



Quw'utsun Tumuhw

Dated for Reference July 4, 2019

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PREAMBLE

The Cowichan Tribes Members have the gifts of traditional knowledge and spiritual ceremonies in relation to Tumuhw, and our ancestors were born into this world carrying these gifts to help and pass on to our people for all generations.

Our true history is that our ancestors were the first ones dropped on our lands.

Cowichan Tribes was gifted and bestowed the land, water, seas, minerals, and all resources in our territories, including Tumuhw.

Cowichan Tribes and Cowichan Tribes Members are the keepers of, and have the responsibility to look after, what we have been given by the Creator.

Cowichan Tribes and Cowichan Tribes Members have existing inherent rights which are recognized and affirmed by section 35 of the *Constitution Act, 1982* (Canada).

The Government of Canada owes ongoing duties to Cowichan Tribes and its Members to continue to work in good faith with Cowichan Tribes to resolve outstanding grievances with respect to lands matters.

Canada ratified the Framework Agreement on First Nation Land Management by enacting the *First Nations Land Management Act*, and Cowichan Tribes became a signatory to the Framework Agreement on October 4, 2012.

Cowichan Tribes has been undertaking reserve land administration responsibilities since 1980.

Cowichan Tribes wishes to manage its lands and resources, rather than having its lands and resources managed on its behalf under the *Indian Act*.

THIS QUW'UTSUN TUMUHW IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW FOR TUMUHW.

PART 1 - PRELIMINARY MATTERS

1. Title

Title

1.1 The title of this enactment is Quw'utsun Tumuhw.

2. Interpretation

Definitions

2.1 The following definitions apply in this Quw'utsun Tumuhw:

“Certificate of Possession” or “CP” means a Member’s right of possession to Tumuhw created under, and which meets the requirements of, section 20 of the *Indian Act*, including an allotment, location ticket, cardex holding, or Certificate of Possession, or equivalent Interest created under section 29 of this Quw'utsun Tumuhw;

“Common-law Spouse” means a Person who has been living with another Person of any gender in a marriage-like relationship for a continuous period of at least two years but who is not married to that other Person;

“Council” means the Chief and Council of Cowichan Tribes or any successor elected government of Cowichan Tribes;

“CP Land” means Tumuhw that is subject to a Certificate of Possession;

“Cowichan Tribes” means the Cowichan Tribes, a First Nation listed in the schedule to the *First Nations Land Management Act*;

“Easement” means a non-exclusive Interest in Tumuhw granted under this Quw'utsun Tumuhw or, prior to the date of this Quw'utsun Tumuhw, under the *Indian Act*, giving one Person (the grantee) the right to use the land of another (the grantor) for an Easement or right of way, or to provide utility or other services to the land of the grantor or other lands, and

- (a) is limited to only such Interest as is necessary to give effect to the Easement granted, and
- (b) despite any common law rule to the contrary, does not require that there be a dominant and servient tenement;

“Eligible Voter” means, for the purpose of voting in respect of land matters under this Quw'utsun Tumuhw, a Member who has attained the age of eighteen (18) years of age on or before the day of the vote;

“Financial Administration Law” means the *Cowichan Tribes First Nation Financial*

Administration Law, 2018;

“First Nations Land Register” means the register established under subsection 25(1) of the *First Nations Land Management Act* or any successor land register that may be established to replace the First Nations Land Register;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Minister and the Chiefs of fourteen First Nations on February 12, 1996, and includes any amendments to the Framework Agreement made pursuant to its provisions;

“Heritage Site” means Tumuhw, whether designated or not, including land covered by water, that has heritage value to Cowichan Tribes or the Members of Cowichan Tribes;

“Immediate Relatives”, in respect of a Person, means the Person’s parent, Spouse, sibling, child, grandparent and grandchild;

“Individual Agreement” means the Agreement entered into between Cowichan Tribes and the Government of Canada pursuant to section 6(3) of the *First Nations Land Management Act* and clause 6.1 of the Framework Agreement;

“Instrument” means a legal document in writing which purports to affect or to create, grant, assign, transfer or encumber an Interest or Licence in Tumuhw;

“Interest” means an interest, right or estate in or to Tumuhw and includes a Certificate of Possession, Leasehold, Life Estate, Easement and right-of-way, but for greater certainty does not include title to Tumuhw;

“Land Investigation Committee” means the Land Investigation Committee continued under subsection 29.4 of this Quw'utsun Tumuhw;

“Lands Committee” means the Lands Committee established under subsection 22.1 of this Quw'utsun Tumuhw;

“Lands and Governance Director” means the Person appointed by Resolution to oversee the day to day operations of the Cowichan Tribes Lands Office and the administration of this Quw'utsun Tumuhw;

“Law” means a law enacted pursuant to this Quw'utsun Tumuhw, including an amendment to a Law, but does not include a Resolution;

“Lease” means a written contract setting out the terms and conditions of a Leasehold;

“Leasehold” means an Interest in Tumuhw granted under this Quw'utsun Tumuhw or, prior to the date of this Quw'utsun Tumuhw, under the *Indian Act*, including a Sub-Lease, giving a Person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including any renewal or extension period;

“Licence” means a permission granted under this Quw'utsun Tumuhw, or a permit or licence issued by the Minister pursuant to the *Indian Act* prior to the effective date of this Quw'utsun Tumuhw, to use, develop, or extract specified Natural Resources from, or otherwise have non-exclusive use of, a specified parcel or parcels of Tumuhw but which does not grant an Interest in, or possession to, Tumuhw;

“Life Estate” means an Interest in a CP granted to a Person, including a non-Member, that conveys to the individual a right to use and occupy a specified home or parcel of Tumuhw for a time period which cannot exceed the life of the grantee;

“Meeting of Members” means a meeting convened under section 10 to which the Members are invited to attend;

“Member” means a Member of Cowichan Tribes pursuant to the *Cowichan Indian Band Membership Rules*, amended June 28, 1992, as amended or replaced from time to time;

“Minister” means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of the *First Nations Land Management Act* and the Framework Agreement, or for the purposes of the *Indian Act*, as the context requires;

“Mortgage” means a charge or encumbrance on an Interest in Tumuhw in favour of another as security for a debt;

“Natural Resources” means any materials or substances on, under or in Tumuhw in their natural state which, when removed, has economic or other value;

“Person” means an individual, a body corporate, a partnership, a society or other entity, including the First Nation, and any Trustee, executor, administrator or other legal representative;

“Quw'utsun Tumuhw” means this land governance code of the Cowichan Tribes, established in accordance with the Framework Agreement and the *First Nations Land Management Act*;

“Ratification Vote” means a vote of Eligible Voters under section 12;

“Resolution” means a resolution of the Council made in relation to this Quw'utsun Tumuhw, a Law, or the administration of Tumuhw.

“Shhw'a'mut” is a Hul'qumi'num word that translates to “bed” and is used to describe interests in property associated with family long house sites; often referred to as family land that is passed down from generation to generation;

“Spouse” means a Person who is married to another Person, or who is a Common-law Spouse;

“Spousal Relationship” means a relationship between Spouses;

“Sub-Lease” means a Lease executed by a lessee in a parcel of Tumuhw to a third Person,

conveying the same Interest that the lessee enjoys in all or a portion of the parcel, but for a shorter term than that for which the lessee holds. A sub-lease is subordinate to the original Leasehold;

“Trustee” means a Member who is 19 years of age or older and who holds a Certificate of Possession in trust on behalf of another Member, or as executor or administrator of the estate of a Member;

“Tumuhw” means any portion of a reserve that is subject to this Quw'utsun Tumuhw under section 5;

“Un-Allotted Land” means any Tumuhw that is not CP Land, and includes Shhw'a'mut lands;

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

2.2 Unless otherwise defined herein, the definitions as set forth in the Framework Agreement and the *First Nations Land Management Act* will have the same meaning in this Quw'utsun Tumuhw.

Interpretation

2.3 In this Quw'utsun Tumuhw:

- (a) The use of the word “will” or “must” denotes an obligation that, unless this Quw'utsun Tumuhw provides to the contrary, must be carried out as soon as practicable after this Quw'utsun Tumuhw comes into effect or the event that gives rise to the obligation;
- (b) Where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (c) Where the time limited for the doing of an act in the Cowichan Tribes administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;
- (d) Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded;
- (e) Unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- (f) Unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- (g) 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;

- (h) The headings of parts, sections and subsections in this Quw'utsun Tumuhw have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions;
- (i) A reference to a statute, including this Quw'utsun Tumuhw and any Law, includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it; and
- (j) a reference to a Part (e.g. Part 1), section (e.g. section 2), subsection (e.g. subsection 2.1), paragraph (e.g. paragraph 3.4(a)) or Schedule (e.g. Schedule A) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Quw'utsun Tumuhw, except where otherwise stated.

Paramountcy

- 2.4 Subject to subsection 16.4, if there is an inconsistency or conflict between this Quw'utsun Tumuhw and any other law, by-law, Resolution or policy of Cowichan Tribes, this Quw'utsun Tumuhw prevails to the extent of the inconsistency or conflict.
- 2.5 If there is an inconsistency or conflict between this Quw'utsun Tumuhw and the Framework Agreement, the Framework Agreement prevails to the extent of the inconsistency or conflict.

Culture and Traditions

- 2.6 The structures, organizations, Laws and procedures established by or under this Quw'utsun Tumuhw will be interpreted in accordance with the culture, traditions and customs of Cowichan Tribes, unless otherwise provided.

Non-Abrogation

- 2.7 This Quw'utsun Tumuhw does not change or affect:
- (a) any Aboriginal, treaty, self-government, inherent rights or other rights or freedoms that pertain now or in the future to Cowichan Tribes or its Members;
 - (b) the fiduciary relationship between Her Majesty the Queen in Right of Canada and Cowichan Tribes or between Her Majesty and Members of Cowichan Tribes; or
 - (c) the by-law powers of Council pursuant to the Indian Act.

Fair Interpretation

- 2.8 This Quw'utsun Tumuhw will be interpreted in a fair, large and liberal manner.

Access to Services Not Affected

- 2.9 This Quw'utsun Tumuhw will not affect the eligibility of Cowichan Tribes or any Member to receive services or participate in such government programs for the public or indigenous communities as may be established from time to time.

Lands and Interests Affected

- 2.10 A reference to “Tumuhw” or “land” in this Quw'utsun Tumuhw includes, unless the context otherwise requires, all the Interests and rights in and to Tumuhw, and the resources that belong to Tumuhw, to the extent that these are under the jurisdiction of Canada or Cowichan Tribes, and include:
- (a) air space;
 - (b) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable Natural Resources in and of that land; and
 - (c) all the Interests and Licences granted by Her Majesty in right of Canada, as listed in the Individual Agreement; and
 - (d) All Interests and Licences granted by Cowichan Tribes after this Quw'utsun Tumuhw comes into effect.
- 2.11 Unless a Law provides otherwise, the interpretation provisions of this section 2 apply to Laws.

3. Authority to Govern

Source of Authority

- 3.1 The Creator gifted and bestowed Cowichan Tribes with our lands, water, seas, and Natural Resources, and as such Cowichan Tribes has the responsibility to look after what we have been given by the Creator.

Flow of Authority

- 3.2 The authority of Cowichan Tribes to govern its lands and resources flows from the Creator to the Quw'utsun Mustimuhw (Cowichan Tribes Members), from the Quw'utsun Mustimuhw to the Chief and Council according to the culture, traditions, customs and Laws of Cowichan Tribes, and from Cowichan Tribes' inherent right of self-government and its other Aboriginal rights, including Aboriginal title.

Inherent Right to Govern

- 3.3 By enacting this Quw'utsun Tumuhw, Cowichan Tribes exercises its inherent right to govern that part of our territory which has been set aside as reserve land, within the meaning of the *Indian Act*, R.S.C. 1985, c I-5, for the use and benefit of Cowichan Tribes.

Administration

- 3.4 Council will perform all of the duties and functions and exercise all the powers that are not specifically assigned to an individual or body under this Quw'utsun Tumuhw.

Delegation by Council

- 3.5 Despite subsection 3.4, Council may, by Resolution, delegate administrative authority to an individual or a body established or authorized under this Quw'utsun Tumuhw.

Delegation of Duties

- 3.6 Any individual or body to whom duties are given under this Quw'utsun Tumuhw or a Law may, subject to and in accordance with the authority given, delegate the performance of those duties to an individual or body under that individual or body's supervision.

4. Purpose

Purpose

- 4.1 The purpose of this Quw'utsun Tumuhw is to set out the principles and legislative and administrative structures that apply to Tumuhw and by which Cowichan Tribes will exercise authority over Tumuhw.

Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified and confirmed when this Quw'utsun Tumuhw takes effect.

Ratification of Quw'utsun Tumuhw

- 4.3 This Quw'utsun Tumuhw will be ratified if:
- (a) The Members approve this Quw'utsun Tumuhw and the Individual Agreement by a Ratification Vote; and
 - (b) This Quw'utsun Tumuhw has been certified by the Verifier in accordance with the Framework Agreement.

Approval

- 4.4 The Quw'utsun Tumuhw will be approved in accordance with the Cowichan Tribes Community Ratification Process which is dated for reference July 4, 2019.

5. Description of Tumuhw

Tumuhw

- 5.1 The lands that are subject to this Quw'utsun Tumuhw are those lands described in "Annex G" of the Individual Agreement and any other reserve lands or interest of Cowichan Tribes in reserve lands that are made subject to this Quw'utsun Tumuhw by Resolution or Ministerial order.

Excluded Lands

- 5.2 The lands identified in Part B of Section 2 of each of the Land Descriptions referred to in Annex "G" of the Individual Agreement, being lands excluded pursuant to section 7 or section 7.1 of the *First Nations Land Management Act* and clauses 4.1.4 and 4.1.6 of the Framework Agreement are excluded from the application of this Quw'utsun Tumuhw.
- 5.3 For greater certainty, the portions of Cowichan Tribes' reserve lands that are excluded from Cowichan Tribes' jurisdiction under this Quw'utsun Tumuhw under subsection 5.2 remain part of Cowichan Tribes' reserve but will be managed under the *Indian Act* until they are made subject to this Quw'utsun Tumuhw under subsection 5.4.

Additional Lands

- 5.4 The Reserve lands that are excluded from the application of this Quw'utsun Tumuhw under subsection 5.2 will become subject to this Quw'utsun Tumuhw at such time as:
- (a) Cowichan Tribes and the Minister, acting reasonably, agree that the exclusion is no longer justifiable or necessary; and
 - (b) Council has passed a Resolution to add the excluded lands to the jurisdiction under this Quw'utsun Tumuhw.
- 5.5 Any reserve land beneficially owned jointly by Cowichan Tribes and another First Nation may be made subject to this Quw'utsun Tumuhw when the respective First Nations involved agree on a joint management scheme for those lands.

Addition to Tumuhw

- 5.6 In accordance with any request by made by Cowichan Tribes, the Minister may, by order, set apart as a reserve, for the use and benefit of Cowichan Tribes, any lands the title to which is vested in Canada and provide in the order that the lands are Tumuhw, and are subject to this Quw'utsun Tumuhw.

Application of Quw'utsun Tumuhw

- 5.7 Before the lands are transferred to Canada by Cowichan Tribes or a third party for the purpose of being set apart as a reserve, or before the lands are set apart as a reserve, Cowichan Tribes may, in accordance with this Quw'utsun Tumuhw:
- (a) grant Interests and Licences in relation to the lands; and
 - (b) enact zoning or other laws within the scope of its jurisdiction under this Quw'utsun Tumuhw in relation to the lands

provided that such Interests, Licences, and laws will come into effect only if and when the lands become Tumuhw.

Amendment to the Description of Tumuhw

- 5.8 Notwithstanding paragraph 12.1(b), as of the date of any Resolution or Ministerial order providing that lands are Tumuhw in accordance with this section 5, the description of Tumuhw in this Quw'utsun Tumuhw will be deemed to be amended to add the description of the Tumuhw set out in the Resolution.

Additional Lands

- 5.9 Council will provide notice to Members prior to lands becoming Tumuhw under this section, or as soon as practicable thereafter.

Land Exchange

- 5.10 For greater certainty, subsections 5.2 to 5.5 do not apply to lands acquired by land exchange, which is governed by the process set out in section 14.

PART 2 - FIRST NATION LEGISLATION

6. Law-Making Powers

Council May Make Laws

- 6.1 The Council may, in accordance with this Quw'utsun Tumuhw, make Laws respecting the development, conservation, protection, management, use and possession of Tumuhw, and Interests and Licences in relation to Tumuhw. This power includes the power to make Laws in relation to any matter necessary or ancillary to the making of Laws in relation to Tumuhw.

Examples of Laws

- 6.2 For greater certainty, and without limiting the generality of subsection 6.1, Council may make Laws respecting the following:
- (a) regulation, control and prohibition of zoning, land use, subdivision control and land development;
 - (b) regulation, control, authorization and prohibition of residency, access, occupation and development of Tumuhw;
 - (c) creation, regulation and prohibition of Interests and Licences, and transfers and assignments of Interests and Licences in relation to Tumuhw;
 - (d) to provide for the rights and responsibilities of landlords and tenants;
 - (e) establishing fees or charges to be paid to Cowichan Tribes for the granting or transfer of Interests in Tumuhw and relating to activities on Tumuhw;
 - (f) environmental assessment and protection;

- (g) provision of local services in relation to Tumuhw and the imposition of user charges;
- (h) fees, stumpage, or royalties to be paid to Cowichan Tribes for the removal or extraction of Natural Resources from Tumuhw, including for removal or extractions of minerals, gravels and timber from Un-Allotted Land and from CP Land;
- (i) fees to be paid to Cowichan Tribes for Interests and Licences, and for applications and administrative processes including registrations;
- (j) bonds, irrevocable letters of credit, or other security to be provided by a Person developing any portion of Tumuhw if such security is required to protect the interests of Cowichan Tribes or to protect the integrity of lands, structures or infrastructure;
- (k) provision of local services in relation to Tumuhw and the imposition of user charges including development cost charges or their equivalent;
- (l) setting aside, protection and regulation of parks, recreational lands, Heritage Sites, cultural sites, and wildlife refuges;
- (m) removal and punishment of Persons trespassing upon Tumuhw or frequenting Tumuhw for prohibited purposes;
- (n) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (o) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (p) Acquisition of Tumuhw for community purposes or works in accordance with clause 17 of the Framework Agreement and section 13 of this Quw'utsun Tumuhw;
- (q) exchange or addition of Tumuhw in accordance with the clauses 14.1 and 14.2 of the Framework Agreement and this Quw'utsun Tumuhw;
- (r) procedures for the Lands Committee selection, and transitional rules for the first members of the Lands Committee;
- (s) provision of services for the resolution, outside the courts, of disputes in relation to Tumuhw;
- (t) limits on liability, defences and immunities to any person or entity in respect of any act or omission occurring in the exercise of a power or the performance of duties under this Quw'uts'un Tumuhw or a Law; and
- (u) establishment of offences, penalties, and enforcement mechanisms.

- 6.3 For greater certainty, in addition to Laws, Council may also implement other regulatory tools, including rules, regulations, standards, codes and policies.

7. Law-Making Procedure

Introduction of Laws

- 7.1 A proposed Law may be introduced at a duly convened meeting of the Council by:
- (a) a member of Council;
 - (b) a representative of the Lands Committee, or other body or authority composed of Members that may be authorized by Council to do so; or
 - (c) the Lands and Governance Director.
- 7.2 A proposed Law introduced under subsection 7.1 must be accompanied by a briefing note setting out:
- (a) the title of the proposed Law;
 - (b) a brief description of the subject matter to be addressed;
 - (c) a reason why the proposed Law is necessary; and
 - (d) the section or sections of the Quw'utsun Tumuhw which authorize the proposed Law.

Tabling and Posting of Proposed Laws

- 7.3 Before a proposed Law may be enacted by the Council, it must first be:
- (a) deposited with the Chair of the Lands Committee at least thirty (30) days before the Law is to be enacted;
 - (b) tabled at a meeting of the Council held at least twenty-eight (28) days before the proposed Law is to be enacted;
 - (c) posted in public places on Tumuhw at least twenty-one (21) days before the Law is to be enacted.

For greater certainty, the time periods set out in paragraphs 7.3(a), (b), and (c) may occur concurrently.

Urgent Matters

- 7.4 The Council may enact a Law without the preliminary steps required under subsection 7.3, if the Council is of the opinion that the Law is needed urgently to protect Tumuhw or Members, but the Law expires 120 days after its enactment, unless re-enacted in accordance with subsection 7.3.

Approval of Law by Council

- 7.5 Subject to satisfaction of the requirements of Part 3, if applicable, a Law is enacted if it is approved by Council by Resolution.

Certification of Laws

- 7.6 The original copy of any Law and the Resolution under subsection 7.5 approving the Law will be signed by the members of the Council present at the meeting at which it was enacted.

Coming into Force

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

Repeal or Amendment

- 7.8 A Law may be repealed or amended by following the procedure set out in this section, unless the Law to be amended specifies a different procedure, in which case the procedure set out in the Law applies.

8. Publication of Laws

Publication

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

Posting Laws

- 8.2 The Council will post a copy of the Law in the Cowichan Tribes administration building and on Cowichan Tribes' website within seven (7) days after a Law has been enacted, and will publish a notice of the law in the community newsletter provided that it is in regular circulation; however, failure to post a Law as required by this subsection does not invalidate the Law.

Register of Laws

- 8.3 The Council will cause to be kept, at the administrative offices of Cowichan Tribes, 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.

Access and Copies for Any Person

- 8.4 Any Person may:
- (a) have reasonable access during regular business hours to view a copy of any Law or Resolution; and

- (b) obtain a copy of a Law or Resolution on payment of a reasonable fee set by the Council.

PART 3 COMMUNITY INPUT AND APPROVAL

9. Rights of Eligible Voters

Rights of Eligible Voters

9.1 Each Eligible Voter is entitled to:

- (a) attend Meetings of Members called under this Quw'utsun Tumuhw; and
- (b) vote in a Ratification Vote.

10. Community Input

Laws Requiring Community Input

10.1 A Meeting of Members must be convened to provide information and receive Members' input prior to the enactment of any Law or class of Laws.

Decisions Requiring Community Input

10.2 The Council will convene a Meeting of Members to receive their input before Council makes a final decision concerning the following:

- (a) any decision or class of decision which, under this Quw'utsun Tumuhw or a Law requires a Meeting of Members;
- (b) any decision or class of decision that Council, by Resolution, declares to be subject to this subsection.

10.3 Notwithstanding subsection 10.2, a Meeting of Members is not required in relation to grants or transfers of Certificates of Possession to Members.

11. Procedure at a Meeting of Members

Notice of Meeting

11.1 The Council will 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

11.2 The notice of a Meeting of Members must be given to the Members by:

- (a) posting the notice in a public place on Tumuhw and on the Cowichan Tribes website at least fourteen (14) days before the meeting; and
- (b) such additional method as the Council may consider appropriate in the circumstances, which may include publishing the notice in a community newsletter, hand delivery and distribution through social media.

Who May Attend

- 11.3 All Members have a right to attend a Meeting of Members, but other Persons may attend only with the permission of the Council.

No Quorum Requirement

- 11.4 There is no minimum number of Eligible Voters who must attend a Meeting of Members for the meeting to be considered valid under this Quw'utsun Tumuhw.

Other Meetings

- 11.5 The Council may schedule more than one Meeting of Members to discuss and receive input on a matter that requires a Meeting of Members.

Laws or Policies on Meeting Procedures

- 11.6 For greater certainty, the Council, upon recommendation of the Lands Committee, may make Laws or policies respecting procedures for Meetings of Members provided they are in accordance with this Quw'utsun Tumuhw.

12. Ratification Votes

Community Approval by Ratification Vote

- 12.1 Community approval by a Ratification Vote must be obtained for the following:
- (a) any voluntary exchange of Tumuhw;
 - (b) subject to section 40, any amendment to this Quw'utsun Tumuhw; and
 - (c) any other matter, Law or class of Laws that Council, by Resolution, declares to be subject to this subsection.

Lands Committee May Recommend Ratification Vote

- 12.2 The Lands Committee may recommend that Council hold a Ratification Vote on any particular Law or decision, and Council will give full and fair consideration to any such recommendation.

Ratification Process

- 12.3 Any Ratification Vote required under this Quw'utsun Tumuhw will be conducted in substantially the same manner as the Cowichan Tribes Community Ratification Process

used to ratify this Quw'utsun Tumuhw and which is dated for reference July 4, 2019, with any modifications that are necessary in the circumstances.

No Verifier

12.4 A Verifier is not required in a Ratification Vote.

Minimum Requirements for Approval

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

PART 4 - PROTECTION OF TUMUHW

13. Acquisition of Tumuhw for Community Purposes

Definitions

13.1 In this section, the term "Acquire" and "Acquisition" have the same meaning as the terms "expropriate" and "expropriation" as that term is used in clause 17 of the Framework Agreement, and "Community Acquisition" refers to an Acquisition by Cowichan Tribes for a community purpose, as described in subsection 13.3.

Rights and Interests That May be Acquired for Community Purposes

13.2 An Interest or Licence in Tumuhw may only be Acquired by Cowichan Tribes in accordance with the Framework Agreement and a Law enacted for the purpose of establishing the rights and procedures for Community Acquisitions.

Community Purposes

13.3 A Community Acquisition may only be made for a necessary community purpose or works of Cowichan Tribes, including: a fire hall, sewage or water treatment facility, dike, community center, public work, road, school, daycare facility, hospital, health-care facility, retirement home, emergency response infrastructure, and any other capital infrastructure.

Acquisition Laws

13.4 Before proceeding to make any Community Acquisitions in accordance with this Quw'utsun Tumuhw, the Council will enact a Law respecting the rights and procedures for Community Acquisitions, including provisions respecting:

- (a) the taking of possession of the Interest or Licence;
- (b) transfer of the Interest or Licence;
- (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

13.5 Before Cowichan Tribes decides to Acquire an Interest or Licence, it will make a public report on the reasons justifying the Community Acquisition, which must include a description of measures taken by Cowichan Tribes to ensure minimal impairment of the rights and Interests of Persons affected by the Acquisition.

Acquisition by Mutual Agreement

13.6 The right of Cowichan Tribes to Acquire Tumuhw can only be exercised after a good faith effort to negotiate, by mutual agreement, a transfer of the Interest or Licence in Tumuhw to Cowichan Tribes.

Compensation for Rights and Interests

13.7 Cowichan Tribes will, in accordance with its Laws and the Framework Agreement,

- (a) serve reasonable notice of the Community 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

13.8 The total value of the compensation under this section will be based on the following:

- (a) the market value of the Interest or Licence that is being Acquired;
- (b) the replacement value of any improvement to the Tumuhw that is being Acquired;
- (c) the damages attributable to any disturbance; and
- (d) damages for any reduction in the value of a remaining Interest.

Neutral Evaluation

13.9 Unless a different dispute resolution process is provided for in a Law enacted pursuant to subsection 13.4, a dispute concerning the right of Cowichan Tribes to Acquire an Interest or Licence in Tumuhw will be reviewed 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 will be applied, as appropriate in the circumstance, by the neutral evaluator.

Arbitration to Resolve Disputes

13.10 Unless a different dispute resolution process is provided for Law enacted pursuant to subsection 13.4, the resolution of the following disputes will be determined by arbitration, in the same manner as provided in Part IX of the Framework Agreement:

- (a) disputes concerning the right of a Person who claims an Interest or Licence in Acquired Tumuhw to compensation; and
- (b) disputes concerning the amount of the compensation to be paid to the Person who held an Interest or Licence in Acquired Tumuhw.

14. Voluntary Land Exchanges and Protections

Exchanging Tumuhw for non-Cowichan Tribes Lands

14.1 Cowichan Tribes may agree with another party to exchange a parcel of Tumuhw for a parcel of non-Tumuhw land from that other party in accordance with this Quw'utsun Tumuhw and the Framework Agreement.

No Effect

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

Land to be Received

14.3 A proposed land exchange cannot proceed to a Ratification Vote unless:

- (a) the land to be received in the exchange under section 14.1
 - (i) is of equal or greater an area than the area of the Tumuhw to be exchanged, and
 - (ii) is eligible to become a reserve and to become Tumuhw subject to this Quw'utsun Tumuhw; and
- (b) the total value of the compensation to be received in the land exchange, taking into account lands to be received under subsection 14.1 and other compensation to be received under section 14.5, is at least comparable to the equivalent fee simple appraised value of the Tumuhw to be exchanged.

Negotiators

14.4 A Person who negotiates a land exchange agreement on behalf of Cowichan Tribes must be designated by Resolution to negotiate the agreement.

Additional Compensation

- 14.5 Cowichan Tribes may negotiate to receive other compensation, such as money or one or more other parcels of land, in addition to the parcel referred to in subsection 14.1, and any such additional land does not need to meet the requirements of paragraph 14.3(a).

Additional Land

- 14.6 Such additional land under subsection 14.5 may be held by, or in trust for, Cowichan Tribes, in fee simple or otherwise.

Federal Consent

- 14.7 Before Cowichan Tribes concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Her Majesty in right of Canada:
- (a) other than the land received by Cowichan Tribes not to be held as reserve in accordance with subsections 14.5 and 14.6, agrees to set apart lands received in the land exchange as reserve lands, as of the date of the land exchange or such later date as Council may specify by Resolution or as provided by an agreement with Canada;
 - (b) if applicable, agrees to acquire and hold the land in trust for Cowichan Tribes until the land becomes reserve land subject to this Quw'utsun Tumuhw;
 - (c) consents to the manner and form of the exchange as set out in the land exchange agreement; and
 - (d) agrees to amend the Individual Agreement and take all other steps to enable the land to become Tumuhw subject to this Quw'utsun Tumuhw.

Community Notice

- 14.8 Once negotiations on the land exchange agreement are concluded, the Council or the Lands and Governance Director will provide the following information to Eligible Voters before the Ratification Vote:
- (a) a description of the Tumuhw to be exchanged;
 - (b) a description of the land to be received in the exchange;
 - (c) a description of any other compensation to be exchanged;
 - (d) a report of a certified land appraiser setting out that the conditions in paragraph 14.3(b) have been met;
 - (e) a copy or summary of the exchange agreement; and
 - (f) a copy of the consent referred to in subsection 14.7.

Process of Land Exchange

14.9 The land exchange agreement will 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 Tumuhw being exchanged, in accordance with the exchange agreement; and
- (c) a copy of the Instruments transferring title to the relevant parcels of land must be registered in the First Nations Land Register.

PART 5 - ACCOUNTABILITY

15. Conflict of Interest

Application of Rules

15.1 Any Person dealing with a matter, or making a recommendation or a decision, that is related to Tumuhw must comply with policies and procedures established by Council pursuant to the *Financial Administration Law* respecting the avoidance and mitigation of conflicts of interest, as amended or replaced from time to time.

Meeting of Eligible Voters

15.2 If the Council is unable to vote on a proposed Law or Resolution due to a lack of quorum arising from conflicts of interest, the Council may refer the matter to the Eligible Voters for enactment or approval by Ratification Vote in accordance with section 12.

Inability to Act

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

Other Laws

15.4 For greater certainty, the Council may enact Laws or approve policies to further implement this section.

16. Financial Management

Definition

16.1 In this section, "Account" means the bank account or accounts established pursuant to subsection 16.5.

Application

- 16.2 Sections 16 through 20 inclusive apply only to financial matters relating to Tumuhw that are administered under this Quw'utsun Tumuhw and will be interpreted in a manner consistent with the *Financial Administration Law*.

Compliance with Financial Administration Law

- 16.3 All accounting, auditing, reporting and other financial matters relating to Tumuhw will be conducted in accordance with the *Financial Administration Law*, and all regulations, policies or procedures enacted or approved under it.

Paramountcy

- 16.4 If there is an inconsistency or conflict between this Part and the *Financial Administration Law*, the *Financial Administration Law* prevails to the extent of the inconsistency or conflict.

Establishment of Bank Accounts

- 16.5 The Council will maintain one or more bank accounts in a financial institution and will deposit in those accounts:
- (a) transfer payments received from Canada for the management and administration of Tumuhw;
 - (b) moneys received by Cowichan Tribes from the grant or disposition of any Interests or Licences in Tumuhw;
 - (c) all fees, fines, charges and levies collected under a Law or Resolution;
 - (d) all capital and revenue moneys received from Canada from the grant or disposition of any Interests and Licences in Tumuhw; and
 - (e) any other land revenue received by Cowichan Tribes.

Adoption of Budget

- 16.6 The Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if the Council deems it necessary in the course of the fiscal year, adopt revised budgets for that fiscal year.

Procedure

- 16.7 Council will inform Members of the land management budget or revised budget in a manner consistent with policies, procedures, or directions made pursuant to the *Financial Administration Law* for informing Members about Cowichan Tribes' annual budget.

Financial Policy

- 16.8 Cowichan Tribes may, in accordance with this Quw'utsun Tumuhw and the *Financial Administration Law*, adopt a financial policy to further manage moneys related to Tumuhw.

17. Financial Records

Preparation of Financial Statement

- 17.1 At the end of each fiscal year, the Council will prepare a financial statement in respect of moneys related to Tumuhw in comparative form, containing at a minimum:
- (a) a balance sheet;
 - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any revised budget; and
 - (c) any other information necessary for a fair presentation of the financial position of Cowichan Tribes in relation to Tumuhw.

Consolidated Accounts

- 17.2 The accounting, auditing and reporting requirements of this Quw'utsun Tumuhw may be done together with, and consolidated with, the other accounts, audits and reports of Cowichan Tribes provided that the statement and analysis relating to Tumuhw is clearly distinguishable.

18. Audit

Appointment of Auditor

- 18.1 The auditor appointed under the *Financial Administration Law* will audit the financial statements of Cowichan Tribes relating to Tumuhw.

Duty of Auditor

- 18.2 The auditor will provide the audited financial statements to the Lands Committee for its review and consideration not more than one hundred and fifteen (115) days after the fiscal year end for which the statements were prepared.

Council Review of Audit

- 18.3 The Council must review and approve the audited financial statements of Cowichan Tribes relating to Tumuhw not more than one hundred and twenty (120) days after the fiscal year end for which the statements were prepared.

Access to Records

- 18.4 In order to prepare the report on Cowichan Tribes' financial statement, the auditor may at all reasonable times inspect any financial records of Cowichan Tribes and any Person or body who administers money on behalf of Cowichan Tribes.

Explanation of Auditor's Report

- 18.5 The Council will communicate the auditor's report to the Members in a manner consistent with policies, procedures and directions made pursuant to the *Financial Administration Law*.

19. Annual Report

Publish annual Report

- 19.1 The Council, on behalf of Cowichan Tribes, will publish an annual report on administration of Tumuhw within one hundred and eighty (180) days after the end of each fiscal year.

Contents

- 19.2 The annual report will include:

- (a) an annual review of Tumuhw management activities;
- (b) a copy and explanation of the audit as it applies to Tumuhw; and
- (c) any other matter as may be directed by the Council or reasonably requested by the Lands Committee.

20. Access to Information

Access

- 20.1 Any Member may, during normal business hours at the main administrative office of Cowichan Tribes, have reasonable access to:
- (a) the auditor's report prepared under section 18; and
 - (b) the annual report prepared under section 19.

Copies for Members

- 20.2 Any Member may obtain a copy of the auditor's report or annual report on payment of any applicable fee set by or under a Resolution of the Council.

Access to Records

- 20.3 If Council makes a policy providing for access by Members to financial records related to Tumuhw other than the auditor's report or annual report, then access to such records will be governed by that policy. If no such policy is in effect, then any Member authorized by the Council by Resolution may, at any reasonable time and subject to reasonable privacy restrictions, inspect the financial records of Cowichan Tribes related to Tumuhw in accordance with conditions of access as described in the Resolution.

PART 6 - LAND ADMINISTRATION

21. Lands Committee

Lands Committee Established

21.1 The Lands Committee is hereby established to:

- (a) assist with the development and functioning of the land administration system;
- (b) advise the Council and staff on matters respecting Tumuhw;
- (c) recommend Laws, Resolutions, policies and procedures respecting Tumuhw to the Council;
- (d) hold regular and special Meetings of Members to discuss land issues and make recommendations to Council on the resolution of any significant land issues;
- (e) review and make recommendations to Council concerning applications for Interests and Licences in Tumuhw;
- (f) assist in the exchange of information on land issues between Members and the Council;
- (g) oversee community input and approvals under this Quw'utsun Tumuhw; and
- (h) perform such other duties and functions as Council may direct.

Implementation of Policies

21.2 Recommendations of the Committee in relation to rules and procedures developed in accordance with subsection 21.1 will be given full and fair consideration by Council for implementation as Laws, policies, or amendments to this Quw'utsun Tumuhw.

Delegation

21.3 Despite subsection 3.4 and without limiting the generality of subsection 3.5, Council may, by Resolution, delegate authority to the Lands Committee to make regulations and policies and other regulatory tools to implement Laws, and Council may establish procedures for the development of such regulations and policies.

Internal Procedures

21.4 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, provided that such rules are not inconsistent with any Laws, Resolutions, rules or procedures established by Council.

22. Implementation of the Lands Committee

First Lands Committee

22.1 As soon as possible after the next Council election following the ratification of Quw'utsun Tumuhw, Council shall appoint the first Lands Committee by Resolution.

Composition

22.2 The Lands Committee will be composed of five (5) Eligible Voters and two (2) members of Council appointed by Council.

Ex Officio Committee Members

22.3 The Chief and the General Manager are ex officio members of the Lands Committee, and when in attendance, have voting privileges.

Quorum

22.4 A quorum of the Lands Committee is 5 members or ex officio members, unless specified otherwise in a Law, policy or terms of reference under subsection 22.8.

Eligibility

22.5 Any Eligible Voter, whether or not resident on Tumuhw, 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; and
- (b) any Person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

Interim Lands Committee

22.6 The Land Management Committee as it exists on the date of the Ratification Vote and as set out in Schedule A to this Quw'utsun Tumuhw will hold office and carry out the duties of the Lands Committee until the first Lands Committee appointed under subsection 22.2 takes office.

Term of Office

22.7 The length of the term of office for members of the Lands Committee is the same as the term of office for members of Council, unless specified otherwise in a Law, policy or terms of reference under subsection 22.8.

Laws and Policies Concerning Lands Committee Appointment

22.8 As soon as possible after the coming into force of this Quw'utsun Tumuhw, Council shall develop a Law, a policy, or terms of reference dealing with such matters as Lands Committee selection and appointments, number of members, composition, eligibility, Chair, functions of the Chair, term of office, remuneration, conditions of service, termination,

vacancies arising during term, and such other matters as Council deems appropriate to the operation of the Lands Committee.

23. Land Investigation Committee

Continuation of the Land Investigation Committee

- 23.1 The Land Investigation Committee is continued, and the Land Investigation Committee will carry out the responsibilities assigned to it under this Quw'utsun Tumuhw, a Law or a Resolution.

PART 7 - INTERESTS AND LICENCES IN LAND

24. Revenue from Tumuhw

Determination of Fees and Rent

- 24.1 The Lands Committee will recommend to Council processes, Laws or policies for determining:
- (a) the fees or rent to be paid for or in relation to Interests and Licences in Tumuhw;
 - (b) the fees for services provided by Cowichan Tribes staff or contractors in relation to any Tumuhw; and
 - (c) the fees and royalties to be paid for the taking of Natural Resources from Tumuhw.

25. Registration of Interests and Licences

Enforcement of Interest and Licences

- 25.1 An Interest or Licence in Tumuhw created or granted after this Quw'utsun Tumuhw takes effect is not enforceable unless it is registered in the First Nations Land Register.

Registration of Consent or Approval

- 25.2 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 to the Instrument.

Responsibility for Ensuring Accuracy of Instruments

- 25.3 Persons or entities submitting Instruments for registration are responsible for ensuring the validity and accuracy of their documents. Neither Cowichan Tribes, nor any employee or officer of Cowichan Tribes, will be responsible or liable for ensuring that a document which affects or purports to affect Tumuhw:
- (a) is validly made;

- (b) complies with the Quw'utsun Tumuhw or any Law;
 - (c) should be or is registered or recorded; or
 - (d) will be accepted for registration or recording in the First Nations Land Register.
- 25.4 Council will direct that, provided that the Lands and Governance Director has received a registerable copy of the following Instruments, the Lands and Governance Director will ensure that each of the following Instruments is deposited in the First Nations Land Register:
- (a) a grant of an Interest in, or Licence in relation to, Tumuhw;
 - (b) a transfer or assignment of an Interest in, or Licence in relation to, Tumuhw; and
 - (c) Instruments encumbering or otherwise affecting or purporting to affect Tumuhw, or an Interest or Licence in Tumuhw.
- 25.5 Financial claims or other assertions of right which affect, or purport to affect, Tumuhw and Interests and Licences in Tumuhw, may, in accordance with all Laws and other applicable law, be recorded in the First Nations Land Register.
- 25.6 The types of Instruments which may be recorded under subsection 25.5 include:
- (a) Judgments;
 - (b) Court orders;
 - (c) Rights of First Refusal;
 - (d) Certificates of Pending Litigation;
 - (e) Caveats;
 - (f) Liens;
 - (g) Assignments of Rent;
 - (h) Options to Purchase;
 - (i) Tax Certificates; and
 - (j) Covenants.

26. Separate Lands Register

Option to Maintain Separate Register

- 26.1 If Council passes a Law establishing a separate register from the First Nation Land Register, the Law may provide that the Cowichan register supersedes the First Nation Land Register.

27. Limits on Interests and Licences

All Dispositions in Writing

- 27.1 An Interest in, or Licence in relation to, Tumuhw may only be created, granted, disposed of, assigned, encumbered or transferred by an Instrument issued in accordance with this Quw'utsun Tumuhw.

Standards

- 27.2 The Council may establish mandatory standards, criteria and forms for Interests and Licences in Tumuhw.

Improper Transactions Void

- 27.3 A deed, Lease, contract, Instrument, document or agreement of any kind, whether written or oral, by which Cowichan Tribes, a Member or any other Person purports to grant, dispose of, transfer, encumber or assign an Interest or Licence in Tumuhw after the date this Quw'utsun Tumuhw takes effect is void if it contravenes this Quw'utsun Tumuhw.

Non-Members

- 27.4 Subject to this Quw'utsun Tumuhw and any Laws, a Person who is not a Member may hold an Interest or Licence in Tumuhw, but a Person who is not a Member may not hold a permanent interest in a Certificate of Possession.

Consent of Council

- 27.5 There shall be no disposition, grant, transfer or assignment of an interest in Tumuhw without the written consent of Council, except for:
- (a) transfers between Members;
 - (b) transfers that occur by operation of law, including transfers of estate by testamentary disposition;
 - (c) transfers in accordance with a family homes and matrimonial interests Law; and
 - (d) subleases and assignment of subleases where the head Lease provides that the Council's consent is not required.

Interests Granted in Error or by Fraud

- 27.6 Council may, subject to any applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any Interest or Licence issued or allotted in error or by fraud.

28. Existing Interests

Continuation of Existing Interests

28.1 Any Interest or Licence in Tumuhw that existed when this Quw'utsun Tumuhw takes effect will, subject to this Quw'utsun Tumuhw, continue in force in accordance with its terms and conditions.

Applies to Interests and Licences in Uwhunshun Subdivision

28.2 For greater certainty, subsection 28.1 applies to any Interests and Licences issued pursuant to Order-in-Council P.C. 1966-807 (the "OIC") in relation to lands known as the Uwhunshun Subdivision, and any such Interests or Licences will be administered in accordance with any lawful requirements under the OIC.

28.3 All new and pre-existing Interests are subject to this Quw'utsun Tumuhw and to any relevant Laws, land use plans, and policies passed under this Quw'utsun Tumuhw and for greater certainty, Cowichan Tribes is not liable for any decrease in value or use of an Interest as a result of a Law, land use plan, regulation or policy duly passed under or in relation to this Quw'utsun Tumuhw.

29. New Interests and Licences

Authority to Make Dispositions

29.1 Subject to this Quw'utsun Tumuhw and any Laws, the Council may, on behalf of Cowichan Tribes, grant:

- (a) Interests and Licences in Un-Allotted Land;
- (b) with the consent of the CP holder, Interests and Licences in CP Land; and
- (c) Licences to take Natural Resources from Tumuhw, including, with the consent of the CP holder, from CP Land.

Conditional Grant

29.2 The grant of an Interest or Licence under section 29.1 may be made subject to the satisfaction of written conditions, but any such conditions must be set out in the Instrument in respect of the grant of the Interest or Licence.

Role of the Lands Committee

29.3 The Lands Committee will make recommendations to Council on the granting of Interests and Licences except the allotment of Certificates of Possession.

Role of the Land Investigation Committee

29.4 The Land Investigation Committee will make recommendations to Council on the allotment of Certificates of Possession.

Shhw'a'mut Policy

- 29.5 Council, on the recommendation of the Land Investigation Committee, will establish a Law or policy under this Quw'utsun Tumuhw to fairly address Shhw'a'mut lands and other unregistered claims and interests.

30. Certificates of Possession

Nature of Interest in CP

- 30.1 Subject to this Quw'utsun Tumuhw and any Laws, a Certificate of Possession in respect of a parcel of Tumuhw is an Interest that entitles the Member holding it to:
- (a) possession of the land;
 - (b) share with Cowichan Tribes in the benefit from the Natural Resources on or in the land;
 - (c) grant subsidiary Interests and Licences to use and occupy the land, including Leaseholds, Life Estates, and Easements;
 - (d) transfer, devise or otherwise dispose of the Certificate of Possession to another Member; and
 - (e) any other rights, consistent with this Quw'utsun Tumuhw, that are attached to certificates of possession under the *Indian Act*.
- 30.2 For certainty, a CP holder may grant a Leasehold to himself or herself in the same manner as to another Person notwithstanding any common law rule to the contrary.
- 30.3 Subject to subsection 30.4 and notwithstanding any common law rule to the contrary, all Natural Resources on Tumuhw, including CP Land, belong to Cowichan Tribes and Cowichan Tribes has the exclusive authority to grant Licences in relation to Natural Resources on Tumuhw including CP Land.
- 30.4 Revenue derived from the use and development of Natural Resources on CP Land will be shared with the CP holder in accordance with a Cowichan Tribes Law enacted, or policy made or continued under this Quw'utsun Tumuhw.

Ceasing to be a Member

- 30.5 A Person who ceases to be a Member shall within six months of ceasing to be a Member transfer any CP they hold to Cowichan Tribes or another Member.
- 30.6 Where a Member does not transfer their CP in accordance with subsection 30.5, any CP shall, six months and one day after the Person ceases to be a Member, be cancelled and the Tumuhw described in the CP shall automatically become Un-Allotted Land.
- 30.7 Where a CP reverts to Cowichan Tribes under Section 30.6, the individual ceasing to be a Member shall remain liable for any obligations or liabilities, including environmental

liabilities, or any monies owing pursuant to any Interests they held prior to the date the CP reverts to Cowichan Tribes.

31. Limits on Mortgages and Seizures

Protections

31.1 In accordance with the Framework Agreement:

- (a) section 29, section 87 and subsections 89(1) and (2) of the *Indian Act* continue to apply to Tumuhw;
- (b) Subsection 89(1.1) of the *Indian Act* will continue to apply to all Leasehold interests that exist when the Quw'utsun Tumuhw comes into force if the Tumuhw is designated land at that time;
- (c) Notwithstanding paragraph (a), the interest of a Member in a Leasehold is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.

Mortgage of CP

31.2 A Certificate of Possession may be subject to a Mortgage or charge, but only to Cowichan Tribes or to a Member of Cowichan Tribes with the written consent of the Council by Resolution, such approval not to be unreasonably withheld.

Mortgages of Leasehold Interests

31.3 Notwithstanding subsection 27.5, a Leasehold may be subject to charge or Mortgage without the consent of Council, provided that:

- (a) the charge or Mortgage is permitted under the terms of the Lease; and
- (b) the charge or Mortgage provides Council, on behalf of Cowichan Tribes, with a right of redemption.

Time Limit

31.4 The term of any charge or Mortgage of a Leasehold must not exceed the term of the Lease.

Default in Mortgage

31.5 In the event of default in the terms of a charge or Mortgage of a Leasehold, the Leasehold is not subject to possession by the chargee or Mortgagee, or to 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, where required;
- (b) the charge or Mortgage was registered in the First Nations Land Register; and
- (c) a reasonable opportunity to redeem the charge or Mortgage is given to the Council on behalf of Cowichan Tribes.

Power of Redemption

- 31.6 If the Council exercises its right of redemption with respect to a Leasehold, Cowichan Tribes becomes the lessee and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

32. Residency, Access and Trespass

No Financial Obligations

- 32.1 A right of residence or access to Tumuhw does not create any financial obligation or liability on the part of Cowichan Tribes.

Trespass

- 32.2 Any Person, who resides on, enters or remains on Tumuhw other than in accordance with a residence or access right under this Quw'utsun Tumuhw or a Law pursuant to this Quw'utsun Tumuhw is guilty of an offence and may, in addition to other remedies, be ordered evicted or removed by Resolution enforceable by any peace officer or enforcement official designated by Council by Resolution.

Civil Remedies

- 32.3 All civil remedies for trespass are preserved.

33. Transfers on Death

Indian Act application

- 33.1 Subject to any Laws in respect of family homes and matrimonial interests, until Cowichan Tribes exercises jurisdiction in relation to wills and estates, the provision of the *Indian Act* dealing with wills and estates shall continue to apply with respect to Interests in Tumuhw.

Registration of transfer

- 33.2 A person who receives an Interest in Tumuhw by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that Interest registered in the First Nations Land Register.

Disposition of Interest

- 33.3 If no provision has been made by the deceased Member of the disposition of the Interest to another Member, the following rules apply:
- (a) the Minister or his or her delegate may make application to Council requesting that an Instrument evidencing lawful possession or occupation of Tumuhw be issued; or
 - (b) a certificate for an Interest or other instrument may be issued in accordance with procedures established by Council, or application of the Minister or his or her delegate, if the beneficiary or purchaser is a Member.

34. Family Homes and Matrimonial Interests Law

Development of rules and procedures

- 34.1 Council has the power to enact Laws that apply during a Spousal Relationship, when that relationship breaks down, or on the death of a Spouse, respecting:
- (a) the use, occupancy and possession of family homes on Tumuhw; and
 - (b) the division of the value of any Interests held by Spouses in or to structures and lands on Tumuhw.

Enactment of rules and procedures

- 34.2 The rules and procedures contained in family homes and matrimonial Interests Laws shall be developed by the Lands Committee in consultation with the Members.

Additional Provisions

- 34.3 Family homes and matrimonial Interests Laws may include:
- (a) provisions for administering those Laws; and
 - (b) despite subsection 89(1) of the *Indian Act*, provisions for enforcing, on Tumuhw, an order of a court or a decision made or an agreement reached in accordance with the provisions of those Laws.

Notice of Land Laws

- 34.4 Council will provide, to the provincial Attorney General, notice of its intent to make family homes and matrimonial Interests Land laws and, upon enactment, provide a copy of those laws to the Attorney General.

PART 8 - DISPUTE RESOLUTION

35. Dispute Resolution Procedure

Disputes

- 35.1 Except as otherwise provided in this Part, and subject to any Law, disputes in relation to Tumuhw or Interests or Licences in Tumuhw shall be determined as follows:
- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration, or other dispute resolution process agreed to by the parties; or
 - (b) if the parties do not agree on a dispute resolution mechanism, the dispute may be determined by a court of competent jurisdiction.

Dispute Resolution Laws

35.2 Nothing in this Part precludes Council from establishing Laws in accordance with Part 2 providing for additional or alternate processes for resolving disputes involving Tumuhw or Interests or Licences in Tumuhw.

36. Costs

Parties Bear Own Costs

36.1 Subject to any ruling by an arbitrator, all parties to a dispute must bear their own costs in any dispute resolution process they undertake.

Cowichan Tribes not Liable

36.2 For greater certainty, unless a Law provides otherwise, Cowichan Tribes is not liable or responsible for the costs of any dispute resolution process under this Part where Cowichan Tribes is not a party.

PART 9 - OTHER MATTERS

37. Liability

Prior Acts of Canada

37.1 Cowichan Tribes is not liable for anything done or omitted to be done by Canada or any Person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Quw'utsun Tumuhw comes into force.

No Waiver

37.2 This Quw'utsun Tumuhw is not, nor will it be interpreted as being, a waiver by Cowichan Tribes in regard to any liability, acts or omissions of Canada.

Liability Coverage

37.3 The Council will arrange, maintain and pay insurance coverage for its officers, employees and Council members engaged in carrying out any matter related to Tumuhw to indemnify them against personal liability arising from the performance of those duties.

Extent of Coverage

37.4 The extent of the insurance coverage will be determined by the Council.

Bonding

37.5 Every employee, officer and contractor of Cowichan Tribes whose responsibilities include land administration or collecting or accounting for land revenue must be bondable.

38. Offences, Penalties and Enforcement

Application of the *Criminal Code*

38.1 Unless another 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 Quw'utsun Tumuhw or under a Law.

Penalties

38.2 Any Person who commits an offence under this Quw'utsun Tumuhw or a Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both, provided however, that offences related to Cowichan Tribes environmental protection Laws may carry penalties consistent with similar environmental protection laws in force in Canada.

Other Penalties

38.3 Notwithstanding subsection 38.2:

- (a) a Law may provide for a penalty which is different than, and for greater certainty, which exceeds, the penalties referred to in subsection 38.2;
- (b) a Law may provide for a variety of enforcement mechanisms including ticketing, stop work orders, restorative justice orders, and fines, or may incorporate such enforcement mechanisms from provincial or local government sources.

Enforcement

38.4 Unless otherwise provided for in this Quw'utsun Tumuhw or a Law, this Quw'utsun Tumuhw and Laws are to be enforced by a court of competent jurisdiction.

Justices of the Peace

38.5 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Quw'utsun Tumuhw and Laws.

Community Justice Process

38.6 Council may enact Laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through a community justice process.

Agreements with other Agencies

38.7 Council may enter into agreements with other governments or government agencies to collect any fines, debts, fees or other penalties, or to otherwise carry out enforcement measures under this Quw'utsun Tumuhw or Laws.

39. Amendment

Ratification Vote Requirement

39.1 Subject to subsection 39.2, amendments to this Quw'utsun Tumuhw must receive community approval by Ratification Vote.

Minor Amendments

39.2 A ratification vote is not required for revisions to this Quw'utsun Tumuhw that do not change the substance of this Quw'utsun Tumuhw. Council may, from time to time, arrange and revise this Quw'utsun Tumuhw. Such revisions include:

- (a) an amendment of the description of Tumuhw subject to this Quw'utsun Tumuhw;
- (b) a reference in this Quw'utsun Tumuhw to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this Quw'utsun Tumuhw to an Act or parts thereof that have expired, have been repealed or suspended;
- (d) changes in this Quw'utsun Tumuhw as are required to reconcile seeming internal inconsistencies or inconsistencies with other enactments;
- (e) minor improvements in the language as may be required to bring out more clearly the intention of the Quw'utsun Tumuhw without changing the substance of this Quw'utsun Tumuhw; and
- (f) correcting editing, grammatical or typographical errors.

40. Commencement

Preconditions

40.1 This Quw'utsun Tumuhw will take effect if the community approves this Quw'utsun Tumuhw and the Individual Agreement and this Quw'utsun Tumuhw has been certified by the Verifier pursuant to the Framework Agreement.

Commencement Date

40.2 This Quw'utsun Tumuhw will come into effect on the later of:

- (a) the first day of the month following certification of this Quw'utsun Tumuhw by the verifier under the Framework Agreement, or
- (b) the date the Individual Agreement is executed on behalf of Canada.

SCHEDULE "A"

INTERIM LANDS COMMITTEE

The current Land Management Committee will function as the Lands Committee until the council appoints a permanent Lands Committee.

Current Land Management Committee Members

Chief	William (Chip) Seymour (Ex-Officio)
Councillor	Albie Charlie
Councillor	Craig George
Councillor	Calvin Swustus
Community Rep	Diane Modeste
Community Rep	Ernie Elliott
Community Rep	John Charlie
Community Rep	Tracy Thomas
A/General Manager	Derek Thompson (Ex-Officio)
Lulumexun Director	Larry George (Chair)
Lands Manager	Jodee Dick
A/Land Records and Claims Administrator	Glenda George
<u>Technical Support</u>	
Lulumexun Associate Director	Melissa Tokarek