



July 15, 2019

Via Email: commission.secretary@bcuc.com

British Columbia Utilities Commission
(BCUC)
6 Floor – 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Commission Secretary:

**Re: Beecher Bay First Nation (“Beecher Bay”) written evidence submissions to BCUC
Indigenous utilities Regulation Inquiry (the “Inquiry”)**

1. We are legal counsel to Beecher Bay and are writing on its behalf to provide written evidence for this Inquiry.
2. Beecher Bay has a direct interest in the Inquiry as it has experienced first-hand the challenges facing Indigenous communities seeking to establish an energy utility in British Columbia. As the panel knows, Beecher Bay is the majority owner in Spirit Bay Utilities Ltd., (“SB Utilities”) which in 2016 applied to the BCUC for an exemption under section 88(3) of the *Utilities Commission Act* (“UCA”) from the application of Part 3 of the UCA. The application was ultimately unsuccessful and this significantly impacted Beecher Bay’s long-term economic development plans. Based on its experience, Beecher Bay believes affirming Indigenous communities’ right to establish, operate, and regulate Indigenous utilities will promote Indigenous economic development and facilitate meaningful reconciliation in British Columbia.
3. This written evidence is presented in two parts:
 - I. Beecher Bay overview and the context for the Nation’s interest in utilities; and
 - II. Indigenous governance and regulation of Indigenous utilities.

816-1175 Douglas Street
Victoria BC V8W 2E1
T 250 405 3460
F 250 381 8567
www.jfklaw.ca

Erin Thomson-Leach

Associate

Direct Line: 250 405 1864

C 778-679-1739

E ethomson-leach@jfklaw.ca

File No. 1316-004

Part I: Beecher Bay Overview and Context

4. Beecher Bay is a relatively small community located on Vancouver Island, about 30 km southwest of Victoria near East Sooke. Its traditional territory expands along the Juan de Fuca Strait east and west of its reserve lands and inland beyond Sooke Lake. It has about 260 members. The Beecher Bay community is related to the Klallam people, who signed treaties with Governor James Douglas in 1850 and of which Beecher Bay is a beneficiary.
5. The Beecher Bay community has witnessed significant change since first signing its Treaty with Governor Douglas. Various factors, such as major urban development throughout the Greater Victoria Area and successive federal and provincial policies (such as the *Indian Act*, fisheries and wildlife regulations, and land use planning and development decisions), have impacted Beecher Bay's traditional economies, culture and way of life, and members' ability to exercise their Aboriginal and Treaty rights.
6. Today, Beecher Bay is part of the Te'mexw Treaty Association, which consists of five First Nations on Vancouver Island negotiating together in the BC Treaty Process. It is currently in the final stage of negotiating its modern Treaty, having signed an Agreement in Principle with British Columbia and Canada in 2015. As a Nation, Beecher Bay is focused on the future and building a sustainable economy for the community. Through Treaty negotiations, Beecher Bay is seeking to assert and affirm its right to self-government and self-determination, and its economic development plans reflect and honour these principles.

Economic Development at Spirit Bay

7. Beecher Bay is developing a residential community on its reserve lands called Spirit Bay. When complete, Spirit Bay will feature a new town rooted in the principle of treading lightly on the environment. Homes are available for long-term leases of 99 years and so far over 50 homes have been built, many of which are now occupied. The long-term development plan at Spirit Bay includes up to 600 homes, some commercial space, a spa resort, and a 36 acre light industrial site. Photographs of some of the Spirit Bay Development homes were provided during Beecher Bay's oral evidence in the July 4, 2019 community hearing session in Victoria. Additional information is available online [here](#).
8. To facilitate the Spirit Bay development, Beecher Bay established Spirit Bay Developments Limited Partnership, of which Beecher Bay owns 51% and the remaining 49% is owned by a family-controlled entity. More details about Beecher Bay's

development at Spirit Bay are outlined in SB Utilities' application for a s.88(3) exemption, which is attached as Appendix "A" (the "Exemption Application").

Challenges Beecher Bay faced in establishing and operating Spirit Bay Utilities Ltd.

9. As part of Beecher Bay's overall economic development objectives, it wanted to establish its own utility system to provide services to the Spirit Bay development, and to grow a source of revenue for Beecher Bay. Together with its partner in the Spirit Bay development, Beecher Bay created Spirit Bay Utilities Ltd., which is Beecher Bay majority-owned (51%). The intent is that Beecher Bay will eventually own 100% of SB Utilities.
10. SB Utilities was to initially provide electricity and heat to the Spirit Bay development, and then to expand its services to include water and sewer. As outlined in the Exemption Application, SB Utilities contemplated providing energy utilities from two main sources:
 - (1) a direct-energy system through ocean heat exchange based at Spirit Bay; and
 - (2) electricity purchased from BC Hydro at bulk rates, which would then be distributed by SB Utilities to the homes and businesses at the Spirit Bay Development at a reasonable retail rate.
11. Beecher Bay also intended to regulate the utility services provided by Spirit Bay in a manner similar to municipal utilities. As set out in the Exemption Application, Beecher Bay holds legal authority under the ***First Nations Land Management Act*** and the Beecher Bay ***Land Code*** to make laws and policies related to land use and management, including the provision of local utility services.
12. In order to proactively obtain certainty as to the operation of SB Utilities, Beecher Bay and its partners explored ways to ensure that SB Utilities would be exempt from the application of Part 3 of the UCA. This included detailed discussions with the Ministry of Energy and Mines. The Minister and ministry staff encouraged and supported SB Utilities application for an exemption under s.88 of the UCA or, alternatively, a declaration that for the purposes of the UCA, SB Utilities is a municipality. The Commission ultimately denied the application.
13. The decision to deny the exemption application had significant consequences for SB Utilities, the Spirit Bay development, and for Beecher Bay. SB Utilities had already invested roughly \$1.5 million into infrastructure required to bring three phase power

from BC Hydro out to the Spirit Bay economic development zone. SB Utilities intended to recover that significant investment through the additional revenue from selling electricity purchased at bulk rates from BC Hydro and distributed to customers in the Spirit Bay development at fair market value; however, that is currently not possible under the current structure of the UCA.

14. In addition, SB Utilities has established a geothermal ocean direct energy system. The system was funded in part through a \$440,000 provincial grant from the BC First Nations Clean Energy Fund. In order to receive the full amount of the grant, Beecher Bay must be able to provide the province examples of six months of billing. To date, because SB Utilities was not granted an exemption, it has not been able to provide the requisite examples and has not been able to recover all of its costs for developing this system or realize its full objectives in supplying clean energy to leaseholders.

Part II: Indigenous governance and regulation of Indigenous Utilities

15. The Commission has asked participants to provide evidence to help answer key questions about Indigenous utilities. Beecher Bay's story of SB Utilities is an example of why the UCA is not an appropriate instrument for regulating Indigenous utilities, and why Beecher Bay does not view Indigenous utilities as public utilities within the meaning of the UCA. This section discusses Beecher Bay's broad objectives in providing utility services and then discusses statutory and other sources of authority for Indigenous communities providing and overseeing Indigenous utilities.

Beecher Bay's Objectives for Utility Services

16. Beecher Bay's vision in establishing and operating SB Utilities is broader than just providing services to the Spirit Bay Development. The additional revenue generated by SB Utilities would also significantly benefit Beecher Bay's community objectives elsewhere. As an example, additional own-source revenue would potentially allow Beecher Bay to off-set housing costs.
17. Many people living on the Beecher Bay reserve are struggling to make ends meet and live on social assistance. In administering on-reserve housing and other social services such as health and child care, Beecher Bay has observed that social assistance rates are insufficient for some families to cover shelter costs. As a result, some members cannot afford to pay their BC Hydro bills. The Beecher Bay band will sometimes assist members to pay all or part of their hydro bills to help avoid disconnection or to ensure reconnection. With limited budgets, Beecher Bay must make difficult decisions about where to allocate its funds across critically important and sometimes competing

interests. For example, should the band assist members facing a hydro cut-off with an outstanding balance or should it pay for necessary housing maintenance?

18. Beecher Bay intends that, in operating SB Utility as described above, additional revenue could help to alleviate the effects of poverty and improve housing security on reserve for its community members. For example, the funds could be used to fund housing maintenance or establish a program to assist vulnerable members in need of utility support. In addition, SB Utilities could potentially in the future provide Beecher Bay with energy independence, and allow Council to address energy poverty by considering novel approaches, such as flexible terms and conditions for low-income ratepayers including reduced reconnection fees and flexible outstanding bill payment arrangements.

Characteristics of an Indigenous Utility

19. The Commission has asked participants to consider the characteristics of an Indigenous utility. In order to recognize the *sui generis* nature of Indigenous governance, we encourage the Commission to take a broad and purposive view of an Indigenous utility. Indigenous communities will have specific features that each government may be seeking to address in developing its Indigenous utility. For example, some, like Beecher Bay, may be interested in providing services to a development on their lands. Others may need to address the challenges of obtaining secure and reliable energy to a remote location. Still others may have significant economic development objectives off-reserve or for treaty settlement land. It would be short-sighted and inconsistent with the principle of reconciliation to limit Indigenous utilities to one particular arrangement.
20. As Kris Obrigewitsch described in his oral submissions, Beecher Bay cautions against requiring that Indigenous utilities be 100% Indigenous owned. This would create a significant barrier to Indigenous economic development as utility projects may require more capital than that to which many First Nations will have immediate access. This may also impede the overarching objective of reconciliation between Indigenous peoples and communities and all Canadians, which should be at the forefront of all decisions affecting Indigenous peoples.

Indigenous Governance and Regulation of Indigenous utilities

21. Beecher Bay's position is that Indigenous utilities should be exempt from the UCA and not regulated as other public utilities. Self government, if it is to be meaningful, must include the right to make laws and oversee all matters that fall within Indigenous governments' jurisdiction. Utilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments and provincial and federal

governments should recognize Indigenous peoples' inherent governance rights and responsibilities, including to regulate any such Indigenous utilities.

22. It should also be open to Indigenous utilities to provide services off of their lands and there should be flexibility in any regulatory arrangement to allow for these various scenarios. Indigenous Governments are already subject to regulatory frameworks with their own mechanisms and remedies to protect ratepayers and to ensure fairness. Where an Indigenous utility would be providing utility services beyond its reserve or treaty settlement land, the relevant Indigenous government should also maintain its jurisdiction to regulate the utilities to maintain fairness and consistency among ratepayers in a region. In addition, an Indigenous utility may prove better situated to provide utility services to certain communities due to factors such as local geography or other utilities' limited ability to provide services (which can be the case in remote locations). This could facilitate development and energy security.
23. Beecher Bay enacted a comprehensive Land Code in 2003 (the "Land Code"), pursuant to the *First Nations Land Management Act* (the "FNLMA"). Under s. 38 of the *FNLMA*, when the Land Code came into force, a number of sections of the *Indian Act* respecting land and related matters ceased to apply to Beecher Bay. Thus, in the case of an Indigenous utility owned and operated by Beecher Bay, it is appropriate to look to the Land Code Beecher Bay's authority to make laws regarding the provision and oversight of its utilities. The Beecher Bay Land Code is enclosed in the Exemption Application.
24. Section 20 of the *FNLMA* sets out the First Nations powers to make laws including:
 - 20 (1) The council of a First Nation has, in accordance with its land code, the power to enact laws respecting
 - ...
 - (b) the development, conservation, protection, management, use and possession of First Nation land;
 - ...
 - (e) any matter arising out of or ancillary to the exercise of the power to enact laws under paragraphs (a) to (d).
 - (2) Without restricting the generality of subsection (1), First Nation laws may include laws respecting:
 - ...
 - (d) the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services;

25. Beecher Bay's Land Code echoes this power. The Land Code provides jurisdiction to Beecher Bay over an Indigenous utility supplying power on reserve lands. Part 2 of the Land Code empowers Beecher Bay with the following law making powers:
 - a. Development, conservation, protection, management, use and possession of First Nation land;
 - b. Interests and licenses in relation to First Nation land;
 - c. Any matter necessary to give effect to this Land Code; and
 - d. Any matter **necessary or ancillary** to a Law respecting First Nation Land

26. In addition, under s. 6.2, the Land Code provides specific authority to enact laws including but not limited to:
 - a. The development, conservation, protection, management, use and possession of First Nation Land;
 - b. The **provision of local services and the imposition of user charges**; and,
 - c. The construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works.

27. The enumerated list under s. 6.2 is not exhaustive and merely sets out examples of the law making power granted to Council for Beecher Bay under its Land Code; nonetheless, even the express authority set out is sufficiently broad to encompass the power to establish and regulate an Indigenous utility.

28. Beecher Bay submits that a local, Indigenous utility falls under the category of local services governed by the *FNLMA* or local works under 6.2 of the Land Code. The *FNLMA* contemplates that a Land Code First Nation can make laws respecting the imposition of equitable charges and the interpretation Beecher Bay proposes with respect to the operation of an Indigenous utility gives meaning to this grant of power. This interpretation of the statute is rooted in the guiding principles of statutory interpretation as it is in accordance with the legislative scheme, the context in which the legislation was enacted, and with keeping in mind the legislative aim and purpose of the statute (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21).

29. Regulatory legislation that applies to Beecher Bay, including the Land Code, is robust and includes processes and procedures to ensure fairness and transparency to ratepayers. We respectfully submit that there is no principled reason why Indigenous power utilities should be barred from self-regulation, which is to say regulation in

accordance with applicable statutes, Indigenous laws, and common law principles regarding service fees and user charges.

30. The Supreme Court of Canada said in *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623, 2013 SCC 14 that “[t]he honour of the Crown requires the Crown to act in a way that accomplishes the intended purposes of treaty and statutory grants to Aboriginal peoples” (at para. 73 (4)). It would be contrary to this principle not to interpret the FNLMA as intending to provide First Nations with jurisdiction over Indigenous utilities.

31. In the future, if Beecher Bay’s members ratify its modern Treaty, the Governance Chapter will also provide for Beecher Bay’s law-making authority over public works and related services. The Te’mexw Treaty Association Agreement in Principle Governance Chapter (Chapter 14) provides:

Public Works

145. The Te’mexw Member First Nation Government may make laws in respect of public works and related services on its Treaty Settlement Lands.

32. As shown by the above Treaty language, Indigenous authority over public works forms an integral part of the goal of self government and self determination. This goal, however, need not wait for Treaty ratification. As noted above, ample statutory authority already exists to allow Indigenous governments to operate a utility.

33. First Nations’ authority under *FNLMA* is at a minimum analogous to that of a municipality. Although not defined as a municipality under the *Interpretation Act*, other provincial legislation demonstrates that an Indigenous government should be viewed as, at the very least, equivalent in authority to a municipality or other form of local government. For example, the *Community Charter* defines a ‘public authority’ to include a First Nation.

34. Indigenous governments and services, however, are *sui generis*, which means that they are inherently unique. Where a municipality has only delegated authority, Indigenous governments derive authority from a variety of sources, which we submit empowers them with even greater rights to establish and operate utility services. In addition, the Land Code is established pursuant to Federal statute, namely the FNLMA, which is paramount to provincial legislation.

35. To ensure transparency and procedural fairness for ratepayers, Beecher Bay First Nation has already prepared a Beecher Bay Spirit Bay Utilities Law (the “Utilities Law”), which is also included in the Exemption Application. The Utilities Law:
 - a. Provides for equitable and reasonable rates that are subject to council approval (6.4); and
 - b. Establishes a fair process for rate-payer disputes, including an independent dispute resolution panel under the Land Code and the ability to appeal decisions to the Federal Court (6.7).
36. In addition, Beecher Bay could develop a formal process for ensuring non-members are made and remain aware of the Utility Law and any proposed revisions, amendments or replacements that may be made from time to time, including rate changes. Beecher Bay may also take additional measures to promote procedural fairness, such as seeking public input on proposed plans and changes affecting its utilities, promoting transparency and good utility governance.
37. As Ruth Sauder mentioned in her presentation to the Panel on July 4, 2019, Beecher Bay is already administering property taxes for non-member residents in the Spirit Bay Development. Beecher Bay works with BC Assessment to determine property assessments and determined initial rates based on rates in nearby municipalities. In addition to the formal structures set out in taxation laws, as a smaller community, Beecher Bay is committed to maintaining positive relationships with non-members and staff is available to answer questions and receive feedback. Beecher Bay’s economic and social success as a community depends on fair and reasonable taxation rates and processes; and the same is true for any rates for any utilities Beecher bay would provide through SB Utilities.

Concluding Comments

38. The emergence of an Indigenous utilities sector will support creative approaches that allow for flexibility in sustainability based in Indigenous laws and a community’s local resources. As an example, Beecher Bay intends to provide energy utilities from a direct-energy system through ocean heat exchange based at Spirit Bay. Other communities may explore options such as waste thermal energy captured from sewage. Locally situated, Indigenous utilities would be ideally positioned to support objectives such as cutting carbon emissions, reducing dependence on fossil fuels, and keeping energy affordable in the long term.

39. Each Indigenous community is unique, with its own resources, history and potentially different approaches to energy. Indigenous utilities support the ability to develop local practices that are environmentally sound, and that support global and local climate action efforts. The development of an Indigenous utility sector would allow Beecher Bay Council and other Indigenous governments to do what is best for their communities and to respond to emergent technologies in an effective and flexible manner.
40. Any consideration with respect to Indigenous utilities must be undertaken in the context of reconciliation. In February 2019, the BC Government committed in the Throne Speech that it will enact legislation to implement the United Nations Declaration on the Rights of Indigenous People (“UNDRIP”). Premier Horgan [stated](#) that this would be more than symbolic. He explained that the government needs “to address reconciliation in British Columbia, not just for social justice... but for economic equality for all citizens, Indigenous and non-Indigenous.” Creating space for Indigenous utilities as described above would be an important turning point towards this goal.
41. To move forward with substantive reconciliation, it is essential that Indigenous perspectives are seriously and demonstrably considered. As long as sources of law that apply to Indigenous governments remain subordinate to other sources of law, there can be no meaningful reconciliation. This Inquiry is a step in the right direction and Beecher Bay urges the panel to recommend an outcome that recognizes and implements Indigenous rights to self government and self determination.

Yours truly,

JFK Law Corporation



Per:

Erin Thomson-Leach

ETL/clt

Encls.

Appendix A

Spirit Bay Utilities Ltd.

Application for an Exemption Pursuant to Section 88(3) of the Utilities Commission Act
or Declaration Pursuant to Section 72

June 1, 2016

Reply to: **David Austin**
Direct Tel: 604.891.7742
Email: DAustin@cwilson.com
File No: 44459-0001

CLARK WILSON LLP
Barristers & Solicitors
Patent & Trade-Mark Agents
900 – 885 West Georgia Street
Vancouver, BC V6C 3H1 Canada
T. 604.687.5700 F. 604.687.6314
cwilson.com

June 1, 2016

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
6th Floor – 900 Howe Street
Vancouver, B.C.
V6Z 2N

Attention: Laurel Ross, Acting Commission Secretary

Dear Ms. Ross:

**Re: Application by Spirit Bay Utilities Ltd.¹ (“Spirit Bay Utility”) for an
Exemption Pursuant to Section 88(3) of the *Utilities Commission Act*
 (“UCA”) or Declaration Pursuant to Section 72**

1. Introduction

We are legal counsel for the Spirit Bay Utility and on its behalf we are applying for an exemption pursuant to Section 88(3) of the UCA from the application of Part 3 of the UCA with respect to the proposed provision of electricity, propane delivered by a system of interconnected pipes, heat and cooling (“Utility Services”) by the Spirit Bay Utility to the Spirit Bay Community, as defined below. No exemption is being sought with respect to section 42 of the UCA in relation to safety orders of the British Columbia Utilities Commission (“BCUC”) issued to the Spirit Bay Utility under sections 23, 25, 38 or 49 of this Act.

The basis for the exemption request, as set out in more detail below, is that the Beecher Bay First Nation (Scianew) (“Beecher FN”) will exercise its legal authority under the First Nations Land Management Act², Framework Agreement on First Nations Land Management³ (“Act and Agreement”) and the comprehensive Beecher FN land code enacted in 2003, as amended⁴ (“Land Code”) and regulate the Utility Services provided by the Spirit Bay Utility.

In the alternative, the Spirit Bay Utility requests that, pursuant to section 72 of the UCA, the Beecher FN is a municipality or regional district for the purpose of the UCA. The Spirit Bay Utility would then fall within the exemption provided to a municipality or regional district under section 1, definition of “pubic utility” of the UCA.

¹ This company is currently being incorporated under the Business Corporations Act (British Columbia) and will be majority owned by the Beecher FN.

² S.C. 1999, c. 24.

³ <https://www.aadnc-aandc.gc.ca/eng/1327090675492/1327090738973>.

⁴ Attached as Annex 1.

The need for an exemption or direction is urgent because BC Hydro wants the matter clarified before any interconnection to its electrical system can be made.

2. Background

The Beecher FN is located on Southern Vancouver Island approximately 45 minutes from Victoria. There are 242 members of which 80 live on the reserve which is roughly 1,000 acres. It is in the process of developing a residential community (“Spirit Bay Community”) on part of this reserve by making available land for development under long term leases. These lands will not be surrendered as that term is defined under the *Indian Act*. They will remain under the control and governance of the Beecher FN in accordance with the comprehensive Land Code.

The following summary provides the broad historical context for the Land Code⁵:

“In 1991, a group of First Nation Chiefs approached the Government of Canada with a proposal to opt out of 32 provisions in the Indian Act on land and resources. As a result of this proposal, the [Framework Agreement on First Nation Land Management](#) was negotiated by 14 First Nations and Canada in 1996, and later ratified in 1999 by the [First Nations Land Management Act](#). The Framework Agreement led to the establishment of the [Lands Advisory Board and Resource Center](#) to assist the 14 First Nations in implementing their own land management Regime. Under the First Nations Land Management (FNLM) Regime, land administration is transferred to First Nations once their land codes come into effect. This includes the authority to enact laws with respect to land, the environment, and resources...”

In terms of the provision of Utility Services, the Land Code does two things:

1. gives the Beecher FN the powers of a government; and
2. provides the Beecher FN with jurisdiction over the provision of Utility Services including providing them.

The Beecher FN has established the Spirit Bay Utility to provide the Utility Services to the Spirit Bay Community. Without these services its development would not proceed nor could it continue to function.

3. Spirit Bay Community and Commercial Structure

Prior to making the decision to proceed with the Spirit Bay Community, the Beecher FN’s only source of economic activity was a small fishing marina and campground. Once the Land Code was implemented it began to attract economic development. In 2014 the Beecher FN with the assistance of the Trust For Sustainable Development (a federally chartered not for profit and experienced new town developer) created a 100 acre economic development zone for the purpose of developing a new town comprising 400-600 homes, 50,000 square feet of commercial space, a spa resort, and a 36 acre light industrial site.

⁵ <https://www.aadnc-aandc.gc.ca/eng/1327090675492/1327090738973>. As noted on the website “As of January 2016, [95 First Nations](#) have entered the FNLM Regime and are either developing or operating under their own land codes.” Beecher FN entered into this regime in August 2003.

A partnership was created called Spirit Bay Developments Limited Partnership (“LP”) that is 51% owned by the Beecher Bay FN and 49% owned by a family-controlled entity to facilitate the development.

Pursuant to the Land Code the Beecher FN has created zoning laws, registry laws, property taxation laws, and amended its Land Code to allow for 99 year leases. The LP is actively managed by two general partners – the TSD General Partner Inc. and the Beecher Bay GP Ltd. The LP has invested almost \$7,000,000 over the past two years to create the first subdivision plans, service the first 54 lots, gain CMHC approval of the leases and FCT Title insurance for the lots. To date 23 homes have been sold. The buildout will be approximately 40-60 homes per year.

4. Utility

The Spirit Bay Utility will be initially majority owned by the Beecher FN and ultimately wholly owned. It will oversee the acquisition of the utility assets from the LP and the ongoing operation/maintenance and administration of the utility. This utility is to be comprised of water, sewer, electricity, propane delivered by a system of interconnected pipes, and an ocean district energy system. This system is funded in part through a \$440,000 provincial grant from the BC First Nations Clean Energy Fund. The water and sewer systems are not subject to regulation by the BCUC.

5. Land Code

As a result of the Act and Agreement the Beecher FN was able to enact the Land Code. This code applies to the lands that the Spirit Bay Community is located on and sub-section 4.2 states:

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

Under this code, the Beecher FN through its Council (“Council”) has very broad power to make laws as set out in sub-section 6.1:

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

- (a) development, conservation, protection, management, use and possession of First Nation Land;*
- (b) interests and licences in relation to First Nation Land;*
- (c) any matter necessary to give effect to this Land Code; and*
- (d) any matter necessary or ancillary to a Law respecting First Nation Land.”*

In sub-section 6.2 there are numerous examples of its broad law making jurisdiction and these examples are not exclusive. Some of the examples are:

“For greater certainty, Council may make Law in relation to First Nation Land including but not limited to:

- (b) regulation, control authorization and prohibition of the occupation and development of land;*
- (c) creation, regulation and prohibition of interests and licences;*
- (e) provision of local services and the imposition of user charges;*
- (f) provision of services for the resolution, outside the courts, of disputes;*

- (p) *construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;"*

Section 38 of the Land Code provides for an optional mechanism for resolving disputes in relation to First Nation land that is in addition to all other civil remedies.

The Beecher FN has at least comparable law-making authority to that of a municipality or regional district and will be exercising this authority with respect to the Spirit Bay Utility by enacting the Beecher Bay Spirit Bay Utilities Law. A draft copy is attached⁶ and it is not expected there will be any material changes made prior to its passage by Council. The final version will be filed with the BCUC when it is passed.

6. Land Code – Long Term Leases

In addition to the ability of Beecher FN to make laws under the Land Code in relation to the Spirit Bay Community and as described under the heading "5. Land Code", the Land Code also provides the framework for the long term leasing of the land required for the Spirit Bay Community.

Pursuant to Section 30.3 of the Land Code, the Beecher First Nation granted a lease to the LP which was registered in the Beecher Bay Land Registry as established under this code. The LP as sublandlord has the authority to grant subleases to subtenants who are, or will be the homeowners and businesses in the Spirit Bay Community. The subleases provide for the establishment of the Owner Corporation Rules with mandatory compliance by all subtenants. These rules will be amended to require the taking of, and payment for Utility Services.

7. Legal Synopsis

Although the Land Code and related documentation establishes a very strong foundation for the proposition that the Beecher FN is a government that has jurisdiction over the provision of Utility Services by the Spirit Bay Utility or any other entity, there is a decision of the Saskatchewan Court of Appeal that predates the Agreement and Act that describes how First Nations perform the functions of government. In part the Court said⁷:

"13 As municipal councils are "creatures" of the legislatures of the provinces, so Indian band councils are the "creatures" of the Parliament of Canada. Parliament, in exercising the exclusive jurisdiction conferred upon it by s. 91(24) of the B.N.A. Act to legislate in relation to "Indians, and Lands reserved for the Indians", enacted the Indian Act, R.S.C. 1970, c. I-6, which provides — among its extensive provisions for Indian status, civil rights, assistance, and so on, and the use and management of Indian reserves — for the election of a chief and 12 councillors by and from among the members of an Indian band resident on an Indian reserve. These elected officials constitute Indian band councils, who in general terms are intended by Parliament to provide some measure — even if rather rudimentary — of local government in relation to life on Indian reserves and to act as something of an intermediary between the band and the Minister of Indian Affairs.

⁶ Annex 2.

⁷ **Whitebear Band v Carpenters Provincial Council (Saskatchewan)** (1982) 135 DLR (3d) 128 (SKCA).

14 More specifically, s. 81 of the Act clothes Indian band councils with such powers and duties in relation to an Indian reserve and its inhabitants are usually associated with a rural municipality and its council : a band council may enact by-laws for the regulation of traffic, **the construction and maintenance of public works** (emphasis added) zoning, the control of public games and amusements and of hawkers and peddlers, the regulation of the construction, repair and use of buildings, and so on. Hence a band council exercises — by way of delegation from Parliament — these and other municipal and governmental powers in relation to the reserve whose inhabitants have elected it...

19 In summary, an Indian band council is an elected public authority, dependent on Parliament for its existence, powers and responsibilities, whose essential function it is to exercise municipal and government power — delegated to it by Parliament — in relation to the Indian reserve whose inhabitants have elected it; as such, it is to act from time to time as the agent of the minister and the representative of the band with respect to the administration and delivery of certain federal programs for the benefit of Indians on Indian reserves, and to perform an advisory, and in some cases a decisive, role in relation to the exercise by the minister of certain of his statutory authority relative to the reserve.”

Similar jurisprudence can be found with respect to the *Income Tax Act*. In this context, band councils have been granted the same exemptions as municipalities, and have been found to constitute a “municipality” within the language of the *Income Tax Act*.

Section 149(1) of the *Income Tax Act*, RSC 1985, c 1, grants an exemption from income tax to:

Municipal authorities

(c) a municipality in Canada, or a municipal or public body performing a function of government in Canada;

In *Otineka Development Corp v. Canada*⁸ the Pas Indian Band (Opaskwayak Cree Nation) sought an exemption from income tax for its wholly-owned corporation, Otineka Development Corp. The Band was a self-governing entity that had passed bylaws for most of the purposes allowed under the *Indian Act*, including the regulation of water supplies and sewers. It had also been granted a declaration that it was entitled to make bylaws for the purpose of raising money from band members by means of taxation. The court noted that:

8...The Pas Indian Band, through its chief and council, is run on essentially the same lines as any other municipality and provides substantially the same services to its band members on the reserve as any municipality in Canada of comparable size.

Looking to a provision that granted an exemption to corporations owned by municipalities, the court determined that the sole question was whether the Pas Indian Band was a “municipality” within that provision:

⁸ [1994] 2 CNLR 83 (TCC).

24 The term "municipality" is not defined in the *Income Tax Act* and unless there is a reason to do otherwise it must be given its ordinary meaning of a community having and exercising the powers of self government and providing the type of services customarily provided by such a body. If its ordinary meaning is to apply, it is not necessary that it be incorporated.

In finding that the Pas Indian Band was a municipality within the meaning of that provision of the *Income Tax Act*, the court reasoned that the federal government clearly would have the ability to create a municipality on reserve lands under the head of power of 91(24), and that although it had not done exactly that, it had conferred similar powers on the band through the *Indian Act*:

"30 ...The result of that conferral of powers by the Government of Canada, and the exercise thereof by the band, has been to create a form of self-government that is an essential attribute of a municipality. It follows therefore that the entity exercising that form of self-government is a municipality within the ordinary understanding of that word. The question is not the nature of the authority that created the governmental body but rather the nature of the body that is created."

The Beecher FN is not a municipality or regional district as those terms are used in the *Interpretation Act* (British Columbia)⁹ but the Federal Government has conferred powers to it which it has exercised in relation to Utility Services. These powers are at least the equivalent to those exercisable by municipal and regional governments. It is respectfully submitted that for the purposes of the UCA the Beecher FN is a municipality or regional government.

This power is not unrestrained. The Land Code contains a voluntary dispute resolution mechanism which says in part¹⁰:

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

The common law applies to the regulation of monopolies¹¹:

"23 The obligation of a public utility or other body having a practical monopoly on the supply of a particular commodity or service of fundamental importance to the public has long been clear. It is to supply its product to all who seek it for a reasonable price and without unreasonable discrimination between those who are similarly situated or who fall into one class of consumers. The great utility systems supplying power, telephone and transportation services now so familiar may be of relatively recent origin, but special obligations to supply service have been imposed from the very earliest days of the common law upon bodies in like case, such as carriers, innkeepers, wharfingers and ferry operators.

This has been true in England and in the common law jurisdictions throughout the world. In Munn v. Illinois, 94 U.S.113 in the Supreme Court of the United States, the historical roots of this principle were examined and they have been applied in the United States. In Canada the law has followed the same path. In

⁹ RSBC 1996, Chapter 238.

¹⁰ Subsection 39.3.

¹¹ *Chastain vs British Columbia Hydro and Power Authority* [1973] 2 W.W.R. 481.

St. Lawrence Rendering Company Ltd. v. The City of Cornwall [1951] O.R. 669 at p. 683, Spence, J. then of the Ontario High Court, said:

That a public utility was at common law compelled to treat all consumers alike, to charge one no more than the others and to supply the utility as a matter of duty and not as a result of a contract, seems clear: The Attorney-General of Canada v. The City of Toronto (1893), 23 S.C.R. 514; Scottish Ontario and Manitoba Land Co. v. City of Toronto (1899), 26 O.A.R. 345; The City of Hamilton v. The Hamilton Distiller Company; The Same v. The Hamilton Brewing Association (1907), 38 S.C.R. 239; 51 Corpus Juris, para 16."

8. Request for Exemption or Declaration

The Beecher FN is very confident that it has the power to provide Utility Services through the Spirit Bay Utility and to establish Laws in this respect. However in order to provide legal certainty with respect to the formation and ongoing operation of the Spirit Bay Utility, this utility is seeking an exemption pursuant to Section 88(3) of the UCA from the application of Part 3 of the UCA with respect to the proposed provision of Utility Services. No exemption is being sought with respect to section 42 of the UCA in relation to safety orders of the BCUC issued to the Spirit Bay Utility under sections 23, 25 or 49 of this Act.

It must be noted that while the Beecher FN is the majority owner of the Spirit Bay Utility it is not by definition a municipality or regional district under the *Interpretation Act*. However the powers granted to it by the Federal Government are at least the equivalent of those exercisable by municipalities or regional districts regarding the provision of utility services. Under section 1 of the UCA, municipalities and regional districts are not by definition "public utilities" and the utility services they provide are not subject to regulation under this legislation.

As an alternative to an exemption pursuant to Section 88(3) of the UCA and in order to provide legal certainty, the Spirit Bay Utility requests that the BCUC direct pursuant to section 72 of the UCA that the Beecher FN is a municipality or regional district for the purpose of the UCA.

The need for an exemption or direction is urgent because BC Hydro wants the matter clarified before any interconnection to its electrical system can be made.

Yours truly,

CLARK WILSON LLP

Per: 

David Austin

DAA/smd

Enclosures: Annex 1
Annex 2

BEECHER BAY FIRST NATION
LAND CODE

Dated for Reference May 25, 2003

RECEIVED JUL 03 2003

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Certified
July 16, 2003
Date
Mel W. Jacobs
Mel W. Jacobs, Verifier

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PREAMBLE

WHEREAS the SCI~~A~~NEW peoples of the Beecher Bay First Nation are represented by the Council of the Beecher Bay First Nation;

AND WHEREAS the SCI~~A~~NEW peoples of the Beecher Bay First Nation have a profound relationship with the land;

AND WHEREAS the Beecher Bay First Nation is a party to a Douglas Treaty;

AND WHEREAS the traditional teachings of the Beecher Bay First Nation speak of the special obligation of the SCI~~A~~NEW peoples to care for and respect the land and the wonders of nature created on the land;

AND WHEREAS the Beecher Bay First Nation wishes to manage its lands and resources, thereby enabling the First Nation to become economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, cultural and social development within the context of the Canadian society, rather than having its lands and resources managed on its behalf by Canada under the *Indian Act*;

AND WHEREAS the Beecher Bay First Nation wishes to manage its lands and resources by entering into the *Framework Agreement on First Nation Land Management* concluded between Her Majesty in right of Canada and fourteen First Nations on February 12, 1996, as amended;

**NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE
FUNDAMENTAL LAND LAW OF THE BEECHER BAY FIRST NATION.**

PART 1 PRELIMINARY MATTERS

1. Title

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

2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

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

“Band Land” means First Nation Land in which all Members have a common interest;

“Beecher Bay Lands Register” means the register maintained by the First Nation under clause 17.1 of this Land Code;

“Common-law Marriage” means a man and woman not married to each other that have lived together as husband and wife for a period of not less than five years;

“Council” means the Chief and Council of the First Nation and any successor government of the First Nation;

“Elders Advisory Council” means the group of elders established under clause 14.1 of this Land Code;

“Eligible Voter” means, for the purpose of voting in respect of matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“First Nation” means the Beecher Bay First Nation as named in the Act;

“First Nation Land” means any portion of a First Nation Indian reserve that is subject to this Land Code;

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51.1 of the Framework Agreement;

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

“Immediate Family”, means, in respect of an individual, the individual’s parent, sister, brother, grandchild, child or Spouse;

“Individual Agreement” means the Individual First Nation Agreement made between the First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Instrument” means a formal legal document;

“Land Code” means this *Beecher Bay First Nation Land Code*;

“Land Management Advisory Committee” means the Beecher Bay Land Management Advisory Committee established under clause 14.4;

“Lands Manager” means the employee responsible for the administration of First Nation Land;

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

“Meeting of Members” means a meeting under clause 22;

“Member” means an individual whose name appears or is entitled to appear on the Beecher Bay First Nation membership list;

“Panel” means the Dispute Resolution Panel established under clause 38.1;

“Ratification Vote” means a vote under clause 23;

“Resolution” means a resolution of Council enacted under this Land Code;

“Spouse” means an individual who is married to another, whether by custom, religious or civil ceremony, and includes a Spouse by Common-law Marriage; and

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

Paramountcy

- 2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the First Nation, this Land Code will prevail to the extent of the inconsistency or conflict.
- 2.3 If there is an inconsistency or conflict between this Land Code and the Douglas Treaty, the Douglas Treaty will prevail to the extent of the inconsistency or conflict.

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

Culture and Traditions

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

Language

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

Non-abrogation

- 2.7 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the First Nation or to its Members.
- 2.8 This Land Code is not intended to affect the eligibility of the First Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the First Nation has not assumed responsibility for such services or programs.

Fair Interpretation

- 2.9 This Land Code will be interpreted in a fair, large and liberal manner.

Fiduciary Relationships

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

Lands and Interests Included

- 2.11 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and all rights and resources in and of such land, including, but not limited to:
- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land, to the extent that those resources are under the jurisdiction of Canada or the First Nation; and
 - (b) all the interests and licenses granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

3. Authority to Govern

Source of Authority

- 3.1 The authority of the First Nation to govern its lands and resources flows from:
- (a) the Creator to the people of the First Nation;
 - (b) from the people of the First Nation to the Council according to the culture, traditions, customs and laws of the First Nation; and
 - (c) from the First Nation's inherent right of self-government and its rights, including aboriginal title and those rights defined in the Douglas Treaty.

4. Purpose

Purpose

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

Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when the First Nation approves this Land Code.

5. Description of First Nation Land

First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code is that land described on an interim basis according to the Act by the Department of Indian Affairs and Northern Development for the purposes of the First Nation's Ratification Vote as follows:
- (a) Beecher Bay Indian Reserve No. 1: Those lands within the Province of British Columbia, Canada, as described in the following documents which either set aside lands as reserve for the benefit of the Beecher Bay First Nation, or alternatively remove these lands from reserve status:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
 - (ii) The lands described in the Order in Council of the Privy Council (OCPC) No. 1975-380, dated February 25, 1976 and recorded in the ILR as number 39157.

- (b) Beecher Bay Indian Reserve No. 2: Those lands within the Province of British Columbia, Canada, as described in the following documents which either set aside lands as reserve for the benefit of the Beecher Bay First Nation, or alternatively remove these lands from reserve status:
- (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
 - (ii) The lands described in the Order in Council of the Privy Council (OCPC) No. 2441, dated April 25, 1952 and recorded in the ILR as 13325.
 - (iii) The lands described in OCPC No. 1966-2445, dated December 29, 1960 and recorded in the ILR as number 13326.
- (c) Lamb Island Indian Reserve No. 5: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
- (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (d) Fraser Island Indian Reserve No. 6: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
- (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (e) Village Island Indian Reserve No. 7: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
- (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (f) Whale Island Indian Reserve No. 8: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
- (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (g) Long Neck Island Indian Reserve No. 9: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:

- (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (h) Twin Island Indian Reserve No. 10: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.

Excluded Lands

- 5.2 Notwithstanding clause 5.1, this Land Code does not apply to any land determined by the Phase II Environmental Site Assessment conducted or being conducted by Canada and the First Nation at the time this Land Code comes into effect, to have an environmental hazard or to be otherwise environmentally unsafe for First Nation use, until such land has been the subject of an environmental audit and is declared to be free of environmental hazard and safe for First Nation use.

Additional Lands

- 5.3 The following additional lands may be made subject to this Land Code if they are, or become, reserve lands and the following conditions are met:
- (a) lands owned jointly by the First Nation and another First Nation, if both First Nations agree upon a joint management scheme for those lands; and
 - (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use.
- 5.4 Clause 5.3 does not apply to land acquired by voluntary land exchange in accordance with clause 26.
- 5.5 If the relevant conditions of clause 5.2 or 5.3 are met, Council will call a Meeting of Members and after receiving input at that meeting may enact a Law declaring the land or interest to be subject to this Land Code.

PART 2 FIRST NATION LEGISLATION

6. Law-Making Powers

Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) development, conservation, protection, management, use and possession of First Nation Land;
 - (b) interests and licenses in relation to First Nation Land;
 - (c) any matter necessary to give effect to this Land Code; and
 - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to First Nation Land including, but not limited to:
- (a) zoning and land use planning;
 - (b) regulation, control, authorization and prohibition of the occupation and development of land;
 - (c) creation, regulation and prohibition of interests and licenses;
 - (d) environmental assessment and protection;
 - (e) provision of local services and the imposition of user charges;
 - (f) provision of services for the resolution, outside the courts, of disputes;
 - (g) authorization and regulation of subdivisions and the conduct of surveys;
 - (h) setting aside and regulation of parks, parklands, and recreational lands;
 - (i) setting aside and regulation of heritage land;
 - (j) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;

- (k) creation of management and administrative bodies or agencies;
- (l) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (m) public nuisance and private nuisance;
- (n) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (o) construction and maintenance of boundary and internal fences;
- (p) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works; and
- (q) regulation of traffic and transportation.

Administration

- 6.3 Council will perform all the duties and functions, and exercise all the powers, of the First Nation that are not specifically assigned to an individual or body established under this Land Code.

Delegation

- 6.4 Notwithstanding clause 6.3 Council may by enacting a Law, delegate administrative authority in relation to a Law enacted under clause 6.1 to an individual or a body established or authorized under this Land Code.

7. Law-Making Procedure

Introduction of Laws

- 7.1 A proposed Law may be introduced at a meeting of Council by:
- (a) a member of Council;
 - (b) a representative of the Land Management Advisory Committee, or other body composed of Members, that may be authorized by Council to do so; or
 - (c) the Lands Manager.

Tabling and Posting of Proposed Laws

- 7.2 A proposed Law will be:

- (a) tabled at a meeting of Council at least 21 days before the proposed Law is voted upon;
- (b) deposited with the Chair of the Land Management Advisory Committee at least 21 days before the proposed Law is voted upon; and
- (c) posted in the First Nation administration offices and other public places on First Nation Land at least 7 days before the proposed Law is voted upon.

Urgent Matters

- 7.3 Council may enact a Law without the preliminary steps required under clause 7.2 if Council is reasonably of the opinion that the Law is required urgently to protect First Nation Land or Members.
- 7.4 A Law enacted under clause 7.3 will be deemed to have been repealed and to have no force and effect 28 days after its enactment, but may be re-enacted in accordance with clause 7.2.

Approval of Law by Council

- 7.5 A Law is enacted if it is approved by Council.

Certification of Laws

- 7.6 The original copy of a Law or Resolution relating to First Nation Land will be signed by the quorum of Council present at the meeting at which the Law is enacted.

Law Coming Into Force

- 7.7 A Law comes into force on:
- (a) the date it is enacted; or
 - (b) such other date as may be set by the Law.

8. Publication of Laws

Publication

- 8.1 All Laws will be published in the minutes of Council.

Posting Laws

- 8.2 Within ten days after a Law has been enacted, Council will post a copy of the Law in the First Nation administration offices.

Register of Laws

- 8.3 Council will cause to be kept at the First Nation administration offices a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed and are no longer in force.
- 8.4 Any person may, during regular business hours at the First Nation administration offices, have reasonable access to the register of Laws.

Copies for Any Person

- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.
- 8.6 Clause 8.5 does not preclude Council or a body designated by Council from making a copy of a Law or Resolution available to Members without fee.

PART 3 LAND ADMINISTRATION

9. Financial Management

Application

- 9.1 This part applies only to financial matters in relation to First Nation Land administered under this Land Code.

Establishment of Bank Accounts

- 9.2 Council will maintain one or more financial accounts in a financial institution and will deposit in those accounts:
- (a) transfer payments received from Canada for the management and administration of First Nation Land;
 - (b) moneys received by the First Nation from the grant or disposition of interests or licenses in First Nation Land;
 - (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
 - (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licenses in First Nation land; and
 - (e) any other land revenue received by the First Nation from First Nation Land.

- 9.3 Council will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which Council, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to the Members within the meaning of clause 5.2(d) of the Framework Agreement.

Financial Policy

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

Signing Officers

- 9.5 Council will authorize at least three persons, at least one of whom will be a member of Council and one of whom will be the Lands Manager, to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under clause 9.2.
- 9.6 A cheque or other bill of exchange or transfer drawn on a financial account maintained under clause 9.2 must be signed by two persons authorized under clause 9.5.
- 9.7 A payee will not be a signor under clause 9.6.
- 9.8 Every signing officer will complete such security screening process as may be prescribed by Council.

Fiscal Year

- 9.9 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

- 9.10 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 9.11 Prior to adopting a budget referred to in clause 9.10, Council will consult with the Land Management Advisory Committee.

Procedure

- 9.12 After adopting a land management budget or supplementary budget, Council will as soon as practicable:
- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and

- (b) make a copy of the budget or supplementary budget available at the First Nation administration offices for inspection by Members during regular business hours.

If No Budget

- 9.13 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

Expenditures

- 9.14 Council may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an adopted budget.

Determination of Revenues

- 9.15 Council will establish a process for determining:
- (a) fees and rent for interests and licenses in First Nation Land; and
 - (b) fees for services provided in relation to First Nation Land and compliance with this Land Code.

10. Financial Records

Financial Records

- 10.1 The First Nation will keep financial records in accordance with generally accepted accounting principles.

Offences

- 10.2 Any person who has control of the financial records of the First Nation and who:
- (a) impedes or obstructs anyone from exercising a right to inspect those records; or
 - (b) fails to give all reasonable assistance to anyone exercising a right to inspect those financial records,
- is guilty of an offence under this Land Code.

Preparation of Financial Statement

- 10.3 Within 90 days after the end of each fiscal year Council will prepare a financial statement in comparative form containing:
- (a) a balance sheet;

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

Consolidated Accounts

- 10.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

11. Audit

Appointment of Auditor

- 11.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.
- 11.2 An auditor appointed for other First Nation audits may be appointed under clause 11.1.

Vacancy in Office

- 11.3 If a vacancy occurs during the term of an auditor, Council will forthwith appoint a new auditor for the remainder of the former auditor's term.

Remuneration

- 11.4 An appointment under clause 11.1 will contain a statement approving the remuneration to be paid to the auditor.

Duty of Auditor

- 11.5 The auditor will, within 120 days after the end of the First Nation's fiscal year, prepare and submit to Council an audit report on the First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the First Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

- 11.6 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

11.7 Council will present the auditor's report at a Meeting of Members.

12. Annual Report

Publish Annual Report

12.1 Council will prepare and table with the Land Management Advisory Committee an annual report on First Nation Land management.

12.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;
- (b) a copy and explanation of the audit report as it applies to First Nation Lands; and
- (c) such other matters as may be directed by Council or reasonably requested by the Land Management Advisory Committee.

13. Access to Financial Information

Copies for Members

13.1 Any person may, during normal business hours at the First Nation administrative offices, have reasonable access to:

- (a) the auditor's report; and
- (b) the annual report.

13.2 A Member may, during normal business hours at the First Nation administration offices, upon payment of a reasonable fee set by Resolution, obtain a copy of the auditor's report or annual report on First Nation Land management.

14. Advisory Committees

Elders Advisory Council

14.1 An Elders Advisory Council is hereby established to:

- (a) consider developments on designated heritage land and sacred lands under clause 25.1; and
- (b) provide advice and guidance to Council, the Land Management Advisory Committee and the Members generally in land management matters.

14.2 The Elders Advisory Council will include Members who are 45 years of age or more and are acknowledged by the Members as elders of the First Nation.

14.3 Members of the Elders Advisory Council may not concurrently be members of the Land Management Advisory Committee.

Land Management Advisory Committee Established

14.4 A Land Management Advisory Committee is hereby established to:

- (a) assist with the development of a First Nation Land administration system;
- (b) advise Council and First Nation staff on matters respecting First Nation Land;
- (c) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
- (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to Council on the resolution of such issues;
- (e) assist in the exchange of information regarding First Nation Land matters between Members and Council;
- (f) oversee community consultations under this Land Code; and
- (g) perform such other duties and functions as Council may direct.

Development of Land Related Rules and Procedures

14.5 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the Members and the Land Management Advisory Committee, establish rules and procedures to address the following matters:

- (a) environmental protection and assessment;
- (b) resolution of disputes in relation to First Nation Land;
- (c) land use planning and zoning; and
- (d) clause 37 respecting spousal property and the policy upon which that clause is based.

Implementation of Policies

- 14.6 Rules and procedures developed in accordance with clause 14.5 will be given full and fair consideration by Council for implementation as Laws, policies or amendments to this Land Code.

Internal Procedures

- 14.7 The Land Management Advisory Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 14.8 Subject to Council requirements in respect of financial obligations, the Land Management Advisory Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by Land Management Advisory Committee members; and
 - (b) establish programs for the orientation and education of Land Management Advisory Committee members.
- 14.9 The Land Management Advisory Committee will take reasonable measures to consult with the Elders Advisory Council in the conduct of its meetings and general affairs.

15. Land Management Advisory Committee Membership

Composition

- 15.1 The Land Management Advisory Committee will be comprised of a minimum of seven Eligible Voters.

Eligibility

- 15.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be appointed to the Land Management Advisory Committee, except for:
- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment; and
 - (b) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

Selection of Land Management
Committee Members

- 15.3 The members of the Land Management Advisory Committee are to be selected as follows:

- (a) a member of Council appointed by Council; and
 - (b) six members appointed jointly by Council and the Lands Manager.
- 15.4 Council will enact a Law to establish the procedure for selection of Land Management Advisory Committee members, including such transitional rules as may be necessary for the members of the first Land Management Advisory Committee.
- 15.5 A Law enacted under clause 15.4 will include:
- (a) a process for providing notice to Members that appointments will be made to the Lands Management Advisory Committee and offering Members an opportunity to apply for such appointment; and
 - (b) standards and criteria for appointment to the Lands Management Advisory Committee.

Term of Office and Vacancy

- 15.6 A member of the Lands Management Advisory Committee will serve in office until that member:
- (a) resigns in writing;
 - (b) becomes ineligible to hold office under clause 15.2;
 - (c) ceases to be a Member;
 - (d) is absent from three consecutive meetings of the Lands Management Advisory Committee for a reason other than illness or incapacity without being authorized to be absent by the Lands Management Advisory Committee; or
 - (e) dies or becomes mentally incompetent.

Filling of Vacancy

- 15.7 Where the office of a member of the Land Management Advisory Committee becomes vacant, the vacancy will be filled in accordance with clause 15.3.

16. Chair of the Land Management Advisory Committee

Chair

- 16.1 The member of the Land Management Advisory Committee appointed under clause 15.3(a) will be the Chair of the Lands Management Advisory Committee.

Co-chair

- 16.2 The members of the Land Management Advisory Committee will appoint a Co-chair who will perform the functions of the Chair if the Chair is unavailable or unable to perform the functions of office.

Alternate

- 16.3 If the Chair and Co-chair are unavailable or unable to perform the functions of office, the Land Management Advisory Committee will appoint another member of the Land Management Advisory Committee to serve as interim Chair.

Duties of the Chair

- 16.4 The duties of the Chair are to:
- (a) chair meetings of the Land Management Advisory Committee;
 - (b) ensure that financial statements relating to all activities of the Land Management Advisory Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with Council;
 - (c) report to Council and the Members on the activities of the Land Management Advisory Committee;
 - (d) monitor the presentation of the audited annual financial statements under clause 11.7; and
 - (e) perform such other duties as Council or the Land Management Advisory Committee may reasonably prescribe.

17. Registration of Interests and Licenses

Beecher Bay Lands Register

- 17.1 Council will maintain a Beecher Bay Lands Register in, at a minimum, the same form and with the same contents as the First Nation Lands Register.
- 17.2 An interest or license in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Beecher Bay Lands Register.

Registration of Consent or Approval

- 17.3 No instrument that requires the consent of Council or Land Management Advisory Committee approval may be registered in the Beecher Bay Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.

Duty to Deposit

- 17.4 Every person who receives a grant of an interest or license in First Nation Land from a Member will deposit an original copy of the instrument in the Beecher Bay Lands Register.
- 17.5 Council will ensure that a copy of the following instruments is deposited in the Beecher Bay Lands Register:
- (a) a grant of an interest or license in First Nation Land;
 - (b) a transfer or assignment of an interest in First Nation Land;
 - (c) a land use plan or subdivision plan; and
 - (d) this Land Code and any amendment to this Land Code.
- 17.6 Notwithstanding clause 17.1, nothing precludes Council from enacting a Law providing for maintenance of the Beecher Bay Lands Register in such other land registry system or facility as may meet the requirements of the Beecher Bay Lands Register.
- 18. First Nation Lands Register**
- 18.1 Council will ensure that a duplicate copy of any instrument deposited in the Beecher Bay Lands Register is deposited in the First Nation Lands Register.

**PART 4
COMMUNITY CONSULTATION**

19. Rights of Eligible Voters

Rights of Eligible Voters

- 19.1 An Eligible Voter is eligible to vote in a Ratification Vote.

20. Approval by Land Management Advisory Committee

Approval by Committee

- 20.1 Approval by majority vote of the Land Management Advisory Committee must be obtained for:
- (a) a land use plan;
 - (b) amendment of a land use plan;

- (c) a grant or disposition of an interest or license in First Nation Land for a term exceeding 25 years;
 - (d) renewal of a grant or disposition of an interest or license in First Nation Land for a term exceeding 25 years, or that would have the effect of extending the original grant or disposition for a term exceeding 25 years;
 - (e) a grant or disposition of natural resources on First Nation Land exceeding a term of one year;
 - (f) a charge or mortgage of a leasehold interest on Band Land for a term exceeding 25 years;
 - (g) a law enacted under clause 37; and
 - (h) any Law or class of Law that Council, by Resolution, declares to be subject to this clause.
- 20.2 Council will, in consultation with the Land Management Advisory Committee develop laws, policies or procedures for:
- (a) conduct of meetings of the Land Management Advisory Committee;
 - (b) approvals under clause 20.1, including timelines for decision-making; and
 - (c) regular review of grants or dispositions issued under clause 20.1(c), (d) and (e).

21. Community Consultation

Meeting with Committee and Elders

- 21.1 Council will call a meeting of the Land Management Advisory Committee and the Elders Advisory Council to receive input prior to introducing a Law in respect of:
- (a) a land use plan;
 - (b) a subdivision plan;
 - (c) declaring land or an interest in land referred to in clause 5.2 or 5.3 to be subject to this Land Code;
 - (d) heritage land;
 - (e) environmentally sensitive property;
 - (f) environmental assessment;

- (g) the transfer or assignment of interests in First Nation Land;
- (h) spousal property under clause 37;
- (i) any other matter or class of matters that Council by Resolution declares to be subject to this clause.

Process to Implement Laws

- 21.2 Council will, in consultation with the Land Management Advisory Committee and within a reasonable time after this Land Code takes effect, establish a process to develop and implement the Laws referred to in clause 21.1.
- 21.3 Nothing in this Land Code precludes Council or the Land Management Advisory Committee from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts.

22. Meeting of Members

Notice of Meeting

- 22.1 Council will give written notice of a Meeting of Members that:
 - (a) specifies the date, time and place of the meeting; and
 - (b) contains a brief description of the matters to be discussed at the meeting.

Manner of Notice

- 22.2 Written notice of a Meeting of Members under clause 22.1 will be given by:
 - (a) posting the notice in public places on First Nation Land at least 21 days before the meeting;
 - (b) mailing the notice to Members at least 21 days before the meeting; and
 - (c) such additional methods as Council may consider appropriate.

23. Ratification Votes

Approval by Ratification Vote

- 23.1 Approval by a Ratification Vote must be obtained for:
 - (a) voluntary exchange of First Nation Land under clause 26;

- (b) amendment of the Individual Agreement that reduces the amount of funding provided by Canada;
- (c) amendment of this Land Code;
- (d) expropriation of a Member's interest under clause 24.7; and
- (e) enactment of a Law or class of Laws that Council, by Resolution, declares to be subject to this clause.

Individual Agreement with Canada

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

Ratification Process

- 23.3 A Ratification Vote required under this Land Code will be conducted, with any appropriate modifications necessary in the circumstances, in substantially the same manner as that provided in the *Beecher Bay First Nation Community Ratification Process* that was used to ratify this Land Code.

Minimum Requirements for Approval

- 23.4 A matter will be approved by a Ratification Vote if a majority of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote in favour of the matter.

No Verifier

- 23.5 A Verifier is not required in a Ratification Vote.

PART 5 PROTECTION OF LAND

24. Expropriation by the First Nation

Rights and Interests That May Be Expropriated

- 24.1 An interest or license in First Nation Land or in any building or other structure on such land may be expropriated by the First Nation in accordance with the Framework Agreement and any Law enacted in accordance with clause 24.3 of this Land Code.

Community Purposes

- 24.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including but not limited to fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.

Expropriation Law

- 24.3 Council will enact a Law respecting the rights and procedures for expropriations, including provisions in respect of:
- (a) taking possession of an expropriated interest or license;
 - (b) transfer of an expropriated interest or license;
 - (c) notice of an expropriation;
 - (d) service of a notice of expropriation;
 - (e) entitlement to compensation;
 - (f) determination of the amount of compensation; and
 - (g) the method of payment of compensation.

Public Report

- 24.4 Before the First Nation expropriates an interest or license, Council will:
- (a) prepare a public report on the reasons for the expropriation;
 - (b) post a copy of the report in the First Nation administration offices; and
 - (c) mail a copy of the report to each Eligible Voter at their last known address.

Rights That May Not Be Expropriated

- 24.5 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the First Nation.

Acquisition by Mutual Agreement

- 24.6 The First Nation may expropriate only after a good faith effort to acquire, by mutual agreement, the interest or license in First Nation Land.

Approval by Ratification Vote

- 24.7 An expropriation of a Member's interest has no effect unless the proposed expropriation receives prior approval by a Ratification Vote.

Compensation for Rights and Interests

- 24.8 The First Nation will, in accordance with its Laws and the Framework Agreement:
- (a) serve reasonable notice of the expropriation on each affected holder of the interest or license to be expropriated; and
 - (b) pay fair and reasonable compensation to the holder of the interest or license being expropriated.

Compensation Calculation

- 24.9 The total value of compensation payable under clause 24.8(b) will be based on:
- (a) the fair market value of the interest or license being expropriated;
 - (b) the replacement value of any improvement to the land being expropriated;
 - (c) the damages attributable to any disturbance; and
 - (d) damages for reduction in the value of any remaining interest.

Market Value

- 24.10 The fair market value of an expropriated interest or license is equivalent to the amount that would have been paid for the interest or license if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

- 24.11 Subject to clause 24.13, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.
- 24.12 The sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

- 24.13 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

- (a) a dispute concerning the right of the holder of an expropriated interest or license to compensation; and
- (b) a dispute concerning the amount of compensation.

25. Heritage Land

Elders Advisory Council Approval

- 25.1 Development will be permitted on a site designated as heritage land under a First Nation land use plan only if the proposed development receives approval by the Elders Advisory Council.
- 25.2 Clause 25.1 applies to any lands duly designated as sacred lands approved by the Elders Advisory Council.

26. Voluntary Land Exchange and Protection

Conditions for a Land Exchange

- 26.1 The First Nation may agree with another party to exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

- 26.2 A land exchange is of no effect unless it receives approval by a Ratification Vote.

Land to be Received

- 26.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:
 - (a) is of equal or greater area than the First Nation Land to be exchanged;
 - (b) is of a value comparable to the appraised value of the First Nation Land to be exchanged; and
 - (c) is eligible to become a reserve under the *Indian Act* and First Nation Land subject to this Land Code.

Negotiators

- 26.4 A person who negotiates a land exchange agreement on behalf of the First Nation will be designated by Resolution.

Additional Compensation

26.5 The First Nation may receive additional compensation, including money or other land in addition to the land referred to in clause 26.3.

26.6 Such other land may be held by the First Nation in fee simple or otherwise.

Federal consent

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

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

Information to Members

26.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in clause 26.2, Council or the Land Management Advisory Committee will provide the following information to Members:

- (a) a description of the First Nation Land to be exchanged;
- (b) a description of the land to be received by the First Nation;
- (c) a description of any additional compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in clauses 26.3(a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the statement referred to in clause 26.7.

Process of Land Exchange

26.9 A land exchange agreement will provide that:

- (a) the other party to the exchange will transfer to Canada the title to the land that is to be set apart as a reserve;

- (b) Council will pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and
- (c) a copy of the instruments transferring title to the land will be registered in the Beecher Bay Lands Register and the First Nation Lands Register.

PART 6 CONFLICT OF INTEREST

27. Conflict of Interest

Application of Rules

27.1 Clause 27.2 applies to:

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

Duty to Report and Abstain

27.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
- (b) take no part in any deliberations on the matter; and
- (c) take no part in a vote on the matter.

Common Interests

27.3 Clause 27.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Members

- 27.4 If Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, Council may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Law or Resolution.

Inability to Act

- 27.5 If a board, committee or other body is unable to act due to a conflict of interest, the matter will be referred to Council and Council may decide the matter.

Disputes

- 27.6 Determination of whether a breach of this clause has occurred may be referred to the Panel.

**PART 7
INTERESTS AND LICENSES IN LAND**

28. Limits on Interests and Licenses

All Dispositions in Writing

- 28.1 An interest in, or license to use, First Nation Land may only be created, granted, disposed of, assigned or transferred by an instrument issued in accordance with this Land Code.

Standards

- 28.2 Council may, after full and fair consideration of any recommendations made by the Land Management Advisory Committee, establish mandatory standards, criteria and forms for interests and licenses in First Nation Land.

Improper Transactions Void

- 28.3 A deed, lease, contract, document, agreement or instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an interest or license in First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

Non-Members

- 28.4 A person who is not a Member may hold a lease, license or permit in First Nation Land.

Grants to Non-Members

28.5 The written consent of Council is a requirement of a grant or disposition of a lease, license or permit in First Nation Land to a person who is not a Member.

29. Existing Interests

Continuation of Existing Interests

29.1 An interest or license in First Nation Land, whether held by a Member or a person other than a Member, that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or license.

29.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any interest or license issued or allotted in error, by mistake or by fraud.

30. New Interests and Licenses

Authority to Make Dispositions

30.1 Subject to this Land Code, Council may grant:

- (a) interests and licenses in Band Land; and
- (b) permits and licenses to take resources from Band Land.

Conditional Grant

30.2 The grant of an interest, license or permit may be made subject to conditions.

31. Certificates of Possession

Prohibition of Permanent Interests

31.1 No tenure that establishes a permanent interest in First Nation Land will be established under this Land Code.

32. Allocation of Land

Allocation of Residential Lots

32.1 Council may, by lease, rental arrangement or other disposition, allocate lots of available land to Members for residential purposes in accordance with Laws enacted by Council.

32.2 A residential lot may not be allocated to a person who is not a Member.

33. Transfer and Assignment of Interests

Transfer of Interests

- 33.1 Council may enact Laws providing that a Member holding an interest in First Nation Land may transfer, devise or otherwise dispose of that land to another Member.
- 33.2 Except for transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under clause 37:
- (a) there will be no transfer or assignment of an interest in First Nation Land without the written consent of Council; and
 - (b) the grant of an interest or license is deemed to include clause 33.2(a) as a condition of any subsequent transfer or assignment.

34. Limits on Mortgages and Seizures

Protections

- 34.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply on First Nation Land.

Mortgage of Member's Interest

- 34.2 The interest of a Member in First Nation Land other than a leasehold interest may be subject to a mortgage or charge only to the First Nation.

Mortgages of Leasehold Interests with Consent

- 34.3 A leasehold interest may be subject to a charge or mortgage only with the written consent of Council.

Default in Mortgage of Leasehold

- 34.4 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the charge or mortgage received the written consent of Council;
 - (b) the charge or mortgage received Land Management Advisory Committee approval where required;
 - (c) the charge or mortgage was registered in the First Nation Lands Register; and
 - (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.

Power of Redemption

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

35. Residency and Access Rights

Right of Residence

35.1 The following persons have a right to reside on First Nation Lands:

- (a) subject to clause 35.2, a Member;
- (b) a Member who has been allocated a residential lot by Council;
- (c) a Spouse and child of a Member referred to in clause 35.1(b);
- (d) a Member with a registered interest in First Nation Land; and
- (e) a lessee or permittee in accordance with the provisions of the instrument granting the lease or permit.

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

Right of Access

35.3 The following persons have a right of access to First Nation Land:

- (a) a lessee of First Nation Land;
- (b) an invitee of a lessee of First Nation Land;
- (c) a permittee and any person who is granted a right of access under the permit;
- (d) a Member;
- (e) a Member's Spouse and children;
- (f) an invitee of Member;
- (g) a person who is authorized by a government body or any other public body, established by or under an enactment of the First Nation, Canada or British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; and

- (h) a person authorized by a Law or in writing by Council.

Public Access

- 35.4 A person may have access to First Nation Land for a social or business purpose if that person:
- (a) does not trespass on occupied land;
 - (b) does not interfere with an interest in land;
 - (c) complies with all applicable Laws; and
 - (d) no Resolution has been enacted prohibiting that person from having access to First Nation Land.

Trespass

- 35.5 It is an offence for any person to enter, reside or remain on First Nation Land other than in accordance with a right of residence or access under this Land Code.

Civil Remedies

- 35.6 Subject to a Law under clause 6.2(1), all civil remedies for trespass are preserved.

36. Transfers on Death or Mental Incompetence

Right of Widow or Widower

- 36.1 In the event that:

- (a) a Member holding an interest in First Nation Land dies intestate and is survived by a Spouse or dependant who do not hold a registered interest in that land; or
- (b) a Member holding an interest in First Nation Land is declared incompetent due to mental incapacity,

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's interest is disposed of under this clause.

- 36.2 A Spouse or dependant referred to in clause 36.1, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's interest, and Council will, subject to this Land Code, decide the application on its merits.

Location of Family Members

36.3 In the event that:

- (a) no other provision has been made by a Member referred to in clause 36.1 for the disposition of the interest in the First Nation Land; or
- (b) the Member's Spouse or dependant does not within a reasonable time make application under clause 36.2; or
- (c) a member of the Member's Immediate Family disputes the continued residence on and use of the land by the Member's Spouse or dependant,

Council will take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Panel if requested, recommend who is to receive the interest in the land.

Meeting of Members

36.4 If a Member referred to in clause 36.1 has no other Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the interest, Council will decide who is to receive the interest and may call a Meeting of Members to provide advice on the disposition of the interest.

36.5 Subject to this Land Code, Council will make best efforts to implement a recommendation made under clause 36.3 or 36.4.

37. Spousal Property Law

Development of Rules and Procedures

37.1 Within twelve months after the date this Land Code comes into effect Council will enact a spousal property Law providing rules and procedures applicable on the breakdown of a marriage to:

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

Enactment of Rules and Procedures

37.2 The rules and procedures contained in the spousal property Law will be developed in consultation with the Members and the Land Management Advisory Committee.

General Principles

- 37.3 The rules and procedures developed under clause 37.2 will take into account the following general principles:
- (a) a child of the Spouses should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of that child;
 - (b) the Spouses should resolve spousal property matters by contract or agreement;
 - (c) each Spouse should have an equal right to possession of the matrimonial home;
 - (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common; and
 - (e) the rules and procedures will not discriminate on the basis of sex.

Interim Law

- 37.4 Council may enact an interim spousal property Law at any time within the twelve month period prescribed in clause 37.1.
- 37.5 An interim Law enacted under clause 37.4 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with clause 37.1.

PART 8 DISPUTE RESOLUTION

38. Dispute Resolution Panel

Panel Established

- 38.1 A Dispute Resolution Panel is hereby established to hear and resolve disputes in relation to First Nation Land.

Representation

- 38.2 Council will, for the purpose of identifying eligible members of a Panel, establish an eligibility list containing the names of Eligible Voters who are representative of the community, including non-resident Members.

No Remuneration

38.3 Unless Council by Resolution provides otherwise, members of a Panel will receive no remuneration.

39. Dispute Resolution Procedure

Disputes

39.1 A dispute related to First Nation Land may be referred by the parties to the dispute to a Panel for resolution or opinion.

Prior Disputes

39.2 For greater certainty, disputes that originated before this Land Code comes into effect may be referred to the Panel.

Optional Process

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

Informal Resolution of Disputes

39.4 The First Nation intends that wherever possible, a dispute in relation to First Nation Land will be resolved through informal discussion by the parties to the dispute and nothing in this part will be construed to limit the ability of any person to settle a dispute without recourse to this Part.

Application Procedures

39.5 Referral of a dispute to the Panel will be made in accordance with procedures established by Council in consultation with the eligible members of a Panel and the Land Management Advisory Committee.

Limitation Period

39.6 The limitation period for referring a dispute to a Panel is:

- (a) thirty days after the day the decision, act or omission that is the subject of the dispute occurred; or
- (b) in the case of a dispute under clause 36, 12 months after the date of the final decision of Council under that clause.

39.7 A Panel will be made up of three panelists selected by lot.

39.8 The Chair of the Land Management Advisory Committee will make the selection referred to in clause 39.7.

39.9 The panelists selected under clause 39.7 will select a chair from among themselves.

40. Impartiality

Duty to Act Impartially

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

Offence

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

Rejection of Application

40.3 In addition to any other penalty provided for an offence under clause 40.2, the Panel may refuse an application to hear a dispute if the Panel reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Panel's decision.

41. Powers of Panel

Powers of Panel

41.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased; or
- (d) refer the matter or dispute for reconsideration.

Rules of Panel

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

Professional Services

41.3 The Panel may retain the services of professionals to assist it in fulfilling its functions, in which case it will make best efforts to use professional services available in the community.

Decisions

- 41.4 The Panel will give written reasons for a decision.
- 41.5 Written decisions of the Panel will be signed by the chair of the Panel.
- 41.6 Subject to clause 41.7, a decision of the Panel is binding.

Appeal of Decision

- 41.7 Subject to any exception established by a Law a decision of the Panel may be appealed to the Federal Court of Canada.

Costs

- 41.8 Unless otherwise ordered by a Panel or an appellate court, the parties to a dispute will bear their own costs.

Alternate Forums

- 41.9 Nothing in this part precludes Council or the Land Management Advisory Committee from establishing additional processes for resolving disputes under this Part, which processes may include facilitated discussion, mediation or arbitration.

PART 9 OTHER MATTERS

42. Liability

Liability Insurance

- 42.1 Council will arrange for, maintain and pay insurance coverage for:
- (a) liability of the First Nation in relation to First Nation Land; and
 - (b) personal liability of the First Nation's officers and employees for acts done in good faith while engaged in carrying out duties related to First Nation Land.

Extent of Coverage

- 42.2 Council will determine the extent of insurance coverage under clause 42.1.

43. Enforcement

Application of the Criminal Code

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

Justices of the Peace

43.2 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

Provincial Courts

43.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court as the case may require.

44. Amendments to Land Code

Ratification Vote

44.1 An amendment of this Land Code must receive prior approval by Ratification Vote.

45. Commencement

Ratification

45.1 This Land Code will be ratified if:

(a) the Members approve this Land Code and the Individual Agreement by a Ratification Vote; and

~~(b) this Land Code has been certified by the Verifier in accordance with the Framework Agreement~~

Effective Date

45.2 This Land Code will take effect on the first day of the month following certification of this Land Code by the Verifier, or after the Individual Agreement has been executed on behalf of Canada.

ANNEX 1



**Aboriginal Affairs and Northern Development Canada
Application for Registration**

**Affaires autochtones et Développement
du Nord Canada
Demande d'enregistrement**

Send Two Copies to:

Aboriginal Affairs and Northern Development Canada
Indian Lands Registry
Terrasses de la Chaudière
Ottawa, Ontario K1A 0H4
Attention: Registrar of Indian Lands

Envoyer deux copies à:
Affaires autochtones et Développement du Nord Canada
Registre des terres indiennes
Terrasses de la Chaudière
Ottawa, Ontario K1A 0H4
Attention: Le registraire des terres indiennes

N.B. Applicants should check with the First Nation to ensure that the document accompanying this application complies with the laws and policies of the First Nation before submitting this application. Please submit documents in the order that they are to be registered/recorded, if other related applications and documents are being submitted.

N.B. Avant de soumettre leur demande, les demandeurs devraient vérifier auprès de la Première nation que le document qui l'accompagne respecte les lois et politiques de cette dernière. Si d'autres demandes et documents sont également soumis, veuillez respecter l'ordre dans lequel ils ont été.

<u>Registration # / # au registre</u>	<u>Received Date / Date au registre</u>	<u>Regional File # / # de dossier régional</u>
4021295	2014/01/14	

NAME OF PARTIES TO INSTRUMENT / NOM DES PARTIES DU DOCUMENT	
Grantor / Cédant	
<u>Name / Nom</u>	
640 - Beecher Bay	
Grantee / Cessionnaire	
<u>Name / Nom</u>	
640 Beecher Bay	

Instrument Type / Type de document: Land Code 220

Instrument Date / Date du document: 2013/06/15

FN/SG Land Code / Code foncier AG/PN:

Purpose / Objet:

Remarks / Remarques: AMENDMENT TO LAND CODE REG #LMA00789

LAND DESCRIPTION / DESCRIPTION DE LA TERRE
Province: BRITISH COLUMBIA
Reserve Name / Nom de la réserve: 06787 - BECHER BAY 1
Legal Description - Land Affected / Description Légal - Terre: WHOLE OF RESERVE

List of Supporting documentation (must be attached to document or a registration number quoted) / Liste des documents de support annexées (doivent être attachés ou cités un numro d'enregistrement):
--

Applicant Email:

Band Email: bernicebbfn@live.ca

()			
Signature of Applicant Signature du requérant	Tel. # of Applicant # Tél. du requérant	email courriel	Date

Return To:
BERNICE MILLETTE

Registration Number / Numéro d'enregistrement: _____

Registration Date: / Date d'enregistrement: _____ and Time: / et heure: _____

Signature of Registration Office / Signature de l'officier d'enregistrement

Date

Beecher Bay First Nation
Certification By Ratification Officer

The names of 179 eligible voters appeared on the list of voters.

The number of eligible voters who constituted a majority was 90.

The total number of votes cast was 95.

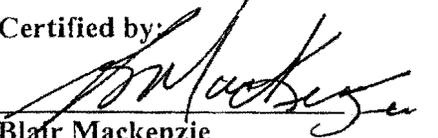
With regard to the Beecher Bay Land Code Amendment, dated for reference June 15th, 2013, the following number of votes cast are as follows:

70 voted YES for the Amendment

25 voted NO for the Amendment

Ratification of the Amendment requires that a simple majority of the eligible voters who cast a ballot as noted above has been attained, so therefore, the Amendment has been approved .

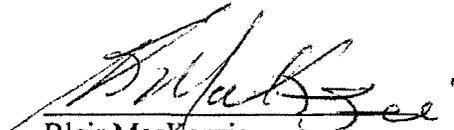
Certified by:


Blair Mackenzie
Ratification Officer
July 10, 2013

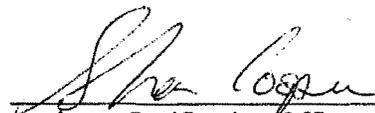
APPOINTMENT OF AN ASSISTANT RATIFICATION OFFICER

JUNE 20TH, 2013

I Blair Mackenzie, Ratification Officer, appoint SHARON COOPER, to act as my assistant in carrying out my duties in accordance with the *Beecher Bay First Nation Community Ratification Process* for the purpose of the Ratification Vote.


Blair MacKenzie,
Ratification Officer

I, Sharon Cooper, agree to act as an assistant to the Ratification Officer for the purpose of the Ratification Vote and promise to carry out all assigned duties to the best of my abilities and in accordance with the *Beecher Bay First Nation Community Ratification Process* and the requirements of confidentiality.


Assistant Ratification Officer

**BEECHER BAY FIRST NATION
LAND CODE AMENDMENT**

Dated for Reference June 15 , 2013

TABLE OF CONTENTS

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PART 1 -

INTRODUCTORY PROVISIONS

Title

- 1 This title of this enactment is the Beecher Bay First Nation Land Code Amendment.

Definitions

- 2 In this enactment, "Land Code" means the Beecher Bay First Nation Land Code dated for reference May 25, 2003.

PART 2 -

LAND CODE AMENDMENTS

Definitions

1 Section 2.1 is amended by adding the following definitions in alphabetical order:

“Band Owned Entity” means a corporation, partnership, joint venture, trust or other body corporate, the majority ownership of which is held by the First Nation or by a corporation, trust or partnership wholly owned by the First Nation;

“Economic Development Zone” means the lands identified in Schedule A to this Land Code and designated for economic development activities including:

- (a) Economic initiatives that will enhance the quality of life and prosperity for the First Nation and its Members;
- (b) Development of diverse, sustainable and profitable businesses for the First Nation and its Members that respect the history, culture, and traditions of the First Nation, and the environment; and
- (c) Economic activities that will assist in building the capacity of Members.

Minimum Requirements for Approval

2 Section 23.4 is deleted and the following is substituted:

23.4 A matter will be approved by a Ratification Vote if a majority of the Eligible Voters participating in the vote cast a vote in favour of the matter.

New Interests and Licenses

3 Section 30 is amended by adding the following subsections:

Lease of lands in Economic Development Zone

30.3 Subject to this Land Code, Council may grant a lease of all or part of the lands in the Economic Development Zone to a Band Owned Entity for a term not to exceed 149 years.

Granting of Sub-Interests of lands in Economic Development Zone

30.4 A Band Owned Entity holding a lease of lands in the Economic Development Zone may grant a sub-lease, license, interest, permit or mortgage in such lands, provided the term of any such sub-lease, license, interest, permit or mortgage does not exceed 99 years and the provisions of sections 20.1, 24, 28.5, 33.2, 34.3, 34.4, 34.5, 37 or 39 of this Land Code will not apply to such sub-leases, licenses,

interests, permits or mortgages or to any sub-interests in the lands granted by the holders of such sub-leases, licenses, interests ,permits or mortgages.

PART 3 -

GENERAL PROVISIONS

Commencement

- 1 The Beecher Bay First Nation Land Code Amendment will take effect on the first day of the month following its approval by Ratification Vote.

BACKGROUND INFORMATION

SUMMARY OF THE LAND CODE AMENDMENTS

The Land Code as currently drafted does not allow for the creation of a 99 year leasehold development on Beecher Bay lands because it requires, among other things:

- Approval of the Land Management Advisory Committee for any granting of an interest with a term over 25 years (s.20.1);
- Consent of Council for the granting of any lease to a non-Member (s.28.5);
- Consent of Council for any transfer of an interest in land (s.33.2)
- Consent of Council for any mortgage of a leasehold interest in the lands (s. 34.3), together with some provisions requiring mortgages to permit Council to redeem them on default (s.34.4-34.5)

These types of provisions would not be workable in the context of a leasehold development because the buyers of the units would not be able to buy, sell or mortgage their units without consent of Council, and that requirement would not be marketable.

The proposed changes to the Land Code are intended to be as minimal as possible and to apply just to the lands proposed to be developed.

The following is an explanation of each of the amendments:

Section 2.1 - Definitions

Two new definitions are to be added:

- Band Owned Entity - this means an entity majority owned by the Nation (or a Nation owned company/partnership/trust); and
- Economic Development Zone - this will set out exactly what lands we are dealing with by putting a schedule describing those lands in the Land Code itself. In addition these lands are to be used for economic development purposes.

Section 30 - Lease of Lands in the Economic Development Zone

Section 30.3 will allow Council to grant a lease of lands in the Economic Development Zone to a Band Owned Entity for up to 149 years (this would be the head lease). This power to lease is restricted in two ways: first - the lease can only be to a Band-Owned Entity, and second - it only applies to lands in the Economic Development Zone.

Section 30.4 goes on to provide that the Band Owned Entity can then grant sub-leases or other interests (like mortgages) under the head lease. The restrictive provisions in the Land Code identified above (together with provisions dealing with spousal property matters or expropriation) will not apply to any of those subleases - or interests granted by the holders of the subleases. Any development on the Economic Development Zone lands would need to be marketed to give potential buyers comfort that their interest in land will be almost as secure as purchasing an interest in Land Titles lands, and so the restrictive provisions regarding transfers and mortgages, are not to apply to those interests.

Neither the granting of the head lease or any of the subleases will change the status of the lands - they will always remain Beecher Bay reserve lands.

Section 23.4 - Approval Requirements

Section 23.4 - this amendment changes the requirements for approval by Ratification Vote (which includes approval of all future changes to the Land Code) - from a requirement that a majority of eligible members vote, and of them a majority approve - to simply requiring a majority of the members who actually vote approve the matter in question.

This proposed change to the Land Code is intended to govern all dealings with lands under the Land Code into the future.

BACKGROUND INFORMATION

INFORMATION ABOUT THE PROPOSED DEVELOPMENT

INTRODUCTION

The purpose of this letter is to provide members with background information explaining why Land Code amendments are being proposed. The existing Land Code contains limits on the Nation's ability to develop its lands. In order to develop Scia'new lands and maximize opportunities the Land Code would need to allow 99 year lease hold interests on Band land, in place of the current 25 year restriction. A number of other first nations in BC now allow 99 year leasehold interests on their reserve lands, including the Osoyoos, Westbank, Kamloops Tk'emlups, Tsawwassen, Sechelt, and Tsleil-Waututh . They have done this because banks, and the residential real estate market demand 99 year lease terms. The lands will not lose their status as reserve lands, even with the 99 year leases. The ability to sell longer leasehold interests allows for increased prosperity as developments such as a new village could be created..

A development of this sort could result in bringing members back to Scia'new lands by creating jobs at Beecher Bay for all Band members who want them, creating revenue to build homes for members that want to move back, and improving the living conditions for members who live in Beecher Bay.

The Band's path to self governance, prosperity, and sustainability depends upon establishing inter-generational sustainable development on the reserve areas not currently used by Band members.

DEVELOPMENT LIMITED PARTNERSHIP AND CONTROL

If the Land Code Amendment is passed, the Scia'new Development Limited Partnership (SDLP) will be created to construct the development. SDLP will be fifty-one (51) percent owned and controlled by the Band with forty-nine (49) percent held by the Trust for Sustainable Development (the Trust). The Trust has extensive experience in planning, developing and constructing new towns based on the principles of sustainability. A head lease of up to 149 years would be granted to SDLP and then SDLP would grant subleases of no more than 99 years to the individual purchasers of the leasehold interests.

The proposed plan is to re-develop the existing campground area and expand it, over time, into a medium to high value, sustainable, walkable, village. Phase 1 of the development could start this summer, with the first 50 homes, and continue forward with the creation of a commercial centre and another 80 homes next year.

If the Land Code Amendment is passed, notice will be given to campground campers beginning this summer. Those non-Band members in the campground, who are in need, will be given assistance in their relocation. It is hoped that those campers, who are not in need and who have a vacation home in the campground, will choose to buy a home in the new development. Provision would be made to store trailers and personal effects in a new industrial area developed at the old landfill site.

SUSTAINABILITY

The Scia'new Development Limited Partnership (SDLP) would commit to: creating more biomass, biodiversity and resilience in the ecosystem; being a net generator of renewable energy and re-using and recycling all the water and other natural materials which come to the Nation's lands; and creating economic prosperity for the Scia'new people.

JOBS

The Scia'new Development Limited Partnership (SDLP) would commit to the preferential hiring of Band members.

HOUSING

Affordable housing for Band members is needed on reserve. By creating opportunities for new jobs for Band members on reserve, members could start coming back into the community and the revenue from the development would help provide money for the delivery of more affordable housing for members. SDLP would commit to constructing four new homes for members at the same time as construction started on the homes in the proposed development.

CASH FLOW

In addition to the profit earned from the development of the lands, the Band would also benefit from property taxes and property transfer taxes that would be charged on the leased lands on an on-going basis.

DISTRIBUTIONS TO MEMBERS

It is anticipated that the Band would distribute an amount equal to up to 10% of its share of the profits of SDLP directly to Band members for their own personal use.

NOTICE OF VOTE

TO: MEMBERS OF BEECHER BAY FIRST NATION

TAKE NOTICE that a Ratification Vote will be held pursuant to the *Beecher Bay First Nation Community Ratification Process* on **July 10, 2013** in order to determine if Registered Voters approve the *Beecher Bay First Nation Land Code Amendment*.

The following question will be asked of the Registered Voters of Beecher Bay First Nation by ballot:

“Do you approve:

- The Beecher Bay First Nation Land Code Amendment dated June 15, 2013?”

The Ratification Vote will take place on, the 10th day of July, 2013, from 8:00 a.m. until 6:00 p.m. at:

The Beecher Bay First Nation Long House
4901B Sooke Road
Sooke, British Columbia

Copies of the Background Documents and Ratification Documents may be obtained from, **Blair Mackenzie** Ratification Officer, at the Beecher Bay First Nation Administration Offices, 4901B Sooke Road, Sooke, British Columbia, telephone: 250-478 3535.

AND FURTHER TAKE NOTICE that all Members of the Beecher Bay First Nation 18 years of age or older as of the date of the Ratification Vote are eligible to vote, **PROVIDED THAT SUCH MEMBERS MUST COMPLETE A VOTER REGISTRATION FORM TO BE PLACED ON THE LIST OF REGISTERED VOTERS.** Voter registration forms will be sent to all Eligible Voters whose address is on record with the Beecher Bay First Nation. Voter registration forms are also available from Blair Mackenzie, Ratification Officer at the Beecher Bay First Nation Band Office, 4901B Sooke Road, Sooke, British Columbia, telephone: 250-478 3535.

DATED at Beecher Bay, British Columbia, this 20 day of June, 2013.

Blair Mackenzie

Ratification Officer 56 Hibberson Crescent, Victoria, British Columbia V8T 2R5

Telephone: 250 480 1433 email blair.mack@shaw.ca

NOTE: Any Registered Voter may vote by mail-in ballot. A Voter Registration Form will be sent to all Eligible Voters whose address is on record with the Beecher Bay First Nation. If an Eligible Voter has not received a Voter Registration Form by June 26, 2013 please contact the Assistant Ratification Officer Sharon Cooper 250 391 1802 so that the necessary form can be supplied to you.

**BEECHER BAY FIRST NATION
LAND CODE**

Dated for Reference May 25, 2003

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PREAMBLE

WHEREAS the SĆIÁNEW peoples of the Beecher Bay First Nation are represented by the Council of the Beecher Bay First Nation;

AND WHEREAS the SĆIÁNEW peoples of the Beecher Bay First Nation have a profound relationship with the land;

AND WHEREAS the Beecher Bay First Nation is a party to a Douglas Treaty;

AND WHEREAS the traditional teachings of the Beecher Bay First Nation speak of the special obligation of the SĆIÁNEW peoples to care for and respect the land and the wonders of nature created on the land;

AND WHEREAS the Beecher Bay First Nation wishes to manage its lands and resources, thereby enabling the First Nation to become economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, cultural and social development within the context of the Canadian society, rather than having its lands and resources managed on its behalf by Canada under the *Indian Act*;

AND WHEREAS the Beecher Bay First Nation wishes to manage its lands and resources by entering into the *Framework Agreement on First Nation Land Management* concluded between Her Majesty in right of Canada and fourteen First Nations on February 12, 1996, as amended;

**NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE
FUNDAMENTAL LAND LAW OF THE BEECHER BAY FIRST NATION.**

PART 1 PRELIMINARY MATTERS

1. Title

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

2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

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

“Band Land” means First Nation Land in which all Members have a common interest;

“Band Owned Entity” means a corporation, partnership, joint venture, trust or other body corporate, the majority ownership of which is held by the First Nation or by a corporation, trust or partnership wholly owned by the First Nation;

“Beecher Bay Lands Register” means the register maintained by the First Nation under clause 17.1 of this Land Code;

“Common-law Marriage” means a man and woman not married to each other that have lived together as husband and wife for a period of not less than five years;

“Council” means the Chief and Council of the First Nation and any successor government of the First Nation;

“Economic Development Zone” means the lands identified in Schedule A to this Land Code and designated for economic development activities including:

- (a) Economic initiatives that will enhance the quality of life and prosperity for the First Nation and its Members;
- (b) Development of diverse, sustainable and profitable businesses for the First Nation and its Members that respect the history, culture, and traditions of the First Nation, and the environment; and
- (c) Economic activities that will assist in building the capacity of Members.

“Elders Advisory Council” means the group of elders established under clause 14.1 of this Land Code;

“Eligible Voter” means, for the purpose of voting in respect of matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

- “First Nation” means the Beecher Bay First Nation as named in the Act;
- “First Nation Land” means any portion of a First Nation Indian reserve that is subject to this Land Code;
- “First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51.1 of the Framework Agreement;
- “Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between the Government of Canada and fourteen First Nations on February 12, 1996, as amended;
- “Immediate Family”, means, in respect of an individual, the individual’s parent, sister, brother, grandchild, child or Spouse;
- “Individual Agreement” means the Individual First Nation Agreement made between the First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;
- “Instrument” means a formal legal document;
- “Land Code” means this *Beecher Bay First Nation Land Code*;
- “Land Management Advisory Committee” means the Beecher Bay Land Management Advisory Committee established under clause 14.4;
- “Lands Manager” means the employee responsible for the administration of First Nation Land;
- “Law” means a Law enacted under this Land Code but does not include a Resolution;
- “Meeting of Members” means a meeting under clause 22;
- “Member” means an individual whose name appears or is entitled to appear on the Beecher Bay First Nation membership list;
- “Panel” means the Dispute Resolution Panel established under clause 38.1;
- “Ratification Vote” means a vote under clause 23;
- “Resolution” means a resolution of Council enacted under this Land Code;
- “Spouse” means an individual who is married to another, whether by custom, religious or civil ceremony, and includes a Spouse by Common-law Marriage; and

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

Beecher Bay First Nation Land Code Amendment, 2013, Part 2, Section 1.

Paramountcy

- 2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the First Nation, this Land Code will prevail to the extent of the inconsistency or conflict.
- 2.3 If there is an inconsistency or conflict between this Land Code and the Douglas Treaty, the Douglas Treaty will prevail to the extent of the inconsistency or conflict.
- 2.4 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement will prevail to the extent of the inconsistency or conflict.

Culture and Traditions

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

Language

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

Non-abrogation

- 2.7 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the First Nation or to its Members.
- 2.8 This Land Code is not intended to affect the eligibility of the First Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the First Nation has not assumed responsibility for such services or programs.

Fair Interpretation

- 2.9 This Land Code will be interpreted in a fair, large and liberal manner.

Fiduciary Relationships

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

Lands and Interests Included

- 2.11 A reference to “land” or “Land” in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and all rights and resources in and of such land, including, but not limited to:
- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land, to the extent that those resources are under the jurisdiction of Canada or the First Nation; and
 - (b) all the interests and licenses granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

3. Authority to Govern

Source of Authority

- 3.1 The authority of the First Nation to govern its lands and resources flows from:
- (a) the Creator to the people of the First Nation;
 - (b) from the people of the First Nation to the Council according to the culture, traditions, customs and laws of the First Nation; and
 - (c) from the First Nation’s inherent right of self-government and its rights, including aboriginal title and those rights defined in the Douglas Treaty.

4. Purpose

Purpose

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

Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when the First Nation approves this Land Code.

5. Description of First Nation Land

First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code is that land described on an interim basis according to the Act by the Department of Indian Affairs and Northern Development for the purposes of the First Nation's Ratification Vote as follows:
- (a) Becher Bay Indian Reserve No. 1: Those lands within the Province of British Columbia, Canada, as described in the following documents which either set aside lands as reserve for the benefit of the Beecher Bay First Nation, or alternatively remove these lands from reserve status:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
 - (ii) The lands described in the Order in Council of the Privy Council (OCPC) No. 1975-380, dated February 25, 1976 and recorded in the ILR as number 39157.
 - (b) Becher Bay Indian Reserve No. 2: Those lands within the Province of British Columbia, Canada, as described in the following documents which either set aside lands as reserve for the benefit of the Beecher Bay First Nation, or alternatively remove these lands from reserve status:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
 - (ii) The lands described in the Order in Council of the Privy Council (OCPC) No. 2441, dated April 25, 1952 and recorded in the ILR as 13325.
 - (iii) The lands described in OCPC No. 1966-2445, dated December 29, 1960 and recorded in the ILR as number 13326.
 - (c) Lamb Island Indian Reserve No. 5: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
 - (d) Fraser Island Indian Reserve No. 6: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.

- (e) Village Island Indian Reserve No. 7: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (f) Whale Island Indian Reserve No. 8: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (g) Long Neck Island Indian Reserve No. 9: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.
- (h) Twin Island Indian Reserve No. 10: Those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Beecher Bay First Nation:
 - (i) The lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry (ILR) as number 8042.

Excluded Lands

- 5.2 Notwithstanding clause 5.1, this Land Code does not apply to any land determined by the Phase II Environmental Site Assessment conducted or being conducted by Canada and the First Nation at the time this Land Code comes into effect, to have an environmental hazard or to be otherwise environmentally unsafe for First Nation use, until such land has been the subject of an environmental audit and is declared to be free of environmental hazard and safe for First Nation use.

Additional Lands

- 5.3 The following additional lands may be made subject to this Land Code if they are, or become, reserve lands and the following conditions are met:
- (a) lands owned jointly by the First Nation and another First Nation, if both First Nations agree upon a joint management scheme for those lands; and

- (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use.
- 5.4 Clause 5.3 does not apply to land acquired by voluntary land exchange in accordance with clause 26.
- 5.5 If the relevant conditions of clause 5.2 or 5.3 are met, Council will call a Meeting of Members and after receiving input at that meeting may enact a Law declaring the land or interest to be subject to this Land Code.

PART 2 FIRST NATION LEGISLATION

6. Law-Making Powers

Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) development, conservation, protection, management, use and possession of First Nation Land;
 - (b) interests and licenses in relation to First Nation Land;
 - (c) any matter necessary to give effect to this Land Code; and
 - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to First Nation Land including, but not limited to:
- (a) zoning and land use planning;
 - (b) regulation, control, authorization and prohibition of the occupation and development of land;
 - (c) creation, regulation and prohibition of interests and licenses;
 - (d) environmental assessment and protection;
 - (e) provision of local services and the imposition of user charges;
 - (f) provision of services for the resolution, outside the courts, of disputes;
 - (g) authorization and regulation of subdivisions and the conduct of surveys;
 - (h) setting aside and regulation of parks, parklands, and recreational lands;
 - (i) setting aside and regulation of heritage land;
 - (j) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;

- (k) creation of management and administrative bodies or agencies;
- (l) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (m) public nuisance and private nuisance;
- (n) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (o) construction and maintenance of boundary and internal fences;
- (p) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works; and
- (q) regulation of traffic and transportation.

Administration

- 6.3 Council will perform all the duties and functions, and exercise all the powers, of the First Nation that are not specifically assigned to an individual or body established under this Land Code.

Delegation

- 6.4 Notwithstanding clause 6.3 Council may by enacting a Law, delegate administrative authority in relation to a Law enacted under clause 6.1 to an individual or a body established or authorized under this Land Code.

7. Law-Making Procedure

Introduction of Laws

- 7.1 A proposed Law may be introduced at a meeting of Council by:
- (a) a member of Council;
 - (b) a representative of the Land Management Advisory Committee, or other body composed of Members, that may be authorized by Council to do so; or
 - (c) the Lands Manager.

Tabling and Posting of Proposed Laws

- 7.2 A proposed Law will be:

- (a) tabled at a meeting of Council at least 21 days before the proposed Law is voted upon;
- (b) deposited with the Chair of the Land Management Advisory Committee at least 21 days before the proposed Law is voted upon; and
- (c) posted in the First Nation administration offices and other public places on First Nation Land at least 7 days before the proposed Law is voted upon.

Urgent Matters

- 7.3 Council may enact a Law without the preliminary steps required under clause 7.2 if Council is reasonably of the opinion that the Law is required urgently to protect First Nation Land or Members.
- 7.4 A Law enacted under clause 7.3 will be deemed to have been repealed and to have no force and effect 28 days after its enactment, but may be re-enacted in accordance with clause 7.2.

Approval of Law by Council

- 7.5 A Law is enacted if it is approved by Council.

Certification of Laws

- 7.6 The original copy of a Law or Resolution relating to First Nation Land will be signed by the quorum of Council present at the meeting at which the Law is enacted.

Law Coming Into Force

- 7.7 A Law comes into force on:
- (a) the date it is enacted; or
 - (b) such other date as may be set by the Law.

8. Publication of Laws

Publication

- 8.1 All Laws will be published in the minutes of Council.

Posting Laws

- 8.2 Within ten days after a Law has been enacted, Council will post a copy of the Law in the First Nation administration offices.

Register of Laws

- 8.3 Council will cause to be kept at the First Nation administration offices a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed and are no longer in force.
- 8.4 Any person may, during regular business hours at the First Nation administration offices, have reasonable access to the register of Laws.

Copies for Any Person

- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.
- 8.6 Clause 8.5 does not preclude Council or a body designated by Council from making a copy of a Law or Resolution available to Members without fee.

PART 3 LAND ADMINISTRATION

9. Financial Management

Application

- 9.1 This part applies only to financial matters in relation to First Nation Land administered under this Land Code.

Establishment of Bank Accounts

- 9.2 Council will maintain one or more financial accounts in a financial institution and will deposit in those accounts:
- (a) transfer payments received from Canada for the management and administration of First Nation Land;
 - (b) moneys received by the First Nation from the grant or disposition of interests or licenses in First Nation Land;
 - (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
 - (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licenses in First Nation land; and
 - (e) any other land revenue received by the First Nation from First Nation Land.

- 9.3 Council will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which Council, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to the Members within the meaning of clause 5.2(d) of the Framework Agreement.

Financial Policy

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

Signing Officers

- 9.5 Council will authorize at least three persons, at least one of whom will be a member of Council and one of whom will be the Lands Manager, to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under clause 9.2.
- 9.6 A cheque or other bill of exchange or transfer drawn on a financial account maintained under clause 9.2 must be signed by two persons authorized under clause 9.5.
- 9.7 A payee will not be a signor under clause 9.6.
- 9.8 Every signing officer will complete such security screening process as may be prescribed by Council.

Fiscal Year

- 9.9 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

- 9.10 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 9.11 Prior to adopting a budget referred to in clause 9.10, Council will consult with the Land Management Advisory Committee.

Procedure

- 9.12 After adopting a land management budget or supplementary budget, Council will as soon as practicable:
- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and

- (b) make a copy of the budget or supplementary budget available at the First Nation administration offices for inspection by Members during regular business hours.

If No Budget

- 9.13 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

Expenditures

- 9.14 Council may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an adopted budget.

Determination of Revenues

- 9.15 Council will establish a process for determining:
- (a) fees and rent for interests and licenses in First Nation Land; and
 - (b) fees for services provided in relation to First Nation Land and compliance with this Land Code.

10. Financial Records

Financial Records

- 10.1 The First Nation will keep financial records in accordance with generally accepted accounting principles.

Offences

- 10.2 Any person who has control of the financial records of the First Nation and who:
- (a) impedes or obstructs anyone from exercising a right to inspect those records; or
 - (b) fails to give all reasonable assistance to anyone exercising a right to inspect those financial records,

is guilty of an offence under this Land Code.

Preparation of Financial Statement

- 10.3 Within 90 days after the end of each fiscal year Council will prepare a financial statement in comparative form containing:
- (a) a balance sheet;

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

Consolidated Accounts

- 10.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

11. Audit

Appointment of Auditor

- 11.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.
- 11.2 An auditor appointed for other First Nation audits may be appointed under clause 11.1.

Vacancy in Office

- 11.3 If a vacancy occurs during the term of an auditor, Council will forthwith appoint a new auditor for the remainder of the former auditor's term.

Remuneration

- 11.4 An appointment under clause 11.1 will contain a statement approving the remuneration to be paid to the auditor.

Duty of Auditor

- 11.5 The auditor will, within 120 days after the end of the First Nation's fiscal year, prepare and submit to Council an audit report on the First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the First Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

- 11.6 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

11.7 Council will present the auditor's report at a Meeting of Members.

12. Annual Report

Publish Annual Report

12.1 Council will prepare and table with the Land Management Advisory Committee an annual report on First Nation Land management.

12.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;
- (b) a copy and explanation of the audit report as it applies to First Nation Lands; and
- (c) such other matters as may be directed by Council or reasonably requested by the Land Management Advisory Committee.

13. Access to Financial Information

Copies for Members

13.1 Any person may, during normal business hours at the First Nation administrative offices, have reasonable access to:

- (a) the auditor's report; and
- (b) the annual report.

13.2 A Member may, during normal business hours at the First Nation administration offices, upon payment of a reasonable fee set by Resolution, obtain a copy of the auditor's report or annual report on First Nation Land management.

14. Advisory Committees

Elders Advisory Council

14.1 An Elders Advisory Council is hereby established to:

- (a) consider developments on designated heritage land and sacred lands under clause 25.1; and
- (b) provide advice and guidance to Council, the Land Management Advisory Committee and the Members generally in land management matters.

14.2 The Elders Advisory Council will include Members who are 45 years of age or more and are acknowledged by the Members as elders of the First Nation.

14.3 Members of the Elders Advisory Council may not concurrently be members of the Land Management Advisory Committee.

Land Management Advisory Committee Established

14.4 A Land Management Advisory Committee is hereby established to:

- (a) assist with the development of a First Nation Land administration system;
- (b) advise Council and First Nation staff on matters respecting First Nation Land;
- (c) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
- (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to Council on the resolution of such issues;
- (e) assist in the exchange of information regarding First Nation Land matters between Members and Council;
- (f) oversee community consultations under this Land Code; and
- (g) perform such other duties and functions as Council may direct.

Development of Land Related Rules and Procedures

14.5 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the Members and the Land Management Advisory Committee, establish rules and procedures to address the following matters:

- (a) environmental protection and assessment;
- (b) resolution of disputes in relation to First Nation Land;
- (c) land use planning and zoning; and
- (d) clause 37 respecting spousal property and the policy upon which that clause is based.

Implementation of Policies

- 14.6 Rules and procedures developed in accordance with clause 14.5 will be given full and fair consideration by Council for implementation as Laws, policies or amendments to this Land Code.

Internal Procedures

- 14.7 The Land Management Advisory Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 14.8 Subject to Council requirements in respect of financial obligations, the Land Management Advisory Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by Land Management Advisory Committee members; and
 - (b) establish programs for the orientation and education of Land Management Advisory Committee members.
- 14.9 The Land Management Advisory Committee will take reasonable measures to consult with the Elders Advisory Council in the conduct of its meetings and general affairs.

15. Land Management Advisory Committee Membership

Composition

- 15.1 The Land Management Advisory Committee will be comprised of a minimum of seven Eligible Voters.

Eligibility

- 15.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be appointed to the Land Management Advisory Committee, except for:
- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment; and
 - (b) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

Selection of Land Management
Committee Members

- 15.3 The members of the Land Management Advisory Committee are to be selected as follows:

- (a) a member of Council appointed by Council; and
 - (b) six members appointed jointly by Council and the Lands Manager.
- 15.4 Council will enact a Law to establish the procedure for selection of Land Management Advisory Committee members, including such transitional rules as may be necessary for the members of the first Land Management Advisory Committee.
- 15.5 A Law enacted under clause 15.4 will include:
- (a) a process for providing notice to Members that appointments will be made to the Lands Management Advisory Committee and offering Members an opportunity to apply for such appointment; and
 - (b) standards and criteria for appointment to the Lands Management Advisory Committee.

Term of Office and Vacancy

- 15.6 A member of the Lands Management Advisory Committee will serve in office until that member:
- (a) resigns in writing;
 - (b) becomes ineligible to hold office under clause 15.2;
 - (c) ceases to be a Member;
 - (d) is absent from three consecutive meetings of the Lands Management Advisory Committee for a reason other than illness or incapacity without being authorized to be absent by the Lands Management Advisory Committee; or
 - (e) dies or becomes mentally incompetent.

Filling of Vacancy

- 15.7 Where the office of a member of the Land Management Advisory Committee becomes vacant, the vacancy will be filled in accordance with clause 15.3.

16. Chair of the Land Management Advisory Committee

Chair

- 16.1 The member of the Land Management Advisory Committee appointed under clause 15.3(a) will be the Chair of the Lands Management Advisory Committee.

Co-chair

- 16.2 The members of the Land Management Advisory Committee will appoint a Co-chair who will perform the functions of the Chair if the Chair is unavailable or unable to perform the functions of office.

Alternate

- 16.3 If the Chair and Co-chair are unavailable or unable to perform the functions of office, the Land Management Advisory Committee will appoint another member of the Land Management Advisory Committee to serve as interim Chair.

Duties of the Chair

- 16.4 The duties of the Chair are to:
- (a) chair meetings of the Land Management Advisory Committee;
 - (b) ensure that financial statements relating to all activities of the Land Management Advisory Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with Council;
 - (c) report to Council and the Members on the activities of the Land Management Advisory Committee;
 - (d) monitor the presentation of the audited annual financial statements under clause 11.7; and
 - (e) perform such other duties as Council or the Land Management Advisory Committee may reasonably prescribe.

17. Registration of Interests and Licenses

Beecher Bay Lands Register

- 17.1 Council will maintain a Beecher Bay Lands Register in, at a minimum, the same form and with the same contents as the First Nation Lands Register.
- 17.2 An interest or license in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Beecher Bay Lands Register.

Registration of Consent or Approval

- 17.3 No instrument that requires the consent of Council or Land Management Advisory Committee approval may be registered in the Beecher Bay Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.

Duty to Deposit

- 17.4 Every person who receives a grant of an interest or license in First Nation Land from a Member will deposit an original copy of the instrument in the Beecher Bay Lands Register.
- 17.5 Council will ensure that a copy of the following instruments is deposited in the Beecher Bay Lands Register:
- (a) a grant of an interest or license in First Nation Land;
 - (b) a transfer or assignment of an interest in First Nation Land;
 - (c) a land use plan or subdivision plan; and
 - (d) this Land Code and any amendment to this Land Code.
- 17.6 Notwithstanding clause 17.1, nothing precludes Council from enacting a Law providing for maintenance of the Beecher Bay Lands Register in such other land registry system or facility as may meet the requirements of the Beecher Bay Lands Register.
- 18. First Nation Lands Register**
- 18.1 Council will ensure that a duplicate copy of any instrument deposited in the Beecher Bay Lands Register is deposited in the First Nation Lands Register.

PART 4 COMMUNITY CONSULTATION

19. Rights of Eligible Voters

Rights of Eligible Voters

- 19.1 An Eligible Voter is eligible to vote in a Ratification Vote.

20. Approval by Land Management Advisory Committee

Approval by Committee

- 20.1 Approval by majority vote of the Land Management Advisory Committee must be obtained for:
- (a) a land use plan;
 - (b) amendment of a land use plan;

- (c) a grant or disposition of an interest or license in First Nation Land for a term exceeding 25 years;
 - (d) renewal of a grant or disposition of an interest or license in First Nation Land for a term exceeding 25 years, or that would have the effect of extending the original grant or disposition for a term exceeding 25 years;
 - (e) a grant or disposition of natural resources on First Nation Land exceeding a term of one year;
 - (f) a charge or mortgage of a leasehold interest on Band Land for a term exceeding 25 years;
 - (g) a law enacted under clause 37; and
 - (h) any Law or class of Law that Council, by Resolution, declares to be subject to this clause.
- 20.2 Council will, in consultation with the Land Management Advisory Committee develop laws, policies or procedures for:
- (a) conduct of meetings of the Land Management Advisory Committee;
 - (b) approvals under clause 20.1, including timelines for decision-making; and
 - (c) regular review of grants or dispositions issued under clause 20.1(c), (d) and (e).

21. Community Consultation

Meeting with Committee and Elders

- 21.1 Council will call a meeting of the Land Management Advisory Committee and the Elders Advisory Council to receive input prior to introducing a Law in respect of:
- (a) a land use plan;
 - (b) a subdivision plan;
 - (c) declaring land or an interest in land referred to in clause 5.2 or 5.3 to be subject to this Land Code;
 - (d) heritage land;
 - (e) environmentally sensitive property;
 - (f) environmental assessment;

- (g) the transfer or assignment of interests in First Nation Land;
- (h) spousal property under clause 37;
- (i) any other matter or class of matters that Council by Resolution declares to be subject to this clause.

Process to Implement Laws

- 21.2 Council will, in consultation with the Land Management Advisory Committee and within a reasonable time after this Land Code takes effect, establish a process to develop and implement the Laws referred to in clause 21.1.
- 21.3 Nothing in this Land Code precludes Council or the Land Management Advisory Committee from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts.

22. Meeting of Members

Notice of Meeting

- 22.1 Council will give written notice of a Meeting of Members that:
- (a) specifies the date, time and place of the meeting; and
 - (b) contains a brief description of the matters to be discussed at the meeting.

Manner of Notice

- 22.2 Written notice of a Meeting of Members under clause 22.1 will be given by:
- (a) posting the notice in public places on First Nation Land at least 21 days before the meeting;
 - (b) mailing the notice to Members at least 21 days before the meeting; and
 - (c) such additional methods as Council may consider appropriate.

23. Ratification Votes

Approval by Ratification Vote

- 23.1 Approval by a Ratification Vote must be obtained for:
- (a) voluntary exchange of First Nation Land under clause 26;

- (b) amendment of the Individual Agreement that reduces the amount of funding provided by Canada;
- (c) amendment of this Land Code;
- (d) expropriation of a Member's interest under clause 24.7; and
- (e) enactment of a Law or class of Laws that Council, by Resolution, declares to be subject to this clause.

Individual Agreement with Canada

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

Ratification Process

- 23.3 A Ratification Vote required under this Land Code will be conducted, with any appropriate modifications necessary in the circumstances, in substantially the same manner as that provided in the *Beecher Bay First Nation Community Ratification Process* that was used to ratify this Land Code.

Minimum Requirements for Approval

- 23.4 A matter will be approved by a Ratification Vote if a majority of the Eligible Voters participating in the vote cast a vote in favour of the matter.

Beecher Bay First Nation Land Code Amendment, 2013, Part 2, Section 1

No Verifier

- 23.5 A Verifier is not required in a Ratification Vote.

PART 5 PROTECTION OF LAND

24. Expropriation by the First Nation

Rights and Interests That May Be Expropriated

- 24.1 An interest or license in First Nation Land or in any building or other structure on such land may be expropriated by the First Nation in accordance with the Framework Agreement and any Law enacted in accordance with clause 24.3 of this Land Code.

Community Purposes

- 24.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including but not limited to fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.

Expropriation Law

- 24.3 Council will enact a Law respecting the rights and procedures for expropriations, including provisions in respect of:
- (a) taking possession of an expropriated interest or license;
 - (b) transfer of an expropriated interest or license;
 - (c) notice of an expropriation;
 - (d) service of a notice of expropriation;
 - (e) entitlement to compensation;
 - (f) determination of the amount of compensation; and
 - (g) the method of payment of compensation.

Public Report

- 24.4 Before the First Nation expropriates an interest or license, Council will:
- (a) prepare a public report on the reasons for the expropriation;
 - (b) post a copy of the report in the First Nation administration offices; and
 - (c) mail a copy of the report to each Eligible Voter at their last known address.

Rights That May Not Be Expropriated

- 24.5 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the First Nation.

Acquisition by Mutual Agreement

- 24.6 The First Nation may expropriate only after a good faith effort to acquire, by mutual agreement, the interest or license in First Nation Land.

Approval by Ratification Vote

- 24.7 An expropriation of a Member's interest has no effect unless the proposed expropriation receives prior approval by a Ratification Vote.

Compensation for Rights and Interests

- 24.8 The First Nation will, in accordance with its Laws and the Framework Agreement:
- (a) serve reasonable notice of the expropriation on each affected holder of the interest or license to be expropriated; and
 - (b) pay fair and reasonable compensation to the holder of the interest or license being expropriated.

Compensation Calculation

- 24.9 The total value of compensation payable under clause 24.8(b) will be based on:
- (a) the fair market value of the interest or license being expropriated;
 - (b) the replacement value of any improvement to the land being expropriated;
 - (c) the damages attributable to any disturbance; and
 - (d) damages for reduction in the value of any remaining interest.

Market Value

- 24.10 The fair market value of an expropriated interest or license is equivalent to the amount that would have been paid for the interest or license if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

- 24.11 Subject to clause 24.13, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.
- 24.12 The sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

- 24.13 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

- (a) a dispute concerning the right of the holder of an expropriated interest or license to compensation; and
- (b) a dispute concerning the amount of compensation.

25. Heritage Land

Elders Advisory Council Approval

- 25.1 Development will be permitted on a site designated as heritage land under a First Nation land use plan only if the proposed development receives approval by the Elders Advisory Council.
- 25.2 Clause 25.1 applies to any lands duly designated as sacred lands approved by the Elders Advisory Council.

26. Voluntary Land Exchange and Protection

Conditions for a Land Exchange

- 26.1 The First Nation may agree with another party to exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

- 26.2 A land exchange is of no effect unless it receives approval by a Ratification Vote.

Land to be Received

- 26.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:
 - (a) is of equal or greater area than the First Nation Land to be exchanged;
 - (b) is of a value comparable to the appraised value of the First Nation Land to be exchanged; and
 - (c) is eligible to become a reserve under the *Indian Act* and First Nation Land subject to this Land Code.

Negotiators

- 26.4 A person who negotiates a land exchange agreement on behalf of the First Nation will be designated by Resolution.

Additional Compensation

- 26.5 The First Nation may receive additional compensation, including money or other land in addition to the land referred to in clause 26.3.
- 26.6 Such other land may be held by the First Nation in fee simple or otherwise.

Federal consent

- 26.7 Before the First Nation concludes a land exchange agreement, it must receive a written statement from Canada stating that Her Majesty in right of Canada:
- (a) consents to set apart as a reserve the land to be received in the land exchange, as of the date of the land exchange or such later date as Council may specify by Resolution; and
 - (b) consents to the manner and form of the land exchange as set out in the land exchange agreement.

Information to Members

- 26.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in clause 26.2, Council or the Land Management Advisory Committee will provide the following information to Members:
- (a) a description of the First Nation Land to be exchanged;
 - (b) a description of the land to be received by the First Nation;
 - (c) a description of any additional compensation to be received;
 - (d) a report of a certified land appraiser stating that the conditions in clauses 26.3(a) and (b) have been met;
 - (e) a copy of the land exchange agreement; and
 - (f) a copy of the statement referred to in clause 26.7.

Process of Land Exchange

- 26.9 A land exchange agreement will provide that:
- (a) the other party to the exchange will transfer to Canada the title to the land that is to be set apart as a reserve;

- (b) Council will pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and
- (c) a copy of the instruments transferring title to the land will be registered in the Beecher Bay Lands Register and the First Nation Lands Register.

PART 6 CONFLICT OF INTEREST

27. Conflict of Interest

Application of Rules

27.1 Clause 27.2 applies to:

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

Duty to Report and Abstain

27.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
- (b) take no part in any deliberations on the matter; and
- (c) take no part in a vote on the matter.

Common Interests

27.3 Clause 27.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Members

- 27.4 If Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, Council may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Law or Resolution.

Inability to Act

- 27.5 If a board, committee or other body is unable to act due to a conflict of interest, the matter will be referred to Council and Council may decide the matter.

Disputes

- 27.6 Determination of whether a breach of this clause has occurred may be referred to the Panel.

PART 7 INTERESTS AND LICENSES IN LAND

28. Limits on Interests and Licenses

All Dispositions in Writing

- 28.1 An interest in, or license to use, First Nation Land may only be created, granted, disposed of, assigned or transferred by an instrument issued in accordance with this Land Code.

Standards

- 28.2 Council may, after full and fair consideration of any recommendations made by the Land Management Advisory Committee, establish mandatory standards, criteria and forms for interests and licenses in First Nation Land.

Improper Transactions Void

- 28.3 A deed, lease, contract, document, agreement or instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an interest or license in First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

Non-Members

- 28.4 A person who is not a Member may hold a lease, license or permit in First Nation Land.

Grants to Non-Members

- 28.5 The written consent of Council is a requirement of a grant or disposition of a lease, license or permit in First Nation Land to a person who is not a Member.

29. Existing Interests

Continuation of Existing Interests

- 29.1 An interest or license in First Nation Land, whether held by a Member or a person other than a Member, that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or license.
- 29.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any interest or license issued or allotted in error, by mistake or by fraud.

30. New Interests and Licenses

Authority to Make Dispositions

- 30.1 Subject to this Land Code, Council may grant:
- (a) interests and licenses in Band Land; and
 - (b) permits and licenses to take resources from Band Land.

Conditional Grant

- 30.2 The grant of an interest, license or permit may be made subject to conditions.

Lease of lands in the Economic Development Zone

- 30.3 Subject to this Land Code, Council may grant a lease of all or part of the lands in the Economic Development Zone to a Band Owned Entity for a term not to exceed 149 years.

Beecher Bay First Nation Land Code Amendment, 2013, Part 2, Section 3.

Granting of Sub-Interests of lands in Economic Development Zone

- 30.4 A Band Owned Entity holding a lease of lands in the Economic Development Zone may grant a sub-lease, license, interest, permit or mortgage in such lands, provided the term of any such sub-lease, license, interest, permit or mortgage does not exceed 99 years and the provisions of sections 20.1, 24, 28.5, 33.2, 34.3, 34.4, 34.5, 37, or 39 of this Land Code will not apply to such sub-leases, licenses, interests, permits or mortgages or to any sub-

interests in the lands granted by the holders of such sub-leases, licenses, interests, permits or mortgages.

Beecher Bay First Nation Land Code Amendment, 2013, Part 2, Section 3.

31. Certificates of Possession

Prohibition of Permanent Interests

- 31.1 No tenure that establishes a permanent interest in First Nation Land will be established under this Land Code.

32. Allocation of Land

Allocation of Residential Lots

- 32.1 Council may, by lease, rental arrangement or other disposition, allocate lots of available land to Members for residential purposes in accordance with Laws enacted by Council.
- 32.2 A residential lot may not be allocated to a person who is not a Member.

33. Transfer and Assignment of Interests

Transfer of Interests

- 33.1 Council may enact Laws providing that a Member holding an interest in First Nation Land may transfer, devise or otherwise dispose of that land to another Member.
- 33.2 Except for transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under clause 37:
- (a) there will be no transfer or assignment of an interest in First Nation Land without the written consent of Council; and
 - (b) the grant of an interest or license is deemed to include clause 33.2(a) as a condition of any subsequent transfer or assignment.

34. Limits on Mortgages and Seizures

Protections

- 34.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply on First Nation Land.

Mortgage of Member's Interest

- 34.2 The interest of a Member in First Nation Land other than a leasehold interest may be subject to a mortgage or charge only to the First Nation.

Mortgages of Leasehold Interests with Consent

- 34.3 A leasehold interest may be subject to a charge or mortgage only with the written consent of Council.

Default in Mortgage of Leasehold

- 34.4 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the charge or mortgage received the written consent of Council;
 - (b) the charge or mortgage received Land Management Advisory Committee approval where required;
 - (c) the charge or mortgage was registered in the First Nation Lands Register; and
 - (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.

Power of Redemption

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

35. Residency and Access Rights

Right of Residence

- 35.1 The following persons have a right to reside on First Nation Lands:
- (a) subject to clause 35.2, a Member;
 - (b) a Member who has been allocated a residential lot by Council;
 - (c) a Spouse and child of a Member referred to in clause 35.1(b);
 - (d) a Member with a registered interest in First Nation Land; and
 - (e) a lessee or permittee in accordance with the provisions of the instrument granting the lease or permit.
- 35.2 A right of residence under clauses 35.1 does not imply any financial obligation on the part of Council.

Right of Access

35.3 The following persons have a right of access to First Nation Land:

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

Public Access

35.4 A person may have access to First Nation Land for a social or business purpose if that person:

- (a) does not trespass on occupied land;
- (b) does not interfere with an interest in land;
- (c) complies with all applicable Laws; and
- (d) no Resolution has been enacted prohibiting that person from having access to First Nation Land.

Trespass

35.5 It is an offence for any person to enter, reside or remain on First Nation Land other than in accordance with a right of residence or access under this Land Code.

Civil Remedies

35.6 Subject to a Law under clause 6.2(l), all civil remedies for trespass are preserved.

36. Transfers on Death or Mental Incompetence

Right of Widow or Widower

36.1 In the event that:

- (a) a Member holding an interest in First Nation Land dies intestate and is survived by a Spouse or dependant who do not hold a registered interest in that land; or
- (b) a Member holding an interest in First Nation Land is declared incompetent due to mental incapacity,

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's interest is disposed of under this clause.

- 36.2 A Spouse or dependant referred to in clause 36.1, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's interest, and Council will, subject to this Land Code, decide the application on its merits.

Location of Family Members

36.3 In the event that:

- (a) no other provision has been made by a Member referred to in clause 36.1 for the disposition of the interest in the First Nation Land; or
- (b) the Member's Spouse or dependant does not within a reasonable time make application under clause 36.2; or
- (c) a member of the Member's Immediate Family disputes the continued residence on and use of the land by the Member's Spouse or dependant,

Council will take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Panel if requested, recommend who is to receive the interest in the land.

Meeting of Members

36.4 If a Member referred to in clause 36.1 has no other Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the interest, Council will decide who is to receive the interest and may call a Meeting of Members to provide advice on the disposition of the interest.

36.5 Subject to this Land Code, Council will make best efforts to implement a recommendation made under clause 36.3 or 36.4.

37. Spousal Property Law

Development of Rules and Procedures

37.1 Within twelve months after the date this Land Code comes into effect Council will enact a spousal property Law providing rules and procedures applicable on the breakdown of a marriage to:

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

Enactment of Rules and Procedures

37.2 The rules and procedures contained in the spousal property Law will be developed in consultation with the Members and the Land Management Advisory Committee.

General Principles

- 37.3 The rules and procedures developed under clause 37.2 will take into account the following general principles:
- (a) a child of the Spouses should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of that child;
 - (b) the Spouses should resolve spousal property matters by contract or agreement;
 - (c) each Spouse should have an equal right to possession of the matrimonial home;
 - (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common; and
 - (e) the rules and procedures will not discriminate on the basis of sex.

Interim Law

- 37.4 Council may enact an interim spousal property Law at any time within the twelve month period prescribed in clause 37.1.
- 37.5 An interim Law enacted under clause 37.4 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with clause 37.1.

PART 8 DISPUTE RESOLUTION

38. Dispute Resolution Panel

Panel Established

- 38.1 A Dispute Resolution Panel is hereby established to hear and resolve disputes in relation to First Nation Land.

Representation

- 38.2 Council will, for the purpose of identifying eligible members of a Panel, establish an eligibility list containing the names of Eligible Voters who are representative of the community, including non-resident Members.

No Remuneration

38.3 Unless Council by Resolution provides otherwise, members of a Panel will receive no remuneration.

39. Dispute Resolution Procedure

Disputes

39.1 A dispute related to First Nation Land may be referred by the parties to the dispute to a Panel for resolution or opinion.

Prior Disputes

39.2 For greater certainty, disputes that originated before this Land Code comes into effect may be referred to the Panel.

Optional Process

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

Informal Resolution of Disputes

39.4 The First Nation intends that wherever possible, a dispute in relation to First Nation Land will be resolved through informal discussion by the parties to the dispute and nothing in this part will be construed to limit the ability of any person to settle a dispute without recourse to this Part.

Application Procedures

39.5 Referral of a dispute to the Panel will be made in accordance with procedures established by Council in consultation with the eligible members of a Panel and the Land Management Advisory Committee.

Limitation Period

39.6 The limitation period for referring a dispute to a Panel is:

- (a) thirty days after the day the decision, act or omission that is the subject of the dispute occurred; or
- (b) in the case of a dispute under clause 36, 12 months after the date of the final decision of Council under that clause.

39.7 A Panel will be made up of three panelists selected by lot.

39.8 The Chair of the Land Management Advisory Committee will make the selection referred to in clause 39.7.

39.9 The panelists selected under clause 39.7 will select a chair from among themselves.

40. Impartiality

Duty to Act Impartially

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

Offence

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

Rejection of Application

40.3 In addition to any other penalty provided for an offence under clause 40.2, the Panel may refuse an application to hear a dispute if the Panel reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Panel's decision.

41. Powers of Panel

Powers of Panel

41.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased; or
- (d) refer the matter or dispute for reconsideration.

Rules of Panel

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

Professional Services

41.3 The Panel may retain the services of professionals to assist it in fulfilling its functions, in which case it will make best efforts to use professional services available in the community.

Decisions

- 41.4 The Panel will give written reasons for a decision.
- 41.5 Written decisions of the Panel will be signed by the chair of the Panel.
- 41.6 Subject to clause 41.7, a decision of the Panel is binding.

Appeal of Decision

- 41.7 Subject to any exception established by a Law a decision of the Panel may be appealed to the Federal Court of Canada.

Costs

- 41.8 Unless otherwise ordered by a Panel or an appellate court, the parties to a dispute will bear their own costs.

Alternate Forums

- 41.9 Nothing in this part precludes Council or the Land Management Advisory Committee from establishing additional processes for resolving disputes under this Part, which processes may include facilitated discussion, mediation or arbitration.

PART 9 OTHER MATTERS

42. Liability

Liability Insurance

- 42.1 Council will arrange for, maintain and pay insurance coverage for:
 - (a) liability of the First Nation in relation to First Nation Land; and
 - (b) personal liability of the First Nation's officers and employees for acts done in good faith while engaged in carrying out duties related to First Nation Land.

Extent of Coverage

- 42.2 Council will determine the extent of insurance coverage under clause 42.1.

43. Enforcement

Application of the Criminal Code

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

Justices of the Peace

43.2 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

Provincial Courts

43.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court as the case may require.

44. Amendments to Land Code

Ratification Vote

44.1 An amendment of this Land Code must receive prior approval by Ratification Vote.

45. Commencement

Ratification

45.1 This Land Code will be ratified if:

- (a) the Members approve this Land Code and the Individual Agreement by a Ratification Vote; and
- (b) this Land Code has been certified by the Verifier in accordance with the Framework Agreement.

Effective Date

45.2 This Land Code will take effect on the first day of the month following certification of this Land Code by the Verifier, or after the Individual Agreement has been executed on behalf of Canada.

 Indian and Northern Affairs Canada	Affaires indiennes et du Nord Canada	Chronological No. D-M-2013
	BAND COUNCIL RESOLUTION RESOLUTION DE CONSEIL DE BANDE	File reference no.

NOTE: The words "Indian and Northern Affairs Canada" or "Affaires indiennes et du Nord Canada" wherever they appear in this form must appear in all translations including reproductions from Band Funds.

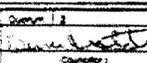
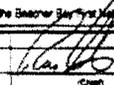
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D	M	Y	Province	Revenue Account	\$								
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WHEREAS

- A. We have reviewed a document dated January 27, 1971 that purports to be a surrender pursuant to section 40 of the Indian Act R.S.C. (1971) c. 8, by Beecher Bay Indian Band of 40 acres of land or Beecher Bay R.R. No. 1 (the "Land") to Her Majesty the Queen in Right of Canada to lease to such person or persons, and upon such terms as the Government of Canada may deem most conducive to the welfare of Beecher Bay people (the "1971 Surrender");
- B. We have reviewed P.O. Order-in-Council 1971-987 dated May 25, 1971 which is the Governor in Council's approval of the 1971 Surrender;
- C. On about April 18, 1973 and 1971 Surrender and P.O. Order-in-Council 1971-987 were registered on the Government of Canada's Indian Lands Registry as instrument number 415254;
- D. To the best of our knowledge the Land was never leased by Canada to any third parties on our behalf;
- E. On June 29, 2003 Members of the Beecher Bay First Nation voted in favour of the Individual Agreement dated for reference May 5, 2003 between Canada and the Beecher Bay First Nation and the Beecher Bay First Nation Land Code dated for reference May 25, 2003;
- F. On about August 1, 2003 Canada retransferred administration and control of land management of Beecher Bay R.R. No. 1 and other Beecher Bay Indian Reserve described therein back to Beecher Bay First Nation and the Beecher Bay Land Code took effect;
- G. Under the Individual Agreement, Canada transferred all of Canada's rights, obligations and powers with respect to the 1971 Surrender to Beecher Bay First Nation;
- H. On or about July 10, 2013 Members of the Beecher Bay First Nation voted to include the Land with an Economic Development Zone and approved Council granting a lease of the Land to a Band Owned Entity for economic development purposes, and
- I. Council wishes to ensure there are no circumstances surrounding the 1971 Surrender that will interfere with its ability to lease the Land under the Beecher Bay Land Code in the future.

THEREFORE BE IT RESOLVED THAT:

1. Council, for and on behalf of the members of the Beecher Bay First Nation, revokes the 1971 Surrender

Councilor 1  Councilor	Councilor 2  Councilor	Councilor 3 Councilor
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FOR DEPARTMENTAL USE ONLY - RESERVE ADMINISTRE					
Expenditure Amount, object and section Montant, objet et section	Source of Funds Source des fonds	Comments Commentaires	Authority, power and basis Pouvoir, article de la Loi sur les Indiens	Results of Funds Résultats des fonds	Approved Approuvé
Recommending officer Officier recommandant	Recommending officer Officier recommandant				

Canada

*First Nation Land Management Act/
Loi sur la gestion des terres des premières nations
Registration Control Sheet / Fiche de contrôle des enregistrements*

Received / Reçue _____

Registration No./ No d'enregistrement _____

Date: _____

Time/ Heure: _____ AM / PM

RECU/RECEIVED
11-01-2014

Pending File No. /
N° du dossier en attente : 4021295 Region /
Région : BC

Reserve Name / Nom de la réserve : Beecher Bay No. 1

Instrument Type /
Type d'instrument : Land code Purpose/
Objet : _____

Term /
Durée: _____ From /
Du : _____ To /
Au: _____

Retire PIN / Retirer le NIP	Yes / Oui <input type="checkbox"/>	No / Non <input type="checkbox"/>	EOT Required: PDT exigée :	Yes / Oui <input type="checkbox"/>	No / Non <input type="checkbox"/>
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Cancels EOT / PDT annulée: _____

PIN(s) / NIP(s)	Legal Description/Land Affected / Description légale/Terre affectée
_____	_____
_____	_____
_____	_____
_____	_____

Remarks/Registration Numbers Affected / Observations/Numéros d'enregistrement touchés

Examined By/ Examinée par : _____ Date: _____

Verified By:/ Vérifiée par : _____ Date: _____

ANNEX 2



**SPIRIT BAY UTILITY SERVICES LAW
BEECHER BAY FIRST NATION**

**A Law for the Purpose of Providing Utility Services
to the Spirit Bay Economic Development Zone**

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WHEREAS the Beecher Bay First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

AND the Beecher Bay First Nation has taken over control and management of Beecher Bay Reserve lands and resources pursuant to the First Nations Land Management Act and *Framework Agreement on First Nation Land Management* and has enacted the *Beecher Bay Land Code* effective the 1st day of August, 2003;

AND under the *Beecher Bay Land Code*, Beecher Bay Council is authorized to pass various laws relating to lands including laws under section 6 for “regulation, control, authorization and prohibition of the occupation and development of land”, “creation, regulation and prohibition of interests and licenses” and the “provision of local services and the imposition of user charges”;

AND Beecher Bay has prepared a draft Land Use Plan in February, 2005 and the community approved a revised land use plan for the Spirit Bay Economic Development Zone on September 17, 2013, which broadly delineates conceptual land use designations for the area;

AND the community voted to amend the Land Code on July 10, 2013 to enable the Spirit Bay development;

AND Council believes it is in the interests of Beecher Bay to regulate and plan for utilities and utility usage within the Spirit Bay development; and

AND these utilities and this utility usage are integral to the Spirit Bay development.

NOW THEREFORE this *Beecher Bay Spirit Bay Utilities Law* is hereby enacted at a duly convened meeting as a Law of the Beecher Bay First Nation Council.

PART 1. NAME

1.1 This Law may be cited as the *Beecher Bay Spirit Bay Utilities Law*.

PART 2. PURPOSE

2.1 The purpose of this Law is to plan for and enable development, land management and

the delivery of Utility Services within the Spirit Bay Economic Development Zone and particularly the Spirit Bay development.

PART 3. WHERE THIS LAW APPLIES

3.1 The provisions of this Law apply to the area within the Spirit Bay Economic Development Zone.

PART 4. DEFINITIONS

4.1 For the purposes of this Law, terms have the same definitions as in the Land Code.

4.2 For the purposes of this Law, the following definitions apply:

“Band Manager” means any person who is appointed and employed by Council in the capacity of the Band Manager of Beecher Bay;

"Beecher Bay" means the Beecher Bay First Nation, the Beecher Bay Indian Band or the Scianew First Nation;

"Law Enforcement Officer" means any person or persons appointed by Council, from time to time, to administer and enforce the provisions of Beecher Bay Laws enacted by Council, and includes any delegate, the RCMP and any peace officer;

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

"Premises" means a store, office, shop, building, home, warehouse, storage area, factory, structure, enclosure, temporary or permanent vending stand, yard or other definite area occupied or capable of being occupied by a Person for the purpose of a residence, Business or otherwise and includes any area situated within any of the foregoing where a separate class or type of Business is carried on, by a separate operator, all in accordance with applicable laws and zoning;

“Spirit Bay Economic Development Zone” means the area set out in the map entitled ‘Prepared by the Trust for Sustainable Development’, dated September 17, 2013;

“Spirit Bay Utilities Ltd.” means the company incorporated for the purpose of providing the Utility Services and which is majority owned by Beecher Bay; and

“Utility Services” means, unless otherwise prescribed by a regulation under this Law, electricity, heating, cooling, propane delivered by a system of interconnected pipes to the Premises, water and sewer services.

PART 5. GENERAL PROVISIONS

5.1 The headings of parts and sections in this Law have been inserted as a matter of convenience and for reference only and in no way define or limit or any of its

provisions.

- 5.2 In the event that all or any part of any section or sections of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.
- 5.3 Neither Beecher Bay, Council, the Lands Office nor any Beecher Bay Department or official are liable or in any way responsible for the provision or lack of provision of Utility Services by Spirit Bay Utilities Ltd.

PART 6. PROVISION AND USE OF UTILITY SERVICES

- 6.1 Subject to this law, Spirit Bay Utilities Ltd. is given the exclusive right to provide Utility Services to all Premises within the Spirit Bay Economic Development Zone.
- 6.2 With the written consent of Council, not to be unreasonably withheld, Spirit Bay Utilities Ltd. may contract with third parties to provide all or a portion of the Utility Services provided that the Spirit Bay Utilities Ltd. shall continue to remain liable for the provision of Utility Services.
- 6.3 Provided that Utility Services are available through Spirit Bay Utilities, all Premises within the Spirit Bay Economic Development Zone shall be required to connect to, use and pay for all applicable Utility Services through Spirit Bay Utilities Ltd.
- 6.4 Term, conditions and rates set by Spirit Bay Utilities for Premises in the Spirit Bay Economic Development Zone shall be:
 - (a) approved in writing by Beecher Bay Council, and
 - (b) just and reasonable and for clarity without unreasonable discrimination between those who are similarly situated or who fall into one class of customer.
- 6.5 The installation and operation of Utility Services and related infrastructure and services shall:
 - (a) comply with all Beecher Bay laws;
 - (b) the Beecher Bay Environmental Management Plan; and
 - (c) comply with all applicable standards and technical requirements.
- 6.6 Spirit Bay Utilities Ltd. shall obtain and maintain the insurance coverage required by Beecher Bay.
- 6.7 Any disputes between Spirit Bay Utilities Ltd. and the interest-holders or occupants or Premises will be subject to resolution in accordance with Section 39 of the Land Code.

PART 7. PROHIBITIONS

- 7.1 No Person shall offer, sell, provide or receive Utility Services within the Beecher Bay Development Zone except in accordance with this Law.

PART 8. INSPECTIONS, OFFENCES, PENALTIES AND ENFORCEMENT

Inspection

8.1 The Band Manager, Lands Manager, an Enforcement Officer, an Enforcement Monitor, and any other official authorized by Council is authority to enter onto any property and, with 24 hours' notice, enter into any Premises to carry out inspections to determine whether or not this Law is being complied with.

Penalties

- 8.2 A person who contravenes this Law or an order made by a court pursuant to this Law is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 for each offence.
- 8.3 A fine payable under paragraph 9.1 shall be remitted to Beecher Bay by the court, after reasonable court costs have been deducted.

Offences

- 8.4 It is an offence to:
- (a) obstruct, interfere with, or deny access to an inspector, Law Enforcement Officer, or other individual who is designated to enforce this Law, or
 - (b) connect to or use Utility Services in the Spirit Bay Economic Development Zone except as provided under this Law.

Suspensions and Disconnections

- 8.5 In addition to any other remedies or penalties under this Law, the Band Manager or the Lands Manager may:
- (a) issue an order to suspend any use of Utility Services in the Spirit Bay Economic Development Zone if they are not in compliance with this Law;
 - (b) order the disconnection to or use of any Utility Services in the Spirit Bay Economic Development Zone if they are not in compliance with this Law; and
 - (c) if any of the above orders are disobeyed, stop or disconnect any non-compliant Utility Services at the expense of the person who has connected or been using them.

PART 9. COMING INTO FORCE

Date Law Comes into Force

9.1 This Law shall come into force and effect on the date it is passed by Council Resolution.

BE IT KNOWN that this Law entitled the *Beecher Bay Spirit Bay Utilities Law* is hereby enacted by a quorum of Council at a duly convened Council of the Beecher Bay First Nation held on _____, 2016.

(BCR# _____)

Chief Russell Chipps

Gordon Charles

Bernice Millette

A Quorum consists of 2 Council