

MARCH 2015 DRAFT
For Discussion by
LNIB Membership and Leadership



LOWER NICOLA
INDIAN BAND

LAND CODE



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PREAMBLE

WHEREAS the Lower Nicola Indian Band aspires to move ahead as an organized, highly-motivated, determined and self-reliant nation;

AND WHEREAS the Lower Nicola Indian Band is comprised of proud, united people whose purpose is to establish a future that will ensure a high quality of life while flourishing with the environment;

AND WHEREAS Nlaka'pamux traditions and cultural beliefs are the driving force of our success and destiny; and

AND WHEREAS the Lower Nicola Indian Band wishes to manage its lands and resources, rather than having its lands and resources managed by Aboriginal Affairs and Northern Development Canada on its behalf under the *Indian Act*.

NOW THEREFORE, the Lower Nicola Indian Band Land Code is hereby enacted as the fundamental land law of the Lower Nicola Indian Band for and in respect of the Lower Nicola Indian Band First Nation Land.

Part 1 - Preliminary Matters

1.1 Title

(a) **Title**

The title of this enactment is the *Lower Nicola Indian Band Land Code*.

1.2 Interpretation

(a) **Definitions**

The following definitions apply in this Land Code:

- (i) **“Allocation”** means the right granted to a Member by a Band Council Resolution in a parcel or area of Lower Nicola Indian Band Land, to permit the Member and the Extended Family of the Member to occupy the parcel or area of First Nation Land for residential purposes only, and for no other purpose and for greater certainty, such right to occupy and the nature of such right, whether temporary or permanent, is subject to the terms and conditions of the granting Band Council Resolution;

- (ii) **“Allotment”** means an Interest in a parcel or area of Lower Nicola Indian Band Land granted by Band Council Resolution to a Member that entitles the Member to use and occupy a parcel or area of LNIB Land under this Land Code or, prior to the date of this Land Code came into effect, under section 20(1), 20(2) or 20(3) of the *Indian Act*;
- (iii) **“Band”** means the Lower Nicola Indian Band;
- (iv) **“Band Community Ratification Process”** has the meaning ascribed to that term in section 3.4(b)(i) of this Land Code;
- (v) **“Budget”** means a Lands Management Budget or supplementary budget as described in Part 7 **“Accountability”** and section 7.2 **“Financial Matters”** of this Land Code;
- (vi) **“Certificate of Possession”** or **“CP”** means a certificate of possession in respect of First Nation Land issued prior to the coming into force of this Land Code under section 20(2) of the *Indian Act* or a certificate of possession in respect of First Nation Lands issued after the coming into force of this Land Code under section 4.5 (c) **“Allocation and Allotment of Land”** of this Land Code as evidence of the Allotment;
- (vii) **“CP Holder”** means the holder of an Allotment, whether or not a Certificate of Possession has been issued;
- (viii) **“Common-law Marriage”** means a relationship between two people not married to each other but who have lived together as spouses for a period of not less than one year;
- (ix) **“Community Approval”** means the approval of the Members by a Ratification Vote under Part 3 - Community Approvals” of this Land Code;
- (x) **“Community Engagement Process”** means the process of involving the community in accordance with section 3.2 **“Community Engagement Process”** through a meeting or meetings with Members or other means of communication with Members through which the Members may provide comments and feedback to Council, for consideration by Council in its sole discretion;
- (xi) **“Community Land”** means any LNIB Land in which all Members have a common interest but does not include LNIB Land subject to an Allotment;

- (xii) **“Community Purpose”** means a public purpose or public work intended to provide a benefit for the Members, the Band or Persons who reside on or operate a business on First Nation Land and shall include but shall not be limited to transportation and utility corridors and requirements related to transportation and utility corridors, public works, cemeteries, schools, day-care facilities, administrative buildings and facilities, seniors’ housing facilities, hospitals, fire halls, sewage and water treatment facilities, playgrounds, community centres and other similar facilities and the protection of heritage sites;
- (xiii) **“Council”** means the Chief and Councillors of LNIB or any successor elected government of the Band;
- (xiv) **“Easement”** means a non-exclusive interest in First Nation land granted under this Land Code or, prior to the date of this Land Code, under the Indian Act, give one person (the grantee) the right to use the land of another (the grantor) for an easement or a right of way, or to provide utility or other services to the land of the grantor or other lands, and
 - (a) is limited only to such interest as is necessary to give effect to the easement granted, and
 - (b) despite any common law rule to the contrary, does not require that there be a dominant and a servient tenement;
- (xv) **“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 18 years on or before the day of the vote;
- (xvi) **“Environmental Audit”** means an environmental assessment report conducted in accordance with the standards of either the *Canadian Environmental Assessment Act, 2012, S.C. 2012, c. 19, s. 52* and regulations thereunder, as amended or restated from time to time, or the *British Columbia Environmental Assessment Act, SBC 2002, Chapter 43*, whichever imposes the more stringent assessment standards in the opinion of the Lands Management Advisory Committee;
- (xvii) **“Environmental Consultant”** means a reputable firm of environmental consultants, qualified to do business in British Columbia and qualified to conduct investigation and remediation of soil, water and vapour contamination, employing consultants qualified as professional engineers registered and in good standing with the Association of Professional Engineers and Geoscientists of British Columbia and maintaining professional liability and errors and omissions insurance in the amount of not less than \$1 million per occurrence;
- (xviii) **“Extended Family”**, in respect of the family of an individual, means the individual’s Immediate Relatives, grandparent, uncle, aunt, cousin or

grandchild;

- (xix) **“LNIB”** means the Lower Nicola Indian Band;
- (xx) **“LNIB Lands”** means any portion of a reserve of the Band that is subject to this Land Code;
- (xxi) **“First Nations Land Register”** means the register maintained by Aboriginal Affairs and Northern Development Canada under the Framework Agreement;
- (xxii) **“Framework Agreement”** means the Framework Agreement on First Nation Land Management entered into between the Minister of Aboriginal Affairs and Northern Development Canada and 14 First Nations on February 12, 1996, as amended from time to time;
- (xxiii) **“General Zoning By-Law”** means the general zoning bylaw of the First Nation, as amended from time to time. The General Zoning By-Law must comply with the Land Use Plan and must be approved by Community Approval followed by approval by Council by Resolution. The General Zoning By-Law may be amended from time to time:
 - A. to approve a use of First Nation Land that is contrary to the Land Use Plan, by Community Approval followed by approval by Council by Resolution; or
 - B. in all other cases, by Council by Resolution following a Community Engagement Process to gather input on the proposed amendment for Council’s consideration, in its sole discretion;
- (xxiv) **“Immediate Relatives”**, in respect of the relatives of an individual, means the individual’s parent, sister, brother, child (natural, or adopted pursuant to either the laws of the Province of British Columbia or Nlaka’pamux tradition) or Spouse;
- (xxv) **“Interest”** means an interest in First Nation Land, including an Allotment, Certificate of Possession, lease, mortgage, mortgage of lease, easement, sublease and sub-sublease, but excluding an Allocation;
- (xxvi) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c. 250 as amended from time to time or its successor legislation;
- (xxvii) **“Lands Department”** means the department of the Band that administers the day to day operation of First Nation Lands and this Land Code;
- (xxviii) **“Lands Management Advisory Committee”** means the Lands Management Advisory Committee established under this Land Code;
- (xxix) **“Lands Manager”** means the person employed or otherwise engaged by LNIB to oversee the day to day operations of the Lands Department and the administration of this Land Code;

- (xxx) **“Land Use Plan”** means at any time the then current land use plan for the First Nation Land duly approved from time to time by Ratification Vote, as may be amended by Council following a Community Engagement Process to gather input on the proposed amendment for Council’s consideration, in its sole discretion;
- (xxxi) **“Law”** means a Law enacted pursuant to Part 2 - **First Nation Legislation”** of this Land Code;
- (xxxii) **“Lower Nicola Indian Band Land Register”** means the register maintained by the Band under section 6.6(a) **“Duty to maintain”**;
- (xxxiii) **“Majority”** means greater than 50%;
- (xxxiv) **“Meeting of Members”** means a meeting of the Members under either section 3.2 **“Community Engagement Process”** or section 3.4 **“Community Approval”** of this Land Code;
- (xxxv) **“Member”** means an individual whose name appears on the Lower Nicola Indian Band Membership List;
- (xxxvi) **“Person”** means an individual, corporation, body corporate, partnership, joint venture, association, trust, or unincorporated organization of any trustee, executor, administrator, or other legal representative;
- (xxxvii) **“Panel”** means the Dispute Resolution Panel established under section 8.1(a) **“Panel established”** of this Land Code;
- (xxxviii) **“Ratification Vote”** means a vote of Eligible Voters under section 3.4 **“Community Approval”** of this Land Code;
- (xxxix) **“Resolution”** means a Resolution of Council passed under this Land Code, and “Resolutions” shall have a correlative meaning;
- (xl) **“Spouse”** means an individual who is married to another individual, whether by a traditional, religious or civil ceremony, and includes a Person who is cohabiting in a Common-law Marriage;
- (xli) **“Statutory Covenant”** means a covenant made in accordance with section 219 of the *Land Title Act*;
- (xlii) **“Statutory Right of Way”** has the meaning given to that phrase for the purposes of the *Land Title Act*;
- (xlili) **“Verifier”** means a verifier appointed in accordance with section 8.1 of the Framework Agreement.

(b) Interpretation

In this Land Code:

- (i) 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 in the event that gives rise to the obligation;
- (ii) Where the time limited for doing 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;
- (iii) Where the time limited for doing an act in the Lower Nicola Indian Band 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;
- (iv) Where there is a reference to a number of days or a number of days between the two events, in calculating that number of days, the days on which the events happen are excluded;
- (v) Unless it is otherwise clear from the context, the use of the singular includes the plurals, and the use of plural includes the singular;
- (vi) 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; and
- (vii) The headings of parts and sections in this Land Code have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions.

(c) Paramountcy

If there is inconsistency or conflict between this Land Code and any other enactment of the Band, this Land Code prevails to the extent of the inconsistency; and if there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement prevails to the extent of the inconsistency or conflict.

(d) Culture and traditions

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 Band, unless otherwise provided.

(e) **Non-abrogation**

This Land Code does not abolish, repeal or otherwise abrogate, or detract, diminish or otherwise derogate from, any Aboriginal, treaty or other rights or freedoms that pertain now or in the future to the Band or its Members, including, without limitation, rights to land, water and air and natural resources.

(f) **Fair interpretation**

Subject to section 1.2(c) "**Paramountcy**", this Land Code shall be interpreted in a fair, large and liberal manner.

(g) **Fiduciary Relationship**

This Land Code does not abolish, repeal or otherwise abrogate the fiduciary relationship between Her Majesty the Queen in Right of Canada, the Band and its Members.

(h) **Lands and Interests affected**

A reference to "land" in this Land Code means all rights and resources in and of the land, and includes:

- (i) the water, beds underlying water, riparian rights, air rights and renewable and non-renewable natural resources in and of that land, water or air to the extent that these are under the jurisdiction of Canada or the Band; and
- (ii) all the Interests and licenses granted to the Band by Her Majesty in right of Canada listed in the Transfer Agreement.

1.3 Authority to Govern

(a) **Aboriginal Rights and Title**

The First Nation has never ceded, surrendered, or in any way relinquished aboriginal title and will continue to assert its interests and exercise its aboriginal rights over its traditional territory.

(b) **Protection of Aboriginal Rights**

The First Nation is committed to protecting the aboriginal rights of the First Nation and its Members.

(c) **Origin of authority**

By enacting this Land Code, the Band is giving effect to its aboriginal title to that portion of its territories comprised of First Nation Land.

(d) **Flow of authority**

The authority of the Band to govern its lands and resources flows from its aboriginal title and inherent right of self-government of the Band.

(e) **Purpose**

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

(f) **Ratification**

The Band has executed the Framework Agreement that will be ratified and confirmed by the Band when this Land Code takes effect.

1.4 Description of First Nation Land

(a) **First Nation Land**

The First Nation Land that is subject to this Land Code consists of:

- (i) Hamilton Creek IR #7;
- (ii) Joeyaska IR#2;
- (iii) Logan's IR #6;
- (iv) Nicola Mameet IR#1;
- (v) Pipeul IR#3;
- (vi) Speous IR#8;
- (vii) Zoht IR#4;
- (viii) Zoht IR#5; and
- (ix) Zoht IR#14;

including but not limited to, any sub-surface rights.

(b) **Excluded Lands**

The lands described as follows are excluded from the application of this Land Code:

Hihium Lake IR#6.

Such land may be made subject to this Land Code in accordance with section 1.4(e) "**Inclusion of land or Interest**" on a recommendation of the Lands Management Advisory Committee after an Environmental Audit prepared by an Environmental Consultant stating that it is free of environmental hazard and safe for community use.

(c) **Additional lands**

The following lands may be made subject to this Land Code in accordance with section 1.4(e) "**Inclusion of land or Interest**" if they are, or become, reserve lands and the following conditions are met:

- (i) any lands owned jointly by the Band and another First Nation or other First Nations, when all the First Nations agree upon a joint management scheme for those lands; and
- (ii) any land or Interest acquired by the Band after this Land Code takes effect, whether by land claim, purchase or other process, after an Environmental Audit prepared by an Environmental Consultant expresses the view that the land does not pose a significant risk to human health or the environment.

(d) **Land exchange**

For greater certainty, section 1.4(c) "**Additional lands**" applies to land acquired by land exchange in accordance with section 5.3 "**Voluntary Land Exchanges and Protections**".

(e) **Inclusion of land or Interest**

When the relevant conditions in sections 1.4(b) "**Excluded Lands**" and 1.4(c) "**Additional lands**", whichever is applicable, are met, Council shall call a Meeting of Members under section 3.2(a) "**Prior meeting of Members**" and, following a Community Engagement Process, may by passing a Resolution, declare the land or Interest to be subject to this Land Code.

Part 2- First Nation Legislation

2.1 Law-Making Powers

(a) Council may make Laws

Council may, in accordance with this Land Code, make new Laws. Council must bring any proposed new Law to a Community Engagement Process and prior to enactment must obtain Community Approval.

(b) Examples of Laws

For greater certainty and without limitation, but subject to section 2.1(a) “**Council may make Laws**”, Council may make Laws relating to:

- (i) the development, conservation, protection, management, use and possession of First Nation Land;
- (ii) Interests and licenses in relation to First Nation Lands;
- (iii) a General Zoning By-Law;
- (iv) a Law creating a Land Use Plan;
- (v) the purchase, acquisition or sale of First Nation Land in accordance with the Act and this Land Code;
- (vi) regulation, control, authorization and prohibition of residency, access, occupation and development of First Nation Land and Interests therein;
- (vii) environmental assessment and environmental protection;
- (viii) expropriation;
- (ix) setting aside and regulation of heritage lands and sacred sites;
- (x) all matters set out in section 3.4(b) “**Ratification Process for this Land Code**”;
- (xi) regulation, licensing and control of businesses on First Nation Land;
- (xii) regulation of construction and standards for buildings, structures and facilities on First Nation Land;
- (xiii) fees or charges to be paid to the Band for the granting or transfer of Interests in Band Land;

- (xiv) fees, stumpage or royalties to be paid to the Band for the removal or extraction of natural resources from First Nation Land, including for removal or extraction of minerals, gravels and timber from First Nation Land and from Allotments or CP lands;
- (xv) bonds, irrevocable letters of credit, or other security to be provided by a Person developing any portion of First Nation Land if such security is required to protect the interest of the Band or to protect the integrity of lands, structures or infrastructures;
- (xvi) provision of local services and the imposition of user charges including development cost charges or their equivalent;
- (xvii) authorization and regulation of development of land and subdivisions including requirements for park dedications or grants in lieu of park dedication and requirements for community housing land or unit dedication or grants in lieu of housing dedications;
- (xviii) the conduct of surveys of lands or Interests;
- (xix) setting aside, designation, regulation or management of parks, parkland, trails, greenspace, and recreational lands;
- (xx) removal and punishment of Persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (xxi) public nuisance and private nuisance;
- (xxii) regulations of sanitary conditions and the provision of sanitary services in private premises and public places;
- (xxiii) construction and maintenance of boundary and internal fences;
- (xxiv) construction, maintenance and management of roads, water courses, water diversion, storm drains, bridges, ditches and other local and public works;
- (xxv) regulation of traffic and transportation;
- (xxvi) hunting, fishing, and management and protection of fish, wildlife and their habitat on First Nation Land;
- (xxvii) management and control of domestic and agricultural animals on First Nation Land;

- (xxviii) use and storage of fireworks, firearms, weapons and hazardous materials or substance;
- (xxix) environmental assessment and protection;
- (xxx) enforcement of First Nation Laws;
- (xxxi) matrimonial law in accordance with the *Family Homes on Reserves and Matrimonial Interests or Rights Act*;
- (xxxii) provision of services for the resolution, outside the courts, of disputes in relation to First Nation Land; and
- (xxxiii) any matter necessary or ancillary to Laws respecting First Nation Land.

(c) **Amendments to Laws**

Council may, following a Community Engagement Process, and in accordance with this Land Code, including section 2.2(c) **“Tabling and posting of Laws and proposed amendments to Laws”**, make any amendments to Laws.

(d) **Land Use Plan**

Council shall, within 24 months after this Land Code has been approved in accordance with section 3.4(b) **“Ratification Process for this Land Code”** propose a Land Use Plan for consideration by the Members at a Meeting of the Members. The Land Use Plan proposed by Council shall be approved by Ratification Vote.

(e) **Internal procedures**

The Lands Management Advisory Committee may establish rules for its meetings and generally for the conduct of its affairs.

(f) **Offences and Penalties**

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

(g) **Enforcement**

Council may, subject to section 2.1(a) **“Council may make Laws”**, enact Laws:

- (i) respecting the appointment of justices of the peace for enforcement of this Land Code and Laws:

- A. if no justice of the peace is appointed, this Land Code and Laws are to be enforced by a court of competent jurisdiction; and
 - B. Council may enact Laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through a community justice process; and
- (ii) to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

2.2 Law-Making Procedure

(a) Introduction of Laws

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

- (i) the Chief or a Councillor;
- (ii) a representative of the Lands Management Advisory Committee, or other body or authority composed of Members that may be authorized by Council to do so;
- (iii) the Lands Manager; or
- (iv) a Petition presented to Council signed by at least 20 per cent of Eligible Voters, setting out the request for development of a Law addressing a specific subject matter or issue.

(b) Written proposal

A written proposal for a Law in section 2.2(a) “**Introduction of Laws**” above shall contain in relation to the proposed Law:

- (i) a proposed title;
- (ii) a brief description of the subject matter to be addressed;
- (iii) a reason why the proposed Law is necessary;
- (iv) a draft outline of the Law; and
- (v) the section or sections of the Land Code which authorize the proposed Law.

(c) Tabling and posting of Laws and proposed amendments to Laws

Before a Law or a proposed amendment to a Law may be enacted, Council must undertake a Community Engagement Process at a Meeting of the Members, meeting the following requirements. The proposed Law or amendment must be:

- (i) tabled at a meeting of Council held at least 28 days before the duly called Meeting of the Members;
- (ii) deposited with the Chair of the Lands Management Advisory Committee at least 21 days before the duly called Meeting of the Members; and
- (iii) posted in public places on First Nation Land at least 21 days before the duly called Meeting of the Members.

Following the Community Engagement Process, Council may, in its sole discretion, incorporate the input received by the Members before obtaining approval of the Law or amendment of Law in accordance with section 2.2(e) "**Approval of Law**".

(d) **Urgent matters**

- (i) Council may enact an amendment of a Law without the preliminary steps required under sections 2.1(c) "**Amendments to Laws**" and 2.2(c) "**Tabling and posting of Laws and proposed amendments to Laws**" or a Law without the preliminary steps required under section 2.1(a) "**Council may make Laws**", if Council is of the opinion that the Law is needed urgently to protect First Nation Land or Members; and
- (ii) An amendment of a Law or a Law enacted under section 2.2(d)(i) "**Urgent matters**" expires 28 days after its enactment unless it is re-enacted in accordance with section 2.1(c) "**Amendments to Laws**" and 2.2(c) "**Tabling and posting of Laws and proposed amendments to Laws**" or section 2.1(a) "**Council may make Laws**", respectively.

(e) **Approval of Law**

- (i) A Law is enacted if it is approved by Ratification Vote followed by approval by a majority of Council at a duly convened meeting of Council open to the Members.
- (ii) An amendment of a Law is enacted if it is approved by a majority of Council at a duly convened meeting of Council open to the Members.

(f) **Certification of Laws**

The original copy of any Law, amendment of Law or Resolution concerning First Nation Land shall be signed by a quorum of Council present at the meeting at which it was enacted.

2.3 Publication of Laws

(a) Publication

All Laws shall be published in the minutes of Council.

(b) Posting Laws

Within seven days after a Law shall have been enacted, Council shall post a copy of the Law in the administrative offices of the Band and on the Band website. However, failure to post a Law within seven days shall not invalidate the Law.

(c) Registry of Laws

Council shall cause to be kept, at the administrative offices of the Band, 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.

(d) Copies for any Person

Any Person may, during regular business hours at the Band administration office, have reasonable access to the register of Laws and may obtain a copy of a Law or Resolution on payment of such reasonable fee as may be set by Council or a body designated by Council.

2.4 Commencement of Laws

(a) Laws taking effect

A Law enacted by Council takes effect on the date of its enactment or such later date as may be specified by the Law.

Part 3 - Community Approvals

3.1 Rights of Eligible Voters

(a) Rights of Eligible Voters

- (i) Every Eligible Voter is eligible to participate and provide input at a Meeting of Members held for the purposes of a Community Engagement Process.
- (ii) Every Eligible Voter is eligible to vote at a Meeting of Members held for the purposes of obtaining Community Approval.

3.2 Community Engagement Process

(a) Prior meeting of Members

- (i) Council shall convene a Meeting of Members under this section 3.2 **“Community Engagement Process”** or invite Members to a Council meeting to receive their input pursuant to a Community Engagement Process prior to the introduction of any new Law or any amendments thereto.
- (ii) At any time and from time to time, Council may convene a Meeting of Members to receive their input pursuant to a Community Engagement Process to discuss matters or issues arising under this Land Code.

(b) Process to Implement Certain Laws

Subject to section 4.11 **“Spousal Property Law”**, Council shall, in consultation with the Lands Management Advisory Committee and within a reasonable time after this Land Code takes effect, establish a community process to develop and implement Laws respecting:

- (i) a community plan or subdivision plan that is not in accordance with the Land Use Plan or the General Zoning Bylaw;
- (ii) the Allotment of First Nations Land;
- (iii) declaring land or an Interest referred to in section 1.4(b) **“Excluded Lands”** or 1.4(c) **“Additional lands”**;
- (iv) significant changes to or developments of a heritage site or an environmentally sensitive property;
- (v) environmental assessment;
- (vi) Spousal Property Law under section 4.11 **“Spousal Property Law”**;
- (vii) the Laws referred to in section 2.1(d) **“Land Use Plan”**;
- (viii) the Laws referred to in section 2.1(b)(iii), 2.1(b)(iv), 2.1(b)(vi), 2.1(b)(vii), 2.1(b)(viii), 2.1(b)(ix) and 2.1(b)(x); and
- (ix) any other matter or class of matters that Council, by Resolutions, declares to be subject to this section.

3.3 Procedure at a Meeting of Members

(a) Voting

- (i) Except for the Meeting of Members for the taking of a Ratification Vote for the approval of this Land Code and for the approval of a Spousal Property Law pursuant to section 4.11 "**Spousal Property Law**", decisions at a Meeting of Members shall be made by a majority vote of the Eligible Voters present at the meeting and there shall be no requirement for a quorum.
- (ii) Voting on a Ratification Vote shall proceed by a secret ballot. Voting on matters pursuant to a Community Engagement Process shall proceed by a show of hands.

(b) Notice of meeting

The Council shall give written notice of a Meeting of Members that:

- (i) specifies the date, time and place of the meeting; and
- (ii) contains a brief description of the matters to be discussed and decided at the meeting and a copy of any draft Law to be voted on after the meeting.

(c) Manner of notice

Written notice of a Meeting of Members shall be given to the Members by:

- (i) posting the notice in public places on First Nation Land and on the Band website at least 21 days before the meeting;
- (ii) mailing or e-mailing the notice to Members for whom the Lands Management Advisory Committee has a current mailing or e-mail addresses;
- (iii) publishing the notice in a community newsletter or local newspaper at least 10 working days before the meeting; and
- (iv) such additional methods as Council may consider appropriate in the circumstances.

(d) Who may attend

- (i) All Members have a right to attend a Meeting of Members; and

- (ii) An Individual other than a Member may attend a Meeting of Members only with written permission or invitation of Council. Or with written permission or invitation of the Lands Management Advisory Committee .

(e) **Other meetings**

Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members.

(f) **Other Laws**

Subject to sections 2.1(a) "**Council may make Laws**" and 3.3 "**Procedure at a Meeting of Members**", Council may make Laws respecting Meetings of Members.

3.4 **Community Approval**

(a) **Community Approval at a Meeting of Members**

Community Approval must be obtained following a Meeting of Members for the following:

- (i) any development on a heritage site designated in a land use plan;
- (ii) any voluntary exchange of First Nation Land;
- (iii) any amendment to the Transfer Agreement that reduces the amount of funding provided by Canada;
- (iv) subject to section 5.2 "**Heritage Sites**", any Land Use Plan or amendment to a Land Use Plan;
- (v) a Law enabling development or loss of protection of a heritage site relating to any cemeteries;
- (vi) any Law enacted under section 4.11 "**Spousal Property Law**";
- (vii) any other new Law enacted pursuant to this Land Code; and
- (viii) any amendment of a Law that Council, by Resolution, declares to be subject to this Part.

(b) **Ratification Process for this Land Code**

- (i) A Ratification Vote for this Land Code shall be conducted in accordance with the Framework Agreement, the *First Nations Land Management Act*

and the Band community ratification process approved by Council (the “**Band Community Ratification Process**”);

- (ii) All Eligible Voters are entitled to register to vote on the Land Code, in accordance with procedures set out in the Band Community Ratification Process;
- (iii) This Land Code shall be approved if
 - A. at least 25% of the Eligible Voters participate in the vote; and
 - B. at least 25% of all Eligible Voters vote to approve the Land Code.

(c) **Transfer Agreement with Canada**

For greater certainty, an amendment to, or renewal of, the Transfer Agreement does not require Community Approval unless the amendment or renewal reduces the amount of funding provided by Canada.

(d) **Ratification Process**

Any Ratification Vote required under this Land Code shall be conducted in substantially the same manner as the Band Community Ratification Process which was used to ratify this Land Code, with any modifications necessary to suit that particular situation, and with the voting threshold as set out in section 3.4(f) “**Minimum requirements for approval**”.

(e) **No Verifier**

A Verifier is not required in a Ratification Vote, except for the Ratification Vote to approve this Land Code pursuant to section 3.4(b) “**Ratification Process for this Land Code**”.

(f) **Minimum requirements for approval**

A Law or matter shall be considered approved by a Ratification Vote if 10% of the Eligible Voters participate in the vote and at least a Majority of the participating voters cast a vote in favour of the matter.

Part 4 - Interests and Licenses in Land

4.1 Limits on Interests and Licenses

(a) **All dispositions in writing**

An Interest in, or license to use, First Nation Land may only be created, granted, disposed of, assigned or transferred by a written instrument issued in accordance with this Land Code.

(b) **Standards**

Council may, after full and fair consideration of any recommendations made in accordance with section 6.1(b) "**Development of land related rules and procedures**", establish mandatory standards, criteria and forms for Interests and licenses in First Nation Land.

(c) **Improper transactions void**

A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Band, a Member or any other Person purports to grant, dispose of, transfer or assign an Interest or license in First Nation Land after the date this Land Code takes effect is void if it contravenes this Land Code.

(d) **Granting of Interests**

A Person, whether or not a Member, may hold a lease, sublease, easement, license, permit, mortgage or similar Interest in First Nation Land subject to this Land Code and any relevant Laws. For greater certainty, a Person who is not a Member shall not be issued a Certificate of Possession and shall acquire no Interest in a Certificate of Possession by transfer, by devise or descent.

(e) **Requirement for Grants**

The written consent of Council must be obtained for any grant or disposition of a lease, license, easement or permit in First Nation Land to any Person, whether or not a Member.

4.2 Existing Interests

(a) **Continuation of existing Interests**

Any Interest or license in First Nation Land that exists when this Land Code takes effect will, subject to this Land Code, continue in force in accordance with its terms and conditions. Any renewals in any Interest or license in First Nation

Land undertaken after this Land Code takes effect will be in accordance with the terms and conditions of this Land Code.

4.3 New Interests and Licenses

(a) Authority to make dispositions

In accordance with the General Zoning Bylaw and Land Use Plan, Council may by Resolution, upon a recommendation from the Lands Management Advisory Committee, grant:

- (i) Interests and licenses in First Nation Land, including leases, permits, easements and rights-of-ways to any Person but not a lease for a term exceeding 99 years;
- (ii) any renewal of a grant or disposition of an Interest or license in First Nation Land except a renewal that would extend the term of a lease beyond 99 years;
- (iii) Certificates of Possession to Members;
- (iv) any disposition of any natural resources on First Nation Land:
 - A. so long as the term of the disposition of natural resources does not exceed a term of 20 years;
 - B. for minerals, placer minerals, sand, rock or gravel, whether or not it exceeds a volume of 100 cubic meters per year;
 - C. for timber, whether or not it exceeds a volume of 500 cubic meters; and
 - D. for water or groundwater, excluding authorizations to connect to water services provided for a local government;
- (v) permits to take natural resources from First Nation Land, including but not limited to, cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances; and
- (vi) any voluntary exchange of First Nation Land;

(b) Interests Greater than 99 Years

In accordance with the General Zoning Bylaw and Land Use Plan, upon a recommendation from the Lands Management Advisory Committee, and upon

Community Approval following a Community Engagement Process, Council may by Resolution, grant:

- (i) Interests and licenses in First Nation Land, including leases, permits, easements and rights-of-ways to any Person for a term exceeding 99 years; and
- (ii) any renewal of a grant or disposition of an Interest or license in First Nation Land for a term of a lease beyond 99 years.

(c) **Authority to Grant Consents**

In accordance with the General Zoning Bylaw and Land Use Plan, Council may by Resolution, upon a recommendation from the Lands Management Advisory Committee, grant:

- (i) a consent to the granting by a lessee of First Nation Land of an assignment of the lease or a subletting of the First Nation Land including a mortgage of lease by way of assignment and a mortgage of lease by way of sublease;
- (ii) a consent to an assignment of a lease or a subletting of the First Nation Land where the assignment of lease or the subletting of the First Nation Land is subject to the approval of the First Nation; and
- (iii) a consent to the granting by a lessee of First Nation Land of a sublease where the granting of sublease is subject to the approval of the First Nation.

Council shall have the power at its discretion but upon receiving recommendations from the Lands Management Advisory Committee to impose conditions to the granting of its consents.

(d) **Conditional grant**

The grant of an Interest, license or permit may be made subject to written conditions, and upon receiving recommendations from the Lands Management Advisory Committee, Council may attach specific conditions to the grant of an Interest but any such conditions must be set out in writing in the granting of the Interest.

(e) **Role of the Lands Management Advisory Committee**

The Lands Management Advisory Committee shall advise Council on the granting of Interests, licenses, easements and permits and may be authorized to act as a delegate of Council under this Part.

(f) **Non-Disturbance Agreement**

Upon a recommendation of the Lands Management Advisory Committee, a Person, whether or not a Member, who holds a lease or sublease of, or has executed an agreement to lease or sublease for First Nation Land subject to this Land Code shall be given consideration for the granting of a non-disturbance agreement designed to facilitate the development of the First Nation Land. The non-disturbance agreement may provide for an assurance that the Interest of a subtenant and any Person who derives its Interest in the First Nation Land from the sublease will not be terminated on account of a default by the head lessee under its lease or a mortgage of the lease, or may otherwise remain in possession of the First Nation Land.

(g) **Statutory Rights of Way and Statutory Covenants**

A Person who holds or may hold an Interest or license in First Nation Land subject to this Land Code may and is deemed always to have been able to create, by grant or otherwise, a Statutory Right of Way and a Statutory Covenant. The following sections of the *Land Title Act* governing the registration, use and application of Statutory Rights of Way and Statutory Covenants are incorporated herein by reference and shall govern any Statutory Right of Way created or Statutory Covenant given under this Land Code: ss. 99, 113, 116, 117, 119, 218, 219, 221, 222 and 223, except that:

- (i) any reference to “registrar” shall be read as a reference to the “registrar of the First Nation Land Register”;
- (ii) any reference to “register” or “land title office” shall be read as a reference to the “First Nation Land Register”;
- (iii) any reference to “registration” shall be read as a reference to registration in the “First Nation Land Register”;
- (iv) any reference to “this Act” shall be read as a reference to “this Land Code”;
- (v) for the purposes of section 218, subsections 218(1)(d) and 281(2.1) shall not apply; and

- (vi) for the purposes of section 222, a covenant shall not be void and of no effect solely by reason of the fact that the covenant restricts the sale, ownership, occupation or use of the land to a Member or the First Nation.

4.4 Possession of Land by Members

(a) Nature of Members' Interest

Subject to section 3.4 "**Community Approval**", Council may enact Laws providing for an Interest in First Nation Land that entitles a Member holding First Nation Land to:

- (i) possession of the land;
- (ii) benefit from the resources arising from the land, with the exception of:
 - A. the removal of sand and gravel;
 - B. the cutting and removal of timber; and
 - C. subsurface mineral rights and claims;
- (iii) grant subsidiary Interests and licenses in the land, including leases, permits, easements, rights-of-ways, Statutory Rights of Way and Statutory Covenants;
- (iv) transfer, devise or otherwise dispose of the land to another Member; and
- (v) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act* as the same is in force when this Land Code comes into effect.

4.5 Allocation and Allotment of Land

(a) Allocation of lots

- (i) Council may, by lease or rental arrangement, allocate lots of available Band Land to Members in accordance with procedures established by Council.
- (ii) No Community Approval is required for an allocation under section 4.5(a)(i).
- (iii) An individual who is not a Member shall not be allocated a lot or otherwise hold a permanent Interest in First Nation Land.

(b) **Allotment of lots**

- (i) Council may allot lots of available land to Members in accordance with procedures established by Council.
- (ii) No Community Approval is required for an allotment under section 4.5(b)(i).
- (iii) An individual who is not a Member shall not be allotted a lot or hold a permanent Interest in First Nation Land.

(c) **Issuance of Certificate of Possession**

Subject to section 4.6(c) **“Cancellation of a CP”**:

- (i) Council will issue a Certificate of Possession to a Member for a lot for which a Member has received an Allotment, provided that the Member has met the necessary conditions and requirements established by the Council’s policies; or
- (ii) Council may, in its sole direction, issue a Certificate of Possession to a Member for a lot for which a Member has received an Allocation, provided that the Member has met the necessary conditions and requirements established by the Council’s policies.

(d) **Band Land**

- (i) Where a Member or Members claim an ownership interest in Band Land, and wishes the Band Land to be allotted to that Member or Members, the Member or Members may submit the claim (“Claim”) to the Band Land and basis for the claim, including a sketch of the Band Land subject to the Claim, to the Lands Management Advisory Committee;
- (ii) If the Lands Management Advisory Committee does not consider the Claim to the Band Land by the Member or Members to be valid, it will so advise the Member or Members of its decision in writing and provide a copy of its decision to the Council;
- (iii) If the Lands Management Advisory Committee considers the Claim to the Band Land by the Member or Members to be valid, it will so advise the Member or Members of its decision in writing and provide written recommendations to the Council;
- (iv) If after receiving the recommendation of the Lands Management Advisory Committee, the Council considers the Claim to the Band Land by the Member or Members to be valid in accordance with the Band’s

Allotment and Allocation Policy, it may allot the Band Land to the Member or Members;

- (v) If after receiving the recommendation of the Lands Management Advisory Committee, the Council does not consider the Claim to the Band Land by the Member or Members to be valid, it will so advise the Member or Members of its decision in writing;
- (vi) If the Lands Management Advisory Committee or the Council have decided that the Claim to the Band Land by the Member or Members is not valid, the Member or Members claiming an ownership interest in Band Land may refer the matter for determination to the Dispute Resolution Panel pursuant to Part 8 - **Dispute Resolution**”;
- (vii) In making their decisions hereunder, the Lands Management Advisory Committee and the Council shall give due consideration to the Land Use Plan and to any other policy or guideline of the Lands Management Advisory Committee and the Council respecting land use, as applicable; and
- (viii) If a Claim is approved by the Council, the Member or Members claiming the Band Land will cause a legal survey to be completed by a qualified Canada Land Surveyor and the cost of the legal survey will be borne by the Band.

4.6 Transfer and Assignment of Interests

(a) Transfer of Interests

Subject to section 4.7(a) **“Transfer and Use of CPs”**, a Member may transfer or assign an Interest in First Nation Land to another Member without the need for Community Approval or consent of Council.

(b) Consent of Council

Except for transfers under section 4.6(a) **“Transfer of Interests”** and transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted pursuant to section 4.11 **“Spousal Property Law”**:

- (i) there shall be no transfer or assignment of an Interest in First Nation Land without the written consent of Council; and
- (ii) the grant of an Interest or license is deemed to include the requirements of section 4.6(b)(i) as a condition of any subsequent transfer or assignment.

(c) **Cancellation of a CP**

Council may, by Resolution, cancel an Allocation, Allotment or CP that was issued in error or in violation of this Land Code provided that Council:

- (i) gives the CP Holder at least 30 days written notice of an intention to cancel and provides the holder with an opportunity to make submissions and arguments;
- (ii) consults with the Land Manager and the Lands Management Advisory Committee ; and
- (iii) in the Resolution, sets out the justification or necessity of cancelling the Allocation or Allotment or CP, such justifications or necessities may include, but are not limited to:
 - A. the CP, Allocation or Allotment was issued in error to a non-Member;
 - B. the CP, Allocation or Allotment was issued with conditions under this Land Code and the conditions were not met; or
 - C. the CP, Allocation or Allotment was issued to an individual who was a Member at the time of the issuance but later became a non-Member.

4.7 Transfer, Use and Assignment of Interests

(a) **Transfer and Use of CPs**

A Member may transfer or assign a Certificate of Possession on First Nation Land to another Member without the need for any Community Approval or consent of the Council, but:

- (i) all such transfers must be registered in the First Nation Land Registry and Lower Nicola Indian Band Land Registry to take effect;
- (ii) CP Lands and structures may be rented for residential purposes to Members but shall not be rented for residential purposes to Persons who are not Members; and
- (iii) CP Lands shall not be leased for commercial, industrial or other purposes unless:
 - A. the General Zoning Bylaw so permits;

- B. the use of the CP Lands and structures are in accordance with the Land Use Plan;
- C. the term of the lease of the CP Lands does not exceed 99 years and
- D. the subject lands and intended use of said lands and appurtenant buildings, existing or intended, satisfy the Band's Environment Policy.

(b) **Consent of Council**

Except for transfers made pursuant to sections 4.7(a) "**Transfer and Use of CPs**", 4.7(c)(i) or 4.7 (c)(ii) "**Ceasing to be a Member**" and transfers that occur by operation of law such as transfers through wills, estates or spousal property:

- (i) there shall be no transfer or assignment of an Interest in First Nation Land without the written consent of the Council by Resolution; and
- (ii) the grant, transfer or assignment of an Interest is deemed to include section 4.7(b) as a condition on any subsequent grants, transfers or assignments.

(c) **Ceasing to be a Member**

- (i) A person who ceases to be a Member shall, within six months after the day he or she ceases to be a Member, transfer any Allocation, Allotment or CP he or she holds to the Band or another Member;
- (ii) If a Member fails to transfer his or her Allocation, Allotment or CP pursuant to section 4.7(c)(i), the Allocation, Allotment and any CP issued shall, six months and one day after the person ceases to be a Member, be cancelled and the First Nation Land described in the Allocation, Allotment and any CP shall automatically become Band Land.
- (iii) If an Allocation, Allotment or CP reverts to the Band pursuant to section 4.7(c)(ii):
 - A. the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any Interest he or she held prior to the date the Allocation, Allotment or CP reverts to the Band; and
 - B. valid leases or other Interests held by third parties will continue on the former Allocation, Allotment or CP that reverts to the Band

until their term expires or they reach a negotiated agreement with the Band to terminate or modify their Interest.

4.8 Limits on Mortgages and Seizures

(a) Protections

In accordance with the Framework Agreement, sections 29 (Exemption from Seizure), 87 (Property Exemption from Taxation), 89(1) (Restriction on Mortgage Seizure) and 89(2) (Conditional Sales) of the *Indian Act* continue to apply to First Nation Land.

(b) Mortgage of Member's Interest

The Interest of a Member in First Nation Land may be subject to a mortgage or charge only to the First Nation or another Member provided that a leasehold Interest of a Member may be subject to charge or mortgage in accordance with the provisions of the lease, if the lease permits.

(c) Time limit

The term of any charge or mortgage of a leasehold Interest shall not exceed the term of the lease.

(d) Default in mortgage

In the event of default in the terms of a charge or mortgage of a leasehold Interest granted by the Band or granted by a corporation controlled by the Band, the leasehold Interest is not subject to possession by the chargee or mortgagee pursuant to foreclosure, power of sale or any other form of execution or seizure, unless:

- (i) the charge or mortgage was registered in the First Nation Land Register; and
- (ii) a reasonable opportunity to redeem the charge or mortgage was given to Council on behalf of the Band.

(e) Power of redemption

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

4.9 Tenancy and Access Rights

(a) **Right of tenancy**

Subject to this Land Code, Laws or Resolutions, the following persons may reside on First Nation Lands:

- (i) a Member who has been allocated a residential lot by Council;
- (ii) a Spouse and children (natural and adopted, whether by Provincial law or Nlaka'pamux tradition) of a Member referred to in subsection 4.9(a)(i);
- (iii) a Member with a registered Interest in First Nation Land;
- (iv) any invitee of a Member referred to in subsection 4.9(a)(i) or 4.9(a)(ii);
and
- (v) lessees and permittees, in accordance with the provisions of the instrument granting the lease or permit.

(b) **Right of Access**

Subject to this Land Code, Laws or Resolutions, the following Persons have a right of access to First Nation Lands:

- (i) a lessee;
- (ii) a lessee's invitees;
- (iii) a permittee and any Person who is granted a right of access under the permit;
- (iv) a Member;
- (v) a Member's Spouse and children (natural and adopted, whether by Provincial law or Nlaka'pamux tradition);
- (vi) a Person who is authorized in writing by a government body or any other public body, established by or under an enactment of the Band, Parliament or the Province of British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- (vii) a Person authorized in writing by Council, the Lands Management Advisory Committee or by a First Nation Law.

(c) **Public access**

A Person may have access to First Nation Land for social or business purposes if:

- (i) the Person does not trespass on occupied land and does not interfere with any Interest in land;
- (ii) the Person complies with all applicable Laws; and
- (iii) no Resolution has been enacted barring that Person from having access to First Nation Land.

(d) **Trespass**

Any Person who resides on, enters or remains on First Nation Land other than in accordance with a valid lease of First Nation Land, a right of residence or access under this Land Code or a related Law or as an invitee or licensee of a lessee of First Nation Land or a holder of an Certificate of Possession, is guilty of an offence and may, in addition to other remedies, be ordered evicted or removed by Resolution, enforceable by any peace officer or enforcement official designated by Council by Resolution.

(e) **Civil remedies**

All civil remedies for trespass are preserved.

4.10 Transfers on Death or Mental Incompetence

(a) **Right of widow or widower**

In the event that a Member holding an Interest in First Nation Land:

- (i) dies and is survived by a Spouse who does not hold a registered Interest in that land; or
- (ii) is declared incompetent due to mental incapacity;

the Member's Spouse may reside on and use the land until such time as a determination is made under section 4.10(b)(ii).

(b) Location of Family Members

If no provision has been made by a Member holding an Interest in First Nation Land referred to in section 4.10(a) “**Right of widow or widower**” or the disposition of the Interest in the First Nation Land to another Member:

- (i) the Lands Management Advisory Committee shall take reasonable steps to advise the Member’s Immediate Relatives that the Interest in land held by the Member is available for disposition;
- (ii) the Member’s Immediate Relatives may, with the assistance of the Panel if necessary, decide who among them is to receive the Interest in the land; and
- (iii) if the Member left no Immediate Relatives or heirs and no will, the Interest will revert to the Band as Band Land and:
 - A. if it is an Allocation, Allotment or CP, may at Council’s discretion be returned to the pool of lands for Allocation or Allotment to Members who do not have an Allocation or Allotment; or
 - B. may be used by the Band for Band purposes.

4.11 Spousal Property Law

(a) Development of rules and procedures

In accordance with section 7 (Power to enact First Nations laws) of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, Council shall enact a Spousal Property Law providing rules and procedures applicable on the breakdown of a marriage or a common-law marriage, to:

- (i) the use, occupancy and possession of First Nation Land; and
- (ii) the division of Interests in that land.

(b) Enactment of rules and procedures

The rules and procedures contained in the Spousal Property Law shall be developed by the Lands Management Advisory Committee in consultation with the community, through a Community Engagement Process and shall be enacted within 12 months from the date this Land Code takes effect, or such longer period as may be agreed in writing by the Council.

(c) General principles

For greater certainty, the rules and procedures developed by the Lands Management Advisory Committee under this section shall respect the following general principles:

- (i) regard for the best interests of any children of the marriage and compliance with any related court orders;
 - (ii) unless a marriage contract or a pre-marital agreement outlining otherwise has been signed by both spouses:
 - A. each Spouse shall have an equal right to possession of the matrimonial home;
 - B. each Spouse shall be entitled to an undivided half interest in the matrimonial home as a tenant in common;
 - (iii) the rules and procedures shall not discriminate on the basis of sex; and
 - (iv) only Members are entitled to hold a Certificate of Possession or a charge against a Certificate of Possession.
- (d) **Approval of Spousal Property Law**
- (i) any Spousal Property Law proposed hereunder must be submitted for Community Approval; and
 - (ii) shall be approved if at least 25% of the Eligible Voters participate in the vote and a majority of those who participated in the vote voted to approve it.

Part 5 - Protection of Land

5.1 Expropriation

(a) **Right and Interest that may be expropriated**

An Interest or license in First Nation Land, or in any building or other structure on those lands, may only be expropriated by the Band in accordance with the Framework Agreement and any Law enacted in accordance with section 5.1(c) “**Expropriation Laws**”.

(b) **Community purposes**

A community expropriation may only be made for a Community Purpose, including but not limited to a fire hall, sewage or water treatment facility, public works, cemetery, roads, schools, day-care facilities, and “not for profit” facilities

such as hospitals, health-care facilities, retirement homes, day-care facilities, community centres and other similar community facilities, and to protect heritage sites.

(c) **Expropriation Laws**

An Interest or license in First Nation Land or in any building or other structure on such land may only be expropriated by the Band provided the following conditions, in the order listed, have been met:

- (i) a Law has been enacted setting out:
 - A. a procedure governing the expropriation process;
 - B. a method of determining fair compensation to be paid to the Interest holder; and
 - C. the procedure for an arbitrator or a panel of arbitrators to resolve disputes regarding the amount of compensation to be paid to any Interest holder;
- (ii) Written notice has been given to the Interest holder specifying the Interest that is considered for expropriation or cancellation as a result of an expropriation;
- (iii) Council has undertaken a Community Engagement Process;
- (iv) Council has attempted in good faith to negotiate an agreement with the Interest-holder for the transfer or cancellation of the Interest that or cancellation of permit that is being considered for expropriation but has failed to reach such an agreement; and
- (v) Council has issued a report to the Members setting out for their input the Community Purpose for which the proposed expropriation is required and the necessity for the proposed expropriation.

(d) **Rights that may not be expropriated**

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 Band.

(e) **Acquisition by mutual agreement**

The right of the Band to expropriate can be exercised only after a good faith effort to acquire, by mutual agreement, the Interest or license in First Nation Land.

(f) **Compensation for rights and Interests**

The Band shall, in accordance with its Laws and the Framework Agreement:

- (i) serve reasonable notice of the expropriation on each affected holder of the Interest or license to be expropriated;
- (ii) pay fair and reasonable compensation to the holder of the Interest or license being expropriated; and
- (iii) no land will be expropriated when the Band has insufficient funds to provide compensation as described in section 5.1(g) "**Compensation Calculations**" of this Land Code.

(g) **Compensation calculations**

The total value of the compensation under section 5.1(f)(ii) shall be based on:

- (i) the fair market value of the Interest or license being expropriated determined in accordance with section 5.1(h) "**Fair Market Value**";
- (ii) the replacement value of any improvement to the land being expropriated;
- (iii) the damages attributable to any disturbance; and
- (iv) damages for any reduction in the value of a remaining Interest.

(h) **Fair Market Value**

The fair market value of an expropriated Interest or license:

- (i) shall be assessed by a mutually agreed upon professional land appraiser certified by the Accredited Appraiser Canadian Institute. The terms of reference for the appraisal shall be determined by the Council by Resolution. The costs for the appraiser shall be borne by the Band. If the parties cannot agree upon a professional land appraiser to determine fair market value, the matter will be determined by arbitration in the same manner provided in Part IX (Dispute Resolution) of the Framework Agreement;

(ii) is equal 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 Member seller to a willing Member buyer based on the current or existing use of the Interest or license. For greater certainty, the fair market value of an expropriated Interest or license shall reflect the provisions of this Land Code, including any restrictions on what may be done with the Interest or license and the need to obtain approvals.

(i) **Neutral evaluation to resolve disputes**

The resolution of disputes concerning the right of the Band to expropriate shall be determined by the Panel established under section 8.1 “**Dispute Resolution Panel**” of this Land Code only if all the parties consent in writing to its use and if all the parties do not consent in writing to its use, by neutral evaluation in the same manner as provided in Part IX (Dispute Resolution) of the Framework Agreement and the 60 day period referred to in clause 32.6 (Expropriation of First Nation Land by Canada - Restrictions) of the Framework Agreement shall be applied, as appropriate in the circumstances, by the neutral evaluator.

(j) **Arbitration to resolve disputes**

The Resolution of the following disputes shall be determined by arbitration in the same manner as provided in Part IX (Dispute Resolution) of the Framework Agreement:

- (i) disputes concerning the right of the holder of an expropriated Interest or license to compensation; and
- (ii) disputes concerning the amount of compensation.

(k) **Forfeiture is not Expropriation**

Notwithstanding the provisions of section 5.1 “**Expropriation**”, Council is not required to proceed through the steps set out in sections 5.1(a) to 5.1(j) inclusive to cancel an Interest or proceed with and complete a forfeiture for a tax debt or other debt owing to the First Nation.

5.2 Heritage Sites

(a) **Heritage Site Law**

The Council shall within 24 months after this Land Code takes effect, enact a Law regarding heritage sites.

(b) **Community Approval of development**

No amendment may be made to a Land Use Plan to delete a heritage site designated under that plan unless the amendment receives Community Approval.

5.3 Voluntary Land Exchanges and Protections

(a) **Conditions for a land exchange**

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

(b) **No effect**

An exchange of reserve land by the Band or by a corporation controlled by the Band in accordance with section 5.3(a) "**Conditions for a land exchange**" is of no effect unless it receives Community Approval under section 3.4 "**Community Approval**".

(c) **Land to be received**

No land exchange may be agreed to unless the land to be received by the Band in the exchange:

- (i) is at least comparable, having regard to any compensation received under section 5.3(e) "**Additional land**", to the appraised value of the First Nation Land; and
- (ii) is eligible to become or shall become a reserve and First Nation Land subject to this Land Code.

(d) **Negotiators**

Any Person who negotiates a land exchange agreement on behalf of the Band must be designated by way of Resolution for that purpose.

(e) **Additional land**

The Band may receive compensation, such as money or one or more other parcels of land that are not reserve land, in addition to or substitution for the land referred to in section 5.3(c) "**Land to be received**", and such other land may be held by the Band or a nominee on behalf of the Band in fee simple or in some other manner and any such additional land does not need to meet the requirements set out in section 5.3(c) "**Land to be received**".

(f) **Federal consent**

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

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

(g) **Community notice**

At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided in section 5.3(b) "**No effect**", Council or the Lands Management Advisory Committee shall provide the following information to the Eligible Voters in a manner consistent with the confidential nature of the information:

- (i) a description of the First Nation Land to be exchanged;
- (ii) a description of the land to be received by the First Nation;
- (iii) a description of any other compensation to be exchanged;
- (iv) a report of a professional land appraiser certified by the Accredited Appraiser Canadian Institute stating that the conditions in section 5.3(c) "**Land to be received**" have been met, if applicable;
- (v) subject to any confidentiality obligations, a copy or summary of the exchange agreement; and
- (vi) a copy of the statement referred to in section 5.3(f) "**Federal consent**".

(h) **Process of land exchange**

A land exchange agreement shall provide that:

- (i) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (ii) Council must pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and

- (iii) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register.

Part 6 - Land Administration

6.1 Lands Management Advisory Committee

(a) Lands Management Advisory Committee established

- (i) The Lands Management Advisory Committee is hereby established to assist with the development of the land administration system;
- (ii) advise Council and its staff on matters respecting First Nation Land;
- (iii) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
- (iv) hold regular and special meetings of Members to discuss land issues and make recommendations to Council on the resolution of these land issues;
- (v) assist in the flow of information on land issues between Members and Council;
- (vi) oversee Community Engagement Process and Community Approvals under this Land Code;
- (vii) oversee other consultations under this Land Code; and
- (viii) perform such other duties and functions as Council may direct.

(b) Development of land related rules and procedures

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

- (i) the process and criteria for granting Interests in First Nation Land;
- (ii) the process and criteria for an appeal from a decision to grant or refuse to grant Interests in First Nation Land;
- (iii) environmental protection and assessment in relation to First Nation Land;
- (iv) resolution of disputes in relation to First Nation Land;

- (v) land use planning and zoning; and
- (vi) section 4.11 “**Spousal Property Law**”, including whether any change should be made to the policy upon which that Part is based.

(c) **Implementation of policies**

Rules and procedures developed in accordance with section 6.1(b) “**Development of land related rules and procedures**” shall be considered by Council for implementation as Laws, policies or amendments to this LandCode.

(d) **Internal procedures**

The Lands Management Advisory 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.

6.2 Membership of the Lands Management Advisory Committee

(a) **Composition**

The Lands Management Advisory Committee shall be composed of an uneven number of no less than five and no more than seven Members, all of whom must be Eligible Voters save and except for the Lands Manger.

(b) **Eligibility to be appointed as a Lands Management Advisory Committee Member**

Any Eligible Voter, whether resident on or off First Nation Land, is eligible for appointment to a Member position of the Lands Management Advisory Committee, except for the following:

- (i) any Eligible Voter convicted of an offence that was prosecuted by way of indictment except for a conviction for an offense where the person was involved in the support or defense of an aboriginal right or title;
- (ii) any undischarged bankrupt or owes money to the Band; and
- (iii) any Eligible Voter convicted of a corrupt practice in connection with an election, including but not limited to, accepting a bribe, dishonesty or wrongful conduct.

(c) **Selection of Lands Management Advisory Committee Members**

The members of the Lands Management Advisory Committee shall be appointed by Council and shall be composed of the following:

- (i) one Member of Council as determined by Council;
- (ii) the Lands Manager, ex officio; and
- (iii) the remaining Members appointed from the Eligible Voters, subject to the eligibility requirements set out in section 6.2(b) **“Eligibility to be appointed as a Lands Management Advisory Committee Member”**.

(d) **Term of office**

- (i) The term of office of a member of the Lands Management Advisory Committee appointed under this Land Code shall not exceed four years, but nothing precludes such member from being elected for further terms; and
- (ii) The appointment under section 6.2(c) **“Selection of Lands Management Advisory Committee Members”** shall be made as soon as practicable after an election of Council.

(e) **Staggered terms**

In the first election held under this Land Code:

- (i) the first half of the number of appointed members of the Lands Management Advisory Committee under section 6.2(c)(iii) with the highest and sequentially next highest number of votes from Council shall hold office for a term commencing at midnight of the appointment date and terminating at midnight four years following the appointment date or upon being replaced in a subsequent appointment, whichever occurs first;
- (ii) the remaining one half of the number of appointed members of the Lands Management Advisory Committee under section 6.2(c)(iii) shall hold office for a term commencing at midnight of the appointment date and terminating at midnight two years following the appointment date or upon being replaced in office in a subsequent appointment, whichever occurs first; and
- (iii) thereafter the appointed members of the Lands Management Advisory Committee will hold office for a term commencing at midnight on the date of their appointment and terminating at midnight four years following that date, or upon being replaced in office in a subsequent appointment, whichever occurs first.

(f) **Vacancy on Lands Management Advisory Committee**

The office of a Member of the Lands Management Advisory Committee becomes vacant if the Member, while holding office:

- (i) is or becomes ineligible to hold office under section 6.2(b) **“Eligibility to be appointed as a Lands Management Advisory Committee Member”**;
- (ii) ceases to be a Member because of a transfer of membership from the Band;
- (iii) is absent for three consecutive meetings of the Lands Management Advisory Committee for a reason other than illness or incapacity without being authorized to be absent by majority of the Lands Management Advisory Committee;
- (iv) dies or becomes mentally incompetent; or
- (v) the Member of the Lands Management Advisory Committee appointed under section 6.2(c)(i) ceases to be a Member of Council.

(g) **Vacancy in term**

Where the office of a Member of the Lands Management Advisory Committee becomes vacant more than 90 days before the date when another appointment would be made, an appointment shall be made by Council in accordance with this Land Code to fill the vacancy.

(h) **Balance of term of office**

The term of a Member of the Lands Management Advisory Committee appointed to fill a vacancy under section 6.2(g) **“Vacancy in term”** is the balance of the term in respect of which the vacancy occurred.

6.3 Chair of the Lands Management Advisory Committee

(a) **Chair**

The Member of Council who is appointed under section 6.2(c)(i) **“Selection of Lands Management Advisory Committee Members”** shall be the Chair of the Lands Management Advisory Committee.

(b) **Alternate Chair**

If the Chair is unable to perform the functions of office either temporarily or on a long term basis, the Lands Management Advisory Committee shall appoint

another Member of the Lands Management Advisory Committee to act as the Chair, subject to confirmation by Council.

(c) **Duties of the Chair**

The Chair shall:

- (i) chair meetings of the Lands Management Advisory Committee;
- (ii) ensure that there is an agenda prepared and circulated to Lands Management Advisory Committee Members in advance of each meeting and that the agenda is followed, as amended, at each meeting;
- (iii) ensure the preparation of financial statements relating to all activities of the Lands Department, including any applicable revenues and expenditures concerning First Nation Lands;
- (iv) table any financial statements of the Lands Department with Council;
- (v) report to the Council and Members on the activities of the Lands Management Advisory Committee and Lands Department;
- (vi) ensure the audited annual financial statements are presented under section 7.5(c)(i) “**Explanation of auditor’s report**”; and
- (vii) perform such other duties as Council may reasonably prescribe.

6.4 Revenue From Lands

(a) **Determination of fees and rent**

The Lands Management Advisory Committee shall, subject to the approval of Council, establish a process for determining:

- (i) any application, grant of Interest, payment, fees, rent, royalty or other amount relating to a Law, process or grant under this Land Code;
- (ii) fees for services provided in relation to any First Nation Land and compliance with this Land Code; and
- (iii) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code.

(b) **Consideration of obligation**

Subject to section 7.2(b) “**Establishment of bank accounts**”, the Lands Management Advisory Committee shall recommend to Council processes and

criteria for managing the Band's obligations in relation to revenue from First Nation Land.

6.5 First Nation Land Register

(a) Duplicate Register

Council shall ensure that a duplicate copy of the following instruments is deposited in the First Nations Land Register:

- (i) any grant of an Interest or license in First Nation Land;
- (ii) any transfer or assignment of an Interest in First Nation Land;
- (iii) every land use plan, subdivision plan or resource use plan; and
- (iv) this Land Code and any amendment to this Land Code.

6.6 Registration of Interests and Licenses

(a) Duty to maintain

Council shall maintain a Lower Nicola Indian Band Land Register in the same form and with the same content as the First Nation Land Register.

(b) Enforcement of Interests and licenses

An Interest or license in First Nation Land created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Land Register.

(c) Duty to deposit

- (i) Council shall ensure that an original copy of the following instruments is deposited in the First Nation Land Register:
 - A. Any grant of an Interest or license in First Nation Land;
 - B. Any transfer or assignment or encumbrance of an Interest 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.

- (ii) Every Person who receives an Interest or license in First Nation Land from a Member shall deposit an original copy of the relevant instrument in the First Nation Lands Register.
- (iii) Without limiting the generality of subsection (ii) above, any Person in whose favour a Statutory Right of Way has been created or a Statutory Covenant has been granted in accordance with section 4.3(g) "Statutory Rights of Way and Statutory Covenants" of this Land Code shall comply with the deposit and registration requirements set out in those sections of the *Land Title Act*, incorporated herein by reference as set out and amended in section 4.3(g) "Statutory Rights of Way and Statutory Covenants".

(d) Registration of consent or approval

No instrument that requires the consent of Council, or Community Approval, may be registered unless a certified copy of the document that records the consent or approval is attached to the instrument.

(e) Effect of Registration

- (i) Subject to Section 6.6(e)(ii), Interests registered under this Land Code that affect the same parcel of First Nation Land shall have priority according to the time and date of their registration and not according to the time and date of their execution.
- (ii) For greater certainty, Section 6.6(e)(i) does not apply to a document that does not grant an Interest.
- (iii) A registered Interest affecting a parcel of First Nation Land is entitled to priority over an unregistered Interest affecting the same parcel of First Nation Land.
- (iv) A registered mortgage has priority over a subsequently registered Interest that affects the same parcel of First Nation Land, to the extent of the money actually advanced under the mortgage, to a maximum of the amount secured by the mortgage, even if all or part of the money was advanced after the registration of the subsequently registered Interest, unless the mortgagee had actual notice of the registration of the subsequently registered interest before making the advance.
- (v) The holder of a registered Interest, or a person applying to register an Interest, may apply to record a postponement agreement that gives priority over the registered Interest to a specified Interest that was, or is to be, subsequently registered.

(vi) On the recording of a postponement agreement, priority shall be accorded to the Interests referred to in the agreement in the manner provided for in the agreement.

(f) **Priorities**

(i) An Interest that was registered in the First Nation Land Register before the day on which this Land Code come into force has priority over an Interest registered under this Land Code on or after that day.

(ii) Section 6.6(f)(i) shall not be interpreted to confer a priority on one Interest that was registered in the First Nation Land Register before the day on which this Land Code come into force over any other Interest that was also registered in the First Nation Land Register before that day.

Part 7 - Accountability

7.1 Conflict of Interest

(a) **Application of conflict of interest rules**

The rules in section 7.1(b) “**Duty to report and abstain**” apply to the following Persons when dealing with a matter, interest or decision relating to the First Nation Land:

- (i) each member of Council who is dealing with any matter before Council;
- (ii) each Person who is an employee or contractor of the Band; and
- (iii) each Person who is a member of a board, committee or other body of the Band.

(b) **Duty to report and abstain**

If there is any interest, financial or otherwise, in the matter being dealt with that might involve the Person or his or her Immediate Relatives, that Person shall:

- (i) disclose in writing and/or orally at such meeting the interest to the Council and, if appropriate, to their employment, supervisor, board, committee or other body as the case may be;
- (ii) take no part in any deliberations on that matter;
- (iii) take no part in any votes, Resolutions, decisions or recommendations on that matter; and

- (iv) remove themselves from the room during deliberation and discussion amongst the remaining Council, board, committee, or other body, as the case may be.

(c) **Common Interests**

Section 7.1(b) “**Duty to report and abstain**” does not apply to any Interest that is held by a Member in common with every other Member. A Member shall not be considered to be in conflict if the proposed decision will benefit that Member in the same way it will benefit all Members.

(d) **Inability to act**

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

(e) **Meeting of Eligible Voters**

If Council is unable to vote on a proposed amendment of a Law or Resolution due to a conflict of interest Council may refer the matter to a Meeting of Members for a decision by Ratification Vote under section 3.4 “**Community Approval**”.

(f) **Specific Conflict Situations**

- (i) Not more than two Members from the same Extended Family may be members of a board, committee or other body dealing with any matter that is related to First Nation Land; and
- (ii) For greater certainty, section 7.1(f)(i) does not apply to Council.

(g) **Disputes**

Questions about whether a breach of this Part has occurred may be referred by any Person to the Panel.

(h) **Other Laws**

Council may enact such further Laws as may be necessary to implement this section.

(i) **Penalties**

In addition to any other penalty that may be prescribed by Council, by federal or provincial law or by a Law for breach of this Part, a Person is liable to the First Nation to repay any benefit to himself or herself, an immediate Family member

or a business in which that Person holds an interest, resulting from a violation of this Part.

7.2 Financial Matters

(a) Application

This Part 7 “**Accountability**” applies only to financial matters relating to First Nation Land, and revenues derived from and expressly incurred in respect of First Nation Land.

(b) Establishment of bank accounts

Any monies received by the Band or corporations controlled by the Band that are derived from the administration of First Nation Land under the Framework Agreement and this Land Code, excluding property tax under this Land Code, must be receipted and fully deposited, without delay, in the general account of the Band and broken into a sub-account designated for First Nation Land and natural resources revenues, in accordance with generally accepted accounting practices, including:

- (i) transfer payments received from Canada for the management and administration of First Nation Land;
- (ii) monies received by the Band from the grant or disposition of any Interests or licenses in First Nation Land;
- (iii) all fees, fines, charges and levies collected under a Law or land Resolution;
- (iv) all capital and revenue monies received from Canada from the grant or disposition of any Interests and licenses in First Nation Land; and
- (v) any other land or natural resources revenue received by the Band excluding property tax.

(c) Controlled by the Band

For the purpose of this Part 7 “**Accountability**”, “controlled by the Band” means with respect to a corporation, the direct or indirect possession of the power to direct or cause the direction of the affairs or management of the corporation, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise, including, without limitation:

- (i) the right to exercise a majority of the votes which may be cast at a general meeting of a corporation; and
- (ii) the right to elect or appoint, directly or indirectly, a majority of the directors of a corporation or other Persons who have the right to manage or supervise the management of the affairs and business of the corporation.

(d) **Preparation of Budget**

The Lands and Natural Resources Budget shall be prepared by the Financial Controller of the Band in consultation with the Lands Manager and any other department that the Financial Controller considers relevant before the commencement of the fiscal year and shall provide a summary of anticipated revenues from First Nation Land and natural resources and proposed expenditures for those funds.

(e) **Adoption of budget**

Council shall:

- (i) 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 by Resolution one or more supplementary budgets for that fiscal year;
- (ii) prior to adopting a budget referred to in section 7.2(h)(i), consult with the Lands Management Advisory Committee.

(f) **Supplementary Budget**

Prior to adopting a supplementary budget referred to in section 7.2(e)(i), Council will request the Financial Controller and Lands Manager to prepare and comment on the supplementary budget.

(g) **Procedure**

After adopting a land management budget or supplementary budget, Council shall, without undue delay:

- (i) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and
- (ii) make a copy of the budget or supplementary budget available at the administrative offices of the Band for inspection by Members.

(h) **If no Budget**

If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year:

- (i) the budget and any supplementary budgets of the previous fiscal year shall apply until a new budget is adopted; and
- (ii) Council will adopt a land management budget as soon as possible.

(i) **Budget rules**

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

(j) **Expenditures**

Except in the event of an emergency, Council may not expend monies related to land or commit itself, by contract or otherwise, to expend monies related to land unless the expenditure is authorized by or under a Law or an approved budget.

(k) **Other Laws and policies**

Council may enact such further Laws or adopt such further policies as may be necessary to implement this Part.

7.3 Financial Records

(a) **Application**

The intent of this

(b) **Financial records**

The Band shall keep financial records related to budgets, revenue and expenditures in accordance with generally accepted accounting principles and in accordance with the Band's financial policy.

(c) **Offences**

A Person is guilty of an offence if that Person:

- (i) impedes or obstructs anyone from exercising their right to inspect the financial records of the Band; or

- (ii) has control of the financial records of the Band and fails to give all reasonable assistance to a Member exercising his or her right to inspect the financial records.

(d) **Preparation of financial statement**

Within 120 days after the end of each fiscal year, the Band Finance Department shall prepare a financial statement, in comparative form, containing at a minimum:

- (i) a balance sheet;
- (ii) 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
- (iii) any other information necessary for a fair presentation of the financial position of the Band.

(e) **Consolidated accounts**

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

7.4 Audit

(a) **Appointment of auditor**

For each fiscal year, a duly accredited auditor shall be appointed by Council by Resolution and contracted with to audit the financial records of the Band relating to the First Nation Land.

(b) **Term of Service**

The auditor appointed under this Part shall continue to act for the Band until reappointed or replaced.

7.5 Remuneration

The auditor's remuneration shall be as agreed to by Council in accordance with the terms of any contract entered into between the Band and the auditor.

(a) **Duty of auditor**

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

(b) **Access to records**

In order to prepare the report on the Band's financial statement, the auditor may at all reasonable times inspect any financial records of the Band and the financial records of any Person or body who is authorized to administer First Nation Land land-related money on behalf of the Band.

(c) **Explanation of auditor's report**

- (i) Council shall present the auditor's report to the Members at a Meeting of Members.
- (ii) Nothing precludes an auditor contracted with for other Band audits from being contracted under section 7.4(a) "**Appointment of auditor**".

7.6 **Annual Report**

(a) **Publish annual report**

Council shall, within 30 days of receiving an audit report under section 7.5(a) "**Duty of auditor**", prepare and table with the Lands Management Advisory Committee , an annual report on First Nation Land management which shall include:

- (i) an annual review of land management activities;
- (ii) a copy and explanation of the audit report as it applies to First Nation Lands; and
- (iii) such other matters as may be determined by Council or the Lands Management Advisory Committee .

7.7 Access to Information

(a) Access

Any Member may, during normal business hours at the main administration office of the Band, have reasonable access to:

- (i) the register of Laws;
- (ii) the auditor's report under section 7.5(a) "**Duty of auditor**" above;
- (iii) the budget or supplementary budget referenced in section 7.2(f) "**Supplementary Budget**" above, and
- (iv) the annual report on lands issues in section 7.6 "**Annual Report**".

(b) Copies for Members

Any Member may, during normal business hours at the main administration office of the Band, upon payment of any reasonable fee set by Resolution, obtain a copy of the auditor's report, annual report on First Nation Land management, budget or supplementary budget.

Part 8 - Dispute Resolution

8.1 Dispute Resolution Panel

(a) Panel established

A Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to First Nation Land.

(b) Appointment of Panel

A Panel shall be composed of three Eligible Voters.

(c) Representation

- (i) The Lands Management Advisory Committee shall appoint the Panel, and shall ensure that the Panel represents the various elements of the community, including Elders and non-resident Members.
- (ii) The Lands Management Advisory Committee shall establish rules and procedures for the appointment of members to the Dispute Resolution Panel, provided that any such rules and procedures are not inconsistent

with any rules and procedures established by Council, and such rules and procedures must be approved by Council by Resolution.

(d) **Term of office**

Panellists shall hold office for a term of three years. A panellist may be re-appointed at the end of his or term of office.

(e) **No remuneration**

Unless Council by Resolution provides otherwise, panellists shall receive no remuneration.

8.2 **Dispute Procedure**

(a) **Informal Resolution to Disputes**

The Band 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 is intended to limit the Parties ability to resolve the dispute informally.

(b) **Referral of Dispute to Panel**

The Parties to a dispute in relation to First Nation Land after demonstrating that they have made efforts to resolve the dispute under section 8.2(a) "**Informal Resolution to Disputes**" may notify Council that they wish to refer the dispute to the Panel to assist in resolving the dispute.

(c) **Prior Disputes**

For greater certainty, disputes that arose before this Land Code takes effect may be referred to the Panel.

(d) **Optional process**

The referral of a dispute to the Panel is optional and all other civil remedies continue to be available to a party to the dispute.

(e) **Disputes not resolved by Council**

If a Member, or a non-Member with an Interest in First Nation Land, has a dispute with Council or the Lands Management Advisory Committee, that Person shall attempt to resolve the dispute with Council or the Lands Management Advisory Committee , before referring the dispute to the Panel.

(f) **Application procedures**

A referral of a dispute to the Panel shall be made in accordance with procedures established by the Panel.

(g) **Limitation period**

The limitation period for referring a matter or a dispute to the Panel is:

- (i) 30 days after the day the decision, act or omission being referred was made;
- (ii) in the case of an estate dispute under section 4.10(b)(ii) "**Location of Family Members**", 18 months after the date of the decision; or
- (iii) in the case of a dispute with the Lands Management Advisory Committee or Council, 30 days after the Lands Management Advisory Committee or Council rejects the attempt at resolution under section 8.2(e) "**Disputes not resolved by Council**".

(h) **Disputes with the Lands Management Advisory Committee**

Notwithstanding section 8.1(c) "**Representation**", in the event of a dispute with the Lands Management Advisory Committee, and unless otherwise agreed by the Parties to the dispute, a Panel shall be appointed as follows:

- (i) one Panelist by the Lands Management Advisory Committee which, for greater certainty, shall not be the member of the Lands Management Advisory Committee appointed by Council in accordance with section 6.2(c)(i) "**Selection of Lands Management Advisory Committee Members**";
- (ii) one Panelist by Council; and
- (iii) one Panelist by the person initiating the dispute resolution.

The Panel shall select a chairperson for each matter referred to the Panel under section 8.2(h) "**Disputes with the Lands Management Advisory Committee**".

8.3 Impartiality

(a) **Duty to act impartially and confidentially**

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

(b) **Offence**

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

(c) **Rejection of application**

In addition to any other sanction, the Panel may reject a referral without hearing it if the Panel reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Panel's decision.

8.4 Powers of Panel

(a) **Powers of Panel**

The Panel may, after hearing a dispute:

- (i) confirm or reverse the decision in dispute, in whole or in part;
- (ii) substitute its own decision for the decision in dispute;
- (iii) direct that an action be taken or ceased;
- (iv) refer the matter or dispute for reconsideration by the decision-maker; or
- (v) refer the matter to a Meeting of the Members.

(b) **Rules of Panel**

The Panel may establish rules for the procedure at its hearings and general conduct of its affairs. The rules will be prepared by an independent third party professional and discussed at a Meeting of Members before they are approved by Resolution.

(c) **Professional services**

The Panel may obtain the service of independent third party professionals to assist it in fulfilling its functions, in which case it shall make reasonable efforts to use professional services available in the community.

(d) **Written decisions**

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.

(e) **Reasons**

The Panel shall:

- (i) give reasons for a decision;
- (ii) give written reasons for a decision within 14 days after the date of the decision, and shall maintain, in safekeeping, a record of its decision.

(f) **Appeal of decision**

A decision of the Panel is binding but, subject to any exception established by a Law, may be appealed to a court of competent jurisdiction.

(g) **Costs**

Unless otherwise ordered by the Panel or an appellate court, the parties to a dispute shall bear their own costs and an equal share of the costs of the dispute process. For greater certainty, none of the Band, the Lands Manager, nor any of Band's representatives including members of Council and the Lands Management Advisory Committee will be liable or responsible for the costs of any dispute resolution where the Band is not a party.

Part 9 - Other Matters

9.1 Liability

(a) **Liability Coverage**

Council shall arrange, maintain and pay, out of the transfer payments received from Canada or other source, insurance coverage for:

- (i) liability of the Band in relation to First Nation Land; and
- (ii) the Band's Councillors, members of the Lands Management Advisory Committee and officers and employees engaged in carrying out any matter related to First Nation Land to indemnify them against personal liability arising from those activities.

(b) **Extent of coverage**

The extent of the insurance coverage shall be determined from time to time by Council.

(c) **Bonding**

Every employee, officer or contractor of the Band whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.

9.2 Offences and Enforcement

(a) Application of the Criminal Code

Unless some other procedure is provided for by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code or under a Law.

(b) Other Offences and Penalties

Despite section 9.2(a):

- (i) a Law may provide for fines of up to \$100,000 for violation of specified provision of the Law; and
- (ii) a Law may provide for a variety of enforcement mechanisms including ticketing, stop work orders, restorative orders, and fines.

(c) Justices of the peace

For greater certainty, Council may enact Laws respecting appointment of Justices of the Peace for the enforcement of this Land Code and Laws.

(d) Provincial courts

If no Justice of the Peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia.

9.3 Amendments to Land Code

(a) Amendment to Land Code

This Land Code may be amended from time to time.

(b) Community Approval

All amendments to this Land Code, save and except minor amendments to correct typographical errors or to remedy inconsistencies, must receive Community Approval at a Meeting of Members and approval of the Council by Resolution.

(c) Verifier

A Verifier is not required in a Ratification Vote on an amendment.

9.4 Commencement

(a) Preconditions

This Land Code shall not take effect unless:

- (i) the Electors approve this Land Code and the Transfer Agreement with Canada by a Ratification Vote; and
- (ii) this Land Code has been certified by the Verifier pursuant to the Framework Agreement.

(b) Commencement date

Subject to section 9.4(a), this Land Code shall take effect on the first day of the month following the certification of this Land Code by the Verifier.