



STZ'UMINUS FIRST NATION LAND CODE

January 17, 2013

- In accordance with -

***The Framework Agreement on
First Nations Land Management***

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PREAMBLE

Whereas the Stz'uminus First Nation has had a profound relationship with its land since time immemorial;

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

And Whereas the Stz'uminus First Nation wishes to manage its lands and resources, rather than having its lands and resources managed on its behalf under the *Indian Act*,

NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE STZ'UMINUS FIRST NATION.

PART 1: PRELIMINARY MATTERS

1.0 Title

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

2.0 Interpretation

2.1 The following definitions apply in this Land Code:

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

"affiliate" means a person who is listed on the SFN Band Membership list as an affiliate member of SFN, who has the right to reside on SFN Lands but who is not a Member;

"arbitrator" means a person who

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

"Canada" means Her Majesty the Queen in Right of Canada;

"Certificate of Possession" means an instrument, issued under section 20 of the *Indian Act*, granting exclusive use and possession of a parcel of SFN Lands to a Member;

"child" means

- (a) a biological child,
- (b) an adopted child, whether by law or by custom,
- (c) a stepchild,

- (d) a foster child, or
- (e) a child over whom a person has guardianship;

"common-law marriage" means a union of two individuals not married to each other, who have lived together in a conjugal relationship for a period of not less than one year;

"community land" means any SFN Lands in which all Members have a common interest and to which no Members have been granted a Certificate of Possession;

"community purpose" means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on SFN Lands, and may include public works, utility or transportation corridors, or similar purposes;

"Council" means the Chief and Council of the Stz'uminus First Nation, elected in accordance with the *Chemainus First Nation Election Code* or the *Indian Band Election Regulations*, as applicable;

"easement" means a non-exclusive interest in SFN Lands, giving one person (the "grantee") the right to use the land of another (the "grantor") for a right of way or to provide utility or other services to the land of the grantee, and is limited to only such interest as is necessary to give effect to the easement granted;

"eligible voter" means, for the purpose of voting in respect of land matters under this Land Code, a Member who is 18 years of age or older on the day of the vote;

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

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

"heritage site" means a site on SFN Lands that is of particular cultural, historical, archaeological, anthropological or spiritual importance to SFN and the Members;

"immediate family", in respect of a person, means and includes the person's parent, sister, brother, child or spouse;

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

"Individual Agreement" means the Individual Transfer Agreement made between SFN and Canada, dated ;

"interest", in relation to SFN Lands, means any interest, right or estate of any nature in or to that land including a lease, easement, mortgage, right of way or permit, but does not include title to that land;

"Lands Manager" means the person appointed by the Council in accordance with article 7, who is responsible for the day-to-day administration of the Lands Department;

“Lands Department” means the department established under this Land Code to assist in the management and administration of SFN Lands;

“Law” means a law enacted under this Land Code;

“lease” means an instrument granting a person an exclusive right of use and possession to a parcel of SFN Lands, upon agreed conditions, for a specified period of time, and includes a sublease;

“license”, in relation to SFN Lands, means any right of use or occupation of SFN Lands other than an interest in that land;

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

“mediator” means a person who

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

“Meeting of Members” means a meeting under article 18 to which the Members are invited;

“Member” means a person whose name appears or is entitled to appear on the SFN Band Membership List, but for clarity, does not include an affiliate;

“mortgage” means a charge on an interest in SFN Lands, in which a which a person with a registered Certificate of Possession, lease or license (the “mortgagor”) transfers their interest to another person (the “mortgagee”), as security for a debt on conditions set out in a written mortgage agreement including a condition that if the debt is repaid by a specific time the transfer becomes void and the interest returns to the mortgagor;

“natural resources” means any minerals, oil, gas, substances, groundwater, water, vegetation or animals found on or in SFN Lands which, when removed, have economic or other value;

“permit” means an interest in a specified area of SFN Lands other than a lease, easement or license, that gives a person the right to non-exclusive use of a specified area of SFN Lands for a specified purpose;

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

“ratification vote” means a vote of registered voters under article 20;

“registered voter” means an eligible voter who has registered to vote in accordance with the SFN Ratification Process;

“resolution” means a written resolution passed by the Council at a duly convened meeting;

"SFN" means the Stz'uminus First Nation, a band within the meaning of subsection 2(1) of the *Indian Act*;

"SFN Lands" means any portion of a reserve that is subject to this Land Code under article 5;

"SFN Law Registry" means the register, kept at the main administration office, which contains a copy of all Laws, by-laws, resolutions and other enactments of SFN, including all Laws, by-laws, resolutions and enactments of SFN that have been repealed, replaced, amended, or are no longer in force;

"SFN Ratification Process" means the *Stz'uminus First Nation Community Ratification Process*, which was used to ratify this Land Code;

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

"sublease" means a portion of an interest held under a lease;

"Verifier" means a person appointed to monitor and verify the process of SFN opting in to the Act, in accordance with section 8.1 of the Framework Agreement; and

"written instrument" means a written document, in the form approved by the Lands Manager, which purports to create, grant, assign or transfer an interest in SFN Lands or affect SFN Lands.

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

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

- (a) the water, beds underlying water, the foreshore to the high water mark, aquifers, and riparian rights;
- (b) minerals, subsurface resources and all renewable and non-renewable natural resources belonging to that land, to the extent that these are under the jurisdiction of Canada or SFN; and
- (c) all the interests granted to SFN by Canada listed in the Individual Agreement.

2.4 In this Land Code,

- (a) the use of the word "shall" denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable 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 or Law includes every amendment to it, every regulation made under it and any statute enacted in substitution for it or in replacement of it; and
 - (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.
- 2.5 The provisions under this Land Code shall be interpreted in accordance with the language, culture, traditions and customs of SFN, unless otherwise provided.
- 2.6 If there is an inconsistency or conflict between this Land Code and any other SFN enactment, this Land Code shall prevail to the extent of the inconsistency.
- 2.7 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.
- 2.8 If there is an inconsistency or conflict between this Land Code and a regulation made under section 42 or 73 of the *Indian Act*, this Land Code shall prevail to the extent of the inconsistency.
- 2.9 This Land Code does not abrogate or derogate from any Aboriginal, treaty or other right or freedom that pertains now or in the future to SFN or its Members.
- 2.10 This Land Code is not intended to affect the eligibility of SFN 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 SFN has not assumed responsibility for such services or programs.
- 2.11 This Land Code does not abrogate the fiduciary relationship between Canada and SFN and its Members.
- 3.0 Authority to Govern**
- 3.1 By enacting this Land Code, SFN is reaffirming its special responsibility to care for and respect the land, which has been the obligation of Members and their ancestors since time immemorial.
- 3.2 The authority of SFN to govern its lands and resources flows from its Aboriginal title and its inherent right of self-government.
- 3.3 For any purpose related to SFN Lands, SFN shall have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.
- 4.0 Purpose**
- 4.1 The purpose of this Land Code is to set out the principles, rules and administrative structures that apply to SFN Lands and by which SFN shall exercise its authority over SFN Lands.

5.0 Description of SFN Lands

5.1 The following SFN Indian Reserves are subject to this Land Code

- (a) Say-La-Quas I.R. #10;
- (b) Squaw-Hay-One I.R. #11;
- (c) Oyster Bay I.R. #12;
- (d) Chemainus I.R. #13; and
- (e) lands set apart by Canada in the future as lands reserved for the use and benefit of SFN, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the Indian Act.

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

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

5.3 If the relevant conditions at section 5.2 are met, the Council shall give public notice, in accordance with section 40.1, on any proposed inclusion of lands before the Council makes a Law or resolution declaring the lands to be subject to this Land Code.

5.4 For greater certainty, sections 5.2 and 5.3 do not apply to land acquired by land exchange, which is governed by the process set out at article 31.

PART 2: LAND ADMINISTRATION**6.0 Responsibilities of Council**

6.1 The Council is responsible for all matters relating to the management and administration of SFN Lands whether or not they have been assigned or delegated to an individual or body by or under this Land Code.

6.2 Notwithstanding section 6.1, and subject to the Act, the Framework Agreement and this Land Code, the Council may assign or delegate to the Lands Manager, the Lands Department, or a body established by or under this Land Code any of its functions under this Land Code except:

- (a) the granting of interests in SFN Lands;
- (b) the negotiation of amendments to the Individual Agreement;
- (c) expropriation of SFN Lands;
- (d) the establishment of a Lands Management Board;

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

7.0 Lands Manager

7.1 The Council shall, by resolution, appoint a Lands Manager to

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

7.2 Without limiting the generality or scope of the duties and responsibilities of the Lands Manager, the Lands Manager shall:

- (a) prepare and present regular reports to the Council;
- (b) approve all forms of written instruments developed or adapted for use by the Lands Department;
- (c) make recommendations to the Council regarding the fees and rent for interests in community land;
- (d) determine the fees for services provided by the Lands Department;
- (e) execute such written instruments and carry out any action required to be taken by and on behalf of Canada in relation to an interest described in section 22.1;
- (f) carry out any action required to be taken by Canada in relation to an interest described in section 22.1 after the date this Land Code comes into force; and
- (g) carry out any duty or responsibility delegated to the Lands Manager under section 6.2.

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

8.0 Lands Department

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

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

- (a) administer SFN Lands in accordance with this Land Code and Laws;
- (b) prepare forms of written instruments for use in creating, granting, transferring or assigning interests in SFN Lands, where deemed necessary and advisable by the Lands Manager;
- (c) prepare forms of written instruments for use in registering documents which affect or purport to affect SFN Lands, where deemed necessary and advisable by the Lands Manager;
- (d) arrange for the execution of written instruments and related documents on behalf of SFN and Canada;
- (e) maintain and protect records in relation to SFN Lands;
- (f) carry out any duty or responsibility delegated to the Lands Department under section 6.2; and
- (g) carry out such additional duties as are requested by the Lands Manager consistent with the Laws and this Land Code.

9.0 Lands Management Board

- 9.1 The Council may, by Law or resolution, establish a Lands Management Board, as an advisory body to the Council or the Lands Department.
- 9.2 A Law or resolution that establishes a Lands Management Board shall include provisions that set out
 - (a) the composition of the Lands Management Board, including quorum;
 - (b) eligibility criteria and process for selecting members of the Lands Management Board;
 - (c) the term of office for members of the Lands Management Board;
 - (d) the process for selecting a chair; and
 - (e) the duties of the chair.

10.0 Exercise of Duties

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

PART 3: SFN LEGISLATION

11.0 Law-Making Powers

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

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

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

- (a) regulation, control and prohibition of zoning land use, subdivision control and land development;
- (b) rules, procedures and rights respecting the expropriation of interests in SFN Lands;
- (c) creation, regulation and prohibition of interests in SFN Lands;
- (d) environmental assessment and protection;
- (e) provision of services for the resolution, outside the courts, of disputes in relation to SFN Lands;
- (f) regulation, control, authorization and prohibition of residency, access and occupation of SFN Lands;
- (g) fees, stumpage or royalties to be paid to SFN for the removal or extraction of natural resources from SFN Lands;
- (h) fees to be paid to SFN for permit or license applications or for administrative processes;
- (i) conduct of surveys;
- (j) setting aside and regulation of parks, parklands and recreational lands;
- (k) setting aside and regulation of heritage sites and sacred sites;
- (l) creation of management and administrative bodies or agencies;
- (m) removal and punishment of persons trespassing upon SFN Lands or frequenting SFN 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, maintenance and management of roads, water courses, storm drains, bridges, fences, ditches, and other local and public works;
- (q) regulation of traffic and transportation; and
- (r) any matter as deemed necessary by the Council.

11.3 A Law may

- (a) establish offences that are punishable on summary conviction;
- (b) provide for fines, imprisonment, restitution, community service, and alternate means for achieving compliance; and
- (c) establish enforcement procedures consistent with federal law, such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.

11.4 All Laws shall be

- (a) posted in accordance with section 14.1; and
- (b) included in the SFN Law Registry in accordance with section 14.2

12.0 Spousal Property Law

12.1 Within 12 months from the date this Land Code takes effect, the Council shall enact a spousal property Law providing rules and procedures applicable on the breakdown of a relationship between spouses, to the

- (a) use, occupancy and possession of SFN Lands; and
- (b) division of interests in SFN Lands.

12.2 At least 60 days before enacting a Law under section 12.1, the Council shall notify the Members of the proposed Law and shall request the Members to provide input on the proposed Law.

12.3 For greater certainty, the rules and procedures in the spousal property Law enacted under section 12.1 shall respect the following general principles;

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

12.4 The Council may enact an interim spousal property Law as described in sections 12.1 and 12.3, provided that any such Law shall expire 12 months after the coming into force of this Land Code, unless it is re-enacted in accordance with article 13.

12.5 A spousal property Law enacted under this article shall be

- (a) posted in accordance with section 14.1; and
- (b) included in the SFN Law Registry in accordance with section 14.2.

13.0 Law-Making Procedure

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

- (a) the Chief or a Councilor;
- (b) the Lands Manager; or
- (c) a representative of a body or authority authorized by the Council to do so.

13.2 A Member who wishes to propose a Law to the Council shall submit their request to the Lands Manager, who shall determine whether to bring the proposal to the Council, in accordance with paragraph 13.1(b).

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

- (a) tabled at a Council meeting at least 28 days before the Law is to be enacted; and
- (b) posted at the band administration office and at each public building on SFN Lands, at least 21 days before the Law is to be enacted.

13.4 The Council may enact a Law without the preliminary steps required under section 13.3, if the Council is of the opinion that the Law is needed urgently to protect SFN Lands or the Members, but the Law expires 120 days after its enactment, unless re-enacted in accordance with section 13.3.

13.5 A Law is enacted if it is approved by a majority of the Council at a meeting of the Council.

13.6 The original copy of any Law or resolution concerning SFN Lands shall be signed by a quorum of the Council present at the meeting at which it was enacted.

14.0 Publication of Laws

14.1 Within seven days after a Law has been enacted, SFN shall

- (a) post a copy of the Law at the band administration office; and
- (b) post a copy of the Law on SFN's website.

- 14.2 The Council shall ensure that a copy of each Law is included in the SFN Law Registry.
- 14.3 Any person may review the SFN Law Registry at the main administration office during normal office hours, upon request.
- 14.4 Any person may obtain a hard copy of a Law or resolution on payment of a reasonable fee set by the Lands Manager.

15.0 Commencement and Amendment of Laws

- 15.1 A Law enacted by the Council takes effect on the date of its enactment or such later date as specified by the Law.
- 15.2 A Law may be repealed or amended by following the procedure set out at article 13.

PART 4: MEMBER INPUT AND APPROVALS

16.0 Rights of Eligible Voters

- 16.1 Each Member who is at least 18 years of age is eligible to vote at a Meeting of Members and at a ratification vote.

17.0 Informing Members

- 17.1 The Council shall notify the Members, in accordance with section 40.1, prior to the introduction of
- (a) any Law on spousal property that may be enacted under section 12.1;
 - (b) any land use plan;
 - (c) a Law respecting a community plan or subdivision plan;
 - (d) a Law declaring land or an interest referred to in section 5.2 or 5.3 to be subject to this Land Code;
 - (e) a Law affecting a heritage site or an environmentally sensitive property;
 - (f) a Law or process respecting environmental assessment;
 - (g) a Law respecting the transfer and assignment of interest in land;
 - (h) a Law respecting the rate and criteria for the payment of fees or rent for land; and
 - (i) any other Law or class of Law that the Council, by resolution, declares to be subject to this section.

18.0 Approval at Meeting of Members

18.1 The Council shall convene a Meeting of Members for consideration and voting on the following matters:

- (a) a voluntary exchange of SFN Lands in accordance with article 31; and
- (b) any Law or class of Law that the Council, by resolution, declares to be subject to this section.

19.0 Procedures for a Meeting of Members

19.1 The Council shall give public notice of a Meeting of Members, in accordance with section 40.1.

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

19.3 The quorum at a Meeting of Members is 25 eligible voters, subject to section 19.4.

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

19.5 A matter or Law is approved at a Meeting of Members if a majority of the quorum in attendance votes in favour of the matter or Law.

19.6 The Council may schedule more than one Meeting of Members for consideration and voting on a matter or Law that requires a Meeting of Members.

20.0 Ratification Votes

20.1 Member approval by a ratification vote shall be obtained for any Law or class of Law that the Council, by resolution, declares to be subject to this section.

20.2 Any ratification vote required under this Land Code shall be conducted in substantially the same manner as the SFN Ratification Process, except that the Council shall have the discretion to determine whether a Verifier is required.

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

PART 5: INTERESTS IN LAND

21.0 Limits on Interests

21.1 An interest in SFN Lands may only be created, granted, disposed of, assigned or transferred by a written instrument, in accordance with this Land Code.

- 21.2 The Lands Department may establish mandatory standards, criteria and forms for interests in SFN Lands.
- 21.3 Any written deed, lease, contract, instrument, document or agreement of any kind, by which SFN, a Member or any other person purports to grant, dispose of, transfer or assign an interest in SFN Lands after the date this Land Code takes effect is voidable if it contravenes this Land Code.
- 21.4 A person who is not a Member may only hold an easement, lease, license, mortgage or permit in SFN Lands.

22.0 Existing Interests and Licenses

- 22.1 Any interest or license in SFN Lands that existed when this Land Code takes effect shall, subject to this Land Code, continue in force in accordance with its terms and conditions.

23.0 New Interests and Licenses

- 23.1 The Lands Department may
- (a) set criteria for issuing permits and licenses; and
 - (b) make recommendations to the Council regarding the granting of interests in SFN Lands.
- 23.2 The grant of an interest may be made subject to the satisfaction of written conditions.

24.0 Transfer and Assignment of Interests

- 24.1 Except for transfers that occur by operation of law, all transfers and assignments of interests shall
- (a) comply with this Land Code and all Laws; and
 - (b) be registered in the First Nations Land Registry, in accordance with article 29.

25.0 Limits on Mortgages and Seizures

- 25.1 In accordance with the Framework Agreement, section 29, section 87 and subsections 89(1), (1.1) and (2) of the *Indian Act* continue to apply to SFN Lands, whether or not the SFN Lands were designated before this Land Code came into effect.
- 25.2 The holder of a Certificate of Possession may only grant a mortgage of that interest to SFN or to a Member.
- 25.3 A leasehold interest may be subject to charge or mortgage, provided that, in the event of a default, SFN shall have the right of first refusal.

- 25.4 The term of any charge or mortgage of a leasehold interest shall not exceed the term of the lease.
- 25.5 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest shall not be subject to possession by the charge or mortgage, foreclosure, power of sale or any other form of execution or seizure, unless the
- (a) charge or mortgage was registered in the First Nations Land Registry; and
 - (b) chargor or mortgagee has given the Council, acting on behalf of SFN, 90 days in which to redeem the charge or mortgage.
- 25.6 If the Council exercises its power of redemption with respect to a leasehold interest, SFN becomes the lessee of the land and takes the position of the chargor or mortgagee for all purposes after the date of the redemption.

26.0 Surveys

- 26.1 The Lands Department, or a holder of an interest in SFN Lands, may cause surveys to be made of SFN Lands in accordance with the *Canada Lands Surveys Act*, R.S.C. 1985, c. L-6 and the *Canada Lands Surveyors Act*, S.C. 1998, c. 14.
- 26.2 A survey respecting SFN Lands shall only become effective upon being registered in the First Nations Land Registry.
- 26.3 Notwithstanding sections 26.1 and 26.2, surveys determining boundaries of SFN Lands shall not abrogate or derogate from SFN's Aboriginal rights and title or treaty rights.

27.0 Registration of Interests

- 27.1 An interest in SFN Lands created or granted after this Land Code takes effect is voidable and not enforceable unless it is registered or recorded in the First Nations Land Registry.
- 27.2 Every person who receives an interest in SFN Lands shall
- (a) submit the written instrument creating, transferring or assigning the interest for registration or recording in the First Nations Land Registry; or
 - (b) submit the written instrument to the Lands Department, together with
 - i. a written request to register or record the written instrument in the First Nations Land Registry,
 - ii. a filing fee if applicable, and
 - iii. a signed waiver or liability.

- 27.3 Upon receiving the items under paragraph 27.2(b), the Lands Manager shall confirm that the written instrument is in compliance with this Land Code, the Act and the *First Nations Land Registry Regulations*, and submit the written instrument and supporting documentation for registration or recording in the First Nations Land Registry.
- 27.4 A written instrument granting an interest or license in SFN Lands that requires the consent of the Council, or approval at a Meeting of Members, shall include a certificate issued by the Lands Manager indicating that the applicable consent or approval has been obtained.
- 27.5 A written instrument registered in the First Nations Land Registry which does not include the certificate required under section 27.4 is void.
- 27.6 The Lands Manager shall ensure that an original copy of the following documents is deposited in the First Nations Land Registry:
- (a) every land use plan, subdivision plan or resource use plan; and
 - (b) this Land Code and any amendment to this Land Code.

28.0 Transfers on Death

- 28.1 A Member who claims to be entitled to a Certificate of Possession by testamentary disposition or succession pursuant to the *Indian Act* is not entitled to such Certificate of Possession until
- (a) the Member has filed with the Lands Department a written instrument in a form prescribed by the Lands Manager, duly executed by the personal representative of the estate of the deceased Member transferring such Certificate of Possession to the Member; and
 - (b) the written instrument referred to in subsection (a) is registered in the First Nations Land Registry.
- 28.2 A purchaser of a Certificate of Possession pursuant to subsection 50(2) of the *Indian Act* is not entitled to such Certificate of Possession until
- (a) the purchaser has filed with the Lands Department, a written instrument in a form prescribed by the Lands Manager, duly executed by the person authorized under the *Indian Act* to execute a transfer of a Certificate of Possession acquired pursuant to section 50(2) of the *Indian Act*; and
 - (b) the written instrument referred to in subsection (a) is registered in the First Nations Land Registry.

29.0 Residency and Access Rights

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

29.2 Subject to any Laws passed under this Land Code, all civil remedies for trespass are preserved.

29.3 The following persons have a right to reside on SFN Lands:

- (a) Members who hold a Certificate of Possession or who, and their spouses and children;
- (b) Members who have been assigned band housing, and their spouses and children;
- (c) lessees, in accordance with the provisions of the instrument granting the lease.

29.4 The following persons have a right of access to SFN Lands:

- (a) Members and their spouses, children and invitees;
- (b) lessees and their invitees;
- (c) permittees and those granted a right of access under the permit;
- (d) persons authorized by a government body or any other public body, established by or under an enactment of SFN or British Columbia to establish, operate or administer a public service, to operate a public institution or to conduct a technical survey;
- (e) persons authorized by a Law; or
- (f) any person, for a valid social or business purpose,
provided that the person
 - (g) does not trespass on occupied land and does not interfere with any interest in land;
 - (h) complies with all applicable laws; and
 - (i) is not the subject of a resolution barring the person from SFN Lands.

29.5 A right of residence on or access to SFN Lands does not imply or create any financial obligation on the part of SFN.

29.6 No liability is imposed upon SFN, in respect of any person exercising a right of residency or access under this Land Code, for injuries or damages suffered on account of the condition or state of SFN Lands.

PART 6: EXPROPRIATION AND PROTECTION OF LAND

30.0 Expropriation

30.1 An interest in SFN Lands, or in any building or other structure on SFN Lands, may only be expropriated by SFN

- (a) in accordance with the Framework Agreement;

- (b) in accordance with any Law enacted for the purpose of establishing the rights and procedures for expropriations;
 - (c) for a necessary community purpose, including but not limited to a fire hall, sewage or water treatment facility, community center, public works, roads, schools, daycare facility, hospitals, health-care facility, and retirement home;
 - (d) after notifying the interest-holders of the purpose for expropriation, and making a good faith effort to acquire, by mutual agreement, the interest in SFN Lands;
 - (e) if no other similar and suitable SFN Lands is reasonably available; and
 - (f) in the most reasonable amount and for the shortest period of time necessary to reasonably meet the need for which the interest, building or structure is required by SFN.
- 30.2 Before SFN decides to expropriate an interest, it shall post a public notice, in accordance with section 40.1.
- 30.3 An interest of Canada is not subject to expropriation by SFN.
- 30.4 SFN shall, in accordance with its Laws and the Framework Agreement,
- (a) serve reasonable notice of the expropriation on each affected holder of the interest to be expropriated; and
 - (b) pay fair and reasonable compensation to the holders of the interest being expropriated.
- 30.5 In determining the total value of the compensation under this section, SFN shall apply the rules set out in the *Expropriation Act*, with such modifications as the circumstances may require.
- 30.6 In determining compensation under section 30.5, the “market value” of an expropriated interest is equal to the amount that would have been paid for the interest if it had been sold on the reserve by a willing seller to a willing buyer under no duress.
- 30.7 Disputes concerning the
- (a) right of a person who claims an interest in expropriated SFN Lands to compensation; and
 - (b) amount of the compensation to be paid to the person who held an interest in expropriated SFN Lands,
- shall be determined in accordance with Part 8.
- 30.8 No expropriation of an interest in SFN Lands or in any building or other structure on SFN Lands by SFN shall take effect earlier than either of the

- (a) date the notice of expropriation is registered in the First Nations Land Registry; or
- (b) 30th day after the day the last copy of the notice is served on the interest-holder.

31.0 Voluntary Land Exchanges and Protections

- 31.1 SFN may agree with another party to exchange a parcel of SFN Lands for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.
- 31.2 A land exchange is of no effect unless it receives approval at a Meeting of Members in accordance with section 18.1.
- 31.3 No land exchange may occur unless:
- (a) the land to be received in the exchange is
 - i. equal to or greater than the area of the SFN Lands to be exchanged,
 - ii. at least comparable to the appraised value of the SFN Lands, and
 - iii. eligible to become a reserve under the *Indian Act* and SFN Lands subject to this Land Code; and
 - (b) SFN receives from Canada a written statement clearly stating that Canada consents to
 - i. set apart as a reserve the land to be received in exchange, as of the date of the land exchange or such later date as the Council may specify by resolution or as provided by an agreement with Canada, and
 - ii. the manner and form of the exchange as set out in the exchange agreement.
- 31.4 The Council may, by resolution, delegate to another person the authority to negotiate a land exchange agreement on behalf of SFN.
- 31.5 In addition to the land described at section 31.3, SFN may negotiate to receive other compensation, such as money, or other parcels of land which may be held by SFN in fee simple or in some other manner.
- 31.6 Once negotiations on the land exchange agreement are concluded, the Council shall, at least 21 days before the Meeting of Members, provide to eligible voters a:
- (a) description of the SFN Lands to be exchanged;
 - (b) description of the land to be received in the exchange;
 - (c) description of any other compensation to be exchanged;

- (d) report of a certified land appraiser setting out that the conditions in paragraph 31.3(a) have been met;
- (e) copy or summary of the exchange agreement; and
- (f) copy of the consent referred to in paragraph 31.3(b).

31.7 Any land exchange agreement shall provide that

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

32.0 Natural Resources

32.1 All natural resources and revenues from natural resources are the property of SFN, unless specifically granted under a permit, license or other interest.

33.0 Heritage Sites

33.1 Development on a site designated as a heritage site under a Law or land use plan shall not be permitted, unless the development receives approval at a Meeting of Members.

33.2 No amendment may be made to a Law or land use plan to delete a heritage site or remove heritage site designation unless the amendment receives approval at a Meeting of Members.

33.3 The Council shall develop and enact, in accordance with article 13, a Law regarding the protection of heritage sites within 24 months of the date this Land Code comes into force.

33.4 A Law enacted under section 33.3 shall be

- (a) posted in accordance with section 14.1; and
- (b) included in the SFN Law Registry in accordance with section 14.2.

PART 7: ACCOUNTABILITY

34.0 Conflicts of Interest and Financial Management

34.1 Any conflict of interest that arises under this Land Code or under a Law shall be determined in accordance with the *Stz'uminus First Nation Conflict of Interest Regulation*.

- 34.2 All financial matters in relation to the SFN Lands administered under this Land Code shall be conducted in accordance with the *Stz'uminus First Nation Financial Administration Law, 2010* and all regulations, policies or procedures enacted or approved under it.

PART 8: DISPUTE RESOLUTION

35.0 Informal Resolution of Disputes

- 35.1 SFN intends that whenever possible, a dispute in relation to SFN 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.
- 35.2 SFN further intends that a dispute in relation to SFN Lands that is not resolved by informal discussion shall be resolved by the parties through the alternative dispute resolution mechanisms outlined in this Part.
- 35.3 Nothing in this Part precludes Council from establishing additional processes or Laws for resolving disputes involving SFN Lands, or restricts the parties' right to pursue remedies in a court of competent jurisdiction at any time.

36.0 Application of this Part

- 36.1 This Part applies to
- (a) disputes involving a Member who claims an interest;
 - (b) disputes involving a person who has a dispute with another person or with SFN in relation to the possession, use or occupation of SFN Lands;
 - (c) SFN when asserting an interest in SFN Lands;
 - (d) SFN when disputing the possession, use or occupation of SFN Lands; and
 - (e) disputes in relation to expropriation as set out at section 30.7.
- 36.2 Dispute resolution is not available under this Part for disputes of decisions
- (a) relating to housing allocation; or
 - (b) of the Council to grant or refuse to grant an interest in SFN Lands.
- 36.3 Disputes that originated before this Land Code came into effect may be decided under this Part.

37.0 Mediation

37.1 Parties that have been unable to resolve a dispute through informal discussion in accordance with section 35.1 may attempt to resolve the dispute through mediation, in accordance with the following procedure:

- (a) the parties to the dispute shall jointly select a mediator;
- (b) if the parties are unable to agree on a mediator, the parties may request the Lands Advisory Board Resource Centre to appoint a mediator; and
- (c) the mediator to the dispute shall set the rules and procedures for the mediation.

38.0 Arbitration

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

- (a) the parties to the dispute shall jointly select an arbitrator;
- (b) if the parties are unable to agree on an arbitrator, the parties may request the Lands Advisory Board Resource Centre to appoint an arbitrator; and
- (b) the arbitrator of the dispute shall set the rules and procedures for the arbitration.

38.2 Subject to section 38.3, the decision of the arbitrator shall be final and binding on the parties.

38.3 Notwithstanding section 38.2, where there is an exception established by law, the decision of the arbitrator may be appealed to a court of competent jurisdiction.

39.0 Costs

39.1 All parties to a dispute shall bear their own costs in any dispute resolution process they undertake.

39.2 For greater certainty, SFN shall not be liable or responsible for the costs of any dispute resolution process under this Part where SFN is not a party.

PART 9: OTHER MATTERS

40.0 Public Notice

40.1 Unless expressly provided otherwise, public notice under this Land Code

- (a) shall specify the time, date and location of the meeting or vote, if applicable;

- (b) shall contain a brief description of the matter at issue;
- (c) shall be posted at least 30 days prior to the event that is the subject of the public notice;
- (d) is properly posted if a written notice is placed in the reception area of the band and office, and at each public building on SFN Lands; and
- (e) may, at the discretion of the Council, be
 - i. published in SFN's newsletter,
 - ii. posted on SFN's website, or
 - iii. posted by any such additional method as the Council may consider appropriate in the circumstances.

41.0 Liability

- 41.1 SFN is not liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to SFN Lands that occurred before this Land Code came into effect.
- 41.2 The Council shall arrange, maintain and pay insurance coverage for
 - (a) liability of SFN in relation to community land and SFN assets; and
 - (b) personal liability of SFN Councillors, officers employees for acts done in good faith while engaged in carrying out duties related to SFN Lands under this Land Code.
- 41.3 The Council shall determine the extent of the insurance coverage reasonably required under section 41.2.
- 41.4 Every employee of SFN whose responsibilities include land administration or collecting or accounting for land revenue shall be bondable.

42.0 Offences

- 42.1 Unless some other procedure is provided for by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code*, R.S.C. 1985, c. C-46 apply to offences under this Land Code or under a Law.
- 42.2 The Council may enact Laws respecting the appointment of justices of the peace for the purposes of enforcing this Land Code and the Laws.
- 42.3 If no justice of the peace is appointed or available, then this Land Code and the Laws shall be enforced through the provincial courts.
- 42.4 For the purposes of prosecuting offences, SFN shall enter into an agreement with

- (a) Canada and British Columbia to arrange for a provincial prosecutor; or
- (b) Canada to arrange for a federal agent to prosecute these offences.

43.0 Commencement

43.1 This Land Code shall take effect if

- (a) the Members approve this Land Code and the Individual Agreement with Canada by ratification vote; and
- (b) this Land Code has been certified by the Verifier pursuant to the Framework Agreement.

43.2 This Land Code shall take effect 30 days following the certification of this Land Code by the Verifier.

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

44.0 Amendments to the Land Code

44.1 The Council may, by resolution, make non-substantive amendments to this Land Code.

44.2 Any substantive amendments to this Land Code shall be approved at a Meeting of Members, in accordance with article 19.