

**ᑭᐱᑭᐱᑭ**  
**AMENDED LAND CODE**

**Certified true copy of original Land Code, dated for reference [date]**

**Date:** [date]

**Signature:** \_\_\_\_\_  
**Jeanie Lanine, Barrister & Solicitor**

**TABLE OF CONTENTS**

PART 1 .....	5
PRELIMINARY MATTERS.....	5
1. Title .....	5
2. Interpretation.....	6
3. Authority to Govern.....	10
4. Purpose.....	10
5. Description of ᐃᓄᓐᓄᓐ Lands .....	10
PART 2 .....	12
ᐃᓄᓐᓄᓐ LEGISLATION.....	12
6. Law-Making Powers.....	12
8. Publication of Laws .....	16
PART 3 .....	17
MEMBER INPUT AND APPROVALS .....	17
9. Rights of Eligible Voters .....	17
10. Community Land Code Meetings .....	17
11. Meeting of Members.....	18
12. Procedure at a Meeting of Members .....	19
13. Ratification Votes .....	20
PART 4 .....	21
EXPROPRIATION AND LAND EXCHANGE.....	21
14. Expropriation by ᐃᓄᓐᓄᓐ.....	21
15. Heritage Sites .....	24
16. Voluntary Land Exchange .....	24
PART 5.....	26
ACCOUNTABILITY .....	26
17. Application.....	26
18. Conflict of Interest .....	26
20. Competition with ᐃᓄᓐᓄᓐ Businesses .....	26
21. Financial Management.....	26
22. Financial Records.....	27
23. Audit .....	28
24. Annual Report.....	28
25. Access to Financial Information .....	28
PART 6 .....	28
ADMINISTRATION OF ᐃᓄᓐᓄᓐ LANDS.....	28
26. ᐃᓄᓐᓄᓐ Lands Department .....	29
26.1 The ᐃᓄᓐᓄᓐ Lands Department shall carry out duties and responsibilities delegated or assigned to it under this Land Code and any other applicable law.....	29
26.2 Without limiting the generality of section 26.1, the ᐃᓄᓐᓄᓐ Lands Department shall: 29	
28. Officers, Employees and Contractors .....	32

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29. Registration of Interests and Licences .....	33
PART 7 .....	34
INTERESTS AND LICENCES IN ʔAᑭAM LANDS .....	34
30. Interests and Licences .....	34
31. Existing Interests.....	35
32. New Interests and Licences .....	35
33. Permanent Interests of Members .....	36
34. Limits on Mortgages and Seizures.....	36
35. Residency and Access Rights .....	38
36. Transfers on Death or Mental Incompetence.....	39
PART 8 .....	42
DISPUTE RESOLUTION .....	42
38. Informal Resolution of Disputes .....	42
39. Adjudicator Established .....	43
40. Application Procedure .....	43
41. Referral to Adjudicator .....	44
42. Duties and Powers of the Adjudicator .....	44
44. Appeals and Alternate Forums.....	46
PART 9 .....	47
OTHER MATTERS.....	47
45. Liability.....	47
46. Offences .....	47
47. Amendments to Land Code .....	47
48. Commencement .....	48

## **DECLARATION OF ʔAᑭAM**

**We are known collectively as ʔaᑭam and through this Land Code, we declare our sovereignty and jurisdiction.**

**Since the beginning of time, our people have lived on the lands that the Creator provided for our Ancestors. They lived by our traditional system of governance that sustained us and our lands and resources for thousands of years. Our society governed all forms of environmental, social and political relations through a sophisticated system of traditional laws, as is our traditional way.**

**It is from this proud history that ʔaᑭam derives our inherent right of self-government. With jurisdiction and responsible leadership, we will create economic and employment opportunities to sustain and improve the quality of life for present and future generations.**

**WHEREAS**

**A.** ᑭᓄᓐᓄᓐ, as it has always done, continues to occupy its lands and based on its traditional teachings, it will empower its Members to be healthy, self-governing stewards of its lands and resources, today and always;

**B.** ᑭᓄᓐᓄᓐ honours its connection to the land, resources and elements of the natural world that provide for its physical and spiritual needs;

**C.** ᑭᓄᓐᓄᓐ recognizes its responsibility to protect the land and its resources for future generations and to protect the rights of ᑭᓄᓐᓄᓐ and its Members;

**D.** the Members of ᑭᓄᓐᓄᓐ are a proud, united people whose purpose is to promote a healthy and prosperous future that ensures the continued existence of ᑭᓄᓐᓄᓐ as a strong political, social and cultural community that aspires to move ahead as an organized, highly-motivated, determined and self-reliant nation;

**E.** ᑭᓄᓐᓄᓐ values the need to respect, protect and promote its heritage, culture and traditions as the driving force of its success and destiny while understanding that these practices may change and require contemporary expression;

**F.** ᑭᓄᓐᓄᓐ wished to manage its land and resources under the *First Nations Land Management Act* by entering into the Framework Agreement and an Individual Agreement with Canada; and

**G.** The members of ᑭᓄᓐᓄᓐ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

**H.** The members of ᑭᓄᓐᓄᓐ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held on [date] in accordance with sections 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code*, and those amendments are fully integrated into this *ᑭᓄᓐᓄᓐ Amended Land Code*;

**NOW THEREFORE** ᑭᓄᓐᓄᓐ duly enacts as follows:

**PART 1  
PRELIMINARY MATTERS**

**1. Title**

1.1 The title of this enactment is the *ᑭᓄᓐᓄᓐ Amended Land Code*.

## 2. Interpretation

### Definitions

2.1 The following definitions apply in this Land Code:

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

“Adjudicator” means the person appointed by Council to the Office of the Adjudicator;

“ᑭᓄᓂᓂ” means ᑭᓄᓂᓂ, formerly known as the St. Mary’s Indian Band, which is a Band within the meaning of section 2(1) of the *Indian Act* for whose use and benefit in common ᑭᓄᓂᓂ Lands have been set apart by Canada;

“ᑭᓄᓂᓂ Lands” means those lands described in section 5.1;

“ᑭᓄᓂᓂ Lands Department” means the office established by Council to assist in the management and administration of ᑭᓄᓂᓂ Lands;

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

“Chief” means the lawfully elected Chief of ᑭᓄᓂᓂ;

“Community Lands” means any ᑭᓄᓂᓂ Lands in which all Members have a common interest;

“Community Land Code Meeting” means a Community Land Code Meeting convened in accordance with sections 10.2 or 10.3 of Part 3;

“Council” means the lawfully elected government of ᑭᓄᓂᓂ and includes the Chief;

“Cultural Resource” means an object, site or location of a traditional or cultural practice that has past and ongoing importance and this is of historical, cultural or archaeological significance to ᑭᓄᓂᓂ;

“Director of Lands and Natural Resources” means the person appointed by Council to manage the ᑭᓄᓂᓂ Lands Department;

“Eligible Voter” means a Member who has attained the age of 18 years on or before the day of the vote;

“First Nation Land Register” means the First Nation Land Register established by the Minister under subsection 25(1) of the Act;

“*First Nations Land Registry Regulations*” means the *First Nations Land Registry Regulations* SOR/2007-231, made on October 25, 2007 by Her Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, pursuant to subsection 25(3) of the Act;

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management* entered into between Canada and fourteen First Nations on February 12, 1996, and includes any amendments to that agreement;

“*Immediate Family*”, means father, mother, sister, brother, husband, wife, common-law spouse, son or daughter, including adopted;

“*Indian Act*” means the *Indian Act*, RSC 1985, c.I-5;

“*Individual Agreement*” means the Individual Transfer Agreement entered into between ᑭᓱᓂᓂ and Canada in accordance with clause 6.1 of the Framework Agreement and subsection 6(3) of the Act;

“*Land Code*” means this *ᑭᓱᓂᓂ Amended Land Code*;

“*land instrument*” means a written document that purports to transfer an interest or licence in or to ᑭᓱᓂᓂ lands;

“*Lands Authority*” means the Lands Authority established by ᑭᓱᓂᓂ prior to the enactment of the *St. Mary’s Indian Band Land Code*;

“*Lands Committee*” means the Lands Committee established under section 27.1;

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

“*Majority*” means fifty percent plus one (50% + 1);

“*Meeting of Members*” means a Meeting of Members convened in accordance with sections 12.5 and 12.6 of Part 3;

“*Member*” means a person registered on the Membership List;

“*Membership List*” means the list of names of Members maintained by ᑭᓱᓂᓂ;

“*Minister*” means the Minister of Aboriginal Affairs and Northern Development;

“*Office of the Adjudicator*” is the Office of Adjudicator established under section 39.1 of Part 8;

“Ratification Vote” means a Ratification Vote convened in accordance with section 13.3 of Part 3;

“Resolution” means a formal motion moved by a Council member, seconded by another Council member and passed by a quorum of Council at a duly convened meeting;

“*St. Mary’s Indian Band Land Code*” means the *St. Mary’s Indian Band Land Code* that came into effect on July 1, 2014 and that is amended by this *ᑭᓄᓂ Amended Land Code*;

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by civil and common-law marriage; and

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

#### Paramountcy

2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of ᑭᓄᓂ, this Land Code shall prevail to the extent of the inconsistency or conflict.

2.3 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.

#### Culture and Traditions

2.4 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 ᑭᓄᓂ, unless otherwise provided.

#### Non-abrogation

2.5 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other right or freedom that pertains now or in the future to ᑭᓄᓂ or its Members including:

- (a) any rights or freedoms that have been recognized by section 35 of the *Constitution Act, 1982*;
- (b) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- (c) any rights or freedoms that may be acquired by ᑭᓄᓂ or its Members by way of

land claims settlement.

- 2.6 This Land Code is not intended to affect the eligibility of ᑭᐱᑭᐱᐱ or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that ᑭᐱᑭᐱᐱ has not assumed responsibility for such services or programs.

#### Interpretation

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

#### Fiduciary Relationships

- 2.10 This Land Code is not intended to abrogate the fiduciary duty between Canada, ᑭᐱᑭᐱᐱ and its Members.

#### Land and Interests Affected

- 2.11 A reference to “land” in this Land Code is, unless the context otherwise requires, a reference to ᑭᓄᓂᓂ Lands and all rights and resources of ᑭᓄᓂᓂ Lands, including:
- (a) the water;
  - (b) beds underlying water;
  - (c) riparian rights, including to lands acquired through accretion;
  - (d) minerals and subsurface resources;
  - (e) and all other renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada or ᑭᓄᓂᓂ; and
  - (f) all the interests and licences granted to ᑭᓄᓂᓂ by Canada that are listed in the Individual Agreement.

### **3. Authority to Govern**

#### Origin of Authority

- 3.1 By enacting this Land Code ᑭᓄᓂᓂ is giving effect to its aboriginal title to that portion of its territories comprised of ᑭᓄᓂᓂ Lands.

#### Flow of Authority

- 3.2 The authority of ᑭᓄᓂᓂ to govern its land and resources flows from its aboriginal title and inherent right of self-government.
- 3.3 Through this Land Code, ᑭᓄᓂᓂ will exercise its inherent right of self-government and provide for effective and accountable governance as a self-determining community.

### **4. Purpose**

#### Purpose

- 4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to ᑭᓄᓂᓂ Lands and by which ᑭᓄᓂᓂ shall exercise authority over ᑭᓄᓂᓂ Lands.

### **5. Description of ᑭᓄᓂᓂ Lands**

## ᑭᓱᓂᓂ Lands

- 5.1 ᑭᓱᓂᓂ Lands that are subject to this Land Code have the same meaning as “first nation land” in the Act and more specifically means those lands described in the Individual Agreement and any lands added in compliance with this Land Code, including:
- (a) Kootenay Indian Reserve No. 1 (07422);
  - (b) Isidore’s Ranch No. 4 (07423);
  - (c) Cassimayooks No. 5 (07424);
  - (d) Bummer’s Flat No. 6 (07425);
  - (e) St. Mary’s Indian Reserve No. 1 (10028); and
  - (e) lands set apart by Canada in the future as lands reserved for the use and benefit of ᑭᓱᓂᓂ, within the meaning of subsection 91(24) of the *Constitution Act*, 1867 and section 2(1) of the *Indian Act*.

## Additional Land

- 5.2 The following lands may be made subject to this Land Code if they are, or become, reserve land and the following conditions are met:
- (a) any land owned jointly by ᑭᓱᓂᓂ and one or more other First Nations, when the First Nations agree upon a joint management scheme for that land; and
  - (b) any land or interest acquired by ᑭᓱᓂᓂ after this Land Code comes into force, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for ᑭᓱᓂᓂ use.

## Land Exchange

- 5.3 For greater certainty, section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 16.

## Inclusion of Land or Interest

- 5.4 If the relevant conditions in section 5.2 are met, Council shall call a Community Land Code Meeting in accordance with sections 10.3 and 10.4 and, after receiving input from Members, Council may, by Resolution, declare the land or interest to be subject to this Land Code.

**PART 2**  
**ᐃᓄᓐᓄᓐ LEGISLATION**

**6. Law-Making Powers**

General

6.1 Council shall develop laws consistent with this Land Code regarding the management, administration, use and protection of ᐃᓄᓐᓄᓐ Lands.

Council May Make Laws

6.2 Without limiting the generality of section 6.1, Council may make laws in relation to:

- (a) development, conservation, protection, management, use and possession of ᐃᓄᓐᓄᓐ Lands;
- (b) interests in and licences to use ᐃᓄᓐᓄᓐ Lands;
- (c) any matter necessary to give effect to this Land Code; and
- (d) any matter necessary or ancillary to a law in relation to ᐃᓄᓐᓄᓐ Lands.

Examples of Laws

6.3 For greater certainty, Council may make laws in relation to ᐃᓄᓐᓄᓐ Lands including:

- (a) zoning and land use planning;
- (b) regulation, control, authorization and prohibition of the occupation and development of land;
- (c) creation, disposition, regulation and prohibition of interests and licences;
- (d) environmental assessment and environmental protection;
- (e) archaeological assessment and protection of archaeological and Cultural Resources;
- (f) provision of local services and imposition of user charges;
- (g) enforcement of laws;

- (h) provision of services for the resolution, outside the courts, of disputes;
  - (i) setting aside and regulation of parks, parklands and recreational lands;
  - (j) setting aside and regulation of heritage lands;
  - (k) rules and procedures for the receipt, management, expenditure, investment and borrowing of moneys, including the establishment of administrative structures to manage such moneys;
  - (l) creation of management and administrative bodies or agencies;
  - (m) removal and punishment of persons trespassing upon ᑭᓱᓂᓂ Lands or frequenting ᑭᓱᓂᓂ Lands for prohibited purposes;
  - (n) public nuisance and private nuisance;
  - (o) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
  - (p) construction and maintenance of boundary and internal fences;
  - (q) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works; and
  - (r) regulation of traffic and transportation.
- 6.4 Council shall perform all the duties and functions, and exercise all the powers, of ᑭᓱᓂᓂ that are not specifically assigned to an individual or body established under this Land Code.
- 6.5 Notwithstanding section 6.4, Council may, by Resolution, delegate administrative authority to an individual or body established or authorized under this Land Code.

## **7. Law-Making Procedure**

### General

- 7.1 Council shall enact laws under this Land Code in accordance with this part.

### Development of Laws

- 7.2 The development of a draft law shall be initiated by a Resolution, setting out the specific subject matter of the proposed law.

First Reading: Draft Law

7.3 Upon completion of the draft law, Council shall table it at a regular meeting of Council for consideration.

Decision on Draft Law

7.4 After considering the draft law, Council shall, by Resolution:

- (a) accept the draft law in principle;
- (b) reject the draft law; or
- (c) direct further work on the draft law and specify a return date to re-table the draft law at a future Council meeting.

7.5 Where Council has rejected the draft law, Council must ensure that the Resolution regarding the rejection:

- (a) sets out the reasons for the rejection;
- (b) is clearly documented in the Council meeting minutes; and
- (c) is available to Members by request.

Second Reading: Community Land Code Meeting on Draft Law

7.6 If Council has accepted the draft law in principle, Council shall schedule a Community Land Code Meeting in accordance with sections 10.3 and 10.14 for the purpose of consulting with Members on the draft law.

Written Notice of Meeting

7.7 The notice of the Community Land Code Meeting shall include:

- (a) the date, time and location of the Community Land Code Meeting;
- (b) a summary of the draft law;
- (c) notification that a full copy of the draft law may be obtained by Members at the ᑭᓱᓂᓂ administration building or at the Community Land Code Meeting;
- (d) an invitation for Members to provide written comments to Council on the draft law; and

- (e) the return date by which Members shall provide written comments to Council, which date shall be at least twenty (20) days from the date of the Community Land Code Meeting.

Conduct of Meeting

- 7.8 Copies of the draft law shall be made available to Members attending the Community Land Code Meeting.
- 7.9 At the Community Land Code Meeting, Council or its delegate shall explain the purpose and provisions of the draft law, and invite questions and comments by Members.

Council Shall Consider Comments

- 7.10 After the expiry of the time specified under subsection 7.7(e) for written comments from Members, Council shall consider any comments received, the needs of the community and any other relevant matters, and shall prepare or cause to be prepared a final draft law.

Third Reading: Final Draft Law

- 7.11 Upon completion of the final draft law, Council shall table it at a regular meeting of Council for consideration.

Decision on Final Draft

- 7.12 Subject to section 11.1 (*Matters Requiring Approval at Meeting of Members*) and section 13.1 (*Matters Requiring Approval by Ratification Vote*), after considering the final draft law Council shall, by Resolution:
  - (a) enact the final draft law;
  - (b) make changes to the final draft law;
  - (c) reject the final draft law;
  - (d) schedule a Community Land Code Meeting in accordance with sections 7.6 and 7.7 for consideration of the final draft law by Members; or
  - (e) refer the final draft law for approval by Eligible Voters at a Meeting of Members or in a Ratification Vote.

Written Notice of Approval Meeting

7.13 If a Meeting of Members or a Ratification Vote is called under subsection 7.12(e), section 11.1 or section 13.1 to approve the final draft law, the notice of the meeting or vote shall include:

- (a) a summary of the final draft law; and
- (b) notification that a full copy of the final draft law may be obtained by Members at Ṣaqam administration building

Enactment of Law by Council

7.14 A law is enacted on the date that it is approved and adopted by Resolution of Council.

Enactment of Law by Eligible Voters

7.15 If a law is approved by Eligible Voters at a Meeting of Members or in a Ratification Vote, the law shall be deemed to be enacted on the date of its approval and it shall have the same force and effect as a law enacted by Resolution of Council.

Enactment of Law on Urgent Matters

7.16 Council may enact a law without calling a Community Land Code Meeting, Meeting of Members or a Ratification Vote if Council is reasonably of the opinion that the law is required urgently to protect Ṣaqam Lands or Members.

7.17 A law enacted under section 7.16 shall be deemed to have been repealed and to have no force and effect as of twenty-eight (28) days after its enactment, but it may be re-enacted in accordance with this part.

Amendments

7.18 A law may be repealed or amended by following the procedure specified in the law.

7.19 If a law does not specify a procedure for its repeal or amendment, the law may be repealed or amended by the same procedure that was followed to enact it.

Commencement Date

7.20 If the date of commencement is not specified in a law, the law shall come into force on the date of its enactment.

## 8. Publication of Laws

Publication

8.1 All laws enacted by Resolution shall be published in the minutes of Council meeting.

Posting and Registering Laws

8.2 Within seven (7) days after a law has been enacted, Council shall:

- (a) post a copy of the law in a public area of the ᑭᓱᓂᓂ administration offices; and
- (b) submit an original copy of the law in the First Nations Land Register for registration.

Register of Laws

8.3 Council shall cause to be kept, at the ᑭᓱᓂᓂ administration offices, a register of laws containing the original copy of all laws, including any that have been repealed or that are no longer in force.

8.4 Any person may have, during regular business hours at the ᑭᓱᓂᓂ administration offices, reasonable access to the register of laws.

Copies for Any Person

8.5 Any person may obtain a copy of a law upon payment of such reasonable fee as may be set by Council.

8.6 Section 8.5 does not preclude Council from making copies of a law available to Members without a fee.

**PART 3  
MEMBER INPUT AND APPROVALS**

**9. Rights of Eligible Voters**

Rights of Eligible Voters

9.1 Every Eligible Voter may vote at a Meeting of Members and in a Ratification Vote.

**10. Community Land Code Meetings**

Community Consultations

10.1 The Council, Director of Lands and Natural Resources and Lands Committee may each

call and hold a Community Land Code Meeting to consult with Members on matters relating to Ṣaḳam Lands.

- 10.2 If a Community Land Code Meeting is called under section 10.1, the entity calling the meeting shall give notice to Members by any method that the entity calling the meeting may consider appropriate in the circumstances.

Written Notice of Community Land Code Meeting

- 10.3 If a Community Land Code Meeting is required to be held under this Land Code, written notice of the meeting shall be provided to Eligible Voters at least ten (10) business days before the date of the meeting by:

- (a) either:
  - (i) delivering or mailing the written notice to Eligible Voters at their last known address; or
  - (ii) publicizing the written notice in an Ṣaḳam newsletter that is delivered or mailed to Eligible Voters at their last known address; and
- (b) posting of a notice in a public area of the Ṣaḳam administration offices.

- 10.4 The written notice of a Community Land Code Meeting shall:

- (a) specify the date, time and place of the meeting; and
- (b) include a summary of the matter to be discussed at the meeting.

Who May Attend a Community Land Code Meeting

- 10.5 Any Member may attend a Community Land Code Meeting.

## **11. Meeting of Members**

Matters Requiring Approval by Members

- 11.1 Approval at a Meeting of Members shall be obtained for:

- (a) subject to section 15, any land use plan or substantive amendment to a land use plan;

- (b) a law enacted under section 37;
  - (c) a substantive amendment to this Land Code; and
  - (d) any law or class of law that Council, by Resolution, declares to be subject to this section.
- 11.2 Subject to section 11.3, any matter requiring approval at a Meeting of Members shall receive a Majority vote in favour of the matter in accordance with section 12.3.
- 11.3 Council may, by Resolution, provide that any matter that requires approval at a Meeting of Members may instead be decided by:
- (a) mail-in ballots and phone-in ballots in accordance with the same standards of quorum and approval that apply under section 12.3; or
  - (b) a Ratification Vote.

## **12. Procedure at a Meeting of Members**

### Quorum for a Meeting of Members

- 12.1 The quorum for a Meeting of Members is ten percent (10%) of Eligible Voters.

### Voting at a Meeting of Members

- 12.2 Voting at a Meeting of Members shall be conducted by a combination of ballots cast in person at the meeting, by phone-in ballot and by mail-in ballots in substantially the same manner as that set out in the *St. Mary's Indian Band Custom Election Regulation*.

### Requirements for Approval at a Meeting of Members

- 12.3 A matter shall be considered to be approved at a Meeting of Members if:
- (a) at least 10% of Eligible Voters cast a ballot either in person at the meeting or by mail-in ballot or phone-in ballot; and
  - (b) the Majority of Eligible Voters who cast a ballot vote in favour of the matter.
- 12.4 Voting in person at a Meeting of Members shall be by secret ballot.

### Written Notice of a Meeting of Members

12.5 A written notice of a Meeting of Members shall be given to Eligible Voters at least ten (10) business days before the meeting by:

- (a) either:
  - (i) a written notice delivered or mailed to Eligible Voters at their last known address, or
  - (ii) the publication of a written notice in the ᑭᓱᓂᓂᓂ newsletter delivered or mailed to Eligible Voters at their last known address; and
- (b) the posting of a written notice in a public area of the ᑭᓱᓂᓂᓂ administration offices.

12.6 Every written notice of a Meeting of Members shall:

- (a) specify the date, time and place of the meeting; and
- (b) include a summary of the matter to be discussed and decided at the meeting.

Who May Attend a Meeting of Members

12.7 Any Member may attend a Meeting of Members.

12.8 Council may, by Resolution, declare a Meeting of Members to be a closed meeting that only Members and any other persons identified in the Resolution may attend.

Council May Schedule More Meetings

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

### **13. Ratification Votes**

Matters Requiring Approval by Ratification Vote

13.1 Approval by a Ratification Vote shall be obtained for:

- (a) developments on a heritage site that is designated in a land use plan;
- (b) voluntary exchanges of lands as part of the addition to reserve process of ᑭᓱᓂᓂᓂ Lands;

- (c) amendments to the Individual Agreement that reduces the amount of funding provided by Canada; and
- (d) any law or class of law that Council, by Resolution, declares to be subject to this section.

Individual Agreement

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

Ratification Vote Process

13.3 Subject to sections 13.4 to 13.6, a Ratification Vote under this Land Code shall be conducted in substantially the same manner as that set out in the *St. Mary's Indian Band Community Ratification Process* that was used to ratify the *St. Mary's Indian Band Land Code*.

No Verifier Required

13.4 A Verifier is not required for a Ratification Vote under this Land Code.

Phone-in Voting Permitted

13.5 Phone-in voting is permitted for a Ratification Vote under this Land Code.

Requirements for Approval by Ratification Vote

- 13.6 A matter shall be considered approved by a Ratification Vote if:
- (a) at least the Majority of Eligible Voters participate in the vote; and
  - (b) the Majority of those participating in the vote cast a vote in favour of the matter.

**PART 4  
EXPROPRIATION AND LAND EXCHANGE**

**14. Expropriation by ᑭᐱᑭᐱ**

Rights and Interests That May be Expropriated

- 14.1 An interest or licence in ᐃᓄᓐᓄ Lands or in any building or other structure on such land may only be expropriated by ᐃᓄᓐᓄ in accordance with the Framework Agreement and a law enacted in accordance with section 14.3.

Community Purposes

- 14.2 ᐃᓄᓐᓄ may expropriate only for a necessary community purpose or works of ᐃᓄᓐᓄ, including a fire hall, sewage or water treatment facility, community center, public work, road, school, day-care facility, hospital, health-care facility or retirement home.

Expropriation Laws

- 14.3 Council shall enact a law setting out the rights and procedures for expropriation, including provisions in relation to:

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

Public Report

- 14.4 Before ᐃᓄᓐᓄ may expropriate an interest or licence, Council shall:

- (a) prepare a report on the reasons for the expropriation; and
- (b) post a copy of the report in all ᐃᓄᓐᓄ administration offices.

Rights that May Not be Expropriated

- 14.5 An interest of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by ᐃᓄᓐᓄ.

Mutual Agreement

14.6 ᐃᓄᓄᓄ may expropriate only after ᐃᓄᓄᓄ has made a good faith effort to acquire, by mutual agreement, the interest or licence in ᐃᓄᓄᓄ Lands.

Limitation

14.7 The law enacted under section 14.3 shall include provisions having the following effect:

- (a) an expropriation shall be made only for the smallest interest necessary and for the shortest time necessary; and
- (b) where less than a full interest is expropriated, a person whose interest is expropriated may continue to use and occupy the land for purposes that are not inconsistent with the expropriation.

Notice and Compensation

14.8 ᐃᓄᓄᓄ shall, in accordance with a law enacted under section 14.3 and the Framework Agreement:

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

Compensation Calculation

14.9 The total value of compensation under subsection 14.8(b) shall be based on:

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

Market Value

14.10 The fair market value of an expropriated interest or licence is equal to the amount that would have been paid for the interest or licence if it had been sold on ᐃᓄᓄᓄ Lands by a willing seller to a willing buyer.

Dispute Resolution

14.11 The resolution of disputes concerning the right of ᑭᓱᓂᓂᓂ to expropriate shall be determined in accordance with Part 8.

## 15. Heritage Sites

### Approval of Amendments

15.1 No amendment may be made to a land use plan to develop or delete from the land use plan a heritage site designated under that plan unless the amendment receives prior approval by a Ratification Vote.

## 16. Voluntary Land Exchange

### Conditions for a Land Exchange

16.1 ᑭᓱᓂᓂᓂ may agree with another party to exchange ᑭᓱᓂᓂᓂ Lands for land from that other party in accordance with this Land Code and the Framework Agreement.

### No Effect

16.2 A land exchange is of no effect unless it approved by a Ratification Vote.

### Land to be Received

16.3 A land exchange may proceed to a Ratification Vote only if the land to be received by ᑭᓱᓂᓂᓂ:

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

### Negotiators

16.4 A person who negotiates a land exchange agreement on behalf of ᑭᓱᓂᓂᓂ shall be designated by Council by Resolution.

### Additional Land

16.5 ᑭᓱᓂᓂᓂ may receive additional compensation, including money or other land in addition to the land referred to in section 16.3.

16.6 Such other land may be held by ᑭᓄᓂᓂ in fee simple or other manner.

Federal Consent

16.7 Before ᑭᓄᓂᓂ concludes a land exchange agreement, it shall receive a written statement from Canada stating that Canada:

- (a) consents to set aside as a reserve the land to be received in the land exchange under section 16.3, as of the date of the land exchange or such later date as Council may specify by Resolution; and
- (b) consents to the manner and form of the exchange as set out in the land exchange agreement.

Community Notice

16.8 At such time as negotiation of a land exchange agreement is concluded, and at least twenty-one (21) days before the Ratification Vote provided for in section 16.2, Council shall provide the following information to the Members:

- (a) a description of ᑭᓄᓂᓂ Lands to be exchanged;
- (b) a description of the land to be received by ᑭᓄᓂᓂ;
- (c) a description of any other compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in subsections 16.3(a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the written statement from Canada referred to in section 16.7.

Process of Land Exchange

16.9 A land exchange agreement shall provide that:

- (a) the other party to the exchange shall transfer to Canada the title to the land that is to be set aside as a reserve;
- (b) Council shall pass a Resolution authorizing Canada to transfer title to ᑭᓄᓂᓂ Lands being exchanged, in accordance with the land exchange agreement; and

- (c) a copy of the land instruments transferring title to the relevant parcels of land shall be registered in the First Nation Land Register.

## **PART 5 ACCOUNTABILITY**

### **17. Application**

- 17.1 This part applies only to conflicts of interest and financial matters in relation to the management and administration of ᑭᓱᓂᓂ Lands under this Land Code.

### **18. Conflict of Interest**

Rules

- 18.1 In the event of real, perceived and potential conflicts of interest arising in relation to the management and administration of ᑭᓱᓂᓂ Lands under this Land Code, the *St. Mary's Indian Band Financial Administration Law 2013, Schedule - Avoiding and Mitigating Conflicts Of Interest* shall apply.

### **19. Disclosure of Conflict of Interest**

Procedure for Disclosure of a Conflict of Interest or Appearance of a Conflict of Interest

- 19.1 The procedure for the disclosure of any real, perceived or potential conflict of interest that arise to the management and administration of ᑭᓱᓂᓂ Lands under this Land Code, shall be the procedure set out in the *St. Mary's Indian Band Financial Administration Law 2013, Schedule - Avoiding and Mitigating Conflicts Of Interest*.

### **20. Competition with ᑭᓱᓂᓂ Businesses**

- 20.1 No Member of Council shall, during their term of office, engage as a partner, officer, director, shareholder, advisor, employee, or in any other capacity, in any business that is in competition with a business carried on by ᑭᓱᓂᓂ, without first complying with the conflict of interest rules and procedures developed under sections 18.1 and 19.1.

### **21. Financial Management**

Financial Management and Policy

- 21.1 All financial matters in relation to ᑭᓱᓂᓂ Lands that are administered under this Land Code shall be conducted in accordance with the *St. Mary's Indian Band Financial*

*Administration Law, 2013*, and all regulations, policies or procedures enacted or approved under that law.

#### Establishment of Bank Accounts

21.2 Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts:

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

#### Other Laws and Policies

21.3 Council shall establish a process for determining:

- (a) fees and rents for interests and licences in ᑭᓄᓐᓂᓐ Lands; and
- (b) fees for services provided in relation to ᑭᓄᓐᓂᓐ Lands and compliance with this Land Code.

## **22. Financial Records**

#### Financial Records

22.1 ᑭᓄᓐᓂᓐ shall keep financial records in accordance with generally accepted accounting principles and in compliance with the *St. Mary's Indian Band Financial Administration Law, 2013*.

#### Offences

22.2 A person who has control of the financial records of ᑭᓄᓐᓂᓐ and who impedes or obstructs anyone from exercising a right to inspect those records is guilty of an offence.

**23. Audit**

Appointment of Auditor

23.1 For each fiscal year, Council shall appoint a duly accredited auditor to audit the financial records of ᐃᓱᓂᓂᓂ in relation to ᐃᓱᓂᓂᓂ Lands.

**24. Annual Report**

Publish Annual Report

24.1 Council shall ensure, within thirty (30) days of receiving an annual audit report, that an annual report on ᐃᓱᓂᓂᓂ lands management is prepared.

24.2 The annual report prepared under section 24.1 shall include:

- (a) an annual review of land management activities;
- (b) a copy and explanation of the audit report as it applies to ᐃᓱᓂᓂᓂ Lands; and
- (c) such other matters as may be directed by Council or reasonably requested by the Director of Lands and Natural Resources.

**25. Access to Financial Information**

Access Law

25.1 Council shall develop policies and procedures setting out the rights and procedures by which Members and other persons may exercise access to ᐃᓱᓂᓂᓂ financial information.

**PART 6  
ADMINISTRATION OF ᐃᓱᓂᓂᓂ LANDS**

**26. ᐃᓄᓐᓄ Lands Department**

- 26.1 The ᐃᓄᓐᓄ Lands Department shall carry out duties and responsibilities delegated or assigned to it under this Land Code and any other applicable law.
- 26.2 Without limiting the generality of section 26.1, the ᐃᓄᓐᓄ Lands Department shall:
- (a) administer ᐃᓄᓐᓄ Lands in accordance with this Land Code and any other applicable law or policy of ᐃᓄᓐᓄ;
  - (b) develop forms for use in the registering or recording of land instruments in the First Nation Land Register;
  - (c) process applications for the registration or recording of land instruments in the First Nation Land Register;
  - (d) arrange for ᐃᓄᓐᓄ'ᓄ execution of land instruments that relate to Community Lands;
  - (e) maintain and protect records in relation to ᐃᓄᓐᓄ Lands in the Lands Department files; and
  - (f) perform such other duties and functions consistent with this Land Code as Council may direct.

Director of Lands and Natural Resources

- 26.3 The Director of Lands and Natural Resources shall manage the ᐃᓄᓐᓄ Lands Department and perform such duties and responsibilities that are delegated or assigned to the Director of Lands and Natural Resources by Council or under this Land Code or any other applicable law.
- 26.4 In consultation with Council, the Director of Lands and Natural Resources may develop policies and procedures required for the proper administration and management of the ᐃᓄᓐᓄ Lands Department.
- 26.5 Without limiting the generality of sections 26.1, 26.3 and 26.4, the Director of Lands and Natural Resources shall:
- (a) oversee the day-to-day operations of the ᐃᓄᓐᓄ Lands Department;
  - (b) advise the Lands Committee and Council on matters in relation to ᐃᓄᓐᓄ Lands;

- (c) make recommendations to the Lands Committee and Council on the development of laws, policies and procedures in relation to ʔaᓄam Lands;
- (d) subject to Part 8 (Dispute Resolution), hold regular and special meetings with Members to discuss issues related to ʔaᓄam Lands, and make recommendations to the Lands Committee and Council on the resolution of such issues;
- (e) assist in the exchange of information between Members and Council regarding ʔaᓄam Lands issues;
- (f) oversee community consultations under this Land Code;
- (g) schedule and oversee Land Committee elections;
- (h) monitor community approvals under this Land Code; and
- (i) perform such other duties and functions consistent with this Land Code as Council may direct.

## **27. Lands Committee**

### Lands Committee Established

27.1 The Lands Authority is hereby dissolved and the Lands Committee is established.

27.2 The Lands Committee shall:

- (a) assist the Director of Lands and Natural Resources with administrative decisions in relation to ʔaᓄam Lands;
- (b) review draft laws and provide comments to Council;
- (c) recommend to Council laws, policies and procedures in relation to ʔaᓄam Lands;
- (d) consult with Members on land issues; and
- (e) perform such other duties and functions as Council or the Director of Lands and Natural Resources may direct.

### Composition

27.3 The Lands Committee shall be composed of:

- (a) one (1) member of Council appointed by Council; and
- (b) four (4) Members appointed by Council.

## Eligibility for Appointment to Lands Committee

27.4 Any Eligible Voter who resides within twenty (20) kilometers from ʔaᑭam Lands, shall be eligible for appointment to the Lands Committee, except for the following:

- (a) a person convicted of an offence by way of indictment or felony conviction within five (5) years prior to the date of the election; and
- (b) any person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

## Terms of Office

27.5 Subject to section 27.6, Lands Committee members shall hold the following terms of office:

- (a) Council shall appoint a member of Council as soon as practicable following Council elections and that member shall sit on the committee until the next Council election;
- (b) appointed members shall sit on the committee for a maximum of four (4) years, but they are not precluded from being appointed for further terms.

## Vacancies

27.6 The office of a Lands Committee member shall become vacant if that member:

- (a) resigns;
- (b) is convicted of an offence under the *Criminal Code*;
- (c) ceases to be an Eligible Voter;
- (d) is an appointed member of Council who ceases to be a member of Council;
- (e) dies or becomes mentally incapacitated.; or
- (f) is terminated under section 27.7.

Terminations

- 27.7 The Council may, by Resolution, terminate the remaining term of a Lands Committee member if the Lands Committee member:
- (a) is absent from three (3) consecutive Lands Committee meetings for a reason other than illness or incapacity without being authorized to be absent by the chairperson; or
  - (b) fails to perform any of his or her duties in good faith and in accordance with the terms of this Land Code.

Council Fills Vacancies

- 27.8 Council may appoint a new member to the Lands Committee to fill a vacancy under section 27.6.
- 27.9 A Lands Committee member appointed under section 27.8 shall serve out the balance of the term of that Lands Committee member whose office was vacated.
- 27.10 The Council may develop policies regarding the eligibility criteria for appointments to the Lands Committee

Chairperson of Lands Committee

- 27.11 The Lands Committee shall appoint a chairperson of the Lands Committee by majority vote.
- 27.12 The Lands Committee shall select an alternate chairperson to perform the functions of the chairperson if the chairperson is unavailable.

Rules and Procedures of Lands Committee

- 27.13 The Lands Committee may recommend policies, rules and procedures governing committee meetings and the administration of the general affairs of the committee for approval by Council.

**28. Officers, Employees and Contractors**

General

- 28.1 Council shall provide for the appointment of officers and the hiring of other employees to

administer this Land Code in an effective and fiscally responsible manner in accordance with this Land Code and any other applicable law.

Appointment of Director of Lands and Natural Resources

28.2 Council shall, by Resolution, appoint a Director of Lands and Natural Resources and an alternate to act in the place of the Director of Lands and Natural Resources when he or she is absent.

## 29. Registration of Interests and Licences

Enforcement of Interests and Licences

29.1 An interest or licence in ᑭᐱᑭᐱ Lands created or granted after this Land Code comes into effect, is not enforceable unless:

- (a) it is registered in the First Nation Land Register; or
- (b) it is a residential tenancy agreement.

Duty to Deposit

29.2 The ᑭᐱᑭᐱ Lands Department shall ensure that an original copy of the following land instruments are registered in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*:

- (a) except residential tenancy agreements, any interest or licence in ᑭᐱᑭᐱ Lands that ᑭᐱᑭᐱ is a party to;
- (b) an interest or licence in Community Lands granted by ᑭᐱᑭᐱ;
- (c) the transfer or assignment of an interest or licence in Community Lands that Council consents to;
- (d) a completed application for registration of an interest or licence in ᑭᐱᑭᐱ Lands received by the Lands Department;
- (e) this Land Code and any amendment to this Land Code; and
- (f) any law made pursuant to this Land Code.

29.3 Every person who receives an interest or licence in ᑭᐱᑭᐱ Lands shall register an original

copy of the relevant land instrument in the First Nation Land Register by way of application to the ᑭᐱᑭᐱ Lands Department in accordance with the *First Nations Land Registry Regulations*.

Registration of Consent or Approval

- 29.4 No land instrument that requires the consent of Council, approval of the ᑭᐱᑭᐱ Lands Department, or approval of Members at a Meeting of Members or in a Ratification Vote may be registered or recorded in the First Nation Land Register unless a certified copy of the document that records the consent or approval is attached to the land instrument.

Registration Fees

- 29.5 The ᑭᐱᑭᐱ Lands Department may establish and charge reasonable fees for services provided to the public including processing applications for the registration or recording of land instruments in the First Nation Land Register.
- 29.6 Section 29.5 does not preclude the ᑭᐱᑭᐱ Lands Department from providing services to Members without a fee.

**PART 7**  
**INTERESTS AND LICENCES IN ᑭᐱᑭᐱ LANDS**

**30. Interests and Licences**

General

- 30.1 The occupation, use and development of ᑭᐱᑭᐱ Lands is subject to this Land Code and any other applicable law.

No Interest or Licence Created

- 30.2 No person may acquire an interest or licence in ᑭᐱᑭᐱ Lands by use, occupation or by any other means that is not authorized under this Land Code or a law enacted under it.

All Dispositions in Writing

- 30.3 An interest or licence in ᑭᐱᑭᐱ Lands may only be created, granted, disposed of, assigned or transferred by a land instrument issued in accordance with this Land Code.

Non-Members

- 30.4 A person who is not a Member may hold a lease, licence, easement, mortgage or permit in ᑭᐱᑭᐱ Lands.

Original Grants of Leases, Licenses, Easements or Permits

- 30.5 The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in ᑭᓱᓂᓂᓂ Lands..
- 30.6 Notwithstanding section 30.5, if Council has consented to the original grant of a lease in ᑭᓱᓂᓂᓂ Lands to a person who is not a Member, that leasehold interest may be subsequently mortgaged, transferred or assigned without the consent of Council or approval of Members.

### **31. Existing Interests**

Continuation of Existing Interests

- 31.1 An interest or licence in ᑭᓱᓂᓂᓂ Lands, whether held by a Member or a person other than a Member, that is in effect on the date this Land Code comes into force shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.
- 31.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction:
- (a) cancel or correct any land instrument that Council issued or allotted in error, by mistake or by fraud; and
  - (b) if required, issue a replacement land instrument.

### **32. New Interests and Licences**

Authority to Make Grants

- 32.1 Subject to this Land Code, Council may grant:
- (a) interests in Community Lands; and
  - (b) licences and permits to take resources from Community Lands.

Conditional Grant

- 32.2 The grant of an interest, licence or permit in Community Lands may be made subject to conditions.

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Role of Director of Lands and Natural Resources

32.3 The Director of Lands and Natural Resources may advise Council on the granting of interests, licences and permits in Community Lands and may be authorized to act as a delegate of Council under this part.

### **33. Permanent Interests of Members**

Nature of Interest

33.1 Council may enact laws providing for Council to grant a Member an allotment in ᑭᓱᓂᓂ Lands that entitles that Member to:

- (a) permanent possession of the land;
- (b) benefit from the resources in and of the land;
- (c) grant subsidiary interests, licences and permits in the land;
- (d) transfer, devise or otherwise dispose of the land to another Member; and
- (e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

33.2 For greater certainty, no allotment granted by Council may be granted to or held by a person who is not a Member.

Transfer and Assignment of Interests

33.3 A Member may transfer or assign an allotment that is granted by Council:

- (a) to ᑭᓱᓂᓂ, with the consent of Council; or
- (b) to a Member without the consent of Council or approval of Members.

33.4 For greater certainty, a Member may transfer their allotment to themselves.

### **34. Limits on Mortgages and Seizures**

Protections

34.1 In accordance with the Framework Agreement and the Act, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to ᑭᓱᓂᓂ Lands.

- 34.2 The ᑭᓱᓱᓱ Lands Department and the Director of Lands and Natural Resources shall not be responsible or liable for ensuring that a lease in ᑭᓱᓱᓱ Lands permits the leasehold interest to be mortgaged or charged, that the lease is in good standing or that the leaseholder is in compliance with the terms of the lease.
- 34.3 Disputes in relation to mortgages of leases shall be determined as follows:
- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or
  - (b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.

Mortgage of a Leasehold Interest in ᑭᓱᓱᓱ Lands Held by a Person Who is Not a Member

- 34.4 A leasehold interest in ᑭᓱᓱᓱ Lands held by a person who is not a Member is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members.

Mortgage of Leasehold Interests in Community Lands or in ᑭᓱᓱᓱ Lands Held by a Member

- 34.5 An interest of a Member in ᑭᓱᓱᓱ Lands which is not a leasehold interest may be subject to a mortgage or charge only to ᑭᓱᓱᓱ or a Member.
- 34.6 An Indian, as that term is defined in the *Indian Act*, including a Member, may grant a lease to him or herself in the same manner as to another person.
- 34.7 A leasehold interest in ᑭᓱᓱᓱ Lands that is held by an Indian, as that term is defined in the *Indian Act*, including a Member, may be subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members, and the mortgagee has the same legal and equitable rights it would have if the leasehold interest was held by a non-Indian.
- 34.8 A leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by the mortgagee.

Default in Mortgage

- 34.9 In the event of default in the terms of a mortgage or charge of a leasehold interest in ᑭᓱᓱᓱ Lands, the leasehold interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the mortgage or charge was registered in the First Nation Land Register; and

- (b) reasonable notice of the foreclosure was provided to Council, giving Council an option to redeem the leasehold interest.

#### Power of Redemption

34.10 If Council exercises an option to redeem with respect to a leasehold interest under subsection 34.9(b), ᐃᓄᓐᓄᓐ becomes the lessee of the leasehold lands and, with the consent of the lender, takes the position of the mortgagor or chargor for all purposes after the date of redemption.

### **35. Residency and Access Rights**

#### Right of Residence

35.1 Subject to a law of the ᐃᓄᓐᓄᓐ, stating otherwise, the following persons may reside on ᐃᓄᓐᓄᓐ Lands:

- (a) a Member;
- (b) a Member who has been granted an allotment by Council;
- (c) a Spouse and child of a Member referred to in subsection (b);
- (d) a Member with a registered land instrument that grants an interest in ᐃᓄᓐᓄᓐ Lands;
- (e) a lessee or permittee, in accordance with the provisions of the land instrument granting the lease or permit.

35.2 A right of residence under section 35.1 does not imply any financial obligation on the part of ᐃᓄᓐᓄᓐ.

#### Right of Access

35.3 Subject to a law of ᐃᓄᓐᓄᓐ that states otherwise, the following persons have a right of access to ᐃᓄᓐᓄᓐ Lands:

- (a) a lessee or mortgagee of ᐃᓄᓐᓄᓐ Lands;
- (b) an invitee of a lessee of ᐃᓄᓐᓄᓐ Lands;

- (c) a permittee and any person who is granted a right of access under the permit;
- (d) a Member;
- (e) a Member's Spouse and children;
- (f) a person who is authorized by a government body or any other public body, established by or under an enactment of ʔaᑭam, Canada or British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey;
- (g) a person authorized in writing by Council or the Director of Lands and Natural Resources; or
- (h) a person authorized by any applicable law.

#### Public Access

- 35.4 A person may have access to ʔaᑭam Lands in areas designated as public in the land use plan if that person:
- (a) does not trespass on occupied land;
  - (b) does not interfere with an interest or licence in land;
  - (c) complies with all applicable laws; and
  - (d) no Resolution has been enacted prohibiting that person from having access to ʔaᑭam Lands.

#### Trespass

- 35.5 Any person who resides on, enters or remains on ʔaᑭam Lands other than in accordance with a right of residence or access under this Land Code is guilty of an offence.

#### Civil Remedies

- 35.6 Subject to any law enacted under this Land Code, all civil remedies for trespass are preserved.

### **36. Transfers on Death or Mental Incompetence**

- 36.1 A person who receives an interest in ᑭᓄᓂᓂ Lands from a Member by testamentary disposition is entitled to have that interest registered in the First Nation Land Register provided that:
- (a) where the deceased Member was ordinarily resident on ᑭᓄᓂᓂ Lands and the will is either approved in whole by the Minister, or the part of the will addressing the interest is approved by the Minister, under section 45 of the *Indian Act*, the land instrument transferring the interest is duly executed by either:
    - (i) the executor who is approved by the Minister, or
    - (ii) if no executor is named in the will, the administrator who is appointed by the Minister; or
  - (b) where the deceased Member was not ordinarily resident on ᑭᓄᓂᓂ Lands and:
    - (i) the will is approved by a court, the land instrument transferring the interest is duly executed by the person that is named in the court order as the executor or administrator of the deceased Member's estate; or
    - (ii) the Minister assumes jurisdiction under sections 4(3) and 43 of the *Indian Act*, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister to be the administrator of the deceased Member's estate;
- 36.2 A person who receives an interest in ᑭᓄᓂᓂ Lands from a Member by intestate succession is entitled to have that interest registered in the First Nation Land Register provided that:
- (a) where the deceased Member was ordinarily resident on ᑭᓄᓂᓂ Lands, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister under section 43 of the *Indian Act* to be the administrator of that Member's estate; or
  - (b) where the deceased Member was not ordinarily resident on reserve and:
    - (i) a court has made an order regarding the deceased Member's estate, the land instrument transferring the interest is duly executed by the person who is named in the court order as the administrator of estate; or
    - (ii) the Minister assumes jurisdiction under sections 4(3) and 43 of the *Indian Act*, the person who is appointed by the Minister to be the administrator of estate;
- 36.3 A person who receives an interest in ᑭᓄᓂᓂ Lands from a Member who has been declared

by a court or health authority to be mentally incompetent is entitled to have that interest registered in the First Nation Land Register provided that:

- (a) where the Member who is declared mentally incompetent is ordinarily resident on ᑭᓄᓂᓂ Lands, the land instrument transferring the interest is duly executed by either:
  - (i) the Minister, or
  - (ii) a person who is appointed by the Minister pursuant to section 51(2)(a) of the *Indian Act* to administer the estates of mentally incompetent Members; or
- (b) where the Member who is declared mentally incompetent is not ordinarily resident on ᑭᓄᓂᓂ Lands, the land instrument transferring the interest is duly executed by the person who is named in that person's power of attorney or in an order from the court to be that Member's committee.

36.4 A Member who purchases an interest in ᑭᓄᓂᓂ Lands under subsection 50(2) of the *Indian Act* is entitled to have that interest registered in the First Nation Land Register provided that:

- (a) the land instrument transferring the interest is duly executed by the person duly authorized under the *Indian Act* to transfer the interest; and
- (b) Council has, by Resolution, consented to the land instrument transferring the interest to the purchasing Member.

36.5 Council may, by Resolution, authorize the Director of Lands and Natural Resources to act as a delegate of Council under subsection 36.4(b).

36.6 An interest in ᑭᓄᓂᓂ Lands that reverts to ᑭᓄᓂᓂ under subsection 50(3) of the *Indian Act* shall become Community Lands on the date of reversion or on such other date that the Minister or the Minister's duly authorized delegate may specify.

### **37. Matrimonial Real Property Law**

Development of Rules and Procedures

37.1 Council shall enact a matrimonial real property law providing rules and procedures applicable on the breakdown of a marriage or death of a Member to:

- (a) the use, occupancy and possession of an interest in ᑭᓄᓂᓂ Lands held by the Member; and

- (b) the division of that interest in land.

Enactment of Rules and Procedures

37.2 The rules and procedures contained in the matrimonial real property law shall be developed by the Director of Lands and Natural Resources in consultation with Members.

General Principles

37.3 The rules and procedures developed under section 37.2 shall take into account the following general principles:

- (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of the children;
- (b) each Spouse should have an equal right to possession of the matrimonial home;
- (c) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
- (d) the rules and procedures shall not discriminate on the basis of sex;
- (e) a mortgage of lease of matrimonial real property shall not be set aside if the mortgagee acquired it for value and acted in good faith; and
- (f) only Members are entitled to hold a permanent interest in ᑲᓱᓱᓱ Lands or a charge against a permanent interest in ᑲᓱᓱᓱ Lands.

## **PART 8 DISPUTE RESOLUTION**

### **38. Informal Resolution of Disputes**

Intent

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

**39. Adjudicator Established**

Office of the Adjudicator

- 39.1 The Office of the Adjudicator is hereby established to hear and resolve disputes in relation to ʔaᓄam Lands in accordance with this Land Code and any other applicable laws and policies.
- 39.2 The Adjudicator shall be a Barrister and Solicitor and a member of the Law Society of British Columbia who is independent of the parties to a dispute and to other interests in the dispute.

**40. Application Procedure**

Reference to Adjudicator

- 40.1 The following persons may notify the Director of Lands and Natural Resources that they wish to refer the dispute to the Adjudicator for resolution under this part:
- (a) a Member who claims an interest in ʔaᓄam Lands based on a registered interest;
  - (b) a person who has a dispute with another person or with ʔaᓄam in relation to the possession, use or occupation of ʔaᓄam Lands;
  - (c) ʔaᓄam when asserting an interest in ʔaᓄam Lands; and
  - (d) ʔaᓄam when disputing the possession, use or occupation of ʔaᓄam Lands.

Dispute Resolution Not Available

- 40.2 Dispute resolution processes under this Land Code are not available under this part for disputes in relation to:
- (a) mortgages of lease;
  - (b) decisions relating to housing allocation; or
  - (c) decisions of Council to grant or refuse to grant an interest or licence in ʔaᓄam Lands.

Disputes Originating Prior to Land Code

- 40.3 Disputes that originated before the date this Land Code comes into force may be decided under this part.

Demonstration of Reasonable Effort to Resolve

40.4 Persons applying for adjudication under section 40.1 shall demonstrate that they have made reasonable efforts to resolve the dispute.

Limitation Period

40.5 Parties may request a referral to the Adjudicator no later than:

- (a) 60 days after the day the decision, act or omission that is the subject of the dispute occurred; or
- (b) 30 days after an attempt to resolve the dispute informally, in accordance with section 40.4, has failed.

**41. Referral to Adjudicator**

Director of Lands and Natural Resources Shall Establish Procedures

41.1 In consultation with the Lands Committee and Council, the Director of Lands and Natural Resources shall establish procedures for referring disputes to an Adjudicator.

41.2 Subject to section 41.3, the Director of Lands and Natural Resources shall, in a timely manner as required to settle the dispute, appoint the Adjudicator in accordance with the procedures established by Council.

Agreement to be Bound

41.3 The Director of Lands and Natural Resources shall not refer a dispute to the Adjudicator unless all parties to the dispute agree to be bound by the decision of the Adjudicator, in a form prescribed by Council in consultation with the Director of Lands and Natural Resources.

**42. Duties and Powers of the Adjudicator**

Duty to Act Impartially

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

Offense

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

Rejection of Application

42.3 In addition to any other penalty provided for an offence under section 42.2, the Adjudicator may refuse to hear or decide an application if, regardless of whether a person has been found to have committed an offence under section 42.2, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision.

#### Rules of Adjudicator

42.4 The Adjudicator may, consistent with this Land Code, establish rules for procedure at hearings and for the general conduct of proceedings.

#### Professional Services

42.5 Prior to retaining the services of any professionals to assist in fulfilling his or her functions, the Adjudicator shall notify the parties to the dispute of the proposed professionals and their estimated services and costs.

42.6 Upon agreement of the parties, the Adjudicator may retain the services of professionals to assist in fulfilling his or her functions, in which case they shall make best efforts to use professional services available in the community who do not have a conflict of interest.

42.7 The Adjudicator may refuse to hear or decide an application if one or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

42.8 The Adjudicator may, after hearing a dispute:

- (a) confirm or reverse the decision in dispute, in whole or in part;
- (b) substitute the Adjudicator's own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute for reconsideration by the decision-maker; or
- (e) refer the matter to a court of competent jurisdiction or other forum.

#### Decisions

42.9 The Adjudicator shall give written reasons for a decision and shall sign the written reasons.

42.10 Subject to section 44.1(Appeal of Decision) a decision of the Adjudicator is binding.

42.11 An order from an Adjudicator may be entered into court and enforced through the court of competent jurisdiction.

### **43. Costs**

#### Costs

43.1 Unless otherwise ordered by the Adjudicator under section 43.2 or by an appellate court, the parties to a dispute shall bear their own costs and an equal share of the costs of the adjudication process.

43.2 The Adjudicator has the authority to order one, both or all of the parties to pay some or all of the costs of the adjudication process, including but not limited to the costs of the Adjudicator and any professionals retained, taking into account:

- (a) the reasonableness of the parties in their positions;
- (b) the conduct of the parties;
- (c) the result of the adjudication;
- (d) the use of professional services; and
- (e) any other relevant factor.

#### ᑭᓱᓂᓂᓂ Liability

43.3 For greater certainty, ᑭᓱᓂᓂᓂ shall not be liable or responsible for the costs of adjudication under this part, or of any dispute resolution process, where the ᑭᓱᓂᓂᓂ is not a party.

### **44. Appeals and Alternate Forums**

#### Appeal of Decision

44.1 Subject to any exception established by a law, a decision of the Adjudicator may be appealed to a court of competent jurisdiction.

#### Alternate Forums

44.2 Nothing in this part precludes Council from establishing additional processes or laws for resolving disputes, which processes may include facilitated discussion, mediation, administrative appeals, or referral to another forum.

**PART 9  
OTHER MATTERS**

**45. Liability**

Liability Coverage

45.1 Council shall arrange for, maintain and pay insurance coverage for:

- (a) liability of ᑭᐱᑦᐱᐱ in relation to ᑭᐱᑦᐱᐱ Lands; and
- (b) personal liability of ᑭᐱᑦᐱᐱ’s officers and employees for acts done or omitted to be done in good faith while engaged in carrying out duties in relation to ᑭᐱᑦᐱᐱ Lands.

Extent of Coverage

45.2 Council shall determine the extent of insurance coverage under section 45.1.

**46. Offences**

Application of Criminal Code

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

Justices of the Peace

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

Provincial Courts

46.3 If no justice of the peace is appointed, this Land Code and Laws shall be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court or any court of competent jurisdiction as the case may require.

**47. Amendments to Land Code**

47.1 All substantive amendments to this Land Code shall be approved at a Meeting of Members.

47.2 Non-substantive amendments to this Land Code may be approved by Council, by Resolution.

**48. Commencement**

48.1 This amended Land Code shall come into effect if the members of ʔaᓄam vote in favour of it at a Meeting of Members vote in accordance with sections 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code*.

48.2 This Land Code shall come into effect on the day following the date that the members of ʔaᓄam vote in favour of it at a Meeting of Members vote in accordance with sections 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code*.