

# Swan Lake First Nation Land Management Code

## PREAMBLE

**WHEREAS** Swan Lake Indian Band is a signatory to *Treaty One 1871* and *Treaty One Adhesion 1876* with Her Majesty the Queen in Right of Great Britain, thereby assuring ad infinitum possession of Swan Lake Indian Band land vested now to Her Majesty the Queen in Right of Canada to hold for the benefit of Swan Lake Indian Band;

**AND WHEREAS** Swan Lake Indian Band has had, still does and will have a reverential relationship with the land that the Plains Ojibway of the Swan Lake Indian Band known as aki, and more specifically with this Land Management Code, iskonigan;

**AND WHEREAS**, the Swan Lake Indian Band has the option of withdrawing from the land provisions of the *Indian Act* in order to exercise its own land management system with respect to its land and natural resources for the use and benefit of its membership, rather than having its land and natural resources managed on its behalf by the Department of Indian and Northern Affairs Canada;

**AND WHEREAS**, the Chief and Council on behalf of the Swan Lake Indian Band has, with this *Land Management Code*, become a signatory to the *Framework Agreement on First Nation Land Management* with Canada as amended and as ratified by the *First Nations Land Management Act*, on a government to government basis, with the full and outright acknowledgement by both parties that this Land Management Code will not in any way infringe on the rights and obligations as outlined in *Treaty One 1871* and *Treaty One Adhesion 1876*;

**AND FURTHER WHEREAS**, the Chief and Council on behalf of the Swan Lake Indian Band is signing onto the *Framework Agreement on First Nation Land Management* with Canada with the full and outright acknowledgement by both parties that the Swan Lake Indian Band will still be subject to certain provisions in the *Indian Act* with all its legal obligations;

**NOW THEREFORE**, this Land Management Code is hereby enacted as the Land Law code with respect to the land and natural resources of the Swan Lake Indian Band.

## PART 1: PRELIMINARY MATTERS

### 1. Title

Title

- 1.1 This document **shall** be cited as the *Swan Lake First Nation Land Management Code*.

### 2. Authority to Govern

Stewardship

- 2.1 The Bungee teachings speak to the obligation of the Gaabiskigamaag people to respect the land and its gifts thereupon bestowed by the Creator. By enacting this *Land Code*, the Swan Lake First Nation acknowledges its obligatory stewardship to the land.

Creator to Ogimaakaanag

- 2.2 The authority to oversee the land foremost comes from the Creator to the Anishinaabeg of the Gaabiskigamaag First Nation and then, from the Anishinaabeg to the Ogimaakaanag of the First Nation.

### 3. Definitions and Interpretations

Definitions

- 3.1 Unless otherwise stated, the following definitions apply in this *Swan Lake First Nation Land Management Code* (“*Land Code*”);

“Abrogate” means to abolish by authoritative action, annul;

“Allocate” means granting the use of Land for a specific purpose;

“Band Member” or “Member” means an Indian whose name is registered or is entitled to be registered on the Swan Lake First Nation Band Membership List;

“Canada” means Her Majesty the Queen in right of Canada;

“Common-Law Partner” means the relationship between two (2) persons who are cohabiting in a conjugal relationship;

“Community Meeting of Members” means a meeting under Part 3 of this *Land Code* to which the members are invited to attend;

“Community Lands” means any Swan Lake First Nation Land in which all members have a common interest;

“Council” means Chief and Council of the Swan Lake First Nation or any successor elected government of the Swan Lake First Nation;

“Derogate” means to take away a part so as to impair, detract;

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

“Extended Family”, in respect of a person, means the person’s grandparent, uncle, aunt, first degree cousin, grandchild and/or any other relation or relationship that Council may add by law;

“*First Nations Land Management Act*”, means that legislative document enacted by the federal government to ratify the *Framework Agreement on First Nations Land Management*;

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development in accordance with the First Nations Land Registry Regulations;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between the Minister of Indian Affairs and Northern Development and fourteen First Nations on February 12, 1996 as amended to include Swan Lake First Nation;

“Immediate Family Relative” in respect of a person means the person’s parent, sister, brother, child, custom adopted child, spouse or common-law partner;

“Individual Agreement” means the Individual Transfer Agreement entered into between the Swan Lake First Nation and Canada in accordance with section 6.1 of the *Framework Agreement*, as amended from time to time;

“Land Committee” means the Lands Advisory Committee established in accordance with section 25 of this *Land Code* to advise the Council on matters of Land and Natural Resources;

“Land Code” means the *Swan Lake First Nation Land Management Code* as ratified by the Eligible Voters;

“Land Law” means a Law, restricted to Swan Lake First Nation Reserve Land, enacted by Council pursuant to this *Land Code*;

“Panel” means the Dispute Resolution Panel established in accordance with Part 8 of this *Land Code* to resolve a dispute;

“Roster Panel” means the list of Panelists established under section 40 of this Code from which the Dispute Resolution Panel is chosen;

“Ratification Vote” means a vote as set out in this *Land Code*;

“Riparian Rights” means the legal rights of owners of land bordering on a river or other body of water. Also, law that pertains to use of the water for that land;

“Spouse” means a person who is married to another, whether by a traditional customary, religious or civil ceremony, and includes a Spouse by Common-Law Partnership;

“Spousal Property” means any interest in Swan Lake First Nation Land or real property improvements belonging to one or both persons who are spouses of one another;

“Swan Lake First Nation” means the Swan Lake Indian Band.

“Swan Lake First Nation Land” or “Land” means any reserve land that is subject to this *Land Code*.

“Swan Lake Land Register” means, where established, the register maintained by Swan Lake First Nation pursuant to Part 6 of this *Land Code* for the purpose of registering interests in Swan Lake First Nation Land.

#### Paramountcy

**3.2** If there is an inconsistency between a provision in this *Land Code* or any other enactment, made by the Council, including a by-law enacted pursuant to section 81 of the *Indian Act*, in regard to the management, administration or governance of Lands the provisions of this *Land Code* **shall** prevail to the extent of the inconsistency.

#### Definitions in Laws

**3.3** For greater certainty, if the context requires, Swan Lake First Nation laws, policies and regulations may prescribe different definitions than those provided in this *Land Code*.

#### Clarification

**3.4** Any words or terms used in this *Land Code* which are defined in the *Framework Agreement* **shall** have the same meaning as in the *Framework Agreement*, unless the context otherwise requires.

#### Use of the Word “SHALL”

**3.5** The word “**shall**” signifies 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.

#### Use of the Masculine or Feminine

**3.6** 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.

#### Titles and Headings

**3.7** Titles and headings of Parts and provisions have been inserted in the *Land Code* for convenience of reference only, and are not interpretive aids.

#### Non-Abrogation, Non-Derogation

**3.8** This *Land Code* **shall** not to be interpreted so as to abrogate or derogate from:

- a) the by-law powers of the Council of Swan Lake First Nation pursuant to the *Indian Act*,
- b) the aboriginal title or the aboriginal, or Treaty One or inherent rights of Swan Lake First Nation; or
- c) the special relationship between Canada and Swan Lake First Nation and its Members.

#### Lands and Interests Affected

**3.9** Any reference to “Swan Lake First Nation Land” in this *Land Code* means all rights and natural resources in and of the land, including:

- a) the water, water beds underlying water, aquifers, riparian rights, renewable and non-renewable natural resources to the extent that these are under the jurisdiction of Canada.
- b) all interests and licenses, transferred to the First Nation by Canada as outlined in the *Individual Transfer Agreement*.

## 4. Purpose

#### Purpose

**4.1** The purpose of this *Land Code* is to outline the principles, policies and procedures by which the Council will exercise full control over its First Nation lands.

#### Ratification

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

## 5. Description of Swan Lake Reserve Land

Lands that are Subject to this Land Code

**5.1** Swan Lake First Nation Land that is subject to this *Land Code* is that Land known as:

- ◆ Swan Lake Indian Reserve No. 7A as shown on the CLSR Plan No. FB38223;
- ◆ Swan Lake Indian Gardens Reserve No. 8 as shown on the CLSR Plan No. FB38225;
- ◆ Swan Lake Indian Reserve No. 8A as shown on the CLSR Plan No. FB38224.

Swan Lake Indian Reserve No. 7

**5.2** For greater certainty, Swan Lake First Nation will add the Swan Lake Indian Reserve No. 7 to this *Land Code* and to the Individual Agreement upon the approval by the First Nation of a completed Land Description Report.

Additional Lands

**5.3** Swan Lake First Nation Land includes all reserve land listed in the Individual Agreement and such other Land as may be included in the Individual Agreement as amended from time to time.

Community Consultation

**5.4** Council ***shall*** hold Community Meetings of Members for consultation or approval for the addition of Land to the Individual Agreement as may be required.

## PART 2: FIRST NATION LEGISLATION

### 6. Law-Making Powers

Council may make Land Laws

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

- a) the development, conservation, protection, management, use and possession of Swan Lake First Nation Land;
- b) interests and licenses in relation to Swan Lake First Nation Land; and
- c) any matter necessary or ancillary to the making of Land Laws in relation to Swan Lake First Nation Land.

Examples of Land Laws

**6.2** For greater certainty, Council may make Land Laws including, but not limited to:

- a) regulation, control and prohibition of zoning, land use, subdivision control and land development;

- b) creation, regulation and prohibition of interests and licenses in relation to Swan Lake First Nation Land;
- c) environmental assessment and protection;
- d) provision of local services in relation to Swan Lake First Nation Land and the imposition of equitable user charges;
- e) enforcement of Swan Lake First Nation Land Laws; and
- f) provision of services for the resolution, outside the courts, of disputes in relation to Swan Lake First Nation Land.

#### Regulatory Documents

**6.3** For greater certainty, in addition to Land Laws, Council may also develop the following regulatory documents including, but not limited to, regulations, standards, codes, and policies.

## 7. Law-Making Procedure

#### Introduction of Land Laws

**7.1** A proposed Land Law may be introduced at a duly convened meeting of the Council by:

- a) the Chief or a Councilor; or
- b) the representative of any body or authority composed of Members that may be authorized by Council to do so; or
- c) any Eligible Voter.

#### Rationalization of Land Law

**7.2** It ***shall*** be incumbent upon any proposer mentioned in section 7.1 to submit a written rationalization on why the proposed Land Law is needed.

#### Land Law Committee Review and Report

**7.3** Upon receipt of a proposed Land Law Council shall provide the proposed Land Law to the Land Committee. The Land Committee ***shall*** provide a Land Law Review Report to the Council within thirty (30) business days after the proposed Land Law was presented to the Council at a Council meeting.

#### Council and Committee Meeting

**7.4** The Land Law Review Report ***shall*** be deliberated at a meeting of the Council and Land Committee within 14 fourteen days after it was presented pursuant to section 7.3 and amendments may be made by Council at this meeting.

#### Council Procedure for Review of Land Law Review Report

**7.5** Upon reviewing the Land Law Review Report with the Land Committee under section 7.4, Council may:

- a) table the Land Law proposal for further review or for enactment;
- b) reject the Land Law proposal;

- c) request that the proposer provide further information or attend before a future meeting of Council to speak to the Land Law proposal; or
- d) undertake or direct the preparation of a draft law concerning matters raised in the Land Law proposal, for consideration by Council.

#### Report to Proposer and Community

**7.6** The Land Law Review Report *shall* be made available to the proposer and to the community generally.

#### Tabling and Posting of the proposed Land Law

**7.7** Before a proposed Land Law may be enacted by Council, the proposed Land Law *shall* be:

- a) tabled at a meeting of the Council held at least forty two (42) days before the Land Law is to be enacted; and
- b) posted in the administrative offices of Swan Lake First Nation, in a location accessible to any Eligible Voter, at least thirty five (35) days before the proposed Land Law is to be enacted; and
- c) be made available to Eligible Voters at least thirty five (35) days before the Land Law is to be enacted; and
- d) a notice of the Council meeting at which the Land Law will be considered for enactment, including the Land Law Review Report, has been circulated to First Nation members at least thirty five (35) days prior to the Council meeting.

#### Approval of Land Law by Council

**7.8** Subject to the sections 7.1 –7.7 having been satisfied, a Land Law is enacted if it is approved by:

- a) a quorum of Council at a duly convened meeting of Council; or
- b) the Eligible Voters at a Community Meeting of Members when required.

#### Certification of Land Laws

**7.9** Two official true copies of any Land Law or land resolution concerning Swan Lake First Nation Land *shall* be signed and witnessed by a quorum of the Council present at the meeting at which it was enacted and delivered to the Land Committee.

#### Repeal

**7.10** A Land Law may be repealed by a quorum of Council upon:

- a) passing the appropriate repealing law; and
- b) giving notice to the Band Members that the Land Law is no longer required.



#### Emergency Land Laws

**7.11** Notwithstanding any other provision of this *Land Code*, the Council may enact a Land Law without the preliminary steps required under sections 7.1 - 7.7, if the Council is of the opinion that the law is needed urgently to protect Swan Lake First Nation Land or the Band Members, but the law expires 120 days after its enactment, unless re-enacted in accordance with sections 7.1 - 7.7.

#### Law making procedures

**7.12** Council may make laws respecting law making procedures not inconsistent with this *Land Code*.

## 8. Publication and Security of Land Laws

#### Swan Lake Land Register

**8.1** Council ***shall*** cause to be established and maintained, at the administrative offices of Swan Lake First Nation, the Swan Lake Land Register which shall contain copies of all Land Laws and resolutions, including Land Laws and resolutions that have been repealed or are no longer in force.

**8.2** Council shall establish and maintain an electronic storage repository for purposes of storing electronic versions of certified copies of Land Laws.

#### Publication of Land Laws

**8.3** Land Laws enacted pursuant to this *Land Code* ***shall*** be published:

- a) in the minutes of the Council meeting at which it was enacted;
- b) by the Land Committee in minutes of the Land Committee meeting at which an official true copy of the Land Law is noted as received;
- c) by posting an official true copy of the Land Law in a location within the administrative offices of Swan Lake First Nation accessible to all Band Members, as soon as practicable after enactment and for a period of not less than thirty (30) days thereafter; and
- d) any additional method as Council may consider appropriate including the First Nation Gazette.

#### Access to Swan Lake Land Register

**8.4** Any person may view the register during normal business hours and may view or obtain a copy of any Land Law or Resolution.

#### Fees

**8.5** Council may from time to time by resolution set fees for viewing or obtaining copies of Land Laws.

## 9. Effective Date of a Land Law

#### Effective Date

**9.1** A Land Law enacted by the Council takes effect on the date of its approval or such a later date as specified by or under the Land Law.

## 10. Enforceability of Land Laws

### Enforceability of Land Laws

**10.1** To enforce its *Land Code* and its Land Laws, Swan Lake First Nation **shall** have the power to:

- a) establish offences that are punishable on summary conviction;
- b) provide for fines, imprisonment, restitution, community service, and alternate means for achieving compliance; and
- c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

## PART 3: COMMUNITY APPROVALS

## 11. Participation of Members

### Participation of Band Members

**11.1** Every Band Member is entitled to participate in the community consultation processes set out in Part 3 of this *Land Code*.

### Participation of Eligible Voters

**11.2** Every Eligible Voter is entitled to participate in the community approval processes set out in Part 3 of this *Land Code*.

## 12. Community Input

### Consultation with Band Members

**12.1** The Council **shall** consult with Band Members prior to the enactment of a Land Law:

- a) respecting a community plan or subdivision plan;
- b) affecting a heritage site or an environmentally sensitive property;
- c) respecting environmental assessment and protection;
- d) respecting the transfer and assignment of rights and interests in Swan Lake First Nation Land;
- e) respecting Spousal Property on Swan Lake First Nation Land under section 38;
- f) respecting the rights and procedures on community expropriation; and
- g) respecting any other matter, law or class of law that Council, by Resolution, declares to be subject to this section.

### No Quorum of Band Members

**12.2** For greater certainty, community consultation does not require a quorum of Band Members.

Information to Band Members

**12.3** In fulfilling its obligation to consult with the community as required under section 12.1, Council in consultation with the Land Committee *shall* make efforts to ensure the Band Members are informed on the relevant policies, rules and procedures respecting the categories described in section 12.1, by mailing information to Band Members, by holding meetings with the Band Members or by undertaking any other form of consultation as the Council may consider appropriate in the circumstance.

### 13. Community Approval

Community Approval of Members

**13.1** Community approval must be obtained for the following:

- a) any master land use plan;
- b) any grant or disposition of an interest or license to a non-Band Member in any Swan Lake First Nation Land exceeding a term of forty-five (45) years;
- c) any renewal of a grant or disposition of an interest or license to a non-Band Member in any Swan Lake First Nation Land that extends the original term beyond forty-five (45) years;
- d) any grant or disposition of any non-renewable natural resources on any Swan Lake First Nation Land exceeding a term of five (5) years;
- e) any deletion of a heritage site referred to in section 17 of this *Land Code*;
- f) any law or class of law that Council, by resolution, declares to be subject to this section.

Method of Voting

**13.2** Community approval may be obtained by various methods, including but not limited to:

- a) secret ballot;
- b) show of hands;
- c) mail in ballot; and/or
- d) any other method outlined in voting policies.

Call for a Vote

**13.3** For greater certainty, Council may determine that the Community Approval vote may be achieved by calling for a Community Meeting of Members, by calling for a vote and establishing voting days and polling locations, by calling for a mail-in ballot community vote, and/or any other method outlined in 13.2.

Quorum

**13.4** The quorum for Community Approvals under this *Land Code* is ten percent (10%) of Eligible Voters.

First Community Approval Vote

**13.5** For Community Approvals, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters casting a ballot, provided that there is a quorum of Eligible Voters participating in the vote.

No Quorum Obtained

**13.6** If a quorum was not obtained pursuant to sections 13.4 a second Community Approval vote may be called.

Second Community Approval Vote

**13.7** The quorum for a second attempt at a Community Approval Vote under this *Land Code* is five percent (5%) of Eligible Voters.

Quorum for Second Community Vote

**13.8** For a quorum of Eligible Voters for a second attempt at a Community Approval Vote, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters who cast a ballot.

Third Community Approval Vote

**13.9** If a quorum was not obtained pursuant to section 13.7 a third Community Approval vote may be called without any quorum requirement.

Voting

**13.10** Decisions may be made by a majority vote of fifty percent plus one (50%+1) of the Eligible Voters who cast a ballot.

## **14. Procedure for a Community Meeting of Members**

Notice of Meeting for Community Meeting of Members

**14.1** The Council ***shall*** give written notice for a Community Meeting of Members that ***shall*** include:

- a) the date, time and place of the meeting;
- b) a brief description of the matters to be discussed and decided on at the meeting;
- c) the name and telephone number of a contact person;
- d) a feedback form which any person entitled to participate may submit to the Land Committee for review, and forwarded to Council in lieu of or in addition to attending at the meeting; or
- e) feedback by such additional methods, if any, as Council and Land Committee may consider appropriate.

#### Manner of Notice

**14.2** The notice for a Community Meeting of Members must be given to the Members by:

- a) posting the notice in public places on Swan Lake First Nation Land at least forty two (42) business days before the meeting;
- b) mailing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve at least forty two (42) business days before the meeting;
- c) publishing the notice in the community newsletter or local newspaper at least thirty five (35) business days before the meeting; and
- d) such additional method as Council may consider appropriate in the circumstances.

#### Informed Decision

**14.3** The Council may schedule as many Community Meetings of Members as may be necessary to ensure that Members are well informed before making a decision on a proposed Land Law or land issue.

#### Members to Attend

**14.4** All Band Members have a right to attend a Community Meeting of Members.

#### Non-Band Member Attendance

**14.5** A person, other than a Band Member, may attend any meeting upon a prior approval of the Council, or upon the invitation of the Council.

#### Rules of Conduct at Meetings

**14.6** The Council, upon the advice of the Land Committee, may establish rules of conduct to be followed at Community Meeting of Members.

#### Other Land Laws

**14.7** For greater certainty, the Council may make laws respecting Community Meeting of Members.

## **15. Ratification Votes**

#### Community Approval by Ratification Vote

**15.1** Community approval by a Ratification Vote must be obtained for the following:

- a) any amendment to this *Land Code*; or
- b) any law or class of law that Council, by Resolution, declares to be subject to this section.

#### Individual Agreement with Canada

**15.2** For greater certainty, an amendment to, or renewal of, the Individual Agreement does not require community approval by a Ratification Vote.

#### Ratification Process

**15.3** Any Ratification Vote required under this *Land Code* **shall** be conducted in substantially the same manner as the *Swan Lake First Nation Community Ratification Process*, which was used to ratify this *Land Code*.

#### Exception

**15.4** For greater certainty, revisions made pursuant to section 47.1 do not require community approval by a Ratification Vote.

#### Verifier

**15.5** A verifier must be obtained for any Ratification Vote which changes the substance of this *Land Code*. For greater certainty, a Verifier is not required for revisions as set out in section 47.1 but may be required for purposes of section 15(1)(b) which determination will be at the discretion of Council.

#### Ratification Vote Quorum

**15.6** In order to obtain a quorum for a community approval by Ratification Vote under this *Land Code* at least twenty five (25%) of Eligible Voters must register.

#### Minimum Requirements for Approval

**15.7** A matter **shall** be considered approved at a Ratification Vote if a majority of the registered Eligible Voters cast a vote in favour of the matter, provided that at least 25% of the Eligible Voters have registered to vote in the Ratification Vote.

#### Proposed Land Matter Rejected by Majority Vote

**15.8** A matter **shall** be considered not approved at a Ratification Vote if a majority of the registered Eligible Voters cast a vote in opposition of the matter.

#### No Second Ratification Vote if Land Matter Rejected

**15.9** If the matter is rejected pursuant to section 15.8, the amendment to the *Land Code* **shall** not be executed, **shall** have no effect and **shall** not be submitted for a second Ratification Vote. The document may be re-submitted for a Ratification Vote under section 15.6 provided additional community consultation occurs.

#### Second Ratification Vote

**15.10** If a quorum was not obtained pursuant to section 15.6 a second Ratification Vote may be called.

#### Reduced Quorum for Second Ratification Vote

**15.11** In order to obtain a quorum for community approval for a second Ratification Vote under this *Land Code* at least ten percent (10%) of Eligible Voters must register.

#### Voting

**15.12** A matter **shall** be considered approved at a second Ratification Vote if a majority of the registered Eligible Voters cast a vote in favour of the matter.

#### No Third Ratification Vote

**15.13** If the required quorum pursuant to section 15.11 is not obtained, the amendment to the *Land Code* **shall** not be executed, **shall** have no effect and **shall** not be submitted for a third Ratification Vote. The document may be re-submitted for a Ratification Vote under section 15.6 provided additional community consultation occurs, community direction is obtained to re-draft and the document is re-drafted accordingly.

#### Other Laws

**15.14** For greater certainty, the Council may make laws respecting Ratification Votes not inconsistent with this *Land Code*.

## PART 4: PROTECTION OF LAND

### 16. Expropriation

#### Acquisition by Mutual Agreement

**16.1** The right of Swan Lake First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the interest or license in Swan Lake First Nation Land.

#### Rights and Interests That May be Expropriated

**16.2** An interest or license in Swan Lake First Nation Land, or in any building or other structure on those Lands, may only be expropriated by Swan Lake First Nation in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community expropriations.

#### Community Purposes

**16.3** A community expropriation **shall** only be made for a necessary community purpose or public works of Swan Lake First Nation, including but not limited to: a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, day-care facility, hospitals, health-care facility, and retirement home.

#### Expropriation Laws

**16.4** Before proceeding to make any community expropriations in accordance with this *Land Code*, the Council **shall** enact a Land Law respecting the rights and procedures for community expropriations, including provisions respecting:

- a) the taking of possession of the interest or license;
- b) transfer of the interest or license;
- c) notice of expropriation and service of the notice of expropriation;
- d) entitlement to compensation;
- e) determination of the amount of compensation; and
- f) the method of payment of compensation.

#### Member Notification

**16.5** In the case of an expropriation of a Member's interest or license in Swan Lake First Nation Land, the affected Member or Members must receive notification of the expropriation within a reasonable time prior to the release of the public report referred to in section 16.6.

#### Public Report

**16.6** Before Swan Lake First Nation decides to expropriate an interest or license, it **shall** make a public report on the reasons justifying the expropriation.

#### Compensation For Rights and Interests

**16.7** Swan Lake First Nation **shall**, 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 holders of the interest or license being expropriated.

#### Compensation Calculations

**16.8** Swan Lake First Nation **shall** calculate the total value of the compensation under this section based on the heads of compensation set out in the *Expropriation Act* (Canada).

#### Market Value

**16.9** The "market value" of an expropriated interest or license is equal to the amount that would have been paid for the interest or license if it had been sold by a willing seller to a willing buyer under no duress.

#### Neutral Evaluation to Resolve Disputes

**16.10** The resolution of disputes concerning the right of Swan Lake First Nation to expropriate **shall** be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the sixty (60) day period referred to in clause 32.6 of the *Framework Agreement shall* be applied, as appropriate in the circumstances, by the neutral evaluator.

#### Arbitration to Resolve Disputes

**16.11** The resolution of the following disputes **shall** be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*:

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



## 17. Heritage Sites

Community Input on Development

**17.1** No development *shall* be allowed on any site designated as a heritage site under the land use plan, unless the community is consulted on the development plan, provided however that no development *shall* be permitted on any site designated by Land Law as a permanently protected site.

Community Approval for Amendment to Land Use Plan

**17.2** No amendment may be made to a land use plan to delete a heritage site unless the amendment is approved by the community.

## 18. Voluntary Land Exchange

No Land Exchange

**18.1** No land exchange *shall* occur on Swan Lake First Nation.

## PART 5: CONFLICT OF INTEREST

### 19. Application

Application

**19.1** This section applies to the following persons with respect to a conflict of interest:

- a) a Council member who is dealing with any matter before Council pertaining to the management or administration of Swan Lake First Nation Land;
- b) a Land Committee member;
- c) each Swan Lake First Nation employee whose responsibilities are land related;
- d) a member of the Dispute Resolution Panel; or
- e) a member of a decision-making body dealing with Land related matters.

Parameters of Conflict

**19.2** A person mentioned in section 19.1 has a conflict of interest or an apparent conflict of interest:

- a) when that member is to decide on an issue where there is an opportunity to advance his or her private interest, or the private interest of an Immediate Family Relative; or
- b) when there is a reasonable perception, which a reasonably well-informed person could properly have, that the person's ability to decide on an issue may have been affected by his or her private interest, or the private interest of an Immediate Family Relative.

#### Conflict of Interest Prohibition

**19.3** For greater certainty, a person mentioned in section 19.1 **shall** not exercise his or her authority, or dispose of his or her responsibility provided for in this *Land Code*, if that member has a conflict of interest or an apparent conflict of interest.

#### Duty to Report and Abstain

**19.4** If there is any financial, familial or personal conflict of interest in the matter being dealt with, the person:

- a) **shall** disclose the interest to the Council, or the board, committee or other body as the case may be;
- b) **shall** not take part in any deliberations on that matter or vote on that matter; and
- c) **shall** remove themselves from the proceedings.

#### Common Interests

**19.5** Section 19.4 does not apply to an interest that is held by a Band Member in common with every other Band Member.

#### Record of Absence

**19.6** When a person withdraws from a matter pursuant to section 19.4, the minutes of the meeting **shall** record the disclosure, general nature of the conflict and withdrawal of the person from the meeting.

#### Inability to Act

**19.7** If the board, committee or other body is unable to act due to a conflict of interest, the matter **shall** be referred to the Council.

#### Meeting of Eligible Voters

**19.8** If the Council is unable to vote on a Land Law proposal or resolution due to a conflict of interest, the Council may refer the matter to a Community 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 Land Law or Land Resolution.

#### Specific Conflict Situations

**19.9** No Immediate Relatives and not more than two (2) Band Members from the same Extended Family **shall** be concurrent Band Members of an appointed board, committee or other body dealing with any matter that is related to Swan Lake First Nation Land.

#### Elected Body

**19.10** For greater certainty, the Council or any other elected board, committee or body is not included under the rule set out in 19.9.

#### Disputes

**19.11** Any person may file a complaint as to whether a person has been in breach of the conflict of interest provisions of this *Land Code* with the Panel.

Other Laws

**19.12** For greater certainty, the Council may enact laws to further implement this section.

## **20. Financial Management**

Application

**20.1** This section applies only to the financial matters relating to Swan Lake First Nation Land.

Adoption of Budget

**20.2** Prior to the beginning of each fiscal year the Council **shall**, by resolution, adopt a land management budget for the following fiscal year and may, if it is required, adopt supplementary budgets during that fiscal year.

Availability of Budget

**20.3** The Council **shall** ensure that the adopted land management budget or supplementary budget **shall** be presented at the next Annual Meeting and that a copy is available at the Swan Lake First Nation Administration Office for review by Band Members during office hours.

If No Budget

**20.4** If the Council is unable to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the land management budget and any supplementary budget of the previous fiscal year **shall** apply until a new budget is adopted.

Budget Policy

**20.5** The Council may develop and adopt policies and procedures with respect to the preparation and implementation of land management budgets.

Expenditures

**20.6** The Council **shall** not expend moneys or commit itself by contract or otherwise, to expend moneys related to Land and derived from Land transactions, unless such an expenditure is authorized by or under a Land Law, an approved budget or a resolution.

Financial Policy

**20.7** The Swan Lake First Nation may, in accordance with this *Land Code*, adopt a financial policy to further manage monies related to Swan Lake First Nation Land.

## **21. Audit**

Appointment of Auditor

**21.1** For each fiscal year, a duly accredited auditor **shall** be appointed to audit the Land related financial records of the Swan Lake First Nation. The duly accredited

appointed auditor may be the auditor who is appointed to audit other Swan Lake First Nation program accounts.

#### Access to Records

**21.2** In order to prepare a report on Swan Lake First Nation's financial statement, the auditor may at all reasonable times review the financial records, accounts, minutes, vouchers and receipts, or request such information from any person or body who administers moneys on behalf of Swan Lake First Nation's Lands Department.

#### Review of Audit

**21.3** Prior to an annual meeting, the auditor **shall** meet with the Council and Land Committee to review the audit report of the Lands Department.

## 22. Annual Land Report

#### Publish Annual Report

**22.1** The Council, on behalf of the Land Committee, **shall** publish the Annual Land Report within forty-five (45) days of receipt of the audit report. The Annual Land Report will include:

- a) an annual review of land management;
- b) a copy and explanation of the audit as it applies to Swan Lake First Nation Land; and
- c) any other matter as determined by the Council or Land Committee.

#### Presentation of Annual Land Report

**22.2** Council **shall** convene a Community Meeting of Members where the Land Committee and if by request, the auditor, **shall** present the Annual Audit Report and Annual Land Report to community members.

## 23. Access to Information

#### Access

**23.1** Any Band Member may, during normal business hours of the Land Office, have reasonable access to:

- a) the Swan Lake Land Register;
- b) a copy and explanation of the audit as it applies to Swan Lake First Nation Land;
- c) the most recent Annual Land Report
- d) the auditor's reports and annual land reports for each of the previous six years.
- e) any other matter considered, as determined by the Council or Land Committee.

Copies for Members

**23.2** Any Member may obtain a copy of the auditor's report of the Annual Land Report on payment of a reasonable fee set by a resolution of the Council.

Access to Records

**23.3** Any person who is not a Band Member, with the authorization of Council, may at any reasonable time inspect the financial records of Swan Lake First Nation related to Swan Lake First Nation Land.

## PART 6: LAND ADMINISTRATION

### 24. Lands Staff

Administration

**24.1** Council may delegate administrative authority to staff to carry out functions necessary for day to day administrative operations of Lands and natural resources.

### 25. Land Committee

Committee Established

**25.1** The Council **shall** establish by resolution a Land Committee which will be responsible for the following:

- a) assist with the development of the land administration system;
- b) advise Council and its staff on matters respecting Swan Lake First Nation Land;
- c) recommend Land Laws, resolutions, policies and practices respecting Swan Lake First Nation Land to the Council;
- d) hold regular and special Community Meetings of Members to discuss land issues and make recommendations to Council on the resolution of these land issues;
- e) to assist in the communication of land issues between Band Members and the Council;
- f) to oversee community approvals under this *Land Code*; and
- g) any other duties delegated by resolution or Land Law.

Number of Members

**25.2** The Land Committee **shall** be comprised of five (5) to seven (7) Band Members who are Eligible Voters. At least one such Band Member **shall** reside off the Swan Lake First Nation.

#### Internal Procedures

**25.3** The Land Committee may establish its own rules of procedure generally for the conduct of its affairs which are not to be inconsistent with the policies and procedures of the Council.

#### Development of Land Related Rules and Procedures

**25.4** Within a reasonable period of time after this *Land Code* takes effect, the Land Committee **shall**, in consultation with the community, ensure that Land Laws, rules and procedures, as may be appropriate, are developed to address the following matters:

- a) terms of reference for the procedure for meetings of the Land Committee, and generally for the conduct of its affairs, not inconsistent with those established by the Council;
- b) the process for determining the fees and rent for interests, rights and licenses in Community Lands, and the fees for services provided in relation to Swan Lake First Nation Land;
- c) the process for determining the fees and royalties for the taking of natural resources on Swan Lake First Nation Land;
- d) environmental protection and assessment in relation to Swan Lake First Nation Land;
- e) any outstanding disputes in relation to Swan Lake First Nation Land;
- f) land use planning and zoning;
- g) respecting spousal and real property policy and whether any changes should be made to the policy upon which that section is based; and
- h) and any other matter referred by Council.

## **26. Membership of the Land Committee**

#### Eligibility

**26.1** Any Eligible Voter, is eligible for appointment to the Land Committee upon the completion and submission of the “request for membership” application, except for the following persons:

- a) any person who has been declared by an appropriate court as a bankrupt or who is under the supervision of a Trustee;
- b) any person who has been convicted of an indictable offence during the past 5 years; or
- c) any person who has been convicted, or is pending a trial or disposition, of corrupt practice including the acceptance of a bribe, dishonesty or wrongful conduct.

## Term of Office

**26.2** The term of office for a Land Committee member **shall** be two (2) years, commencing from the date of appointment by the Council.

## Vacancy

**26.3** The office of a Land Committee member becomes vacant if, while holding office, the member:

- a) resigns;
- b) becomes ineligible to hold office pursuant to section 26.1;
- c) ceases to be a Band Member of the Swan Lake First Nation;
- d) fails to disclose a conflict of interest pursuant to section 19;
- e) is absent for 3 consecutive meetings of the Committee without a due acknowledgement to the Land Committee members; or
- f) fails to fulfill his or her obligations and responsibilities required as a Land Committee member, upon the determination of the Council.

## Vacancy in Term

**26.4** Where an office becomes vacant for more than ninety (90) days before the date when another appointment would ordinarily be held, a special appointment may be made in accordance with this *Land Code* to fill the vacancy for the balance of the term in respect of which the vacancy occurred.

## 27. Chairperson of the Land Committee

## Chairperson

**27.1** The Chairperson of the Land Committee will be determined at the beginning of each new term of the Land Committee by vote of the members of the Land Committee. The Chairperson will only exercise a vote in the event that a consensus cannot be reached by the Land Committee.

## Alternate Chairperson

**27.2** If the Chairperson is unable to perform the functions of office, either temporarily or on a long term basis, the Land Committee **shall** appoint one of the other Land Committee members to act as or be the Chairperson.

## Functions

**27.3** The functions of the Chairperson may include:

- a) chairing meetings of the Land Committee
- b) presenting the information to the members at a meetings of members under Part 3 of this *Land Code*;
- c) providing quarterly written reports to Council on the activities of the Land Committee; and

- d) performing such other duties as may from time to time be assigned by resolution of the Land Committee or Council.

## 28. Registration of Interests and Licences

### Enforcement

**28.1** An interest in or a licence to use Swan Lake First Nation Land created or granted after this *Land Code* comes into effect, is not enforceable unless it is registered in the First Nation Lands Register.

### Certificate of Consent or Approval

**28.2** An instrument granting an interest in or a licence to use Swan Lake First Nation Land that requires the consent of Council or by community approval, is void unless the original or a certified true copy of the document evidences that the applicable approval has been obtained which **shall** be attached to the instrument.

### Duty to Deposit

**28.3** The Council **shall** ensure that an original copy of the following instruments are deposited in the First Nation Lands Register, as established by Canada, in accordance with section 51.1 of the *Framework Agreement*:

- a) any grant of an interest in or a license to use Swan Lake First Nation Land; and
- b) any transfer or assignment of an interest in Swan Lake First Nation Land.

### Forms and Procedures

**28.4** The Land Committee may prescribe forms and procedures to create evidence of applicable approvals referred to in this section.

### Instrument Void

**28.5** An instrument registered in the First Nation Lands Register which does not include the original or certified true copy referred to in section 28.2 is void.

### Instrument Void

**28.6** If there is a discrepancy between an instrument registered in the First Nation Lands Register and the Swan Lake Land Register, the registration in the Swan Lake Land Register **shall** prevail to the extent of the discrepancy.

### Duty to Deposit

**28.7** The Land Committee **shall** ensure that an original copy of the following instruments is deposited in the First Nation Lands Register:

- a) any grant of an interest in or a licence to use Swan Lake First Nation Land;
- b) any transfer or assignment of an interest in or a licence to use;
- c) every land use plan, subdivision plan or resource use plan; and



d) this *Land Code* and any amendment to this *Land Code*.

## 29. Swan Lake Land Register

Swan Lake Land Register

**29.1** The Council *shall* establish and maintain the Swan Lake Land Register and make laws with respect to the land register and the effect of registering documents in the register.

Duty to Deposit

**29.2** Every person who receives an interest in or a license to use Swan Lake First Nation Land *shall* deposit an original copy of the relevant instrument in the Swan Lake Land Register.

Priority

**29.3** In the event of an inconsistency or a conflict between the Swan Lake Land Register and the First Nation Lands Register, the Swan Lake First Nation Land Register prevails to the extent of the inconsistency or conflict.

## PART 7: INTERESTS IN AND LICENCES TO USE

### 30. Formalities of Grants, Transfers and other Transactions

Dispositions In Writing

**30.1** An interest in or a license to use Swan Lake First Nation Land may only be created, granted, disposed of, assigned, transferred by an instrument in writing in accordance with this *Land Code* and any relevant Land Law.

Standards

**30.2** The Council may establish mandatory standards, criteria and forms for transactions relating to interests in and licenses to use Swan Lake First Nation Land.

Non-Conforming Transactions Void

**30.3** A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Swan Lake First Nation, any Band Member or any non-Band Member purports to grant, dispose of, transfer, or assign an interest in or a licence to use Swan Lake First Nation Land after this *Land Code* comes into affect is void if it contravenes this *Land Code*.

### 31. Existing Interests and Licences

Continuation of Existing Interests and Licences

**31.1** Any interest in or a license to use Swan Lake First Nation Land that existed when this *Land Code* comes into effect *shall*, subject to this *Land Code*, continue in force in accordance with its terms and conditions.

#### Unregistered Interests

**31.2** A policy **shall** be established as soon as practical after the coming into force of the *Land Code* to accommodate unregistered land interests.

### **32. New Interests and Licences**

#### Authority to make dispositions

**32.1** Subject to section 12.1, the Council may, on behalf of the Swan Lake First Nation, grant:

- a) interests in and licenses to use Swan Lake First Nation Land including leases, permits, easements and rights-of-way; and
- b) permits to take natural resources from Swan Lake First Nation Land, including cutting timber, or removing minerals, stone, gravel, clay, soil, or other substances.

#### Conditional grant

**32.2** The grant of an interest in or a license to use Swan Lake First Nation Land may be made subject to the satisfaction of written terms and conditions.

### **33. Interests of Non-Band Members**

#### Non-Members

**33.1** A person who is not a Member of Swan Lake First Nation may not hold any interest in Swan Lake First Nation Land except a lease, license to use, or a permit.

#### Grants to Non-Members

**33.2** A transfer or other disposition of all or any part of a lease, a license to use or a permit in Swan Lake First Nation Land to a person who is not a Band Member **shall** not be effective unless and until it is confirmed by a resolution of Council.

### **34. Allocation of Land**

#### Policies and Procedures for Allocation of Lots

**34.1** Subject to the provisions of this *Land Code*, Council in consultation with the Land Committee may establish policies and procedures for the allocation of lots to members.

#### No Allocation of Lots to Non-Band Members

**34.2** A person who is not a Band Member is not entitled to be allocated a lot or to hold a permanent interest in Swan Lake First Nation Land.

### **35. Transfer and Assignments of Interests**

#### Consent of Council and Exceptions

**35.1** No interest in Swan Lake First Nation Land may be transferred or assigned

without the consent in writing of Council, except:

- a) a transfer or assignment of an interest from one Member to another in accordance with this *Land Code*;
- b) a transfer that occurs by operation of law, including transfer of estate by testamentary disposition;
- c) a transfer pursuant to the interim Spousal Property Rules in section 38 of this *Land Code*, or pursuant to a Spousal Property Law enacted by Swan Lake First Nation as provided in this *Land Code*; and
- d) every grant of an interest in or a license to use Swan Lake First Nation Land, other than those stated herein to be an exception, **shall** be deemed to include such consent as a condition of subsequent transfers or assignments.

### **36. Limits on Mortgages and Seizures**

Indian Act Protection

**36.1** In accordance with the *Framework Agreement*, section 29, section 87 and sub sections 89 (1) and (2) of the *Indian Act* continue to apply to Swan Lake First Nation Land.

Mortgage of an Interest

**36.2** The interest of a Member in Swan Lake First Nation Land may be subject to a mortgage or charge to Council or to a Band Member, where authorized by a resolution of Council.

Mortgage of Leasehold Interest with Consent

**36.3** A leasehold interest may be subject to charge or mortgage, but only where authorized by a resolution of Council with the advice of the Land Committee.

Time Limit

**36.4** The term of any charge or mortgage of a leasehold interest **shall** not exceed the lesser of:

- a) the term of the lease; or
- b) forty five (45) years, or such longer period as may receive community approval.

Default in Mortgage

**36.5** 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 the Council;
- b) the charge or mortgage received community approval where required;

- c) the charge or mortgage was registered in the Swan Lake First Nation Land Register and the First Nation Land Register; and
- d) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of Swan Lake First Nation.

#### Power of Redemption

**36.6** Subject to prior redemption by the lessee, Council on behalf of Swan Lake First Nation may redeem the charge or mortgage from the chargee or mortgagee in possession and *shall* thereupon acquire all the rights and interests of the chargee or mortgagee and of the lessee.

### **37. Residency and Access Rights**

#### Right of Residency

**37.1** Subject to sections 37.3, the following persons have a right to reside on Swan Lake First Nation Land:

- a) Members, who have been allocated a residential lot by Council, and their spouses and children;
- b) Members with a registered interest in Swan Lake First Nation Land;
- c) any invitee of a Member referred to in clause a) or b);
- d) lessees and permittees, in accordance with the provisions of the instrument granting the lease or permit; and
- e) a person authorized in writing by the Council, the Land Committee or by a Swan Lake First Nation law.

#### Right of Access

**37.2** The following persons have a right of access to Swan Lake First Nations Land:

- a) a lessee and his or her invitees to a leasehold;
- b) permittees and those granted a right of access under a permit, to the lands subject to the permit;
- c) Members, their spouses and their minor or dependent children for residential, educational, social and employment or business purposes;
- d) a Member's invited guests;
- e) a person who authorized by a government body or any other public body, established by or under an enactment of Swan Lake First Nation, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- f) a person authorized in writing by the Council or the Land Committee or by a Swan Lake First Nation law.

#### Public Access

**37.3** Any person who is not a Member may have access to Swan Lake First Nation Land for any social or business purposes, if:

- a) the person does not trespass on occupied land and does not interfere with any interest in Land;
- b) the person complies with all applicable laws including any restrictions contained in written authorization from Council; or
- c) no resolution has been enacted barring that person.

#### Use of Roads

**37.4** Any person having a right of access to Swan Lake First Nation Land may have the right to access such Land over First Nation roads, subject to this *Land Code* and First Nation laws.

#### Trespass

**37.5** Any person who resides on, enters or remains on Swan Lake First Nation Land other than in accordance with a residence or access right under this *Land Code* is guilty of an offence.

#### Civil Remedies

**37.6** All civil remedies for trespass are preserved.

## **38. Spousal Property Law**

#### Enactment of Rules and Procedures

**38.1** The Council ***shall*** enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage and spousal relationships concerning:

- a) the use and occupation of Swan Lake First Nation Land; and
- b) the division of real property improvements.

#### Development of Rules and Procedures

**38.2** The rules and procedures contained in the spousal property law ***shall*** be developed by the Land Committee in consultation with the community.

#### Enactment Deadline

**38.3** The spousal property law ***shall*** be drafted and enacted 12 months from the date this *Land Code* takes effect.

#### General Principles

**38.4** For greater certainty, the rules and procedures developed by the Land Committee under this section must respect the following general principles:

- a) each spouse should have an equal right to use and occupation of their spousal home;

- b) each spouse should be entitled to an undivided half interest in their spousal home, as a tenant in common;
- c) the rules and procedures **shall** not discriminate on the basis of gender; and
- d) only Members are entitled to hold a permanent interest in Swan Lake First Nation Land or a charge against a permanent interest in Swan Lake First Nation Land.

#### Interim Spousal Property Rules

**38.5** In order that Members benefit immediately from the legislative authority of the Council to address the issue of spousal property:

- a) Council may enact Interim Spousal Property Rules to govern the rights of spouses in relation to Swan Lake First Nation Land in event of a breakdown of marriage or spousal relationships.
- b) the Interim Spousal Property Rules **shall** be consistent with the principles provided in this *Land Code* to govern the development of a Spousal Property Law.
- c) Interim Spousal Property Rules enacted by Council **shall** come into force as a Land Law pursuant to this *Land Code* immediately upon enactment by Council, or on the later effective date provided therein, and **shall** remain in force for not more than 12 months or such shorter period of effect as may be stated therein, unless re-enacted, amended or replaced by new Interim Spousal Property Rules, in each case to remain in force for not more than 12 months.
- d) Council's authority to enact Interim Spousal Property Rules **shall** be independent of the state of completion of the work of the Land Committee and the community consultation process relating to the development of a Spousal Property Law.

## PART 8: DISPUTE RESOLUTION

### 39. Purpose

#### Intent

**39.1** The intent of this Part is to ensure that all persons entitled to reside upon, use or otherwise occupy Swan Lake First Nation Land do so harmoniously with due respect to the rights of others and of Swan Lake First Nation and with access to Swan Lake First Nation procedures to resolve disputes.

#### Purpose

**39.2** The purpose of these rules is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matters in dispute, taking into account the values which distinguish dispute resolution from litigation.

## Dispute Prevention

**39.3** The parties **shall** use best efforts to prevent disputes from arising and **shall** consider the use of dispute resolution processes at the earliest possible stage of any conflict.

## Disputes Prior to the Land Code

**39.4** Disputes that arose before the *Land Code* takes effect could also be referred to this Part.

## Settle a Dispute

**39.5** Nothing in this Part **shall** be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

## Settlement Agreement

**39.6** Any settlement reached through dispute resolution **shall** not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

## 40. Roster Panel Established

## Appointment to Roster Panel

**40.1** The Roster Panel **shall** be composed of a maximum of twenty (20) Panelists.

## Ineligible

**40.2** Notwithstanding section 19, in order to avoid conflict of interest, no Council member, or employee of Swan Lake First Nation or person already serving on another board, body, or committee related to Swan Lake First Nation Land **shall** sit on the Roster Panel.

## Representation

**40.3** Council **shall** appoint the Roster Panelists, and **shall** ensure that, where possible, the Roster Panelists represent the various elements of the community.

## Term of Office

**40.4** The Roster Panelists hold office for a term of three (3) years, at which time the term of office may be renewed.

## No Remuneration

**40.5** Unless Council by resolution or law provides otherwise, the Panelists are to act on a volunteer basis and receive no remuneration for their services.

## Rules of Roster Panel

**40.6** The Roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

## 41. Impartiality of the Dispute Resolution Panel

### Duty to Act Impartially

**41.1** The Panel **shall** act impartially and without bias or favour to any party in a dispute.

### Offence

**41.2** 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

**41.3** In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

### Rules of Conduct for Parties to a Dispute

**41.4** The Roster Panel **shall** establish rules of conduct for the parties to a dispute.

## 42. Procedure to File a Dispute

### Procedure to File a Dispute

**42.1** A person who wishes to resolve a dispute with another person or Swan Lake First Nation in relation to the use or occupation of Swan Lake First Nation Land may file a written notice of dispute with the Lands Department setting out:

- a) the nature of the dispute;
- b) a statement outlining the facts and supporting arguments of the dispute claim; and
- c) the relief that is sought.

### Dispute Resolution Not Available

**42.2** Dispute resolution is not available under this Part for disputes in relation to:

- a) the administration or distribution of an estate;
- b) decisions relating to housing allocations;
- c) decisions of Council to grant or refuse to grant an interest in or a license to use Swan Lake First Nation Land to a non-Member;
- d) decisions on expropriation under section 16 of this *Land Code*;
- e) prosecution or conviction of an offence under a Land Law or under criminal law; and
- f) challenges to the validity of any Land Law.



#### Duty of Fairness

**42.3** All persons involved in a dispute under this Part **shall** be:

- a) treated fairly;
- b) given a full opportunity to present their case; and
- c) given reasons for a decision made under this Part.

#### Rules and Procedures

**42.4** Council may prescribe such laws, resolutions, rules, policies, procedures, guidelines, forms and reasonable fees not inconsistent with this *Land Code*, as may be necessary to give effect to this Part including but not limited to:

- a) mandatory application of the dispute resolution process;
- b) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- c) code of conduct for facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- d) disclosure and confidentiality;
- e) limitation period;
- f) implementing recommendations of the Dispute Resolution Panel made under section 44.2; and
- g) any other matter necessary to give effect to this Part.

#### Waiver of Liability

**42.5** By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists **shall** not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

#### Mandatory Application

**42.6** Council may establish a Land Law that sets out the mandatory application of this Part of the Swan Lake First Nation Land Code in certain circumstances.

#### Civil Remedies

**42.7** Notwithstanding section 42.6, nothing in this Part **shall** be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

#### Challenge to Validity of Law

**42.8** For greater certainty, nothing in this Part **shall** be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

### 43. Arbitration by the Dispute Resolution Panel

#### Disputes

**43.1** Any matter or dispute related to Swan Lake First Nation Land shall be submitted to the Lands Department but that such matter or dispute shall then be referred to the Roster Panel for resolution.

#### Panel of Three Chosen From Roster Panel

**43.2** Disputes referred to the Roster Panel are to be heard by three (3) Panelists chosen as follows:

- a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute;
- b) one (1) panelist, who is to be the chairperson, **shall** be chosen by the rest of the Panel; and
- c) in the case of situations not adequately covered by section (a) or (b), all three (3) panelists **shall** to be chosen by the Roster Panel as a whole.

#### Panel Established

**43.3** The Panel is hereby established with jurisdiction to resolve disputes in relation to Swan Lake First Nation Land. For greater certainty, disputes outlined in section 42.2 **shall** not be heard by the Panel.

### 44. Powers of the Dispute Resolution Panel

#### Power of the Panel

**44.1** 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;
- d) refer the matter or dispute back for a new decision; or
- e) make an order to give affect to its decision, including any necessary order for the survey of an interest in Swan Lake First Nation Land, the registration of an interest in Swan Lake First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

#### Recommendations by Panel

**44.2** In addition to making a determination under section 44.1, the Panel may:

- a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this *Land Code*; or

- b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

#### Interim Decisions

**44.3** The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an interest in Swan Lake First Nation Land.

#### Professional Services

**44.4** The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it **shall** make best efforts to use professional services available in the community.

#### Written Decisions

**44.5** Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so. Where requested, the written decision shall be provided to a party to the proceeding within fourteen (14) days after the date of the decision.

#### Appeal of Decision

**44.6** A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the appropriate court of competent jurisdiction.

## PART 9: OTHER MATTERS

### 45. Liability

#### Liability Coverage

**45.1** The Council **shall** arrange, maintain and pay for insurance coverage for its officers and employees engaged in carrying out any matter related to Swan Lake First Nation Land to indemnify them against personal liability arising from the performance of those duties.

#### Extent of Coverage

**45.2** The extent of the insurance coverage **shall** be determined by the Council.

### 46. Offences

#### Application of the Criminal Code

**46.1** Unless some other procedure is provided for by a law, the summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under this *Land Code* or under a law.

## 47. Revisions to Land Code

### Revisions

**47.1** A Ratification Vote is not required for revisions made to this *Land Code* that do not change the substance of this *Land Code*. The Council **shall**, from time to time, arrange and revise this *Land Code*. Revisions may be made as a result of, but are not limited to:

- a) an addition of land under section 5.1, pursuant to the addition of other lands in the Individual Agreement as amended from time to time;
- b) a reference in this *Land Code* to a clause in another act or document that was amended and resulted in clause renumbering;
- c) a reference in this *Land Code* to an Act or parts thereof that have expired, have been repealed or suspended;
- d) minor improvements in the language as may be required to bring out more clearly the intention of Swan Lake First Nation without changing the substance of the *Land Code*;
- e) changes in this *Land Code* as are required to reconcile seeming inconsistencies with other acts; and
- f) correct editing, grammatical or typographical errors.

## 48. Commencement

### Preconditions

**48.1** This *Land Code shall* not take effect unless the community approves this *Land Code* and the Individual Agreement with Canada and this *Land Code* has been certified by the verifier pursuant to the *Framework Agreement*.

### Commencement

**48.2** Subject to section 48.1, this *Land Code shall* take effect on the first day of the month following the certification of this *Land Code* by the verifier.