

# TZEACHTEN FIRST NATION LAND CODE

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## **PART 1 PRINCIPLES**

### *Tzeachten Aboriginal Title*

- 1.1 Tzeachten First Nation has occupied, used and shared with other Stó:lō our lands, waters and resources since time immemorial and has never surrendered or relinquished aboriginal title.

### *Tzeachten Authority to Govern*

- 1.2 By enacting this Land Code, Tzeachten exercises its inherent right to govern that part of S'ólh Témexw (our lands) which has been designated as Tzeachten reserve land within the meaning of the *Indian Act*, R.S.C. 1985, c I-5.
- 1.3 The authority of Tzeachten to govern its land and resources flows from:
- (a) The Creator to the Tzeachten people;
  - (b) The Tzeachten people to the Council according to the culture, traditions, customs and laws of Tzeachten; and
  - (c) Tzeachten's inherent right of self-government and its other aboriginal rights, including aboriginal title.

### *Respect for Stó:lō heritage, culture and tradition*

- 1.4 Using this Land Code, Tzeachten will continue to carry out its responsibility to protect and manage the land and her resources for future generations in accordance with Stó:lō heritage, culture and traditions, while allowing for the evolution of modern expressions of that heritage, culture and tradition.

### *Legal Title held by Canada for Purposes of Land Code*

- 1.5 Tzeachten acknowledges that, subject to section 2.9 (non-derogation of aboriginal rights and title), for the purposes of this Land Code, legal title to Tzeachten reserve land continues to be held for Tzeachten's use and benefit by Her Majesty the Queen in right of Canada.

## **PART 2 DEFINITIONS AND INTERPRETATION**

- 2.1 In this Land Code, unless the context does not permit, these words have the following meanings:

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

*Allotment* means an interest in Tzeachten Lands granting a Member possession of a part of Tzeachten Lands under Part 9 of this Land Code or, prior to the date this Land Code comes into force, pursuant to section 20 of the *Indian Act*;

*Certificate of Possession* or *CP* means an official document issued under this Land Code or formerly issues under section 20 of the *Indian Act* to confirm a Member's Allotment;

*Chief* means the duly elected Chief of Tzeachten;

*Child* includes the natural offspring of an individual, and any person less than 18 years of age who has been adopted legally or by Stó:lō custom;

*Common-law Marriage* means the union of two individuals who, though not married to each other, have lived together as Spouses for a period of not less than ten years;

*Committee* means the Land Management Advisory Committee established in Part 5;

*Community Lands* means any Tzeachten Lands in which no Allotment to a Member has been made or affirmed by this Land Code;

*Community Purpose* means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Tzeachten Lands and may include public works, utility or transportation corridors, or similar vital purposes;

*Council* means the governing body of Tzeachten, comprised of the elected Chief and Councilors;

*Council Resolution* means a formal, written motion passed by a quorum of Council at a duly constituted meeting of Council;

*Councilor* means a duly elected Councilor of Tzeachten;

*Easement* means a non-exclusive interest in Tzeachten Lands granted under Part 9 of this Land Code or, prior to the date of this Land Code, under the *Indian Act*, giving the grantee the right to use the land of another for a right of way or to provide utility or other services to the land of the grantee, and is limited to only such interest as is necessary to give effect to the Easement granted;

*Eligible Voter* means a Member who, as of the date of a Ratification Vote or other vote provided for in this Land Code, has attained the age of eighteen years;

*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, that individual's parent, grandparent, sister, brother, grandchild, Child or Spouse;

*Individual Agreement* means the agreement entered into between Tzeachten and the Government of Canada pursuant to section 6(3) of the *Act* and Section 6.1 of the Framework Agreement;

*Interest* means an interest in Tzeachten Lands, including an Allotment, Lease, License, Mortgage, Permit and Sublease;

*Land Code* means this Tzeachten Land Code;

*Lands Manager* means the Tzeachten First Nation employee or contractor responsible for the day-to-day administration of Tzeachten Lands;

*Land Use Plan* means a formal plan addressing land use and other factors related to the use or development of Tzeachten Lands;

*Law* means a law or regulation enacted under this Land Code but does not include a Council Resolution that does not comply with the requirements set out in this Land Code;

*Lease* means a written agreement granting Leasehold;

*Leasehold* means an interest in Tzeachten Lands granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, including a Sub-lease, giving a person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including any renewal or extension period;

*License* means an interest in Tzeachten Lands granted under this Land Code, giving a person the right to use, develop or extract specified Natural Resources from a specified parcel of Tzeachten Lands but which does not grant exclusive possession of Tzeachten Lands;

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

*Member* means a person who meets the requirements of membership in the Tzeachten Membership Code and whose name is shown on the Tzeachten membership list;

*Minister* means the Minister of Indian Affairs and Northern Development, as the representative of Her Majesty the Queen in Right of Canada;

*Mortgage* means a charge on an Interest in Tzeachten Lands in favour of another as security for a debt;

*Natural Resources* means any minerals, oil, gas, substances, groundwater, water, vegetation or animals found on, under or in Tzeachten Lands which, when removed, have

economic or other value;

*Permit* means an interest in specified area of Tzeachten Lands other than a Leasehold, Easement or License, granted under Land Code or, prior to the date of this Land Code, the *Indian Act*, giving a person the right to use a specified area of Tzeachten Lands a specified purpose. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted;

*Ratification Vote* means a vote carried out in relation to this Land Code in a manner consistent with Part 4;

*Residential Use* means use of an Allotment by one Member, who does not already have an Allotment or a CP, for the purpose of situating their home, and does not include buildings intended for renting out, or industrial, commercial or other uses except in accordance with Tzeachten laws including laws for home-based businesses;

*Returning Officer* means a person, trained or experienced in carrying out votes or referenda and appointed under this Land Code, who is neither a Member nor has any personal interest in the outcome of any particular Ratification Vote or other vote;

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

*Sub-Lease* means a portion of that Interest held under Lease;

*Tzeachten First Nation* and *Tzeachten* means the collective of those individuals who recognize each other as members of a community traditionally connected to Tzeachten Lands, and which is a First Nation within the meaning of the Framework Agreement;

*Tzeachten Lands* means:

Tzeachten Indian Reserve No. 13;

Lands set apart by Canada in the future as lands reserved for the use and benefit of Tzeachten within the meaning of subsection 91(24) of the *Constitution Act, 1867* and subsection 2(1) of the *Indian Act*;

Reserve lands jointly for the use and benefit of Tzeachten and one or more other First Nations, if the First Nations agree upon a joint management scheme for those lands;

the water, beds underlying the water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of the lands described in (i) or (ii) directly above to the extent that those resource are under

the jurisdiction of Canada or Tzeachten; and

all the interests and licenses granted or confirmed to Tzeachten by Her Majesty in right of Canada listed in the Individual Transfer Agreement.

*Tzeachten Lands Office* means the department established by Council to manage Tzeachten Lands;

*Tzeachten Lands Register* means the register of Tzeachten Lands established by Canada in accordance with clause 51.1 of the Framework Agreement and maintained by the Minister in Ottawa, Ontario; and

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

### *Interpretation*

#### 2.2 In this Land Code:

- (a) the use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- (f) unless it is otherwise clear from the context, the use of the masculine includes the feminine and the use of the feminine includes the masculine;
- (g) where the time limited for the doing of an act expires or falls on a Saturday, a Sunday or a federal, provincial, or aboriginal holiday, the act may be done on the next business day;

- (h) where the time limited for the doing of an act in the Tzeachten administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open; and
- (i) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.

#### *Paramountcy*

- 2.3 If there is an inconsistency or conflict between this Land Code and any other Tzeachten Law or Council Resolution, this Land Code shall 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 shall prevail to the extent of the inconsistency or conflict.

#### *Culture and Traditions*

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

#### *Fair Interpretation*

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

#### *Purpose*

- 2.7 The purpose of this Land Code is to set out the principles, procedures and administrative structures that apply to Tzeachten Lands and by which Tzeachten will exercise authority over those lands.

#### *Non-abrogation*

- 2.8 This Land Code shall not abrogate or derogate from any aboriginal right, treaty right or other right or freedom that pertains now or in the future to Tzeachten or its Members.
- 2.9 This Land Code is not intended to affect the eligibility of Tzeachten 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 Tzeachten has not assumed responsibility for such services and programs.

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

### **PART 3 TZEACHTEN LAW-MAKING AND LAWS**

#### *Law-making Powers*

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

- (a) Development, conservation, protection, management, use and possession of, and planning for Tzeachten Lands;
- (b) Interests;
- (c) Establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, revenues, or other monies in relation to Tzeachten Lands;
- (d) Any matter necessary to give effect to this Land Code; and
- (e) Any matter necessary or ancillary to a Law.

3.2 For greater certainty, and without limiting the generality of section 3.1, Council may make Laws respecting the following but only after completing the community consultation process set out in Part 4:

- (a) a Law creating, or making a significant amendment to, a Land Use Plan;
- (b) creation, regulation and prohibition of Interests;
- (c) environmental assessment and environmental protection;
- (d) expropriation; and
- (e) setting aside and regulation of heritage lands and sacred sites.

3.3 For greater certainty, and without limiting the generality of section 3.1, Council may make Laws respecting the following :

- (a) the purchase, acquisition or sale of lands in accordance with the *Act* and this Land Code;
- (b) regulation, control, authorization and prohibition of residency, access, occupation and development of Tzeachten Lands;
- (c) zoning and land use planning;
- (d) fees or charges to be paid to Tzeachten for the granting or transfer of Interests in Community Lands;
- (e) fees, stumpage, or royalties to be paid to Tzeachten for the removal or extraction of Natural Resources from Tzeachten Lands, including for removal or extraction of minerals, gravels and timber from Community Lands and from Allotments or CP lands;
- (f) fees to be paid to Tzeachten for Permit or License applications or administrative processes;



- (g) provision of local services and the imposition of user charges including development cost charges or their equivalent;
- (h) authorization and regulation of subdivisions including requirements for park dedications or grants in lieu of park dedications;
- (i) the conduct of surveys of lands or Interests;
- (j) setting aside, designation, regulation or management of parks, parklands and recreational lands;
- (k) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys, and the establishment of administrative structure to manage such moneys;
- (l) creation of management and administrative bodies or agencies;
- (m) removal and punishment of persons trespassing upon Tzeachten Lands or frequenting Tzeachten Lands for prohibited purposes;
- (n) public nuisance and private nuisance;
- (o) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (p) construction and maintenance of boundary and internal fences;
- (q) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (r) regulation of traffic and transportation;
- (s) hunting, fishing, and management and protection of fish, wildlife and their habitat on Tzeachten Lands; and
- (t) use and storage of fireworks, firearms, weapons and hazardous materials or substances.

### *Introduction of Laws*

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

- (a) a member of Council;
- (b) a representative on behalf of the Committee, or other body composed of Members as may be authorized by Council; or
- (c) the Lands Manager.

### *Tabling and Posting of Proposed Laws*

3.5 At least 30 days prior to a Council vote on a Law, the proposed Law shall be:

- (a) tabled at a meeting of Council;
- (b) deposited with the Chair of the Committee; and
- (c) posted in Tzeachten administration offices and other public places on Tzeachten Lands.

3.6 For proposed Laws relating to subsections 3.2 above, in addition to the requirements set out in 3.4-3.5 above, Council or the Lands Manager must also bring the proposed Law to a

Special Membership Meeting.

- 3.7 Council may pass Laws regarding land use planning by following sections 3.1-3.6 above. However, for a Land Use Plan, in addition to the requirements set out above, a Ratification Vote is required at a Special Membership Meeting in accordance with section 4.9 below.

*Urgent Matters*

- 3.8 Council may enact a Law without the preliminary steps required above if Council, acting reasonably, believes that the Law is required urgently to protect Tzeachten Lands or Members.
- 3.9 A Law enacted under section 3.8 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 whole or as amended in accordance with section 3.8.

*Enactment of Laws*

- 3.10 A Law is enacted when approved by Council Resolution after Council has complied with sections 3.1 – 3.7 above.

*Administration*

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

*Delegation*

- 3.12 Notwithstanding section 3.11, Council may, by enacting a Law, delegate administrative authority to an individual or a body established or authorized under this Land Code.

*Certification of Laws*

- 3.13 A quorum of Council shall sign the original copy of a Law or Council Resolution.

*Amendments*

- 3.14 Any Tzeachten Law may be repealed or amended by following the procedure set out in the provisions under which the Law was enacted.

*Law Coming Into Force*

- 3.15 A Law comes into force on:

- (a) the date it is enacted; or
- (b) such other reasonable date as may be set by Council Resolution or Law.

#### *Publication*

3.16 All Laws shall be published in the minutes of Council.

#### *Posting Laws*

3.17 As soon as practicable after a Law has been enacted, Council shall post a copy of the Law in the Tzeachten administration office.

#### *Register of Laws*

3.18 Council shall cause a register of Laws to be kept at the Tzeachten administration office, containing the original copy of all Laws and Council Resolutions, including those that have been repealed or are otherwise no longer in force.

3.19 Any person may, during regular business hours at the Tzeachten administration office, have reasonable access to the register of Laws.

#### *Copies for Any person*

3.20 Any person may obtain a copy of a Law or Council Resolution upon payment of such reasonable fee, if any, as may be set by Council or the Lands Manager.

## **PART 4 COMMUNITY AND COMMITTEE CONSULTATION**

#### *Right of Eligible Voter*

- 4.1 An Eligible Voter is entitled to:
- (a) attend Special Membership Meetings called under this Land Code; and
  - (b) if there is a vote, vote at a Special Membership Meeting called under this Land Code.

#### *Conduct of Meetings*

4.2 Council shall, in consultation with the Committee, develop Laws, policies or procedures for the conduct of meetings under this Land Code.

#### *Consultation with Committee*

4.3 Council shall meet with the Committee to receive input prior to proposing or enacting a Law in respect of:

- (a) a Land Use Plan or amendment of a Land Use Plan;
- (b) a subdivision plan;
- (c) declaring land or an Interest in land subject to this Land Code;
- (d) designated heritage or sacred land;
- (e) environmentally sensitive property;
- (f) environmental assessment;
- (g) the transfer or assignment of Interests in Tzeachten Lands;
- (h) spousal property under section 9.53; or
- (i) any other matter or class of matters that Council by Council Resolution declares to be subject to this section.

#### *Process to Implement Laws*

- 4.4 Council shall, in consultation with the Committee and within a reasonable time after this Land Code takes effect, establish a process to develop and implement the Laws referred to in section 4.3.
- 4.5 Nothing in this Land Code precludes Council or the Committee from consulting with other advisors or representatives of other jurisdictions, including Canada, a province, another First Nation, a municipal Council or a regional district.

#### *Special Membership Meetings*

- 4.6 Where required by this Land Code, Council shall consult with Members at a Special Membership Meeting.

#### *Notice*

- 4.7 Council shall give written notice of a Special Membership Meeting that:
  - (a) specifies the date, time and place of the meeting;
  - (b) contains a brief description of matters to be discussed at the meeting; and
  - (c) includes the text of any Law or other document to be voted on, if any,and such notice shall be:
  - (d) posted in public places on Tzeachten Lands at least 30 days before the meeting;
  - (e) mailed or delivered to Members at least 30 days before the meeting; and
  - (f) given by such additional methods as Council may consider appropriate.
- 4.8 Nothing precludes Council from holding a Special Membership Meeting in conjunction with any other meeting of Tzeachten Members.

#### *Approval by Ratification Vote*

- 4.9 Prior to passing a Law or making a final decision on any of the following, approval by a Ratification Vote at a Special Membership Meeting must be obtained:
- (a) a disposal or grant of an Interest in Community Lands having a term of more than 15 years;
  - (b) creation, regulation and prohibition of Interests;
  - (c) environmental assessment and environmental protection;
  - (d) setting aside and regulation of heritage lands and sacred sites;
  - (e) a voluntary exchange of Tzeachten Lands under section 7.11;
  - (f) approval of a Land Use Plan or a significant amendment to a Land Use Plan;
  - (g) an Expropriation of an Interest in Tzeachten Lands; and
  - (h) Enactment of a Law or class of Laws that Council, by Council Resolution, declares to be subject to this section.

#### *Ratification Process*

- 4.10 A Ratification Vote required under this Land Code shall be conducted, with any modifications necessary in the circumstances, in substantially the same manner as that provided in the process used to ratify this Land Code.

#### *Minimum Requirements for Approval*

- 4.11 A matter is approved by a Ratification Vote where a Majority of those Eligible Voters who show up to vote, in accordance with registration procedures approved by Council, vote by secret ballot in favour of the matter.

#### *No Verifier*

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

## **PART 5 FINANCIAL ADMINISTRATION RELATING TO LAND**

### **Financial Management**

#### *Application*

- 5.1 This part applies only to financial matters in relation to Tzeachten that are administered under this Land Code.

#### *Establishment of Bank Accounts*

- 5.2 Council will maintain one or more dedicated financial accounts in an accredited financial institution and will deposit in those accounts:

- (a) Transfer payments received from Canada for the management and administration of Tzeachten Lands;
  - (b) Moneys received by Tzeachten from the grant or disposition of Interests in Tzeachten Lands;
  - (c) Fees, fines, charges and levies collected under a Law or Council Resolution in respect of Tzeachten Lands;
  - (d) All capital and revenue moneys received from Canada from the grant or disposition of Interests in Tzeachten Lands; and
  - (e) Any other revenues received by Tzeachten in relation to Tzeachten Lands.
- 5.3 Council will continue to implement a system of financial planning and financial administration for the management of Tzeachten moneys through which Council, Tzeachten employees and other persons who manage moneys in relation to Tzeachten Lands are accountable to the Members within the meaning of subsection 5.2(d) of the Framework Agreement.

#### *Financial Policy*

- 5.4 Tzeachten may, in accordance with this Land Code, adopt a financial policy to further manage money related to Tzeachten Lands.

#### *Signing Officers*

- 5.5 A cheque or other bill of exchange or transfer drawn on a financial account maintained under section 5.2 must be signed by at least two members of Council in accordance with Tzeachten financial policy.
- 5.6 Despite subsection 5.5, Council may delegate signing authority to the Lands Manager to act as one of two signers provided that this delegation:
- (a) is set out in a Council Resolution;
  - (b) is for a specified and limited period of time and expires if the Lands Manager is no longer an employee of Tzeachten; and
  - (c) is for specified types of payments and within a dollar limit set by Council in the Council Resolution.
- 5.7 A signing authority in section 5.5 or 5.6 shall not sign a cheque for which they are the payee.
- 5.8 Any signing authority who violates section 5.7 is subject to having the cheque signed in violation voided and is also personally liable for any additional costs incurred by Tzeachten.
- 5.9 Every signing officer will complete all reasonable security screening processes as required by Council or in accordance with Tzeachten financial policy.

### *Fiscal Year*

- 5.10 The fiscal year of Tzeachten will begin on April 1 of each year and end on March 31 of the following year.

### **Budgets**

#### *Adoption of Budget*

- 5.11 Council will, by Council 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.
- 5.12 Prior to adopting a budget or supplementary budget referred to in section 5.11, Council will consult with the Committee.

#### *Procedure*

- 5.13 After adopting a land management budget or supplementary budget, Council will as soon as practicable make a copy of the budget or supplementary budget available at the Tzeachten administration offices for inspection by Members during regular business hours.

#### *If No Budget*

- 5.14 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year:
- (a) Council will adopt a land management budget as soon as possible; and
  - (b) the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

#### *Spending Must Follow Budget*

- 5.15 Council shall not spend moneys related to Tzeachten Lands or commit, by contract or otherwise, to spend moneys related to Tzeachten Lands unless the spending is authorized under a duly approved budget.

#### *Determination of Fees and Revenues*

- 5.16 Council will establish a process for determining:
- (a) Fees and rents for payable for the granting and transfer of Interests in Tzeachten Community Lands;
  - (b) Fees or charges payable for the registration and transfer of Interests relating to Tzeachten Lands held under an Allotment or CP; and

- (c) Fees for services provided in relation to Tzeachten Lands and compliance with this Code.

#### *Financial Records*

- 5.17 Tzeachten will keep financial records in accordance with generally accepted accounting principles.

#### *Preparation of Financial Statements*

- 5.18 After the end of each quarter of each fiscal year, the Tzeachten Finance Department 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 duly approved supplementary budget; and
  - (c) Any other information necessary for a full and fair presentation of the financial position of Tzeachten in relation to Tzeachten Lands.

#### *Consolidated Accounts*

- 5.19 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other Tzeachten accounts, audits and reports, provided that the statement and analysis relating to Tzeachten Lands is clearly distinguishable.

### **Audit**

#### *Appointment of Auditor*

- 5.20 For each fiscal year Council will appoint a duly accredited auditor to audit the financial records under this Part.
- 5.21 An auditor appointed for other Tzeachten audits may be appointed under section 5.20.

#### *Vacancy in Office*

- 5.22 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*

- 5.23 All appointments of auditors in relation to this Land Code will contain a statement approving the remuneration to be paid to the auditor.

#### *Duty of Auditor*



- 5.24 The auditor will within 90 days after the end of Tzeachten's fiscal year prepare and submit to Council an audit report of the Tzeachten financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of Tzeachten in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

#### *Access to Records*

- 5.25 The auditor may at all reasonable times inspect any Tzeachten financial records and the financial records of any person or body who is authorized to administer money relating to Tzeachten Lands.

### **Annual Report**

#### *Annual Report to be Published*

- 5.26 The Lands Manager will prepare and table with Council an annual report on Tzeachten Land management.

- 5.27 The annual report will include:

- (a) An annual review of Tzeachten land management activities;
- (b) A copy and explanation of the audit report as it applies to Tzeachten Lands; and
- (c) Such other matters as may be directed by Council or reasonably requested by the Committee.

### **Access to Information**

- 5.28 Any Member may, during regular business hours at Tzeachten administration office, have reasonable access to view:

- (a) Tzeachten Lands audit reports; and
- (b) Tzeachten Lands annual reports.

- 5.29 Council may decide to include all or a portion of any Tzeachten Lands audit reports or annual reports in a newsletter or meeting presentation to Tzeachten members.

### **Offences**

- 5.30 Any person who has control of Tzeachten financial records and who:

- (a) Impedes or obstructs any Member or Auditor from exercising a right to inspect those records; or
- (b) Fails to give all reasonable assistance to any Member or Auditor exercising a right to inspect those financial records,

Is guilty of an offence under this Land Code.

## **PART 6 LANDS ADMINISTRATION**

### **Land Management Advisory Committee**

#### *Committee Established*

- 6.1 A Tzeachten Land Management Advisory Committee is hereby established.
- 6.2 The purpose of the Tzeachten Committee is to:
- (a) Advise Council and the Land Manager of a Tzeachten Land administration system;
  - (b) Advise Council and Tzeachten staff on matters respecting Tzeachten Lands;
  - (c) Recommend to Council Laws, Council Resolutions, policies and procedures respecting Tzeachten Lands;
  - (d) Subject to Part 10 (Dispute Resolution), hold Meetings of Members and other meetings to discuss issues relating to Tzeachten Lands and make recommendations to Council on the resolution of such issues;
  - (e) Assist in the exchange of information between Members and Council regarding Tzeachten Land matters;
  - (f) Oversee other consultations under this Land Code; and
  - (g) Perform such other duties and functions as Council may direct.

#### *Development of Land Related Rules and Procedures*

- 6.3 With a reasonable time after this Land Code comes into effect, Council will, in consultation with Members and the Committee, establish rules and procedures to address:
- (a) Environmental protection and assessment;
  - (b) Subject to Part 10 (Dispute Resolution) Resolution of disputes in relation to Tzeachten Lands;
  - (c) Subject to 3.7 and 4.9 (Community approval of Land Use Plans), land use planning and zoning; and
  - (d) Section 9.53 respecting spousal property and the policy upon which that section is based.

#### *Implementation of Policies*

- 6.4 Recommendations of the Committee in relation to rules and procedures developed in accordance with section 6.2 will be given full and fair consideration by Council for implementation as Laws, policies, or amendments to this Land Code.

#### *Internal Procedures*

- 6.5 The Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by council.
- 6.6 Subject to approved budgets and to Council requirements in respect of financial obligations, the Committee may:
- (a) Recommend policies for the remuneration and recovery of expenses incurred by Committee members; and
  - (b) Recommend programs for the orientation and education of Council, staff, and Committee members.
- 6.7 The Committee will take reasonable measures to consult with Elders with respect to matters in general under this Land Code, and particularly with respect to heritage lands and sacred lands.

### **Committee Membership**

#### *Composition of Committee*

- 6.8 The Committee will be comprised of seven Members appointed by Council.
- 6.9 Council will try to ensure representation of a broad diversity of the Tzeachten community in making appointments to the Committee.
- 6.10 A quorum of the Committee is at least 4 Committee members.

#### *Eligibility*

- 6.11 Any Eligible Voter whether or not resident on Tzeachten Lands, is eligible to be appointed to the Committee except for:
- (a) A person convicted of an offense prosecuted by way of indictment or felony conviction within five years prior to the date of the appointment; and
  - (b) A person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or other wrongful conduct.
- 6.12 The Lands Manager will be a member *ex officio* of the Committee.
- 6.13 Council will enact a Law to establish the procedure for selection of Committee members, including such transitional rules as may be necessary for the members of the first Committee.
- 6.14 A Law enacted under section 6.13 will include:

- (a) A process for providing notice to Members that appointments will be made to the Committee and offering Members an opportunity to apply for such appointment; and
- (b) Standards and criteria for appointment to the Committee.

#### *Terms of Office and Vacancy*

6.15 A member of the Committee will serve for two years or until that member:

- (a) Resigns in writing;
- (b) Becomes ineligible to hold office under section 6.11;
- (c) Ceases to be a Member;
- (d) Is absent from three consecutive meetings of the Committee for a reason other than illness or incapacity without being authorized to be absent by the Committee;
- (e) Is removed by Council Resolution, including if this removal is recommended by other members of the Committee; or
- (f) Dies or becomes mentally incompetent.

#### *Filling Vacancies*

6.16 Where a seat becomes vacant on the Committee Council will fill the seat in accordance with Part 6 as soon as possible and no later than three months after it becomes vacant.

#### **Chair of the Committee**

##### *Chair*

6.17 The Committee will select a Committee member in good standing to be the Chair.

##### *Co-Chair*

6.18 The Committee members will select a Co-Chair to perform the functions of the Chair if the Chair is unavailable or unable to perform them.

##### *Interim Chair*

6.19 If both the Chair and Co-Chair are unavailable or unable to perform the functions of Chair, the Committee will appoint another member of the Committee to serve as interim Chair.

##### *Duties of Chair*

6.20 The duties of the Chair are to:

- (a) Chair meetings of the Committee;

- (b) Ensure that there is an agenda prepared and circulated to Committee members in advance of each meeting and that the agenda is followed, as amended, at each meeting;
- (c) Ensure that financial statements relating to the activities of the Committee, including any applicable revenues and expenditures in relation to Tzeachten Lands, are prepared and tabled with Council;
- (d) Report to Council and Members on the activities of the Committee and ensure that written recommendations are provided to Council in a timely manner on key issues in accordance with section 6.2;
- (e) Monitor the presentation of the annual report under section 5.26; and
- (f) Perform such other duties as Council or the Committee may reasonably prescribe.

## **Registration of Interests**

### *Tzeachten Lands Register*

- 6.21 Council will maintain a Tzeachten Lands Register in, at a minimum, the same form and with the same contents as the First Nations Lands Register.
- 6.22 An Interest in Tzeachten Lands created or granted after this Land Code comes into effect is void and unenforceable unless it is registered in the Tzeachten Lands Register.
- 6.23 Persons or entities involved in registering Interests are responsible for ensuring the validity and accuracy of their documents. Neither Tzeachten, nor the Lands Manager shall be responsible or liable for ensuring that a document which affects or purports to affect Tzeachten Lands:
- (a) is validly made;
  - (b) complies with the Land Code;
  - (c) should be registered or recorded; or
  - (d) will be accepted by the Minister for registration or recording.

### *Council Consent Must be Registered*

- 6.24 No document issued in relation to this Land Code that requires the consent of Council by Council Resolution will be registered in the Tzeachten Lands Register unless the Council Resolution approving it, or a certified copy of the Council Resolution, is attached to the document.

### *Duty to Deposit*

- 6.25 Every person who receives a grant of an Interest in Tzeachten Lands from a Member will deposit an original copy of the document granting that Interest in the Tzeachten Lands Register.

6.26 Council will ensure that a copy of the following documents is deposited in the Tzeachten Lands Register:

- (a) A grant of an Interest in Tzeachten Lands;
- (b) A transfer or assignment of an Interest in Tzeachten Lands;
- (c) A Land Use Plan or subdivision plan; and
- (d) This Land Code and any amendments to this Land Code.

6.27 Despite section 6.25, Council may pass a Law to maintain the Tzeachten Lands Register in another registry system or facility that meets the requirements for the Register under this Land Code.

### **Duplicate Copies in First Nation Lands Register**

6.28 Council will ensure that a duplicate copy of any document deposited in the Tzeachten Lands Register is deposited in a timely manner in the First Nation Lands Register.

## **PART 7 PROTECTION OF LAND**

### **Expropriation by Tzeachten**

#### *Rights and Interests that May Be Expropriated*

7.1 An Interest in Tzeachten Lands or in any building or other structure on Tzeachten Lands may be expropriated by Tzeachten in accordance with the Framework Agreement and a Law enacted under this Land Code.

#### *Community Purpose*

7.2 An expropriation may be made only for a necessary Community Purpose.

#### *Process and Limits on Expropriation*

7.3 Council may only expropriate an Interest in Tzeachten Lands:

- (a) For a Community Purpose;
- (b) After Council has notified all holders of legal interests of Tzeachten's need for the land or Interest and of the proposed use;
- (c) After Council has made good faith efforts to try and acquire the Interest or license through negotiations;
- (d) If no other similar and suitable land is reasonably available;
- (e) After a Special Membership Meeting to identify whether the proposed use is sufficiently compelling to justify expropriation;
- (f) In the smallest amount of land and for the shortest period of time necessary to reasonably meet the need for which the land or interest is required by Tzeachten;

- (g) After Tzeachten has paid fair market value or provided fair and reasonable replacement compensation for the expropriation; and
- (h) After all of the other relevant requirements set out in the Land Code or Tzeachten Law have been followed.

#### *Expropriation Law*

7.4 Council will enact a Law in respect of rights and procedures for expropriation including provisions in respect of:

- (a) Taking possession of an expropriated Interest;
- (b) Transfer of an expropriated Interest;
- (c) Notice of expropriation;
- (d) Service of a notice of expropriation;
- (e) Entitlement to compensation;
- (f) Determination of the amount of compensation; and
- (g) The method of payment of compensation.

#### *Rights that Cannot Be Expropriated*

7.5 Council cannot expropriate:

- (a) an Interest of Her Majesty the Queen in right of Canada, or
- (b) an Interest previously expropriated under section 35 of the *Indian Act*.

#### *Calculating Compensation*

7.6 The total value of compensation payable under section 7.3 will be based on the following factors:

- (a) The fair market value of the Interest being expropriated;
- (b) The replacement value of any improvement to the Interest being expropriated;
- (c) The damage attributable to any disturbance; and
- (d) Damages for reduction in the value of any remaining Interest.

#### *Fair Market Value*

7.7 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 Tzeachten Lands, with all of the rights, limits and restrictions that apply to Interests and transactions on Tzeachten Lands, by a willing seller to a willing buyer.

#### *Neutral Evaluation to Resolve Disputes*

- 7.8 Subject to section 7.10, the resolution of a dispute concerning Tzeachten's right to expropriate will be determined by neutral evaluation as provided in Part IX of the Framework Agreement.
- 7.9 The 60-day period referred to in subsection 32.6 of the Framework Agreement will be applied as appropriate in the circumstances, by the neutral evaluator.

#### *Arbitration to Resolve Disputes*

- 7.10 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 about the right to compensation for the holder of an expropriated Interest or license; and
  - (b) A dispute about the amount of compensation owed for an expropriation.

### **Voluntary Land Exchange**

#### *Conditions for a Land Exchange*

- 7.11 Tzeachten may, by agreement with another party, exchange Tzeachten Land for land from that other party in accordance with this Land Code and the Framework Agreement.

#### *No Effect unless Ratified*

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

#### *Conditions for Lands to be Received*

- 7.13 A proposed Land Exchange cannot proceed to a Ratification Vote unless the land to be received by Tzeachten is:
- (a) of equal or greater area than the Tzeachten Land to be exchanged;
  - (b) of a value comparable to the appraised value of the Tzeachten Land to be exchanged; and
  - (c) eligible to become a Reserve under the *Indian Act* and to become Tzeachten Land in accordance with this Land Code.

#### *Negotiators Must be Designated by Resolution*

- 7.14 A person can only negotiate a land exchange agreement on behalf of Tzeachten if they are designated by Council Resolution for that specific negotiation.

#### *Additional Compensation*



7.15 Tzeachten may accept additional compensation, including money or other land, in addition to the exchange land referred to in section 7.11.

7.16 Other land accepted under section 7.15 may be held by Tzeachten in fee simple or otherwise.

#### *Federal Consent*

7.17 Before Tzeachten completes a land exchange, it must receive a written statement from Canada stating that Her Majesty in right of Canada:

- (a) Consents to set apart as a Reserve subject to this Land Code 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 Council Resolution; and
- (b) Consents to the manner and form of the land exchange as set out in the land exchange agreement.

#### *Information to Members*

7.18 At such time as negotiations of a land exchange agreement are concluded, and at least 30 days before the Ratification Vote set out in section 7.12, Council will provide the following information to Members:

- (a) A description of the Tzeachten Land to be exchanged;
- (b) A description of the land to be received by Tzeachten;
- (c) A description of any additional compensation to be received by Tzeachten;
- (d) A report from a certified land appraiser stating that the conditions set out in sections 7.13(a) and (b) have been met;
- (e) A copy of the land exchange agreement; and
- (f) A copy of the statement referred to in section 7.17.

#### *Process for Land Exchange*

7.19 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 Reserve;
- (b) Council will pass a Council Resolution authorizing Canada to transfer title to the Tzeachten Land being exchanged, in accordance with the land exchange agreement; and
- (c) A copy of the documents transferring title to the land will be registered in the Tzeachten Lands Register and the First Nations Lands Register.

7.20 Despite the voluntary transfer and expropriation provisions in this Part, nothing in this Land Code prevents a Member with an Allotment or CP from transferring all or a portion

of their interest in Land to Tzeachten for fair market value or other agreed-upon compensation. Such transfers do not require community consultation or a ratification vote.

## **PART 8 CONFLICT OF INTEREST**

### **Conflict of Interest**

#### *Application of Rules*

8.1 Section 8.2 applies to:

- (a) A member of Council who is dealing with a matter before Council that is related to Tzeachten Lands;
- (b) An employee of Tzeachten dealing with a matter that is related to Tzeachten Lands; and
- (c) A member of a Tzeachten board, committee or other body dealing with a matter that is related to Tzeachten Lands.

#### *Duty to Report and Abstain*

8.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual referred to in section 8.1, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) Disclose in writing the interest to Council, their employment supervisor, the board, the committee, or the other body;
- (b) Take no part in deliberations or discussions on the matter; and
- (c) Take no part in any votes, decisions or recommendations on the matter.

#### *Common Interests Not a Conflict*

8.3 Section 8.2 does not apply to an interest that is held by a Member in common with every other Member. For example, an individual is not in conflict if a proposed decision will benefit that Member in the same way it will benefit all Members.

#### *Council May Refer Matter to Meeting of Members*

8.4 If Council is unable to vote on a proposed Law or Council Resolution due to one or more conflicts of interest, Council may refer the matter to a Special Membership Meeting to be decided by a Ratification Vote.

#### *Committee May Refer Matter to Council*

- 8.5 If a board, committee or other body is unable to make a decision or recommendation due to one or more conflicts of interest, the board, committee or other body will refer the matter to Council for a final decision.

#### *Disputes*

- 8.6 Any person may refer a matter to the Adjudicator to determine if there has been a breach of the conflict of interest provisions in this Part.

#### *Penalty*

- 8.7 In addition to any other penalty that may be prescribed by Council or by Law for breach of this Part, an individual is liable to Tzeachten for any benefit to himself, an Immediate Family members or a business in which that individual holds an interest resulting from a violation of this Part.

## **PART 9 INTERESTS IN LAND**

### **Limits on Interests**

#### *Dispositions Must be in Writing*

- 9.1 An Interest in Tzeachten Lands may only be created, granted, disposed of, assigned, or transferred by a document issued in accordance with this Land Code.

#### *Standards*

- 9.2 Council may, after full and fair consideration of any recommendation made by the Committee, establish mandatory standards, criteria and forms for Interests in Tzeachten Lands.

#### *Improper Transactions Void*

- 9.3 A document by which Tzeachten, a Member or any other person purports to create, grant, dispose of, assign, or transfer an Interest in Tzeachten Lands after the date this Land Code comes into effect is void if it contravenes this Land Code or a Law passed under the Land Code.

#### *Non-Members*

- 9.4 Subject to this Land Code, a person who is not a Member may hold an Interest in Tzeachten Lands but a non-Member may never hold an Allotment or a CP.

#### *Ceasing to be a Member*

- 9.5 A person who ceases to be a Member shall within six months of ceasing to be a Member transfer any Allotment or CP they hold to Tzeachten or another Member.
- 9.6 Where a Member does not transfer their Allotment or CP in accordance with section 9.5, the Allotment and any CP issued shall, six months and one day after the person ceases to be a Member, be cancelled and the Tzeachten Lands described in the Allotment become Community Lands.
- 9.7 Where an Allotment reverts to Tzeachten under section 9.6, the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any interest they held prior to the date the Allotment or CP reverts to Tzeachten.

### **Natural Resources**

- 9.8 Subject to applicable law all Natural Resources on Tzeachten Lands belong to Tzeachten.
- 9.9 The use and development of Natural Resources on or under Tzeachten Lands will be subject to this Land Code and all Tzeachten laws, Land Use Plans and bylaws.
- 9.10 Subject to sections 9.8 and 9.9, unless specifically excluded by the document granting an Allotment of Tzeachten Lands, the Allotment includes all Natural Resources on or under that land to the extent they are under Tzeachten jurisdiction.

### **Existing Interests**

#### *Continuation of Existing Interests*

- 9.11 An Interest in Tzeachten Lands 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.
- 9.12 All existing Interests will be subject to the terms and conditions set out in this Land Code and to any relevant Laws, Land Use Plans or regulations passed in relation to this Land Code. For greater certainty, Tzeachten is not liable for any decrease in value or use of an Interest arising in relation to a Law, Land Use Plan or regulation duly passed under in relation to this Land Code.
- 9.13 Council may, subject to an applicable ruling under Part 9 or by a court of competent jurisdiction, cancel or correct any Interest issued or allotted in error or by fraud.

### **New Interests**

#### *Authority to Make Dispositions*

- 9.14 Council may grant, in accordance with this Land Code:

- (a) Subject to (b), (c) and (d) directly below, Interests in Tzeachten Lands;
- (b) Permits and Licenses to occupy or take resources from Community Lands;
- (c) Permits and Licenses for utilities for Tzeachten Lands; and
- (d) With the written consent of a CP-holder, Permits or Licenses to occupy or take resources from CP lands.

### *Conditional Grant*

9.15 In addition to section above, Council make attach specific conditions to the grant of an Interest but any such conditions must be set out in writing in the granting of the Interest.

### **Allotments and CPs**

9.16 Subject to this Land Code and any relevant Tzeachten Laws, Land Use Plans and policies approved by Council Resolution, Council may grant:

- (a) an Allotment to a Member for Residential Use by Council Resolution; and
- (b) an Allotment to a Member for Non-Residential Use only after holding a Ratification Vote

9.17 Any law or policy relating to Allotments for Residential Use and any decision to grant an Allotment for Residential Use shall include:

- (a) a maximum lot size which shall not be greater than half an acre;
- (b) a fair process to ensure that Members who do not yet have an Allotment or CP have an opportunity to apply for one; and
- (c) an assessment of whether hook-up, servicing, or other fees are required to cover or offset expenses incurred by Tzeachten in acquiring or developing the lot.

9.18 Despite any other provision of this Land Code, a person who is not a Member cannot hold an Allotment in Tzeachten Lands.

### **Creation of Sub-Interests in Allotted Tzeachten Lands**

9.19 A Member or Members holding an Allotment in Tzeachten Lands may grant a Leasehold, Easement, Permit or License in those lands by a written document registered in the Tzeachten Lands Register provided that:

- (a) The Member or Members are the sole lawful possessor of the Allotment (i.e. that another Member with an interest in the Allotment does not oppose the granting of the sub-interest),
- (b) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey registered or recorded in the Tzeachten Lands Register,
- (c) The sub-interest complies with this Land Code and all Tzeachten laws and bylaws, and

- (d) The Member states in writing that the terms of the document creating the sub-interest will not violate any agreement with a person who has, or will have, an interest in the lands affected, or any portion thereof, or the Member has obtained the written consent of the other interest holder or holders.
- 9.20 A Member granting a Leasehold, Easement, Permit or License under section 9.19 may grant that sub-interest to himself or herself in the same manner as to another person.
- 9.21 A person holding a Leasehold in Tzeachten Lands may grant a Sub-lease, Easement, Permit or License in those lands by a written document registered in the Tzeachten Lands Register provided that:
- (a) The grant complies with the Land Code and all Tzeachten Laws and bylaws;
  - (b) The grant is permitted by the terms of the Lease;
  - (c) There is a proper legal description of the lands, and if required, the lands have been surveyed and the survey registered or recorded in the Tzeachten Lands Register, and
  - (d) The term of the Interest granted does not exceed the duration of the Leasehold.
- 9.22 For greater certainty, unless otherwise prescribed by Tzeachten law, nothing in this Part prevents a Member with an Allotment or Leasehold occupied by a trailer park or similar development prior to the commencement of this Land Code from registering each trailer pad as a sub-interest using a reasonable sketch of the trailer park and pad numbers without requirement for a legal survey of each pad.
- 9.23 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease.
- 9.24 For transactions under sections 9.19 to 9.22,
- (a) neither the Tzeachten Lands Office nor the Lands Manager are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the person granting the Interest; and
  - (b) without restricting the generality of (a) directly above, neither the Tzeachten Lands Officer nor the Lands Manager shall be responsible for determining whether a Lease, Easement, Permit or License is in good standing or the terms have been complied with.

## **Transfer and Assignment of Interests**

### *Transfer of Interests*

- 9.25 Council may enact Laws providing that a Member holding an Interest in Tzeachten Lands may transfer, leave in their will, or otherwise dispose of that Interest to another Member

or to Tzeachten.

- 9.26 A Member may only transfer their Allotment to another Member or to Tzeachten.
- 9.27 Where an Allotment is transferred or reverts to Tzeachten other than in relation to the granting of a Mortgage, the Allotment and any CP issued are automatically cancelled and the lands described in the Allotment become Tzeachten Community Lands.
- 9.28 Subject to this Part, a person holding an Interest other than an Allotment in Tzeachten Lands may transfer, assign or devise their Interest to any person or entity by a written document registered in the Tzeachten Lands Register.

## **Mortgages and Limits on Mortgages and Seizures**

### *Protections*

- 9.29 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply on Tzeachten Lands but section 89 is modified as set out below.

### *Mortgage of Member's Interest*

- 9.30 Except for a mortgage of a Member's Lease to himself or herself under section 9.20, the Interest of a Member in Tzeachten Lands other than a Leasehold may only be subject to a mortgage or charge to Tzeachten or to another Member .
- 9.31 Subject to section 9.30 the holder of an Allotment, Leasehold or License may, in accordance with this section grant a Mortgage of that interest.
- 9.32 The holder of an Allotment may only grant a Mortgage of that interest to a Member or to Tzeachten.
- 9.33 The holder of an Allotment who has granted himself or herself a Leasehold under section 9.20 may grant a Mortgage of this Leasehold to any person.
- 9.34 A Leasehold in Tzeachten Lands, including allotted lands, that is held by an Indian as that term is defined in the *Indian Act*, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights it would have had if the Leasehold were held by a non-Indian.
- 9.35 A Leasehold in Tzeachten Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.
- 9.36 The holder of a Permit or Easement cannot grant a Mortgage.

9.37 A Mortgage may be granted by document registered in the Tzeachten Lands Register provided that:

- (a) the land is in the sole lawful possession of the Member granting the Mortgage or, the Leaseholder or License holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or License;
- (b) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, Lease or License;
- (c) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered in the Tzeachten Lands Register; and
- (d) in the case of a Mortgage of a Leasehold or License, the Mortgage term does not exceed the duration of the Leasehold or License.

9.38 Neither the Tzeachten Lands Office nor the Tzeachten Lands Manager shall be responsible or liable for ensuring that the Lease or License permits the interest in the land to be mortgaged or that the Lease or License is in good standing or its terms have been complied with.

#### *Power of Redemption*

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

#### **Residency and Access; Trespass**

##### *No Financial Obligations*

9.40 A right of residence or access to Tzeachten Lands does not create any financial obligation on the part of Tzeachten.

##### *Trespass*

9.41 Subject to any Tzeachten Laws, any person who resides on, enters, remains on, or attempts to solicit on Tzeachten Lands other than in accordance with a residence or access right under this Land Code is guilty of a summary offence.

9.42 Subject to any laws or bylaws enacted under this Land Code, all civil remedies for trespass are preserved.

##### *No Liability*

9.43 No liability is imposed upon Tzeachten in respect of any person exercising a right of residency or access under this Land Code for injuries or damages suffered on account of



the condition or state of Tzeachten Lands.

### **Transfer on Death or Mental Incompetence**

9.44 In making any decision on its merits under this section, Council shall consider:

- (a) All input, requests or recommendations Immediate family members and the Committee;
- (b) Any outstanding loans or financial obligations in relation to the Interest in the lands in question and may give priority to the arrangement that is most likely to result in ensuring these loans or financial obligations are paid out; and
- (c) All other relevant information.

### *Right of Widow or Widower*

9.45 In the event that:

- (a) A Member holding an Interest in Tzeachten Lands dies intestate and is survived by a Spouse or dependant who does not hold a registered Interest in that land; or
- (b) A Member holding an Interest in Tzeachten Lands is declared incompetent due to mental incapacity,

The Member's Spouse and/or dependants 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 Part.

9.46 A Spouse or dependant referred to in section 9.45 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, evaluate the application on its merits and make a recommendation to the Minister.

### *Notification*

9.47 Pursuant to the Land Code, in the event that;

- (a) No other provision has been made by a Member referred to in section 9.45 for the disposition of the Interest in Tzeachten Lands;
- (b) The Member's Spouse or dependant does not within 3 months make application under section 9.46; 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 or the Lands Manager shall 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.

*Optional Meeting of Members or Committee*

9.48 If a Member's Immediate Family does not within 3 months after the date of a Member's death or declaration of incompetence under section 9.45 recommend who is to receive the Interest, Council may refer the matter to the Committee or call a Meeting of Members to provide advice on the disposition of the Interest.

*Land Goes to Tzeachten if No Immediate Family*

9.49 If no Immediate Family members are interested and eligible to take the Interest in the Land within 4 months of a death or declaration of mental incapacity under section 9.45, Council will pass a Council Resolution to transfer the Interest in the Land to Tzeachten and, if the Interest is an Allotment or a CP, the Land will become Community Lands.

*If Competing Members, Council Decides*

9.50 If there is more than one Immediate Family member interested and eligible to take the Interest in the Land arising from section 9.45, Council will, after taking into account any information received under section 9.48, recommend to the Minister on the merits who should receive the Interest.

*Council May Comment on Outstanding Debts*

9.51 In making a recommendation under section 9.50, Council may include recommendations or comments on dealing with any outstanding debts or liabilities relating to the Interest to be transferred.

*Council to Make Best Efforts to Influence Minister*

9.52 Council will make best efforts to influence the Minister of the Department of Indian and Northern Affairs to implement recommendations made under this section.

**Spousal Property Law**

*Development of Rules and Procedures*

9.53 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 possess of Tzeachten Lands; and
- (b) The division of Interests in that land.

### *Enactment of Rules and Procedures*

9.54 For greater certainty, the rules and procedures contained in the spousal property Law will be developed in consultation with the Members and the Committee.

### *General Principles*

9.55 The rules and procedures developed under section 9.53 will take into account the following general principles:

- (a) Regard for the best interests of any children of the marriage;
- (b) The distinction between Members and Non-Members for the purpose of determining what Interest in Tzeachten Lands may be held by an Individual; and
- (c) The rules and procedures will not discriminate on the basis of gender.

### *Interim Law*

9.56 Council may enact an interim spousal property Law at any time within the twelve month period set out in section 9.53.

9.57 An interim Law enacted under section 9.56 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 as amended, in accordance with section 9.53.

## **PART 10 DISPUTE RESOLUTION**

### **Adjudicator of Disputes**

#### *Informal Resolution of Disputes*

10.1 Tzeachten intends that whenever possible, a dispute in relation to Tzeachten Lands 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 the parties to a dispute to settle a dispute without recourse to this Part.

10.2 Tzeachten further intends that whenever possible, a dispute in relation to Tzeachten Lands that is not resolved by informal discussions by the parties to the dispute be resolved through voluntary participation of the parties to the dispute in a tribal or alternate justice forum.

#### *Adjudicator Established*

10.3 The office of the Adjudicator is hereby established to hear and resolve disputes in relation to Tzeachten Lands in accordance with the Land Code and relevant Tzeachten Laws and

policies.

- 10.4 The Adjudicator will be a Barrister and Solicitor and a member of the British Columbia Bar who is independent of the parties to a dispute and to other Interests in the dispute.

### **Dispute Resolution Procedure**

#### *Disputes*

- 10.5 The parties to a dispute in relation to Tzeachten Lands, after demonstrating they have made efforts to resolve the dispute under 10.1-10.2, may notify Council that they wish to refer the dispute to the Adjudicator for resolution.

#### *Prior Disputes*

- 10.6 Disputes that originated before this Land Code comes into effect may be referred to the Adjudicator.

#### *Council to Appoint*

- 10.7 Council will appoint the Adjudicator in a timely manner as required to settle any dispute.

#### *Optional Process*

- 10.8 Referral of a dispute to the Adjudicator is optional and all other civil remedies continue to be available to all parties to the dispute.

#### *Application Procedure*

- 10.9 Referral of a dispute to the Adjudicator will be made in accordance with procedures established by Council in consultation with the Committee.

#### *Limitation Period*

- 10.10 The limitation period for referring a dispute to the Adjudicator is:
- (a) Thirty days after the day the decision, act or omission that is the subject of the dispute occurred;
  - (b) In the case of a dispute under section 9.44-9.51 (transfer on death of mental incompetence), twelve months after the date of the final decision of Council under that section;
  - (c) In the case of historic grievances not involving INAC, within twelve months year of the Effective Date of this Land Code; and
  - (d) For any other disputes, such reasonable time period as Council may decide on the merits of each situation.

### *Duty to Act Impartially*

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

### *Offense*

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

### *Rejection of Application*

10.13 The Adjudicator may refuse to hear or decide an application:

- (a) If, regardless of whether a person has been found to have committed an offence under section 10.12, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision; or
- (b) One or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

## **Powers of Adjudicator**

### *Power of Adjudicator*

10.14 The Adjudicator may, after hearing a dispute:

- (a) Confirm or reverse the decision in dispute, in whole or in part;
- (b) Substitute his or her own decision for the decision in dispute;
- (c) Direct that an action be taken or ceased;
- (d) Refer the matter or dispute for reconsideration by the decision-maker; or
- (e) Refer the matter to a tribal or other forum.

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

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

10.16 An order from an Adjudicator may be entered into court and enforced through the court.

## **Adjudication Procedures**

### *Rules of Adjudicator*

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

### *Professional Services*

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

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

### *Decisions*

10.20 The Adjudicator will give written reasons for a decision and will sign the written reasons.

10.21 Section to section 10.22 (Appeal of Decision), a decision of the Adjudicator is binding.

### *Appeal of Decision*

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

### *Costs*

10.23 Unless otherwise ordered by the Adjudicator or an appellate court, the parties to a dispute will bear their own costs and an equal share of the costs of adjudication process.

10.24 For greater certainty, Tzeachten will not be liable or responsible for the costs of any dispute resolution process where Tzeachten is not a party.

### *Alternate Forums*

10.25 Nothing in this part precludes Council or the Committee from establishing additional processes for resolving disputes under this Part, which processes may include facilitated discussion, mediation, arbitration, or referral to a tribal or other forum.

## **PART 11 OTHER MATTERS**

### **Liability**

### *Liability Insurance*

- 11.1 Tzeachten is not liable for anything done or omitted to be done by Canada or any person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.
- 11.2 This Land Code is not, nor shall it be interpreted as being, a waiver by Tzeachten in regard to any liabilities, acts, or omissions of Canada.
- 11.3 Council will arrange for, maintain and pay insurance coverage for:
- (a) Liability of Tzeachten in relation to Tzeachten Community Lands and assets; and
  - (b) Personal liability of Tzeachten Lands Department employees, officers or Committee members for acts done in good faith while engaged in carrying out duties related to Tzeachten Lands under this Land Code.

### *Extent of Coverage*

- 11.4 Council will determine the extent of insurance coverage reasonably required under section 11.3.

## **Offences and Enforcement**

### *Application of the Criminal Code*

- 11.5 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.

### *Enforcement*

- 11.6 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.
- 11.7 If no justice of the peace is appointed, this Land Code and Laws are to be enforced by a court of competent jurisdiction.
- 11.8 Council may enact laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through Qwi:qwelstóm or other relevant tribal or community justice process.

## **Amendments to Land Code**

- 11.9 This Land Code may be amended from time to time.

11.10 Council or the Lands Office will post all proposed amendments in the Tzeachten Office and will make best efforts to provide notification of any proposed amendments to all Members.

11.11 All amendments to this Land Code must be done by Ratification Vote.

11.12 A Ratification Vote on an amendment to the Land Code will be approved if a Majority of the Members who vote in the Ratification Vote in favour.

## **Commencement**

### *Ratification*

11.13 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.

11.14 The Land Code will be approved if a Majority of registered voters vote in favour in the Ratification Vote for the Land Code.

### *Effective Date*

11.15 This Land Code will come into effect on the later of:

- (a) The first day of the month following certification of this Land Code by the Verifier;  
or
- (b) The date the Individual Agreement is executed on behalf of Canada.