

**Final Ratification Draft**

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**WE WAI KAI NATION LAND CODE**

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August 1, 2008

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## **PART I – Definitions and Interpretation**

### **1. Interpretation**

#### 1.1 In this Land Code,

“Band” has the same meaning as in the *Indian Act* and includes We Wai Kai Nation;

“Business Interest” means ownership or partial ownership of a business, shares of a corporation, or other financial involvement, including any financial obligation from, or financial obligation to, any individual, business or corporation;

“Chief” means the lawfully elected Chief of We Wai Kai Nation;

“Chief Administrative Officer” means the individual appointed by Resolution to hold the principal non-political management position for We Wai Kai;

“Citizen” means an individual registered on the We Wai Kai Citizenship Roll;

“Citizenship” means the group of persons who constitute the Citizens of We Wai Kai;

“Citizenship Roll” means the names on the Band List for We Wai Kai maintained by We Wai Kai Nation;

“Common Law Spouse” means a person who has lived with another in a marriage-like relationship for a period of not less than two (2) consecutive years but is not married to the other person;

“Community Lands” means any We Wai Kai Lands in which no Right of Occupancy to a Citizen has been made or in which no Citizen has lawful possession on the date this Land Code comes into force;

“Community Purpose” means a purpose which is intended to provide a facility, benefit or support for Citizens or persons residing on We Wai Kai Lands, including but not limited to parks, cultural sites, schools, community buildings, water or sewage facilities or lines, transportation and utility corridors, and requirements related to such purposes;

“Council” means the lawfully elected governing body of We Wai Kai Nation;

“Council of Elders” means the body lawfully elected under the Election Code that has responsibility to hear matters and make decisions under this Land Code as authorized by this Land Code;

“Detailed Lands and Natural Resources Budget” means the annual budget of revenues and expenditures of monies derived from We Wai Kai Lands and Natural Resources prepared under Part VII of this Land Code;

“Devise” means the gift or disposition of an interest in We Wai Kai Lands by a will;

“Easement” means an interest in We Wai Kai Lands granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, 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. An Easement does not confer any right of exclusive possession in the land and does not restrict the rights of the grantor of the Easement beyond that required to give effect to the Easement granted;

“Election Code” means the We Wai Kai Election Code;

“Elector” means an individual who, as of the date of a Referendum or other vote provided for in this Land Code, is eligible to vote in elections or by-elections under the provisions of the Election Code;

“Electoral Officer” means the individual appointed under this Land Code to conduct Referendums;

“Electors’ List” means an alphabetical list of eligible Electors indicating the name, business address and business telephone number of the Electoral Officer;

“Emergency Purpose” means exceptional circumstances, including but not limited to circumstances relating to health, safety and socio-economic issues that were not reasonably foreseeable;

“Expropriation” means a taking of an interest or all interests in We Wai Kai Lands for a Community Purpose through a process established by We Wai Kai Law in accordance with section 23;

“Finance Committee” means a committee composed of a member of Council, the Financial Administration Officer and the Chief Administrative Officer;

“Financial Administration Officer” means the individual appointed by Resolution to oversee the day-to-day financial operations of We Wai Kai;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen (14) First Nations on February 12, 1996 as amended;

“Immediate Family” means a spouse (including a Common Law Spouse), parent, grandparent, child (including adopted children or those living with you as your child), grandchild or sibling, and also includes the spouse (including Common Law Spouse) of an Immediate Family Citizen;

“Individual Agreement” means the agreement entered into between We Wai Kai and the Government of Canada pursuant to section 6(3) of the *First Nations Land Management Act*;

“Jurisdiction” means law-making authority;

“Land Use Plan” means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and

development of We Wai Kai Lands;

“Lands Administration Officer” means the individual appointed by Resolution to oversee the day-to-day operations of the We Wai Kai Lands Office;

“Lease” means a written contract setting out terms and conditions of Leasehold;

“Leasehold” means an interest in We Wai Kai Lands granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, including a Sub-Lease giving a Person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified term of one (1) year or longer, calculated by including any renewal or extension period;

“Majority” means fifty per cent plus one (50%+1);

“Minister” means the Minister of Indian Affairs and Northern Development;

“Mortgage” means an interest in We Wai Kai Lands granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, in which a Person with a registered Right of Occupancy, Leasehold or Licence (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 specified time the transfer becomes void and the interest returns to the mortgagor;

“Natural Resources” means any materials on or under the land in their natural state which when extracted have economic value;

“Natural Resources Licence” means an interest in We Wai Kai Lands granted under Part III of this Land Code, giving one Person the right to use, develop or extract the Natural Resources on or under the land of another or on or under Community Lands;

“Occupancy Certificate” means documentary evidence of a Citizen’s Right of Occupancy of part of We Wai Kai Lands described thereon;

“Ordinary Residence” means the place where in the settled routine of a person’s life, that individual regularly, normally or customarily lives;

“Permit” means an interest in We Wai Kai Lands other than a Leasehold, Easement or Licence granted under Part III of this Land Code or, prior to the date this Land Code comes into force, granted pursuant to the provisions of the *Indian Act*, giving one Person the right to use the land of another for a specified purpose. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required giving effect to the Permit granted ;

“Person “ means, in addition to its ordinary meaning , any association, household, society, corporation, partnership or party and the successors, assigns and personal or other representative of such person to whom the context can apply according to law;

“Polling Site” means the building in which the polling station is located;

“Provisional Lands and Natural Resources Budget” means an interim or preliminary budget projecting revenues and expenditures relating to We Wai Kai Lands and Natural Resources revenues anticipated to be required for the next fiscal year;

“Referendum” means a Referendum held in accordance with Part IX of this Land Code;

“Resolution” means a formal motion moved by a member of Council, seconded by another member of Council and passed by Council;

“Right of Occupancy” means an interest in We Wai Kai Lands granting a Citizen lawful possession of a part of We Wai Kai Lands under Part III of this Land Code;

“Special General Meeting” means a meeting held as required for Citizens to consider a specific issue or issues or We Wai Kai Laws;

“Sub-Lease” means Leasehold in which the Person transferring the interest is the lessee in a prior existing Lease;

“Trustee” means an individual nineteen (19) years of age or older who holds a Right of Occupancy as a legal trustee on behalf of a Citizen under the age of nineteen (19) years who is the beneficial owner of the Right of Occupancy, or an individual nineteen (19) years of age or older who is the executor or administrator of the estate of a Citizen;

“We Wai Kai” means the We Wai Kai Nation;

“We Wai Kai Nation” means the body of people who comprise the entity also known as the Cape Mudge Indian Band of Indians under the *Indian Act* and for whose use and benefit in common We Wai Kai Lands have been set apart by Her Majesty the Queen;

“We Wai Kai Lands” means:

- a) the following We Wai Kai Indian Reserves:
  - i) Village Bay Indian Reserve # 7;
  - ii) Open Bay Indian Reserve # 8;
  - iii) Drew Harbour Indian Reserve # 9;
  - iv) Cape Mudge Indian Reserve # 10; and
  - v) Quinsam Indian Reserve # 12; and
- b) lands set apart by Canada in the future as lands reserved for the use and benefit of We Wai Kai, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“We Wai Kai Lands Department” means the We Wai Kai administrative department established to assist in the management and administration of We Wai Kai Lands;

“We Wai Kai Lands Register” means the register of We Wai Kai Lands established by Canada and held in Ottawa, Ontario;

“We Wai Kai Law” means a law in relation to We Wai Kai Lands enacted under Part IV of this Land Code;

“Written Instrument” means an instrument in writing, either in the approved form prepared by the We Wai Kai Lands Department or such other form as may be agreed to by the We Wai Kai Lands Department, which purports to create, grant, assign, transfer, discharge, cancel, release or forfeit an interest in We Wai Kai Lands or affect We Wai Kai Lands;

- 1.2 A reference to We Wai Kai Lands in this Land Code includes all interests in, and all Natural Resources of, We Wai Kai Lands to the extent that they are within the Jurisdiction of Canada.
- 1.3 Where the time limited for doing an act expires or falls on a Saturday, Sunday, or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.
- 1.4 Where the time limited for doing an act in the We Wai Kai administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open.
- 1.5 Where reference is made to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.
- 1.6 A document shall be considered duly distributed or provided to an Elector if it was mailed or delivered to the Elector’s contact address.
- 1.7 Except as otherwise provided in this Land Code, in the event of a conflict between this Land Code and a We Wai Kai Law, this Land Code shall prevail to the extent of the conflict.
- 1.8 In the event of a conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the conflict.
- 1.9 Wherever the singular, masculine or the term “person” is used in this Land Code, it shall be deemed to include the plural, feminine, body corporate, We Wai Kai or other entity where the context so requires.

## **PART II – Principles**

### **2. General**

- 2.1 These principles will provide a vision and foundation to guide the social, economic, political and community development of We Wai Kai.
- 2.2 These principles shall be used to assist the interpretation of this Land Code.

### **3. Aboriginal Rights, Title and Governance**

- 3.1 We Wai Kai has never ceded, surrendered, or in any way relinquished aboriginal title and will continue to assert its interests and exercise its aboriginal rights over its traditional territory.
- 3.2 We Wai Kai has rights to and economic interests in the lands and resources in its traditional territory.
- 3.3 We Wai Kai is committed to protect the aboriginal rights of We Wai Kai and its Citizens.
- 3.4 We Wai Kai has aboriginal title to We Wai Kai Lands and any interest granted under this Land Code is subject to We Wai Kai aboriginal title to We Wai Kai Lands.
- 3.5 Through this Land Code, We Wai Kai is exercising its inherent right of self-government over We Wai Kai Lands and Natural Resources.
- 3.6 We Wai Kai governance shall be accessible, stable, effective, accountable and transparent.
- 3.7 We Wai Kai shall work to promote a healthy and prosperous future to ensure the continued existence of We Wai Kai as a strong political, social and cultural community.

### **4. Lands, Resources and Culture**

- 4.1 We Wai Kai recognizes and respects the connection of its Citizens to the land, resources and elements of the natural world that provide for its Citizens' physical and spiritual needs.
- 4.2 We Wai Kai shall manage and govern We Wai Kai Lands and Natural Resources balancing the need for community development, sustainability, environmental protection, and the right of future generations to benefit from We Wai Lands and Natural Resources.
- 4.3 We Wai Kai values the need to respect, protect and promote its heritage, culture and traditions understanding that traditions and practices change and that they will continue to develop contemporary expressions of those traditions and practices.
- 4.4 We Wai Kai shall honour and protect places of traditional and cultural importance on We Wai Kai Lands.

## **PART III – Land Rules**

### **5. General**

- 5.1 The purpose of this Part is to set out the principles, rules and administrative structures pursuant to which We Wai Kai will exercise authority and Jurisdiction over We Wai Kai

Lands and Natural Resources.

- 5.2 We Wai Kai Lands are “Lands reserved for the Indians” under subsection 91(24) of the *Constitution Act, 1867*, and are reserves set apart by Her Majesty the Queen in Right of Canada for the use and benefit of We Wai Kai.
- 5.3 Title to all We Wai Kai Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of We Wai Kai.
- 5.4 Beneficial ownership of We Wai Kai Lands shall remain with We Wai Kai and any interest in Wai Kai Lands granted or recognized under this Land Code is subject to underlying We Wai Kai ownership of and aboriginal title to We Wai Kai Lands.
- 5.5 For greater certainty, existing We Wai Kai Indian Reserves that are subject to this Land Code at the time it comes into force are those lands:
- a) shown on a copy of the Reference Plans prepared by the Office of the Surveyor General of Canada, Natural Resources Canada attached to Annex “A” of the Individual Agreement; and
  - b) described in Annex “A” to the Individual Agreement with reference to the original Order-in-Council of the Privy Council (OCPC) or Proclamation setting aside the lands for the benefit of We Wai Kai, any subsequent OCPC’s adding lands to the reserve and any subsequent OCPC’s taking lands out of the reserve.
- 5.6 The use and development of We Wai Kai Lands is subject to this Land Code, We Wai Kai Law and other applicable laws.
- 5.7
- a) Any instrument purporting to create, grant, assign or transfer an interest in We Wai Kai Lands which restricts the application of, or is in violation of, We Wai Kai Law or other applicable law is void.
  - b) Notwithstanding section 5.7(a), should an offending provision be capable of being severed from the instrument, the remaining provisions shall not in any way be affected or impaired.
- 5.8 Council shall develop We Wai Kai Laws, consistent with this Land Code, regarding the management, administration, use and protection of We Wai Kai Lands and Natural Resource revenue realized by We Wai Kai from We Wai Kai Lands and Natural Resources.
- 5.9 Council shall, within two (2) years of the date this Land Code comes into force, refer a final draft We Wai Kai Law to adopt a Land Use Plan to a Special General Meeting for enactment by Electors in accordance with section 31.

## **6. We Wai Kai Lands Department**

- 6.1 The We Wai Kai Lands Department shall carry out duties and responsibilities delegated or assigned to it under this Land Code or by We Wai Kai Law.

- 6.2 Without limiting the generality of the duties and responsibilities of the We Wai Kai Lands Department, it shall:
- a) administer We Wai Kai Lands in accordance with this Land Code and We Wai Kai Law;
  - b) provide forms of Written Instruments for use in registering interests in We Wai Kai Lands where deemed necessary and advisable by the We Wai Kai Lands Department;
  - c) review Written Instruments for compliance with this Part, We Wai Kai Law and other applicable laws or policies;
  - d) arrange for the execution of Written Instruments and related documentation on behalf of We Wai Kai, the Minister and Her Majesty the Queen in Right of Canada;
  - e) maintain information in relation to We Wai Kai Lands and this Land Code;
  - f) prepare and present regular reports to Council; and
  - g) carry out such duties as are requested or required by Council consistent with this Land Code, We Wai Kai Law and other applicable law.

## **7. Interests in We Wai Kai Lands**

- 7.1 Interests in We Wai Kai Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the date this Land Code comes into force shall continue to have effect in accordance with their terms and conditions.
- 7.2 Where an interest described in section 7.1 includes an action to be taken by the Minister or Her Majesty the Queen in Right of Canada, the responsibility for such action after the date this Land Code comes into force shall be with the Council or their designate.
- 7.3 An interest of a Citizen in We Wai Kai Lands identified in Schedule "A" to this Land Code shall , as of the date this Land Code comes into effect shall be deemed to be a Right of Occupancy and an Occupancy Certificate shall be issued to the Citizen.
- 7.4 The types of interests in We Wai Kai Lands are:
- a) Right of Occupancy;
  - b) Leasehold;
  - c) Easement;
  - d) Permit;
  - e) Natural Resources Licence; and
  - f) Mortgage.

## **8. No Interest Created**

- 8.1 Subject to section 7.1, an interest in We Wai Kai Lands may only be created, granted, assigned or transferred by Written Instrument in accordance with this Land Code or a We Wai Kai Law enacted under this Land Code.
- 8.2 No Person shall acquire an interest in We Wai Kai Lands by use, occupation or any other means not authorized under this Land Code or a We Wai Kai Law enacted under this Land Code.
- 8.3 A contract, instrument or agreement of any kind entered into after the date this Land Code comes into force, whether written or oral, by which a Person purports to create, grant, assign or transfer an interest in We Wai Kai Lands is void if it does not comply with this Land Code or a We Wai Kai Law enacted under this Land Code.
- 8.4 No Right of Occupancy or Leasehold interest in We Wai Kai Lands can be created, granted, assigned or transferred until a clearance certificate has been issued by the Chief Administrative Officer in accordance with We Wai Kai Law or a policy adopted by Resolution, certifying that there are no monies owing to We Wai Kai by the holder of the interest to be created, granted, assigned or transferred in relation to a housing loan, mortgage, utilities or other services provided to the lands or interest involved.
- 8.5 For greater certainty, the We Wai Kai Law or policy referred to in section 8.4 may permit a clearance certificate to be issued if the grantee or transferee of the interest agrees by written agreement with Council to assume financial responsibility for the monies owing to We Wai Kai.

## **9. Natural Resources**

- 9.1 All Natural Resources on or under We Wai Kai Lands belong to We Wai Kai.
- 9.2 The use and development of Natural Resources on or under We Wai Kai Lands shall be subject to this Land Code and We Wai Kai Law.
- 9.3 To the extent that We Wai Kai has ownership or rights over water as recognized by federal or provincial legislation, Order-in-Council, or by operation of law, We Wai Kai retains ownership and has Jurisdiction to manage and regulate water use.
- 9.4 Subject to section 9.3(a), a Right of Occupancy includes Natural Resources on the surface of that land. All Natural Resources under We Wai Kai Land subject to a Right of Occupancy belong to We Wai Kai.

## **10. Right of Occupancy**

- 10.1 Only Citizens who are nineteen (19) years of age or older can hold or receive a Right of Occupancy provided that a Citizen who is under the age of nineteen (19) years of age may be the beneficial owner of a Right of Occupancy held on their behalf by a Trustee.

- 10.2 Subject to section 10.3, a Citizen may only hold one Right of Occupancy at a time in an area of We Wai Kai Lands identified as residential in a We Wai Kai Zoning Law or a Wai Kai Land Use Plan.
- 10.3 A Citizen may hold more than one Right of Occupancy in an area of We Wai Kai Lands identified as residential where:
- a) the additional Right of Occupancy is acquired by will or upon an intestacy, or where the Citizen holds the Right of Occupancy only as Trustee; or
  - b) the Citizen holds the additional Right of Occupancy for the purpose of building a house on the We Wai Kai Lands subject to the Right of Occupancy and that within twelve (12) months of the Citizen acquiring the additional Right of Occupancy they transfer one of the Rights of Occupancy to another Citizen or We Wai Kai.
- 10.4 Subject to sections 7.3 and 10.5, no Right of Occupancy shall be granted until a We Wai Kai Law has been enacted establishing policy, procedure and criteria for the granting of a Right of Occupancy.
- 10.5 A Right of Occupancy may be granted by Resolution where the holder of a Right of Occupancy is required to fulfill an agreement lawfully entered into prior to the date this Land Code comes into force or to comply with an order of a court of competent jurisdiction.

## **11. Leasehold in Community Lands**

- 11.1 Where an area of We Wai Kai Community Lands has been approved by Referendum as available for leasing, Leasehold in Community Lands may be granted by Resolution to any Person.
- 11.2 Except with respect to Leaseholds granted by Resolution under section 11.1 or existing interests under section 7.1, where We Wai Kai proposes to grant a Leasehold in Community Lands for a term or possible term of not more than forty-nine (49) years, calculated by including any renewal or extension period, Council shall schedule a Special General Meeting to decide whether the Leasehold should be granted.
- 11.3 Notice of the Special General Meeting shall be given to the Citizenship at least twenty (20) days before the meeting and shall include:
- a) a summary of the proposed Lease;
  - b) notification that a full copy of the proposed Lease can be obtained by Citizens at the We Wai Kai administration building;
  - c) a statement that there will be a vote by secret ballot of the Electors present at the Special General Meeting to decide whether or not to grant the proposed Leasehold; and
  - d) the date, time and place of the Special General Meeting also specifying the time period during which voting will take place.

- 11.4 Notice of the Special General Meeting shall be provided to the Citizenship by:
- a) publication in the We Wai Kai newsletter distributed to Electors or by separate written notice distributed to Electors; and
  - b) posting of the notice in a public area of the We Wai Kai administration building.
- 11.5 At the Special General Meeting, Council or its designate shall explain the purpose and provisions of the proposed Lease, and Citizens may ask questions and provide comments.
- 11.6 Upon completion of the discussion, the Electors, including members of Council, present shall vote by secret ballot on whether or not to grant the proposed Leasehold.
- 11.7 The granting of a Leasehold described in section 11.2 shall be deemed authorized if a Majority of Electors voting at the Special General Meeting vote in favour of granting the proposed Leasehold.
- 11.8 The decision at the Special General Meeting shall be recorded in the minutes and shall be evidence of the approval for granting the proposed Leasehold or rejecting the granting of the proposed Leasehold.
- 11.9 Where the proposed Leasehold is for a term or possible term longer than forty-nine (49) years, calculated by including any renewal or extension period, the proposed Leasehold shall be approved by Referendum.
- 11.10 The granting of Leasehold for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved by the Referendum vote.
- 11.11 The results of the Referendum held under section 11.9 shall be evidence of approval for granting the proposed Leasehold or rejection of the proposed Leasehold.
- 11.12 Sections 11.9, 11.10 and 11.11 do not apply to Leaseholds granted by Resolution under section 11.1 or to existing interests under section 7.1.
- 11.13 The granting of Leasehold does not grant any interest in the Natural Resources on or under the land described in the Lease unless specifically included in the terms and conditions of the Lease.

## **12. Easements, Permits and Licences in Community Lands**

- 12.1 Council may, by Resolution, grant Easements, Permits and Licences in Community Lands to any Person.
- 12.2 Where We Wai Kai proposes to grant a Natural Resources Licence in Community Lands, Council shall schedule a Special General Meeting to consider whether the proposed Natural Resources Licence should be granted.
- 12.3 Notice of the Special General Meeting shall be given to the Citizenship at least twenty

(20) days before the meeting and shall include:

- a) a summary of the proposed Licence;
- b) notification that a full copy of the proposed Licence can be obtained by Citizens at the We Wai Kai administration building;
- c) a statement that there will be a vote by secret ballot of the Electors present at the Special General Meeting to decide whether or not to grant the proposed Licence; and
- d) the date, time and place of the Special General Meeting also specifying the time period during which voting will take place.

12.4 Notice of the Special General Meeting shall be provided to the Citizenship by:

- a) publication in the We Wai Kai newsletter distributed to Electors or by separate written notice distributed to Electors; and
- b) posting of the notice in a public area of the We Wai Kai administration building.

12.5 At the Special General Meeting, Council or its designate shall explain the purpose and provisions of the proposed Licence and Citizens may ask questions and provide comments.

12.6 Upon completion of the discussion, the Electors, including members of Council, present shall vote by secret ballot on whether or not to grant the proposed Licence.

12.7 The granting of a Natural Resources Licence shall be deemed authorized if a Majority of Electors voting at the Special General Meeting vote in favour of granting the proposed Licence.

12.8 The decision at the Special General Meeting shall be recorded in the minutes and shall be evidence of approval for granting the proposed Licence or rejecting granting the proposed Licence.

### **13. Creation of Sub-Interests in Allotted We Wai Kai Lands**

13.1 A Citizen or Trustee holding a Right of Occupancy in We Wai Kai Lands may grant a Leasehold, Easement, Permit or Natural Resources Licence in those lands to any Person by Written Instrument registered in the We Wai Kai Lands Register provided that:

- a) the Citizen or Trustee is the lawful possessor of the land or holder of the Right of Occupancy;
- b) there is a proper legal description of the lands and, if required, the lands have been surveyed and the survey is registered in the We Wai Kai Lands Register; and
- c) the Citizen or Trustee states in writing that the terms of the Written Instrument will

not violate any agreement with a Person who has, or will have, an interest in the lands affected, or any portion thereof, or the Citizen or Trustee has obtained the written consent of the interest holder.

- 13.2 A Citizen granting a Leasehold, Easement, Permit or Natural Resources Licence under section 13.1 may grant the interest to himself or herself in the same manner as to another Person.
- 13.3 Subject to section 7.1, a Person holding a Leasehold in We Wai Kai Lands may grant a Sub-Lease, Easement, Permit or Natural Resources License in those lands by Written Instrument registered in the We Wai Kai Lands Register provided that:
- a) the interest to be granted is permitted by the terms of the Lease;
  - b) there is a proper legal description of the lands and, if required, the lands have been surveyed and the survey registered in the We Wai Kai Land Register; and
  - c) the term of the interest granted does not exceed the duration of the Leasehold.
- 13.4 The granting of a Leasehold shall not grant any interest in the Natural Resources on the lands described in the Lease unless specifically included in the terms and conditions of the Lease.
- 13.5 Any interest granted in Natural Resources by a Leasehold or Natural Resources Licence shall be subject to We Wai Kai's interest under section 9.4.
- 13.6 In transactions under sections 13.1, 13.2 and 13.3, neither the We Wai Kai Lands Department nor the Lands Administration Officer are obligated to undertake any investigations or due diligence and shall not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the Person granting the interest.
- 13.7 Without restricting the generality of section 13.6, neither the We Wai Kai Lands Department nor the Lands Administration Officer will be responsible for determining whether a Lease, Easement, Permit or Natural Resources Licence is in good standing or its terms have been complied with.

## **14. Mortgages**

- 14.1 Subject to section 14.2, the holder of a Right of Occupancy, Leasehold or Natural Resources Licence may, in accordance with this section, grant a Mortgage of that interest to any Person.
- 14.2 The holder of a Right of Occupancy may only grant a Mortgage of that interest to a Citizen or We Wai Kai.
- 14.3 For greater certainty:
- a) the holder of a Right of Occupancy who has been granted a Leasehold pursuant to section 13.1 and 13.2 may grant a Mortgage of the Leasehold interest to any

Person;

- b) a Leasehold interest held by an Indian, as that term is defined in the *Indian Act*, in We Wai Kai Lands, including allotted lands, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution, and the mortgagee has all the same legal and equitable rights it would have if the Leasehold interest was held by a non-Indian; and
- c) a Leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

14.4 The holder of a Permit or Easement cannot grant a Mortgage.

14.5 A Mortgage may be granted by Written Instrument registered in the We Wai Kai Lands Register provided that:

- a) the land is in the sole lawful possession of the Citizen or Trustee granting the Mortgage, or the Leaseholder or Natural Resources Licence holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or Licence;
- b) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Right of Occupancy, Lease or Natural Resources Licence;
- c) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered in the We Wai Kai Lands Register; and
- d) in the case of a Mortgage of a Leasehold or Natural Resources Licence, the Mortgage term does not exceed the duration of the Leasehold or Natural Resources Licence.

14.6 The We Wai Kai Lands Department shall not be responsible or liable for ensuring that the Lease or Natural Resources Licence permits the interest in the land to be mortgaged, or that the Lease or Natural Resources Licence is in good standing or its terms have been complied with.

14.7 Except as modified in this section, the provisions of section 89 of the *Indian Act* continue to apply.

## **15. Transfer of Interests**

15.1 Subject to section 15.2 and this Part, a Citizen or Trustee may, by a Written Instrument registered in the We Wai Kai Lands Register, transfer their Right of Occupancy.

15.2 A Citizen or Trustee may only transfer their Right of Occupancy to another Citizen or We Wai Kai.

15.3 Where a Right of Occupancy is transferred to We Wai Kai other than in relation to the granting of a Mortgage, the Right of Occupancy interest is cancelled and the We Wai Kai

Lands described in the Right of Occupancy become Community Lands. Any subsequent transfer or grant of those We Wai Kai Lands must be in compliance with conditions in a We Wai Kai Law described in section 10.4.

- 15.4 Subject to section 15.5 and this Part, a Person holding an interest in We Wai Kai Lands other than by way of Right of Occupancy may transfer, assign or Devise their interest to any Person or entity by a Written Instrument registered in the We Wai Kai Lands Register.
- 15.5 A Citizen or We Wai Kai holding a Mortgage of a Right of Occupancy can only transfer or assign that Mortgage to another Citizen or We Wai Kai.

## **16. Transfer on Death**

- 16.1 Unless We Wai Kai enacts a We Wai Kai Law to the contrary, the provisions of the *Indian Act* dealing with wills and estates of Indians, except sections 49 and 50(4), shall continue to apply with respect to the transfer interests in We Wai Kai Lands by will or intestacy of a Citizen who is an Indian.
- 16.2 A Person who receives an interest in We Wai Kai Lands by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that interest registered in the We Wai Kai Lands Register.

## **17. Ceasing to be a Citizen**

- 17.1 An individual who ceases to be a Citizen shall, within one (1) year of ceasing to be a Citizen, transfer their Right of Occupancy to We Wai Kai or another Citizen.
- 17.2 Where a Citizen fails to transfer their Right of Occupancy in accordance with section 17.1, the Right of Occupancy and any Certificate of Occupancy issued shall, one (1) year after the individual ceases to be a Citizen, be cancelled and the We Wai Kai Lands described in the Right of Occupancy shall be deemed to be transferred to We Wai Kai and shall become Community Lands.
- 17.3 Where the Right of Occupancy reverts to We Wai Kai under section 17.2, We Wai Kai shall pay reasonable compensation for improvements to the individual ceasing to be a Citizen provided that:
- a) the individual ceasing to be a Citizen shall remain liable to We Wai Kai for any obligations or monies owing to We Wai Kai in relation to the Right of Occupancy, or services or loans provided in relation to such lands, and any such monies may be deducted from monies paid to them as reasonable compensation for improvements; and
  - b) the individual ceasing to be a Citizen shall remain liable for any obligations or monies owing to another Citizen under a Mortgage and, unless the Mortgage is discharged by the individual ceasing to be a Citizen prior to the lands becoming

Community Lands, We Wai Kai shall pay the amount outstanding on the Mortgage and deduct this amount, together with its reasonable costs to obtain the discharge of the Mortgage, from monies paid as reasonable compensation for improvements.

- 17.4 Any dispute with respect to the amount of compensation paid under section 17.3 shall be determined by an arbitrator agreed to by the interest holder and Council. If no arbitrator can be agreed upon by the parties an arbitrator shall be appointed by the British Columbia International Commercial Arbitration Centre or in case the British Columbia International Commercial Arbitration Centre is unavailable to make the appointment, any other impartial body agreed to by the parties to the dispute.
- 17.5 An award under section 17.4 by an arbitrator is final and binding.

## **18. We Wai Kai Lands Register**

- 18.1 Interests in, and registrable instruments which affect or purport to affect, We Wai Kai Lands shall be registered in the We Wai Kai Lands Register.
- 18.2 Notwithstanding section 18.1, only those instruments that are in compliance with this Land Code can be registered in the We Wai Kai Lands Register.
- 18.3 An interest in We Wai Kai Lands is not enforceable unless it is registered in the We Wai Kai Lands Register.
- 18.4 A copy of the We Wai Kai Lands Register or access to the online We Wai Kai Lands Register shall be available at the We Wai Kai Lands Office.

## **19. Date of Grant or Transfer of Interests**

- 19.1 The grant, transfer or other disposition of an interest in We Wai Kai Lands shall be effective on the date the documents are registered in the We Wai Kai Lands Register.

## **20. Cancellation or Forfeiture of Interests**

- 20.1 Except as otherwise provided in this Land Code, We Wai Kai Law or by operation of law, no interest in We Wai Kai Lands may be discharged, released, cancelled or forfeited unless:
- a) all parties to the relevant Written Instrument have consented in writing to the release, cancellation or forfeiture as the case may be;
  - b) a court of competent jurisdiction has ordered the release, cancellation or forfeiture of the interest and the time period for filing an appeal of the order has passed without an appeal having been taken; or
  - c) an individual appointed under section 24.1(a) to adjudicate a dispute pursuant to the Written Instrument in issue has ordered or declared the interest to be

discharged, released, cancelled or forfeited and no appeal has been taken from that decision within the allotted time.

- 20.2 Notwithstanding section 20.1, no interest in We Wai Kai Lands may be discharged, released, cancelled or forfeited under section 20.1 (a) if it will adversely affect:
- a) an interest in those We Wai Kai Lands held by a third party unless that party consents; or
  - b) a claim against, or interest in, those We Wai Kai Lands held by We Wai Kai unless We Wai Kai consents.
- 20.3 If an interest in We Wai Kai Lands is discharged, released, cancelled or forfeited under section 20.1, the necessary documentation to effect the change shall be registered in the We Wai Kai Land Register.

## **21. Surveys**

- 21.1 We Wai Kai may cause surveys to be made of We Wai Kai Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 21.2 The holder of a registered interest in We Wai Kai Lands may cause surveys to be made of those lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 21.3 All surveys of We Wai Kai Lands prepared by the Surveyor General of Canada, or his or her designate, shall be deemed for all purposes to accurately describe and identify the boundaries of the lands covered by such survey.
- 21.4 All surveys respecting We Wai Kai Lands shall become effective upon registration in the We Wai Kai Lands Register.

## **22. Exchange of Lands**

- 22.1 Subject to federal expropriation under section 29 of the *First Nation Land Management Act*, no part of We Wai Kai Lands shall be sold so as to remove their status as We Wai Kai Lands except for an exchange of lands in circumstances where:
- a) Canada has consented or agreed in writing to consent to set apart the exchanged lands as a reserve as defined in section 2(1) of the *Indian Act* for the use and benefit of We Wai Kai and as Lands reserved for the Indians as defined in subsection 91(24) of the *Constitution Act, 1867*;
  - b) Council has made full disclosure to the Citizenship of all the circumstances surrounding the exchange and has held at least three Special General Meetings to consider the proposed transactions;
  - c) We Wai Kai receives land of greater or equivalent size, or value in consideration for the exchange taking into account all of its interests involved; and

- d) the exchange is approved in a Referendum where at least a Majority of Electors participate by casting a vote and at least a Majority of those casting a vote approve the exchange.

### **23. Expropriation for Community Purposes**

23.1 We Wai Kai may expropriate an interest in We Wai Kai Lands for a Community Purpose provided that no expropriation shall take place until the following conditions, in the order listed, have been met:

- a) Council has attempted in good faith to negotiate an agreement with the interest holder for the transfer of the interest that is being considered for expropriation but has failed to reach such an agreement;
- b) Council has given written notice to the interest holder specifying the interest that is being considered for expropriation;
- c) Electors have approved the expropriation at a Special General Meeting held in accordance with procedures under sections 23.2 to 23.7; and
- d) fair compensation is paid to the interest holder.

23.2 Notice of the Special General Meeting required under section 23.1(c) shall be provided to the Citizenship at least twenty (20) days before the Special General Meeting and shall include:

- a) the date, time and place of the Special General Meeting;
- b) notification that a report setting out the Community Purpose for which the expropriation is required and the necessity for the proposed expropriation will be presented at the Special General Meeting, and that copies of the report may be obtained at the We Wai Kai administration building; and
- c) a statement that there will be a vote by secret ballot of the Electors present at the Special General Meeting to decide whether or not to approve the proposed expropriation.

23.3 Notice of the Special General Meeting shall be provided to the Citizenship by:

- a) publication in the We Wai Kai newsletter distributed to Electors or by separate written notice distributed to Electors; and
- b) posting of the notice in a public area of the We Wai Kai administration building.

23.4 Copies of the report on the proposed expropriation shall be made available to Citizens attending the Special General Meeting.

23.5 At the Special General Meeting, Council or its designate shall present the report on the proposed expropriation and Citizens may ask questions and provide comments.

- 23.6 Electors, including members of Council, present at the Special General Meeting shall vote by secret ballot on whether or not to approve the proposed expropriation.
- 23.7 The proposed expropriation shall be deemed approved if a Majority of Electors voting at the Special General Meeting vote in favour of the proposed expropriation.
- 23.8 The decision at the Special General Meeting shall be recorded in the minutes and shall be the authorization for Council to proceed with the expropriation.
- 23.9 Any dispute with respect to the amount of compensation paid to an interest holder whose interest has been expropriated under this Land Code shall be determined by an arbitrator agreed to by the interest holder and Council. If no arbitrator can be agreed upon by the parties, an arbitrator shall be appointed by the British Columbia International Commercial Arbitration Centre or in case the British Columbia International Commercial Arbitration Centre is unavailable to make the appointment, any other impartial body agreed to by the parties to the dispute.
- 23.10 An award under section 23.9 by an arbitrator is final and binding.

## **24. Dispute Resolution**

- 24.1 Except as otherwise provided in this Part, disputes in relation to We Wai Kai Lands or interests in We Wai Kai Lands shall be determined as follows:
- a) the parties to the dispute may agree that the dispute will 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.

## **25. Delegation**

- 25.1 We Wai Kai may, by Resolution, delegate any authority under this Land Code to the We Wai Kai Lands Department or the Lands Administration Officer other than:
- a) law making;
  - b) the adjudication of violations of We Wai Kai Law; or
  - c) a matter required under this Land Code to be determined in a specific manner.
- 25.2 We Wai Kai may, by We Wai Kai Law, establish boards, tribunals, commissions or other bodies to carry out any duties or responsibilities under this Land Code other than:
- a) law-making;
  - b) adjudication of violations of We Wai Kai Law; or

- c) a matter required under this Land Code to be determined in a specific manner.

## **26. Treatment of Interests in We Wai Kai Lands on Marriage Breakdown**

- 26.1 We Wai Kai shall enact a law within twelve (12) months of the date this Land Code comes into force setting out rules and procedures applicable to use, occupancy and possession of We Wai Kai Lands and the division of interests in those lands on the breakdown of a marriage involving at least one Citizen.
- 26.2 For greater certainty, We Wai Kai Laws described in section 26.1 shall not discriminate on the basis of sex but may distinguish as between Citizens and non-Citizens for the purpose of determining what type of interest in We Wai Kai Lands may be held by an individual.

## **PART IV – Law Enactment Procedures**

### **27. Application**

- 27.1 This Part applies to law enactment procedures for We Wai Kai Laws relating to the management and administration of We Wai Kai Lands and Natural Resources.

### **28. Development of We Wai Kai Laws**

- 28.1 Council shall enact We Wai Kai Laws in accordance with this Part consistent with this Land Code.
- 28.2 All We Wai Kai Laws shall be developed and considered under procedures set out in this Part.
- 28.3 The process for developing a We Wai Kai Law shall be initiated by a Resolution setting out the specific subject matter of the proposed law.

### **29. First Reading: Council Review**

- 29.1 Upon completion of the draft law, Council shall table the draft law at a regular meeting of Council.
- 29.2 After considering the draft law at the Council meeting, Council shall, by Resolution:
  - a) accept the draft law in principle;
  - b) reject the draft law; or
  - c) request further work on the draft law and decide to re-table the draft law at a future Council meeting.

### **30. Second Reading: Special General Meeting**

- 30.1 Where Council has accepted the draft law in principle, it shall schedule a Special General Meeting for the purpose of considering the draft law, and shall provide notice to the Citizenship at least twenty (20) days before the date of the meeting.
- 30.2 The notice of the Special General Meeting required under section 30.1 shall include:
- a) the date, time and place of the Special General Meeting;
  - b) a summary of the draft law; and
  - c) notification that a full copy of the draft law can be obtained by Citizens at the We Wai Kai administration building.
- 30.3 Notice of the Special General Meeting shall be provided to the Citizenship by:
- a) publication in the We Wai Kai newsletter distributed or delivered to Electors at the last address filed with or known to Chief Administrative Officer, or by separate written notice distributed to Electors at the last address filed with or known to Chief Administrative Officer; and
  - b) posting of the notice in a public area of the We Wai Kai administration building.
- 30.4 Copies of the draft law shall be made available to Citizens attending the Special General Meeting.
- 30.5 At the Special General Meeting, Council or its designate shall explain the purpose and provisions of the draft law and Citizens may ask questions and provide comments.
- 30.6 After the Special General Meeting, Council shall consider the comments received from Citizens, the needs of the community and other relevant matters, and shall prepare a Second Reading draft law that will be considered at the next Council meeting.
- 30.7 Notice of the Council meeting where the Second Reading draft law will be considered shall be posted at least ten (10) days before the meeting in a public area of the We Wai Kai administration building and shall include:
- a) a summary of the Second Reading draft law;
  - b) notification that a full copy of the Second Reading draft law can be obtained by Citizens at the We Wai Kai administration building;
  - c) a statement that the Second Reading draft law will be considered at the Council meeting; and
  - d) the date, time and place of the Council meeting.
- 30.8 At the Council meeting, Council shall consider the Second Reading draft law and shall, by Resolution, do one of the following:

- a) make any changes it deems advisable in the community interest and refer the draft law to a Special General Meeting under section 30.8(c) or Referendum under section 30.8 (d);
  - b) decide to hold another Special General Meeting for further comment on the draft law;
  - c) refer the draft law to a Special General Meeting for enactment by Electors; or
  - d) require a Referendum be held to enact the law.
- 30.9 Council shall post notice in a public place of the We Wai Kai administration building, setting out the decision reached by Council concerning the Second Reading draft law.
- 30.10 Where Council decides to hold another Special General Meeting under section 30.8 (b) , the procedures for such meetings under sections 30.1 to 30.6 shall be followed.
- 30.11 A final draft law shall be prepared for consideration for enactment by Electors after completion of procedures required under section 30.8.

### **31. Third Reading: Enactment of the Law**

- 31.1 Upon completion of the final draft law, unless Council has required a Referendum be held to enact the law, Council shall schedule a Special General Meeting to consider the final draft law.
- 31.2 Notice of the Special General Meeting where the final draft law will be considered for enactment shall be given to the Citizenship at least twenty (20) days before the meeting and shall include:
- a) a summary of the final draft law;
  - b) notification that a full copy of the final draft law can be obtained by Citizens at the We Wai Kai administration building;
  - c) a statement that there will be a vote by secret ballot of the Electors present at the Special General Meeting to decide whether or not to enact the final draft law and that at least thirty (30) Electors who are not members of Council must be present at the time of the vote on whether or not to enact the final draft law; and
  - d) the date, time and place of the Special General Meeting specifying the time period during which voting will take place.
- 31.3 Notice of the Special General Meeting shall be provided to the Citizenship by:
- a) publication in the We Wai Kai newsletter distributed or delivered to Electors at the last address filed with or known to Chief Administrative Officer, or by separate written notice distributed to Electors at the last address filed with or known to the Chief Administrative Officer; and

- b) posting of the notice in a public area of the We Wai Kai administration building.
- 31.4 If at least thirty (30) Electors who are not members of Council attend the Special General Meeting, the meeting shall proceed to consider enactment of the final draft law.
- 31.5 Copies of the final draft law shall be made available to Citizens attending the Special General Meeting.
- 31.6 At the Special General Meeting, Council or its designate shall explain the purpose and provisions of the final draft law, and Citizens may ask questions and provide comments.
- 31.7 Upon completion of the discussion on the final draft law, the Electors, including members of Council, present shall vote by secret ballot on the final draft law.
- 31.8 The law shall be deemed enacted if a Majority of Electors voting at the Special General Meeting vote in favour of enacting the law.
- 31.9 The decision at the Special General Meeting shall be recorded in the minutes.
- 31.10 If there are less than thirty (30) Electors present who are not members of Council, a new date shall be set by Council for a further Special General Meeting to consider enactment the final draft Law.
- 31.11 Notice shall be given of the meeting referred to in section 31.10 and the procedures in sections 31.2 to 31.9 shall apply to the new Special General Meeting where the final draft law is considered for enactment.
- 31.12 If less than thirty (30) Electors who are not members of Council attend the new Special General Meeting called to consider enactment of the final draft law, the final draft law shall be deemed rejected.
- 31.13 Where the final draft law has been referred to a Referendum for enactment under section 30.8(d) , the law shall be deemed enacted if a Majority of Electors who cast valid ballots vote to enact the law.
- 31.14 Where a final draft law has been rejected, no further action shall be taken on the law or development of another draft law dealing with the same subject matter for at least one hundred and twenty (120) days after the date of the rejection of the final draft law.

## **32. Procedures upon Enactment of a We Wai Kai Law**

- 32.1 A We Wai Kai Law enacted by vote of Electors at a Special General Meeting or enacted by Referendum shall be signed by all members of Council.
- 32.2 A We Wai Kai Law enacted by vote of Electors at a Special General Meeting or enacted by a Referendum shall come into effect on the date of the Special General Meeting or on the date of the Referendum.
- 32.3 Notice of the enactment of a We Wai Kai Law shall be posted in a public area of the We Wai Kai administration building within seven (7) days of its enactment.

- 32.4 Where a We Wai Kai Law has been enacted, original copies of the We Wai Kai Law shall be deposited in the register of We Wai Kai Laws.
- 32.5 The register of We Wai Kai Laws shall be accessible to the public.
- 32.6 A true copy of all We Wai Kai Laws shall be filed at the We Wai Kai administration building.
- 32.7 Copies of We Wai Kai Laws shall be provided to Citizens and other Persons upon request and payment of a reasonable copying fee.
- 32.8 No We Wai Kai Law shall be set aside or be declared invalid by reason only that a member of Council at the time of the enactment of the We Wai Kai Law subsequently ceases to be a member of Council.
- 32.9 The failure of a Council member to sign a validly enacted We Wai Kai Law does not invalidate the enactment of the We Wai Kai Law.

### **33. Amendment**

- 33.1 Any We Wai Kai Law may be repealed or amended by following the procedure set out in this Part under which the We Wai Kai Law was enacted.

## **Part V – Officers and Employees**

### **34. General**

- 34.1 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 We Wai Kai Law.

### **35. Appointment of Officers**

- 35.1 Council shall appoint a Chief Administrative Officer, Financial Administration Officer and Lands Administration Officer by Resolution.
- 35.2 Council may, by Resolution, establish other officer positions with titles and responsibilities it considers appropriate and appoint persons to those positions.
- 35.3 For greater certainty:
- a) Council may assign to an officer positions, powers, duties and functions in addition to those required to be assigned by this Land Code or We Wai Kai Law; and
  - b) an officer may be appointed to two (2) or more positions.

**36. Affirmative Action**

- 36.1 Subject to section 34.1, Council shall establish employment policies that reflect the principle of giving preference to qualified Citizens in the appointment of officers and the hiring of other employees.

**PART VI – Special General Meetings**

**37. Application**

- 37.1 This Part applies only to Special General Meetings held in accordance with this Land Code.

**38. Special General Meetings**

- 38.1 A Special General Meeting shall be held:
- a) where called by Resolution; or
  - b) as required under this Land Code.
- 38.2 The date, time and place for a Special General Meeting shall be determined by Council.
- 38.3 Council shall at least once every twelve (12) months schedule a Special General Meeting to discuss the operation of this Land Code. The first Special General Meeting of this nature shall be held within twelve (12) months of the coming into force of this Land Code.
- 38.4 Notice of the date, time, place and subject matter of a Special General Meeting shall be provided to each member of Council and posted by the Chief Administrative Officer in a public area of the We Wai Kai administration building at least five (5) days before the meeting.
- 38.5 All Special General Meetings shall take place on We Wai Kai Lands.

**39. Attendance at Special General Meetings**

- 39.1 Members of Council shall attend all Special General Meetings unless they have an acceptable reason for being absent.
- 39.2 Members of Council shall notify Council at a Council meeting or notify the Chief Administrative Officer of any anticipated absence and the reasons for such absence.
- 39.3 Where notification under section 39.2 is given to the Chief Administrative Officer, the Chief Administrative Officer shall inform the other Council members of the absence and reasons.

- 39.4 If a member of Council is absent from a Special General Meeting, the chairperson shall, if requested by an Elector, inform the attendees of the meeting the reason for the member of Council's absence.
- 39.5 A quorum of Council is not required for Special General Meeting.
- 39.6 Citizens and employees of We Wai Kai whose attendance is requested by Council may attend Special General Meetings. Other persons may attend Special General Meetings with permission of Council,

## **PART VII – Financial Management and Accountability**

### **40. Application**

- 40.1 This Part applies only to financial matters relating to the management and administration of We Wai Kai Lands and Natural Resources.
- 40.2 Except where inconsistent with this Land Code, We Wai Kai Laws dealing with general financial management and accountability shall apply.

### **41. Duties of Council**

- 41.1 Council shall be responsible for the preservation and protection of We Wai Kai assets and the prudent financial management and administration of We Wai Kai funds, with due accountability to the Citizenship.
- 41.2 Council shall develop We Wai Kai Laws and policies consistent with this Land Code regarding financial management and accountability.
- 41.3 Council shall, by Resolution, establish a Finance Committee to carry out the duties and responsibilities assigned to the Finance Committee in this Land Code.
- 41.4 Council shall establish such positions, agencies, programs, service areas, boards, authorities or committees as may be necessary for the proper administration and control of We Wai Kai assets, and ensure that such bodies have a specific mandate, a clearly defined role, a defined relationship to the Chief and Council, and appropriate policies and procedures sufficient to ensure the efficient and effective administration of the financial affairs of We Wai Kai.

### **42. Receipts and Deposits**

- 42.1 All monies received by We Wai Kai from We Wai Kai Lands and Natural Resources under this Land Code shall be receipted and fully deposited without delay in an account or accounts designated for We Wai Kai Lands and Natural Resources revenues in the financial institution selected by Council.

### **43. Authorizing Officers**

- 43.1 Council shall, by Resolution, designate officers of We Wai Kai to authorize payments and sign cheques on behalf of We Wai Kai.
- 43.2 All payments to be made on behalf of We Wai Kai or cheques to be issued on behalf of We Wai Kai shall be authorized or signed by at least two (2) authorized signing officers.

### **44. Lands and Natural Resources Budget**

- 44.1 The fiscal year for We Wai Kai shall begin on April 1 and end on March 31 of the following year.
- 44.2 Council shall adopt a Provisional Lands and Natural Resources Budget and Detailed Lands and Natural Resources Budget for each fiscal year.
- 44.3 The Financial Administration Officer, in consultation with the Chief Administrative Officer, shall prepare the Provisional Lands and Natural Resources Budget before the commencement of the fiscal year, and shall provide a summary of anticipated revenues and expenditures from We Wai Kai Lands and Natural Resources, which shall include but not be limited to the following:
  - a) all sources of revenue from We Wai Kai Lands and Natural Resources including any prior surplus carried forward; and
  - b) all proposed expenditures of these funds.
- 44.4 The Finance Committee shall review the Provisional Lands and Natural Resources Budgets and present it to Council with recommendations by March 1 of each year.
- 44.5 Council shall, by Resolution, adopt the Provisional Lands and Natural Resources Budget by March 31 of each year.
- 44.6 The Detailed Lands and Natural Resources Budget shall be prepared by the Financial Administration Officer in consultation with the Chief Administrative Officer by September 30 of each year, and shall describe all lands and Natural Resources operations of We Wai Kai for which Council is responsible using the same accounting principles as in the Provisional Lands and Natural Resources Budget, but updated for any known changes to the included facts, assumptions and other hypothecations and shall include, but not be limited to, the following:
  - a) all sources of revenue from We Wai Kai Lands and Natural Resources, including any prior surplus carried forward; and
  - b) all proposed expenditures of these funds.
- 44.7 The Finance Committee shall review the Detailed Lands and Natural Resources Budget and shall present it with recommendations to Council by October 15 of each year.
- 44.8 Council shall, by Resolution no later than November 15 of each year, adopt a Detailed

Lands and Natural Resources Budget for the current fiscal year.

- 44.9 Notice of the Council meeting where the Detailed Lands and Natural Resources Budget will be presented for adoption shall be posted at least ten (10) days prior to the meeting in a public area of the We Wai Kai administration building and shall include:
- a) the date, time and place of the Council meeting; and
  - b) notification that the Detailed Lands and Natural Resources Budget can be examined at the We Wai Kai administration building.
- 44.10 The Provisional and Detailed Lands and Natural Resources Budgets shall be based on the principle of a balanced budget with no deficit.
- 44.11 The adopted Provisional and Detailed Lands and Natural Resources Budgets shall be made available at the We Wai Kai administration building during regular working hours for inspection by any Citizen.
- 44.12 Where there is a substantial change in forecasted revenues or expenditures, the Detailed Lands and Natural Resources Budget may be amended, by Resolution at any time prior to the end of the fiscal year, provided that any amendment of the Detailed Lands and Natural Resources Budget shall be identified and explained by the Financial Administration Officer at a duly called Council meeting.
- 44.13 Notice of the Council meeting where an amendment to the Detailed Lands and Natural Resources Budget will be presented for adoption shall be posted at least ten (10) days prior to the meeting in a public area of the We Wai Kai administration building and shall include:
- a) the date, time and place of the Council meeting; and
  - b) notification that the proposed amendment to the Detailed Lands and Natural Resources Budget can be examined at the We Wai Kai administration building.
- 44.14 All amendments to the Detailed Lands and Natural Resources Budget shall be made by or under the direction of the Financial Administration Officer to reflect any Council Resolutions approved after the initial adoption of the Detailed Lands and Natural Resources Budget.

## **45. Expenditures**

- 45.1 Expenditures shall not exceed the totals approved by the Department of Finance in either the adopted Provisional or Detailed Lands and Natural Resources Budgets during the fiscal period.
- 45.2 Council may, by Resolution, approve expenditures for an Emergency Purpose not contemplated in the Provisional or Detailed Lands and Natural Resources Budgets.
- 45.3 Before the Detailed Lands and Natural Resources Budget is adopted, it is not lawful to make an expenditure unless the expenditure is:

- a) authorized by the Provisional Lands and Natural Resources Budget;
- b) is a carry forward of a prior year surplus; or
- c) permitted under a We Wai Kai Law provided for in this Part.

45.4 No purchase shall be made on behalf of We Wai Kai, unless such purchase is in accordance with the We Wai Kai internal purchasing policy.

## **46. Capital and Extraordinary Expenditures**

46.1 Council shall not approve or make a capital expenditure from We Wai Kai Lands and Natural Resources revenues in excess of five hundred thousand dollars (\$500,000), unless such expenditure has been approved by Electors in accordance with procedures set out in sections 46.2 to 46.8.

46.2 Where Council proposes to authorize a capital expenditure from We Wai Kai Lands and Natural Resource revenues over five hundred thousand dollars (\$500,000) that is not included in the approved Provisional or Detailed Lands and Natural Resources Budgets, Council shall schedule a Special General Meeting to consider the expenditure.

46.3 Notice of the Special General Meeting required under section 46.2 shall be given to the Citizenship at least twenty (20) days before the meeting and shall include:

- a) a summary of the proposed expenditure;
- b) a statement that there will be a vote by secret ballot of Electors present at the Special General Meeting to decide on whether or not to approve the proposed expenditure; and
- c) the date, time and place of the Special General Meeting specifying the time period during which voting will take place.

46.4 Notice of the Special General Meeting shall be provided to the Citizenship by:

- a) publication in the We Wai Kai newsletter distributed to Electors or by separate written notice distributed to Electors; and
- b) posting of the notice in a public area of the We Wai Kai administration building.

46.5 At the Special General Meeting, Council or its designate shall explain the purpose and provisions of the proposed expenditure, and Citizens may ask questions and provide comments.

46.6 Upon completion of the discussion, the Electors, including members of Council, present shall vote by secret ballot on whether or not to approve the proposed expenditure.

46.7 The proposed expenditure shall be deemed authorized if a Majority of Electors voting at the Special General Meeting vote in favour of the proposed expenditure.

46.8 The decision at the Special General Meeting shall be recorded in the minutes.

#### **47. Financial Statements**

47.1 The Financial Administration Officer shall prepare for each year a statement of financial position and a statement of revenues and expenditures for We Wai Kai Lands and Natural Resources, and the expenditures of those revenues as compared to the Detailed Lands and Natural Resources Budget. These statements shall be reflected as a separate fund in the We Wai Kai general purpose financial statements in accordance with Canadian generally accepted accounting principles.

#### **48. Periodic Reporting**

48.1 The Financial Administration Officer shall present to Council a written financial report to the end of each quarter of the fiscal year for We Wai Kai Lands and Natural Resources revenues and expenditures, prepared in accordance with Canadian generally accepted accounting principles.

48.2 Council or its designate shall provide periodic financial updates to Citizens on We Wai Kai Lands and Natural Resources revenues and expenditures as considered necessary by Council.

#### **49. Appointment of Auditor**

49.1 Council shall, by Resolution for each fiscal year, appoint an auditor to audit the We Wai Kai financial statements. As part of the general audit in preparing We Wai Kai financial statements, the auditor shall audit We Wai Kai Lands and Natural Resources revenues and expenditures at least once each year.

49.2 The auditor must be a member in good standing or in a partnership whose partners are members in good standing with the Canadian Institute of Chartered Accountants or the Certified General Accountants' Association of British Columbia.

#### **50. Access to Information by Auditors**

50.1 In exercising his or her duties and responsibilities, the auditor shall conduct all examinations necessary to prepare the reports required under this Part.

50.2 In carrying out his or her duties and responsibilities, the auditor shall have a right of access at all reasonable times to:

- a) the records of Council, the We Wai Kai Lands Department and We Wai Kai;
- b) the records of any other body that exercises the powers of We Wai Kai; and
- c) any computer, other data processing equipment and software that are owned or leased by We Wai Kai or other body and used for financial recording or reporting

purposes.

- 50.3 Upon request, Council members, We Wai Kai officers, employees and agents, and other Persons shall provide the auditor with information, reports or explanations the auditor deems necessary to carry out his or her duties and responsibilities.
- 50.4 An auditor shall abide by all applicable laws restricting the disclosure of information.

## **51. Auditor's Reports**

- 51.1 The auditor shall:
- a) perform, in accordance with Canadian generally accepted auditing standards, a general review of accounting procedures and such tests of accounting records as he or she considers necessary under the circumstances;
  - b) state in a report whether the We Wai Kai consolidated financial statements fairly present the financial position of We Wai Kai at the end of its fiscal year, and the results of its operations for the year then ended; and
  - c) make recommendations in the report for more effective financial management.
- 51.2 The auditor's report shall be prepared in accordance with the form and reporting standards recommended by the Canadian Institute of Chartered Accountants.
- 51.3 The auditor shall present the audit report to Council on or before July 31 for the fiscal year ending the preceding March 31.
- 51.4 The accounting and auditing requirements of this Part may be done together and consolidated with the other accounts of We Wai Kai.
- 51.5 The auditor's report and audited consolidated financial statement shall be reviewed by Council and approved by Resolution.
- 51.6 Upon acceptance by Resolution, the audited consolidated financial statement shall be signed by the Chief and the Chief Administrative Officer and be recorded in the Council minutes as reviewed and approved.

## **52. Annual Reporting on We Wai Kai Finances to Citizens**

- 52.1 Council shall report to Citizens with respect to We Wai Kai Lands and Natural Resources revenues and expenditures for the preceding year as part of Council's annual reporting to Citizens on the We Wai Kai consolidated financial statements.
- 52.2 The most recent audited financial statements and reports shall be available for inspection by Citizens at the We Wai Kai administration building during its regular office hours.

### **53. Right of Elector to File a Complaint**

53.1 An Elector may file a complaint with the Chief Administrative Officer if the Elector believes that:

- a) a disbursement, expenditure, liability or other transaction relating to We Wai Kai Lands or Natural Resources revenues or expenditures is not authorized by or under this Land Code or a We Wai Kai Law provided for in this Land Code; or
- b) there has been a theft, misuse, misappropriation or irregularity in the funds, accounts, assets, liabilities or financial obligations of We Wai Kai or the We Wai Kai Lands Office.

53.2 The Chief Administrative Officer shall forward a copy of the complaint to the Financial Administration Officer, to Council and to the auditor.

53.3 The Chief Administrative Officer shall review the complaint and prepare a report concerning matters raised and provide a copy of his or her report to:

- a) the Financial Administration Officer;
- b) Council; and
- c) the auditor.

53.4 After review of the Chief Administrative Officer's report, Council shall send a written response to the Elector filing the complaint addressing matters raised in the complaint and, where appropriate, remedial action to be taken.

53.5 Where a complaint involves the Chief Administrative Officer, the responsibilities set out in sections 53.1 to 53.3 shall be carried out by the Financial Administration Officer.

### **54. Investment of We Wai Kai Funds**

54.1 We Wai Kai Lands and Natural Resources revenues funds held by We Wai Kai that are not immediately required may only be invested or re-invested by Council in one or more of the following:

- a) securities of Canada or of a Province;
- b) securities guaranteed for principal and interest by Canada or by a Province;
- c) deposits in a chartered bank, trust company or credit union;
- d) investments guaranteed by a chartered bank, trust company or credit union; or
- e) pooled investment funds of First Nations financial institutions.

## **55. Liabilities for Use of Money Contrary to the Land Code**

- 55.1 A member of Council who votes for a Resolution authorizing the expenditure, investment or other use of money contrary to this Land Code is personally liable to We Wai Kai for the amount, unless the member of Council relied on information provided by an employee and the employee acted dishonestly, or with gross negligence, malicious or willful misconduct in relation to the provision of the information.
- 55.2 Money due to We Wai Kai under this section may be recovered for We Wai Kai by:
- a) We Wai Kai; or
  - b) an Elector.

## **Part VIII – Conflict of Interest**

### **56. Application**

- 56.1 This Part applies only to a conflict of interest relating to the management and administration of We Wai Kai Lands, Natural Resources or revenues arising there from.
- 56.2 A conflict of interest arises in any situation where an individual or a member of their Immediate Family has a personal or Business Interest in a transaction under consideration by Council.

### **57. General Duties and Rules**

- 57.1 Members of Council, the Chief Administrative Officer, Lands Administration Officer and any Lands Department staff shall not be involved in any transaction or matter where they are in a conflict of interest or appear to be in a conflict of interest.
- 57.2 A transaction which may give rise to a conflict of interest or the appearance of a conflict of interest may be approved by Council Resolution in accordance with section 58.
- 57.3 No conflict of interest arises where:
- a) an Immediate Family member is as an employee of a Person entering into a transaction with Council or having a matter determined by Council;
  - b) the individual is the beneficiary or shareholder of a corporation, society or other entity owned or controlled by We Wai Kai entering into a transaction with Council or having a matter determined by Council; or
  - c) the individual or their Immediate Family member holds an interest in the same manner as other Citizens of We Wai Kai.

- 57.4 The following transactions will not give rise to a conflict of interest or the appearance of a conflict of interest:
- a) a member of Council guarantees repayment of, or otherwise assumes liability to repay, a loan made to Council or We Wai Kai; or
  - b) Council agrees to indemnify or reimburse an individual for expenses or liabilities incurred by reason of being a member of Council or employee of We Wai Kai, or Council arranges for insurance for those persons against risks undertaken in the carrying out of their responsibilities.

## **58. Procedure Where a Conflict of Interest Arises**

- 58.1 An individual who has a conflict of interest shall disclose the nature and extent of the conflict at a Council meeting. The disclosure shall be made when the conflict first becomes known to the individual, whether or not the transaction or matter in question has been concluded.
- 58.2 If an individual is in doubt as to whether or not he or she is in a conflict of interest, they may request the advice of Council.
- 58.3 After declaring the conflict of interest, the individual shall leave the meeting where the matter is being considered and shall not be counted in the quorum nor participate in the discussion or vote on the matter in question.
- 58.4 Where Council is considering a transaction or matter which may give rise to a conflict of interest or the appearance of a conflict of interest described in this Land Code, it may only agree to the transaction or decide a matter where:
- a) the individual involved has complied with sections 58.1, 58.2, and 58.3;
  - b) the transaction is fair and reasonable;
  - c) a quorum of Council is present for the decision; and
  - d) a Resolution is passed, agreeing to or authorizing a transaction or deciding the matter, by a majority of Council members present and entitled to vote at the meeting.
- 58.5 An individual who fails to provide Council with reasonable and sufficient information to assess the nature of an interest involved in the transaction or matter invalidates any authorization given under this section.
- 58.6 Council may pass a Resolution authorizing a transaction or matter under this section conditional upon the individual taking steps or observing procedures that may be necessary to protect the interests of Council or We Wai Kai Nation, or to safeguard the community's trust in the conduct of the activities of that individual or of Council.
- 58.7 Where no quorum of Council can be established at a meeting where the conflict of interest is to be considered, the matter shall be brought before the next Council meeting

for consideration.

- 58.8 If a quorum of Council can never be established because of conflicts of interest, the matter shall be brought before a Special General Meeting called to consider the transaction or matter in question.
- 58.9 Notice of the Special General Meeting where the conflict of interest will be considered shall be given to the Citizenship at least twenty (20) days before the meeting and shall include:
- a) a summary of the transaction and the conflict of interest involved;
  - b) a statement that there will be a vote by secret ballot of the Electors present at the Special General Meeting to decide whether or not to approve the transaction with or without conditions; and
  - c) the date, time and place of the Special General Meeting specifying the time period during which voting will take place.
- 58.10 Notice of the Special General Meeting shall be provided to the Citizenship by:
- a) publication of a notice in the We Wai Kai newsletter distributed to Electors at the last address filed with or known to Chief Administrative Officer, or by separate written notice distributed to Electors at the last address filed with or known to the Chief Administrative Officer; and
  - b) posting of the notice in a public area of the We Wai Kai administration building.
- 58.11 At the Special General Meeting, Council or its designate shall disclose the transaction or matter in question giving rise to a conflict of interest or the appearance of a conflict of interest, and the individuals involved shall answer questions from the Electors present.
- 58.12 Upon completion of the discussion on the transaction, the Electors, excluding members of Council in a conflict of interest, present shall vote by secret ballot on whether to approve the transaction.
- 58.13 The transaction shall be deemed approved if a Majority of Electors voting at the Special General Meeting vote to approve the transaction.
- 58.14 The decision at the Special General Meeting shall be recorded in the minutes and shall have the same effect as a decision where no conflict of interest had existed

## **59. Using Council Property or Council Information**

- 59.1 A member of Council, the Chief Administrative Officer, Lands Administration Officer or any Lands Department staff shall not use property owned by Council for personal purposes nor purchase property owned by Council, unless the opportunity for such use or purchase is made equally available to all community Citizens and the use and transaction is approved in accordance with sections 58.

59.2 A member of Council, the Chief Administrative Officer, Lands Administration Officer or any Lands Department staff shall not take personal advantage of an opportunity available to Council, unless it is clear that Council has decided against pursuing the opportunity and the opportunity is made equally available to all Citizens.

## **60. Gifts**

60.1 A member of Council, the Chief Administrative Officer, Lands Administration Officer or any Lands Department staff shall not accept gifts, hospitality or other benefit from any Person where the acceptance may be construed by an impartial observer as an illegal payment, bribe or attempt to influence them.

60.2 A member of Council, the Chief Administrative Officer, Lands Administration Officer or any Lands Department staff may accept a gift in the normal exchange of hospitality where the exchange is lawful.

60.3 For greater certainty, this Part shall not be used nor interpreted to restrict appropriate gift giving or receiving customs or traditions, or to prevent due recognition by way of a gift to a member of Council, the Chief Administrative Officer, Lands Administration Officer or any Lands Department staff in recognition of their service to the community or to aboriginal causes or institutions.

## **61. Liability for Violation of Conflict of Interest Provisions**

61.1 In addition to any other penalty, a member of Council shall be personally liable to We Wai Kai for any personal or business benefit the member of Council or their Immediate Family receives resulting from a violation of this Part.

# **PART IX – Referendum Procedures**

## **62. Application**

62.1 This Part applies only to a Referendum required by this Land Code or where Council determines a Referendum is advisable in relation to the management and administration of We Wai Kai Lands.

## **63. Holding a Referendum**

63.1 Council shall hold a Referendum by way of vote in accordance with this Land Code. A second Referendum on any question may not be held for at least one hundred and twenty (120) days after the first vote on that question.

63.2 Council shall, by Resolution at least ninety (90) days prior to the date on which the Referendum is to be held:

- a) set a date for the Referendum;
- b) determine the question or questions to be asked in the Referendum; and
- c) appoint an Electoral Officer to conduct the Referendum.

63.3 Unless otherwise required by this Land Code, a question put to Referendum shall be approved if a Majority of the Electors who cast valid ballots vote "YES" to the question asked.

63.4 In order to be entitled to vote in a Referendum, an individual must be an Elector.

#### **64. Electoral Officer and Deputy Electoral Officers**

64.1 If an Electoral Officer has not been appointed within the time set out in section 63.2, the Electoral Officer shall be appointed by the Chief Administrative Officer as soon as possible.

64.2 A deputy Electoral Officer or Officers shall be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.

64.3 The deputy Electoral Officers shall have such powers as described in this Part and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.

64.4 The deputy Electoral Officer shall not be a member of Council.

64.5 The Electoral Officer shall not be a Citizen, salaried officer or employee of We Wai Kai, or holder of other contracts of services for We Wai Kai.

64.6 Every Electoral Officer and deputy Electoral Officer shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office and shall file with the Chief Administrative Officer the sworn oath of office before assuming their office.

64.7 The Electoral Officer may make such order and issue such instructions consistent with the provisions of this Part as he or she may from time to time deem necessary for the effective administration of the Referendum.

#### **65. Contact Addresses**

65.1 The Chief Administrative Officer shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of Citizens who will have attained the age of eighteen (18) as of the date of the Referendum.

65.2 The contact addresses of Citizens shall take the form of mailing addresses.

65.3 The contact addresses shall be used only for the purposes of providing notices, mail-in

ballots or other documents to Electors who are entitled to receive them under this Part. Except for these purposes, the contact addresses shall not be disclosed by the Electoral Officer without the consent of the Elector.

65.4 Electors shall be responsible for providing the Chief Administrative Officer or the Electoral Officer with current contact addresses.

## **66. Electors' List**

66.1 The Electoral Officer shall prepare an Electors' List within thirty (30) days of assuming office. The Electors' List shall be the official record of Electors for the Referendum.

66.2 The Electoral Officer shall post the Electors' List in a public area of the We Wai Kai administration building and in other conspicuous place or places on We Wai Kai Lands, as may be determined by the Electoral Officer, no later than sixty (60) days prior to the date on which the Referendum is to be held.

66.3 An individual whose name does not appear or does not correctly appear on the Electors' List and who believes they are eligible to be an Elector, or an Elector acting on their behalf, may, no later than ten (10) days prior to the date on which the Referendum is to be held, apply in writing to the Electoral Officer to have his or her name added to the Electors' List.

66.4 The application under section 66.3 shall set out the reasons why the individual's name should be added to the Electors' List, together with any documents supporting the application.

66.5 Where the Electoral Officer believes or has information indicating that an individual whose name is on the Electors' List is not an Elector, or where an Elector applies in writing to the Electoral Officer to have another individual's name removed from the Electors' List because that individual does not qualify as an Elector, the Electoral Officer shall give written notice to the individual whose eligibility is challenged at least twenty (20) days prior to the date on which the Referendum is to be held.

66.6 The application by an Elector under section 66.5 shall set out the reasons why a individual's name should be removed from the Electors' List, together with any documents supporting the application, and must be received by the Electoral Officer no later than twenty-one (21) days prior to the date on which the Referendum is to be held.

66.7 The notice given under section 66.5 shall include the reasons for seeking removal of a name from the Electors List and any supporting documents, and shall provide notice that a written reply may be sent to the Electoral Officer which must be received no later than ten (10) days prior to the date on which the Referendum is to be held.

66.8 After consideration of all information and representations relating to amendments to the Electors' List, the Electoral Officer shall add or delete names to the Electors' List, based on whether individuals qualify as Electors.

66.9 The Electoral Officer shall give an individual whose name has been added to or deleted

from the Electors' List written notice of the decision and shall post the decision in a public area of the We Wai Kai administration building and in other conspicuous place or places on We Wai Kai Lands, as may be determined by the Electoral Officer, at least five (5) days prior to the date on which the Referendum is to be held.

- 66.10 The decision of the Electoral Officer under section 66.8 is final and not subject to appeal.
- 66.11 The Electoral Officer shall, at least five (5) days prior to the date on which the Referendum is to be held, post a final Electors' List in a public area of the We Wai Kai administration building and in other conspicuous place or places on We Wai Kai Lands as may be determined by the Electoral Officer.
- 66.12 Any individual whose name does not appear on the final Electors' List shall not be entitled to vote in the Referendum.

## **67. Preparation of Ballots**

- 67.1 The Electoral Officer shall prepare ballots setting out the question or questions to be asked in the Referendum.
- 67.2 The ballots shall indicate that the Elector is to signify his or her choice with an "X" or other mark under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot.

## **68. Entitlement to Vote by Mail-in Ballot**

- 68.1 At least sixty (60) days prior to the date on which the Referendum is to be held, the Electoral Officer shall publish a notice in the We Wai Kai newsletter sent to Electors or shall forward to Electors at their contact address a notice setting out the conditions for voting by mail-in ballot.
- 68.2 The notice shall include:
  - a) notification that a copy of this Land Code can be obtained at the We Wai Kai administration building;
  - b) the places where copies of the Electors' List will be posted in a public area of the We Wai Kai administration building;
  - c) a statement that Electors whose Ordinary Residence is on We Wai Kai Lands who are unable to vote in person on the date of the Referendum may, at least fifteen (15) days prior to the date on which the Referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot;
  - d) a statement that Electors whose Ordinary Residence is not on We Wai Kai Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them unless they advise the Electoral Officer in writing that they do not want to receive a mail-in ballot at least forty (40) days prior to the date on which the Referendum is to be held;

- e) the business address, telephone and facsimile number of the Electoral Officer;  
and
- f) the date of the notice.

68.3 Any Elector whose Ordinary Residence is on We Wai Kai Lands and who is unable to vote in person on the date of the Referendum is to be held may, at least fifteen (15) days prior to the date on which the Referendum is to be held, apply to the Electoral Officer to vote by mail-in-ballot.

68.4 Any Elector whose Ordinary Residence is not on We Wai Kai Lands and who has not been sent a mail-in ballot package in accordance with section 68.6 may, at least fifteen (15) days prior to the date on which the Referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot.

68.5 An Elector requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.

68.6 The Electoral Officer shall, at least thirty-five (35) days prior the date on which the Referendum is to be held, mail to every Elector whose Ordinary Residence is not on We Wai Kai Lands and to every Elector whose Ordinary Residence is on We Wai Kai Lands whose application to vote by mail-in ballot has been received, a mail-in ballot a package consisting of:

- a) a ballot initialed on the back by the Electoral Officer or deputy Electoral Officer;
- b) an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
- c) a second inner envelope marked "ballot" for insertion of the completed ballot;
- d) an Elector declaration form which shall set out:
  - i) the name of the Elector;
  - ii) the Citizenship number of the Elector; and
  - iii) the name, address and telephone number of the witness to the signature of the Elector;
- e) a letter of instruction regarding voting by mail-in ballot; and
- f) a statement identifying the location of all polling stations, advising the Elector that they may vote in person at any polling station on the day of the Referendum if they return their mail-in ballot to the Electoral Officer at the polling station or swear a written declaration before the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot.

## **69. Notice of Polls**

69.1 The Electoral Officer shall, at least thirty (30) days prior to the date on which the Referendum is to be held, post a notice of polls in a public area of the We Wai Kai administration building and in other conspicuous place or places on We Wai Kai Lands, as may be determined by the Electoral Officer.

69.2 The notice of polls shall include:

- a) the date of the Referendum;
- b) the time the polling stations will be open and closed;
- c) the location of the polling stations;
- d) the question or questions to be asked in the Referendum; and
- e) a statement that the Electors' List is posted in a public area of the We Wai Kai administration building.

## **70. Voting by Mail-in Ballot**

70.1 An Elector shall vote by mail-in ballot by:

- a) clearly marking the ballot with an (X) or other mark that clearly indicates the Elector's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
- b) folding the ballot in a manner so as to conceal the mark or marks on the face of the paper but exposing the Electoral Officer's or deputy Electoral Officer's initials on the back;
- c) placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
- d) completing and signing the Elector declaration form in the presence of a witness who is at least eighteen (18) years of age;
- e) placing the inner envelope marked "ballot" and the completed, signed and witnessed Elector declaration form in the postage-paid, return envelope, pre-addressed to the Electoral Officer; and
- f) delivering to, or otherwise ensuring receipt of the envelope by the Electoral Officer before the time at which the polls close on the day of the Referendum.

70.2 Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the Referendum shall not be counted.

70.3 An Elector to whom a mail-in ballot was delivered may vote in person at a polling station if:

- a) the Elector returns the mail-in ballot to the Electoral Officer or deputy Electoral Officer; or
- b) where the Elector has lost the mail-in ballot, the Elector provides the Electoral Officer or deputy Electoral Officer with a written affirmation of loss signed by the Elector in the presence of either the Electoral Officer, deputy Electoral Officer, justice of the peace, notary public or commissioner for taking oaths.

## **71. Voting at a Polling Station**

- 71.1 The polling station shall be open from eight o'clock (8:00) in the morning until eight o'clock (8:00) in the evening on the day on which the Referendum is to be held.
- 71.2 The Electoral Officer shall, before the polling station is open, supply the polling station with:
- a) ballot boxes;
  - b) a sufficient number of ballots;
  - c) the final Electors' List;
  - d) the necessary materials for marking ballots; and
  - e) a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- 71.3 The Electoral Officer shall provide a voting compartment inside the polling station where the Electors can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the Polling Site.
- 71.4 The Electoral Officer or deputy Electoral Officer shall, immediately before the commencement of the poll:
- a) open the ballot box and, in the presence of any appointed security and other deputy Electoral Officers, confirm that it is empty and complete a written statement to that effect;
  - b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
  - c) place the ballot box in public view for the reception of the ballots.
- 71.5 Each individual presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or deputy Electoral Officer identification issued by the Federal or Provincial government or by We Wai Kai.
- 71.6 Where a individual does not have identification, they shall be deemed to be properly identified if they are known to the Electoral Officer or deputy Electoral Officer.

- 71.7 Where an individual is properly identified as an Elector, he or she shall sign the sign-in sheet presented by the Electoral Officer or deputy Electoral Officer and list their Citizenship number on the sign-in sheet.
- 71.8 Upon signing the sign-in sheet, the Elector shall receive a ballot initialed by the Electoral Officer or deputy Electoral Officer.
- 71.9 The Electoral Officer or deputy Electoral Officer shall place in the proper column of the Electors' List a mark opposite the name of every Elector receiving a ballot.
- 71.10 The Electoral Officer or deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
- 71.11 Voting at all Referendums shall be by secret ballot.
- 71.12 No Elector may vote by proxy or authorize another individual to vote on his or her behalf.
- 71.13 Notwithstanding section 71.12 and section 71.16, any Elector who requires assistance may request that the Electoral Officer or a deputy Electoral Officer vote on their behalf in their presence in favour of or against the question, as the Elector directs.
- 71.14 In the event that an Elector votes in the manner described in section 71.13, the Electoral Officer or deputy Electoral Officer shall note on the Electors' List in the column for remarks opposite the name of such Elector, the fact that the ballot was marked by him or her in the presence of the Elector and the reasons therefore.
- 71.15 Except for voting in the manner provided in section 71.13, the Electoral Officer or deputy Electoral Officer shall ensure the Elector's privacy while in the voting compartment.
- 71.16 Upon receiving the ballot, each Elector shall:
- a) immediately proceed to the voting compartment and clearly mark the ballot with an (X) or other mark that clearly indicates the Elector's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
  - b) fold the ballot so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or deputy Electoral Officer; and
  - c) without unfolding the ballot, have the Electoral Officer or deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Electoral Officer or deputy Electoral Officer in the polling station.
- 71.17 An Elector who inadvertently spoils his or her ballot may return it to the Electoral Officer or deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots, and provide the Elector with a new ballot initialed by the Electoral Officer or deputy Electoral Officer.
- 71.18 An Elector who has received a ballot and subsequently decides not to vote must return the ballot to the Electoral Officer or deputy Electoral Officer, who shall mark the word

“declined” on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.

71.19 An Elector forfeits his or her right to vote at the Referendum after being provided a ballot by the Electoral Officer or deputy Electoral Officer if that individual leaves the polling station without delivering the ballot to the Electoral Officer or the deputy Electoral Officer.

71.20 Any Elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.

71.21 Save and except for the Electoral Officer, deputy Electoral Officer or appointed security, no one other than the Electors who are in the process of voting, or in the case of an elderly or physically incapacitated person, an attendant, is permitted to be inside the polling station.

71.22 No individual shall, on the day the Referendum is held, on the premises of the Polling Site:

- a) distribute any printed materials except such materials as may be distributed by the Electoral Officer or deputy Electoral Officer for the purpose of conducting the Referendum;
- b) attempt to interfere with or influence any Elector in marking his or her ballot; or
- c) attempt to obtain information as to how an Elector is about to vote or has voted.

71.23 The Electoral Officer or deputy Electoral Officer may request appointed security to remove any individual from the Polling Site who is in violation of section 71.22.

## **72. Procedures after the Close of the Polls**

72.1 Immediately after the close of the polls, the Electoral Officer shall, in the presence of the deputy Electoral Officer and any Electors who choose to be present, open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:

- a) set aside the ballot if:
  - i) it was not accompanied by an Elector declaration form or the Elector declaration form is not signed or witnessed;
  - ii) the name of the individual set out in the Elector declaration form is not on the Electors' List; or
  - iii) the Electors' List shows that the Elector has already voted; and
- b) deposit all remaining ballots in the ballot box and place a mark on the final Electors' List.

72.2 Immediately after all valid mail-in ballots have been deposited in the ballot box, the

Electoral Officer shall examine the ballots and reject all ballots that:

- a) have not been initialed by the Electoral Officer or deputy Electoral Officer;
- b) are marked in such a way that the Elector can be identified; or
- c) are marked in such a way that the Elector's choice cannot clearly or unambiguously be determined.

72.3 Any rejected ballot shall not be counted as a vote cast.

72.4 The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.

72.5 The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in this Land Code.

72.6 The Electoral Officer shall:

- a) count the votes given in favour of or against the question or questions submitted in the Referendum; and
- b) prepare and sign a statement in writing of the number of votes so given and of the number of ballots rejected.

72.7 Immediately after the completion of the counting of the votes, the Electoral Officer shall:

- a) publicly declare the results of the Referendum;
- b) prepare a statement in duplicate signed by him or her indicating:
  - i) the number of Electors who voted;
  - ii) the number of votes cast in favour of and against the question or questions submitted in the Referendum; and
  - iii) the number of rejected ballots; and
- c) deliver a copy of the statement to Council.

72.8 The Electoral Officer shall:

- a) within three (3) days of the date on which the Referendum is held post in a public area of the We Wai Kai administration building and in other conspicuous place or places on We Wai Kai Lands, as may be determined by the Electoral Officer, a written statement signed by the Electoral Officer showing the number of votes cast in favour of and against the question or questions submitted in the Referendum and the number of rejected ballots; and
- b) publish a written statement, showing the number of votes cast in favour of and against the question or questions submitted in the Referendum and the number of rejected ballots, in the We Wai Kai newsletter distributed to Electors or in a

separate written notice distributed to Electors.

### **73. Disposal of Ballots**

73.1 The Electoral Officer shall deposit the ballots used in the voting, including the cancelled and declined ballots, in a sealed envelope and retain it for one hundred and twenty (120) days after the date on which the Referendum is held or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two (2) witnesses.

### **74. Appeals**

74.1 Any Elector may file an appeal in writing to the Chief Administrative Officer requesting that the Referendum be declared invalid on one or more of the following grounds:

- a) there was a violation of any provision of this Part in the conduct of the Referendum that might have affected the result of the Referendum; or
- b) there was a corrupt or fraudulent practice in connection with the Referendum.

74.2 Every notice of appeal shall be filed with the Chief Administrative Officer within thirty (30) days from the date upon which the Referendum was held together with a non-refundable filing fee of seventy-five dollars (\$75).

74.3 Every appeal shall set out in an affidavit sworn before a notary public or a duly appointed commissioner for taking oaths the facts substantiating the grounds for declaring the Referendum invalid and shall be accompanied by any documents relied on to support the appeal.

74.4 The Elector appealing the result of the Referendum shall deposit with the Chief Administrative Officer, together with the appeal, security for costs in the amount of five hundred dollars (\$500).

74.5 Upon receipt of the Referendum appeal, supporting documents and security for costs, the Chief Administrative Officer shall forward the appeal and supporting documents to Council.

74.6 Council shall have seven (7) days from the receipt of the material described in section 74.5 to file with the Chief Administrative Officer a written reply to the appeal.

74.7 Upon expiration of the time to file a reply, the Chief Administrative Officer shall forward the appeal, supporting documents and any reply to the Council of Elders to hear and determine the appeal.

74.8 The Council of Elders may, at their discretion, give directions for:

- a) fixing the date, time and place for the hearing of the appeal;
- b) designating the method of taking evidence, either by sworn declaration or written

testimony or both;

- c) designating what individuals are to be notified and how they are to be served; and
- d) dealing with any matter or other thing not otherwise provided for in this section.

74.9 No witness shall be required to divulge how he or she voted in the Referendum.

74.10 The Council of Elders shall provide a written decision together with reasons, confirming or invalidating the Referendum results.

74.11 The result in the Referendum shall not be declared invalid by reason only of any irregularity or non-compliance with the Referendum procedures, or any mistake in the use of forms if it appears to the Council of Elders that the Referendum was conducted in good faith, unless the non-compliance, irregularity or mistake materially affected the result of the Referendum.

74.12 The Council of Elders may in their discretion order by whom, to whom and in what manner costs of the appeal shall be paid. The Council of Elders shall make disposition of the security for costs furnished under this section in accordance with their order.

74.13 The Council of Elders shall give the individual appealing the Referendum and Council written notice of the decision and shall post the decision in a public area of the We Wai Kai administration building and other conspicuous place or places on We Wai Kai Lands, as may be determined by the Council of Elders.

74.14 The determination of the Council of Elders is final and not subject to appeal.

## **75. Penalty**

75.1 In addition to any other penalty or liability, any Person who violates any provision of this Part is guilty of an offence and liable upon summary conviction to a fine not exceeding ten thousand dollars (\$10,000).

## **PART X - Amendment of Land Code**

### **76. Procedure**

76.1 The process for development and passage of amendments to this Land Code may be initiated by Resolution of Council.

76.2 Upon passage of the Resolution under section 76.1, Council shall develop proposed amendments to this Land Code.

76.3 Upon completion of the proposed amendments to this Land Code, Council shall schedule a Special General Meeting for the purpose of considering the proposed amendments and

shall provide notice to the Citizenship.

- 76.4 Notice of the Special General Meeting required under section 76.3 shall be provided to the Citizenship at least twenty (20) days before the meeting and shall include:
- a) the date, time and place of the Special General Meeting;
  - b) a summary of the proposed amendments to this Land Code; and
  - c) notification that the full copy of the proposed amendments to this Land Code and this Land Code can be obtained at the We Wai Kai administration building.
- 76.5 Notice of the Special General Meeting shall be provided to the Citizenship by:
- a) publication of the notice in the We Wai Kai newsletter distributed to Electors or by separate notice distributed to Electors; and
  - b) posting of the notice in a public area of the We Wai Kai administration building and such other places as Council may direct.
- 76.6 Copies of the proposed amendments to this Land Code and this Land Code shall be available to Citizens attending the Special General Meeting.
- 76.7 At the Special General Meeting, Council or its designate shall explain the purpose and provisions of the proposed amendments, and Citizens may ask questions and provide comments.
- 76.8 After the Special General Meeting held to consider the proposed amendments to this Land Code, Council shall, within sixty (60) days of the date on which the Special General Meeting was held, prepare a final draft of the proposed amendments, taking into consideration the comments received from Citizens, the needs of the community and other relevant matters.
- 76.9 The proposed amendments to this Land Code shall be approved by Referendum.
- 76.10 Proposed amendments to this Land Code approved in accordance with this Part come into effect on the date of the Referendum.

## **PART XI – General**

### **77. Liability**

- 77.1 We Wai Kai is not liable for anything done or omitted to be done by Canada or any Person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.
- 77.2 The Land Code is not, nor shall be interpreted as being, a waiver by We Wai Kai in regard to any liabilities, acts or omissions of Canada.

**78. Coming into Force**

78.1 The provisions of this Land Code come into force on the first day of November 2009 or the date that the Minister signs the Individual Agreement, whichever is later.