

NEN CH'EH

the Land's Way



**LAND
CODE**

Xeni Gwet'in First Nations Nen Ch'eh (Land Code)

Date for Reference: June 2023 (Draft #3)



XENI GWET'IN

First Nations Government

The *Land Code* includes any amendments made from time to time. The dates of amendments are noted in the relevant amended sections of this *Land Code*.

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Whereas we the Xení Gwet'in are part of the T̓shilhqot'in Nation, or "People of the River";

And Whereas as T̓shilhqot'in, we have occupied our ancestral *nen* (land) since the times of the *?esggidam* (the time of our ancestors);

And Whereas as T̓shilhqot'in, we hold Aboriginal title to our *nen*, including our reserves, and the Supreme Court of Canada has recognized our Aboriginal title to some of our *nen* in *Tsilhqot'in Nation v British Columbia* 2014 SCC 44;

And Whereas as T̓shilhqot'in, we have an inherent right of self-determination, as recognized by the *United Nations Declaration on the Rights of Indigenous Peoples*, as well as other rights related to our *nen* such as harvesting rights and rights to pursue spiritual activities, and we have never ceded or surrendered our Aboriginal title or any of our rights;

And Whereas as T̓shilhqot'in, we have sacred and legal responsibilities towards our *nen* which were taught to us by our ancestors, and we continue to exercise authority and jurisdiction over our *nen* through our values, principles and our *dechen ts'edilhtan* (our laws, and which literally translates to "laying down the stick");

And Whereas our T̓shilhqot'in values, principles and *dechen ts'edilhtan* require us to conserve our natural resources, maintain healthy ecosystems, and use our *nen* and develop our economy sustainably so that our future generations can thrive here;

And Whereas we the Xení Gwet'in are caretakers for part of the T̓shilhqot'in *nen*;

And Whereas we the Xení Gwet'in are bringing *Nen Ch'eh* into effect pursuant to our Aboriginal title, our inherent right of self-determination, and responsibilities for our caretaker area;

And Whereas *Nen Ch'eh*, like the *Nulh Ghah Dechen Ts'edilhtan* that Xení Gwet'in enacted in 2019, expresses part of our *dechen ts'edilhtan* to guide how we care for our *nen*, and advances our work to put more of our *dechen ts'edilhtan* in writing so that we can share them and strengthen their application;

And Whereas we are also bringing *Nen Ch'eh* into effect pursuant to the *Framework Agreement on First Nation Land Management*, which provides First Nations the option of withdrawing their reserve land from the land management provisions of the *Indian Act* and exercising control over their land and resources for the use and benefit of their Members;

And Whereas under the *Framework Agreement*, Canada recognizes that First Nations have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands;

And Whereas under the *Framework Agreement*, Canada has committed to implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in a manner consistent with the Canadian Constitution;

And Whereas *Nen Ch'eh* initially only applies to Xenigwet'in's Indian reserves, it may eventually apply to some or all of the Tsilhqot'in Aboriginal title lands in our caretaker area;

And Whereas Xenigwet'in Eligible Voters have reviewed, discussed and ratified *Nen Ch'eh* and Xenigwet'in's Individual Framework Agreement;

NOW THEREFORE, THIS *NEN CH'EH* IS ENACTED AS A NEN LAW OF XENIGWET'IN.

PART 2

XENI GWET'IN INHERENT RIGHTS AND OTHER LEGAL RIGHTS

1. Inherent Rights and Other Legal Rights

- 1.1 *Nen Ch'eh* does not define, alter, limit or in any way prejudice T̄silhqot'in Aboriginal title or any other T̄silhqot'in Aboriginal rights related to T̄silhqot'in *nen*.
- 1.2 *Nen Ch'eh* does not affect any rights of the Xení Gwet'in under the *United Nations Declaration on the Rights of Indigenous Peoples*.
- 1.3 *Nen Ch'eh* does not change the fiduciary relationship between Canada and Xení Gwet'in.

PART 3

DEFINITIONS AND INTERPRETATION

2. Definitions

- 2.1 The following definitions apply in *Nen Ch'eh*:

“*Community Lands*” means Lands that are Lands held on behalf of and for the benefit of all Members and for greater certainty excludes Member Lands;

“*Council*” means the Chief and Council of the Xení Gwet'in or any successor government of Xení Gwet'in;

“*Council Resolution*” means a resolution approved by a quorum of Council;

“*Eligible Voter*” means a Member who has attained eighteen years of age on or before the last day of a Vote;

“*First Nation Lands Register*” means the lands register established pursuant to the *Framework Agreement* or any successor lands register that may be established to replace the First Nation Lands Register;

“*Framework Agreement*” means the *Framework Agreement* on First Nation Land Management, entered into between First Nations and Canada on February 12, 1996, as amended from time to time;

“*Individual Framework Agreement*” means the Framework Agreement between Xení Gwet'in and Canada, entered into on _____.

“*Interest*” means any interest, right, or estate of any nature in or to Lands, including a Member Only Interest, lease, life estates, easement, rights of way, and a section 28(2) permit under the *Indian Act*, but does not include:

- (a) title to the Land, including Aboriginal title;
- (b) mortgages; and
- (c) a Licence;

“*Land*” or “*Lands*” has the meaning provided in section 4;

“*Lands Meeting*” means a meeting open to the participation of Members for purposes set out in *Nen Ch’eh*;

“*Licence*” means any temporary right of use or occupation of Lands for a term of two years or less but does not include a business licence, building permit, or similar instrument;

“*Member*” means a person on the Xeni Gwet’in membership list or who is entitled to be on that list;

“*Member Lands*” means Lands that are Lands held by one or more Members under a Member Only Interest and for greater certainty excludes Community Lands;

“*Member Only Interests*” means allotments, certificates of possession, and other interests that can only be held by Members;

“*Natural Resources*” means renewable and non-renewable natural resources such as timber, minerals, stone, sand, gravel, clay, soil, and similar substances, but it does not include water, fish, or wildlife;

“*Nen Ch’eh*” means this Land Code as amended from time to time;

“*Nen Law*” means:

- (a) *Nen Ch’eh*; and
- (b) any other land law enacted under *Nen Ch’eh* that is both within Xeni Gwet’in’s inherent jurisdiction and within Xeni Gwet’in authority under the *Framework Agreement*

but for greater certainty, does not include other nen-related Xeni Gwet’in laws that exist independently of *Nen Ch’eh*, such as the *Nulh Ghah Dechen Ts’edilhtan*;

“*Nenqay Advisory Group*” means the advisory group established under section 6.

“*Publish*” means to make information available to Members by posting online and in the Xeni Gwet’in administration office;

“*Spouse*” means a person who

- (a) is married, whether by a traditional, religious, or civil ceremony, or
- (b) is living in common-law relationship;

“Vote” means a vote for purposes set out in Part 6 in which all Eligible Voters are entitled to participate;

“Xeni Gwet’in” means the Xeni Gwet’in First Nations, a T̓silhqot’in Nation community and an Indian band within the meaning of the *Indian Act*, RSC I-5.

3. Interpretation

3.1 In *Nen Ch’eh*:

- (a) the Preamble and the words in *Nenqayni ch’ih* (T̓silhqot’in language) may be used to interpret *Nen Ch’eh*, whereas titles and headings are for convenience only and do not change the meaning or scope of the any of the provisions; and
- (b) where a time limit falls on a weekend, or any national, provincial, or T̓silhqot’in holiday, the time limit is extended to the next business day.

3.2 If there is an inconsistency or conflict between *Nen Ch’eh* and the *Framework Agreement*, the *Framework Agreement* prevails to the extent of the inconsistency or conflict.

3.3 If there is an inconsistency or conflict between *Nen Ch’eh* and any other Nen Law or by-law under the *Indian Act*, *Nen Ch’eh* prevails to the extent of the inconsistency or conflict.

3.4 Any reference to a court in *Nen Ch’eh* includes a justice of the peace appointed by Xeni Gwet’in with authority in respect of *Nen Ch’eh* and Laws.

3.5 For greater certainty, *Nen Ch’eh* does not regulate *lhuy* (fish) or *nulh ghah* (wildlife).

PART 4

LANDS

4. Lands Subject to *Nen Ch’eh*

4.1 *Nen Ch’eh* applies to the following Lands

- (a) Xeni Gwet’in Indian reserve Lands described in “Appendix G” of the Individual Framework Agreement; and
- (b) any additions to Xeni Gwet’in reserves after *Nen Ch’eh* comes into force; and
- (c) Lands added to reserve through a land exchange in accordance with *Nen Ch’eh*.

4.2 Lands include:

- (a) all Natural Resources situated within them; and

- (b) the waters within the Lands, and the beds underlying those waters.
- (c) all rights that are part of or that attach to the Land, including riparian rights; and
- (d) all Interests and Licences, including those previously granted by Canada before this *Land Code* came into force.

PART 5

LAND AND NATURAL RESOURCES ADMINISTRATION

5. Nenqay Department

- 5.1 Council may, by Council Resolution, identify staff positions in the Nenqay Department whether they are filled by employees, contractors, volunteers, or other persons considered by Council to be Nenqay Department staff.
- 5.2 Council may, by Council Resolution, specify for any Nenqay Department staff position:
 - (a) the scope of delegated authority for management of Lands; and
 - (b) whether that position includes the authority to register Lands instruments in the First Nation Lands Register on behalf of Xeni Gwet'in.
- 5.3 Subject to the terms of any Council Resolution, the Nenqay Department is responsible for:
 - (a) advising Council on the development and amendment of Nen Laws;
 - (b) arranging Lands Meetings and Votes in accordance with *Nen Ch'eh*;
 - (c) proposing to Council the annual Lands workplan and Lands budget;
 - (d) providing input to Xeni Gwet'in's annual reports in respect of Lands revenues and activities; and
 - (e) developing and maintaining the Land administration system, including record keeping and data management using approved forms and procedures.
- 5.4 The Nenqay Department will assist with the work of the Nenqay Advisory Group, and consider advice provided by the Nenqay Advisory Group in carrying out Nenqay Department responsibilities.

6. Nenqay Advisory Group

- 6.1 The Nenqay Department is responsible for establishing the Nenqay Advisory Group and appointing its members in accordance with *Nen Ch'eh*.

- 6.2 The Nenqay Department will make all reasonable efforts to ensure that there are always at least five, and maximum seven, members appointed to the Nenqay Advisory Group.
- 6.3 As soon as possible after *Nen Ch'eh* comes into effect, Council must, by Council Resolution, appoint interim members of the Nenqay Advisory Group who will serve a maximum one-year term and who may be replaced sooner pursuant to section 6.4.
- 6.4 No later than 12 months after *Nen Ch'eh* comes into effect, Council must, by Council Resolution, appoint all the members of the Nenqay Advisory Group so that there are no remaining interim members.
- 6.5 Council may renew appointments to the Nenqay Advisory Group, and there is no limit on renewals.
- 6.6 Council must, by Council Resolution, establish terms of reference for the Nenqay Advisory Group regarding group composition, eligibility, responsibilities, terms (duration) of appointments, procedures, remuneration of members, and any similar matters.
- 6.7 In addition to responsibilities of the Nenqay Advisory Group under *Nen Ch'eh*, the Nenqay Advisory Group will advise Council and the Nenqay Department on all additional Land-related matters as stated in its terms of reference or requested by Council.
- 6.8 Council may, by Council Resolution, delegate to the Nenqay Advisory Group Lands-related responsibilities, other than enacting Nen Laws, including responsibilities related to particular Lands projects, developments, or activities.
- 6.9 Council may terminate the appointment of any member of the Nenqay Advisory Group who fails to:
 - (a) attend three consecutive meetings of the Nenqay Advisory Group without the approval of the chair of the Nenqay Advisory Group;
 - (b) undertake their duties as a member of the Nenqay Advisory Group under *Nen Ch'eh*; or
 - (c) comply with the terms of reference or any code of conduct for the Nenqay Advisory Group.

PART 6

NEN LAW-MAKING POWERS AND PROCEDURES

7. Law-Making Powers

- 7.1 In accordance with the law-making powers set out in the *Framework Agreement*, Council may make Nen Laws:

- (a) about the conservation, protection, development, and management of Lands, including environmental laws;
- (b) about the use and possession of Lands;
- (c) about Interests and Licences and other rights in relation to Lands;
- (d) about family homes and matrimonial interests on Lands;
- (e) establishing charges and fees, including development cost charges, or similar charges or fees related to the development of Lands;
- (f) establishing offences punishable on summary conviction and other enforcement measures; and
- (g) any matter necessary or ancillary to the making of laws in relation to Lands.

7.2 Council must provide the Attorney General of British Columbia a notice of its intention to make a Nen Law about family homes and matrimonial interests as well as copy of that law once Council has enacted it.

8. Law-Making Procedure

8.1 The law-making procedure described in sections 8.3 to 8.8 applies to

- (a) proposed new Nen Laws;
- (b) proposed amendments to an existing Nen Law, other than minor amendments as described in section 8.2; and
- (c) repeal of Nen Laws, modified as required for that context.

8.2 Minor amendments to Nen Laws include

- (a) changes required to address inconsistencies with the *Framework Agreement*;
- (b) minor improvements to bring out more clearly the intention behind the provisions without changing the substance of the Nen Law; and
- (c) grammatical and typographical corrections

and Council may make minor amendments by Council Resolution.

8.3 The Nenqay Department must obtain direction from Council before developing a draft Nen Law.

8.4 Except where Council has decided to enact an emergency Nen Law, the Nenqay Department:

- (a) must consult with the Nenqay Advisory Group about a proposed Nen Law and consider their advice;
 - (b) must ensure that the draft Nen Law is made available to Members by posting it online and in the Xeni Gwet'in administration office until a final decision is made in respect of that Nen Law;
 - (c) must convene at least one Lands Meeting in accordance with the requirements set out in section 10 to discuss the proposed Nen Law and seek Member input;
 - (d) may provide other information to Members that the Nenqay Department considers appropriate; and
 - (e) may edit the draft Nen Law that is posted online and in the Xeni Gwet'in administration office, including as a result of input provided by Members and the Nenqay Advisory Group, in which case it will inform Members of these changes.
- 8.5 After the Nenqay Department has finalized a draft Nen Law, the Nenqay Department must present it to Council for consideration along with a summary of input received from Members and the Nenqay Advisory Group.
- 8.6 A Vote in accordance with Part 6 is required to ratify
- (a) amendments to *Nen Ch'eh*, other than minor amendments described in section 8.2;
 - (b) a draft Nen Law about family homes and matrimonial interests on Lands, or
 - (c) any other Nen Law that Council decides to put to a Vote.
- 8.7 Where no Vote is required, the decision on whether to approve the draft Nen Law lies with Council, who will review it and:
- (a) enact the draft Nen Law as presented by the Nenqay Department;
 - (b) enact the draft Nen Law after making minor amendments to the draft Nen Law, such as changes to the title or headings, typographical or grammatical errors, and minor changes to align the draft Nen Law with other laws of the Xeni Gwet'in; or
 - (c) request that the Nenqay Department undertake further work on the draft Nen Law for reconsideration by Council; or
 - (d) reject the draft Nen Law.
- 8.8 Where Council requests that the Nenqay Department undertake further work on a draft Nen Law, the Nenqay Department must take the same steps to obtain input from Members

and the Nenqay Advisory Group as were followed for the first draft of the Nen Law and present a revised draft Nen Law to Council for reconsideration.

- 8.9 If Council is of the opinion that an emergency Nen Law is required in order to protect public health, safety, Lands, or Members, Council may immediately enact that law as an emergency Nen Law without completing the law-making procedures set out in section 8.4
- 8.10 If Council is of the opinion that an emergency Nen Law should be amended or renewed to continue to protect public health, safety, Lands or Members, Council may amend or renew that emergency Nen Law without completing the law-making procedures set out in section 8.4.
- 8.11 An emergency Nen Law will expire 120 calendar days after enactment, unless Council remains of the opinion that the matter is urgent and renews that emergency Nen Law before it expires for a maximum of an additional one 120 calendar days from the date of renewal.
- 8.12 A quorum of Council must sign each Nen Law that is enacted or amended.
- 8.13 Nen Laws come into force on the date of enactment unless they specify a later coming into force date.

9. Publication of Nen Laws

- 9.1 Xeni Gwet'in must promptly Publish and register in the First Nations Land Register all Nen Laws, including amended versions.

Xeni Gwet'in must keep in its administration office a copy of all its current Nen Laws as well as copies of previous versions including any that have been repealed or are no longer in force, and Members will have reasonable access to this collection of Laws.

PART 7

LANDS MEETINGS AND VOTES

10. Lands Meetings and Votes

- 10.1 The Nenqay Department must hold a Lands Meeting:
 - (a) whenever the Nenqay Department seeks community input on a proposed Nen Law; and
 - (b) prior to holding a Vote.
- 10.2 A Vote is required to determine whether a majority of participating Eligible Voters approve:

- (a) the proposed Nen Laws referenced in section 8.6;
 - (b) a land use plan;
 - (c) a voluntary exchange of Lands as described in section 12;
 - (d) a grant or renewal of an easement, right of way, permit, or licence on Lands for any type of utility, unless it is required to service Xení Gwet'in or Members;
 - (e) a grant or disposal of Natural Resources forming part of Lands for commercial use;
 - (f) a grant or renewal by Council of an Interest or Licence for commercial use; and
 - (g) any decision that Council is precluded from making due to a conflict of interest as explained in section 21.7.
- 10.3 For the purposes of a Lands Meeting or Vote, the Nenqay Department must make reasonable efforts to maintain a current list of Members and Eligible Voters, including their addresses or other contact information; Members who wish to receive direct notice of Meetings and Votes should provide their current address and contact information to the Xení Gwet'in administration.
- 10.4 The Nenqay Department must provide Members notice of a Lands Meeting, and must provide Eligible Voters with notice of a Vote, by:
- (a) posting the notice online;
 - (b) posting the notice in the Xení Gwet'in administration office; and
 - (c) contacting the Member or Eligible Voter by mail, or alternatively contacting them by email if authorized to do so.
- 10.5 The Nenqay Department must provide Members with notice of a Lands Meeting or Vote at least 14 calendar days in advance and it must provide Members with notice of a Vote at least 60 calendar days in advance

10.6 Notice of a Lands Meeting or Vote must include:

- (a) the purpose, date, time, and location of the Lands Meeting or Vote;
- (b) whether Council has set a minimum participation or approval threshold for a Vote;
- (c) a statement that every Member is entitled to participate in the case of a Lands Meeting and that every Eligible Voter is entitled to participate in the case of a Vote;
- (d) whether participation in a Lands Meeting or Vote by non-Members is allowed; and
- (e) methods of participation, including by telephone, online, in-person, mail-in ballot, or any combination of those methods.

10.7 A person must not in any way interfere with a Vote, which includes the following:

- (a) any inducement or reward for a person to vote or refrain from voting, or vote or refrain from voting a certain way;
- (b) interference with another person's right to vote or preventing them from voting, including by any form of threat, intimidation, or bribe; and
- (c) accepting an inducement or reward for voting or refraining from voting, or voting or refraining from voting a certain way.

10.8 Any person who interferes with a Vote under this section is guilty of an offence and is liable on summary conviction to the penalties provided for under section 2.1.

PART 8

PROTECTION OF LAND

11. Expropriation

11.1 Xeni Gwet'in may only expropriate an Interest or Licence if:

- (a) Xeni Gwet'in has enacted an expropriation Nen Law that complies with the requirements of the *Framework Agreement*; and
- (b) the expropriation meets all the legal requirements of the Nen Law and the *Framework Agreement*.

12. Voluntary Exchange of Lands

12.1 Lands may only be exchanged for new land that will become Lands subject to *Nen Ch'eh*.

12.2 Any exchange of Lands is subject to the following requirements:

- (a) the area of the new land and its value must be greater than the land which will cease to be Lands;
- (b) a Vote must be held in which a majority of participating Eligible Voters approve of the land exchange; and
- (c) prior to the Vote, the Eligible Voters must be informed of the total compensation, including monetary or other compensation, as well as the area, value, and environmental condition of the new land.

PART 9

INTERESTS AND LICENCES

13. Revenue from Xeni Gwet'in Land

The Nenqay Advisory Group must advise Council on Nen Laws and policies for setting administrative fees, rent, royalties, or other amounts for:

- (a) Interests and Licences;
- (b) services in relation to Land, including fees for applications, registrations, and transfers; and
- (c) the taking of Natural Resources.

14. Existing Interests

14.1 Any Interest or Licence that existed when *Nen Ch'eh* comes into force continues in accordance with its terms and conditions.

14.2 *Nen Ch'eh* and other Nen Laws apply to all Interests or Licences, whether granted, disposed of, transferred, renewed, or assigned before or after *Nen Ch'eh* comes into force.

14.3 Council may establish, in consultation with the Nenqay Advisory Group and Nenqay Department, a policy on the identification of unregistered traditional land holdings and their documentation and recognition as Interests under *Nen Ch'eh*.

15. Member Only Interests

15.1 Council may, in consultation with the Nenqay Advisory Group and Nenqay Department, establish Nen Laws, policies, and procedures respecting Member Only Interests and the transfer of those Member Only Interests to other Members.

15.2 For greater certainty, a non-Member may not acquire a Member Only Interest.

16. Interests and Licences

16.1 Council may, on behalf of Xeni Gwet'in and in accordance with all applicable Nen Laws and policies, grant, dispose of, transfer, renew, or assign Interests and Licences in Community Lands.

16.2 Members may, grant, dispose of, transfer, renew, or assign:

(a) Member Only Interests to another Member; or

(b) Interests other than Member Only Interests or Licences to any person, provided this is permitted by the terms of the Interest or Licence and done in accordance with all applicable Nen Laws.

16.3 A non-Member may, with the consent of Council, grant, dispose of, transfer, renew, or assign Interests or Licences, provided this is permitted by the terms of the Interest or Licence and done in accordance with all applicable Nen Laws.

16.4 Council may at its sole discretion, waive the requirement of consent of Council for any grant, disposition, transfer, renewal, or assignment of an Interest or Licence, including those related to a will, intestacy, or a court order.

16.5 All Natural Resources forming part of Community Lands belong to Xeni Gwet'in and, in accordance with *Nen Ch'eh* and any Nen Laws, Council may in respect of Natural Resources grant, dispose of, transfer, renew, or assign Licences to take Natural Resources in those Community Lands.

16.6 All Natural Resources forming part of Member Lands belong to the relevant Member and, in accordance with *Nen Ch'eh* and any Nen Laws, that Member may grant, dispose of, transfer, renew, or assign Licences to take Natural Resources from those Member Lands.

16.7 Council may, by Council Resolution or in a Nen Law, delegate to the Nenqay Advisory Group or to the Nenqay Department, Council's authority under this section in respect of any grant, disposition, transfer, renewal, or assignment of Interests and Licences.

17. Registration of Interests and Licences

17.1 A deed, lease, contract, instrument, agreement, or document of any kind by which the Xeni Gwet'in, a Member, or any other person purports to grant, dispose of, transfer,

dispose of, renew, or assign an Interest or Licence after *Nen Ch'eh* comes into force is void if:

- (a) it is not registered in the First Nation Lands Register;
- (b) it is registered in contravention of *Nen Ch'eh*; or
- (c) it is otherwise in contravention of *Nen Ch'eh*.

17.2 No person may register in the First Nation Lands Register any document purporting to grant, dispose of, transfer, renew, or assign an Interest or Licence unless it is accompanied by an approval, by Council or by Vote, if required under *Nen Ch'eh*.

18. Limits on Mortgages and Seizure

18.1 As provided in the *Framework Agreement*, the restrictions on seizure of Land continue to apply on Community Lands and Member Lands.

18.2 A Member Only Interest may only be subject to a mortgage or charge in favour of Xeni Gwet'in or another Member.

18.3 The term of any mortgage or charge of a leasehold Interest shall not exceed the term of the lease.

18.4 A leasehold Interest may be subject to a mortgage or charge in accordance with approval requirements for charges or mortgages, if any, under a Nen Law.

18.5 In the event of default in the terms of a mortgage or charge of a leasehold Interest, the leasehold Interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale, or any other form of execution or seizure, unless:

- (a) the mortgage or charge received the written consent of Council, if required under this Land Code;
- (b) the mortgage or charge received approval, if required under a Land Law;
- (c) the mortgage or charge was registered in the First Nation Lands Register; and
- (d) Council received written notice of the default, subsequently had one hundred and twenty calendar days to redeem the mortgage or charge and has not redeemed the mortgage or charge within that time.

19. A-to-A Leasing

19.1 Members may lease Lands to themselves, subject to any Nen Laws.

20. Registration of Mortgages and Charges

- 20.1 A mortgage or charge made after *Nen Ch'eh* comes into force is void if:
- (a) it is not registered in the First Nation Lands Register;
 - (b) it is registered in contravention of *Nen Ch'eh*; or
 - (c) it is otherwise in contravention of any Nen Law.
- 20.2 No person shall register in the First Nation Lands Register any mortgage or charge unless it is accompanied by an approval for that mortgage or charge, if required under *Nen Ch'eh* or a Nen Law.

21. Residency and Access Rights

- 21.1 Subject to any Nen Laws, a Member their spouse, children and any Member-invitees have a right to access and reside on Lands for which that Member has a Member Only Interest.
- 21.2 Subject to any Nen Laws, Members and Non-Members have a right to reside on Lands for which they have an Interest or Licence, in accordance with the terms of that Interest or Licence.
- 21.3 Subject to any Nen Laws, the following persons have a right of access to the following Lands:
- (a) a Member, their spouse and children in respect of Community Lands, the Lands for which that Member has a Member Only Interest, and on lands for which that Member has a right to reside;
 - (b) lessees and permittees on Lands set out in an Interest or Licence and other Lands to the extent necessary to access those Lands, in accordance with the terms of that Interest or Licence;
 - (c) peace officers, and officials responding to natural disasters, emergencies or urgent health and safety matters on Lands, or acting under federal, provincial or Xeni Gwet'in Law on Lands; and
 - (d) non-Members for social or business purposes, including delivery of goods and services, provided that they do not interfere with any Interest, Licence, or any other occupation of Land, and that no Council Resolution has been adopted barring access by that person.
- 21.4 Notwithstanding any other provision of *Nen Ch'eh*, Council:
- (a) may, by Council Resolution, impose a temporary closure or restrictions on access to any Lands to protect those Lands, or to protect health, safety, environment or cultural assets; and

- (b) must Publish a notice of that closure or those restrictions on Xeni Gwet'in's website and by other means Council deems appropriate to notify the public.

21.5 Any person who, contrary to *Nen Ch'eh*, enters onto or stays on Lands:

- (a) without a right to reside on those Lands;
- (b) without a right of access to those Lands; or
- (c) in violation of a temporary closure or restriction on access on those Lands is guilty of an offence.

21.6 Where a person is found guilty of an offence under *Nen Ch'eh* relating to a right to reside on Lands, right of access to Lands, or violation of a temporary closure or restriction on access, a court may, in addition to any other penalty:

- (a) order that person to leave or vacate any Lands; and
- (b) order that person not to enter or stay on any Lands.

21.7 All civil remedies for trespass are preserved.

21.8 Xeni Gwet'in is not liable for injuries or damages suffered by any person on account of:

- (a) the condition or state of Lands;
- (b) any exercise of a right to reside on Lands or a right of access to Lands;
- (c) any entry or stay on Lands in violation of a temporary closure or restriction on access; or
- (d) any other lawful or unlawful entry or stay on Lands.

21.9 A right to reside or a right of access to Lands does not create any financial obligation on the part of Xeni Gwet'in.

22. Wills and Estates

22.1 The following persons are entitled to have their Interest registered in the First Nations Lands Register, provided that they are otherwise entitled to hold that Interest under a Nen Law or a court order:

- (a) a Member who receives an Interest under a will or estate;
- (b) a non-Member who receives an Interest under a will or estate; and
- (c) a person who holds an Interest on behalf of a minor or a mentally incompetent person.

22.2 A Nen Law may establish required procedures and documents to register an Interest arising from wills and estates.

PART 10

ACCOUNTABILITY

23. Conflict of Interest Obligations

23.1 These conflict of interest provisions apply to:

- (a) Council;
- (b) Nenqay Department staff and other Xenigwet'in employees or contractors;
- (c) members of a board, committee or other body established by Xenigwet'in;
- (d) any person appointed in a dispute resolution process involving Xenigwet'in; and
- (e) any other person involved in a matter related to Lands.

23.2 No person will use their access to Xenigwet'in information or resources in such a manner as to place themselves, their family or personal friends at an advantage over any Members.

23.3 Any person who has an actual or perceived conflict of interest related to a Lands-related matter must:

- (a) promptly disclose that conflict of interest to the person or body which is considering or making a decision on the matter; and
- (b) not take part in any further consideration of or decision-making for that matter.

23.4 A person has an actual or perceived conflict of interest if it would be reasonable to assume that the person's ability to deliberate or decide on the Lands-related matter will be compromised, or has been affected by:

- (a) the person's personal or business interest; or
- (b) the personal or business interest of an immediate relative, meaning a person's parent, sister, brother, child, step-child, or Spouse.

23.5 If a person, board, committee, or other body is unable to act on a matter related to Lands, due to an actual or perceived conflict of interest, the matter must be referred to Council.

23.6 If Council is unable to vote on a matter related to Lands or a proposed Nen Law due to an actual or perceived conflict of interest, Council must refer that matter or the proposed Nen Law to the Members for a decision by Vote.

23.7 Council may establish additional conflict of interest rules in a financial administration law or other law or in a policy.

24. Accountability for Conflicts of Interest

24.1 A person fails to meet the conflict of interest obligations under *Nen Ch'eh*, where that person:

- (a) fails to promptly declare a conflict of interest;
- (b) provides incomplete or misleading information about a conflict of interest;
- (c) participates in a decision where they have a conflict of interest; and
- (d) fails to comply with conflict of interest rules established by Council applicable to signing cheques or financial transfers.

24.2 A person who fails to meet the conflict of interest obligations under *Nen Ch'eh* is guilty of an offence and is liable on summary conviction to the penalties provided for under section 26.1.

24.3 If a person fails to meet the conflict of interest obligations under *Nen Ch'eh*, Xeni Gwet'in or a Voter may apply to a court for any of the following:

- (a) an order that the person pay to Xeni Gwet'in an amount equal to the total funds received as a result of the conflict of interest;
- (b) an award of damages;
- (c) an order that the person no longer hold any office, employment, or any other position with Xeni Gwet'in for such period as the court considers appropriate; and
- (d) any other remedy the court considers appropriate,

and the court may impose any of these remedies whether or not that person has been found guilty of an offence in any other proceeding for failing to meet the conflict of interest obligations under *Nen Ch'eh*.

24.4 If a person fails to meet the conflict of interest obligations under *Nen Ch'eh*, Council may, by majority vote, decide that the person is subject to any of the following, as applicable:

- (a) removal from Council;

- (b) termination as an employee or contractor;
- (c) removal from any board, committee, or other body established by Xeni Gwet'in;
- (d) removal from any dispute resolution process involving Xeni Gwet'in; and
- (e) disqualification from holding office, employment, or any other position with Xeni Gwet'in for any time period Council deems appropriate,

and Council may impose any of these measures whether or not a court in any proceeding has determined that the person has failed to meet the conflict of interest obligations under *Nen Ch'eh*.

25. Financial Management

- 25.1 This Part applies only to financial to Lands-related matters that are administered under *Nen Ch'eh*.
- 25.2 Council must establish one or more accounts dedicated only to Lands at an accredited bank or financial institution.
- 25.3 Council, or any person authorized by Council, must deposit in the accounts dedicated only to Lands, all Lands revenues other than taxes received by Xeni Gwet'in, including:
- (a) capital and revenue monies and any other transfer payments received from Canada;
 - (b) revenues received by Xeni Gwet'in from Lands, including Natural Resources, Interests or Licences; and
 - (c) fees, fines, charges and other monies collected by the Xeni Gwet'in in respect of Lands, including Natural Resources, Interests and Licences, including under any Nen Laws.
- 25.4 Council must, by Council Resolution, appoint at least three signing officers with authority to issue cheques or approve the transfers of Xeni Gwet'in funds.
- 25.5 The following persons are eligible to be appointed by Council Resolution as signing officers:
- (a) any member of Council; and
 - (b) any employee of Xeni Gwet'in
- 25.6 No cheque is valid unless it is signed by at least two appointed signing officers.

- 25.7 No other transfer of Xeni Gwet'in funds is valid unless it is approved in writing by at least two signing officers.
- 25.8 A signing officer must not, in relation to Xeni Gwet'in funds, issue cheques, or carry out other transfers to themselves or to any entity in which they have an ownership interest or are a director.
- 25.9 A person ceases to be a signing officer if the person ceases to be on Council, ceases employment with Xeni Gwet'in, or if their appointment as a signing officer is terminated.
- 25.10 Council may establish limits on the authority of signing officers including:
- (a) maximum dollar amount of signing authority; and
 - (b) any additional conflict of interest rules, beyond those set out in Part 9, applicable to signing cheques or transfers of funds.
- 25.11 Council must, by Council Resolution:
- (a) establish security screening and training processes for signing officers; and
 - (b) periodically review security screening and training processes, and revise those processes as needed.
- 25.12 Council will, prior to the beginning of each fiscal year, adopt an annual Lands budget for all revenues and expenditures relating to Lands.
- 25.13 During a fiscal year, Council may adopt one or more supplementary Lands budgets for that fiscal year.
- 25.14 After adopting an annual Lands budget or supplementary budget, Council must Publish the budget or direct the Nenqay Department to Publish the budget.
- 25.15 If Council fails to adopt an annual Lands budget, the Lands budget for the previous fiscal year, including any supplementary budget, will continue to apply until a new Lands budget is adopted.
- 25.16 No person or body shall spend moneys, or make financial commitments, related to Lands budget unless the spending is authorized under a Lands budget.
- 25.17 Any person or body who spends moneys or makes financial commitments that are not authorized under a Lands budget is guilty of an offence and is liable on summary conviction to the penalties provided for under section 26.1.
- 25.18 Xeni Gwet'in financial records on Lands-related matters must respect generally accepted accounting principles.

- 25.19 Xeni Gwet'in must prepare and Publish the annual audited financial statements for Lands-related matters within 120 calendar days of the end of the fiscal year.
- 25.20 Annual audited financial statements in relation to Lands may be included in consolidated audited financial statements of Xeni Gwet'in provided that Members can obtain information about Lands expenditures and revenues in those consolidated statements.
- 25.21 Council must, by Council Resolution, appoint a duly accredited auditor for the purpose of:
- (a) preparing the annual audited financial statements under *Nen Ch'eh*; and
 - (b) preparing any other audit that may be required by Xeni Gwet'in.
- 25.22 Council must ensure that the remuneration paid to an auditor in relation to *Nen Ch'eh* is disclosed within the Council Resolution appointing the auditor and in the annual audited financial statements.
- 25.23 The auditor may at all reasonable times inspect any Xeni Gwet'in financial records, including those relating to Lands.
- 25.24 The auditor may apply to a court for an order to produce other financial records in order to carry out the auditor's duties under *Nen Ch'eh*.
- 25.25 Any person who:
- (a) impedes or obstructs an auditor from exercising a right to inspect Xeni Gwet'in financial records; or
 - (b) fails to give reasonable assistance to an auditor exercising a right to inspect Xeni Gwet'in financial records,
- is guilty of an offence and is liable on summary conviction to the penalties provided for under section 26.1.

26. Annual Report

- 26.1 The Nenqay Department must prepare and Publish an annual report on Lands governance within 120 days of the end of each fiscal year.
- 26.2 The annual report must include:
- (a) summary of Lands governance activities;
 - (b) a copy and explanation of the annual audited financial statements as it applies to Lands; and
 - (c) other matters as may be directed by Council.

PART 11

DISPUTE RESOLUTION

27. Disputes

- 27.1 Council must establish processes, or enact Nen Laws, for the resolution of disputes in respect of any matter related to Land.

PART 12

OTHER MATTERS

28. Enforcement

- 28.1 Any person who commits an offence under this Land Code is liable on summary conviction to:
- (a) fines, to a maximum of five thousand dollars or any higher amount set out in part XXVII of the Criminal Code of Canada;
 - (b) imprisonment of up to two years less a day;
 - (c) restitution;
 - (d) community service;
 - (e) means for achieving compliance through traditional, cultural or community healing justice measures;
 - (f) any other means for achieving compliance; or
 - (g) any combination of the above.
- 28.2 An officer, director, employee, or agent of an organization, corporation or other entity which commits an offence under this Land Code may be convicted of that same offence, whether or not the organization, corporation or other entity is convicted of the offence.

29. Liability

- 29.1 Council must arrange, maintain, and pay insurance coverage that Council considers appropriate for its officers and employees engaged in carrying out any matter related to Land to indemnify them against personal liability arising from the performance of those duties.
- 29.2 Xení Gwet'in is not liable for any decrease in value, or any impact on the use, of an Interest or Licence arising from any exercise of authority under Nen Laws.

30. Commencement

30.1 *Nen Ch'eh* has been approved by a Vote held on the ___ day of ____ 20__.

30.2 *Nen Ch'eh* comes into force on the first day of the month following certification of *Nen Ch'eh* by the Verifier.