



**KETTLE AND STONY POINT
FIRST NATION**

LAND CODE

OCTOBER 20, 2008

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PREAMBLE

Whereas the Kettle and Stony Point First Nation has a profound relationship with the land;

Whereas the Kettle and Stony Point First Nation has entered into the *Framework Agreement on First Nation Land Management* with Canada on March 31, 2003, as amended, and which was ratified on behalf of the government of Canada by the First Nations Land Management Act;

Whereas the Kettle and Stony Point First Nation wishes to manage its lands and resources, rather than having its lands and resources managed on its behalf under the *Indian Act*;

Whereas the Kettle and Stony Point First Nation recognizes that this community Land Code does not affect treaty or Aboriginal rights, or traditional lands;

And, whereas the Kettle and Stony Point First Nation reaffirms their statement of claim that the Chippewa Nation has never ceded their interest in the bed and water of the southern portion of Lake Huron in Ontario;

Now therefore, this Land Code is hereby enacted as the fundamental land law of the Kettle and Stony Point First Nation

PART 1 PRELIMINARY MATTERS

1. Title

Title of enactment

1. The title of this enactment is the Kettle and Stony Point First Nation Land Code.

Vision and foundation

2. The principles set out in this Part and in the Preamble provide a vision and foundation to guide the social, economic, political and community development of the Kettle and Stony Point First Nation.

2. Interpretation

Definitions

1. The following definitions apply in this Land Code:

"Additions To Reserve Policy" or "ATR Policy" means a Federal government policy for the purpose of granting reserve status to non-reserve lands either, to rectify a legal obligation, for community growth or for creation of a new reserve;

"Canada" means Her Majesty in right of Canada;

"Certificate of Possession" or "CP" means a certificate that is issued which demonstrates that a Member is lawfully in possession of land on the Kettle and Stony Point First Nation;

"Chief" means the lawfully elected Chief of the Kettle and Stony Point First Nation or any successor elected Chief of the Kettle and Stony Point First Nation;

"Civil Remedies" means orders given by a court of law to deal with disputes;

"Common-Law Partner" means the relationship between two (2) persons who are not legally married and are cohabitating together in a conjugal relationship for a continuous twelve (12) month period, and "Common-Law Relationship" shall have a corresponding meaning;

"Community Land" means any First Nation land in which all members have a common interest, and which is not subject to a certificate of possession.

"Council" means the Chief and Council of the Kettle and Stony Point First Nation or any successor elected government of the Kettle and Stony Point First Nation;

"Dispute Resolution Panel" or "Panel" means the body that is established under part 8 for the purpose of resolving disputes;

"Duplicate Lands Register" means the duplicate register maintained by the First Nation under section 28;

"Eligible Voter" means, for the purpose of voting in respect of land matters under this Land Code, a member who has attained the age of eighteen (18) years of age on the day of the vote;

"Expropriation" means the taking over of property by a government, often without fair compensation but usually with a legal assertion that the government has a right to do so;

"Extended Family", in respect of a person, means the person's grandparent, parent, uncle, aunt, cousin, sister, brother, child, grandchild or spouse;

"Fair Market Value" means the agreed upon price between a proposed buyer and seller, provided each have reasonable knowledge respecting the Reserve property in question (along with the surrounding area and the nature of First Nation land ownership in general), and provided preceding negotiations are absent duress, compulsion and threats;

"Fee Simple" means private ownership of real estate in which the owner has the right to control, use, and transfer the property at will;

"Financial Management Bylaw" or "FMB" governs the financial administration of the First Nation.

"Financial Policy and Procedure Manual" is the document that specifies the financial administrative policies and procedures of the First Nation.

"First Nation" means a Band within the meaning of the *Indian Act*, namely the Kettle and Stony Point First Nation;

"First Nation Council Remedies" means penalties and/or fees identified in existing bylaws or policies;

"First Nation Land" means any portion of Kettle and Stony Point First Nation lands that are subject to this land code pursuant to section 5, including all associated rights and all renewable and non-renewable natural resources whether on, above or below Kettle and Stony Point First Nation lands, and also including the water and beds underlying the water;

"First Nations Land Register" means the register maintained by the Department of Indian Affairs and Northern Development under the *Framework Agreement*;

"Framework Agreement" means the Framework Agreement on First Nation Land Management entered into between the Minister of Indian Affairs and Northern Development and the chiefs of fourteen (14) First Nations, including the Kettle and Stony Point First Nation, on March 31, 2003, as amended;

"Full Environmental Assessment" means the inclusion of a Phase One, Two and Three (Remediation) assessment. Phases Two and Three of an Environmental Assessment are dependent on the findings in Phase One, and may not be necessary.

"Heritage Site" means a site set aside for the preservation of historical and/or cultural identity;

"Immediate Relatives", in respect of a person, means the person's parent, sister, brother, child or spouse;

"Lands Committee" means the Lands Committee established under this Land Code;

"Land Use Plan" means a plan detailing the different types of usages (ie. zoning, environmentally sensitive areas) of all community land within the First Nation territory;

"Law" means a law enacted pursuant to this Land Code;

"Matrimonial" or "Marriage" means the union of two (2) persons and includes marriages that are solemnized by a traditional customary, religious or civil ceremony, and/or a common-law relationship, and "Married" shall have a corresponding meaning;

"Matrimonial Home" means the property that was ordinarily occupied by the parties as their family residence;

"Matrimonial Property" means any interest in real and personal property owned by a party and used for a family purpose, which may include, but are not limited to, monetary resources, vehicles, livestock, and household assets;

"Matrimonial Real Property" means together, the Matrimonial Home and Matrimonial Property;

"Meeting of Members" means a meeting under part 3 to which the members are invited to attend;

"Member" means a person whose name appears on, or is entitled to appear on the First Nation Membership List in accordance with the Kettle and Stony Point First Nation Membership Code;

"Membership List" means a list of members of the Kettle and Stony Point First Nation where the First Nation determines its own membership in accordance with the Kettle and Stony Point First Nation Membership Code;

"Panel" or "Dispute Resolution Panel" means the body that is established under part 8 for the purpose of resolving disputes;

"Personal Information Protection and Electronic Documents Act" or "PIPEDA" means a law that has been established by Canada for the purpose of personal information and privacy protection.

"Ratification Vote" means a vote of eligible voters under section 13.

"Resolution" means a resolution of the Council enacted under this Land Code.

"Significant Site" means a site set aside for protection that has been identified as sacred that is of an environmental and/or sensitive nature.

"Spouse" means a person who is married to another, whether by a traditional customary, religious or civil ceremony, and/or includes a Common-Law Partner

"Transfer Agreement" means the Individual Transfer Agreement made between the Kettle and Stony Point First Nation and Her Majesty in right of Canada, dated _____.

"Verifier" means an independent third party that is selected to oversee and ensure adherence to policies and procedures through the amendment of the Land Code.

Paramountcy

2. If there is an inconsistency between this Land Code and any other enactment of the First Nation, this Land Code prevails to the extent of the inconsistency.

Culture and traditions

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

Language

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

Non-abrogation

5. This Land Code does not abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the First Nation or its members.

Fair interpretation

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

Fiduciary relationship

7. This Land Code does not abrogate the fiduciary relationship between Her Majesty and the First Nation and its members.

Lands and interests affected

8. A reference to "land" in this Land Code means all rights and resources that belong to the land, and includes
 - (a) the water, beds underlying water, riparian rights, and renewable and non-renewable natural resources belonging to that land, to the extent that these are under the jurisdiction of Canada; and
 - (b) all the interests and licences granted to the First Nation by Her Majesty in right of Canada listed in the Transfer Agreement.

3. Authority to Govern

Origin of authority

1. The cultural teachings of the First Nation speak of the obligation of the people of the First Nation to care for and respect the land and the magnificent wonders of nature created on the land. By enacting this Land Code, the First Nation is re-assuming this special responsibility.

Flow of authority

2. The authority of the First Nation to govern its lands and resources flows from the people of the First Nation to the Chief and Council.

4. Purpose

Purpose

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

Ratification

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

5. Description of Kettle and Stony Point First Nation land

First Nation land

1. The First Nation land that is subject to this Land Code is the Indian Reserve known as Reserve #44.

(a short description from the legal survey is to be inserted here)

Additional lands

2. Additional lands or interests acquired by the First Nation after this Land Code takes effect, whether by land claim, purchase or other process that are transferred to reserve lands via the Additions to Reserve (ATR) policy, may be made subject to this Land Code after an environmental audit certifies that it is free of environmental hazard and safe for community use.

Inclusion of land or interest

3. When the relevant conditions in sections 5.2 are met, the Council shall call a meeting of members under Section 11 and after receiving their input, may by enacting a law declare the land or interest to be subject to this Land Code.

**PART 2
FIRST NATION LEGISLATION**

6. Law-Making Powers

Council may make laws

1. The Council may, in accordance with this Land Code and provided there is compliance with the First Nation's Constitution, make laws respecting the development, conservation, protection, management and administration, use and possession of First Nation lands, and interests and licences in relation to those lands. This power includes the power to make laws in relation to any matter necessary or ancillary to the making of laws in relation to First Nation land.

Examples of laws

2. The following non-exhaustive list, are illustrative of the laws that may be enacted regarding:
 - (a) regulation, control and prohibition of zoning, land use, subdivision control and land development;
 - (b) creation, regulation and prohibition of interests and licences in relation to First Nation land;
 - (c) environmental assessment and protection;
 - (d) provision of local services in relation to First Nation land and the imposition of equitable user charges;
 - (e) provision of services for the resolution, outside the courts, of disputes in relation to First Nation land;
 - (f) emergencies and protection; and
 - (g) laws that the Council deem necessary to maintain order and good governance within the First Nation relating to its lands.

Community participation

3.
 - (a) Any land use plan will be developed by the community and must receive the input of the eligible voters at a community meeting of members in accordance with section 11.1(a).
 - (b) The Council will establish a committee of community members to consult with the membership on the development of the land use plan for community land. The land use plan will be ratified by receiving the consent of eligible voters in accordance with section 13.

7. Law-Making Procedure

Introduction of laws

1. A proposed law may be introduced at a duly convened meeting of the Council by
 - (a) the Chief or a Councillor;
 - (b) the representative of any body or authority that may be authorized by Council to do so;
or
 - (c) any eligible voter following protocol for addressing Council, who is submitting an application signed by at least 40 eligible voting members.

Tabling and posting of proposed laws

2. Before a proposed law may be enacted by the Council,
 - (a) it must first be tabled at a meeting of the Council held at least sixty (60) days before the law is to be enacted;
 - (b) it must first be posted in public places on First Nation land and distributed to eligible voters, at least sixty (60) days before the law is to be enacted; and
 - (c) within a timeframe set by Council that reasonably reflects the complexity of the proposed law, the Lands Committee (Board) shall prepare a report to Council on the proposed law, which sets out:
 - (i) the history behind the proposed law;
 - (ii) any potential interaction between the proposed law and any existing law of the First Nation;
 - (iii) any potential interaction between the proposed law and any other Land Law that is not yet enacted but it is in the process of research or development;
 - (iv) the problem, if any, that the proposed law is designed to remedy;
 - (v) the Land Committee's recommendations to Council as to the necessity, scope, substance and form of the proposed law; and
 - (vi) any other information requested by Council.

Emergency matters

3. The Council may enact a law without the preliminary steps required under section 7.2, if the Council is of the opinion that emergency measures are needed to protect First Nation land or the health and safety of its members. This law expires 28 days after its enactment, unless re-enacted in accordance with section 7.2.

Approval of law by Council

4. In accordance with section 7.2, a law is enacted if it is approved by a majority of the Council at a meeting of the Council open to the members.

Certification of laws

5. The original copy of any law or resolution concerning First Nation land shall be signed by a quorum of the Council present at the meeting at which it was enacted.

8. Publication of Laws

Publication

1. All laws shall be published in the minutes of the Council.

Posting laws

2. Within 7 days after a law has been enacted, the Council shall
 - (a) post a copy of the law in the administrative offices¹ of the First Nation, and
 - (b) notify members by means which are deemed to be appropriate by the Lands Committee as approved by Council.

Registry of laws

3. The Council shall cause to be kept, at the administrative offices of the First Nation, a register of the original copy of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force.

Copies for any person

4. Any person may obtain a copy of a law or resolution on payment of a reasonable fee set by the Council, or a body designated by Council.

¹ Copies would be posted at all the administrative offices of the Kettle and Stony Point First Nation.

9. Commencement of Laws

Laws taking Effect

1. A law enacted by the Council takes effect on the date of its enactment or such later date as specified by or under the law.

**PART 3
COMMUNITY INPUT AND APPROVALS**

10. Rights of Eligible Voters

Eligibility to vote

1. Each member who is at least 18 years of age is eligible to vote at a ratification vote.

11. Community Input

Prior meeting of members

1. The Council shall make all reasonable efforts to convene a meeting of members to receive their input prior to
 - (a) holding a ratification vote on items listed in section 13.1;
 - (b) land acquisitions, provided it is feasible to do so and not contrary to the First Nation's business interests;
 - (c) any grant or disposition of an interest or licence in community land exceeding a term of forty (40) years;
 - (d) any renewal of a grant or disposition of an interest or licence in community land that extends the original term beyond forty (40) years;
 - (e) a charge or mortgage of a leasehold interest involving community land; and
 - (f) the introduction of the following laws:
 - (i) a law respecting a community plan, subdivision plan, or general land use plan;
 - (ii) a law declaring land or an interest referred to in section 5.2 to be subject to this Land Code;
 - (iii) a law affecting a heritage site or an environmentally sensitive property;
 - (iv) a law respecting environmental assessment;

- (v) a law respecting the transfer and assignment of interests in community land ²;
- (vi) a law respecting the rate and criteria for the payment of fees or rent for community land; and
- (vii) any other law or class of law that Council, by resolution, declares to be subject to this section.

Process to implement laws

2. Subject to section 38, the Lands Committee shall, within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the laws referred to in section 11.1.

12. Procedure for a Meeting of Members

Notice of meeting

1. The Council shall give written notice of the meeting of members that
 - (a) specifies the date, time and place of the meeting; and
 - (b) contains a brief description of the matters to be discussed at the meeting.

Manner of notice

2. The notice of a meeting of members must be given to the members by
 - (a) posting the notice in a public place on First Nation land at least seven (7) days before the meeting;
 - (b) mailing the notice to members;
 - (c) publishing the notice in a community newsletter before the meeting if possible; and
 - (d) such additional method as the Council may consider appropriate in the circumstances.

Who may attend

3. All members and their immediate relatives have a right to attend a meeting of members, and other persons may attend with the permission of the Council.

² Section 40, on spousal separation, contains a special provision for community participation in the making of rules and procedures on how to deal with interests in First Nation land if there is a marriage breakdown.

Other meetings

4. The Council may schedule more than one meeting of members to discuss matters that require a meeting of members.

13. Ratification Votes

Community approval by ratification vote

1. Community approval by a ratification vote must be obtained for the following:
 - (a) any development on a heritage or significant site referred to in section 15, in relation to community land;
 - (b) any voluntary exchange of community land, should the proposed exchange exceed twenty-five (25) acres;
 - (c) any amendment to this Land Code;
 - (d) any grant or disposition of any natural resources on community land exceeding a term of five (5) years;
 - (e) any law on spousal separation that may be enacted under section 38; and
 - (f) any law or class of law in relation to community land that Council, by resolution, declares to be subject to this section.

Transfer Agreement amendment or renewal

2. An amendment to, or renewal of, the Transfer Agreement does not require community approval by a ratification vote, unless the amendment or renewal reduces the amount of funding provided by Canada.

Ratification Process

3. Any ratification vote required under this Land Code shall be conducted in substantially the same manner as the First Nation Community Ratification Process, which was used to ratify this Land Code.

Ratification Officer

4. A ratification officer will be appointed to oversee the ratification vote to ensure that procedures, as outlined in the Community Ratification Process, are adhered to.

Verifier not needed

5. A verifier is not needed in any community ratification vote.

Minimum requirements for approval

6. A matter shall be considered approved at a ratification vote if a majority of the eligible voters cast a vote in favour of the matter.

PART 4 PROTECTION OF LAND

14. Acquisition by Mutual Agreement

No expropriation

1. There shall be no expropriation of any interest or licence in First Nation land by any person, entity or government.

First Nation acquisition

2. The First Nation may acquire an interest or licence in First Nation land for community purposes subject to section 14.5.

Reservation of right

3. In rare instances, due to past inaccuracies regarding land surveys, the Council reserves the right to correct proven inaccuracies.

Community purposes

4. A community acquisition may only be made for a necessary community purpose or works of the 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.

Acquisition procedures through regulations

5. Before proceeding to make any community acquisitions in accordance with this Land Code, the Council shall establish acquisition regulations, including provisions respecting:

- (a) the taking of possession of the interest or licence;

*transfer of
lease holds?*

- (b) transfer of the interest or licence including any associated costs;
- (c) notice of acquisition and service of the notice of acquisition;
- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and
- (f) the method of payment of compensation.

Public report

6. Before the First Nation decides to acquire an interest or licence, it shall make a public report on the reasons justifying the acquisition.

Negotiations

7. The right of the First Nation to acquire can only be exercised after good faith negotiations, to acquire by mutual agreement, the interest or licence in First Nation land.

Compensation for rights and interests

8. The First Nation shall, in accordance with its laws and the *Framework Agreement*,
 - (a) serve reasonable notice of the acquisition on each affected holder of the interest or licence to be acquired; and
 - (b) pay fair and reasonable compensation to the holders of the interest or licence being acquired.

Compensation calculations

9. The total value of the compensation under this clause will be based on the following:
 - (a) the appraised fair market value of the interest or licence that is being acquired;
 - (b) the replacement value of any improvement to the land that is being acquired;
 - (c) the damages attributable to any disturbance; and
 - (d) damages for any reduction in the value of a remaining interest.

Fair market value

10. The "fair market value" of an acquired interest or licence shall be negotiated between the seller and buyer provided the negotiations are free from duress, and in consideration of the current appraised replacement value.

Neutral evaluation to resolve disputes

11. The resolution of disputes concerning the right of the First Nation to acquire shall be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the 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

12. 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 acquired interest or licence to compensation; and
 - (b) disputes concerning the amount of the compensation.

15. Heritage Sites and Significant Sites

Community approval of development

1. No development shall be allowed on any site designated as a heritage site or a significant site under the land use plan, unless the development receives community approval by a ratification vote.

Land use plan

2. No amendment may be made to a land use plan to delete a heritage site or a significant site unless the amendment receives community approval by a ratification vote.

Heritage and significant sites

3. Heritage and significant sites are identified as, but not limited to, burial sites, wetlands, flint beds, kettles, shale beds, environmentally sensitive areas and species at risk areas.

16. Voluntary Land Exchanges and Protections

Conditions for a land exchange

1. The First Nation may agree with another party to exchange a parcel of First Nation community land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.

No effect

2. A community land exchange is of no effect unless it receives community approval by a ratification vote, if the community land to be exchanged is in excess of twenty-five (25) acres.

Land to be received

3. No land exchange may occur unless the land to be received in the exchange meets the following conditions:
 - (a) it must be equal to or greater than the area of First Nation land to be exchanged;
 - (b) it must be at least comparable to the appraised value of the First Nation land;
 - (c) it must become community land subject to this Land Code; and
 - (d) it must be subject to a full environmental assessment.

Negotiators

4. The Council shall designate the person or persons by resolution who are to have authority to negotiate a land exchange agreement on behalf of the Kettle and Stony Point First Nation.

Additional land

5. Kettle and Stony Point First Nation may negotiate to receive other compensation, such as money or one or more other parcels of land as compensation, in addition to the parcel referred to above which is intended to become First Nation land. These other parcels may be held by Kettle and Stony Point First Nation in fee simple or some other manner.

Federal involvement

6. Before the First Nation concludes a land exchange agreement, it must receive a written statement from Canada, stating that Canada
 - (a) agrees to set apart as First Nation land, the land to be received in exchange, as of the

date of the land exchange or such later date as the Council may specify by resolution;
and

- (b) agrees to the manner and form of the exchange as set out in the exchange agreement.

Community notice

- 7. Once negotiations on the land exchange agreement are concluded, the Council / Lands Committee shall provide the following information to eligible voters at least 21 days before the vote:
 - (a) a reason for the exchange;
 - (b) a description of the First Nation land to be exchanged;
 - (c) a description of the land to be received in the exchange;
 - (d) a description of any other compensation to be exchanged;
 - (e) a report of a certified land appraiser setting out that the conditions in section 16.3 have been met;
 - (f) a copy or summary of the exchange agreement; and
 - (g) a copy of the consent referred to in section 16.6.

Process of land exchange

- 8. The land exchange agreement shall provide that
 - (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
 - (b) the Council must pass a resolution authorizing Canada to transfer title to the First Nation land being exchanged, in accordance with the exchange agreement;
 - (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Registry; and
 - (d) all land exchanges be completed within an acceptable timeframe. Unacceptable timeframes due to the ATR policy shall have an agreement that will identify the party that will be responsible for payment of taxes on the land to be exchanged.

**PART 5
ACCOUNTABILITY**

17. Conflict of Interest

Duty to report and abstain

1. If there is any interest, financial or otherwise, in the matter being dealt with that might involve the person or his or her immediate relatives, the person
 - (a) shall disclose the interest to the Council, Board, Committee or other body as the case may be; and
 - (b) shall not take part in any deliberations on that matter or vote on that matter.

Application of rules

2. The rules in section 17.1 apply to the following persons:
 - (a) each member of the Council who is dealing with any matter before Council that is related to First Nation land, and in accordance with the Code of Conduct for First Nation Council members;
 - (b) each person who is an employee of the First Nation dealing with any matter that is related to First Nation land, and in accordance with the Employment Manual for First Nation employees; and
 - (c) each person who is a member of a board, committee or other body of the First Nation dealing with any matter that is related to First Nation land, and in accordance with operating policies for First Nation Committees.

Common interests

3. Section 17.1 does not apply to any interest that is held by a member in common with every other member.

Inability to act

4. If the Lands Committee is unable to act due to a conflict of interest, the matter shall be referred to the Council.

Meeting of eligible voters

5. If the Council is unable to vote on a proposed law or resolution due to a conflict of interest, the Council may refer the matter to a community meeting and a majority of the eligible voters present at the meeting may enact the land law or land resolution.

Specific Conflict Situations

6. Because of the unusual conflicts of interest possible in the community, not more than two members from the same extended family may be members of the Lands Committee.

Disputes

7. Questions about whether a breach of this section has occurred may be referred to the Dispute Resolution Panel.

Other laws

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

18. Financial Management

Application

1. This section applies only to financial matters relating to First Nation land.

Administration

2. All financial matters relating to First Nation land shall be administered in accordance with the First Nation Financial Management Bylaw as supported by the Finance Policy Procedure Manual.

Procedure

3. After adopting the land management budget or supplementary budget, the Council shall, without undue delay and in accordance with the First Nation
 - (a) explain the budget or supplementary budget to the members at an annual community meeting and publish the budget in the annual report; and
 - (b) make a copy of the budget or supplementary budget available at the administrative offices of the First Nation for inspection by members at reasonable hours.

19. Financial Records

Financial records

1. The First Nation shall keep financial records related to land in accordance with generally accepted accounting principles and in accordance with the First Nation Financial Management Bylaw.

Public Access

2. Every member has the right to inspect the financial records maintained in accordance with Part 5 of this land code, and the right to reasonable assistance from the person or persons who have care and control of those financial records.

20. Financial Audit

Process and procedures

1. The annual auditing process and procedures will be conducted in accordance with the Kettle and Stony Point First Nation Financial Management Bylaw.

Presentation of report

2. The Council shall present the auditor's report to the members at a meeting of members.

21. Annual Report

Publish report

1. An annual report on land management activities shall be published jointly with the First Nation annual report.

Contents

2. The annual report will include
 - (a) a report on land management activities; and
 - (b) any other matter pertaining to lands, as deemed necessary by the Council or Lands Committee in accordance with the Personal Information Protection and Electronic Documents Act (PIPEDA).

22. Access to Information

Access

1. Any member or person authorized by the Council may, during normal business hours at the First Nation Administration, have reasonable access to
 - (a) the register of laws;
 - (b) the auditor's report; and
 - (c) the annual report on lands issues.

Copies for members

2. Any member may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under resolution of the Council.

Access to records

3. Any person authorized by the Council may, at any reasonable time, inspect the financial records of the First Nation related to First Nation land, in accordance with the Personal Information Protection and Electronic Documents Act (PIPEDA).

PART 6 LAND ADMINISTRATION

23. Lands Committee

Establishment of the Lands Committee

1. The Lands Committee is hereby established to
 - (a) assist and support the First Nation land administration system;
 - (b) consult with the Council and its staff on matters respecting First Nation land;
 - (c) hold regular and special meetings of members to discuss land issues;
 - (d) recommend laws, resolutions, policies and procedures respecting First Nation land to the Council;
 - (e) maintain the flow of information on land issues between members and the Council;
 - (f) preside over any community approvals and disapprovals required under this Land Code;

- (g) appoint a Dispute Resolution Panel; and
- (h) review the annual budget and workplan.

Development of land related rules and procedures

2. Within a reasonable time after this Land Code takes effect, the Lands Committee shall, in consultation with the community, ensure that rules and procedures are developed that address the following matters:
 - (a) environmental protection and assessment in relation to First Nation land;
 - (b) the protection of heritage and significant sites in relation to First Nation land;
 - (c) land purchases, acquisitions and exchanges;
 - (d) any outstanding issues on the resolution of disputes in relation to First Nation land;
 - (e) land use planning and zoning; and
 - (f) section 38 respecting spousal separation and whether any change should be made to the policy upon which that section is based.

Implementation of policies

3. The rules and procedures, once developed, shall be presented to the Council for consideration, approval and implementation as policies, laws or amendments to this Land Code, whichever is most appropriate.

Internal Procedures

4. The Lands Committee shall establish rules for the procedure at its meetings and generally for the conduct of its affairs, consistent with those established by the Council.

24. Membership of the Lands Committee

Composition

1. The Lands Committee shall be composed of five (5) members plus one (1) member of Council, all of whom must be eligible voters.

Quorum

2. The number of members in attendance, which form a quorum, shall be four (4) members.

Eligibility to be appointed as a Lands Committee member

3. Any eligible voter, whether resident on or off First Nation land, is eligible for appointment to the Lands Committee, except for the following persons:
 - (a) any person convicted of an offence that was prosecuted by way of indictment within the previous seven years;
 - (b) any person convicted of a sex-related offence or a crime of dishonesty, for which a pardon has not been granted, regardless of Crown election;
 - (c) any person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct; and
 - (d) any person who is unable to attend scheduled meetings.

Selection of Lands Committee members

4. The members of the Lands Committee are to be selected and appointed by the Council, as follows:
 - (a) one (1) member of Council;
 - (b) four (4) on-reserve members; and
 - (c) one (1) off-reserve member.

Term of Office

5. The length of the term of office for members of the Lands Committee is the same as for the Council.

Vacancy on Lands Committee

6. The office of a member of the Lands Committee becomes vacant if the person, while holding office
 - (a) is or becomes ineligible to hold office under section 24.3;
 - (b) is or becomes ineligible because of a transfer of membership from the First Nation;
 - (c) is convicted of an indictable offence, or a crime of dishonesty (regardless of Crown election) while on the Committee;
 - (d) is absent for three (3) consecutive meetings of the Lands Committee without notification; or
 - (e) resigns.

Vacancy in term

7. Where the office of an appointed member of the Lands Committee becomes vacant Council shall appoint a member to fill the vacancy.

Balance of term of office

8. A member of the Lands Committee appointed or elected to fill a vacancy remains in office for the balance of the term in respect of which the vacancy occurred.

25. Chairperson of the Lands Committee

Chairperson

1. At the beginning of each term, the Lands Committee shall appoint a Chairperson amongst the Committee members.

Alternate Chairperson

2. If the Chairperson is absent from a meeting, the Lands Committee shall appoint one of the other Lands Committee members to act as or be the Chairperson.

Functions of Chairperson

3. The functions of the Chairperson are to
 - (a) call meetings;
 - (b) receive agenda items from members and set the agenda for meetings;
 - (c) liaise with First Nation members, staff resource, Council and the general public as necessary;
 - (d) attend meetings and functions on behalf of the Lands Committee as necessary;
 - (e) report to the First Nation on the activities of the Lands Committee; and
 - (f) other related duties as necessary.

26. Revenue From Lands

Determination of fees and rent

1. The Lands Committee shall, in accordance with the policies and procedures of the Financial Management Bylaw and with the approval of Council, establish the process for determining
 - (a) the fees, rent for interests and licences in community land;
 - (b) the fees for services provided in relation to community land; and
 - (c) the royalties, fees or other charges for a licence to take resources belonging to community land.

27. Registration of Interests and Licences

Enforcement of interests and licenses

1. An interest or licence in First Nation land created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nations Land Register.

Registration of consent or approval

2. No instrument that requires the consent of the Council, or community approval, may be registered unless a certified copy of the document that records the consent or approval is attached.

Duty to deposit

3. The Council shall ensure that an original copy of the following instruments is deposited in the First Nations Land Register:
 - (a) any grant of an interest or licence in First Nation and/or community land;
 - (b) any transfer or assignment of an interest in First Nation and/or community land;
 - (c) every land use plan, subdivision plan or resource use plan; and
 - (d) this Land Code and any amendment to this Land Code.

28. Duplicate Lands Register

Duty to maintain duplicate register

1. The Council shall maintain a Duplicate Land Register in the same form and with the same content as the First Nations Land Register.

Duty of member to deposit

2. Every person who receives an interest or license in First Nation land from a member shall deposit an original copy of the relevant instrument in the Duplicate Lands Register.

**PART 7
INTERESTS AND LICENCES IN LAND**

29. Limits on Interests and Licences

All dispositions in writing

1. An interest in, or licence to use, First Nation land may only be created, granted, disposed of, assigned or transferred by a written document in accordance with this Land Code, or regulations made thereunder.

Standards

2. The Lands Department with approval from Council may establish mandatory standards, criteria and forms for interests and licences in First Nation land.

Improper transactions void

3. Any transaction involving land that contravenes this land code shall be void. This would include a certificate of possession, lease, contract, instrument, document, grant, disposition, transfer, assignment or agreement of any kind, whether written or oral.

Non-members

4. A person who is not a member may only hold a lease, licence or permit in First Nation land.

Grants to non-members

5. The written consent of the Council must be obtained for any grant or disposition of a lease, licence or permit in First Nation land to a person who is not a member.

30. Existing Interests

Continuation of existing interests

1. Any interest or licence in First Nation land that existed when this Land Code takes effect will continue in force in accordance with its terms and conditions, subject to this Land Code.

31. New Interests and Licences

Authority to make dispositions

1. Subject to section 13.1, the Council may, on behalf of the First Nation, grant
 - (a) interests and licences in community lands, including certificates of possession, leases, permits, easements and rights-of-ways; and
 - (b) permits to take resources from community lands, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional grant

2. All written conditions must be met before the grant of an interest, license or permit may be made.

Role of the Lands Committee

3. The Lands Committee shall advise Council on the granting of interests, licences and permits and may be authorized to act as a delegate of the Council under this section.

32. Certificates of Possession

Application

1. This section summarizes the rights attached to certificates of possession, whether issued under the *Indian Act* or under this Land Code.

Nature of interest in CP

2. Subject to section 27 and any First Nation regulatory processes that may be in effect, a certificate of possession in respect of a parcel of land is an interest that entitles the member holding it to
 - (a) use and possession of the land;
 - (b) benefit from the resources arising from the land and any related revenues;
 - (c) grant subsidiary interests and licences in the land, including leases, permits, easements and rights-of-ways;
 - (d) transfer, devise or otherwise dispose of the land to another member;
 - (e) obtain permits to take resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances; and

- (f) any other rights, consistent with this Land Code, that are attached to certificates of possession under the *Indian Act*.⁶

33. Allocation of Community Land

Allocation of land

1. The Council may allocate available land to members in accordance with procedures established by the Council in accordance with this Land Code.⁷

Community input not required

2. No community input is required for
- (a) the allocation of available land for a single family dwelling, to members; or
 - (b) the issuance of Certificates of Possession to members.

No allocation of land to non-members

3. A person who is not a member is not entitled to be allocated land or to hold a permanent interest in First Nation land.

Issuance of CP

4. The Council may issue a CP or Certificate of Possession to a member for a lot allocated to that member in accordance with section 33.2(b).

34. Transfer and Assignment of Interests

Transfer of CP's

1. A member may transfer or assign an interest in First Nation land to another member without the need for any community input or consent of the Council.

⁶ For example, ministerial approval of transfers of a CP would not be included in (f).

⁷ Allocation is generally done by CP, although the issuance of a CP may be conditional on financing. Some residential units or apartment units could also be established by lease or rental arrangement.

Consent of Council

2. Except for transfers under section 34.1 and transfers that occur by operation of law⁸,
 - (a) there shall be no transfer or assignment of an interest in First Nation land without the written consent of the Council; and
 - (b) the grant of an interest or licence is deemed to include section 34.2(a) as a condition on any subsequent transfers or assignments.

35. Limits on Mortgages and Seizures

Protections

1. In accordance with the *Framework Agreement*, the following sections of the *Indian Act* continue to apply to First Nation land;
 - (a) "Section 29" which states "reserve lands are not subject to seizure under legal process";
 - (b) "Section 87" which states "notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely:
 - a) the interest of an Indian or a band in reserve or surrendered lands; and
 - b) the personal property of an Indian or band situated on a reserve; and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (i) or (ii) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, being chapter 89 of the Revised Statutes of Canada, 1952 or the tax payable under the Estate Tax Act, on or in respect of other property passing to an Indian"; and
 - (c) "Subsections 89(1)" which states "Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian", and "89(2)" which states "A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve."

⁸ Examples are wills and estates and the right of a spouse to a matrimonial home on spousal separation.

Mortgage of CP

2. The interest of a member in First Nation land may be subject to a mortgage or charge, but only to the First Nation with the written consent of the Council.⁹

Mortgages of leasehold interests with consent

3. A leasehold interest may be subject to charge or mortgage, but only with the written consent of the Council.

Time limit

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) twenty-five (25) years, or such longer period as may receive community approval by ratification vote in accordance with section 13.

Default in mortgage

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

Power of redemption

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

⁹ The *Indian Act* (s. 89) allows mortgages between status Indians and the band.

36. Residency and Access Rights

Right of residence

1. The following persons have a right to reside on First Nation lands:
 - (a) First Nation members and their families;
 - (b) any person who does not have membership but has Council's permission to reside; and
 - (c) lessees, in accordance with the provisions of the instrument granting the lease.

Restricted Access

2. No persons shall be allowed access to CP lands without the owner's permission.

Right of Access

3. The following persons have a right of access to community land;
 - (a) First Nation members and their families;
 - (b) a lessee and his or her invitees; and
 - (c) a person authorized in writing by the Council/Lands Committee or by a First Nation law.

Public access

4. Any individual may have access to First Nation/community land for any social or business purposes, if
 - (a) the individual does not trespass on occupied land and does not interfere with any interest in land;
 - (b) the individual complies with all applicable First Nation laws and policies; and
 - (c) no First Nation Council resolution has been enacted barring that individual.

Trespass

5. Any person, who resides on, enters or remains on First Nation/community land other than in accordance with a residence or access right under this Land Code, is guilty of an offence.

First Nation Council remedies and Civil remedies

6. All First Nation Council remedies and civil remedies for trespass are preserved.

37. Transfers on Death

Right of member widow or widower who cohabitated at time of death

1. If a member holding an interest in First Nation land dies and the deceased is survived by a member spouse who does not hold a registered interest in that land, the surviving spouse has an automatic right to hold interest in that land.

Right of non-member widow or widower who cohabitated at time of death

2. If a member holding an interest in First Nation land dies and the deceased is survived by a non-member spouse,
 - (a) that surviving spouse has an automatic right to reside on and use the land for their natural life; and
 - (b) the land will be held in trust by the First Nation for the non-member spouse;

Location of family members

3. If no provision has been made by the deceased member for the disposition of the interest in the First Nation land to another member, the following rules apply:
 - (a) the Council shall take reasonable steps to advise the deceased's immediate relatives that the land held by the deceased is available; and
 - (b) the deceased's immediate relatives may, with the help of the Panel if necessary, decide who among them is to receive the interest in the land.

Meeting of members

4. If the deceased left no immediate relatives, or if they cannot decide who is to receive the interest within 12 months of the date of the death, the Council shall call a meeting of members to receive community input in accordance with section 11, to discuss the issue on the disposition of the interest.

38. Matrimonial Real Property Law

Development of rules and procedures

1. The Council shall enact a Matrimonial Real Property Law providing rules and procedures applicable on the breakdown of a marriage, to
 - (a) the use, occupancy and possession of First Nation land; and
 - (b) the division of interests in that land.

Enactment of rules and procedures

2. The rules and procedures contained in the Matrimonial Real Property Law shall be developed by the Lands Committee in consultation with the community.

Enactment deadline

3. The Matrimonial Real Property Law must be enacted within twelve (12) months from the date this Land Code takes effect.

General principles

4. For greater certainty, the rules and procedures developed by the Lands Committee under this section must respect the following general principles¹⁰:
 - (a) only members are entitled to hold a permanent interest in First Nation land or a charge against a permanent interest in First Nation land;
 - (b) the members children of the spouses, if any, have a right to remain undisturbed in the matrimonial home, with the custodial parent / primary care-giver, regardless of whether or not that parent is a member of Kettle and Stony Point First Nation;
 - (c) the rules and procedures of matrimonial property may distinguish as between Members and non-Members for the purpose of determining what type of interest in First Nation Land may be held by an individual upon breakdown of marriage; and
 - (d) the rules and procedures shall not discriminate on the basis of sex.

Enactment of law

5. Subject to section 38.6, the Council may enact a Matrimonial Real Property Law as soon as this Land Code comes into force.

Immediate rules

6. A Matrimonial Real Property Law enacted before the work of the Lands Committee and the community consultation is complete, will expire at the end of the 12-month period after the coming into force of this Land Code, unless re-enacted, replaced or amended.

¹⁰ These general principles would form the structure of the rules. There could be some specific exceptions, e.g. the right of a couple to negotiate a marriage contract to vary the general right of a spouse to a half interest in the matrimonial home.

**PART 8
DISPUTE RESOLUTION**

39. Dispute Resolution Panel

Panel established

1. The Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to First Nation land.

Appointment of Panel

2. The Panel shall be composed of five (5) panellists of which two (2) are appointed Council members, all of whom must be eligible voters.

Representation

3. The Lands Committee shall appoint the panellists, and shall ensure that the Panel represents the various elements of the community, including Elders, youth, professionals and non-resident members.

Term of office

4. The panellists hold office for a term of two (2) years.

40. Dispute Procedure

Disputes

1. Any matter or dispute related to First Nation land may be referred to the Panel for resolution.¹¹

Optional process

2. An application to the Panel to resolve a dispute is optional. All other civil remedies continue to be available to members and non-members.

¹¹ Disputes that arose before the Land Code takes effect could also be referred to the Panel.

Disputes not resolved by Council

3. If a member, or a non-member with an interest in First Nation land, has a dispute with the Lands Committee or with the Council, the person must
 - (a) first attempt to resolve that dispute with the Council or the Lands Committee; and
 - (b) if no resolution can be achieved, the dispute may then be referred to the panel.

Application procedures

4. Applications to the Panel shall be made in accordance with the procedures established by the Panel.

Limitation period

5. The limitation period for referring a matter or dispute to the Panel is
 - (a) thirty (30) days after the day the decision, act or omission being referred was made; or
 - (b) in the case of an estate dispute under section 37.4, eighteen (18) months after the date of the death.

Panel of three

6. Disputes referred to the Panel are to be heard by three (3) of the five (5) panellists chosen as follows:
 - (a) one (1) panellist is to be chosen by each of the two parties to the dispute; and
 - (b) one (1) panellist, who is to be the chairperson, is to be chosen by the rest of the Panel.

41. Impartiality

Duty to act impartially

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

Offence

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

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.

42. Powers of Dispute Resolution Panel

Powers of Panel

1. The Panel may, after hearing a dispute
 - (a) confirm or reverse the decision, in whole or in part;
 - (b) substitute its own decision for the decision in dispute;
 - (c) direct that an action be taken or ceased; or
 - (d) refer the matter or dispute back for a new decision.

Rules of Panel

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

Professional services

3. 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

4. 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.

Reasons

5. The Panel shall give reasons for its decision, and shall do so in writing within 14 days after, the date of the decision.

Appeal of decision

6. A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the Federal Court (Trial Division).

**PART 9
OTHER MATTERS**

43. Liability

Liability coverage

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

Extent of coverage

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

Bonding

3. Every employee of the First Nation whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.

44. Offences

Application of the Criminal Code

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.

45. Amendments to Land Code

Community approval

1. Subject to section 13, all amendments to this Land Code must receive community approval by ratification vote to be effective.

46. Commencement of Land Code

Preconditions

1. This Land Code shall not take effect unless
 - (a) the community approves this Land Code and the Transfer Agreement with Canada and this Land Code has been certified by the verifier pursuant to the *Framework Agreement*; and

- (b) the Council has enacted a resolution confirming that adequate funding for land management has been identified and assured by Canada under the Transfer Agreement.

Commencement date

- 2. Subject to section 46.1, this Land Code shall take effect on the first day of the month following the certification of this Land Code by the verifier.

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