

SUMMARY OF WE WAI KAI NATION LAND CODE

Dated for reference: August 1 2008

Background

We Wai Kai Nation (“We Wai Kai”) is developing a Land Code under the *First Nations Land Management Act*, which if ratified by We Wai Kai electors (“Electors”) will replace existing *Indian Act* rules for the administration of existing and future We Wai Kai reserve lands (“We Wai Kai Lands”). The Land Code will also govern Natural Resources on We Wai Kai Lands and monies earned from leases or development of Natural Resources on those lands. The following is a summary of draft principles and rules for the Land Code developed by the We Wai Kai Technical Team and Lands Committee. The Land Code must be ratified by a vote of electors before it comes into force.

Part I – Definitions and Interpretation

Part I defines words and terms used throughout the Land Code.

Part II - Principles

The Land Code includes principles to be used in interpreting the Land Code. The principles recognize:

- We Wai Kai aboriginal title and rights over its traditional territory and We Wai Kai Lands;
- the exercise by We Wai Kai of its inherent right of self-government over We Wai Kai Lands and Natural Resources;
- the need for its government to be transparent and accountable to We Wai Kai members (“Citizens”); and
- respect for We Wai Kai heritage, culture and traditions.

Part III – Land Rules

This Part establishes rules that will govern the administration and management of We Wai Kai Lands.

General

- The Land Code only covers existing and future reserve lands and does not address non-reserve traditional territory. We Wai Kai Lands remain reserve lands under Section 91(24) of the *Constitution Act, 1867*, with legal title being held by Canada for the use and benefit of We Wai Kai.
- The beneficial ownership of We Wai Kai Lands remains with We Wai Kai and any interest in We Wai Kai Lands granted under the Land Code is subject to underlying We Wai Kai ownership of and aboriginal title to We Wai Kai Lands.
- Section 87 and Section 89 of the *Indian Act* continue to apply to provide Indians the existing exemption from taxation and protection from seizure of interests in We Wai Kai Lands.
- The use of We Wai Kai Lands is subject to laws to be enacted by We Wai Kai Council must, within two years of the coming into force of the Land Code, create a Law adopting a We Wai Kai Land Use Plan.

We Wai Kai Land Department

- The We Wai Kai Land Department is responsible for administering We Wai Kai Lands and communicating with We Wai Kai Council.

Interests in We Wai Kai Lands

- An interest in We Wai Kai Lands may only be created, assigned or transferred by instrument in writing in accordance with the Land Code. No interest in We Wai Kai Lands is created by mere occupancy. Existing interests in We Wai Kai Lands that have been granted under the *Indian Act* (e.g. leases, permits) that exist on the date the Land Code comes into force will continue to have effect.
- The Land Code will, in Schedule "A", identify existing individual holdings on We Wai Kai Lands for persons who have built and are occupying homes. These holdings will be formally recognized as legal interests ("Right of Occupancy") in We Wai Kai Lands and an Occupancy Certificate will be issued to the holder to evidence their interest. Persons on the housing list who have not yet built can enter into an Agreement with We Wai Kai before the Land Code comes into force giving them the right to receive a Right of Occupancy if they complete building their house within two years of the signing of the Agreement.
- Before an interest can be granted, assigned or transferred, a clearance certificate must be obtained from We Wai Kai showing there are no housing loans, mortgages, utilities or servicing monies owing to We Wai Kai at the time of the proposed transfer or that a payment arrangement has been made.
- Lands where no Right of Occupancy is held are Community Lands. The interest in Community Lands is held by the citizenship of We Wai Kai at large.

Natural Resources

- All Natural Resources on or under We Wai Kai Lands belong to We Wai Kai, except that surface Natural Resources (e.g. timber, sod, top soil) on lands subject to a Right of Occupancy belong to the interest holder. All Natural Resources under We Wai Kai Lands (e.g. minerals, sand, and gravel) continue to belong to We Wai Kai.
- We Wai Kai retains ownership and jurisdiction over water to the extent of its rights under federal and provincial law.
- The use and development of Natural Resources on or under We Wai Kai Lands, whether held by an individual or by We Wai Kai, will be subject to the Land Code and We Wai Kai laws.
- A lease in Community Lands does not grant any interests in the Natural Resources on or under the land unless specifically included in the terms of the lease.

Right of Occupancy

- The Land Code recognizes a Right of Occupancy, which is the exclusive right of a Citizen or trustee for a Citizen to use and occupy a part of We Wai Kai Lands.
- Only Citizens who are 19 years of age or older can hold a Right of Occupancy. A Right of Occupancy for a Citizen under 19 can be held by a trustee.
- A Citizen may only hold one Right of Occupancy at any time in an area of We Wai Kai Lands identified as residential in a We Wai Kai Zoning Law or Land Use Plan. Exceptions are for inheritances, trustee holdings and in the case of building of a house where they transfer to another Citizen within twelve (12) months one of the Rights of Occupancy.
- Once the Land Code is in force no new Right of Occupancy from Community Lands will be granted until a We Wai Kai Law has been enacted by Citizens setting out the policy, procedure and criteria for granting a Right of Occupancy.

Leaseholds, Easements, Permits and Licenses in Community Lands

- Depending on the length of the lease proposed Leasehold in Community Lands may be granted by Resolution, vote of Electors at a Special General Meeting or by a Referendum.
- An Easement or Permit in Community lands can be granted by Resolution.

- The grant of a Natural Resource Licence in Community Lands requires approval of Electors at a Special Membership Meeting.

Creation of Sub-Interests in Allotted We Wai Kai Lands

- A Citizen holding a Right of Occupancy in We Wai Kai Lands may grant a Leasehold, Easement, Permit or Natural Resource Licence to any person by written instrument provided a number of conditions are met.
- The grant of an interest will be registered in the We Wai Kai Lands Register.

Mortgages

- The holder of a Right of Occupancy, Leasehold or Natural Resource License may grant a mortgage of that interest. A Right of Occupancy can only be mortgaged to We Wai Kai or a Citizen.
- A mortgage must be in writing and is registered in the Lands Register.
- The holder of a Permit or Easement cannot grant a mortgage.

Transfer of Interests

- Interests may be transferred by written instrument registered in the We Wai Kai Lands Register. A Right of Occupancy or mortgage of a Right of Occupancy may only be transferred or assigned to We Wai Kai or a Citizen. Other interests may be transferred to any person or entity if conditions are met.
- Until We Wai Kai establishes a We Wai Kai Law in relation disposition on death of interests in We Wai Kai Lands held by a Citizen who is an Indian, provisions of the *Indian Act* dealing with wills and estates continue to apply with respect to such interests in We Wai Kai Lands.
- A person who ceases to be a Citizen must, within one year of ceasing to be a Citizen, transfer their Right of Occupancy to We Wai Kai or to another Citizen. Where a Citizen does not do so within the year, the Right of Occupancy will be deemed transferred to We Wai Kai and the lands become Community Lands with an adjusted payment for improvements.
- Unless the Land Code provides otherwise, interests in We Wai Kai Lands may only be cancelled where all parties agree, or by order of a court or arbitrator.

We Wai Kai Lands Register

- Interests that affect We Wai Kai Lands will be registered in the We Wai Kai Lands Register and any interest not so registered is not enforceable.

- The We Wai Kai Lands Register will be maintained by Canada under *the First Nations Land Management Act Land Registry Regulation*.

Surveys

- Surveys of We Wai Kai Lands will continue to be made in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- All surveys become effective only upon registration in the We Wai Kai Lands Register.

Exchange of Lands

- Subject to federal expropriation under section 29 of the *First Nations Land Management Act*, no part of We Wai Kai Lands will be sold so as to remove their status as We Wai Kai Lands, except where after full disclosure a Referendum of Electors approves an exchange of such lands for other lands of equal or greater size or value which will become reserve lands.

Expropriation for Community Purposes

- We Wai Kai may expropriate an individual's land interest for a Community Purpose (ie. parks, cultural sites, community buildings, water, sewage facilities, and transportation and utility corridors).
- No expropriation by We Wai Kai for a Community Purpose can take place until Council has attempted to reach agreement with the interest holder for transfer of the land. If no agreement is possible, the proposed expropriation must be approved by Electors at a Special General Meeting and fair compensation paid to the interest holder.

Dispute Resolution

- Except where otherwise provided in the Land Code, disputes in relation to We Wai Kai Lands will be determined by mediation, arbitration or other mechanism agreed to by the parties or as determined by a court.

Treatment of Interests on Marriage Breakdown

- Within twelve (12) months of Land Code coming into force We Wai Kai must enact a Law dealing with division of interests in We Wai Kai Lands upon breakdown of a marriage involving at least one Citizen.

Part IV - Law Enactment Procedure

The Land Code establishes a procedure for enacting or amending We Wai Kai Laws relating to the management of We Wai Kai Lands and Natural Resources.

- The development of We Wai Kai Laws is initiated by Council Resolution. Laws are presented to Citizens at a Special General Meeting and must be approved by Electors.
- Council has the option of determining that a law is of sufficient importance that its enactment will be by Referendum of all Citizens.
- A register of We Wai Kai Laws will be maintained at the We Wai Kai administration office and will be accessible to the public.

Part V – Officers and Employees

Council appoints and hires officers and employees required for the administration of the Land Code. Key officers such as Chief Administrative Officer, Chief Financial Officer and Lands Administration Officer must be appointed.

Part VI - Special General Meetings

The Land Code sets out the procedure for holding Special General Meetings. Council must give Citizens notice of a Special General Meeting at least five (5) days before the meeting and members of Council must attend.

Part VII - Financial Management and Accountability

The Land Code contains rules for management and accountability of funds received in relation to management of We Wai Kai Lands and Natural Resources.

- Council has overall responsibility for the preservation and protection of We Wai Kai assets, and proper financial management and accountability to Citizens.
- Council will establish a Finance Committee to review budgets and make recommendations to Council.
- An annual Lands and Natural Resources Budget must be prepared and explained to Citizens at a Special General Meeting.
- Expenditures must not exceed budgetary limits. Council may, by resolution, approve expenditures not identified in budget for an emergency purpose.
- Council must not approve or make a capital expenditure in excess of \$500,000.00, unless such expenditure has been approved by vote of Electors.
- Financial statements must be prepared and audited each fiscal year in by an auditor and presented to Citizens at a meeting as part of the general annual financial reporting. Council shall provide financial updates to Citizens as necessary.

- Procedures exist for a Citizen to file a complaint with respect to financial management of Lands and Natural Resource revenues.
- We Wai Kai funds may only be invested in safe securities such as Canada Savings Bonds, term deposits, etc.

Part VIII - Conflict of Interest

The Land Code sets out conflict of interest rules and procedures relating to the management of We Wai Kai Lands and land revenues.

- Council members, officers and employees may not be involved in decisions where they or Immediate Family have a business or personal interest. The Land Code requires disclosure of a conflict of interest.
- The Land Code includes rules concerning Council member's use of We Wai Kai property, accepting gifts and taking personal advantage of an opportunity that is not equally available to all Citizens.
- Violation of conflict of interest rules makes person liable to We Wai Kai.

Part IX - Referendum Procedures

Procedures are set out for Referendums required under the Land Code. Voting in a Referendum is similar to that in a We Wai Kai election.

Part X - Amendment of Land Code

The Land Code contains procedures for amending the Land Code. An amendment may be initiated by resolution of Council. A Special General Meeting is required to inform Citizens of the nature and purpose of the proposed amendment and the amendments must be approved by Electors in a Referendum.

Part XI - General

Canada remains liable for any negligence in management of We Wai Kai lands that occurred before the Land Code comes into force.

The Land Code if ratified by Electors will come into force on November 1, 2008.