it more difficult to get approval if it wishes. For example, it could require a minimum turnout for registration.

Other laws

- 14.5 For greater certainty, the Council may make laws respecting the Land Code amendment ratification process, and in particular may make laws with respect to the appointment, remuneration and functions of the verifier.

Comment: Clause 14.5 allows the Council to make appropriate changes to the ratification process as the verifier must be appointed and paid by the First Nation and reports to the First Nation, not Canada, in amending a Land Code.

PART 4

PROTECTION OF LAND

15. Expropriation

Comment: A *First Nation* can prohibit itself from expropriating interests in its own lands or may provide for this power and the rules for using it. A few *First Nations* have done this. However, this course is not recommended as virtually every modern government responsible for land management has this power. Giving it up is an exception. It may be considered unfair to involve the community in what is in effect the private business of an individual member and may result in the inability of the First Nation to address the needs of the community. There may also be significant delays and added costs relating to obtaining community approval. Naturally, it would only be exercised for the good of the community as a whole.

No expropriation

- 15.1 There shall be no expropriation of any interest or licence in *First Nation* land by the *First Nation*.

OR [another alternative for section 15]

Rights and interest
that may be
expropriated

15.1 An interest or licence in *First Nation* land, or in any building or other structure on those lands, may only be expropriated by *First Nation* in accordance with the *Framework Agreement* and any land law enacted for the purpose of establishing the rights and procedures for community expropriations.

Community purposes

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

Expropriation laws

15.3 Before proceeding to make any community expropriations in accordance with this Land Code, the Council shall enact a law respecting the rights and procedures for community expropriations, including provisions respecting:

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

Public report

15.4 Before the *First Nation* decides to expropriate an interest or licence, it shall make a public report on the reasons justifying the expropriation.

Rights that may not
be expropriated

15.5 An interest of Her Majesty the Queen in Right of Canada or the province is not subject to expropriation by the *First Nation*.

Acquisition by mutual
agreement

15.6 The right of the *First Nation* to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the interest or licence in *First Nation* land.

[Community approval

15.7 In the case of an expropriation of a member's interest, the expropriation must first receive community approval by ratification vote.]

Compensation for
rights and interests

15.8 The *First Nation* shall, in accordance with its laws and the *Framework Agreement*,

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

Compensation
calculations

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

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

Market value

15.10 The "market value" of an expropriated interest or licence is equal to the amount that would have been paid for the interest or licence if it had been sold on the reserve by a willing seller to a willing buyer under no duress.

Neutral evaluation

15.11 A dispute concerning the right of the *First Nation* to expropriate an interest or licence in First Nation lands shall be reviewed by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the 60 day period referred to in clause 32.6 of the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.

Comment: This is one option for resolving this type of dispute. Alternatively, the *First Nation* could rely on the Dispute Resolution Panel established under this Land Code.

Arbitration to resolve
Disputes

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

- (a) disputes concerning the right of a person who claims an interest or licence in expropriated First Nation lands to compensation; and
- (b) disputes concerning the amount of the compensation to be paid to the person who held an interest or licence in expropriated First Nation lands.

16. Heritage Sites

Community approval
of development

16.1 No development shall be allowed on any site designated as a heritage site under the land use plan, unless the development receives community approval by a ratification vote.

Land use plan

16.2 No amendment may be made to a land use plan to delete a heritage site unless the amendment receives community approval by a ratification vote.

17. Voluntary Land Exchanges and Protections

Conditions for a land
exchange

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

No effect

17.2 A land exchange is of not effect unless it receives community approval by a ratification vote.

Land to be received

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

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

Negotiators

17.4 The persons who will have authority to negotiate a land exchange agreement on behalf of the *First Nation* must be designated by resolution.

Additional land

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

Federal Consent

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

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

Community notice

17.7 Once negotiations on the land exchange agreement are concluded, the Council shall provide the following information to eligible voters at least 21 days before the vote:

- (a) a description of the *First Nation* land to be exchanged;
- (b) a description of the land to be received in the exchange;
- (c) a description of any other compensation to be exchanged;
- (d) a report of a certified land appraiser setting out that the conditions in section 17.3 have been met;

- (e) a copy or summary of the exchange agreement; and
- (f) a copy of the consent referred to in section 17.6

Process of land
exchange

17.8 The land exchange agreement shall provide that

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) the Council must pass a resolution authorizing Canada to transfer title to the *First Nation* land being exchanged, in accordance with the exchange agreement; and
- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nations Lands Register.

PART 5

ACCOUNTABILITY

18. Conflict of Interest

Application of rules

18.1 The rules in section 18.2 apply to the following persons:

- (a) each member of the Council who is dealing with any matter before Council that is related to *First Nation* land;
- (b) each person who is an employee of the *First Nation* dealing with any matter that is related to *First Nation* land; and
- (c) each person who is a member of a board, committee or other body of the *First Nation* dealing with any matter that is related to *First Nation* land.

Duty to report and
abstain

18.2 Any person who has any interest, financial or otherwise, in the matter being dealt with that might involve the person or his or her immediate relatives:

- (a) shall disclose the interest to the Council, or the board, committee or other body as the case may be; and

- (b) shall not take part in any deliberations on that matter or vote on that matter.

18.3 Section 18.2 does not apply to any interest that is held by a member in common with every other member.

Meeting of eligible voters

18.4 If the Council is unable to vote on a proposed law or resolution due to a conflict of interest, the Council may refer the matter to a community meeting and, if a quorum of eligible voters is present, a majority of the eligible voters present at the meeting may enact the land law or land resolution.

Inability to act

18.5 If the board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to the Council.

Specific Conflict situations

18.6 Because of the unusual conflicts of interest possible in the community, not more than two members from the same extended family may be members of a board, committee or other body⁴ dealing with any matter that is related to *First Nation* land.

Disputes

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

Other laws

18.8 For greater certainty, the Council may enact laws to further implement this section.

ALTERNATIVE SECTION `18

CONFLICT OF INTEREST

18. Application

18.1 The rules in section 18 apply to the following persons:

⁴ The Council is not included under this rule.

- (a) *a member of Council who is dealing with any matter before Council pertaining to the management or administration of First Nation Lands; and*
- (b) *a member of the Lands Committee.*

Conflict of Interest

18.2 *A person to which this Part applies has a conflict of interest when the person is being asked to deliberate or decide on a matter where there is the opportunity to further his or her private interest or the private interest of a member of his or her Immediate Family.*

18.3 *A person to which this Part applies has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the person's ability to deliberate or decide on the matter must have been affected by his or her private interest or the private interest of a member of his or her Immediate Family.*

18.4 *Private interest does not include an interest that a person or a member of his or her Immediate Family has in a matter by virtue of the fact that the person or his or her Immediate Family member is a Member.*

Conflict of Interest Prohibition

18.5 *A person to which this Part applies must not exercise his or her power or carry out his or her responsibility provided for in this Land Code if the person has a conflict of interest or an apparent conflict of interest.*

Procedure on Conflict of Interest

18.6 *A person to which this Part applies who has reasonable grounds to believe that he or she has a conflict of interest in a matter before Council or the Lands Committee, as the case may be, must, if present at a meeting considering the matter:*

- (a) *disclose the general nature of the conflict of interest; and*
- (b) *physically withdraw from the meeting without voting or participating in the consideration of the matter.*

18.7 *If a person has complied with section 18.5, the person taking minutes of the meeting must record:*

- (a) *the disclosure;*
- (b) *the general nature of the conflict of interest disclosed; and*

(c) *the withdrawal of the person from the meeting.*

Conflict of Interest in Doubt

18.8 *If a person to which this Part applies is in doubt whether he or she has a conflict of interest, he or she may request a decision on whether he or she is in compliance with this Part:*

(a) *from Council, if the person is a member of Council; or*

(b) *from the Lands Committee, if the person is a member of the Lands Committee.*

18.9 *If a person to which this Part applies has reasonable grounds to believe that another person (the "Subject") to which this Part applies has a conflict of interest, the former may request a decision on whether the Subject is in compliance with this Part:*

(a) *from Council, if the Subject is a member of Council; or*

(b) *from the Lands Committee, if the Subject is a member of the Lands Committee.*

18.10 *A decision of the Council or the Lands Committee, as the case may be, made pursuant to section 18.9 or 18.10 shall be final.*

Failure to Establish Quorum due to Conflict

18.11 *Where, as a result of a conflict of interest, a quorum of Council can never be established, the remaining members of the Council may refer the matter to a community meeting and, if a quorum of eligible voters is present, a majority of the eligible voters present at the meeting may enact the land law or land resolution.*

18.12 *Where, as a result of a conflict of interest, a quorum of the Lands Committee can never be established, the matter shall be referred to Council for decision.*

19. Financial Management

Application

19.1 This section applies only to financial matters relating to *First Nation* land.

Establishment of
Bank accounts

19.2 The Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts

- (a) transfer payments received from Canada for the management and administration of *First Nation* land;
- (b) moneys received by *First Nation* from the grant or disposition of any interests or licences in *First Nation* land;
- (c) all fees, fines, charges and levies collected under a land law or land resolution;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of any interests and licences in *First Nation* land; and
- (e) any other land revenue received by *First Nation*

Signing officers

19.3 The Council shall authorize at least three persons, one of whom shall be a member of the Council, to sign cheques and other bills of exchange or transfer drawn on the account.

Bonding

19.4 Every signing officer must be bondable.

Two signatures

19.5 To be valid, a cheque or other bill of exchange or transfer drawn on the account must be signed by two signing officers.

Fiscal year

19.6 The fiscal year of the *First Nation* begins on April 1 of each year and ends on March 31 of the following year.

Adoption of budget

19.7 The Council shall, by resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if the Council deems it necessary in the course of the fiscal year, adopt supplementary budgets for that fiscal year.

Procedure

19.8 After adopting the land management budget or supplementary budget, the Council shall, without undue delay

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

If no budget

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

Budget rules

19.10 The Council may make rules respecting the preparation and implementation of land management budgets.

Expenditures

19.11 The Council may not expend moneys related to land or commit itself, by contract or otherwise, to expend moneys related to land, unless the expenditure is authorized by or under a law or an approved budget.

Financial Policy

19.12 The *First Nation* may, in accordance with this Land Code, adopt a financial policy to further manage moneys related to *First Nation* land.

20. Financial Records

Financial records

20.1 *First Nation* shall keep financial records related to land in accordance with generally accepted accounting principles.

Offences

- 20.2 A person is guilty of an offence if the person
- (a) impedes or obstructs anyone from exercising their right to inspect the financial records of *First Nation*; or
 - (b) has control of the books or account or financial records of *First Nation* and fails to give all reasonable assistance to anyone exercising their right to inspect the financial records.

Preparation of

financial statement

20.3 Within 90 days after the end of each fiscal year, the Council on behalf of the *First Nation* shall prepare a financial statement in comparative form, containing at a minimum

- (a) a balance sheet
- (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
- (c) any other information necessary for a fair presentation of the financial position of *First Nation*

Consolidated
Accounts, etc.

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

21. Audit

Appointment of
Auditor

21.1 For each fiscal year, a duly accredited auditor shall be appointed to audit the land related financial records of *First Nation*.

Holding Office

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

Vacancy in office

21.3 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

21.4 The auditor's remuneration shall be fixed by the Council.

Duty of auditor

21.5 The auditor shall, within 120 days after the end of the *First Nation's* fiscal year, prepare and submit to the Council, a report on the *First Nation's* financial statement, stating whether, in the opinion of the auditor, the financial statement presents fairly 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

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

Explanation of
Auditor's report

21.7 The Council shall present the auditor's report to the members at a meeting of members.

22. Annual Report

Publish annual report

22.1 The Council, on behalf of the *First Nation*, shall publish an annual report on lands issues within one month of receipt of the audit report.

Contents

22.2 The annual report will include

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

23. Access to Information

Access

23.1 Any person may, during normal business hours at the main administrative office of the *First Nation*, have reasonable access to

- (a) the register of laws;
- (b) the auditor's report; and

- (c) the annual report on lands.

Copies for members

- 23.2 Any member may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under resolution of the Council.

Access to records

- 23.3 Any person authorized by the Council may, at any reasonable time, inspect the financial records of *First Nation* related to *First Nation* land.

PART 6

LAND ADMINISTRATION

24. Lands Committee

Lands Committee
established

- 24.1 The Lands Committee is hereby established to

- (a) assist with the development of the land administration system;
- (b) advise the Council and its staff on matters respecting *First Nation* land;
- (c) recommend laws, resolutions, policies and practices respecting *First Nation* land to the Council;
- (d) hold regular and special meetings of members to discuss land issues and make recommendations to Council on the resolution of these land issues;
- (e) assist in the communication of land issues between members and the Council; and
- (f) oversee community approvals under this Land Code.

Comment: This list of items may be changed to suit the needs of the *First Nation*.

Development of land

related rules and procedures.

- 24.2 Within a reasonable time after this Land Code takes effect, the Lands Committee shall, in consultation with the community, ensure that laws, rules and procedures, as may be appropriate, are developed that address the following matters:
- (a) environmental protection and assessment in relation to *First Nation* land;
 - (b) any outstanding issues on the resolution of disputes in relation to *First Nation* land;
 - (c) land use planning and zoning;
 - (d) section 39 respecting spousal separation and whether any change should be made to the policy upon which that section is based; and,
 - (e) any other matter referred by Council.

Comment: This list of items may be changed to suit the needs of the First Nation.

Implementation of Policies

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

Internal procedures

- 24.4 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established by the Council.

25. Membership of the Lands Committee

Composition

- 25.1 The Lands Committee shall be composed of [insert number] members, all of who must be eligible voters.

Eligibility to be Nominated as a Lands Committee Member

25.2 Any eligible voter, whether resident on or off *First Nation* land, is eligible for appointment or election to the Lands Committee, except for the following persons:

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

Selection of Lands
Committee members

25.3 The members of the Lands Committee are to be selected as follows:

- (a) One eligible voter is to be appointed by the Council;
- (b) one member of Council is to be appointed by the Council;
- (c) the other members are to be elected by eligible voters.

Comment: This method of selection is a suggestion only. Please consider what would be appropriate for the *First Nation*.

Term of office

25.4 The length of the term of office for members of the Lands Committee is the same as the term of office for members of Council.

Staggered terms

25.5 The commencement of the terms of office of the members of the Lands Committee are to be staggered as follows:

- (a) the 2 appointed members are to be appointed by the Council as soon as possible after the election of the Council;
- (b) the other elected members are to be elected mid-way through the term of the Council on a date fixed by the Council.

Election law

25.6 The Council shall enact a law to establish the procedure for the Lands Committee election, including transitional rules for the election of the first members of the Lands Committee.

Vacancy on Lands
Committee

25.7 The office of a member of the Lands Committee becomes vacant if the person, while holding office,

- (a) resigns;
- (b) is or becomes ineligible to hold office under section 25.2;
- (c) transfers his or her of membership to another First Nation; or
- (d) is absent for 3 consecutive meetings of the Lands Committee for a reason other than illness or incapacity, and without being authorized to do so by the Lands Committee.

Vacancy in term

25.8 Where the office of an elected or appointed member of the Lands Committee becomes vacant for more than 90 days before the date when another appointment or election would ordinarily be held, a special election may be held or appointment made in accordance with this Land Code, as the case may be, to fill the vacancy.

Balance of term of
Office

25.9 A member of the Lands Committee appointed or elected to fill a vacancy remains in office for the balance of the term in respect of which the vacancy occurred.

26. Chairperson of the Lands Committee

Chairperson

26.1 The member of the Council who is appointed to the Lands Committee is the Chairperson of the Lands Committee.

Alternate
Chairperson

26.2 If the Chairperson is unable to perform the functions of office, either temporarily or on a long-term basis, the Lands Committee shall appoint one of the other Lands

Committee members to act as or be the Chairperson, subject to confirmation by the Council.

Functions of
Chairperson

26.3 The functions of the Chairperson include:

- (a) ensuring the preparation of financial statements relating to all activities of the Lands Committee, including the revenues and expenditures concerning *First Nation* lands;
- (b) tabling the Lands Committee's financial statements with the Council;
- (c) reporting to the *First Nation* on the activities of the Lands Committee; and
- (d) ensuring that the audited annual financial statements are published under section 21.

27. Revenue From Lands

Determination of
Fees, and rent

27.1 The Lands Committee shall, subject to the approval of the Council, establish the process and recommend any laws, rules and policies for determining

- (a) the fees and rent for interests and licences in community land;
- (b) the fees for services provided in relation to any *First Nation* land; and,
- (c) the fees and royalties to be paid for the taking of natural resources from *First Nation* land.

28. Registration of Interests and Licences

Enforcement of
Interest and licences

28.1 An interest or licence in *First Nation* land created or granted after this Land Code takes effect is not enforceable unless it is registered in the *First Nations* Land Register.

Registration of

Consent or approval

28.2 An instrument granting an interest or licence in *First Nation* land that requires the consent of the Council, or community approval, shall include a certificate issued by the [Land Manager] indicating that the applicable consent or approval has been obtained.

28.3 An instrument registered in the First Nation Land Register which does not include the certificate referred to in clause 28.2 is void.

Duty to deposit

28.4 The Council shall ensure that an original copy of the following instruments is deposited in the *First Nations* Land Register:

- (a) any grant of an interest or licence in *First Nation* land;
- (b) any transfer or assignment of an interest or licence in *First Nation* land;
- (c) every land use plan, subdivision plan or resource use plan; and
- (d) this Land Code and any amendment to this Land Code.

29. Duplicate Lands Register

Maintain
duplicate register

29.1 The Council may maintain a Duplicate Land Register in the same form and with the same content as the *First Nations* Land Register.

Duty of member to
deposit.

29.2 Every person who receives an interest or licence in *First Nation* land from a member shall deposit an original copy of the relevant instrument with the First Nation.

PART 7

INTERESTS AND LICENCES IN LAND

30. Limits on Interests and Licences

All dispositions in writing.

- 30.1 An interest in, or licence to use, *First Nation* land may only be created, granted, disposed of, assigned or transferred by a written document in accordance with this Land Code.

Standards

- 30.2 The Council may establish mandatory standards, criteria and forms for interests and licences in *First Nation* land.

Improper Transactions void

- 30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the *First Nation*, a member or any other person purports to grant, dispose of, transfer or assign an interest or licence in *First Nation* land after the date this Land Code takes effect is void if it contravenes this Land Code.

Non-members

- 30.4 A person who is not a member may only hold a lease or licence in *First Nation* land.

Grants to non-members

- 30.5 The written consent of the Council must be obtained for any grant or disposition of a lease or licence in *First Nation* land to a person who is not a member.

31. Existing Interests

Continuation of existing interests and licences

- 31.1 Any interest or licence in *First Nation* land that existed when this Land Code takes effect will, subject to this Land Code, continue in force in accordance with its terms and conditions.

32. New Interests and Licences

Authority to make dispositions

- 32.1 Subject to section 12.1, the Council may, on behalf of *First Nation*, grant;
- (a) interests and licences in community lands, including [certificates of possession], leases, permits, easements and rights-of-ways; and
 - (b) licences to take resources from community lands, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional grant

- 32.2 The grant of an interest or licence may be made subject to the satisfaction of written conditions.

Role of the Lands
Committee

- 32.3 The Lands Committee shall advise Council on the granting of interests or licences and may be authorized to act as a delegate of the Council under this section.

33. Certificates of Possession

Comment: This section is only applicable to those *First Nations* with CP's. Therefore it can be deleted for those *First Nations* that have traditional land holding practices or a method of holding land other than by CP's.

Nature or interest in
CP

- 33.1 Subject to this Land Code and First Nation laws, a certificate of possession in respect of a parcel of land is an interest that entitles the member holding it to:
- (a) permanent possession of the land;
 - (b) benefit from the resources arising from the land;
 - (c) grant subsidiary interests and licences in the land, including leases, permits, easements and rights-of-ways;
 - (d) transfer, devise or otherwise dispose of the land to another member;
 - (e) grant licences to take resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances;

- (f) any other rights, consistent with this Land Code, that are attached to certificates of possession under the *Indian Act*.⁵

34. Allocation of Land

Allocation of lots

- 34.1 The Council may allocate a lot from available First Nation land to a member in accordance with policies and procedures established by the Council.⁶
- 34.2 No community approval is required for
 - (a) the allocation of lots to members; or
 - (b) the issuance of certificates of possession to members.

No allocation of lots to non-members

- 34.3 A person who is not a member is not entitled to be allocated a lot or to hold a permanent interest in *First Nation* land.

Issuance of CP

- 34.4 The Council shall issue a certificate of possession to a member for a lot allocated to that member.

35. Transfer and Assignment of Interests

Transfer of CP's

- 35.1 A member may transfer or assign an interest in *First Nation* land to another member without community approval or the consent of the Council.

Consent of Council

- 35.2 Except for the transfers under section 35.1 and transfers that occur by operation of law⁷,

⁵ However, Ministerial approval of transfers of a CP would not be included in (f).

⁶ Allocation is generally done by CP, although the issuance of a CP may be conditional on financing. The First Nation may choose another expression, rather than CP. Some residential units or apartment units could also be established by lease or rental arrangement.

⁷ Examples are wills, estates, and the right of a spouse to a matrimonial home on spousal separation.

- (a) there shall be no transfer or assignment of an interest in *First Nation* land without the written consent of the Council; and
- (b) the grant of an interest or licence is deemed to include section 35.2 (a) as a condition on any subsequent transfers or assignments.

36. Limits on Mortgages and Seizures

Protections

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

Mortgage of CP

36.2 The interest of a member in *First Nation* land may be subject to a mortgage or charge, but only to a member or, the *First Nation* with the written consent of the Council.⁸

Mortgages of leasehold interests with consent

36.3 A leasehold interest may be subject to charge or mortgage, with the approval of the First Nation, in accordance with section 12.1 of this Land Code, or the written consent of the Council, as may be applicable.

Time limit

36.4 The term of any charge or mortgage of a leasehold interest shall not exceed:

- (a) the term of the lease; or
- (b) 25 years, or such longer period as may receive community approval.⁹

Default in mortgage

36.5 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, by way of foreclosure, power of sale or any other form of execution or seizure, unless

⁸ The *Indian Act* (s.89) allows mortgages between a member and the First Nation or between one member and another member.

⁹ Each First Nation should consider appropriate time limits.

- (a) the charge or mortgage received the written consent of the Council;
- (b) the charge or mortgage received community approval where required;
- (c) the charge or mortgage was registered in the *First Nations* Land Register; and
- (d) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of *First Nation*.

Power of redemption

36.6 If the 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.

37. Residency and Access Rights

Right of residence

37.1 The following persons have a right to reside on *First Nation* lands;

- (a) members, who have been allocated a residential lot by Council, and their spouses and children;
- (b) members with a registered interest in *First Nation* land;
- (c) any invitee¹⁰ of a member referred to in clause (a) or (b); and
- (d) lessees and permittees, in accordance with the provisions of the granting instrument.

Right of Access

37.2 The following persons have a right of access to *First Nation* lands;

- (a) a lessee and his or her invitees;
- (b) a person granted a right of access under a permit;
- (c) *First Nation* members and their spouses and children;
- (d) A person who is authorized by a government body or any other public body, established by or under an enactment of the *First Nation* Parliament or the province to establish, operate or

¹⁰ Invitee in 37.1 (c) and 37.2 (a) includes a common law spouse

administer a public service, to construct or operate a public institution or to conduct a technical survey; or

- (e) A person authorized in writing by the Council/Lands Committee or by a *First Nation* law.

Public access

37.3 Any individual may have access to *First Nation* land for any social or business purposes, if

- (a) the individual does not trespass on occupied land and does not interfere with any interest in land;
- (b) the individual complies with all applicable laws; and
- (c) no resolution has been enacted barring that individual.

Trespass

37.4 Any person, who resides on, enters or remains on *First Nation* land other than in accordance with a residence or access right under this Land Code is guilty of an offence.

Civil remedies

37.5 All civil remedies for trespass are preserved.

38. Transfers on Death

Comment: This is a suggested method of dealing with interests in land when a member dies. If this method is not appropriate, consider how it should be done for the *First Nation*.

38.1 A member who claims to be entitled to an allotment [or certificate of possession] by testamentary disposition or succession pursuant to the *Indian Act* is not entitled to such allotment until:

- (a) such member has filed with Council, or such person or body as may be designated by Council, an instrument in a form prescribed by Council, duly executed by the personal representative of the estate of the deceased member transferring such allotment to the member; and
- (b) the instrument referred to in subsection (a) is registered in the First Nation Land Register and the *First Nation Duplicate Land Register*, if one is established.

38.2 A member who purchases an allotment[or certificate of possession] pursuant to subsection 50(2) of the *Indian Act* is not entitled to such allotment until:

(a) the purchaser has filed with Council , or such person or body as may be designated by Council, an instrument in a form prescribed by Council, duly executed by the person authorized under the *Indian Act* to execute a transfer of an Allotment acquired pursuant to section 50(2) of the *Indian Act*; and

(b) the instrument referred to in subsection (a) is registered in the First Nation Land Register and the *First Nation Duplicate Land Register*, if one is established

39. Spousal Property Law

Development of rules
and procedures

39.1 The Council shall enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage, to

- (a) the use, occupancy and possession of *First Nation* land; and
- (b) the division of interests in that land.

Enactment of rules
and procedures

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

Enactment deadline

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

General principles

39.4 For greater certainty, the rules and procedures developed by the Lands Committee under this section must respect the following general principles;

- (a) each spouse should have an equal right to possession of their matrimonial home;
- (b) each spouse should be entitled to an undivided half interest in their matrimonial home, as a tenant in common;
- (c) the rules and procedures shall not discriminate on the basis of sex; and

- (d) only members are entitled to hold a permanent interest in *First Nation* Land or a charge against a permanent interest in *First Nation* land.

Comment: These general principles would form the structure of the rules. There could be some specific exceptions, e.g. the right of a couple to negotiate a marriage contract to vary the general right of a spouse to a half interest in the matrimonial home.

Immediate rules

39.5 In order that members benefit immediately from the legislative authority of the Council to address the issue of spousal property under this Land Code, the Council may enact a spousal property law as soon as this Land Code comes into force. As this law would be enacted before the work of the Lands Committee and the community consultation is complete, the law will expire at the end of the 12-month period after the coming into force of this Land Code, unless re-enacted, replaced or amended.

OR

39.5 Council may enact an interim law as provided in clause 39.1, provided that any such law will expire twelve (12) months after the coming into force of this Land Code, unless re-enacted.

PART 8

DISPUTE RESOLUTION

40. DISPUTE RESOLUTION PANEL

Panel established

40.1 The Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to *First Nation* Land

Appointment of
Panel

40.2 The Panel shall be composed of [3 or 5] panelists, all of whom must be eligible voters.

Representation

40.3 The Lands Committee shall appoint the panelists, and shall ensure that the Panel represents the various elements of the community, including Elders, youth, professionals and non-resident members.

Term of office

40.4 The panelists hold office for a term of 3 years.

No remuneration

40.5 Panelists are to act on a volunteer basis and receive no remuneration for their services.

OR

The Council shall determine the remuneration to be paid to the members of a Panel.

41. Dispute Procedure

Comment: This dispute resolution procedure is a suggestion. The area is complex and requires careful consideration. The First Nation should obtain legal advice to review the applicability of this method or any other approach to dispute resolution should be sought on creating an alternative process.

Disputes

41.1 Any person whose interest in First Nation land is affected by a decision of the Council or Land Committee may appeal the decision to the Panel.

Optional process

41.2 For greater certainty, an application to the Panel to resolve a dispute is optional and all other civil remedies continue to be available to members and non-members.

Disputes not
resolved by Council

41.3 If a member, or a non-member with an interest in *First Nation* land, has a dispute with respect to a decision of the Lands Committee or the Council, the person must first attempt to resolve that dispute with the Council or the Lands Committee, before referring the dispute to the Panel.

Comment: A non-member can only hold a lease or licence in First Nation land – see s. 30.4

Application
Procedures

41.4 Applications to the Panel shall be made in accordance with the procedures established by the Panel.

Limitation period

- 41.5 An application to refer a dispute with respect to a decision of the Lands Committee or the Council to the Panel shall be made:
- (a) within 30 days after the day the decision, act or omission being referred was made; or
 - (b) in the case of a dispute with the Lands Committee or the Council, 30 days after the Lands Committee or Council rejects the attempts at resolution made under section 41.3.

Panel of three

- 41.6 Disputes referred to the Panel are to be heard by 3 panelists chosen as follows:
- (a) one panelist is to be chosen by each of the parties to the dispute; and
 - (b) one panelist, who is to be the chairperson, is to be chosen by the rest of the Panel.

42. Impartiality

Duty to act
Impartially

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

Offence

42.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

Rejection of
Application

42.3 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

43. Powers of Panel

Powers of Panel

- 43.1 The Panel may, after hearing a dispute
- (a) confirm or reverse the decision, in whole or in part;
 - (b) substitute its own decision for the decision in dispute;
 - (c) direct that an action be taken or ceased; or
 - (d) refer the matter or dispute back for a new decision.

Rules of Panel

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

Professional services

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

Written decisions

- 43.4 Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so.

Reasons

- 43.5 The Panel may give reasons for its decision, and shall do so in writing if a party to the proceedings requests them within 14 days after the date of the decision.

Appeal of decision

- 43.6 A decision of the Panel is binding but, subject review by the Federal Court (Trial Division).

PART 9

OTHER MATTERS

44. Liability

Liability Coverage

- 44.1 The Council shall arrange, maintain and pay, out of the transfer payments received from Canada, insurance coverage for its officers and employees engaged in carrying out any matter related to *First Nation* land to indemnify them against personal liability arising from the performance of those duties.

Extent of coverage

- 44.2 The extent of the insurance coverage shall be determined by the Council.

Bonding

- 44.3 Every employee of the *First Nation* whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.

45. Offences

Application of the Criminal Code

- 45.1 Unless some other procedure is provided for by a law, the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time, apply to offences under this Land Code or under a First Nation law.
- 45.2 Any person who commits an offence under this Land Code or a First Nation law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both fine and imprisonment, provided however, that offences related to First Nation environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.
- 45.3 A First Nation law may provide for a penalty which is different than the penalties referred to in clause 45.2.

46 Commencement

Preconditions

- 46.1 This Land Code shall take effect if the community approves this Land Code and the Transfer Agreement with Canada and this Land Code has been certified by the verifier pursuant to the *Framework Agreement*.

Commencement date

46.2 This Land Code shall take effect on the first day of the month following the certification of this Land Code by the verifier.

Comment: This is a sample clause ONLY. The Land Code can take effect at any point in time after ratification. It is important to make sure that the Individual Transfer Agreement and funding begin on the effective date of the Land Code.

ANNEX

NOTE: While not required, a section concerning interpretation would make clear a number of basic principles to be used when explaining the Land Code. An example of section dealing with interpretation of the Land Code is set out below.

- 2.1 The definitions as set forth in the Framework Agreement and Act shall have the same meaning in this Land Code;
- 2.2 Where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.
- 2.3 Where the time limited for the doing of an act in the *First Nation* administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open.
- 2.4 Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.
- 2.5 If there is an inconsistency or conflict between this Land Code and any other enactment of the *First Nation*, this Land Code shall prevail to the extent of the inconsistency or conflict.
- 2.6 If there is an inconsistency or conflict between this Land Code and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.
- 2.7 The structures, organizations, Laws and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of the *First Nation*, unless otherwise provided.
- 2.8 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other right or freedom that pertains now or in the future to *First Nation* or its Members.
- 2.9 This Land Code is not intended to affect the eligibility of *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 *First Nation* has not assumed responsibility for such services or programs.
- 2.10 This Land Code shall be interpreted in a fair, large and liberal manner.
- 2.11 The principles set out in the Preamble to this Land Code may be used to interpret this Land Code.

2.12 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 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 law 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.

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