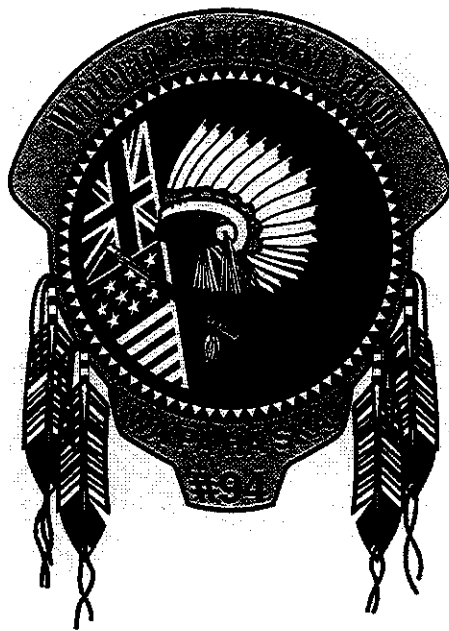


**Whitecap Dakota First Nation
Law Respecting Traditional Interests**



**A Land Law to Establish Formal Interests in Traditional
Whitecap Dakota Land**

Whitecap Dakota First Nation Law Respecting Traditional Interests

WHEREAS the Whitecap Dakota First Nation has inherent rights, customs and traditions, including Aboriginal rights such as the right to self-determination;

AND WHEREAS the Whitecap Dakota First Nation has taken control of its reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management (the "Framework Agreement"), which was ratified by Canada pursuant to the First Nations Land Management Act (the "FNLMA"), and has enacted the Whitecap Dakota First Nation Land Code (the "Land Code") which came into force and effect on January 1, 2004;

AND WHEREAS, pursuant to section 8.1 of the Land Code, the Council of the Whitecap Dakota First Nation has the power to make laws respecting the use and possession of Whitecap Dakota Land;

NOW THEREFORE, THIS LAW IS HEREBY ENACTED AS A LAW OF THE WHITECAP DAKOTA FIRST NATION:

1. Short Title

1.1 This enactment may be cited as the *Law Respecting Traditional Interests*.

2. Interpretation

2.1 In this *Law Respecting Traditional Interests*, the following definitions apply:

"*Certificate of Agricultural Interest*" means a registered instrument granted to a Member to formally recognize past use of Traditional Land;

"*Council*" means the duly elected Chief and Council of the Whitecap Dakota First Nation pursuant to the custom of the First Nation;

"*First Nation*" means the Whitecap Dakota First Nation;

"*Interest*" means any interest, right or estate of any nature in or to Whitecap Dakota Land, including a lease, easement, right of way, servitude, or profit a prendre, but does not include title to that land;

"*Land Code*" means the Whitecap Dakota First Nation Land Code;

"*Land Resolution*" means a resolution of Council made pursuant to the Land Code to approve the granting of an Interest or License;

"*Member*" means a person whose name appears or is entitled to appear on the Whitecap Dakota First Nation Band Membership List;

“*Person*” means not only an individual, but also a partnership, syndicate, association, corporation or the agent or trustee of a person.

“*Traditional Land*” means those parts of Whitecap Dakota Land that have been used by Members without formal disposition either by Interest or Licence or by any other agreement;

“*Whitecap Dakota Land*” means any portion of land referred to in section 6 of the Land Code including all rights and resources that belong to the land;

“*Written Instrument*” means an instrument in writing, either in the approved form prepared by the Whitecap Dakota Land Registry or such other form as may be agreed to by the Whitecap Dakota Land Registry, which purports to create, grant, assign or transfer an Interest or License in Whitecap Dakota Land or affect Whitecap Dakota Land;

2.2 Terms that are defined or used in the Framework Agreement, the FNLMA and the Land Code shall apply to and have the same meaning in this *Law Respecting Traditional Interests*, unless the context otherwise requires.

2.3 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.

2.4 Where the time limited for the doing of an act in the First Nation administration building or the Whitecap Dakota Land Register 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.

3. Purpose

3.1 The purpose of this *Law Respecting Traditional Interests* is to establish an orderly regime for the granting and administration of Traditional Land on the First Nation.

4. Authority

4.1 This *Law Respecting Traditional Interests* is enacted by the Council pursuant to section 8.1 and section 9 of the *Land Code*.

4.2 In the event of any ambiguity or inconsistency arising between the *Law Respecting Traditional Interests* and the Land Code, the provisions of the Land Code shall prevail.

5. Dispositions of Whitecap Dakota Land

5.1 In accordance with the Land Code, and for greater certainty, all dispositions of Whitecap Dakota Land whether allocated pursuant to the *Indian Act*, the custom of the First Nation

or otherwise, shall continue in existence, in accordance with and under the same terms and conditions as the document evidencing such disposition.

- 5.2 An Interest in Whitecap Dakota Land may only be created, granted, disposed of, assigned or transferred by a written Land Resolution, approved by the Council in accordance with the Land Code.
- 5.3 Subject to the terms and conditions of the Land Code, the Council may, by Land Resolution, establish mandatory standards, conditions, criteria and prescribe forms for allocating, granting, transferring or assigning Interests in Whitecap Dakota Land.
- 5.4 No person shall grant, transfer or assign an Interest, in Whitecap Dakota Land that does not comply with mandatory standards, conditions, criterion or form established by the Council and the Land Code and the *Law Respecting Traditional Interests*.
- 5.5 A Land Resolution is required for the following actions of Council:
 - (a) any grant of Interest in Whitecap Dakota Land; and
 - (b) a consent to transfer or assign any Interest in Whitecap Dakota Land.
- 5.6 The Council may, by Land Resolution, establish procedures for the actions referred to in section 5.5 and may make them subject to the satisfaction of written conditions.
- 5.7 A grant of an Interest made under this enactment shall be subject to all prior registered encumbrances, Interests, Licences and Permits made in favour of any person other than the person to whom the Interest is granted.

6. Eligibility for Certificate of Agricultural Interest

- 6.1 The Land Manager will post a notice in the community newsletter giving Members thirty (30) calendar days to make a claim of past use of Traditional Land using the form attached as "Appendix A". Once thirty (30) calendar days expire, no further claims will be processed.
- 6.2 Once the information set forth in section 6.1 is provided by the Member, the Land Manager shall post a notice in the community newsletter advising of the claim by the Member. Written objections to the Member's claim will be received by the First Nation up to fourteen (14) calendar days from the notice being posted.
- 6.3 Upon the expiration of the fourteen (14) calendar day period referred to in section 6.2 and if there are no written objections, the Land Manager shall forthwith advise the Council who may, in turn, issue a Certificate of Agricultural Interest respecting Traditional Land to the Member on such terms and conditions as the Council deems necessary.

- 6.4 Upon the expiration of the fourteen (14) calendar day period referred to in section 6.2 and if there are written objections, the following steps shall be followed within 45 calendar days:
- (a) the Land Manager will direct those objections to the Lands Advisory Committee;
 - (b) the Lands Advisory Committee will meet to review the application and the objections and will forthwith make recommendations to the Council;
 - (c) the Council will consider the recommendations made by the Lands Advisory Committee and communicate its decision to the Land Manager.
 - (d) the Land Manager will communicate the decision to both the applicant and the person objecting to the application.
- 6.5
- (a) Subject to the Land Code and to section 4, a Certificate of Agricultural Interest in respect of Traditional Land entitles only the member holding it to possess the land for the specified purposes only and not for any other purposes or for any period after the lands cease to be used for the specified purposes.
 - (b) In the event the member, who holds a Certificate of Agricultural Interest, does not wish to use the land directly, he/she may permit another Member or a non-Member to utilize the lands conditional upon the following:
 - (i) the Member or non-member enters into an agreement with the Council setting out the use to be made of the lands;
 - (ii) all of the terms and conditions of the original Certificate of Agricultural Interest must be abided by; and
 - (iii) the original Member holding the Certificate of Agricultural Interest will remain jointly responsible, with any other Member or non-Member utilizing the lands, for complying with the terms of any agreement referenced in section 6.5(b)(i).
- 6.6 A Certificate of Agricultural Interest is transferable but only to Members and the First Nation.
- 6.7 All requests to transfer a Certificate of Agricultural Interest must be made to Council in writing.
- 6.8 All transfers are subject to the *Law Respecting Traditional Interests* and the Land Code.
- 6.9 A Certificate of Agricultural Interest, and the Interest in Whitecap Dakota Land it represents, does form part of the estate of the Member who holds the Certificate of Agricultural Interest and Council will authorize a transfer to another Member in

accordance with the wishes of a deceased Member as expressed in the conditions of the Certificate of Agricultural Interest.

- 6.10 Council may, by Land Resolution, determine that the land is not being used for the specified purposes and such determination entitles the First Nation to terminate the Certificate of Agricultural Interest and any agreement entered into with any third party.
- 6.11 When a Certificate of Agricultural Interest expires or is terminated for any reason, Council shall afford the Member holding the Certificate of Agricultural Interest a reasonable opportunity to remove his or her improvements from the land. After that time has passed, all improvements become the property of the First Nation and Council may, in its absolute discretion, determine whether any compensation in respect of such improvements is to be paid to the Member. Should Council determine that compensation is to be paid; it may fix the amount of compensation or prescribe a process by which such amount is to be ascertained, subject to its approval of that amount.
- 6.12 When a Certificate of Agricultural Interest expires or is terminated for any reason, and the land has not been left in a safe, environmentally sound and fit condition, Council may, by Land Resolution, require the Member holding the Certificate of Agricultural Interest to restore the land to a proper condition and give him or her, in the circumstances, a reasonable opportunity to do so. If the Member does not perform the requirements to the satisfaction of Council within the period allowed to him or her for that purpose, Council may direct that all necessary work be done at the cost of the First Nation to fulfill its requirements and direct that the Member reimburse the First Nation for that cost. A direction of Council to pay pursuant to this section shall have the same force and effect as an order from a court of competent jurisdiction and may be enforced by the First Nation in the same manner as a judgment, together with interest and costs.
- 6.13 If agreed to by the holder of a Certificate of Agricultural Interest and the First Nation, the holder of a Certificate of Agricultural Interest may exchange lands contained in a current Certificate of Agricultural Interest for other Whitecap Dakota Lands.
- 6.14 If agreed to by the holder of a Certificate of Agricultural Interest and the First Nation or a Member, the holder of a Certificate of Agricultural Interest may relinquish his/her Interest in the Certificate of Agricultural Interest in accordance with the terms of an agreement agreed to by the holder of the Certificate of Agricultural Interest and the First Nation or a Member.
- 6.15 For greater certainty, lands not expressly granted to a Member by way of a Certificate of Agricultural Interest in accordance with this enactment are retained by the First Nation and may be dealt with by Council as Whitecap Dakota Land.
- 6.16 A holder of a Certificate of Agricultural Interest may enter into discussions with the First Nation with the intent of re-newing the Certificate of Agricultural Interest but must do so before the expiry of the Certificate of Agricultural Interest.

7. Corrections, Amendments and Cancellations

- 7.1 Where Council is satisfied that an Interest authorized by this enactment contains an error or ambiguity, it may by Land Resolution direct that the Interest be amended to correct the error or resolve the ambiguity.
- 7.2 Where Council is satisfied that an Interest authorized by this enactment was issued as the result of a misrepresentation or fraud on the part of the Interest holder, it may by Land Resolution cancel the Interest.
- 7.3 When Council makes a Land Resolution under this section that Land Resolution shall include appropriate directions to such person designated by Council to give effect to the Land Resolution.

8. Dispute Resolution

- 8.1 Any dispute, disagreement or appeals arising as a result of the *Law Respecting Traditional Interests* shall be governed by the dispute resolution process set forth in the Land Code.

9. Effective Date

- 9.1 This *Law Respecting Traditional Interests* becomes effective immediately upon the expiration of the 21 (twenty-one) day posting period pursuant to section 9.5 of the Land Code.

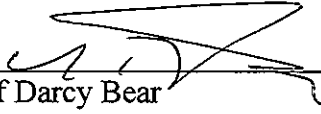
10. Amendments

- 10.1 This *Law Respecting Traditional Interests* may be amended from time to time in accordance with the process and procedure set forth in the Land Code.

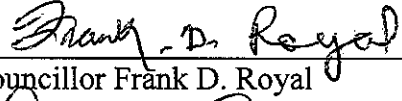
BAND COUNCIL CONSENT

We, the undersigned, being a quorum of the Band Council, acknowledge and declare that we have at a duly convened Band Council meeting, approved this *Law Respecting Traditional Interests* effective the 2nd day of June, 2008.

DATED this 2nd day of June, 2008.



Chief Darcy Bear



Councillor Frank D. Royal



Councillor Dwayne Eagle

Note: A quorum for this Council consists of two (2) Council members.

Appendix A

The following information must be provided by the Member in their claim of traditional use of Whitecap Dakota Land: **(See Land Manager if assistance is required)**

Name: _____, Status #: _____

Description of Land used by Member:

How was traditional interest acquired by Member?: (Provide documentation if available)

Length of time traditional use has been exercised by Member: _____

The type of use exercised by Member:

Other information:

WHITECAP DAKOTA FIRST NATION

Certificate of Agricultural Interest

The Lands authorized to be possessed and used under this Certificate are part of Whitecap Dakota First Nation Land, which is set apart by Her Majesty for the use and benefit of the Members of the Whitecap Dakota First Nation.

This Certificate is issued by the Whitecap Dakota First Nation under authority of the *Whitecap Dakota First Nation Land Code*, which came into force on January 1st, 2004, and the laws made under that Land Code.

THE WHITECAP DAKOTA FIRST NATION HEREBY AUTHORIZES

Member's Name and Status

to possess and use the following lands, situated on Whitecap Dakota First Nation Land, in the Province of Saskatchewan, particularly known and described as:

Land Description

RIGHTS

Subject to the *Law Respecting Traditional Interests* enacted on Date, and to the conditions set out below, this Certificate of Agricultural Interest entitles the member holding it to possess and use the land only for the following specified purposes:

Agricultural Purposes

CONDITIONS

1. The possession of land is for the specified purposes only and, subject to the *Land Law Respecting Traditional Interests*, this Certificate of Agricultural Interest shall expire or be terminated if the land is no longer used for the specified purpose.
2. The term of this Certificate of Agricultural Interest shall be for 49 years commencing _____ and expiring _____.
3. This Certificate of Agricultural Interest is transferable only to Members and to the Whitecap Dakota First Nation.
4. This Certificate of Agricultural Interest is issued subject to all prior encumbrances and to all prior grants reserving all mines and minerals, solid, liquid or gaseous, which may be found to exist within, upon or under the Lands.
5. For greater certainty, this Certificate of Agricultural Interest is subject to other conditions contained in the *Whitecap Dakota First Nation Land Code*, the *Law Respecting Traditional Interests* and other laws and by-laws of the Whitecap Dakota First Nation as these may be in force on the date this Certificate of Agricultural Interest is issued, or subsequently enacted.

This Certificate of Agricultural Interest, and the interest in Whitecap Dakota First Nation land it represents, does form part of the estate of the Member(s) holding it.

In the event of the death of the certificate holder, the certificate holder requests this Certificate of Agricultural Interest be assigned to the following individual (the "Assignee") for the balance of the term of the certificate.

Assignee (print): _____, Status #: _____

Assignee (signature): _____, Date: _____

Certificate Holder (print): _____, Status #: _____

Certificate Holder (signature): _____, Date: _____

IN WITNESS WHEREOF, the Whitecap Dakota First Nation, by and through its duly elected Council and the certificate holder have hereunto set their hands this _____ day of _____, 2008.

CERTIFICATE HOLDER

(Name)

WHITECAP DAKOTA FIRST NATION,

Chief Darcy Bear

Councillor Frank Royal

Councillor Dwayne Eagle