



Introduction to Cultural Heritage Resource Governance

Course Workbook



RC FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE



T M Training, Mentorship &
P D Professional Development

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Introduction to CHR Governance

Course link: https://labrc.com/public/courselet/Introduction-to-Cultural-Heritage-Resources-Governance/presentation_html5.html

Welcome

This courselet will introduce Cultural Heritage Resource (CHR) governance and management under the Framework Agreement on First Nation Land Management First Nation (FN) Land Code (LC) and

The main topics that will be discussed include:

- An introduction to and definition of CHR
- A discussion of where CHR are found
- The preservation of CHR

By the end of this courselet, a Lands Governance Director (LGD) should have gained a basic understanding of what CHRs are and be able to describe the various types as they apply to a FN.

The material provided in this courselet is current to the date of the courselet.

Series of CHR Courselets

Introduction

There are four CHR courselets as follows:

- Introduction to CHR Governance
- CHR and Traditional Information and Traditional Practices
- CHR: Applicable Laws and Regulations
- Developing a Regime for CHR

Introduction to CHR Governance

The Introduction to CHR Governance courselet covers:

- Governance
- Legal Duty to Consult and Accommodate
- An introduction to and definition of CHR
- CHR Activities and where they are found (including Off-reserve CHR)
- A discussion of where CHR are found
- Identifying and Interpreting CHR
- A discussion of the preservation of CHR:
 - a. What may impact them?
 - b. Why would you want to preserve them?

c. How may they be preserved?

CHR and Traditional Information and Traditional Practices covers:

The CHR and Traditional Information and Traditional

Practices courselet covers:

- What are traditional practices?
- What is traditional information?
- Traditional Consultation
- How is traditional information shared?
- What is the difference between traditional knowledge and Western science approach?
- Identifying and interpreting CHRS
- Traditional use and traditional ecological knowledge studies
- Benefits of preserving CHRs
- How are CHRs preserved and what are the preservation approaches?

Applicable Laws and Regulations

The CHR Applicable Laws and Regulations courselet covers:

How CHRs are referred to under:

- a. Framework Agreement and FN Land Code
 - b. First Nation Land Management Act (FNLMA)
 - c. Federal
 - d. Provincial
- Who owns the CHR and the law that applies?
 - Modern treaties, self- government and land claim statues/agreements

Developing a Regime

The Developing a Regime for CHR courselet:

- Introduces key concepts and considerations in developing a CHR governance and management regime
- Suggests Steps in developing a regime:

Step 1: Collecting Information and Background Research

Step 2: Creating the Frameworks

Step 3: Creating the Plan

Step 4: Implementation of Law and Plan

Step 5: Monitoring and Enforcement

Step 6: Amend the Law and Plan as required

Picture: Mi'kmaq Encampment, Sydney, Cape Breton Island

Picture Source: [Wikipedia](#)

Big Picture

Land governance and management under the Framework Agreement and a LC encompasses many aspects and responsibilities. One of these areas is CHR.

In many instances the recognition, management and protection of these resources is done through the FN's Lands Department.

This is especially true for CHRs that are located on-reserve but CHRs may also be located off-reserve in the FN's treaty area or traditional lands.

Overview

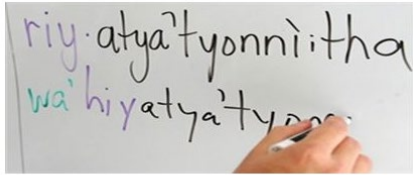
FNs unique knowledge, culture, language and history have been passed down and refined from generation to generation for millennia. Much of this unique information represents an in depth and scientific knowledge of the surrounding environment, how to effectively survive within and manage its resources. Click next for more information.



Picture: Scugog Powwow 2009
Picture Source: LAB

Indigenous Languages

Indigenous languages contain sophisticated troves of biological, cosmological, pharmacological as well as geographic, and meteorological comprehensions. Each language represents its own "universe" Of understanding and describes a spiritual relationship to land.



Picture: Mohawk Language
Picture Source: [CBC](#)

Traditional Protocols

As FNs develop new methods of governance, there often is a "reaffirmation" of these actions in accordance with traditional principles, practices, protocols, vision and/or mandates. While consistency and preservation of these values are important, so is their evolution to fit with modern circumstances and contexts. CHR governance and management is an integral component of a community's social and economic wealth and overall wellbeing.



Photo by R. Tufts
Picture: Tsawout Community, British Columbia
Picture Source: [Saanich Voice Online](#)

Sacred Land Areas

CHRs also include land areas of special importance. These areas of particular significance to Indigenous people and can represent a special historical, spiritual, plant or animal resource, ceremonial and/or grave sites or other archaeological sites.



Picture: Bear Mountain, British Columbia
Picture Source: [First Nations](http://www.firstnations.com/)

<http://www.firstnations.com/>

Lands Governance Directors Role

It is important for LGDs to have an understanding of the basic principles of CHR governance and management, whether they are located on-reserve or off. This includes such fundamentals as:

- What CHRs are
- How this type of resource may be by your own FN
- Identifying types of CHR that exist on your lands (traditional reserve)
- What are traditional practices and why are they important
- How CHR may be managed or protected
- Applicable federal provincial laws that apply to CHR
- What are IPR and why are they important
- What are the activities associated with governance and management of CHR

By the end of this courselet a LGD should be able to identify CHR that exist on First Nation Lands and be able to either identify the elements of a framework by which they are governed and managed or to identify the key components for the development of a framework for governing and managing CHR on your First Nation Lands.

Governance

Introduction

Governance under the Framework Agreement refers to the recognition that FNs have to:

Create law

- Administrate law
- Enforce law
- Mange their lands and resources

Unlike the *Indian Act*, FNs are recognized as governments.

Picture Source: Centre for First Nations Governance



What is Governance?

The [Centre for First Nations Governance](#) defines governance as:

- Governance is the traditions (norms, values, culture, language) and institutions (formal structures, organizations, practices) that a community uses to make decisions and accomplish its goals.

What are Governance Activities

Governance activities may include the:

- Development of effective, accountable and legitimate frameworks
- Systems and processes of legislation, regulations, polices and plans
- Implementation.

Members of FN Government are often responsible to oversee the creation, maintenance and administration of culturally appropriate governance frameworks.

FN governments can vary from ones that are traditionally entrenched in thousands of years of practice and protocol to ones that are established under the *Indian Act*. which consist of an elected-at-large Chief and Council.

What are the Benefits of Good Governance?

Some of the benefits to a FN when establishing frameworks and institutions and thus exercising their right to govern includes the following:

- Control of decision-making that affects the day-to-day lives of community members
- Improve programming and service delivery to members and clients
- Protect, improve or enhance the quality of the environment and of traditional resources
- Establish and strengthen intergovernmental relations
- Removal of outside interference from INAC in lands and resources related matters

These benefits are identical to many of the reasons why some FN's become signatories to the Framework Agreement.

First Nation CHR Governance

Introduction

FN CHR governance and management is an integral component of a FN's community's social economic wealth and overall well-being.

CHR land governance and management areas are one of several specifically identified by the Framework Agreement and FN LCs.

It is important for LGDs to have an understanding of the basic principles, key concepts and an overall how to do it for CHR governance and management on First Nation Lands.

CHRs ARE Unique to Each FN

Given that the governance and management of CHRs is so significant to a FN, it is important for each community to define this type of resource in the context of their own cultures and traditions.

Another integral component in their governance and management is to determine where they are located and to identify some of the activities that may impact that, so that a process to preserve or protect them may be identified.

If your FN has not done so already, you may want to define CHR for yourselves in the context of your community's own traditional practices and protocols. It is important as a LGD to have an understanding of what CHRs are found in the FN community and what the accepted and common terminology used to describe them is. Likewise, the FN's Lands Department should maintain a record of where physical CHRs are found on First Nation Lands.

CHR Activities

There are many activities that may be associated in CHR governance and management.

It is important to remember that the series of CHR courselets are only suggestions meant to guide a community through their own creation of their governance and management frameworks. This is an opportunity for each community to incorporate their own principles, traditions and culture into the management of this resource under the Framework Agreement and their own LC.



Off-Reserve CHRs

Many of the concepts that are discussed in the series of CHR courselets are also applicable to CHRs that are located off reserve in the traditional territory or treaty area.

However, it is important to recognize that there are many different jurisdictions and pieces of legislation that apply to this type of resource that will affect how they are managed and dealt with.

Legislation

Provincial and Federal legislation apply in different ways on and off reserve lands, this has a direct impact on the methods a FN uses to manage its CHR resources.

For more information on legislation that applies both on and off reserve see the "CHR Applicable Laws and Regulations" courselet.

Example- Legislation Off-Reserve & Effects on CHRs

In British Columbia (BC), the current legislative management regime is premised on the provincial government as the sole steward of CHRs off-reserve and is not reflective of a government-to-government relationship between FNs and the Province of BC. BC legislation does not permit FNs to actively conserve and protect their ancestral remains, sacred, spiritual and other CHR resources off reserve.

In response to this problematic situation, the First Nation Leadership Council (FNLC) developed (and was endorsed by BC Assembly of FNs (AFN), Union of British Columbia Indian Chiefs (UBCIC) and First Nations Summit in 2012) a "First Nations Heritage Conservation Action Plan"

This document contains:

- Background to FNs' outstanding need for protection of their cultural heritage resources, and details the current legislative and political frameworks. These frameworks leave little room for the incorporation of cultural laws and protocols specific to each FN, resulting in an urgency to establish a flexible range of policies that respond to the specific concerns of each community. The FNLC proposes this Action Plan as a way forward in developing interim measures to ensure that FNs are able to manage their CHRs in the short term, while longer-term strategies can be developed and implemented at the provincial level
- Collective vision, goals, and action items as well as the identification of comprehensive projects and their implementation

The term "CHRs" is used in this document to include, but is not limited to:

- Archaeological/ heritage sites and objects
- Cultural/heritage landscapes
- Sacred/spiritual sites
- Sites with culture values. It encompasses sites and objects regardless of age.

Also identified in the Action Plan was a capacity gap in the development of tools and support systems to assist FNs in exercising management and jurisdiction over their CHRs. Therefore, the "[UBCIC First Nations Heritage Planning Toolkit](#)" was developed to support FNs in the development of heritage related capacity and their own heritage conservation plans or policies.

Picture: Spaet is a Traditional Mountain in Coast Salish Territories (BC) that was desecrated

Picture Source: [First Nations Rights and Environmentalism in BC](#)



Intellectual Property Rights

The topic of IPR is an important aspect of CHR governance that is explored in greater detail in the "CHR Applicable Laws and Regulations" courselet.

This is an important concept that should be addressed in any legislation that a FN enacts or enters into.

Canada defines IPR as the rights that are defined by common and civil law or by statutes to regulate how and when a person can use the creative works and ideas produced by others. IPRs are strictly defined in law, and extend only to what is defined in the law.

Although the Framework Agreement recognizes no jurisdiction to enact laws regarding intellectual property, the issue arises when collecting, storing and using TK. It is important for FNs to identify what rights exist so these rights can be considered in activities, laws, policies, studies and research involving the use of traditional information. It is all too easy for a FN too lose its ability to protect and have ownership of their information.

Legal Duty to Consult and Accommodate

Introduction

FNs have always practiced responsible consultation in preserving their resources including CHRs. Traditionally, consultation has been an integral part of sustaining and protecting water, air, lands and cultural resources. It has also been mandated in Aboriginal Title cases where there is a claim to title that includes areas where CHRs are located. The legal duty to consult and accommodate is of both national and international importance in the ongoing protection of the rights of FN people.

Duty to Consult & CHR

The International standard for consultation is "Free Prior and Informed Consent" (FPIC), however Canada's Aboriginal and Treaty Rights paradigm does not recognize the full embodiment of those rights. As a result, FN Governments must ensure that their CHRs are identified and protected by infringements by using the duty to consult doctrine to its fullest.

Regulatory Processes

In dealing with CHRs, it's important to note that environmental assessment or regulatory processes may not meet the requirements of the Crown's duty to consult and accommodate and where they are deficient, the Crown must ensure that the duty is met regardless. FNs must ensure they know the legal landscape and that their consultation policies or laws are respected.

Aboriginal and Treaty Rights

Consultation in advance of infringement of Aboriginal and Treaty Rights has now been mandated by Canadian common law. It has also been mandated in Aboriginal Title cases where there is a claim to title that includes areas where CHRs are located. Aboriginal title claim areas that include CHRs are also subject to the Crown's duty. FN communities have developed consultation policies setting out the requirements when Government action is contemplated that would interfere with rights or the exercise of rights. CHRs are included in the bundle of Aboriginal rights and the practice of those rights.

Duty to Consult and Free, Prior and Informed Consent

Introduction

The Canadian common law duty to consult and accommodate does not require the consent of FN Governments unless the infringed right is a right that is proven. As stated earlier the international standard on the duty to consult Indigenous People is the principle of FPIC.

Free, Prior and Informed Consent

FPIC means, that consultation and informed consent of Indigenous must occur prior to any infringement on Indigenous rights of the exercise of those rights. Indigenous communities all over the world, including Canada, have often requested Canada to conform to international legal standards on FPIC and for Canada to adhere to the [United Nations Declaration on the Rights of Indigenous Peoples](#)'. (UNDRIP)

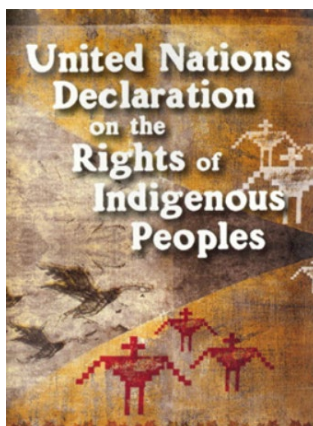
Picture: Chief Perry Bellegarde Picture Source: [Cultural Survival](#)



Declaration on the Rights of Indigenous Peoples

Indigenous Nations assert that Canadian law must be in line with the international standards represented in the UNDRIP.

Implementing the UNDRIP in Canada is key to ensure that Indigenous peoples' rights are fully realized and recognizing Aboriginal self-determination, inherent rights, and land tenure including the principle of FPIC.



Consent vs. Consultation

To be clear, consultation is not consent. The principle of FPIC upholds the human rights of Indigenous people and is an expression of the inherent right to self-determination. It was also the underpinning of the Indigenous nations' ability to protect rights, lands including CHRs in the face of infringements. However, under the weight of unrecognized Aboriginal rights, the failure to implement Treaties, and consultation instead of informed consent, FN communities continue to appeal to international venues for remedies.

The Assembly of FNs in a joint statement to the Permanent Forum on Indigenous Issues² cautioning against replacing the established International standard of consent with the lesser standard of consultation (Free Prior and Informed Consultation) and that governments or corporations would continue to be free to act in their own interests and the interests of other powerful sectors of society while ignoring the decision made by Indigenous peoples³. The duty to consult is a constitutional imperative however Government, their agencies and industry do not hold the international standard as law.

Picture: Chief Roger William of Xeni Gwet'in FN Picture Source: [Ottawa Citizen](#)



Legal Duty to Consult and Accommodate

Introduction

The current common law Aboriginal and Treaty rights paradigm in Canada is a result of the Crown's failure to recognize Aboriginal and Treaty Rights and can be traced back to these systemic failures resulting in a very slow and incremental drawing out of only some of the inherent Aboriginal and Treaty rights with the duty to consult doctrine acting as a conduit.

The duty to consult doctrine has become a body of law where courts, legal and academic scholars have begun the process of sorting through its contours.

Protection of FN Rights

The duty to consult has also been heralded as a victory for FNs in the protection of their rights as it has put a constraint on the Crown's unilateral approach to FNs. The doctrine of the duty to consult and accommodate demonstrates that the Supreme Court of Canada's jurisprudence plays a central role in the continuation of the Crown's authority premised upon an Aboriginal and Treaty rights paradigm that fails to fully recognize the full embodiment of Aboriginal and Treaty rights of FNs. This is why it is vital for FN communities to legislate over their resources including CHRs.

Genesis of the Duty to Consult and the Supreme Court

This judicial genesis of the legal duty of consultation began with a series of Aboriginal right and title decisions providing the foundational principles of the duty to consult. Click [here](#) to find more information on each of the following Supreme Court cases, beginning in the 1980s and up to 2014, to see how the duty to consult has evolved and has strengthened FNs rights and the duty to consult.



Who Owes a Duty to Consult?

The Supreme Court has held that Governments and their agents owe a duty to consult and accommodate. Third parties do not owe a duty and Government's will be bound by the actions of third parties if the duty is not fulfilled.

Consultation and CHRs

Introduction

Industry and Government agencies have often developed policy documents on the duty to consult. FN governments have also developed policy on consultation that is responsive to their community needs that clearly delineates how consultation and accommodation will be conducted.

However, there may be differences in the interpretation of the duty to consult with Government, their agents and industry interpreting the duty narrowly.

Protect your Rights

Some FN Governments may also be experiencing no consultation despite the Supreme Court of Canada clearly setting out its legal and constitutional requirement.

Thus the onus is on each FN to protect their borders, rights, and CHRs. Consultation is not consent and mere engagement is not consultation.

Determining Duty to Consult

There are several considerations when determining if a duty to consult and accommodate is owed to a FN with respect to cultural heritage sites:

- Where is the CHR located?
- Who owns the cultural heritage site or artifact?
- What Laws, Treaty's or Agreements apply to where the CHR is located?

More Info

For more information on the Duty to Consult and Accommodate and Traditional Knowledge go to the "Cultural Heritage Resources: Traditional Information and Traditional Practices" courselet. For more information on the questions of who owns the CHRs and the law that applies to them go to the "Cultural Heritage Resources: Applicable laws and Regulations" courselet.

FN CHR Governance and Decision Making

Introduction

CHR governance and management is an integral component of a community's social and economic wealth and overall wellbeing.

One of the many areas of FN land governance under the Framework Agreement and a FN's own LC is CHR based on a FN's principles, traditional practices, protocols, vision, and/or mandate.



Governance and Jurisdiction over First Nation Lands

The Framework Agreement and a FN's LC enable a FN to have governing jurisdiction over their First Nation Lands. Therefore, CHR governance is a particular area of governance that gives the FN the ability to govern and directly control decision-making for prescribed land-based activities that occur on First Nation Lands.

The decision-making process may be designed to ensure that the community's best interests are being met in proposed activities.



Incorporates Traditional Knowledge

The decision-making process may also reflect the uniqueness of the FN and may also incorporate Traditional Knowledge (TK), practices and protocols which reflects the [principles](#) of the Framework Agreement" .

For more information on the Principles of the Framework Agreement, click [here](#).

Picture: TK Holders from Magnetawan FN share with consultant

Picture Source: [Share Value Solutions](#)



Improved Program and Service Delivery

Decision making process can result in improved programming, better service delivery to community members and clients and the protection, improvement or enhancement of the quality of the environment and of CHR.

CHR Defined

Each FN community may use different terminology to define and describe CHR. This type of resource has many different names or titles such as heritage and archaeology, historical resources, or heritage property to name only a few.

The different names most often correspond to the jurisdiction that is responsible for its administration. Each jurisdiction will have its own definition and it will be appropriate for their circumstances. For the purposes of this course we will use the term CHR

CHR may be defined as the collection of resources that reflect culture, heritage and traditions. The collection of resources may include the following:

- Archaeological sites and artifacts
- Ancestral Remains
- Sacred sites
- Cultural resources
- Cultural Sites
- Historic Sites and Building's
- Traditional Arts and Crafts
- Language

First Nations Defining CHR

Introduction

As a first step a FN will need to define and describe their CHR.

A FN may want to start by outlining the various aspects of CHR that it may have.

It is important to note that depending on the relationship of these activities to land and resource use on-reserve, a LC may or may not provide governance and management authority.

Archaeological Site and Artifact

An archaeological site may be defined as any property that contains an artifact or any other physical evidence of past human use or activity that is of a cultural heritage value or interest. For example:

- Village and settlement sites
- Camps
- Burial ground/sites

An artifact is any object, material or substance that is made, modified, used deposited or affected by human action and is of cultural heritage value or interest. For example tools, pottery, art or clothing.

For example in [Ontario](#) 80 per cent of all archaeological sites are Aboriginal. This includes FN villages, longhouses, hunting camps, portage areas, burial grounds and ossuaries. Artifacts that have been uncovered include pottery shards, arrow and spear points, and everyday materials used by FNs and Métis people. Some artifacts, such as sacred bundles, funerary objects and human remains are sensitive, and one must treat them with utmost respect and dignity.

Picture Source: [Tla'amin FN and SFU](#)



Ancestral Remains

Ancestral Remains refers to the discovery of previously unidentified, buried human remains that are of ancestry to a FN.

In most instances, the provincial authority will have law or policy in place to deal with the discovery of human remains. However, each FN may have its own traditional practices that require special protocols to be conducted in the event of ancestral remains discovery and subsequent handling.

A group of archaeologists, lawyers, anthropologists, indigenous community members etc., developed in December 2014, the Declaration on the Safeguarding of Indigenous Ancestral Burial Grounds as Sacred Sites and Cultural Landscapes document. This group shared a common concern about the safeguarding of sacred sites and in particular ancestral burial grounds. The main purpose of this document is to get Federal and Provincial government to:

- Protect ancestral burial grounds in B.C.
- Directly involve FNs in B.C. in the stewardship of their ancestral burial grounds and heritage sites
- Uphold the requirement for free, prior and informed consent of FNs in approving any project that has a potential to impact their cultural heritage rights and responsibilities

Picture source: [Globe and Mail](#)



Sacred Sites

Sacred sites the products of cultural and spiritual beliefs and place of practice. They may not be apparent to people not familiar with the FN and its traditions and customs.

Examples of sacred sites may include the locations of ceremonial practices, where rock paintings (pictographs and/or petroglyphs) exist, where transformations occur, areas said to be created or inhabited by supernatural beings, and/or birth & death sites.

FNs in B.C. have established [tribal parks](#) to protect sacred sites although tribal parks are not yet officially recognized by the provincial government of B.C.



Cultural Resources

Cultural resources include materials that are accessed for use in traditional and cultural activities.

Some cultural resources are ceremonial plants sage, sweetgrass, cedar or other materials and large trees utilized in carvings for totems or to make canoes. Animals harvested for food or ceremonial processes are also considered to be cultural resources.

Picture Source: [First Peoples of Canada](#)



Cultural Sites

Cultural sites are the locations where cultural resource harvesting and use takes place. These places are commonly referred to as harvest sites or areas, although the term may be applied to other cultural activities as well.

Examples of cultural sites include: moose or other animal kill sites, sites of traditional foods acquisition, locations of where medicinal plants grow and are picked and also where materials used in traditional arts and crafts are obtained and the location of spiritual practices.

The David Suzuki Foundation has produced a document "Sacred Cedar" which speaks to the cultural ancient sites hidden in the old growth rainforests of coastal B.C.

Cedar was critical to the coastal B.C. FN's way of life as they used cedar:

- Logs to build longhouses, dugout canoes
- Bark to make clothing and other essential items
- Branches for sacred ceremonies and spiritual activities

Picture: Cedar Tree Bark Stripping

Picture Source: [Coracle Cove B.C.](#)

Historic Sites and Buildings

Historic sites and buildings are often very old buildings, and the sites where significant historical events have occurred.

Structures that were built prior to a specified date, that have some cultural significance in the community or have some architecturally significant characteristics may be considered a historic or heritage building. Historic Sites may be the location of an important event.

Picture Source: Boating B.C.



Traditional Arts and Crafts

Traditional arts and crafts are considered to be a whole host of activities that are related to the making of things with one's hands and own personal skill. Carvings, designs, weavings and paintings are all examples of traditional arts and crafts.

For example the Aseniwuche Winewak Nation's website of some videos depicting traditional dance, creating traditional drums and moccasins and gathering medicine.

Food and Medicine Gathering

Harvesting areas that contain concentrations of particular plant and animals often actively managed and utilized in a traditional fashion (e.g. Camas, fiddleheads, various berries, bitter root, wild cucumber, wintergreen, shellfish etc.).

Picture: Rare Camas flower Picture Source: [CBC](#)



First Nation Language

FN language contains a spiritual vibration, cultural, historical, scientific and ecological knowledge and is a key component to FN spirituality and cultural identity.

A [CHR Table](#) has been developed which outlines the CHR types described in this section of the courselet and an example of their definition to aid the FN in defining their CHRS.

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The 4 Main Activities of CHR governance and management that were identified

2) Creating the Framework & Planning;

4) Monitoring & Enforcement

Framework & Plan

Approval and Implementation

Monitoring & Enforcement

Monitoring and enforcement activities occurring on the First Nation Land would be monitored for compliance with the transaction clauses and/or any FN laws, by-laws, regulations and policies.

Where are CHR Found and How to Document CHRs?

Introduction

CHRs are not limited to a FN's reserve lands. Likely, the greatest number of CHRs may be found within the FN's Treaty area and/or traditional territory, in addition to the reserve lands.

Treaty and traditional territories are important as FN members conduct their traditional practices on this land base and it is where their traditional knowledge stems from.

Picture: Pre-Confederation Treaties



Treaty Area

The treaty area is the physical boundaries of a treaty agreement that is entered into between a FN and Her Majesty the Queen. FNs have Aboriginal and Treaty rights to those lands.



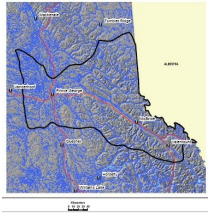
Traditional Territory

A FN's traditional territory is the area which they use traditionally to sustain themselves physically, emotionally and spiritually. The traditional territory may or may not have the same boundaries as the treaty territory. An overlap area occurs when two or more FNs assert interest in a common or shared area.

A FN's lands are collectively held for the use and benefit of all of the members. The traditional and cultural protocols of the FN may reflect the division of responsibility and allowable uses for specific areas and resources of families and individuals to their own traditional lands.

Picture: Lheidli T'enneh FN's (in northern B.C.) Traditional Territory

Picture Source: Lheidli T'enneh



Example

The Lheidli T'enneh FN, is an operational FN located in BC.

They have signed an agreement with the Province of BC and the Caledonia Ramblers Hiking Society, to ensure that the Ancient Forest, located within the Lheidli T'enneh traditional territory, is protected. The Ancient forest is known to the Lheidli T'enneh as "Chun toh whud u jud"

This agreement will help preserve plant ecosystems, wildlife habitat and Lheidli T'enneh cultural values. Quote by Chief Dominic Frederick, of Lheidli T'enneh FN

" Chun toh whud u jud lies in the traditional territory of the Lheidli T'enneh, and we have been stewards of the forest for generations. Our roots run deep in the Ancient Forest, and we look forward to working with the Province to help protect the natural splendor of the area and to continue to celebrate and honour an important part of our cultural heritage. "

Picture: Right to Left: Nowell Senior of the Caledonia Ramblers, MLA Shirley Bond, and Lheidli T'enneh Chief Dominic Frederick sign agreement Picture Source: [250 News](#)



Documenting CHR on Traditional Territories

Once a FN has defined what CHR they have, they may want to begin documenting the location of CHR in their territory. The management of this information may be done through a Geographical Information System (GIS) or other database management system.

Some FNs do not share the exact locations of all of their sites due to treasure hunters and tourists. For example, the Squamish Nation in BC, did a Land Use and Occupancy Study which:

- Identified the location and place names (in their language) of their sites within their traditional territories
- Identified the place names sacred meanings and what spiritual, cultural etc. activities took place on those sites.

This study is only available to the Squamish Nation Government for fear others will desecrate or steal valuable CHRs.

Picture: Squamish Nation Welcome Figure

Picture Source: Turtle Island Indigenous Education



Preservation of CHR

The preservation of CHR consists of:

- Managing the use of CHR
- Protection of CHR

Managing the use of CHR suggests that access to them is maintained so that usage of them may continue to occur. A community may want to consider exercising control over who has permission to have access to and use specific CHR.

Protecting the CHR consists of designating it as a resource that the community would like to protect from impacts of development and other land based activities.

What Activities Impact CHR

Introduction

Many FNs have identified the need to protect CHR from land based activities. Sometimes naturally occurring events disturb the land and may negatively impact CHR, whereas at other times the impacts are a direct result of human activities. These activities may be occurring on-reserve as well as the traditional territory.

There are also a number of different activities that are not necessarily land based activities that can have a significant impact to the survival of CHR.

Even though many of the activities that are discussed here are not ones that a FN's Lands Department may have to deal with directly, it is important for a LGD to acquire a general understanding of the impacts that may affect CHR.



Example of Non-Based Activity

Perhaps the greatest example of an event that led to a major deterioration of traditional practices was the placing of FN children in Residential Schools for significant periods of time.

The forcible removal of children from their communities resulted in the failure of those children to learn their language, traditional practices and protocols. The residential school system contributed to the loss of language in many communities.

It was policy for children to be forced to speak English and speaking in their mother tongue was prohibited.

Example of Land Based and Non-Land Based Activity Examples

Examples of the different types of direct or indirect, land based and non-land based activities that could impact CHR are:

- Land Based Activities: Urban or rural residential development, Fish & wildlife harvesting
- Non-Land Based Activities: Colonization/missionizing
- Natural Occurrences: Flooding, Windstorms

Click on: [Example of Land Based and Non-Land Based Activities Chart](#) for more examples



Impact Based on Type and Scale of Development or Activity

Introduction

The degree to which a CHR may be disturbed or destroyed is largely dependent upon the type and scale of the development or activity such as the following:

- Forestry
- Mining
- Residential/Industrial Development



Forestry

Forestry activities for the most part occur on the surface of the land with minimal disturbance to the subsurface of the land.

Photo: Nipissing FN, in Ontario, Green
Energy Strategy Wood Pellet Operation

Picture Source: [Northern Ontario Business](#)



Mining

Mining activity such as open-pit mining results in the complete alteration or destruction of the both the land surface and subsurface.

Any CHR would likely be completely destroyed by the open-pit mine and access to the site could be limited. The future state of the land would not be returned to the same conditions as were found prior to mining activity for many decades if at all.



Residential or Industrial Development

Residential or Industrial Development, activity can cause a permanent type of disruption and may result in the complete destruction of CHR such as buried archaeological sites, middens, sacred sites or significantly impact the ability to carry out traditional practices on the land.



Example

[Part 5](#) of the video series of the Tla'amin & Simon Fraser University Heritage & Archaeology Project offers a discussion of the impacts that past logging and other heavy industrial activities have had on CHR located on Tla'amin lands.

Creating a FN Activities Chart

A FN may want to identify their own system or processes to evaluate any identified potential impacts that activities may have on CHRs. This could be achieved through the creation and implementation of a zoning and development process, but the first step would be to identify activities on its FN Land.

Now it's your turn to identify the various activities that are occurring on your FN lands that may potentially impact the CHR that are located there. You should further identify whether each activity is a naturally occurring land based activity or non-land based. Click on the [TABLE](#) to use as a template for your answers.



Picture: Peguis FN. in Manitoba Flooding

Picture Source: [CBC News](#)

Summary

Introduction

Governance is the application of:

- Traditions (norms, values, culture, language)
- Institutions (formal structures, organizations, practices)

There are many areas of governance under the Framework Agreement and LC, including CHR.

A FN community uses the traditions and institutions to make decisions and accomplish its goals.

Picture: Clam beds and rock wall, Tla'amin FN, B.C.

Picture Source: [Tla'amin and SFU](#)

Governance Activities

Governance activities may include the development and implementation of effective, accountable and legitimate frameworks, systems and processes of legislation, regulations, policies and plans.

Benefits of Governance

There are a number of benefits for a FN when exercising their governance authorities under the Framework Agreement and their own ratified LC such as:

- Control of decision-making that affects the day-to-day lives of community members,
- Improve programming and service delivery to members and clients,
- Protect, improve or enhance the quality of the land, environment and traditional resources,
- Establish and strength intergovernmental relations.

CHR

CHRs are the collection of resources that reflect culture, heritage and traditions and include:

- Archaeological sites and artifacts
- Ancestral remains
- Sacred sites
- Cultural resources
- Historic sites and buildings
- Traditional arts and crafts
- Language

Each FN is unique and may utilize different terminology to define and describe these resources. It is important for LGDs to learn what CHRs are found in their community.

CHR Activities

The four activities that comprise CHR governance and management are:

- a) Identification and interpretation
- b) Creating the frameworks and planning
- c) Approval and implementation
- d) Monitoring and enforcement.

Once a FN has ratified their LC in accordance with the Framework Agreement, they are able to enact laws and create plans for CHRs located on their reserve lands.

Sources

1. United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, Doc A/RES61/295 (Sept 13, 2007) (2007) 46 ILM 1013. One hundred and forty four states voted in favour of the UN Declaration, while four States (Australia, Canada, New Zealand, and the United States) voted against the UN Declaration. Eleven States abstained. In 2009, Australia moved to endorse the UN Declaration. In April 2010, New Zealand also indicated their support, On November 12, 2010. Canada issued a Statement of Support endorsing the UN Declaration. On December 15, 2010. The United States indicated their support the UN Declaration

2. The Assembly of First Nations Joint Statement at the Tenth session of the Permanent Forum on Indigenous Issues — Free, prior and informed consent, May 16-27, 2011. New York. NY <http://wmv.afmca/index.php/en/national-chief/highlights> AFN has provided a list of recommendations for Canada in respect of FPIC: 1. urge states and specialized agencies to adopt a standardized interpretation of FPIC consistent with international human rights standards. 2. Highlight the need to address the unequal bargaining power generally existing between state\third party developers and Indigenous peoples, by ensuring that the peoples concerned have the necessary financial, technical and Other assistance to fully and effectively participate at all stages, States have a role and responsibility to ensure just and democratic processes, consistent with the principle of sustainable and equitable development. 3. urge states that are undermining FPIC to uphold their international obligations. so as to ensure full respect and implementation of all Indigenous peoples' rights, including those in Treaties with such peoples. In this context, the UN Declaration on the Rights of Indigenous Peoples is inseparable from states obligations under diverse treaties. 4. urge States to fully respect FPIC, in regard to all customary rights Of Indigenous peoples to genetic resources without discrimination, provisions in the Nagoya Protocol that could serve to dispossess Indigenous peoples of such resources lack validity and require urgent redress. Ibid.

See for a comprehensive review of the duty to consult, Newman. Dwight G. The Duty to Consult: New Relationships with Aboriginal Peoples. Saskatoon: Purich Publishing. 2009; Other publications include: Kirk Lambrecht, 'Aboriginal Consultation, Environmental Assessment and Regulatory Review in Canada' University of Regina Press, 2013; Maria Morellato. "The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights," National Centre for First Nations Governance Research Paper (2008); Heather Treacy, Tara L Campbell, Jamie Dickson, •The Current State of the Law on Crown Obligations to Consult and Accommodate Aboriginal Interests in Resource Development- (2007) 44 Alta L Rev 571; Keith Bergner, 'Consultation Requirements in the Post-Treaty Context', Paper presented to Insight Aboriginal Law Forum, May 2006; Thomas Isaac & Anthony Knox, "The Crown's Duty to Consult Aboriginal People" (2003) 41 Alta L Rev 49; Patrick Macklem & Sonia Lawrence. "From Consultation to Reconciliation: Aboriginal Rights and the Crown's Duty to Consult (2000) 79 Can Bar Rev 252;



ACRONYM LIST

AFN	-	Assembly of First Nations
BC	-	British Columbia
CHR	-	Cultural Heritage Resource
FN	-	First Nation
FNLC	-	First Nation Leadership Council
<i>FNLM</i>	-	<i>First Nations Land Management Act</i>
FPIC	-	Free Prior and Informed Consent
<i>FRAMEWORK AGREEMENT</i>	-	<i>Framework Agreement on First Nation Land Management</i>
GIS	-	Geographical Information System
IPR	-	Intellectual Property Rights
LAB	-	Lands Advisory Board
LC	-	Land Code
LGD	-	Land Governance Director
TK	-	Traditional Knowledge
UBCIC	-	Union of British Columbia Indian Chiefs
UNDRIP	-	United Nations <i>Declaration on the Rights of Indigenous Peoples</i> .



GLOSSARY OF TERMS

ANCESTRAL REMAINS

Ancestral Remains refers to the discovery of previously unidentified, buried human remains that are of ancestry to a FN.

ARCHAEOLOGICAL SITE

An **archaeological site** may be defined as any property that contains an artifact or any other physical evidence of past human use or activity that is of a cultural heritage value or interest. For example village and settlement sites, camps and burial grounds/sites

ARTIFACT

An artifact is any object, material or substance that is made, modified, used deposited or affected by human action and is of cultural heritage value or interest. For example tools, pottery, art or clothing.

ENVIRONMENTAL ASSESSMENT

According to the International Association of Impact Assessments, an EA is

“the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made.”

An EA examines effects of proposed projects on soil, air quality, water quality and supply, fisheries, wildlife, traffic, noise, community health, economic development, archaeology and a variety of other social, economic and environmental topics. A well-designed EA assesses the “cumulative effects” of a proposed project combined with other past and proposed future human activities. Ways of avoiding or reducing impacts are identified in an EA.

An EA is a planning tool, a means of reviewing the effects of proposed development, a process of community engagement and an instrument for complying with regulatory requirements. After considering federal and provincial environmental assessment processes, an operational First Nation can design an efficient EA regime that is beneficial to the environment and to the quality of development occurring on reserves.

FIRST NATION LAND



"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code.

FIRST NATIONS LAND MANAGEMENT ACT

Is an Act providing for the ratification and bringing into effect of the Framework Agreement on First Nation Land Management. The Act was required under the *Framework Agreement* for two purposes: to ratify the *Framework Agreement*, and to implement those clauses of the *Framework Agreement* that affect third parties or other federal laws, or that are considered important enough to be repeated in the legislation. The *First Nations Land Management Act* is intended to be consistent with the *Framework Agreement* and to apply to the First Nations that are signatories to the *Framework Agreement*. The Act was enacted and given royal assent on June 7, 1999.

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

The *Framework Agreement on First Nation Land Management* is a government-to-government agreement. The Framework Agreement is an initiative for First Nations to opt out of the land management sections of the *Indian Act* and take over responsibility for the management and control of their reserve lands and resources. The Framework Agreement sets out the principal components of this new land management process.

The *Framework Agreement* provides First Nations with the option to manage their reserve lands under their own Land Codes. Until a First Nation community develops and approves a Land Code to take control of its reserve lands and resources, federal administration of their reserve lands continues under the *Indian Act*. The Framework Agreement is not a treaty and does not affect treaty rights or other constitutional rights of the First Nations.

INDIAN ACT

The *Indian Act* is Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian lands and to approve or disallow First Nations by-laws.

INTELLECTUAL PROPERTY

Intellectual property (IP) is a term referring to creations of the intellect, such as artistic works, inventions, literary, designs and symbols, names and images, for which a monopoly is assigned to designated owners by law.



LAND CODE

A Land Code will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Land Code will be drafted by the First Nation and will make provision for the following matters: identifying the reserve lands to be managed by the First Nation (called “First Nation land”), the general rules and procedures for the use and occupation of these lands by First Nation members and others, financial accountability for revenues from the lands (except oil and gas revenues, which continue under federal law), the making and publishing of First Nation land laws, the conflict of interest rules, a community process to develop rules and procedures applicable to land on the breakdown of a marriage, a dispute resolution process, procedures by which the First Nation can grant interests in land or acquire lands for community purposes, the delegation of land management responsibilities, and the procedure for amending the Land Code.

OSSUARY

An [ossuary](#) is a chest, box, building, well, or site made to serve as the final resting place of human skeletal remains. They are frequently used where burial space is scarce. A body is first buried in a temporary grave, then after some years the skeletal remains are removed and placed in an ossuary.

RESERVE

The *Constitution Act of 1867 Section 91 (24)* - “Indians and lands reserved for Indians”:

- Creates a distinction between Indian reserve lands and other lands in Canada
- Provides that Indians and reserve lands are a federal responsibility
- Gives the federal government exclusive jurisdiction over reserve lands
- Provides that only Parliament can legislate with regard to the use of reserve lands

The basic legal framework underlying reserves is:

- The underlying legal title to reserves belongs to the federal Crown
- How the reserve was created (e.g. before or after Confederation in 1867)
- Pursuant to section 2 of the *Indian Act*, reserves are set aside by the Crown in Right of Canada for the use and benefit of a First Nation

The *Framework Agreement* (see Section 4) clarifies that reserve lands under a Land Code will continue to be reserves within the meaning of the *Indian Act* and that any reserve, title to which is vested in Canada, and managed by a First Nation under a Land Code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.



SACRED SITES

Sacred Sites are the products of cultural and spiritual beliefs and place of practice.

TRADITIONAL PRACTICES

Where First Nation peoples hand down their customs, spiritual beliefs, information, knowledge etc., from generation to generation, since time immemorial, especially orally and by practice.

PRINCIPLES NEGOTIATED IN THE FIRST NATION/CANADA FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

1. **Purpose:** To enable First Nations to resume and exercise control over their lands and resources for the use and benefit of their members without Government interference by replacing the land provisions of the Indian Act with the First Nation community's own laws through its own Land Code.
2. **Approach:** First Nations driven; not driven by Government or any other outside party.
3. **Application:** Applies to existing reserve lands including natural resources except for oil and gas, migratory birds, fish and atomic energy.
4. **Process:** *A Government to Government Agreement on the principles of Reserve land management*, Principles developed by the Chiefs. *Unlike "legislation", which can be changed by the Crown without First Nation consent, changes to the Framework Agreement require the consent of both First Nation signatories and the Crown.*

Ratification of the Framework Agreement occurred when the Crown passed Bill C-49 and occurs when the First Nation (on and off-Reserve voters) vote to accept the Land Code and the Transfer Agreement. Ratification of a First Nation Land Code and Transfer Agreement is a completely transparent process and must ensure the community makes an informed decision that is validated by an independent verifier.

5. **Optional** to a First Nation which passes a BCR to *permit its community to consider* developing and voting on their Land Code, thereby *resuming* their land management. This *protects* other First Nations who do not want or need such an opportunity.

6. **Unique** to each First Nation. Each First Nation develops their **own** Land Code that reflects their own laws, priorities, traditions and ways of doing things.
7. **Paced:** each First Nation will develop their Land Code and ways to ratify their Land Code, at their *own pace*.
8. **Involvement:** Community-based; at a minimum, all voting members, both on-Reserve and off-Reserve, are involved in Land Code *development* and *ratification*; nothing is finalized without community ratification.
9. **Transparency** of lands' decisions to the membership through regular meetings and reporting including the public posting of certain documents.
10. **Accountability** to the membership, *replacing* accountability to the Minister. The Land Code is a public document available to all members. Books of account and records are available for band member scrutiny. The financial statements must be audited by an independent auditor.
11. **Sectoral:** The 102 other sections of the Indian Act are not affected.
12. **Legal status:** A First Nation is unconditionally recognized with all the rights, powers and privileges of an owner of its lands. It has the legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.
13. **Special relationship to the Crown** is retained and **title** to First Nation land is not affected by the Framework Agreement or the legislation.
14. **Constitutional protections** are retained. First Nation land continues to be land reserved for Indians within the meaning of Section 91 (24) of the Constitution Act, 1867.

15. ***Treaty and Aboriginal Rights*** are not affected – the Agreement is not a Treaty.
16. ***No loss of Reserve land***
 - Surrender for sale of reserve land is excluded
 - Expropriation of land by the province is excluded
 - Expropriation of land by the Federal Crown is *restricted* to a national public purpose, for as short a time as possible, with a reversion to Reserve status after the use is over. In *addition*, other land of equal size and value is given Reserve status. This would result in a larger Reserve.
17. ***Increase in Reserve land*** may occur due to a *land exchange* for a piece of Reserve land; the land exchanged will be of equal or greater size and value in addition to other considerations.
18. ***Provision to exclude*** certain lands from application of the Land Code, if those lands are in environmentally unsafe condition, in dispute, uninhabitable or unusable as a result of natural disaster, or the First Nation and the Minister agree that exclusion is justifiable.
19. ***First Nation not liable*** for any previous acts or omissions of Canada (or any person or entity authorized by Canada), that occurred before the First Nation's land code takes effect.
20. ***Protection of a third party interest*** on Reserve, until that interest has expired (e.g. valid leases continue).
21. ***Protection of an individual Band member's interest*** on Reserve (e.g. valid CP's and other legal interests continue).

22. ***A separate First Nation lands Register*** to be set up and maintained for each First Nation with a Land Code in effect and **National registration** of land interests as a sub-system of the existing Reserve Land Register by Canada.
23. The ***Power to Enforce*** First Nation laws including the appointment of a First Nation's own Justice of the Peace.
24. ***Local dispute resolution*** of land issues through out-of-court processes including mediation, arbitration and neutral evaluation. This could save considerable court costs.
25. ***Marital property disposition*** on the *breakdown* of a marriage must be provided for in the Land Code.
26. ***Conflict of interest*** provisions are mandatory, ensuring fair lands' practices.

27. ***Federal Funding***

Developmental Funding will be provided to:

- Develop the Land Code through a community process;
- Develop an Agreement to transfer lands interests from the Crown to the First Nation;
- Develop a process to ratify the Land Code;
- Develop an environmental agreement; and
- Communicate with the membership.

Operational Funding is provided to:

- Develop the *knowledge and skills* of the lands administrators;
- Develop *lands management* systems (e.g., on-Reserve registry);
- Develop a *land use plan* to be approved by the community; and
- *Administer lands transactions*

Governance Funding will be provided to sustain a *national Lands Advisory Board* to assist in developing model land codes, laws and land management systems; and to establish a resource center, curricula and training programs for managers and others who perform functions pursuant to a land code; etc.

Technical Funding will be provided to support a contract *technical team* to provide legal, strategic and tactical advice.

28. ***Environmental Agreement*** to ensure First Nations lands are environmentally safe will be funded by INAC and negotiated between Canada and the First Nation. Funding will also be provided to implement remediation of issues and an environmental management regime to protect lands in future.
29. ***Transfer Agreement:*** The First Nation and Canada negotiate a Transfer Agreement that identifies and transfers the First Nation lands out of Canada's control to the First Nation and that provides for operational funding to the First Nation for land management.

**Text of the Framework
Agreement on First Nation Land
Management**

(signed in 1996)

Includes modifications resulting from

Amendment #1 1998
Amendment #2 1998
Amendment #3 2002
Amendment #4 2007
Amendment #5 2011

**Texte de l'Accord-Cadre relatif
à la Gestion des Terres de
Premières Nations**

(signé en 1996)

Comprend les changements apportés par
les modifications suivantes

Modification #1 1998
Modification #2 1998
Modification #3 2002
Modification #4 2007
Modification #5 2011

Framework Agreement on First Nation Land Management

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

BETWEEN:

THE FOLLOWING FIRST NATIONS:

WESTBANK, MUSQUEAM, LHEIDLI
T'ENNEH (formerly known as "LHEIT-
LIT'EN"), N'QUATQUA, SQUAMISH,
SIKSIKA, MUSKODAY, COWESSESS,
OPASKWAYAK CREE, NIPISSING,
MISSISSAUGAS OF SCUGOG ISLAND,
CHIPPEWAS OF MNJIKANING,
CHIPPEWAS OF GEORGINA ISLAND,
SAINT MARY'S, as represented by their
Chiefs and all other First Nations that
have adhered to the Agreement

AND

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA, as represented by
the Minister of Indian Affairs and Northern
Development

WHEREAS:

The First Nations have a profound
relationship with the land that is rooted in
respect for the Spiritual value of the Earth
and the gifts of the Creator and have a deep
desire to preserve their relationship with the
land;

The First Nations should have the option of

Accord-cadre relatif à la Gestion des Terres de Premières Nations

ACCORD-CADRE RELATIF À LA GESTION DES TERRES DE PREMIÈRES NATIONS

ENTRE :

LES PREMIÈRES NATIONS
SUIVANTES :

WESTBANK, MUSQUEAM, LHEIDLI
T'ENNEH (autrefois connue sous le
nom de "LHEIT-LIT'EN"),
N'QUATQUA, SQUAMISH, SIKSIKA,
MUSKODAY, COWESSESS,
OPASKWAYAK CREE, NIPISSING,
MISSISSAUGAS OF SCUGOG
ISLAND, CHIPPEWAS OF
MNJIKANING, CHIPPEWAS OF
GEORGINA ISLAND, SAINT
MARY'S, représentées par leurs chefs
et toutes les autres Premières Nations
qui se sont jointes à l'Entente

ET

SA MAJESTÉ LA REINE DU CHEF
DU CANADA, représentée par le ministre
des Affaires indiennes et du Nord
canadien

ATTENDU QUE :

Les premières nations entretiennent une
relation profonde avec la terre, basée sur la
valeur spirituelle qu'elles attribuent à la
Terre et aux dons du Créateur et qu'elles
ont le désir de préserver cette relation;

Les premières nations devraient avoir la
possibilité de soustraire leurs terres aux

withdrawing their lands from the land management provisions of the Indian Act in order to exercise control over their lands and resources for the use and benefit of their members;

The Parties wish to enter into a government to government agreement, within the framework of the constitution of Canada, to deal with the issues of land management;

The Parties understand that this Agreement must be ratified;

NOW THEREFORE,

In consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree that the First Nations shall have the option of exercising control over their lands and resources.

PART I PRELIMINARY MATTERS

1. INTERPRETATION 1.

1.1 In this Agreement,

"Canada" or "Crown" means Her Majesty the Queen in right of Canada; ("Canada")

"eligible voter" means a member of a First Nation who is eligible, pursuant to clause 7.2, to vote under this Agreement; ("électeurs")

"federal law" means a law enacted by

dispositions de la Loi sur les Indiens concernant la gestion des terres de façon à exercer un contrôle sur leurs terres et sur leurs ressources à l'usage et au profit de leurs membres;

Les parties souhaitent conclure un accord de gouvernement à gouvernement, dans le cadre de la constitution du Canada, concernant des questions touchant la gestion des terres;

Les parties reconnaissent que le présent accord doit être ratifié;

PAR CONSÉQUENT,

En contrepartie de l'échange des promesses figurant dans le présent accord et sous réserve de ses modalités, les Parties conviennent que les premières nations doivent avoir la possibilité d'exercer un contrôle sur leurs terres et sur leurs ressources.

PARTIE I QUESTIONS PRÉLIMINAIRES

INTERPRÉTATION

1.1 Les définitions qui suivent s'appliquent au présent accord.

« Canada » ou « Couronne » Sa Majesté la Reine du chef du Canada; (« Canada »)

« code foncier » Code adopté par une première nation conformément au présent accord contenant les dispositions générales relatives à l'exercice des droits et pouvoirs de la première nation sur ses terres de

Canada and does not include a land code or a First Nation law; ("loi fédérale")

"federal legislation" means the legislation to be enacted by Canada under Part X; ("loi de ratification")

"First Nation" means a band that is a Party to this Agreement; ("première nation")

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code; ("terres de première nation")

"First Nation Lands Register" means the register established pursuant to clause 51 to register interests or land rights in First Nation land; ("registre des terres de premières nations")

"First Nation law" means a law enacted by a First Nation in accordance with its land code; ("texte législative de la Première nation")

"interest", in relation to First Nation land in any province or territory other than Québec, means any interest, right or estate of any nature in or to that land, including a lease, easement, right of way, servitude, or profit à prendre, but does not include title to that land; ("intérêt")

"land code" means a code, approved by a First Nation in accordance with this Agreement, that sets out the basic provisions regarding the exercise of the First Nation's rights and powers over its First Nation land (although each First Nation can select its own name for the land code); ("code

première nation (les premières nations peuvent néanmoins donner l'appellation de leur choix à ce code foncier). (« land code »)

« Conseil consultatif des terres » Le conseil visé à l'article 38. (« Land Advisory Board »)

« droit foncier » Relativement aux terres de première nation dans la province de Québec, tout droit de quelque nature qu'il soit portant sur ces terres, à l'exclusion du titre de propriété; y sont assimilés les droits du locataire. (« land right »)

« électeurs » Les membres d'une première nation qui ont le droit de voter en vertu de l'article 7.2 du présent accord. (« eligible voters »)

« intérêt » Relativement aux terres de première nation situées dans toute province ou territoire autre que le Québec, tout intérêt, droit ou domaine de quelque nature qu'il soit portant sur ces terres, notamment un bail, une servitude, un droit de passage, un service foncier ou un profit à prendre, à l'exclusion du titre sur ces terres. (« interest »)

« loi de ratification » La loi adoptée par le Canada aux termes de la Partie X. (« federal legislation »)

« loi fédérale » Loi adoptée par le Canada mais ne comprend pas un code foncier ou un texte législatif d'une première nation. (« federal law »)

« membre » À l'égard d'une première

foncier")

"land right", in relation to First Nation land in the Province of Québec, means any right of any nature in or to that land excluding title, and includes the rights of a lessee; ("droit foncier")

"Lands Advisory Board" means the board referred to in clause 38; ("Conseil consultatif des terres")

"licence", in relation to First Nation land, ("permis")

(a) in a province or territory other than Québec, means any right of use or occupation of First Nation land, other than an interest in that land;

(b) in the Province of Québec, any right to use or occupy First Nation land, other than a land right in that land;

"member", in respect of a First Nation, means ("membre")

(a) a person whose name appears on the Band List, or

(b) a person who is entitled to have his or her name appear on the Band List;

"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 this Agreement; ("ministre")

nation : (« member »)

a) personne dont le nom figure sur la liste de bande;

b) personne qui a droit à ce que son nom y figure.

« ministre » Le ministre des Affaires indiennes et du Nord canadien ou un membre du Conseil privé de la Reine désigné par le gouverneur en conseil aux fins du présent accord. (« Minister »)

« permis » Relativement aux terres d'une première nation : (« licence »)

a) dans une province ou un territoire autre que le Québec, tout droit d'usage ou d'occupation des terres de première nation, autre qu'un intérêt sur ces terres;

b) dans la province de Québec, tout droit d'utiliser ou d'occuper les terres de première nation autre qu'un droit foncier sur ces terres.

« première nation » Une bande qui est Partie au présent accord. (« First Nation »)

« registre des terres de premières nations » Le registre créé conformément à l'article 51 pour l'enregistrement des intérêts ou des droits fonciers sur les terres de premières nations. (« First Nation Lands Register »)

« terres de première nation » Dans le cas d'une première nation, tout ou partie d'une réserve décrite dans son code foncier. (« First Nation land »)

"verifier" means the person appointed pursuant to clauses 8 and 44 to monitor and verify the opting in process for a First Nation. ("vérificateur")

1.2 Terms that are defined or used in the Indian Act have the same meaning in this Agreement, unless the context otherwise requires.

1.3 This Agreement is not a treaty and shall not be considered to be a treaty within the meaning of section 35 of the Constitution Act, 1982.

1.4 The Parties acknowledge that the Crown's special relationship with the First Nations will continue.

1.5 This Agreement does not affect any lands, or any rights in lands, that are not subject to this Agreement.

1.6 This Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources or to preclude other negotiations in respect of those rights.

1.7 The parties agree that when a provision of this agreement contains both civil law and common law terminology, or terminology that has different meanings in the civil law and the common law, the civil law

« texte législatif de la première nation »
Une loi ou un autre texte législatif adopté par une première nation conformément à son code foncier. (« First Nation law »)

« vérificateur » La personne chargée, en application des articles 8 et 44, de surveiller et de vérifier le processus d'adhésion d'une première nation.
(« verifier »)

1.2 Sauf indication contraire, les termes du présent accord qui sont définis ou utilisés dans la Loi sur les Indiens s'entendent au sens de cette loi.

1.3 Le présent accord ne constitue pas un traité et n'est pas considéré comme un traité au sens de l'article 35 de la Loi constitutionnelle de 1982.

1.4 Les Parties reconnaissent que la Couronne maintiendra la relation spéciale qu'elle entretient avec les premières nations.

1.5 Le présent accord ne s'applique pas aux terres ou aux droits sur ces terres qui ne sont pas visés par lui.

1.6 Le présent accord n'a pas pour but de définir les droits inhérents ou autres des premières nations d'exercer un contrôle sur leurs terres et leurs ressources ni d'y porter atteinte, ni d'empêcher que ces droits fassent l'objet d'autres négociations.

1.7 Les parties conviennent, que lorsque une disposition du présent accord emploie à la fois des termes propres au droit civil et à la common-law ou des termes qui ont

terminology or meaning is intended to apply to this provision with respect to First Nations in the Province of Quebec and the common law terminology or meaning is intended to apply with respect to First Nations in a province or territory other than Quebec.

2. FIRST NATION LAND

2.1 Land that is a reserve of a First Nation is eligible to be managed by that First Nation under a land code as First Nation land.

2.2 First Nation land includes all the interests and rights or all the land rights and other rights, as well as the resources that belong to that land, to the extent that these are under the jurisdiction of Canada and are part of that land.

2.3 The Parties agree that First Nation lands are lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867.

3. INDIAN OIL AND GAS

3.1 The Indian Oil and Gas Act will continue to apply to any First Nation lands, or interests or land rights in First Nation land, that are "Indian lands" within the meaning of that Act.

un sens différent dans l'un et l'autre de ces systèmes, l'intention est, d'appliquer à cette disposition la terminologie de droit civil ou le sens qu'on lui donne dans ce système en ce qui a trait aux Premières nations au Québec et la terminologie de common-law ou le sens qu'on lui donne dans ce système en ce qui a trait aux Premières nations dans toute province ou territoire autre que le Québec.

2. TERRES D'UNE PREMIÈRE NATION

2.1 Les terres qui constituent une réserve d'une première nation sont admissibles à être gérées par celle-ci en vertu d'un code foncier à titre de terres de première nation.

2.2 Les terres de première nation comprennent tous les intérêts et droits ou tous les droits fonciers et autres droits ainsi que les ressources relatifs à ces terres dans la mesure où ils relèvent de la juridiction du Canada et font partie de ces terres.

2.3 Les parties reconnaissent que les terres de premières nations sont des terres réservées aux Indiens au sens du point 24 de l'article 91 de la Loi constitutionnelle de 1867.

3. PÉTROLE ET GAZ DES INDIENS

3.1 La Loi sur le pétrole et le gaz des terres indiennes continuera à s'appliquer aux terres de premières nations et aux intérêts ou droits fonciers sur les terres de premières nations qui sont des « terres indiennes » au sens de cette Loi.

3.2 Any interest or land right in First Nation land that is granted to Canada for the exploitation of oil and gas under a land code will be deemed to be "Indian lands" within the meaning of the Indian Oil and Gas Act.

3.3 Section 4 of the Indian Oil and Gas Act will continue to apply to revenues and royalties from oil or gas on First Nation land, despite anything to the contrary in clause 12.

4. RESERVES

4.1 Any reserve managed by a First Nation under a land code will continue to be a reserve within the meaning of the Indian Act.

4.2 Any reserve, title to which is vested in Canada, and managed by a First Nation under a land code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

4.3 Where a First Nation wishes to manage a reserve, the whole of the reserve will be included as First Nation land to avoid disjointed administration of the reserve, subject to clauses 4.4, 4.5 and 4.5A.

4.4 Subject to clause 4.5A, a portion of a reserve may be excluded from a land code only if:

(a) the portion of the reserve is in an environmentally unsound condition and the condition cannot be remedied

3.2 Les intérêts ou droits fonciers sur les terres de première nation octroyés au Canada pour l'exploitation du pétrole et du gaz en vertu d'un code foncier seront réputés être des « terres indiennes » au sens de la Loi sur le pétrole et le gaz des terres indiennes.

3.3 L'article 4 de la Loi sur le pétrole et le gaz des terres indiennes continuera de s'appliquer aux revenus et aux redevances provenant du pétrole ou du gaz situés sur les terres de première nation, nonobstant toute disposition contraire de l'article 12.

4. RÉSERVES

4.1 Les réserves gérées par une première nation en vertu d'un code foncier demeurent des réserves au sens de la Loi sur les Indiens.

4.2 Toute réserve, dont le titre est détenu par le Canada et qui est gérée par une première nation en vertu d'un code foncier, continuera d'appartenir au Canada à l'usage et au profit de la première nation pour laquelle la réserve fut mise de côté.

4.3 Lorsqu'une première nation souhaite gérer une réserve, l'ensemble de la réserve sera inclus comme terres de première nation de façon à éviter la double administration de la réserve sous réserve des articles 4.4, 4.5 et 4.5A.

4.4 Sous réserve de l'article 4.5A, il est permis de soustraire une partie d'une réserve à l'application du code foncier seulement dans l'un ou l'autre des cas suivants :

a) l'environnement y est si dégradé que

by measures that are technically and financially feasible before the land code is expected to be submitted for community approval;

(b) the portion of the reserve is the subject of ongoing litigation that is unlikely to be resolved before the land code is expected to be submitted for community approval;

(c) the portion of the reserve is uninhabitable or unusable as a result of a natural disaster; or

(d) there exist one or more other reasons which the First Nation and the Minister agree justify excluding a portion of a reserve.

4.5 A portion of a reserve may not be excluded if the exclusion would have the effect of placing the administration of a lease or other interest or right in land in more than one land management regime.

4.5A Land may be excluded from the application of the land code when it is uncertain whether the land forms part of the reserve. An exclusion for this reason shall be without prejudice to the right of the First Nation or Her Majesty to assert that the land forms part of the reserve. If excluding the land would have the effect of placing a lease, other interest or right in land in more than one land management regime, then all land that is subject to that lease, interest or right shall be excluded from the application of the land code.

des mesures réalisables sur les plans technique et économique ne permettront pas de l'assainir avant la présentation prévue du code foncier à l'approbation de la communauté;

b) cette partie de la réserve fait l'objet d'un litige qui ne sera probablement pas résolu avant la présentation prévue du code foncier à l'approbation de la communauté;

c) cette partie de la réserve est inhabitable ou inutilisable en raison d'un sinistre naturel;

d) l'exclusion est justifiée pour une ou plusieurs autres raisons convenues par la première nation et le ministre.

4.5 Une partie de la réserve ne peut être exclue si l'exclusion avait pour effet d'assujettir un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion foncière.

4.5A Une terre peut être exclue de l'application du code foncier lorsqu'il y a incertitude quant à la question de savoir si la terre est située ou non dans la réserve. L'exclusion pour ce motif ne porte pas atteinte au droit de la première nation ou de Sa Majesté de faire valoir que la terre fait partie de la réserve. Si l'exclusion a pour effet d'assujettir un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion foncière, toute la partie de la réserve qui est assujettie au bail ou autre intérêt ou droit foncier doit être exclue de l'application du code foncier.

4.6 The First Nation will make provision to

amend the description of its First Nation land in its land code to include the excluded portion of the reserve when the First Nation and the Minister agree that the condition justifying the exclusion no longer exists and the individual agreement will be amended accordingly.

PART II OPTING IN PROCEDURE

4.6 Lorsque la première nation et le ministre conviennent que la condition justifiant l'exclusion d'une partie d'une réserve n'existe plus, la première nation fera en sorte que la description des terres de première nation contenue dans son code foncier soit modifiée pour y inclure la partie jusqu'à présent exclue et l'accord distinct sera modifié en conséquence.

PARTIE II PROCÉDURE D'ADHÉSION

5. DEVELOPMENT OF A LAND CODE

5.1 A First Nation that wishes to manage one or more of its reserves will first develop a land code.

5.2 The land code of a First Nation will

(a) describe the lands that are subject to the land code;

(b) set out the general rules and procedures that apply to the use and occupancy of First Nation land, including use and occupancy under

(i) licenses and leases, and

(ii) interests or land rights in First Nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the First Nation;

(b.1) set out the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or land rights in First Nation land;

(c) set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land;

(d) set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under

5. ÉLABORATION D'UN CODE FONCIER

5.1 La première nation qui souhaite gérer une ou plusieurs de ses réserves doit préalablement élaborer un code foncier.

5.2 Les éléments suivants figurent dans le code foncier d'une première nation :

a) la description des terres qui y sont assujetties;

b) les règles générales - de procédure et autres - applicables en matière d'utilisation et d'occupation des terres de première nation, notamment :

(i) en vertu d'un permis ou d'un bail,

(ii) en vertu d'un intérêt ou d'un droit foncier sur les terres de première nation découlant soit de l'attribution de cet intérêt ou droit foncier en vertu du paragraphe 20(1) de la Loi sur les Indiens, soit de la coutume de la première nation;

(b.1) les règles de procédure applicables en matière de transfert d'intérêts ou de droits fonciers sur les terres de première nation, par disposition testamentaire ou succession;

c) les règles générales – de procédure et autres - applicables aux revenus tirés des ressources naturelles relatives aux terres de première nation;

d) les exigences touchant l'obligation de rendre compte de la gestion des fonds et des terres de première nation aux termes

the land code;

(e) set out the procedures for making and publishing its First Nation laws;

(f) set out the conflict of interest rules for land management;

(g) identify or establish a forum for the resolution of disputes in relation to interests or land rights in First Nation lands, including the review of land management decisions where a person, whose interest or land right in First Nation land is affected by a decision, disputes that decision;

(h) set out the general rules and procedures that apply to the First Nation when granting or expropriating interests or land rights in First Nation land, including provisions for notice and the service of notice;

(i) set out the general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to another person or entity; and

(j) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land.

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

e) les règles d'édiction et de publication des textes législatifs de la première nation;

f) les règles applicables en matière de conflit d'intérêts dans la gestion des terres;

g) la création ou l'identification d'une instance chargée de résoudre les différends concernant les intérêts ou les droits fonciers sur les terres de première nation, y compris la révision de toute décision en matière de gestion des terres contestée par une personne dont les intérêts ou les droits fonciers sur ces terres sont affectés par cette décision;

h) les règles générales – de procédure et autres - applicables à la première nation en matière d'attribution ou d'expropriation d'intérêts ou de droits fonciers sur des terres de première nation, y compris les dispositions en matière d'avis et de notification;

i) les pouvoirs et procédures généraux applicables en matière de délégation, par le conseil de la première nation à une autre personne ou entité, des pouvoirs de gestion des terres de première nation;

j) la procédure selon laquelle la première nation peut modifier son code foncier ou approuver un échange de ses terres de première nation.

5.3 Peuvent également figurer dans le code foncier :

(a) any general conditions or limits on the power of the First Nation council to make First Nation laws;

(b) in any province or territory other than Quebec, any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;

(b.1) in the province of Quebec, any general exceptions, reservations, conditions or limits to be attached to the land rights or other rights that may be granted in First Nation land;

(c) any provisions respecting encumbering, seizing, or executing a right or an interest or land right in First Nation land as provided in clause 15; and

(d) any other matter respecting the management of First Nation land.

5.4 In order to clarify the intentions of the First Nations and Canada in relation to the breakdown of a marriage as it affects First Nation land:

(a) a First Nation will establish a community process in its land code to develop rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of First Nation land and the division of interests or land rights in that land;

a) les conditions ou limites générales applicables au pouvoir du conseil de la première nation d'édicter des textes législatifs de la première nation;

b) dans une province ou un territoire autre que le Québec, les exclusions, réserves, conditions ou délimitations générales applicables en matière d'attribution des droits et des intérêts sur les terres de première nation;

b.1) dans la province de Québec, les exceptions, réserves, conditions ou limites générales applicables en matière d'attribution des droits fonciers et autres droits sur les terres de première nation;

c) les dispositions, telles que prévues à l'article 15, concernant la saisie ou l'exécution d'un droit ou d'un intérêt ou droit foncier sur les terres de première nation, ou le fait de les gérer;

d) toute autre disposition concernant la gestion des terres de première nation.

5.4 Afin de préciser l'intention des premières nations et du Canada en ce qui a trait à l'échec du mariage et à ses effets sur les terres de premières nations :

a) une première nation établira, dans son code foncier, un processus communautaire pour l'élaboration de règles et de procédures applicables, au moment de l'échec d'un mariage, en matière d'usage, d'occupation et de possession des terres de première nation et en matière de partage des intérêts ou des droits fonciers sur ces terres;

(b) for greater certainty, the rules and procedures referred to in clause (a) shall not discriminate on the basis of sex;

(c) the rules and procedures referred to in clause (a) shall be enacted in the First Nation's land code or First Nation laws;

(d) in order to allow sufficient time for community consultation during the community process referred to in clause (a), the First Nation shall have a period of 12 months from the date the land code takes effect to enact the rules and procedures;

(e) any dispute between the Minister and a First Nation in respect of this clause shall, notwithstanding clause 43.3, be subject to arbitration in accordance with Part IX;

(f) for greater certainty, this clause also applies to any First Nation that has voted to approve a land code before this clause comes into force.

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

6.1 The Minister and each First Nation that intends to manage its First Nation land will also enter into an individual agreement to settle the actual level of operational funding for the First Nation and the specifics of the transfer of administration between Canada and the First Nation.

b) il est entendu que les règles et procédures mentionnées à l'alinéa a) ne peuvent faire aucune distinction fondée sur le sexe;

c) les règles et procédures mentionnées à l'alinéa a) sont prévues soit dans le code foncier de la première nation, soit dans ses textes législatifs;

d) afin qu'il puisse y avoir une période suffisante pour consulter la communauté, tel que mentionné à l'alinéa a), la première nation dispose d'un délai de 12 mois, à compter de la date d'entrée en vigueur de son code foncier, pour adopter ces règles et procédures;

e) tout différend entre le ministre et une première nation au sujet du présent article est, par dérogation à l'article 43.3, porté en arbitrage en conformité avec la Partie IX;

f) il est entendu que le présent article s'applique également à toute première nation qui a voté en faveur de l'adoption d'un code foncier avant que le présent article n'entre en vigueur.

6. ÉLABORATION D'UN ACCORD DISTINCT AVEC CHAQUE PREMIÈRE NATION

6.1 Le ministre et la première nation qui entend gérer ses propres terres concluront également un accord distinct fixant le niveau du financement opérationnel destiné à la première nation ainsi que les modalités du transfert des responsabilités en matière d'administration entre le

6.2 The First Nation and the Minister will each choose a representative to develop the individual agreement and to assist in transferring administration of the First Nation land.

6.3 Upon the request of a First Nation that is developing a land code, the Minister will provide it with the following information, as soon as practicable:

(a) a list of all the interests or land rights and licences, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the Indian Act;

(b) all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land; and

(c) any other information in Canada's possession that materially affects the interests or land rights and licences mentioned in clause 6.3(a).

6.4 An amendment to an individual agreement with the Minister must be made in accordance with the procedure in that agreement.

7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its

Canada et la première nation.

6.2 La première nation et le ministre désignent chacun un représentant chargé de préparer l'accord distinct et de faciliter le transfert de l'administration des terres de première nation.

6.3 À la demande de la première nation qui élabore un code foncier le ministre lui fournit les renseignements suivants, dans les meilleurs délais :

a) une liste de tous les intérêts ou droits fonciers et permis concernant les terres de la première nation proposées, qui sont consignés dans le registre des terres de réserve et le registre des terres désignées et cédées aux termes de la Loi sur les Indiens;

b) tous les renseignements en la possession du Canada concernant les problèmes environnementaux réels ou potentiels concernant les terres de la première nation proposées;

c) tout autre renseignement en la possession du Canada qui touche notamment les intérêts ou droits fonciers et les permis mentionnés à l'alinéa 6.3 a).

6.4 L'accord distinct conclu avec le ministre est modifié selon la procédure prévue dans celui-ci.

7. APPROBATION DE LA COMMUNAUTÉ

7.1 Le code foncier de la première nation

individual agreement with the Minister need community approval in accordance with this clause.

7.2 Every person who is a First Nation member, whether resident on or off-reserve, who is at least 18 years of age, is eligible to vote on whether to approve their First Nation's proposed land code and its individual agreement with the Minister.

7.3 The land code and individual agreement will be considered approved by the community if

(a) a majority of eligible voters participate in the vote and at least a majority of the participating voters vote to approve them;

(b) the First Nation registers all eligible voters who signified, in a manner determined by the First Nation, their intention to vote, and a majority of the registered voters vote to approve them; or

(c) the community approves them in such other manner as the First Nation and the Minister may agree upon.

7.4 The land code and individual agreement will not be considered approved if less than 25% plus one of all eligible voters voted to approve them.

7.5 The First Nation council may, by resolution, increase the minimum percentage for community approval otherwise required under this clause.

et l'accord distinct conclu avec le ministre doivent être approuvés par la communauté conformément au présent article.

7.2 A le droit de voter, dans le cadre de l'approbation du projet de code foncier de la première nation et de l'accord distinct conclu avec le ministre, tout membre de la première nation qui a au moins 18 ans, qu'il réside ou non dans la réserve.

7.3 Le code foncier et l'accord distinct sont réputés validement approuvés par la communauté dans les cas suivants :

a) la majorité des électeurs participent au scrutin et au moins une majorité des électeurs participants ont exprimé un vote favorable;

b) la première nation inscrit tous les électeurs qui ont fait connaître, selon les modalités fixées par la première nation, leur intention de voter et une majorité des électeurs inscrits ont exprimé un vote favorable;

c) la communauté les approuve selon d'autres modalités fixées conjointement par la première nation et par le ministre.

7.4 Dans tous les cas cependant, le code foncier et l'accord distinct ne sont approuvés que si au moins vingt-cinq pour cent plus un des électeurs ont exprimé un vote favorable.

7.5 Le conseil de la première nation peut, par résolution, augmenter le pourcentage minimum requis en vertu du présent article pour recueillir l'approbation de la communauté.

7.6 A First Nation will take reasonable steps to locate its eligible voters and inform them of

- (a) their right to participate in the approval process and the manner in which that right can be exercised; and
- (b) the content of this Agreement, the individual agreement with the Minister, the proposed land code and the federal legislation.

7.7 Reasonable steps to locate and inform eligible voters may include the following :

- (a) mailing out information to eligible voters at their last known addresses;
- (b) making enquiries of family members and others to locate eligible voters whose addresses are not known or are uncertain;
- (c) making follow up contact with eligible voters by mail or telephone;
- (d) placing advertisements in newspapers circulating in the community and in newspapers circulating in other localities where the number of eligible voters warrants;
- (e) posting notices in the community;
- (f) holding information meetings in the community and in other places where appropriate; and

7.6 Le conseil de la première nation doit prendre des mesures raisonnables pour retrouver les électeurs et les informer :

- a) de leur droit de participer au processus d'approbation et de la manière d'exercer ce droit;
- b) du contenu du présent accord, de l'accord distinct conclu avec le ministre, du projet de code foncier et de la loi de ratification.

7.7 Parmi les mesures raisonnables envisagées pour retrouver les électeurs et les informer, le conseil peut prendre les mesures suivantes :

- a) envoyer par courrier de l'information aux électeurs à leur dernière adresse connue;
- b) s'enquérir auprès des membres de la famille et d'autres personnes afin de retrouver les électeurs dont l'adresse est inconnue ou incertaine;
- c) effectuer un suivi auprès des électeurs par courrier ou par téléphone;
- d) publier des avis dans les journaux distribués dans la communauté et dans toute autre localité où le nombre d'électeurs le justifie;
- e) afficher des avis dans la communauté;
- f) tenir des réunions d'information dans la communauté et à tout autre endroit approprié;

(g) making copies of the documents referred to in clause 7.6(b) available at the administration office of the First Nation and in other places where appropriate.

7.8 A First Nation will, within a reasonable time before the vote, also take appropriate measures to inform other persons having an interest or land right in its lands of the federal legislation, the proposed land code and the date of the vote.

7.9 Where the federal legislation has not yet been enacted when a First Nation proceeds under this clause, Canada will provide the First Nation with a draft copy of its proposed legislation which the First Nation will use to inform its eligible voters and other persons.

7.10 An amendment to a land code must be made in accordance with the procedure in the First Nation's land code.

8. VERIFICATION PROCESS

8.1 Where a First Nation develops a proposed land code and resolves to submit it to the community for approval, an independent person will be appointed as a verifier to monitor and verify the opting in process. The verifier will be chosen in accordance with clause 44.

8.2 The representatives of the First Nation

g) rendre disponible, au bureau d'administration de la première nation et à tout autre endroit approprié, une copie des documents mentionnés à l'alinéa 7.6b).

7.8 La première nation doit prendre dans un délai raisonnable avant le jour du scrutin, des mesures appropriées pour informer les autres personnes ayant un intérêt ou un droit foncier sur ses terres au sujet de la loi de ratification, du projet de code foncier et de la date du scrutin.

7.9 Si la loi de ratification n'a pas encore été adoptée au moment où la première nation met en oeuvre le présent article, le Canada fournira à la première nation une ébauche du projet de loi que la première nation portera à la connaissance des électeurs et des autres personnes concernées.

7.10 Le code foncier d'une première nation est modifié selon la procédure prévue dans celui-ci.

8. PROCESSUS DE VÉRIFICATION

8.1 Lorsqu'une première nation élabore un projet de code foncier et décide de le présenter à la communauté pour approbation, une personne indépendante doit être nommée à titre de vérificateur chargée de surveiller le processus d'adhésion et d'en vérifier la régularité. Le vérificateur est choisi conformément à l'article 44.

8.2 Les représentants de la première nation

and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and provide information and advice to the verifier, after consulting with their respective Parties.

8.3 The First Nation will submit the following information to the verifier:

- (a) a copy of the proposed land code;
- (b) an initial list of the names of every First Nation member who, according to the First Nation's records at that time, would be eligible to vote on whether to approve the proposed land code; and
- (c) a detailed description of the community approval process that the First Nation proposes to use under clause 7.

8.4 The verifier will

- (a) decide whether the proposed land code conforms with the requirements of clause 5;
- (b) decide whether the proposed community approval process conforms with the requirements of clause 7;
- (c) determine whether the community approval process is conducted in accordance with the process that was confirmed; and
- (d) certify as being valid a First

et du ministre, qui ont participé au processus de transfert de la gestion des terres, rencontrent le vérificateur et lui fournissent renseignements et avis, après avoir consulté leurs Parties respectives.

8.3 La première nation communique au vérificateur les documents suivants :

- a) un exemplaire du projet de code foncier;
- b) la liste initiale des membres de la première nation qui, selon les registres de la première nation disponibles à ce moment, auraient le droit de voter aux fins de l'approbation de ce code;
- c) un exposé détaillé du processus d'approbation de la communauté proposé par la première nation aux termes de l'article 7.

8.4 Le vérificateur a pour mandat:

- a) de décider de la conformité du projet de code foncier avec les exigences de l'article 5;
- b) de décider de la conformité du processus d'approbation de la communauté proposé avec les exigences de l'article 7;
- c) de décider de la conformité du déroulement du scrutin avec le processus retenu pour l'approbation de la communauté;
- d) d'attester la validité du code foncier de

Nation's land code that is properly approved by the First Nation.

8.5 The verifier also has the power to make a final decision to resolve

(a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and

(b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.

8.6 A verifier will make decisions that are consistent with clauses 4.4 and 4.5.

8.7 A verifier will not deal with disputes over funding.

8.8 Within 30 days of receiving the First Nation's information pursuant to clause 8.3, the verifier will issue a written notice to the First Nation and the Minister stating whether the proposed land code and community approval process are consistent with this Agreement.

8.9 The verifier will provide written reasons to the First Nation and the Minister in any case where he or she decides that the proposed land code and community approval process are not consistent with this Agreement.

9. CONDUCT OF COMMUNITY VOTE

9.1 Once the verifier confirms that the

la première nation dûment approuvé par elle.

8.5 Le vérificateur a également le pouvoir de trancher de façon définitive :

a) tout différend ayant trait à la question de savoir si une partie d'une réserve peut être soustraite à l'application du code foncier selon l'article 4.4;

b) tout différend concernant les modalités du transfert des pouvoirs d'administration entre le Canada et la première nation.

8.6 Les décisions du vérificateur doivent être conformes aux paragraphes 4.4 et 4.5.

8.7 Le vérificateur ne peut être saisi des différends concernant le financement.

8.8 Le vérificateur émet à la première nation et au ministre, dans les 30 jours de la réception des documents visés à l'article 8.3, un avis écrit indiquant si le projet de code foncier et le processus d'approbation de la communauté proposé sont conformes au présent accord.

8.9 Dans tous les cas où, à son avis, le projet de code foncier ou le processus proposé pour obtenir l'approbation de la communauté ne sont pas conformes au présent accord, le vérificateur consigne par écrit les motifs de cette décision qu'il transmet à la première nation et au ministre.

9. TENUE DU SCRUTIN

9.1 Après que le vérificateur ait décidé que

proposed land code and community approval process are consistent with this Agreement, the First Nation may proceed to submit its proposed land code, and the individual agreement with the Minister, for community approval.

9.2 The verifier will publish one or more notices advising the community of the date, time and place of the First Nation's approval vote.

9.3 The verifier may designate one or more assistants to help observe the conduct of the vote.

9.4 The verifier and any assistant observers will have complete authority to observe the approval process.

9.5 Within 15 days of the conclusion of the vote, the verifier will issue a written report to the First Nation and to the Minister on whether the community approval process was conducted in accordance with the process as previously confirmed.

10. CERTIFICATION OF LAND CODE

10.1 Where a First Nation approves a land code and its individual agreement with the Minister, the First nation council must, without delay, send a true copy of the land code to the verifier together with a true copy of the fully signed individual agreement and a statement from the First Nation council that the land code and the individual agreement were properly approved.

le projet de code et le processus proposé pour obtenir l'approbation de la communauté sont conformes au présent accord, la première nation peut soumettre à l'approbation de la communauté le projet de code foncier et l'accord distinct conclu avec le ministre.

9.2 Le vérificateur fait publier un ou plusieurs avis informant la communauté de la date, de l'heure et du lieu du scrutin.

9.3 Le vérificateur peut s'adjoindre un ou plusieurs assistants pour l'aider à surveiller le déroulement du scrutin.

9.4 Le vérificateur et ses adjoints ont pleins pouvoirs pour surveiller le processus d'approbation de la communauté.

9.5 Le vérificateur remet à la première nation et au ministre, dans les 15 jours suivant la fermeture du scrutin, son rapport écrit au sujet de la conformité du déroulement du scrutin avec le processus d'approbation retenu.

10. CERTIFICATION DU CODE FONCIER

10.1 Lorsque la première nation approuve le code foncier et l'accord distinct avec le ministre, le conseil de la première nation adresse au vérificateur, dans les meilleurs délais, une copie certifiée conforme de l'accord distinct entièrement signé et du code foncier approuvé ainsi qu'une déclaration du conseil de la première nation indiquant que le code foncier et l'accord distinct ont été dûment approuvés.

10.2 Upon receiving a copy of a First Nation's land code, signed individual agreement and statement, the verifier will, subject to clause 11, certify the land code as being valid.

10.3 The verifier will immediately provide the First Nation, the Lands Advisory Board and the Minister with a copy of any certified land code.

10.4 The Lands Advisory Board will, in such manner as it considers advisable, publish a notice announcing the certification of a land code and the date the land code takes effect and advising the public of the means of obtaining copies of it.

10.4.1 Certified copies of the land code will be made available to the public at such places deemed necessary by the First Nation.

10.5 Once a land code is certified by a verifier and takes effect, the land code has the force of law and will be given judicial notice.

10.6 A land code that has been certified pursuant to this Agreement is deemed to have been validly approved by the First Nation.

10.7 A land code takes effect on the day that it is certified by the verifier or on such later date as may be specified in the land code.

11. DISPUTED VOTE

11.1 The Minister or any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting

10.2 Sur réception de la copie du code foncier, de l'accord distinct signé et de la déclaration, le vérificateur atteste la validité du code foncier, sous réserve de l'article 11.

10.3 Le vérificateur adresse immédiatement à la première nation, au Conseil consultatif des terres et au ministre une copie du code foncier dont il a attesté la validité.

10.4 Le Conseil consultatif des terres publie, selon les modalités qu'il estime appropriées, un avis attestant la validité du code foncier, sa date d'entrée en vigueur et faisant connaître au public la façon de s'en procurer des copies.

10.4.1 Des copies certifiées du code foncier seront mises à la disposition du public aux endroits que la première nation estime appropriés.

10.5 Dès que le code foncier reçoit l'attestation du vérificateur et qu'il entre en vigueur, il a dès lors force de loi et est admis d'office dans toute instance.

10.6 Une fois sa validité attestée conformément au présent accord, le code est réputé avoir été dûment approuvé par la première nation.

10.7 Le code foncier entre en vigueur à la date de l'attestation de sa validité par le vérificateur ou à la date postérieure fixée dans le code.

11. CONTESTATION DU VOTE

11.1 Le ministre ou tout électeur peut, dans les cinq jours suivant la clôture du scrutin, informer le vérificateur de toute

process to the verifier.

11.2 A verifier will not certify a land code if he or she is of the opinion that the following two conditions exist:

(1) the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and

(2) the land code might not have been approved but for the irregularity in the process.

11.3 Before making a decision under this clause, the verifier will provide the First Nation and the Minister with a reasonable opportunity to make submissions on the issue.

11.4 Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.

PART III

FIRST NATION LAND MANAGEMENT RIGHTS AND POWER

12. LAND MANAGEMENT POWERS

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

irrégularité dont a été entaché le déroulement du scrutin.

11.2 Le vérificateur ne peut attester la validité du code foncier s'il en vient aux conclusions suivantes :

(1) d'une part, le déroulement du scrutin n'est pas conforme au processus d'approbation qu'il a lui-même confirmé au préalable ou est autrement entaché d'irrégularité;

(2) d'autre part, le code n'aurait peut-être pas été approuvé sans cette irrégularité.

11.3 Avant de prononcer une décision aux termes du présent article, le vérificateur donne à la première nation et au ministre l'occasion de présenter des observations.

11.4 Toute décision du vérificateur en vertu du présent article doit être prise dans un délai de 10 jours suivant la conclusion du vote.

PARTIE III

DROITS ET POUVOIRS DE GESTION DES TERRES DE PREMIÈRE NATION

12. POUVOIRS DE GESTION DES TERRES

12.1 Dès que le code foncier entre en vigueur, la première nation a le pouvoir de gérer ses terres de première nation et d'exercer ses pouvoirs en vertu du présent accord, sous réserve de l'article 13.

12.2 This power includes

(a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and

(b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 In any province or territory other than Quebec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

12.3A In the province of Quebec, a land right or licence granted in relation to First Nation land is subject to any exceptions, reservations, conditions or limits established by the First Nation in its land code.

12.4 For any purpose related to First Nation land, a First Nation will have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.

12.5 First Nation land, revenues, royalties, profits and fees in respect of that land will be managed by the First Nation council or its delegate for the use and benefit of the First Nation.

12.2 Elle peut notamment :

a) exercer tous les droits, pouvoirs et privilèges d'un propriétaire, pour ce qui est de ses terres de première nation;

b) sous réserve des articles 3, 18.5 et 23.6, attribuer des permis et des intérêts ou droits fonciers relatifs à ses terres de première nation et gérer ses ressources naturelles.

12.3 Dans une province ou un territoire autre que le Québec, un intérêt ou un permis relatif aux terres de première nation est assujéti aux exclusions, réserves, conditions ou délimitations énoncées par la première nation dans son code foncier.

12.3A Dans la province de Québec, un droit foncier ou un permis relatif aux terres de première nation est assujéti aux exceptions, réserves, conditions ou limites énoncées par la première nation dans son code foncier.

12.4 À l'égard de ses terres de première nation, la première nation a la capacité juridique d'acquérir et de détenir des biens, de conclure des contrats et d'emprunter, de dépenser des fonds et de faire des investissements, d'ester en justice et d'exercer ses pouvoirs et attributions.

12.5 Le conseil de la première nation ou son délégué administre les terres de première nation ainsi que les revenus, les redevances, les recettes et les droits y afférents à l'usage et au profit de la première nation.

12.6 If a First Nation establishes an entity for the purpose of administering its First Nation land, the entity shall be deemed to be a legal entity with the capacity, rights, powers and privileges of a natural person.

12.7 A First Nation has the right, in accordance with its land code, to receive and use all moneys acquired by or on behalf of the First Nation under its land code.

12.8 Once a First Nation's land code takes effect, all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members before that date, and from time to time thereafter, shall cease to be Indian moneys under the Indian Act, except for the purposes of paragraph 90 (1) (a), and shall be transferred by Canada to the First Nation

13. PROTECTION OF FIRST NATION LAND

13.1 Title to First Nation land is not changed when a First Nation's land code takes effect.

13.2 The Parties declare that it is of fundamental importance to maintain the amount and integrity of First Nation land.

13.3 First Nation land will not be sold, exchanged, conveyed or transferred, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

12.6 Si la première nation met sur pied une entité pour gérer ses terres, l'entité est réputée être une entité juridique ayant la capacité, les pouvoirs, les droits et les privilèges d'une personne physique.

12.7 La première nation a, conformément à son code foncier, le droit de recevoir et d'utiliser les sommes acquises par ou pour le compte de la première nation en vertu de son code foncier.

12.8 À compter de la date d'entrée en vigueur du code foncier d'une première nation, les fonds perçus, reçus et détenus par la Canada à l'usage et au profit de la première nation ou de ses membres avant cette date, ainsi que ceux qui le sont après cette date, cessent d'être de l'argent des Indiens aux fins de la Loi sur les Indiens, sauf aux fins de l'alinéa 90(1)a), et sont transférés par le Canada à la première nation.

13. PROTECTION DES TERRES DE PREMIÈRE NATION

13.1 L'entrée en vigueur du code foncier d'une première nation n'a pas pour effet de modifier le titre des terres de première nation.

13.2 Les Parties déclarent reconnaître l'importance fondamentale que revêt la préservation de la superficie et de l'intégrité des terres de première nation.

13.3 Les terres de première nation ne sont pas susceptibles d'être vendues, échangées ou transférées, si ce n'est dans le cadre d'un échange ou d'une expropriation effectué en conformité avec le présent

14. VOLUNTARY EXCHANGE OF FIRST NATION LAND

14.1 A First Nation has the right to exchange a parcel of First Nation land for another parcel of land, if that other parcel of land becomes First Nation land. An exchange of First Nation land may provide for additional compensation, including land that may not become First Nation land, and may be subject to any other terms and conditions.

14.2 Any exchange of First Nation land will require community approval in accordance with the process established in the land code.

14.3 First Nation land will only be exchanged for land that Canada consents to set apart as a reserve. In addition, the agreement of Canada is required on the technical aspects of the exchange.

14.4 The title to the land to be received in exchange for that First Nation land will be transferred to Canada and will be set apart by Canada as a reserve, as of the date of the land exchange or such later date as the First Nation may specify. This does not apply to land that is received by the First Nation as additional compensation and that is not intended to become First Nation land.

14.5 Where an exchange of First Nation land is approved by a First Nation in accordance with its land code, the First Nation can

accord.

14. ÉCHANGE VOLONTAIRE DE TERRES DE PREMIÈRE NATION

14.1 Une première nation a le droit d'échanger une parcelle des terres de première nation contre une autre parcelle, si cette autre parcelle fait dès lors partie des terres de première nation. L'échange peut également comporter une contrepartie supplémentaire, notamment des terres supplémentaires qui ne sont pas destinées à devenir des terres de première nation, et être assorti d'autres conditions.

14.2 Tout échange de terres de première nation doit être approuvé par les membres de la première nation selon les modalités prévues par le code foncier.

14.3 Des terres de première nation ne peuvent être échangées que contre des terres que le Canada accepte de mettre de côté à titre de réserve. L'accord du Canada est également requis quant aux aspects techniques de l'opération.

14.4 Le titre des terres reçues en échange des terres de première nation sera transféré au Canada, qui mettra ces terres de côté à titre de réserve, à la date de l'échange ou à la date ultérieure fixée par la première nation. Cette disposition ne s'applique pas aux terres remises à une première nation à titre de contrepartie supplémentaire et qui ne sont pas destinées à devenir des terres de première nation.

14.5 Lorsque l'échange des terres de première nation est approuvé par la première nation conformément à son code

execute an authorization to Canada to transfer title to the land.

14.6 Upon the issuance to Canada of an authorization to transfer title to First Nation land under clause 14.5, Canada will transfer title to the land in accordance with the authorization and the applicable terms and conditions of the exchange.

14.7 A copy of the instruments or acts transferring title to First Nation land will be registered in the First Nation Lands Register.

14.8 As of the date of the land exchange, or such later date as the First Nation may specify, the description of First Nation land in the land code will be deemed to be amended to delete the description of the First Nation land that was exchanged and to add the description of the First Nation land received in exchange.

14.9 For greater certainty, the First Nation land that was exchanged will cease to be a reserve.

15. IMMUNITY FROM SEIZURE, ETC.

15.1 The Parties confirm that section 29 and subsections 89(1) and (2) of the Indian Act will continue to apply to any reserve that is First Nation land.

15.2 Subsection 89(1.1) of the Indian Act will continue to apply to all leasehold interests or leases that existed when the land code took effect if the First Nation land was

foncier, la première nation peut délivrer au Canada une autorisation de procéder au transfert du titre sur les terres en question.

14.6 Le Canada procède, sur réception de l'autorisation prévue à l'article 14.5, au transfert du titre sur les terres en question, en conformité avec cette autorisation et avec les conditions de l'échange.

14.7 Une copie des instruments ou actes de transfert du titre sur les terres de première nation sera enregistrée dans le registre des terres de premières nations.

14.8 À partir de la date de l'échange de terres, ou à la date ultérieure fixée par la première nation, la description des terres de première nation dans le code foncier est réputée être modifiée de façon à supprimer la description des terres de première nation qui ont été échangées et à ajouter celle des terres de première nation reçues en échange.

14. 9 Il est entendu que les terres de première nation qui ont été échangées cessent de constituer une réserve.

15. INSAISSABILITÉ, ETC.

15. 1 Les parties confirment que l'article 29 et les paragraphes 89(1) et (2) de la Loi sur les Indiens continuent de s'appliquer aux réserves faisant partie des terres de première nation.

15.2 Le paragraphe 89(1.1) de la Loi sur les Indiens continue de s'appliquer à tous les baux ou intérêts à bail qui existaient lorsque le code foncier est entré en

designated land at that time.

15.3 A land code may provide that some or all of the provisions of subsection 89(1.1) of the Indian Act are also applicable to other leasehold interests or leases in any First Nation lands.

15.4 The Parties confirm that section 87 of the Indian Act continues to apply to First Nation land, so that

(a) the interest of an Indian or a First Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the Indian Act; and

(b) the personal property or the movables of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.

16. THIRD PARTY INTERESTS 16.

16.1 Interests or land rights or licences held by third parties or Canada in First Nation land, that exist at the time the land code takes effect, continue in force according to their terms and conditions.

16.2 Any rights of locatees in possession of First Nation land, either by custom or by allotment under the Indian Act, to transfer, lease and share in natural resource revenues will be defined in the land code.

vigueur, dans le cas où les terres de première nation étaient des terres désignées à ce moment.

15.3 Le code foncier peut énoncer que les dispositions du paragraphe 89(1.1) de la Loi sur les Indiens sont également applicables, en tout ou en partie, aux autres baux ou intérêts à bail sur les terres de première nation.

15.4 Les parties confirment que l'article 87 de la Loi sur les Indiens continue de s'appliquer aux terres de première nation de façon à ce que:

a) le droit d'un Indien ou d'une première nation sur une réserve faisant partie des terres de première nation demeure exempté de taxation, sous réserve de l'article 83 de la Loi sur les Indiens;

b) les biens personnels ou les meubles d'un Indien ou d'une première nation situés sur une réserve faisant partie des terres de la première nation demeurent exemptés de taxation.

INTÉRÊTS DES TIERS

16.1 Les intérêts ou droits fonciers ou les permis que détiennent les tiers ou le Canada sur des terres de première nation lorsque le code foncier entre en vigueur continuent d'avoir effet selon leurs conditions.

16.2 Les droits des occupants en possession de terres de première nation, que ce soit conformément à la coutume ou par attribution aux termes de la Loi sur les Indiens, en matière de transfert, de bail et

16.3 Once a land code takes effect, no interest, land right or licence in relation to First Nation land may be acquired or granted except in accordance with the land code.

16.4 For greater certainty, disputes in relation to third party interests shall be dealt with in the forum identified or established in a land code pursuant to clause 5.2(g).

17. EXPROPRIATION BY FIRST NATIONS

17.1 A First Nation with a land code in effect has the right to expropriate interests or land rights in First Nation lands without consent if deemed by the First Nation council to be necessary for community works or other First Nation purposes.

17.2 A First Nation's power of expropriation will be exercised in accordance with the rules and procedures specified in its land code, its laws and this Agreement.

17.3 In any province or territory other than Québec, an interest in First Nation land that a First Nation expropriates becomes the property of the First Nation free of any previous claim or encumbrance in respect of the interest.

17.3A In the province of Québec, the First Nation that expropriates a land right in its First Nation lands becomes the holder of that

de partage des revenus provenant de ressources naturelles seront définis par le code foncier.

16.3 Après l'entrée en vigueur du code foncier, les permis, les intérêts ou droits fonciers concernant les terres de première nation ne peuvent être acquis ou accordés qu'en conformité avec ce code.

16.4 Il est entendu que les différends relatifs aux intérêts des tiers sont réglés selon ce que prévoit le code foncier conformément à l'alinéa 5.2g).

17. EXPROPRIATION PAR LES PREMIÈRES NATIONS

17.1 La première nation ayant un code foncier en vigueur a le droit d'exproprier sans consentement des intérêts ou droits fonciers sur ses terres de première nation, si le conseil de la première nation estime en avoir besoin pour réaliser des ouvrages communautaires ou à d'autres fins de la première nation.

17.2 La première nation procède à l'expropriation conformément aux règles et procédures établies dans son code foncier, à ses textes législatifs et au présent accord.

17.3 Un intérêt sur les terres de première nation dans une province ou un territoire autre que le Québec exproprié par la première nation devient la propriété de celle-ci, libre de toute réclamation ou tout grèvement antérieurs quant à cet intérêt.

17.3A La première nation qui exproprie un droit foncier sur ses terres de première nation dans la province de Québec devient

right free of any previous right, charge or claim in respect of that land right.

17.4 A First Nation that expropriates an interest or land right in First Nation land will give fair compensation based on the heads of compensation set out in the Expropriation Act (Canada).

17.5 A First Nation will establish a mechanism to resolve disputes over compensation it pays for expropriation.

17.6 Any interest in First Nation land that was obtained pursuant to section 35 of the Indian Act or any interest or land right that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with this Agreement, is not subject to First Nation expropriation.

17.7 A First Nation is not precluded from entering into an agreement with a utility or public body for the purpose of granting it an interest or land right in First Nation land that is exempt from expropriation by the First Nation.

17.8 No expropriation of an interest or land right in First Nation land by a First Nation takes effect earlier than either of the following days:

(a) the date the notice of expropriation is registered in the First Nation Lands Register; or

titulaire de ce droit foncier, libre de tout droit, charge ou réclamation antérieurs.

17.4 La première nation qui exproprie un intérêt ou droit foncier sur ses terres de première nation est tenue de verser une indemnité équitable, calculée selon les règles énoncées dans la Loi sur l'expropriation (Canada).

17.5 La première nation est tenue de mettre sur pied un mécanisme de règlement des différends relatifs à l'indemnisation qu'elle paye pour les expropriations.

17.6 Ne sont toutefois pas susceptibles d'expropriation par la première nation les intérêts ou les droits fonciers sur les terres de première nation obtenus sous le régime de l'article 35 de la Loi sur les Indiens ou qui ont été acquis par le Canada ou encore qui seront acquis par le Canada après l'entrée en vigueur du présent accord conformément à celui-ci.

17.7 Il n'est pas interdit à la première nation de conclure avec un organisme public ou une société de service public un accord lui attribuant un intérêt ou un droit foncier sur les terres de première nation non susceptible d'être exproprié par la première nation.

17.8 L'expropriation par une première nation d'un intérêt ou d'un droit foncier sur les terres de première nation ne prend effet qu'à la première des dates suivantes :

a) la date d'inscription de l'avis d'expropriation dans le registre des terres de la première nation;

(b) the 30th day after the day the last copy of the notice is served.

PART IV FIRST NATION LAW MAKING

18. LAW MAKING POWERS

18.1 The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

18.2 The following examples illustrate some of the First Nation laws contemplated by the Parties:

- (a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;
- (b) laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;
- (c) laws on environmental assessment and protection;
- (d) laws on the provision of local

b) le 30^e jour suivant la signification de la dernière copie de cet avis.

PARTIE IV POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

18. POUVOIRS DE LÉGIFÉRER

18.1 Le conseil de la première nation ayant un code foncier en vigueur peut édicter des textes législatifs, conformément à celui-ci, concernant le développement, la conservation, la protection, la gestion, l'utilisation et la possession des terres de première nation et des intérêts ou droits fonciers et permis les concernant. Cela comprend les textes législatifs portant sur des questions nécessaires ou afférentes à l'élaboration des textes législatifs relatifs aux terres de première nation.

18.2 Les exemples qui suivent illustrent certaines des fins pour lesquelles les premières nations peuvent adopter des textes législatifs, comme l'envisagent les Parties :

- a) pour réglementer, régir ou interdire le zonage, l'aménagement, l'utilisation, le lotissement ou la mise en valeur des terres;
- b) pour créer et réglementer les permis et les intérêts ou les droits fonciers relatifs aux terres de première nation ou prévoir des interdictions à cet égard;
- c) pour régir la protection de l'environnement et l'évaluation environnementale;

services in relation to First Nation land and the imposition of equitable user charges; and

(e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

18.3 A land code will not address the taxation of real or personal property or of immovables or movables. Section 83 of the Indian Act will continue to apply.

18.4 In any proceeding, a copy of a First Nation law, appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.

18.5 This Agreement does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries.

19. ENFORCEMENT OF FIRST NATION LAWS

19.1 To enforce its land code and its First Nation laws, a First Nation will have the power to

(a) establish offences that are punishable on summary conviction;

(b) provide for fines, imprisonment,

d) pour régir la prestation de services locaux relatifs aux terres de première nation et l'imposition de frais équitables à leurs usagers;

e) pour régir la prestation de services de règlement extrajudiciaire des différends relatifs aux terres de première nation.

18.3 Le code foncier ne traite pas de l'imposition des biens réels ou personnels ou des immeubles ou meubles. L'article 83 de la Loi sur les Indiens continue de s'appliquer.

18.4 La copie d'un texte législatif de la première nation paraissant certifiée conforme par un fonctionnaire de la première nation fait foi, dans le cadre de toute procédure, de son adoption à la date qui y est inscrite sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

18.5 Le présent accord ne modifie en rien les droits et pouvoirs actuels relatifs aux pêcheries, ni ne crée des droits ou pouvoirs additionnels à cet égard.

19. CONTRÔLE D'APPLICATION DES TEXTES LÉGISLATIFS DE LA PREMIÈRE NATION

19.1 Aux fins de contrôle d'application de son code foncier et de ses textes législatifs, la première nation peut :

a) créer des infractions punissables par procédure sommaire;

b) prévoir des peines, notamment les

restitution, community service, and alternate means for achieving compliance; and

(c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

19.2 First Nation laws may adopt or incorporate by reference the summary conviction procedures of the Criminal Code for the purpose of enforcement.

19.3 Persons may be appointed by the First Nation or the Governor in Council to act as justices of the peace for the purposes of enforcement. If no justice of the peace is appointed, then First Nation laws will be enforced through the provincial courts.

19.4 A person appointed as a justice of the peace under this clause will have jurisdiction to try offences established by or under a land code or a First Nation law.

19.5 Decisions made by a justice of the peace appointed under this clause may be appealed to a court of competent jurisdiction.

19.6 The First Nation will protect the independence of each justice of the peace it appoints in a way similar to that in a province, for example tenure, removal and

amendes, l'emprisonnement, la restitution, les travaux d'intérêt collectif ou toute autre mesure de nature à assurer l'observation de ces textes;

c) établir, conformément aux lois fédérales, des mesures de contrôle d'application de ces textes notamment en matière d'inspection, de perquisition, de saisie, de prise d'échantillons, d'examen et de communication de renseignements.

19.2 Les textes législatifs de la première nation peuvent, à ces fins, reproduire ou incorporer par renvoi la procédure sommaire du Code criminel.

19.3 La première nation ou le gouverneur en conseil peut nommer des juges de paix chargés d'assurer le contrôle d'application des textes législatifs de la première nation. En l'absence de juges de paix, les poursuites relatives aux textes législatifs de la première nation sont instruites devant les tribunaux provinciaux.

19.4 Il relève de la compétence du juge de paix nommé aux termes du présent article d'instruire les poursuites relatives aux infractions créées par un code foncier ou par un texte législatif de la première nation.

19.5 Les décisions du juge de paix nommé aux termes du présent article sont susceptibles d'appel devant un tribunal compétent.

19.6 La première nation est tenue de protéger l'indépendance des juges de paix qu'elle nomme, de façon analogue à ce que font les provinces, par exemple la durée de

remuneration.

19.7 The First Nation and Canada may enter into agreements for the training, supervision and administrative support for justices of the peace appointed by the First Nation. Provinces may also be parties to such agreements with First Nations.

19.8 The First Nation and Canada will enter into an agreement for the appointment, training, supervision and administrative support for any justice of the peace appointed under this clause by the Governor in Council. The affected province will be invited to participate in the development of and be a party to such agreement.

19.9 For the purpose of prosecuting offences, the First Nation will follow one or more of these options:

- (a) retain its own prosecutor;
- (b) enter into an agreement with Canada and the government of the province to arrange for a provincial prosecutor; or
- (c) enter into an agreement with Canada to arrange for a federal agent to prosecute these offenses.

20. APPLICATION OF FEDERAL LAWS

20.1 Federal laws applicable on First Nation land will continue to apply, except to the extent that they are inconsistent with the

leur mandat, leur destitution et leur rémunération.

19.7 La première nation et le Canada peuvent conclure des ententes concernant la formation, la surveillance et le soutien administratif des juges de paix nommés par la première nation. Les provinces peuvent également être parties à ces ententes avec les premières nations.

19.8 La première nation et le Canada sont tenus de conclure une entente relativement à la nomination, la formation, la surveillance et le soutien administratif des juges de paix nommés aux termes du présent article par le gouverneur en conseil. La province concernée sera invitée à participer à l'élaboration de cette entente et à être partie à celle-ci.

19.9 Aux fins des poursuites, la première nation peut se prévaloir d'une ou de plusieurs des mesures suivantes :

- a) embaucher ses propres procureurs;
- b) conclure avec le Canada et le gouvernement provincial concerné une entente prévoyant le recours à un procureur provincial;
- c) conclure avec le Canada une entente prévoyant le recours à un mandataire fédéral.

20. APPLICATION DES LOIS FÉDÉRALES

20.1 Les lois fédérales applicables sur les terres de première nation continuent de s'appliquer à celles-ci sauf dans la mesure

federal legislation.

20.2 Notwithstanding any inconsistency with the federal legislation, the Emergencies Act will apply on First Nation land, but any appropriation of an interest or land right in First Nation land under the Emergencies Act shall be authorized expressly by an order in council.

20.3 For greater certainty, and subject to Part VII, the Atomic Energy Control Act or any successor legislation continue to apply to First Nation lands.

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

21.1 Once a land code takes effect, the First Nation, its members and its First Nation land will not be subject to the following:

- (a) sections 18 to 20 and 22 to 28 of the Indian Act;
- (b) sections 30 to 35 of the Indian Act;
- (c) sections 37 to 41 of the Indian Act;
- (d) sections 49, 50(4) and 53 to 60 of the Indian Act;
- (e) sections 66, 69 and 71 of the Indian Act;

où elles sont incompatibles avec la loi de ratification.

20.2 La Loi sur les mesures d'urgence est applicable sur les terres de première nation, même si elle est incompatible avec la loi de ratification. Cependant, la réquisition d'intérêts ou de droits fonciers sur les terres de première nation aux termes de la Loi sur les mesures d'urgence doit être expressément autorisée par un décret.

20.3 Sous réserve de la partie VII, il est entendu que la Loi sur le contrôle de l'énergie atomique, ou toute loi qui la remplace, continue de s'appliquer sur les terres de première nation.

21. INAPPLICABILITÉ DE CERTAINS ARTICLES DE LA LOI SUR LES INDIENS ET DES RÈGLEMENTS Y AFFÉRENTS

21.1 Dès l'entrée en vigueur de son code foncier, la première nation, ses membres et les terres de première nation, cessent d'être assujettis aux dispositions suivantes :

- a) les articles 18 à 20 et 22 à 28 de la Loi sur les Indiens;
- b) les articles 30 à 35 de la Loi sur les Indiens;
- c) les articles 37 à 41 de la Loi sur les Indiens;
- d) l'article 49, le paragraphe 50(4) et les articles 53 à 60 de la Loi sur les Indiens;
- e) les articles 66, 69 et 71 de la Loi sur les

- (f) section 93 of the Indian Act;
- (g) regulations made under section 57 of the Indian Act; and
- (h) regulations made under sections 42 and 73 of the Indian Act to the extent that they are inconsistent with this Agreement or the land code or the laws of the First Nation.

22. EXISTING FIRST NATION BY-LAWS

22.1 A First Nation will continue to have the authority under the Indian Act to make by-laws.

PART V ENVIRONMENT

23. GENERAL PRINCIPLES 23.

23.1 The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

23.2 The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

23.3 The principles of these regimes are set out below.

Indiens;

f) l'article 93 de la Loi sur les Indiens;

g) les règlements pris en application de l'article 57 de la Loi sur les Indiens;

h) les règlements pris en application des articles 42 et 73 de la Loi sur les Indiens dans la mesure où ils sont incompatibles avec le présent accord, avec le code foncier ou avec les textes législatifs de la première nation.

22. RÈGLEMENTS ADMINISTRATIFS ACTUELS DE LA PREMIÈRE NATION

22.1 La première nation conserve le pouvoir d'adopter des règlements administratifs aux termes de la Loi sur les Indiens.

PARTIE V ENVIRONNEMENT

PRINCIPES GÉNÉRAUX

23.1 Le conseil de la première nation ayant un code foncier en vigueur a le pouvoir d'édicter des textes législatifs de nature environnementale concernant les terres de première nation.

23.2 Les Parties s'entendent pour qu'il y ait un régime de protection de l'environnement et un régime d'évaluation environnementale pour chaque première nation.

23.3 Les principes de ces régimes sont énoncés ci-dessous.

23.4 The environmental assessment and protection regimes will be implemented through First Nation laws.

23.5 The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

23.6 This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

24. ENVIRONMENTAL MANAGEMENT

24.1 Subject to clause 27, a First Nation with a land code in effect will develop an environmental protection regime, with the assistance of the appropriate federal agencies to the extent that they agree to participate.

24.2 Each First Nation agrees to

harmonize environmental protection with the province in which the First Nation is situated, where the province agrees to participate

23.4 Les régimes de protection et d'évaluation environnementales seront mis en oeuvre par des textes législatifs de la première nation.

23.5 Les Parties conviennent d'harmoniser leurs régimes et processus environnementaux respectifs, en invitant les provinces à participer à cette opération si celles-ci le souhaitent, dans le but de promouvoir l'uniformité et l'efficacité des régimes et processus environnementaux et d'éviter les incertitudes et le double emploi.

23.6 Le présent accord n'a pas pour effet de modifier les droits et pouvoirs concernant les oiseaux migrateurs et les espèces en voie de disparition. Ces questions pourront faire l'objet d'autres négociations. Le présent accord n'a pas pour objet de déterminer la résolution de ces questions ou d'y porter préjudice.

24. GESTION DE L'ENVIRONNEMENT

24.1 Sous réserve de l'article 27, une première nation qui a un code foncier en vigueur élaborera un régime de protection environnementale, avec l'appui des organismes fédéraux concernés, dans la mesure où les organismes fédéraux acceptent de participer.

24.2 Chaque première nation accepte d'harmoniser son régime de protection environnementale avec celui de la province où elle est située, dans la mesure où la province accepte de participer.

24.3 The First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.

24.4 For greater certainty, if there is an inconsistency between the provision of a federal law respecting the protection of the environment and a provision in a land code or First Nation law respecting the protection of the environment, the federal provision will prevail to the extent of any inconsistency.

25. ENVIRONMENTAL ASSESSMENT

25.1 Subject to clause 27, a First Nation will, with the assistance of the Lands

24.3 Les normes de protection environnementale et les pénalités de la première nation devront avoir au moins l'effet équivalent à celui des lois de la province où se situe la première nation.

24.4 Il est entendu qu'en cas d'incompatibilité entre une disposition d'une loi fédérale en matière de protection de l'environnement et une disposition d'un code foncier ou d'un texte législatif des premières nations en matière de protection de l'environnement, la disposition fédérale l'emporte dans la mesure de l'incompatibilité.

25. ÉVALUATION ENVIRONNEMENTALE

25.1 Sous réserve de l'article 27, la première nation s'efforce, avec l'aide du

Advisory Board and the appropriate federal agencies, make best efforts to develop an environmental assessment process within one year after the First Nation's land code takes effect, or within such longer period as the Minister and the First Nation may agree to.

25.2 The First Nation and the Minister will, in the individual agreement referred to in clause 6, address how to conduct the environmental assessment of projects on First Nation land during the interim period until the First Nation's environmental assessment process is developed.

25.3 The First Nation's environmental assessment process will be consistent with requirements of the Canadian Environmental Assessment Act.

25.4 The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

25.5 The Parties agree that section 10 of the Canadian Environmental Assessment Act will not apply to projects located on First Nation land.

Conseil consultatif des terres et des organismes fédéraux intéressés, élaborer un processus d'évaluation environnementale dans l'année suivant l'entrée en vigueur du code foncier de la première nation ou dans un délai plus long convenu entre le ministre et la première nation.

25.2 L'accord distinct conclu entre la première nation et le ministre conformément à l'article 6 doit prévoir les modalités de l'évaluation environnementale des projets devant être réalisés sur les terres de première nation au cours de la période transitoire, jusqu'à ce que la première nation ait élaboré un processus d'évaluation environnementale.

25.3 Le processus d'évaluation environnementale mis sur pied par la première nation doit être compatible avec les exigences de la Loi canadienne sur l'évaluation environnementale.

25.4 Sera un élément déclencheur du processus d'évaluation environnementale dans les cas indiqués, tout projet sur les terres de première nation devant être réalisé, financé, approuvé ou réglementé par celle-ci. Cette évaluation doit s'effectuer le plus tôt possible au cours des premières étapes de la planification du projet avant que des décisions irrévocables ne soient prises.

25.5 Les Parties conviennent que l'article 10 de la Loi canadienne sur l'évaluation environnementale ne s'applique pas aux projets situés sur les terres de première nation.

25.6 The Parties agree to use their best efforts to implement the principle that the First Nation's environmental assessment process be used where an environmental assessment of a project on First Nation land is required by the Canadian Environmental Assessment Act.

25.7 The Parties agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces where they agree to participate.

26. OTHER AGREEMENTS 26.

26.1 The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.

26.2 Where matters being negotiated pursuant to clause 26.1 normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the parties will invite the affected province to be a party to such negotiations and resulting agreements.

27. RESOURCES

27.1 The Parties understand that the obligation of a First Nation to establish

25.6 Les Parties s'efforceront de mettre en œuvre le principe selon lequel le processus d'évaluation environnementale de la première nation sera appliqué lorsque la Loi canadienne sur l'évaluation environnementale exige qu'un projet devant être réalisé sur des terres de première nation fasse l'objet d'une telle évaluation.

25.7 Les Parties conviennent d'élaborer un plan visant à harmoniser leurs processus d'évaluation environnementale respectifs, avec la participation des provinces si celles-ci le souhaitent.

AUTRES ENTENTES

26.1 La première nation et le Canada reconnaissent qu'il pourrait être souhaitable de conclure d'autres ententes, entre elles et avec d'autres gouvernements, dans le domaine de l'environnement, notamment au sujet des questions d'harmonisation, de mise en œuvre, de calendrier, de financement et de contrôle d'application.

26.2 Si une question faisant l'objet de négociation en vertu de l'article 26.1 relève normalement de la compétence de la province, ou si de telles questions sont susceptibles d'avoir des effets importants à l'extérieur des terres de première nation, les Parties inviteront la province concernée à être partie à ces négociations et à l'entente qui en résulte.

27. RESSOURCES

27.1 Les Parties reconnaissent qu'une première nation ne peut remplir son

environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

PART VI FUNDING

28. APPROPRIATION 28.

28.1 Any amounts provided by Canada to the First Nations pursuant to funding arrangements in relation to First Nation land shall be paid out of such moneys as may be appropriated by Parliament for this purpose.

29. DEVELOPMENTAL FUNDING

29.1 Canada and the Lands Advisory Board will enter into a funding arrangement to allow the First Nations to develop land codes and community approval processes for their land codes, to negotiate the individual agreements mentioned in clause 6 and to seek community approval under clause 7.

30. OPERATIONAL FUNDING

30.1 An individual agreement between the Minister and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under a land code. The agreement will determine specific funding issues, for example period of time, and terms and

obligation relative à l'établissement de régimes de protection et d'évaluation environnementales que si elle dispose des ressources financières et de l'expertise nécessaires.

PARTIE VI FINANCEMENT

CRÉDITS

28.1 Les sommes versées par le Canada aux premières nations conformément aux ententes en matière de financement à l'égard des terres de première nation sont prélevées sur les crédits affectés à cette fin par le Parlement.

29. FINANCEMENT DE DÉMARRAGE

29.1 Le Canada et le Conseil consultatif des terres sont tenus de conclure une entente de financement pour permettre aux premières nations d'élaborer leur code foncier et leur processus d'approbation de la communauté relatif à ce code, de négocier l'accord distinct mentionné à l'article 6 et d'obtenir l'approbation de la communauté prévue à l'article 7.

30. FINANCEMENT DE FONCTIONNEMENT

30.1 L'accord distinct conclu entre le ministre et la première nation fixera les ressources que le Canada s'engage à fournir à la première nation pour que celle-ci gère les terres de première nation et édicte, administre et applique les textes législatifs de la première nation pris en vertu du code foncier. L'accord précisera

conditions. les

30.2 A method for allocating such operating funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board.

30.3 Unless a First Nation and Canada agree otherwise, an individual agreement respecting the provision of funding under this clause will have a maximum term of five years and will include provisions for its amendment and renegotiation.

31. LANDS ADVISORY BOARD FUNDING

31.1 Canada will enter into a funding arrangement with the Lands Advisory Board for the five year period following the coming into force of this Agreement.

PART VII EXPROPRIATION OF FIRST NATION LAND BY CANADA

32. RESTRICTIONS 32.

32.1 In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that First Nation lands will not be subject to expropriation.

32.2 Despite the general principle against expropriation, First Nation land may be expropriated by Canada

(a) only with the consent of the

différents aspects du financement, par exemple sa périodicité et ses modalités.

30.2 Les Parties et le Conseil consultatif des terres sont tenus d'élaborer une méthode d'attribution des fonds de fonctionnement autorisés par le Parlement.

30.3 À défaut d'entente contraire de la première nation et du Canada, l'accord distinct concernant le financement prévu par le présent article sera en vigueur pour une durée maximale de cinq ans et prévoira des dispositions concernant sa modification et sa renégociation.

31. FINANCEMENT DU CONSEIL CONSULTATIF DES TERRES

31.1 Le Canada est tenu de conclure avec le Conseil consultatif des terres une entente de financement qui portera sur une période de cinq ans à partir de l'entrée en vigueur du présent accord.

PARTIE VII EXPROPRIATION DE TERRES DE PREMIÈRES NATIONS PAR LE CANADA

RESTRICTIONS

32.1 Conformément au principe énoncé à l'article 13.2, les parties conviennent qu'en règle générale, les terres de première nation ne peuvent faire l'objet d'une expropriation.

32.2 Malgré le principe général voulant que les terres ne puissent faire l'objet d'une expropriation, le Canada peut toutefois exproprier les terres de première nation, si les conditions suivantes sont

Governor in Council; and

(b) only by and for the use of a federal department or agency.

32.3 The Governor in Council will only consent to an expropriation of First Nation land if the expropriation is justifiable and necessary for a federal public purpose that serves the national interest.

32.4 When making a decision to expropriate First Nation land, the Governor in Council, in addition to other steps that may be required before making such a decision, will at a minimum follow these steps:

(a) it will consider using means other than expropriation and will use those other means where reasonably feasible;

(b) it will use non-First Nation land, where such land is reasonably available;

(c) if it must use First Nation land, it will make reasonable efforts to acquire the land through agreement with the First Nation, rather than by expropriation;

(d) if it must expropriate First Nation land, it will expropriate only the smallest interest or land right necessary and for the shortest time required; and

réunies :

a) le gouverneur en conseil y consent;

b) l'expropriation est faite par un ministère ou un organisme fédéral pour ses seuls besoins.

32.3 Le gouverneur en conseil ne consentira à l'expropriation de terres de première nation que si cela est justifiable et nécessaire à des fins d'intérêt public national relevant de la compétence fédérale.

32.4 Avant de donner son consentement à une expropriation de terres de première nation, le gouverneur en conseil, en plus des autres mesures qui peuvent être requises, prendra au moins les mesures suivantes :

a) il envisagera d'autres moyens que l'expropriation et utilisera ces moyens lorsque cela est raisonnablement faisable;

b) il utilisera des terres autres que celles d'une première nation, lorsque de telles terres sont raisonnablement disponibles;

c) s'il faut utiliser des terres de première nation, il s'efforcera de procéder à l'acquisition des terres par convention avec la première nation et non par expropriation;

d) s'il doit exproprier des terres de première nation, il veillera à ce que l'expropriation se limite au strict nécessaire, tant en ce qui touche l'étendue de l'intérêt ou du droit foncier que la

(e) in every case, it will first provide the First Nation with information relevant to the expropriation.

32.5 Prior to the Governor in Council issuing an order consenting to the expropriation of First Nation land, the federal department or agency will make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this clause and will provide a copy of the report to the First Nation.

32.6 Where a First Nation objects to a proposed expropriation it may refer the issue to an independent third party for a neutral evaluation under Part IX, within 60 days of the release of the report referred to in clause 32.5.

32.7 An order of the Governor in Council consenting to the expropriation will not be issued earlier than

(a) the end of the 60 day period referred to in clause 32.6; or

(b) the day the opinion or recommendation of the neutral evaluator is released, where the First Nation referred the proposed expropriation to an independent evaluator under clause 32.6.

33. COMPENSATION BY CANADA

période pour laquelle il est exproprié;

e) dans tous les cas, il communiquera d'abord à la première nation tous les renseignements se rapportant à l'expropriation.

32.5 Avant que le gouverneur en conseil ne prenne un décret consentant à l'expropriation de terres de première nation, le ministère ou l'organisme fédéral est tenu de publier un rapport qui énonce les motifs la justifiant et les mesures prises en application du présent article et de fournir en même temps une copie de ce rapport à la première nation.

32.6 Si une première nation s'oppose à un projet d'expropriation, elle peut, dans les 60 jours de la publication du rapport mentionné à l'article 32.5, renvoyer l'affaire à une tierce partie indépendante pour conciliation aux termes de la Partie IX.

32.7 Un décret du gouverneur en conseil consentant à l'expropriation ne sera pas émis avant :

a) soit l'expiration du délai de 60 jours prévu à l'article 32.6;

b) soit le jour où l'opinion ou la recommandation du conciliateur est publiée, si la première nation renvoie le projet d'expropriation à un conciliateur, en application de l'article 32.6.

33. INDEMNISATION PAR LE CANADA

33.1 In the event of the expropriation of First Nation land by Canada under this Part, Canada will provide compensation to the First Nation in accordance with this clause.

33.2 The compensation will include alternate land of equal or greater size or of comparable value. If the alternate land is of less than comparable value, then additional compensation will be provided. The alternate land may be smaller than the land being expropriated only if that does not result in the First Nation having less land area than when its land code took effect.

33.3 The total value of the compensation provided by Canada under this clause will be based on the following:

- (a) the market value of the land or interest or land right that is acquired;
- (b) the replacement value of any improvement to the land that is acquired;
- (c) the damages attributable to disturbance;
- (d) the value of any special economic advantage arising out of or incidental to the occupation or use of the affected First Nation land to the extent that this value is not otherwise

33.1 Si le Canada exproprie des terres de première nation sous le régime de la présente partie, il est tenu d'indemniser la première nation conformément aux termes du présent article.

33.2 L'indemnité comprendra des terres substitutives ayant une superficie égale ou supérieure ou ayant une valeur comparable à celles qui ont été expropriées. Si les terres substitutives ont une valeur inférieure aux terres expropriées, le Canada est alors tenu d'offrir une indemnité supplémentaire. Les terres substitutives peuvent avoir une superficie moindre que les terres expropriées seulement si, à la suite de l'opération, la première nation dispose d'une superficie de terres qui n'est pas inférieure à celle qu'elle avait lorsque son code foncier est entré en vigueur.

33.3 La valeur totale de l'indemnité versée par le Canada aux termes du présent article doit tenir compte des éléments suivants :

- a) la valeur marchande des terres ou de l'intérêt ou du droit foncier acquis;
- b) la valeur de remplacement des améliorations apportées aux terres acquises;
- c) les dommages attribuables au trouble de jouissance;
- d) la valeur de tout avantage économique particulier découlant ou résultant de l'occupation ou de l'utilisation des terres de première nation concernée, dans la mesure où cette valeur n'a pas déjà donné lieu à

compensated;

(e) damages for any reduction in the value of a remaining interest or land right; and

(f) damages for any adverse effect on any cultural or other special value of the land.

33.4 If the value and nature of the compensation cannot be agreed upon by the federal department or agency and the affected First Nation, either party may refer a dispute on compensation to arbitration under Part IX.

33.5 In any province or territory other than Québec, any claim or encumbrance in respect of the interest, or in Québec any right, charge or claim in respect of the land right, expropriated by Canada may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest or land right is being expropriated.

33.6 Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the superior court of the province in which the First Nation land is located.

34. STATUS OF LANDS

34.1 Where less than the full interest or only part of the land right of the First Nation in

une indemnité;

e) les dommages attribuables à la diminution de la valeur de l'intérêt ou du droit foncier non exproprié;

f) les dommages attribuables aux répercussions négatives sur la valeur culturelle ou toute autre valeur particulière de ces terres.

33.4 En cas de différend relatif à la valeur ou à la nature de l'indemnité, le ministère ou l'organisme fédéral ou la première nation peut saisir un arbitre de tout différend relatif à l'indemnité aux termes de la Partie IX.

33.5 Dans les provinces ou territoires autres que le Québec, le recouvrement de toute réclamation ou tout grèvement concernant l'intérêt exproprié par le Canada, ou dans la province de Québec, le recouvrement de tout droit, charge ou réclamation concernant le droit foncier ainsi exproprié, ne peut être demandé que jusqu'à concurrence de l'indemnité par ailleurs payable à la personne ou à l'entité dont l'intérêt ou le droit foncier est visé par l'expropriation.

33.6 L'indemnité porte intérêt à partir de la prise d'effet de l'expropriation, au taux applicable à l'intérêt avant jugement applicable devant la Cour supérieure de la province où sont situées les terres de première nation.

34. STATUT DES TERRES

34.1 Dans les cas où l'expropriation par le Canada porte sur moins que la totalité de

First Nation land is expropriated by Canada,

- (a) the land retains its status as First Nation land;
- (b) the land remains subject to the land code and to any law of the First Nation that is otherwise applicable, except to the extent the land code or law is inconsistent with the expropriation; and
- (c) the First Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the expropriation.

34.2 Alternate land accepted by the First Nation as part of the compensation will become both a reserve and First Nation land.

35. REVERSION OR RETURN OF INTERESTOR LAND RIGHT IN FIRST NATION LAND

35.1 In any province or territory other than Québec, where an expropriated interest in First Nation land which is less than the full interest of the First Nation in the land is no longer required by Canada for the purpose for which it was expropriated, the interest in land will revert to the First Nation.

35.1A In the province of Québec, where the expropriated land right in First Nation land constitutes only part of the land right of the First Nation in the land, and it is no longer required by Canada for the purpose for

l'intérêt ou seulement sur une partie du droit foncier de la première nation sur les terres en question :

- a) les terres conservent leur statut de terres de première nation;
- b) les terres demeurent assujetties au code foncier et aux textes législatifs adoptés par la première nation, sauf dans la mesure où le texte ou le code foncier est incompatible avec l'expropriation;
- c) la première nation peut continuer à utiliser et à occuper ces terres, sauf dans la mesure où cette utilisation ou cette occupation est incompatible avec l'expropriation.

34.2 Les terres substitutives acceptées par la première nation comme partie de l'indemnité deviennent à la fois une réserve et des terres de première nation.

35. RÉVERSION OU RETOUR D'UN INTÉRÊT OU DROIT FONCIER SUR LES TERRES DE PREMIÈRE NATION

35.1 Dans une province ou territoire autre que le Québec, lorsque l'intérêt exproprié est moindre que la totalité de l'intérêt de la première nation sur les terres en question, cet intérêt est, lorsqu'il n'est plus nécessaire au Canada aux fins de l'expropriation, retourné à la première nation.

35.1A Dans la province de Québec, lorsque l'expropriation porte seulement sur une partie du droit foncier de la première nation sur les terres en question,

which it was expropriated, the land right will return to the First Nation.

35.2 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the interest or the land right is no longer required and determine the disposition of any improvements.

36. RETURN OF FULL INTEREST OR ENTIRE LAND RIGHT IN FIRST NATION LAND

36.1 Where the full interest or the entire land right of a First Nation in First Nation land was expropriated but is no longer required by Canada for the purpose for which it was expropriated, the land will be returned to the First Nation on terms negotiated by the First Nation and the federal department or agency, at the time of the expropriation or at a later date as agreed to by them.

36.2 Where the terms and conditions of the return cannot be agreed upon by the First Nation and the federal department or agency, either party may refer the dispute to arbitration under Part IX.

36.3 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the land is no longer required and determine the disposition of any

le droit foncier est, lorsqu'il n'est plus nécessaire au Canada aux fins de l'expropriation, retourné à la première nation.

35.2 Le ministre responsable du ministère ou de l'organisme à l'origine de l'expropriation peut, sans le consentement du gouverneur en conseil, décider que l'intérêt ou le droit foncier exproprié n'est plus nécessaire et il peut déterminer comment disposer des améliorations.

36. RETOUR DE LA TOTALITÉ DE L'INTÉRÊT OU DU DROIT FONCIER SUR LES TERRES DE PREMIÈRE NATION

36.1 Lorsque la totalité de l'intérêt ou le droit foncier entier de la première nation sur les terres en question a été exproprié et qu'il n'est plus nécessaire au Canada aux fins de l'expropriation, les terres seront retournées à la première nation selon les conditions négociées par la première nation et le ministère ou l'organisme fédéral, soit au moment de l'expropriation, soit à une date ultérieure convenue par eux.

36.2 En cas de différend relatif aux conditions du retour, la première nation ou le ministère ou l'organisme fédéral peut renvoyer l'affaire à un arbitre nommé aux termes de la Partie IX.

36.3 Le ministre responsable du ministère ou de l'organisme à l'origine de l'expropriation peut, sans le consentement du gouverneur en conseil, décider que les terres expropriées ne sont plus nécessaires

improvements.

37. APPLICATION OF EXPROPRIATION ACT

37.1 Any provisions of the Expropriation Act, (Canada) that are applicable to an expropriation of First Nation land by Canada continue to apply, unless inconsistent with this Agreement.

PART VIII LANDS ADVISORY BOARD

38. LANDS ADVISORY BOARD

38.1 The Lands Advisory Board shall consist of at least three members appointed:

(a) Prior to September 1, 2003, by the Councils of the original First Nation parties to this Agreement; and

(b) After September 1, 2003, by the Councils of the First Nations that have ratified this Agreement, whether they ratify the Agreement on, before or after that date.

38.2 The Lands Advisory Board will have all necessary powers and capacity to properly perform its functions under this Agreement.

38.3 The Lands Advisory Board will select a chairperson to preside over the Board and, subject to the direction of the Board, to act

et il peut déterminer comment disposer des améliorations apportées aux terres concernées.

37. APPLICATION DE LA LOI SUR L'EXPROPRIATION

37.1 Les dispositions de la Loi sur l'expropriation (Canada) applicables à l'expropriation de terres de première nation par le Canada continuent de s'appliquer dans la mesure où elles ne sont pas incompatibles avec le présent accord.

PARTIE VIII CONSEIL CONSULTATIF DES TERRES

38. CONSEIL CONSULTATIF DES TERRES

38.1 Le Conseil consultatif des terres sera formé d'au moins trois membres nommés :

a) avant le 1er septembre 2003 par les conseils des premières nations qui étaient parties initiales au présent accord;

b) après le 1er septembre 2003 par les conseils des premières nations qui ont ratifié le présent accord, qu'ils l'aient ratifié à cette date, ou avant ou après cette date.

38.2 Le Conseil consultatif des terres possédera tous les pouvoirs et la capacité nécessaires à l'exercice efficace de ses attributions en vertu du présent accord.

38.3 Le Conseil consultatif des terres est tenu de choisir un président qui peut, sous réserve des instructions du conseil, agir

on its behalf.

39. FUNCTIONS OF THE LANDS ADVISORY BOARD

39.1 In addition to any other functions specifically assigned to it by the Parties, the Lands Advisory Board will be responsible for the following functions:

- (a) developing model land codes, laws and land management systems;
- (b) developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations;
- (c) on request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes;
- (d) assisting a verifier when requested by the verifier;
- (e) establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code;
- (f) on request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty;

pour le compte du conseil.

39. ATTRIBUTIONS DU CONSEIL CONSULTATIF DES TERRES

39.1 Outre les autres attributions que pourraient lui confier les Parties, le Conseil consultatif des terres possèdera les attributions suivantes :

- a) il élabore des modèles de code foncier, de textes législatifs et de systèmes de gestion des terres;
- b) il élabore des modèles d'ententes destinés à être utilisés entre les premières nations et les autres autorités et institutions, notamment les sociétés de service public et les organismes privés;
- c) à la demande d'une première nation, il assiste celle-ci dans l'élaboration et la mise en oeuvre de son code foncier, de ses textes législatifs, de ses systèmes de gestion des terres, et de ses régimes de protection et d'évaluation environnementales;
- d) il apporte son aide au vérificateur, à la demande de ce dernier;
- e) il met sur pied un centre de ressources, des cours et des programmes de formation à l'intention des gestionnaires et des autres personnes qui exercent des attributions aux termes d'un code foncier;
- f) à la demande d'une première nation qui éprouve des difficultés dans la gestion des terres de la première nation, il l'aide à obtenir l'expertise dont elle a besoin pour

(g) proposing regulations for First Nation land registration;

(h) proposing to the Minister such amendments to this Agreement and the federal legislation as it considers necessary or advisable;

(i) in consultation with First Nations, negotiating a funding method with the Minister; and

(j) performing such other functions or services for a First Nation as are agreed to between the Board and the First Nation.

39.2 The Lands Advisory Board will have authority to adopt rules for the procedure at its meetings and generally for the conduct of its affairs.

40. RECORD KEEPING

40.1 The Lands Advisory Board will maintain a record containing

(a) the name of each First Nation that approves a land code;

(b) a copy of that land code;

(c) a copy of each amendment to a land code; and

(d) the dates on which each was approved and certified.

résoudre les difficultés;

g) il propose des règlements concernant l'enregistrement des terres de première nation;

h) il propose au ministre les modifications au présent accord et à la loi de ratification qu'il estime souhaitables ou nécessaires;

i) en consultation avec les premières nations, il négocie avec le ministre un mécanisme de financement;

j) il exerce les autres attributions ou fournit à une première nation les services dont le conseil et celle-ci peuvent convenir.

39.2 Le Conseil consultatif des terres a le pouvoir d'adopter des règles de procédure pour la tenue de ses réunions et, d'une façon générale, pour l'exercice de ses activités.

40. TENUE DES DOSSIERS

40.1 Le Conseil consultatif des terres est tenu de maintenir un registre dans lequel figurent :

a) le nom des premières nations ayant adopté un code foncier;

b) une copie de ces codes fonciers;

c) une copie des modifications apportées aux codes fonciers;

d) les dates auxquelles les codes ont été approuvés et celles auxquelles leur validité a été attestée.

40.2.1 The Lands Advisory Board shall, in consultation with the Minister, prescribe procedures for a First Nation to authorize the signing of this Agreement and for the formal signature of the First Nations to this Agreement, and shall advise the Minister when a First Nation has completed the procedures.

40.2.2 Subject to sub-clause 40.2.1, a First Nation may only become a signatory under this section with the consent of Canada, and Canada shall advise the Lands Advisory Board if and when such consent is given.

40.2.3 The Lands Advisory Board shall receive and record the adhesion of a First Nation party to this Agreement, made after January 1, 2001, and advise the Minister that the said First Nation has signed the Framework Agreement.

41. ANNUAL REPORT 41.

41.1 Within 90 days following the end of each year of operation, the Lands Advisory Board will deliver to the Parties an annual report, in both official languages, on the work of the Board for that year.

41.2 The Minister will cause a copy of the Lands Advisory Board's annual report to be laid before each House of Parliament within the first 30 sitting days of that House after the Minister receives it.

42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

40.2.1 Le Conseil consultatif des terres doit, en consultation avec le ministre, prescrire les procédures qu'une première nation doit suivre pour autoriser la signature du présent accord et les procédures régissant la signature formelle de cet accord par les premières nations et il doit aviser le ministre lorsqu'une première nation a complété les procédures.

40.2.2 Sous réserve de l'article 40.2.1, une première nation peut devenir signataire en vertu de cet article seulement avec le consentement du Canada, et ce dernier doit aviser le Conseil consultatif des terres lorsque le consentement a été accordé.

40.2.3 Le Conseil consultatif des terres doit recevoir et inscrire l'adhésion d'une première nation qui est Partie au présent accord, intervenue après le 1^{er} janvier 2001, et aviser le ministre de la signature de l'accord par celle-ci.

RAPPORT ANNUEL

41.1 Le Conseil consultatif des terres remet aux Parties, dans les 90 jours suivant la fin de son année de fonctionnement, un rapport annuel, dans les deux langues officielles, concernant les travaux accomplis pendant cette année.

41.2 Le ministre est tenu de présenter le rapport annuel du Conseil consultatif des terres aux deux Chambres du Parlement dans les 30 premiers jours de séance de chaque Chambre suivant sa réception par le ministre.

42. DISPARITION DU CONSEIL CONSULTATIF DES TERRES

42.1 In the event that the Lands Advisory Board is no longer in existence, the functions of the Lands Advisory Board under this Agreement will be performed by the Parties, except as follows:

(a) the functions set out in clauses 29 and 39, except clause 39.1(g), will be performed by the First Nations; and

(b) the functions set out in clauses 10 and 40 will be assumed by the First Nations Lands Register.

PART IX DISPUTE RESOLUTION

43. GENERAL PRINCIPLES 43.

43.1 The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out-of-court processes referred to in this Part to resolve the dispute.

43.2 Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.

43.3 Subject to clause 43.4, any dispute

42.1 En cas de disparition du Conseil consultatif des terres, les attributions de celui-ci en vertu du présent accord seront exercées par les Parties, sous réserve des dispositions suivantes :

a) les attributions énumérées aux articles 29 et 39, sauf pour ce qui est de l'alinéa 39.1g), seront exercées par les premières nations;

b) les attributions prévues aux articles 10 et 40 seront assumées par le bureau du Registre des terres des premières nations.

PARTIE IX RÈGLEMENT DES DIFFÉRENDS

PRINCIPES GÉNÉRAUX

43.1 Les Parties s'engagent à résoudre entre elles, à l'amiable et de bonne foi, les différends qui peuvent découler du présent accord. Lorsque les Parties n'arrivent pas à s'entendre pour résoudre un différend par la négociation, elles conviennent de mettre sur pied les processus extrajudiciaires de règlement des différends décrits dans la présente partie et d'y avoir recours.

43.2 Les dispositions du présent accord n'empêchent pas les Parties de recourir à la médiation en vue de régler à l'amiable un différend. Lorsqu'une partie a soumis un différend à un médiateur, l'autre partie est tenue d'assister à une première rencontre avec le médiateur. L'une ou l'autre des Parties peut toutefois mettre fin à la médiation en tout temps après cette première rencontre.

43.3 Sous réserve de l'article 43.4, les

arising from the implementation, application or administration of this Agreement, the federal legislation, an individual agreement or an environmental management agreement may be resolved in either of two ways:

(a) Neutral evaluation - it may be referred to neutral evaluation by one party to the dispute; or

(b) Arbitration - it may be referred to arbitration by both parties to the dispute.

43.4 Any dispute respecting compensation for First Nation land expropriated by Canada or the terms and conditions for the return of the full interest or the entire land right in First Nation land will be referred to arbitration.

43.5 Any objection by a First Nation to a proposed expropriation under Part VII that has been referred to neutral evaluation will be evaluated and a report submitted by the neutral evaluator to the First Nation and Canada within 60 days of the referral to the neutral evaluator.

44. PANELS OF ARBITRATORS, ETC.

44.1 The Parties and the Lands Advisory Board will jointly establish lists of mutually acceptable persons willing to act as mediators, arbitrators, verifiers and neutral evaluators.

différends découlant de la mise en oeuvre, de l'application ou de l'administration du présent accord, de la loi de ratification, d'un accord distinct ou d'un accord en matière de gestion de l'environnement peuvent être résolus selon l'un des deux moyens suivants :

a) la conciliation — le différend peut être renvoyé à un conciliateur par l'une des parties impliquées dans le différend;

b) l'arbitrage — le différend peut être soumis à l'arbitrage par les deux parties impliquées dans le différend.

43.4 Sont soumis à l'arbitrage, les différends portant sur l'indemnité à verser par le Canada en raison de l'expropriation par celui-ci de terres de première nation, ou sur les conditions du retour de la totalité de l'intérêt ou du droit foncier entier sur les terres de première nation.

43.5 Toute opposition, par la première nation, à un projet d'expropriation en vertu de la Partie VII qui aura été porté devant un conciliateur sera évalué par ce dernier. Par la suite, un rapport sera soumis, par ce dernier, à la première nation et au Canada dans un délai de 60 jours suivant le dépôt de l'opposition devant le conciliateur.

44. LISTES D'ARBITRES, ETC.

44.1 Les Parties et le Conseil consultatif des terres sont tenus d'établir conjointement des listes de personnes mutuellement acceptables prêtes à agir en qualité de médiateur, d'arbitre, de vérificateur et de conciliateur.

44.2 Parties who become involved in a dispute may select mediators, arbitrators and neutral evaluators from the appropriate list, or may agree to the appointment of an individual who is not on the list.

44.3 The selection and assignment of verifiers and the procedure to be followed by verifiers will be arranged by the Lands Advisory Board, Canada and the First Nation.

44.4 Individuals appointed to act as mediators, arbitrators, verifiers or neutral evaluators must be unbiased and free from any conflict of interest relative to the matter in issue and have knowledge or experience to act in the appointed capacity.

45. NEUTRAL EVALUATION

45.1 Where a dispute is referred to neutral evaluation, the evaluator will where appropriate,

- (a) identify the issues in the dispute;
- (b) assess the strengths of each party's case;
- (c) structure a plan for the progress of the case;
- (d) encourage settlement of the dispute; and
- (e) provide the parties with a non-binding opinion or recommendation to resolve the dispute.

44.2 Les parties à un différend peuvent choisir, parmi ces listes, un médiateur, un arbitre et un conciliateur ou s'entendre sur la nomination d'une personne qui ne figure pas sur ces listes.

44.3 Le Conseil consultatif des terres, le Canada et la première nation choisiront les vérificateurs, définiront leurs attributions et fixeront la procédure que ces derniers doivent utiliser.

44.4 Les personnes nommées en qualité de médiateur, d'arbitre, de vérificateur ou de conciliateur doivent être impartiales et ne pas se trouver en situation de conflit d'intérêts par rapport aux questions en litige; elles doivent par ailleurs posséder la compétence ou l'expérience nécessaires pour agir en cette qualité.

45. CONCILIATION

45.1 Lorsque la situation l'exige, le conciliateur saisi d'un différend exerce les fonctions suivantes :

- a) il précise les questions sur lesquelles porte le différend;
- b) il évalue le bien-fondé des arguments des parties;
- c) il établit un plan afin de faire progresser la situation;
- d) il encourage le règlement du différend;
- e) il remet aux parties une opinion ou une recommandation non exécutoire visant à mettre fin au différend.

46. ARBITRATION 46.

46.1 Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.

46.2 The procedure will follow the Commercial Arbitration Code, which is a schedule to the Commercial Arbitration Act.

46.3 If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.

46.4 The arbitrator will establish the procedures of the arbitration, subject to this clause.

47. RELATED ISSUES

47.1 The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.

47.2 Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if

(a) all parties to the process consent; and

(b) the person pays the costs of his or her participation, unless otherwise agreed by the other parties to the dispute.

47.3 The decision of a verifier and a

ARBITRAGE

46.1 Sauf entente contraire des Parties, l'arbitrage s'effectuera conformément au présent article.

46.2 La procédure qui sera suivie est celle du Code d'arbitrage commercial, figurant à l'annexe de la Loi sur l'arbitrage commercial.

46.3 Si ce Code ne contient pas de disposition procédurale appropriée, les parties au différend peuvent suivre les Règles d'arbitrage commercial établies à l'occasion par le British Columbia International Commercial Arbitration Centre.

46.4 L'arbitre est tenu de déterminer la procédure d'arbitrage à suivre, sous réserve du présent article.

47. QUESTIONS CONNEXES

47.1 Les parties à un différend assument les frais relatifs à sa résolution à parts égales.

47.2 Toute personne dont les intérêts seraient lésés par un différend porté devant l'un des mécanismes de règlement des différends peut participer au mécanisme de règlement si :

a) d'une part, toutes les parties au mécanisme y consentent;

b) d'autre part, cette personne assume les frais de sa participation, sauf entente contraire des autres parties au différend.

47.3 La décision du vérificateur et la

decision or award of an arbitrator will be final and binding on the participating parties.

47.4 No order shall be made, processed, entered or proceeding taken in any court, whether by way of injunction, mandamus, certiorari, prohibition or quo warranto to contest, review, impeach or limit the action of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement.

47.5 Despite clause 47.4, judicial review may be taken under the Federal Court Act within 30 days of a decision of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement in respect of such person exceeding his or her jurisdiction, refusing to exercise his or her jurisdiction or failing to observe a principal of natural justice.

PART X RATIFICATION AND ENACTMENTS BY THE PARTIES

48. RATIFICATION OF AGREEMENT 48.

48.1 The Parties agree that they will seek to ratify this Agreement and implement it in the following manner:

- (a) each First Nation agrees to develop a land code and to seek community approval; and
- (b) following community approval by two First Nations, Canada agrees to recommend to Parliament the

décision ou sentence d'un arbitre sont définitives et lient les parties qui ont participé aux mécanismes de règlement.

47.4 Aucune ordonnance ne peut être rendue, exécutée ou inscrite, et aucune poursuite ne peut être initiée devant une cour par voie d'injonction, de mandamus, de certiorari, de prohibition ou de quo warranto pour contester, réviser, empêcher ou limiter une mesure prise par le vérificateur, l'arbitre ou le conciliateur nommé sous le régime du présent accord.

47.5 Malgré l'article 47.4, une demande de révision judiciaire peut, dans les 30 jours qui suivent la décision prise par toute personne agissant comme vérificateur, arbitre ou conciliateur sous le régime du présent accord, être présentée en vertu de la Loi sur les Cours fédérales au motif que cette personne a outrepassé sa compétence, refusé de l'exercer ou n'a pas respecté un principe de justice naturelle.

PARTIE X RATIFICATION PAR LES PARTIES ET MESURES LÉGISLATIVES

RATIFICATION DE L'ACCORD

48.1 Les Parties conviennent de ratifier le présent accord et de le mettre en oeuvre de la façon suivante :

- a) chaque première nation s'engage à élaborer un code foncier et à le soumettre à l'approbation de la communauté;
- b) une fois un code approuvé par deux premières nations, le Canada s'engage à recommander au Parlement l'adoption

enactment of legislation.

48.2 This Agreement will be considered to have been ratified by a First Nation when the First Nation approves a land code, and to have been ratified by Canada when the federal legislation comes into force.

49. ENACTMENTS BY THE PARTIES

49.1 Canada agrees that the federal legislation that it recommends to Parliament will be consistent with and will ratify this Agreement.

49.2 In the event of an inconsistency or conflict between the federal legislation and any other federal enactment, the federal legislation will prevail to the extent of the inconsistency or conflict.

49.3 In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the Indian Act, the land code will prevail to the extent of the inconsistency or conflict.

PART XI OTHER MATTERS

50. LIABILITY

50.1 The First Nation will not be liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to First Nation land that occurred before the First Nation's land code takes effect.

d'une loi de ratification.

48.2 Le présent accord sera réputé avoir été ratifié par une première nation lorsque celle-ci aura approuvé un code foncier, et il sera réputé avoir été ratifié par le Canada au moment de l'entrée en vigueur de la loi de ratification.

49. MESURES LÉGISLATIVES ADOPTÉES PAR LES PARTIES

49.1 Le Canada s'engage à ce que la loi de ratification qu'il présentera au Parlement soit conforme au présent accord et ait pour effet de le ratifier.

49.2 En cas d'incompatibilité ou de conflit entre la loi de ratification et une autre loi fédérale, la loi de ratification l'emporte dans la mesure de l'incompatibilité ou du conflit.

49.3 En cas d'incompatibilité ou de conflit entre le code foncier d'une première nation et des dispositions de ses textes législatifs ou de règlements administratifs pris par son conseil en vertu de l'article 81 de la Loi sur les Indiens, le code foncier l'emporte dans la mesure de l'incompatibilité ou du conflit.

PARTIE XI AUTRES QUESTIONS

50. RESPONSABILITÉ

50.1 La première nation n'est pas responsable des actes ou omissions du Canada ou d'une personne ou entité autorisée par le Canada à agir à l'égard des terres de première nation et qui surviendraient avant l'entrée en vigueur du

50.2 Canada will not be liable for acts or omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation's land code takes effect.

50.3 Canada will indemnify a First Nation for any loss arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect of First Nation land that occurred before the First Nation's land code takes effect.

50.4 The First Nation will indemnify Canada for any loss arising from an act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in respect of First Nation land that occurs after the land code takes effect.

50.5 No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, in good faith, during the course of and for the purposes of carrying out his or her functions under this Agreement.

51. FIRST NATION LANDS REGISTER 51.

51.1 Canada will establish a First Nation

code foncier de la première nation.

50.2 Le Canada n'est pas responsable des actes ou omissions de la première nation ou d'une personne ou entité autorisée par celle-ci à agir à l'égard des terres de première nation et qui surviendraient après l'entrée en vigueur du code foncier de la première nation.

50.3 Le Canada s'engage à indemniser la première nation de toute perte découlant d'un acte ou d'une omission du Canada, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait avant l'entrée en vigueur du code foncier de la première nation.

50.4 La première nation s'engage à indemniser le Canada de toute perte découlant d'un acte ou d'une omission de la première nation, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait après l'entrée en vigueur du code foncier.

50.5 Aucune action ni autre procédure ne peut être intentée contre une personne agissant en qualité de membre du Conseil consultatif des terres, de médiateur, de vérificateur, de conciliateur ou d'arbitre pour avoir, de bonne foi, agi ou omis d'agir dans l'exercice de ses fonctions ou dans le but de les exercer aux termes du présent accord.

REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Le Canada est tenu d'établir un

Lands Register to record documents respecting First Nation land or interests or land rights in First Nation land. It will be administered by Canada as a subsystem of the existing Reserve Land Register.

51.2 A separate register will be maintained for each First Nation with a land code in effect.

51.3 The Governor in Council will be authorized in the federal legislation to make regulations respecting the First Nation Lands Register. These regulations will be developed by the Lands Advisory Board and the Minister.

52. STATUS OF DOCUMENTS

52.1 The Statutory Instruments Act, or any successor legislation, will not apply to a land code or to First Nation laws.

53. PROVINCIAL RELATIONS

53.1 Where Canada and a First Nation intend to enter into an agreement that is not referred to in this Agreement but is required to implement this Agreement and where it deals with matters that normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province to be a party to the negotiations and resulting agreement.

registre des terres de premières nations où seront consignés les documents relatifs aux terres de premières nations ou aux intérêts ou aux droits fonciers sur celles-ci. Ce registre sera administré par le Canada à titre de sous-système du registre actuel des terres de réserve.

51.2 Un registre distinct sera créé pour chaque première nation ayant un code foncier en vigueur.

51.3 La loi de ratification autorisera le gouverneur en conseil à prendre un règlement concernant le registre des terres de premières nations. Ce règlement sera élaboré conjointement par le Conseil consultatif des terres et le ministre.

52. STATUT DES DOCUMENTS

52.1 La Loi sur les textes réglementaires ou les lois qui pourraient la remplacer, ne s'appliqueront pas au code foncier, ni aux textes législatifs des premières nations.

53. RAPPORT AVEC LES PROVINCES

53.1 Si le Canada et une première nation entendent conclure une entente qui n'est pas mentionnée dans le présent accord mais qui est nécessaire à la mise en oeuvre du présent accord, et si cette entente traite des questions qui relèvent normalement de la compétence des provinces ou risque d'avoir des effets importants à l'extérieur des terres de première nation, le Canada et la première nation inviteront la province concernée à participer aux négociations de l'entente ainsi qu'à l'entente qui en résulte.

54. TIME LIMITS

54.1 The time limits in this Agreement for the doing of anything may be waived on consent.

55. OTHER REGIMES

55.1 Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.

55.2 Sub-clause 38.1 and clause 57 do not apply to a First Nation to which sub-clause 55.1 applies.

56. REVIEW PROCESS

56.1 The Lands Advisory Board will, on a continuing basis, consult with representatives of the Parties for the purpose of assessing the effectiveness of this Agreement and the federal legislation.

56.2 Within four years of the federal legislation coming into force, the Minister and the Lands Advisory Board or their representatives will jointly conduct a review of this Agreement. It will focus on the following issues, among others:

- (a) the functioning of land management under this Agreement;
- (b) the adequacy and appropriateness of the funding arrangements;

54. DÉLAIS

54.1 Les Parties peuvent, par consentement mutuel, renoncer aux délais prévus par le présent accord.

AUTRES RÉGIMES

55.1 Aucune disposition du présent accord n'empêche une première nation, en tout temps, d'adhérer à tout autre régime en matière de prise de décision et de contrôle par la communauté, à la condition que cette première nation soit admissible à adhérer à cet autre régime et y adhère, conformément à la procédure prévue par cet autre régime.

55.2 Le paragraphe 38.1 et l'article 57 ne s'appliquent pas à une première nation à laquelle le paragraphe 55.1 s'applique.

56. MÉCANISME D'EXAMEN

56.1 Le Conseil consultatif des terres est tenu de consulter régulièrement les représentants des Parties dans le but d'évaluer l'efficacité du présent accord et de la loi de ratification.

56.2 Dans les quatre ans de l'entrée en vigueur de la loi de ratification, le ministre et le Conseil consultatif des terres ou leurs représentants procéderont conjointement à un examen du présent accord. Cet examen portera notamment sur les points suivants :

- a) le fonctionnement de la gestion des terres aux termes du présent accord;
- b) le caractère adéquat et approprié des modalités de financement;

(c) the role of the Lands Advisory Board;

(d) whether there is a demand by other First Nations to use this Agreement;

(e) changes that may improve the functioning of First Nation land management;

(f) the dispute resolution processes; and

(g) such other issues as may be agreed to by the Parties.

56.3 Canada and the First Nations will make best efforts to complete this review within one year. Following completion of the review, the Minister will meet with representatives of the First Nations to discuss the results of the review.

57. AMENDMENTS

57.1 Until September 1, 2003, this Agreement may be amended by agreement of the parties, provided that the amendments to Part VIII may be made with the consent of Canada and 2/3 of the original First Nation parties to this Agreement.

57.2 No amendment affecting the powers, authorities, obligations, operations or operational funding of a First Nation that has ratified this agreement is effective with respect to that First Nation without the consent of that First Nation.

c) le rôle du Conseil consultatif des terres;

d) l'identification d'autres premières nations désirant se prévaloir du présent accord;

e) les changements qui pourraient améliorer le fonctionnement de la gestion des terres de première nation;

f) les mécanismes de règlement des différends;

g) toute autre question convenue par les Parties.

56.3 Le Canada et les premières nations sont tenus de s'efforcer d'achever cet examen dans un délai d'un an. À la fin de l'examen, le ministre rencontrera les représentants des premières nations pour en analyser les résultats.

57. MODIFICATIONS

57.1 Le présent accord peut être modifié jusqu'au 1^{er} septembre 2003 avec le consentement des parties, pourvu que les modifications à la Partie VIII soient apportées avec le consentement du Canada et des deux tiers des premières nations qui étaient Parties initiales au présent accord.

57.2 Aucune modification ayant une incidence sur les pouvoirs, les autorités, les obligations, les opérations ou les fonds de fonctionnement d'une première nation qui a ratifié le présent accord ne peut entrer en vigueur à l'égard de cette dernière sans son consentement.

57.3 After September 1, 2003, this Agreement, may, subject to 57.2, be amended with the consent of Canada and 2/3 of the First Nations which have ratified the Agreement, before, on or after that day.

58. RECITALS 58.

58.1 The recitals form part of this Agreement.

59. COMING INTO FORCE

59.1 This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.

59.2 Despite clause 59.1, such provisions of this Agreement as are necessary to allow a First Nation to ratify this Agreement before Canada ratifies this Agreement will have effect as of the day Canada and that First Nation both sign this Agreement.

57.3 Sous réserve du paragraphe 57.2, après le 1er septembre 2003, le présent accord peut être modifié avec le consentement du Canada et des deux tiers des premières nations qui l'ont ratifié que ce soit à cette date, ou avant ou après cette date.

PRÉAMBULE

58.1 Les dispositions figurant au préambule font partie du présent accord.

59. ENTRÉE EN VIGUEUR

59.1 Le présent accord entrera en vigueur pour ce qui est du Canada et d'une première nation au moment où le Canada et cette première nation auront tous deux ratifié le présent accord conformément à la Partie X.

59.2 Malgré le paragraphe 59.1, les dispositions du présent accord nécessaires à sa ratification par une première nation avant que le Canada ne l'ait ratifié entrent en vigueur le jour où le Canada et cette première nation auront tous deux signé le présent accord.

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY

INTRODUCTION

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. One other First Nation was added as of December 1997. The Agreement was ratified by Canada through the *First Nations Land Management Act*, assented to June 17, 1999

The Agreement is an initiative by these 14 First Nations to take over the governance and management control of their lands and resources. This First Nation designed and driven *Framework Agreement* with Canada has expanded from the original 14 First Nation signatories to 84 First Nation Signatories in 2013. The *Framework Agreement* applies only to those First Nations who choose to ratify it.

The *Framework Agreement* is not a treaty and does not affect existing treaty or other constitutional rights of the First Nations.

The *Framework Agreement* provides the option to govern and manage reserve lands outside the *Indian Act*. The option to regain control of reserve land through a land code can only be undertaken with the consent of the community. A land code replaces approximately 30 sections of the *Indian Act*.

TAKING CONTROL OF LAND GOVERNANCE

A First Nation signatory to the *Framework Agreement* develops its land governance system by creating its own Land Code, drafting a community ratification process and entering into an individual Agreement with Canada. The specific steps are set out in the *Framework Agreement*:

The Land Code: Drafted and approved by the community, will be the basic land law of the First Nation and will replace the land management provisions of the *Indian Act*. The Minister of Indian Affairs and Northern Development will no longer be involved in the management and decision making of a First Nation's reserve lands. The Land Code does not have to be approved by the Minister or AANDC.

The Land Code is drafted by each First Nation and provides for the following matters:

- Identifies the reserve lands to be governed by the First Nation under its Land Code,
- Sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others,
- Provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under the Indian Oil and Gas Act),
- Provides the procedures for making and publishing First Nation land laws,
- Provides conflict of interest rules,
- Provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage,
- Identifies a dispute resolution process,
- Sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes,
- Allows the delegation of certain land management responsibilities,
- Sets out the procedure for amending the Land Code,
- Deals with any other matter respecting the governance of First Nation reserve land and resources.

Individual Transfer Agreement: An Individual Agreement between each community and the Minister will be negotiated to deal with such matters as:

- The reserve lands to be managed by the First Nation,
- The specifics of the transfer of the administration of land from Canada to the First Nation,
- The transitional and operational funding to be provided by Canada to the First Nation for land governance.

Community Ratification Process: In order for the First Nation to assume control over its lands, the Land Code and the Individual Agreement must be ratified by the voting age members of the First Nation. All members of the First Nation who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the Land Code and the Individual Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

Federal Legislation: Canada agreed to ratify the *Framework Agreement* by enacting federal legislation that is consistent with the *Framework Agreement*. The *First Nations Land Management Act* was enacted and given royal assent on June 17, 1999.

Verification: An independent person selected jointly by the First Nation and Canada, called a Verifier, confirms that the community ratification process and Land Code are consistent with the *Framework Agreement*. The Verifier monitors the community ratification process to ensure that the rules are followed.

Recognition of Land Governance Authority: If the community ratifies their own Land Code and the Individual Agreement, control over First Nation lands and resources are no longer be subject to the *Indian Act*, but recognized to be under the governance authority of the First Nation.

TITLE TO FIRST NATIONS

Reserve lands under the *Indian Act* are held by Her Majesty and are set apart for the use and benefit of a First Nation. This will not change under the *Framework Agreement*. These lands remain a federal responsibility under section 91(24) of the *Constitution Act, 1867*. In addition, the First Nation's land will be protected against future surrender for sale.

LEGAL STATUS AND POWERS OF FIRST NATIONS

The *Framework Agreement* provides First Nations with all the legal status and powers needed to govern and manage their lands and resources. While First Nations will not be able to sell their land, they will be able to lease or develop their lands and resources, subject to any limits imposed by their own community Land Code.

Law-Making Powers: A First Nation governing its lands under a Land Code will have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation land. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must be made separately pursuant to section 83 of the *Indian Act*. The First Nation's Council can also continue to make by-laws under section 81 of the *Indian Act*.

Land Management: The *Framework Agreement* provides the First Nation with all the powers of an owner in relation to its First Nation Land, except for control over title or the power to sell it. The First Nation's Council can manage land and resources, as well as revenues from the land and resources, in accordance with its Land Code.

Third Party Interests: Interests in First Nation land held by third parties, or by Canada, will continue in effect according to their terms and conditions under a Land Code. No new interests or licences may be acquired or granted except in accordance with the Land Code.

First Nation Expropriation: The First Nation will have the option to acquire lands for community purposes upon payment of fair compensation to those whose interests are affected.

Accountability: A Land Code will make provision for a First Nation to report to its members and to be accountable for the governance of their lands, resources and revenues.

Marriage Breakdown: A First Nation will be able make rules on the rights of spouses to interests in First Nation land if their marriage breaks down. The community must, within 12 months of passage of its Land Code, develop and enact rules and procedures on this topic. The new rules and procedures will ensure the equality of women and men.

Registration of Interests: All documents pertaining to land interests of a reserve will be recorded in the First Nation Land Registry System (FNLRS).

The FNLRS is:

- Electronic
- Provides for Instant Registration
- Priority based
- Paperless
- Backed by Regulation (Unlike the *Indian Act* registry system)

The FNLRS system and regulations are landmark achievements. These regulations made it possible for reserve to have greater land certainty, mortgageability, title insurance and drastically reduced or eliminated land transaction costs

PROTECTION OF FIRST NATION LAND

The preserving of the quantity and quality of existing First Nations lands is a fundamental principle of the *Framework Agreement*. Some aspects of this principle are summarized below:

Taxation and Seizure under Legal Process: The current exemption of reserve lands, and personal property situated on-reserve, will continue under the relevant provisions of the *Indian Act*.

Environmental Protection: A First Nation with a land code in effect will be required to develop an environmental protection regime. A First Nation will have the power to make environmental assessment and protection laws and will harmonize these laws with federal and respective provincial environmental laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation lands for other lands. Provision can be made in its Land Code for a procedure to negotiate and approve such exchanges. An exchange of land cannot occur without the consent of the First Nation community.

No Provincial Expropriation: Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Restricted Federal Expropriation: Canada's power to expropriate First Nation land is greatly restricted. That power can only be exercised with Cabinet approval and only when the expropriation is justified and necessary for a federal public purpose that serves

the national interest. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished.

Enforcement: The First Nation will have full power to enforce its land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own Justice of the Peace or special prosecutor to try offences created under a Land Code or a First Nation law. First Nation laws may make provision for search and seizure, fines, imprisonment, restitution, community service or alternate means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will remain liable for and will indemnify a First Nation for losses suffered as a result of any act or omission by Canada, or its agents, that occurred before the Land Code comes into effect. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own processes for dealing with disputes in relations to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between the First Nations and Canada on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside the courts.

LANDS ADVISORY BOARD AND RESOURCE CENTRE

The First Nations party to the *Framework Agreement* established a Lands Advisory Board and Resource Centre to assist them in implementing their own land governance regimes, including developing model land codes, laws, documents, agreements and management systems.

FIRST NATIONS INVOLVED

The following is a list of the 40 First Nations who signed the *Framework Agreement* and who have enacted Land Codes pursuant to the *Framework Agreement*.

BC

1. Beecher Bay
2. Kitselas
3. Leq' a: mel
4. Lheidli T'enneh
5. Matsqui
6. Musqueam
7. Seabird Island
8. Shx'wha:y Village
9. Skawahlook
10. Sliammon
11. Snaw Naw As (Nanoose)
12. Songhees
13. Squiala
14. Sumas
15. Tsawout
16. Tsawwassen^(a)

MB

1. Chemawawin
2. Opaskwayak
3. Swan Lake

17. Tsekani (McLeod Lake)
18. Ts'kw'aylaxw (Pavilion)
19. T'sou-ke
20. Tsleil-Waututh
21. Tzeachten
22. Westbank^(b)
23. We Wai Kai (Cape Mudge)
24. We Wai Kum (Campbell River)

SK

1. Kahkewistahaw
2. Kinistin
3. Muskeg Lake
4. Muskoday
5. Whitecap Dakota
6. Flying Dust

ON

1. Anishinaabeg of Naongashiing
2. Georgina Island
3. Henvey Inlet
4. Mississauga
5. Nipissing
6. Scugog Island
7. Whitefish Lake

(a) Now implementing treaty

(b) Now implementing full self-government

Name First Nation Land Code

(Model)

Dated for Reference

June 28, 2017

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NAME FIRST NATION LAND CODE

Preamble

Whereas the Name First Nation has a profound relationship with the Land that is rooted in respect for the spiritual value of the Earth and the gifts of the Creator and has a deep desire to preserve their relationship with the Land;

And Whereas fourteen First Nations and Canada concluded a government-to-government *Framework Agreement on First Nation Land Management* on February 12, 1996;

And Whereas the *Framework Agreement on First Nation Land Management* provides the option to First Nations of withdrawing their reserve Land from the land management provisions of the *Indian Act* in order to exercise control over their Land and resources for the use and benefit of their Members;

And Whereas Canada ratified its commitment to the *Framework Agreement on First Nation Land Management* with the enactment of the *First Nations Land Management Act*, S.C. 1999, c.24;

And Whereas Name First Nation became a signatory on **[insert date]** to the *Framework Agreement on First Nation Land Management*, as Name First Nation wishes to govern its Land and resources under the *Name First Nation Land Code*, rather than having its Land and resources managed on its behalf under the *Indian Act*;

And Whereas the *Framework Agreement on First Nation Land Management* acknowledges that Canada's special relationship with Name First Nation will continue;

And Whereas the *Framework Agreement on First Nation Land Management* is ratified by Name First Nation through community approval of the *Name First Nation Land Code*;

**NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE
FUNDAMENTAL LAND LAW OF THE NAME FIRST NATION.**

PART 1 PRELIMINARY MATTERS

1. Definitions

Clarification

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

Definitions

- 1.2. The following definitions apply in this *Land Code*:

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

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

“Community Land” means any Name First Nation Land in which all Members have a common interest;

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

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

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

“First Nation Lands Register” means the register established pursuant to clause 51 of the *Framework Agreement* and regulated by the *First Nations Land Registry Regulations*;

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management*, entered into between Canada and the signatory First Nations on February 12, 1996, and amended to include Name First Nation on **[insert date]**;

“Immediate Relatives”, in respect of a person, means the person’s parent, sister, brother, child, and Spouse;

“Individual Agreement” means the Individual Agreement providing for the specific of the transfer of administration made between Name First Nation and Canada in accordance with clause 6.1 of the *Framework Agreement*;

“Interest”, in relation to First Nation Land, means any Interest, right or estate of any nature in or to that Land, including a certificate of possession, certificate of entitlement, lease, easement, right of way, servitude, or profit à prendre, but does not include title to that Land;

“Land” or “Name First Nation Land” means any reserve Land that is subject to this *Land Code*;

“Lands Committee” means the Lands Committee established under part 6 of this *Land Code*;

“Licence” in relation to Name First Nation Land, means any right of use or occupation of that Land, other than an Interest in the Land;

“Member” means a person whose name appears or is entitled to appear on the Name First Nation Band Membership List;

“Name First Nation” means the Name First Nation and its Members;

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

2. Interpretation

Interpretation

2.1 In this *Land Code*:

- (a) the *Land Code* shall be interpreted in a fair, large and liberal manner;
- (b) the word “shall” signifies an obligation that, unless this *Land Code* provides to the contrary, must be carried out as soon as practicable after this *Land Code* comes into effect or the event that gives rise to the obligation;

- (c) 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”;
- (d) titles and headings have been inserted in the *Land Code* for convenience of reference only, and are not interpretive aids;
- (e) 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;
- (f) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (g) all references to a time period of days means consecutive days and not business days;
- (h) where the time limited for the doing of an act expires or falls on a Saturday or Sunday, or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (i) where the time limited for the doing of an act in the Name First Nation administration building falls on a day when the office is not open, the act may be done on the next day that the office is open;
- (j) 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; and
- (k) the principles set out in the Preamble to this *Land Code* may be used to interpret this *Land Code*.

Culture and traditions

- 2.2 The structures, organizations and procedures established by or under this *Land Code* shall be interpreted in accordance with the culture, traditions and customs of the Name First Nation.

Language

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

Consistency with *Framework Agreement*

- 2.4 If there is an inconsistency or conflict between this *Land Code* and the *Framework Agreement*, the *Framework Agreement* will prevail to the extent of the inconsistency or conflict.

Paramountcy

- 2.5 If there is an inconsistency or conflict between this *Land Code* and any other enactment of the Name First Nation, including a by-law enacted under section 81 of the *Indian Act*, this *Land Code* prevails to the extent of the inconsistency or conflict.

Rights not affected

- 2.6 This *Land Code* does not change:
- (a) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Name First Nation or its Members; or
 - (b) the fiduciary relationship between Canada and Name First Nation and its Members; or
 - (c) the by-law powers of Council pursuant to the *Indian Act*.

Lands and Interests affected

- 2.7 A reference to Land in this *Land Code* includes all the interests and rights, as well as the resources that belong to that Land to the extent these are under the jurisdiction of Canada and are part of that Land, and includes:
- (a) the water, beds underlying water, riparian rights, and renewable and non-renewable natural resources in and of that Land, to the extent that these are under the jurisdiction of Canada;
 - (b) all the Interests and Licences granted by Canada listed in the Individual Agreement; and

- (c) all the Interests and Licences granted by Name First Nation after this *Land Code* comes into effect.

Eligible Reserve Land

- 2.8 Only Land that is a reserve of the Name First Nation is eligible to be governed by Name First Nation as Land under this *Land Code*.

3. Authority to Govern

Origin of authority

- 3.1 The traditional teachings of the Name First Nation speak of the obligation of the people of the Name First Nation to care for and respect the Land and the magnificent wonders of Nature created on the Land. By enacting this *Land Code*, the Name First Nation is reclaiming this special responsibility.

Flow of authority

- 3.2 The authority of the Name First Nation to govern its Land and resources flows from the Creator to the people of the Name First Nation, and from the people to Council according to the culture, traditions, customs and laws of the Name First Nation.

4. Purpose

Purpose

- 4.1 The purpose of this *Land Code* is to set out the principles, rules and administrative structures that apply to Name First Nation Land and by which the Name First Nation will exercise authority over that Land in accordance with the *Framework Agreement*.

5. Description of Name First Nation Land

Name First Nation Land

- 5.1 The Name First Nation Land that is subject to this *Land Code* is that Land known as **[insert name/s of the reserve/s]** as listed in the Individual Agreement.

Description of Land

- 5.2 The Name First Nation Land includes all reserve Lands described in Appendix “A” of this *Land Code* and any other reserve Lands or Interests

of the Name First Nation that are made subject to this *Land Code* by resolution.

Additional Lands

- 5.3 Council shall hold a meeting of Members prior to amendment of the description of Name First Nation Land subject to this *Land Code* and Individual Agreement.

PART 2 FIRST NATION LEGISLATION

6. Law-Making Powers

Council may make Land laws

- 6.1 Council may, in accordance with this *Land Code*, make Land laws respecting:
- (a) the development, conservation, protection, management, use and possession of Name First Nation Land;
 - (b) Interests and Licences in relation to Name First Nation Land; and
 - (c) any matter necessary or ancillary to the making of Land laws in relation to the Name First Nation Land.

Examples of Land laws

- 6.2 For greater certainty, Council may make Land laws including:
- (a) regulation, control and prohibition of zoning, Land use, subdivision control and Land development;
 - (b) the creation, regulation and prohibition of Interests and Licences in relation to Name First Nation Land;
 - (c) environmental assessment and protection;
 - (d) provision of local services in relation to Name First Nation Land and the imposition of equitable user charges;
 - (e) enforcement of Name First Nation Land laws; and

- (f) provision of services for the resolution, outside the courts, of disputes in relation to Name First Nation Land.

Regulatory Instruments

- 6.3 For greater certainty, in addition to Land laws, Council may make other regulatory instruments, including rules, regulations, standards, codes and policies.

7. Law-Making Procedure

Introduction of Land laws

- 7.1 A proposed Land law may be introduced at a duly convened meeting of Council by:
 - (a) the Chief;
 - (b) a Councillor; or
 - (c) the representative of the Lands Committee, or other body or authority composed of Members, that may be authorized by Council to do so.

Rationalization of Proposed Land law

- 7.2 Any proponent shall submit a written explanation of the reason for the proposed Land law.

Lands Committee Review

- 7.3 Council shall refer a proposed Land law to the Lands Committee for review and comment.

Procedure upon receipt of Proposed Land law

- 7.4 Upon receipt of a proposed Land law, Council may:
 - (a) table the proposed Land law for further review or for enactment;
 - (b) request that the proponent provide further information or attend before a future meeting of Council to speak to the proposed Land law;

- (c) undertake or direct the preparation of a draft Land law concerning matters raised in the proposed Land law, for consideration by Council; or
- (d) reject the proposed Land law.

Tabling and posting
of proposed Land laws

7.5 Before a proposed Land law may be enacted, Council shall:

- (a) table the proposed Land law at a duly convened meeting of Council;
- (b) post it in public places and publish it online;
- (c) deposit the proposed Land law with the Lands Committee;
- (d) review comments and recommendations, provided by the Lands Committee; and
- (e) take any other steps to give notice of the proposed Land law that Council may consider appropriate.

Urgent matters

7.6 Council may enact a Land law without the preliminary steps ordinarily required, if Council is of the opinion that the Land law is needed urgently for public health and safety or to protect Name First Nation Land or the Members however this Land law expires one hundred and twenty (120) days after its enactment unless re-enacted in accordance with the required preliminary steps.

Approval of Land law

7.7 Subject to this *Land Code*, a Land law is approved by a quorum of Council at a duly convened meeting of Council open to the Members.

Certification of Land laws

7.8 The original copy of any approved Land law or resolution concerning Name First Nation Land shall be signed by a quorum of Council.

Land laws taking effect

7.9 A Land law enacted by Council takes effect on the date of its enactment or such later date as specified in the Land law.

8. Publication of Land Laws

Publication

8.1 A Land law shall be:

- (a) published in the minutes of the Council meeting at which it was enacted;
- (b) posted, as soon as practicable after enactment, in a location within the administrative office of Name First Nation accessible to all Members;
- (c) published online; and
- (d) published by any additional method as Council may consider appropriate.

Registry of Land laws

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

Copies for any Person

8.3 Any person may obtain a copy of a Land law or resolution.

9. Enforcement of Land Laws

Enforceability of Land laws

9.2 To enforce its *Land Code* and its Land laws, Name First Nation shall have the power to:

- (a) establish offences that are punishable on summary conviction;
- (b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance;
- (c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and

compulsory sampling, testing and the production of information; and

- (d) enter into agreements with provincial or municipal governments with respect to any matter concerning the enforcement of its *Land Code* and Land laws.

Prosecuting Offences

9.2 For the purpose of prosecuting offences, Name First Nation may:

- (a) retain its own prosecutor; and
- (b) make laws with respect to the appointment and authority of justices of the peace.

PART 3 COMMUNITY MEETINGS AND APPROVALS

10. Participation of Members

Participation of Members

10.1 Every Member is entitled to participate in the meeting of Members.

11. Participation of Eligible Voters

Participation of Eligible Voters

11.1 Every Eligible Voter is entitled to participate in community approvals.

12. Meeting of Members and Community Approval Procedure

Notice of meeting

12.1 Council shall give written notice of the meeting of Members and any matter requiring community approval at a meeting of Members, and include in the notice:

- (a) the date, time and place of the meeting;
- (b) a brief description of the matter to be discussed;

- (c) a brief description of any matter that requires community approval; and
- (d) other information and material that Council considers appropriate.

Manner of notice

12.2 The notice shall be given to the Members before the meeting or vote, by:

- (a) posting the notice in public places;
- (b) providing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve;
- (c) posting the notice online; and
- (d) additional methods Council considers appropriate.

Permission of Council

12.3 A person, other than a Member, authorized by Council may attend a meeting of Members.

Informed Decision

12.4 Council may schedule more than one meeting of Members as may be necessary to ensure that Members are well informed before making a decision on a proposed Land law or Land matter.

13. Community Meetings of Members

Community Meetings

13.1 Council shall call a meeting of Members prior to:

- (a) declaring Land or an Interest to be subject to this *Land Code*;
- (b) enacting a Land law respecting a community plan or subdivision plan;
- (c) any development affecting a heritage site or an environmentally sensitive property;
- (d) enacting a Land law respecting environmental assessment and protection;

- (e) enacting a Land law respecting the transfer and assignment of rights and Interests in Name First Nation Land;
- (f) enacting a Land law respecting matrimonial real property on reserve;
- (g) enacting a Land law respecting the rate and criteria for the payment of fees or rent for Name First Nation Land;
- (h) enacting a Land law respecting the rights and procedures on community expropriation; and
- (i) respecting any other matter, Land law or class of law that Council, by Resolution, declares to be subject to this section.

No Quorum

13.2 No quorum or minimum level of participation is required at a meeting of Members.

14. Community Approval

Community approval

14.1 Community approval shall be obtained for the following:

- (a) any master Land use plan;
- (b) any new grant or disposition of an Interest or Licence in any Name First Nation Land exceeding a term of thirty five (35) years;
- (c) any renewal of a grant or disposition of an Interest or Licence in any Name First Nation Land that extends the original term beyond thirty five (35) years;
- (d) any grant or disposition of any non-renewable natural resources on any Name First Nation Land exceeding a term of five (5) years;
- (e) any deletion of a heritage site;
- (f) any voluntary exchange of Name First Nation Land; and

- (g) any other matter, Land law or class of law that Council, by resolution, declares to be subject to this section.

Utility Permits Excepted

- 14.2 Community approval is not required for an easement, right of way or permit granted by Council for utilities, including telecommunications, water, electricity, natural gas, sewer services and ancillary services.

Method of Voting

- 14.3 Community approval shall be obtained by one or more of the following methods:
 - (a) establishing polling locations;
 - (b) show of hands;
 - (c) mail-in ballot;
 - (d) alternative voting methods, such as electronic and telephone voting; or
 - (e) any other method outlined in voting policies.

Quorum

- 14.4 In order to obtain a quorum for community approval, at least ten percent (10%) of Eligible Voters shall participate.

Approval by Majority

- 14.5 For community approvals, a matter shall be considered approved if a majority of fifty percent plus one (50%+1) of the Eligible Voters vote to approve the matter.

Second Community Approval Vote

- 14.6 If a quorum was not obtained at a first community approval, a second community approval vote may be called without any quorum requirement.

Approval by Majority

- 14.7 A matter shall be considered approved at a second community approval vote, if a majority of fifty percent plus one (50%+1) of the Eligible Voters vote to approve the matter.

15. Ratification Votes

Community Approval
by Ratification vote

15.1 Community approval by ratification vote shall be obtained for an amendment to this *Land Code*.

Exceptions

15.2 A community approval by ratification vote is not required for:

- (a) an amendment to the description of Land of this *Land Code*;
- (b) revisions to this *Land Code* made pursuant to section 47; and
- (c) an amendment to, or renewal of, the Individual Agreement.

Ratification process

15.3 Any ratification vote required under this *Land Code* may be conducted in a similar manner as the *Name First Nation Community Ratification Process*, which was used to ratify this *Land Code*.

No verifier

15.4 A verifier is not required in any ratification vote.

Quorum

15.5 In order to obtain a quorum for a community approval by ratification vote under this *Land Code* at least twenty percent (20%) of Eligible Voters shall register to vote.

Approval by majority

15.6 A matter shall be considered approved at a ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters vote to approve the matter.

Second Ratification Vote

15.7 If a quorum was not obtained at a first ratification vote, a second ratification vote may be called.

Second Ratification Vote Quorum

- 15.8 In order to obtain a quorum for community approval for a second attempt at a ratification vote under this *Land Code* at least ten percent (10%) of Eligible Voters shall register to vote.

Approval by Majority

- 15.9 A matter shall be considered approved at a second ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters vote to approve the matter.

Policies Consultation, Approval
and Ratification

- 15.10 For greater certainty, Council may make Land laws or policies:

- a) for meetings of Members;
- b) for community consultations;
- c) for community approvals;
- d) for ratification votes; and
- e) respecting any other matter, that Council, by resolution, declares to be subject to part 3 of this *Land Code*.

PART 4 PROTECTION OF LAND

16. Expropriation

Acquisition by Mutual Agreement

- 16.1 The Name First Nation may expropriate an Interest or Licence in Name First Nation Land, provided that it has made a good faith effort to acquire, by mutual agreement, the Interest or Licence.

Rights and Interests
that may be expropriated

- 16.2 An Interest or Licence in Name First Nation Land, or in any building or other structure on that Land, may only be expropriated by Name First Nation in accordance with the *Framework Agreement* and any Land law enacted for the purpose of establishing the rights and procedures for community expropriations.

Community purposes

- 16.3 A community expropriation shall only be made for necessary community works or other Name First Nation purposes, including a fire hall, sewage or water treatment facility, community center, public works, utilities, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

Expropriation Land laws

- 16.4 Before proceeding to make any community expropriations in accordance with this *Land Code* and the *Framework Agreement*, Council shall enact a Land law respecting the rights and procedures for community expropriations, including provisions respecting:
- (a) the taking of possession of the Interest or Licence;
 - (b) transfer of the Interest or Licence;
 - (c) notice of expropriation and service of the notice of expropriation;
 - (d) entitlement to compensation;
 - (e) determination of the amount of compensation; and
 - (f) the method of payment of compensation.

Public report

- 16.5 Before Name First Nation expropriates an Interest or Licence, it shall make a public report on the reasons justifying the expropriation.

Member notification

- 16.6 In the case of an expropriation of a Member's Interest in Name First Nation Land, the affected Member or Members shall receive notification of the expropriation within a reasonable time prior to the release of the public report.

Rights that may not
be expropriated

- 16.7 In accordance with clause 17.6 the *Framework Agreement*, an Interest of Canada or the province in Name First Nation Land is not subject to expropriation by the Name First Nation.

Compensation for
rights and Interests

- 16.8 Name First Nation shall, in accordance with its Land laws and the *Framework Agreement*:

- (a) serve reasonable notice of the expropriation on each affected holder of the Interest or Licence to be expropriated; and
- (b) pay fair and reasonable compensation to the holders of the Interest or Licence being expropriated.

Compensation calculations

- 16.9 In accordance with clause 17.4 the *Framework Agreement*, Name First Nation shall calculate the total value of the compensation under this section based on the heads of the compensation set out in the *Expropriation Act* (Canada).

Market value

- 16.10 The “market value” of an expropriated Interest or Licence is equal to the amount that would have been paid for the Interest or Licence if it had been sold by a willing seller to a willing buyer under no duress.

Neutral evaluation to Resolve Disputes

- 16.11 The resolution of disputes concerning the right of the Name First Nation to expropriate shall be determined by neutral evaluation, in the same manner as provided in part IX of the *Framework Agreement*, and the sixty (60) day period referred to in the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.

Arbitration to resolve
Disputes

- 16.12 The resolution of the following disputes shall be determined by arbitration, in the same manner as provided in part IX of the *Framework Agreement*:
- (a) disputes concerning the right of a holder of an expropriated Interest or Licence to compensation; and
 - (b) disputes concerning the amount of the compensation.

17. Voluntary Exchange of Name First Nation Land

Conditions for a land exchange

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

No effect

- 17.2 A land exchange is of no effect unless it receives community approval in accordance with this *Land Code* and with clause 14.2 of the *Framework Agreement*.

Land to be received

- 17.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:
- (a) it shall be equal to or greater than the area of the Name First Nation Land to be exchanged;
 - (b) it shall be at least comparable to the appraised value of the Name First Nation Land; and
 - (c) it shall become a reserve and Name First Nation Land subject to this *Land Code*.

Negotiators

- 17.4 The person who will have authority to negotiate a land exchange agreement on behalf of the Name First Nation shall be designated by resolution.

Additional land

- 17.5 The Name First Nation may negotiate to receive other compensation, such as money or other additional parcels of land, in addition to the parcel which is intended to become a reserve. Such other parcels of land may be held by the Name First Nation in fee simple or some other manner.

Federal Consent

17.6 Before the Name First Nation concludes a land exchange agreement, it shall receive a written statement from Canada clearly stating that Canada:

- (a) consents to set apart as a reserve the land to be received in exchange, as of the date of the land exchange or such later date as Council may specify; and
- (b) consents to the manner and form of the exchange as set out in the exchange agreement.

Community notice

17.7 Once negotiations on the land exchange agreement are concluded, Council shall provide the following information to Eligible Voters ~~at least forty two (42) days~~ before the vote:

- (a) a description of the Name First Nation Land 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 for the land to be received in the exchange have been met;
- (e) a copy or summary of the exchange agreement; and
- (f) a copy of Canada's consent.

Process of land
exchange

17.8 The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) Council must pass a resolution authorizing Canada to transfer title to the Name First Nation Land being exchanged, in accordance with the exchange agreement;
- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register; and

- (d) the land to be set apart as a reserve has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation at no cost to Name First Nation, and with full indemnification to Name First Nation.

PART 5 ACCOUNTABILITY

18. Conflict of Interest or Appearance of Conflict of Interest

Application of rules

18.1 The conflict of interest rules in this *Land Code* apply to the following persons:

- (a) each member of Council who is dealing with any matter before Council that is related to Name First Nation Land;
- (b) each person who is an employee of the Name First Nation dealing with any matter that is related to Name First Nation Land;
- (c) each member of the Dispute Resolution Panel; and
- (d) each person who is a member of a board, committee or other body of the Name First Nation dealing with any matter that is related to Name First Nation Land.

Duty to report and abstain

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

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

Apparent conflict of interest

- 18.3 A person has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the person's ability to deliberate or decide on the matter has been affected by his or her private interest or the private interest of an Immediate Relative.

Inability to act

- 18.4 If the Board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to Council.

Meeting of Members

- 18.5 If Council is unable to vote on a matter due to a conflict of interest, Council may refer a matter, a proposed Land law or resolution to a community meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may approve the matter, Land law or resolution.

Specific Conflict situations

- 18.6 No Immediate Relatives and not more than two (2) members from the same Extended Family shall be concurrent members of an appointed board, committee or other body dealing with any matter that is related to Name First Nation Land. Council or any other elected board, committee or body is exempt from this rule.

Disputes

- 18.7 The Panel has the jurisdiction to hear and decide on any matter concerning a conflict of interest.

Other laws

- 18.8 For greater certainty, Council may develop a policy or enact laws to further implement this section.

19. Financial Management

Application

- 19.1 This section applies only to financial matters relating to Name First Nation Land and natural resources.

Financial policies

19.2 Council may, in accordance with this *Land Code*, develop, adapt or adopt financial management laws or policies, including:

- (a) regulating the receipt, management and expenditure of moneys, including transfer payments, all capital and revenue moneys received from Canada, all Land revenue, and moneys received from a grant or disposition of any Interest or Licence in relation to Name First Nation Land and natural resources;
- (b) managing financial records and accounts;
- (c) preparing financial statements and audits;
- (d) preparing and implementing budgets and annual presentation of budgets;
- (e) determining the general investment strategy;
- (f) contract notes, loans and other indebtedness;
- (g) establishing fees, fines, charges and levies; and
- (h) establishing and maintaining a recordkeeping system that ensures confidentiality, security of records and document retention.

Administrative structure

19.3 Council shall establish the administrative structure:

- (a) to implement all financial policies and procedures;
- (b) to oversee the day to day operational responsibilities for managing moneys related to Name First Nation Land and natural resources;
- (c) to ensure the accuracy of the accounting records;
- (d) to reconcile, review and approve bank statements;
- (e) to present the annual budgets to Members;
- (f) to present annually an audit of the financial statements to the Members; and

- (g) to prepare the annual report to Members.

20. Annual Report

Publish annual report

- 20.1 Council, on behalf of the Name First Nation, shall publish an annual report on Land matters.

Contents

- 20.2 The annual report shall include:

- (a) an annual review of Name First Nation Land and natural resources management;
- (b) annual budget;
- (c) a copy and explanation of the audit as it applies to Name First Nation Land and natural resources; and
- (d) any other matter as determined by Council or Lands Committee.

21. Access to Information

Access

- 21.1 Any person may, during normal business hours at the main administrative office of the Name First Nation, have reasonable access to:
 - (a) the register of Land laws;
 - (b) the auditor's report; and
 - (c) the annual report on Land and natural resources.

Copies for Members

- 21.2 Any Member may obtain a copy of the auditor's report or annual report.

Access to records

- 21.3 Any person authorized by Council may inspect the financial records of Name First Nation related to Name First Nation Land.

PART 6

LAND AND NATURAL RESOURCES ADMINISTRATION

22. Land Staff

Administration

- 22.1 Council may delegate administrative authority to staff to carry out functions necessary for day to day administrative operations of Land and natural resources.

23. Lands Committee

Lands Committee
established

- 23.1 The Lands Committee is hereby established for the following purposes:

- (a) assist Council with the development of the Land administration system;
- (b) advise Council and its staff on matters respecting Name First Nation Land;
- (c) recommend Land laws, resolutions, policies and practices respecting Name First Nation Land to Council;
- (d) consult with Members and non-Members on Name First Nation Land issues, and to make recommendations on the resolution of those issues to Council;
- (e) oversee community meetings of Members, community approvals and ratification votes; and
- (f) perform such other duties as may be delegated or assigned by resolution or Land law under this *Land Code*.

Process to
Implement Land laws

- 24.2 The Lands Committee shall, within a reasonable time after this *Land Code* takes effect, recommend to Council a community process to develop and implement Land laws.

Internal procedures

- 24.3 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established by Council.

24. Implementation of the Lands Committee

First Lands Committee

- 24.1 Immediately upon the coming into effect of this *Land Code*, Council shall select a Lands Committee to serve for a term of up to three (3) years until a policy governing the Lands Committee comes into force.

Policy Governing Successors to
the First Lands Committee

- 24.2 As soon as possible after the coming into force of this *Land Code*, Council, in consultation with the Lands Committee, shall develop a policy providing for Member involvement in the selection, election, or appointment of Eligible Voters to serve on the Lands Committee, and dealing with such matters as number of members, composition, eligibility, Chair and Deputy 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.

PART 7 INTERESTS AND LICENCES IN LAND

25. Revenue from Land and Natural Resources

Determination of
fees and rent

- 25.1 The Lands Committee shall, subject to the approval of Council, establish the process and recommend any Land laws, rules and policies for determining:
- (a) the fees and rent for Interests and Licences in Name First Nation Land;
 - (b) the fees for services provided in relation to any Name First Nation Land; and

- (c) the fees and royalties to be paid for the taking of natural resources from Name First Nation Land.

26. Registration of Interests and Licences

Enforcement of
Interest and Licences

- 26.1 An Interest or Licence in Name First Nation Land created or granted after this *Land Code* takes effect is not enforceable unless it is registered in the First Nation Lands Register.

Registration of
Consent or approval

- 26.2 An instrument granting an Interest or Licence in Name First Nation Land that requires the consent of Council, or community approval, shall include a form of certificate indicating that the applicable consent or approval has been obtained.

Duty to deposit

- 26.3 A copy of the following instruments shall be deposited in the First Nation Lands Register:
 - (a) any grant of an Interest or Licence in Name First Nation Land;
 - (b) any transfer or assignment of an Interest or Licence in Name First Nation Land;
 - (c) every Land use plan, subdivision plan or resource use plan;
 - (d) every Land law: and
 - (e) this *Land Code* and any amendment to this *Land Code*.

27. Limits on Interests and Licences

All dispositions in
writing

- 27.1 An Interest or Licence in Name First Nation Land may only be created, granted, disposed of, assigned or transferred by a written document made in accordance with this *Land Code* and any relevant Land law.

Standards

- 27.2 Council may establish mandatory standards, criteria and forms for Interests and Licences in Name First Nation Land.

Improper
Transactions void

- 27.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Name First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence in Name First Nation Land after the date this *Land Code* takes effect is void if it contravenes this *Land Code*.

28. Existing InterestsContinuation of
existing Interests and Licences

- 28.1 Any Interest or Licence in Name First Nation Land that existed when this *Land Code* takes effect will, subject to this *Land Code*, continue in force in accordance with its terms and conditions.

Voluntary replacement of
existing Interests and Licences

- 28.2 For greater certainty, Interests or Licences previously issued under the *Indian Act* shall continue in effect after the coming into force of this *Land Code* unless the Member or non-Member voluntarily agrees to have the Interest or Licence replaced by a new Interest or Licence.

Replacing the role of the Minister

- 28.3 Immediately upon the coming into force of this *Land Code*, Canada transfers to Name First Nation all the rights and obligations of Canada as grantor in respect of existing Interests and Licences in or in relation to Name First Nation Land.

Unregistered Interests

- 28.4 A policy shall be established as soon as practical after the coming into force of the *Land Code* to accommodate unregistered Interests.

29. New Interests and LicencesAuthority to make
Dispositions

- 29.1 Council may, on behalf of Name First Nation, grant:

- (a) Interests and Licences in Name First Nation Land, including certificates of possession, member allocations, leases, permits, easements and rights-of-ways; and
- (b) Licences to take natural resources from Name First Nation Land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional grant

- 29.2 The grant of an Interest or Licence may be made subject to the satisfaction of written conditions.

Role of the Lands Committee

- 29.3 The Lands Committee shall advise Council on the granting of Interests or Licences and may be authorized to act as a delegate of Council under this section.

30. Interests of Non-Members

Grants to non-Members

- 30.1 A transfer or other disposition of all or any part of an Interest or Licence in Name First Nation Land to a person who is not a Member shall not be effective unless and until it is confirmed by a resolution of Council.

31. Certificates of Possession or Member Interests

Application

- 31.1 For greater certainty, certificates of possession or Member Interests previously issued under the *Indian Act* shall continue to exist after the coming into force of this *Land Code*.

32. Allocation of Land to Members

Policies and procedures for allocation of Land

- 32.1 Subject to the provisions of this *Land Code*, Council in consultation with the Lands Committee shall establish Land laws, policies and procedures for the allocation of Land to Members.

Allocation

32.2 Council may, in accordance with this *Land Code*:

- (a) allocate Land to Members; or
- (b) issue a certificate for an interest to a Member for Land allocated to that Member.

No allocation of Land
to non-Members

32.3 A person who is not a Member is not entitled to be allocated Land or to hold a permanent Interest in Name First Nation Land.

33. Transfer and Assignment of Interests

Transfer of Member Interest

33.1 A Member may transfer or assign an Interest in Name First Nation Land to another Member without community approval or the consent of Council.

Consent of Council

33.2 There shall be no transfer or assignment of an interest in Name First Nation Land 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; and
- (c) transfers in accordance with the matrimonial real property on reserve law.

34. Limits on Mortgages and Seizures

Protections

34.1 In accordance with the *Framework Agreement*, the following provisions of the *Indian Act*, as amended from time to time, continue to apply to the Name First Nation Land:

- (a) section 29;
- (b) section 87;

- (c) Sub-section 89(1); and
- (d) Sub-section 89(2).

Mortgage of Allocated Land

- 34.2 The Interest of a Member in First Nation Land may be subject to a mortgage or charge, but only to a Member or, the Name First Nation with the express written consent of Council.

Mortgages of leasehold Interests with consent

- 34.3 A leasehold Interest may be subject to charge or mortgage, but only with the express written consent of Council.

Time limit

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

Default in mortgage

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

- (a) the charge or mortgage received the written consent of Council;
- (b) the charge or mortgage was registered in the First Nation Lands Register; and
- (c) a reasonable opportunity to redeem the charge or mortgage is given to Council on behalf of Name First Nation.

Power of redemption

- 34.6 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgagor in possession and shall thereupon acquire all the rights and Interests of the charger or mortgagor and of the lessee or Member for all purposes after the date of the redemption.

Waiver of redemption

- 34.7 Council may waive its right to redemption for any charge or mortgage of a leasehold Interest or Licence.

35. Residency and Access Rights

Right of residence

- 35.1 The following persons have a right to reside on Name First Nation Land:

- (a) Members and their Spouses and children;
- (b) Members with a registered Interest in Name First Nation Land;
- (c) any invitee of a Member referred to in clause (a) or (b);
- (d) lessees and permittees, in accordance with the provisions of the granting instrument; and
- (e) a person authorized in writing by Council, Lands Committee or by a Name First Nation Land law.

Right of Access

- 35.2 The following persons have a right of access to Name First Nation Land:

- (a) a lessee and his or her invitees;
- (b) a person granted a right of access under a permit;
- (c) Name First Nation Members and their Spouses and children and his or her invitees;
- (d) a person who is authorized by a government body or any other public body, established by or under an enactment of the Name First Nation, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey provided that the person received written authorization from Council; or
- (e) a person authorized in writing by Council or Lands Committee or by a Name First Nation Land law.

Public access

- 35.3 Any person may have access to Name First Nation Land for any social or business purposes, if:
- (a) the person does not trespass on occupied Land and does not interfere with any Interest in Land;
 - (b) the person complies with all applicable laws; and
 - (c) no resolution has been enacted barring that person.

Use of Roads

- 35.4 Any person may have the right of access to Name First Nation public roads, subject to this *Land Code* and Land laws.

Trespass

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

Civil remedies

- 35.6 All civil remedies for trespass are preserved.

36. Transfers on Death

Indian Act application

- 36.1 Until Name First Nation 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 Name First Nation Land.

Registration of transfer

- 36.2 A person who receives an Interest in Name First Nation Land 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 Nation Lands Register.

Disposition of Interest

- 36.3 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 Name First Nation Land 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 of the Name First Nation.

37. Matrimonial Real Property on Reserve Law

Development of rules
and procedures

- 37.1 Council shall enact a matrimonial real property on reserve law providing rules and procedures applicable on the breakdown of a marriage, to:
- (a) the use, occupancy and possession of Name First Nation Land;
 - (b) the division of Interests in that Land; and
 - (c) the division of the value of improvements in that Land.

Enactment of rules
and procedures

- 37.2 The rules and procedures contained in the matrimonial real property on reserve law shall be developed by the Lands Committee in consultation with the Members.

Enactment deadline

- 37.3 The matrimonial real property on reserve law shall be enacted within twelve (12) months from the date this *Land Code* takes effect.

General principles

- 37.4 For greater certainty, the rules and procedures developed by the Lands Committee under this section shall respect the following general principles:
- (a) each Spouse should have an equal right to possession of their matrimonial home;

- (b) each Spouse should be entitled to an undivided half Interest in their matrimonial home, as a tenant in common;
- (c) the rules and procedures shall not discriminate on the basis of sex; and
- (d) only Members are entitled to hold a permanent Interest in Name First Nation Land or a charge against a permanent Interest in Name First Nation Land.

Interim Rules

- 37.5 The **[Name of the MRP]** enacted under the *Family Homes on Reserve and Matrimonial Interests or Rights Act* shall serve as the interim rules and its provisions regarding breakdown of marriage shall be repealed upon the coming into force of the matrimonial real property on reserve law enacted in accordance with the *Land Code*.

PART 8 DISPUTE RESOLUTION

38. Purpose

Intent

- 38.1 The intent of this part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Name First Nation Land do so harmoniously with due respect to the rights of others and of Name First Nation and with access to Name First Nation procedures to resolve disputes.

Purpose

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

39. Disputes

Dispute Prevention

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

Disputes Prior
to Land Code

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

Decision of Council or Lands Committee

39.3 If a Member, or a non-Member with an Interest in Name First Nation Land, has a dispute with respect to a decision of Council or the Lands Committee, the person shall first attempt to resolve that dispute with Council or the Lands Committee, before referring the dispute to the Panel.

Settle a Dispute

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

Settlement Agreement

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

Contractual Agreement

39.6 A contractual agreement made under this *Land Code* may establish that the dispute resolution outlined in this *Land Code* and its Land laws may be mandatory or may to some degree prescribe for alternate dispute resolution processes if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

Variation of Rules

39.7 The parties to a dispute to which these rules apply may to some degree, modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

Civil Remedies

39.8 For greater certainty, nothing in this part shall be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to Validity of Law

- 39.9 For greater certainty, nothing in this part shall be construed to prevent a party to a dispute from challenging the validity of a Land law, but such a challenge may be heard only in a court of competent jurisdiction.

40. Processes

Staged Processes

- 40.1 Name First Nation intends that a dispute in relation to Name First Nation Land, except as otherwise provided, may progress through the following stages:

- (a) facilitated discussions;
- (b) negotiation;
- (c) mediation; and
- (d) final arbitration by the Dispute Resolution Panel.

Procedure to File a Dispute

- 40.2 A person who wishes to resolve a dispute with another person or Name First Nation in relation to the use or occupation of Name First Nation Land may file a written notice of dispute setting out:

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

Termination of
Processes

- 40.3 Facilitated discussions, negotiations and mediations may be suspended upon any of the following occurrences:

- (a) the parties reach an agreement;
- (b) one of the parties refuses to continue with facilitated

discussions, negotiations or mediation;

- (c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- (d) upon the request of both parties.

Notice of
Termination

40.4 A notice of termination is required when further facilitated discussions, negotiations or mediation shall not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

Dispute resolution
not available

40.5 Dispute resolution is not available for disputes in relation to:

- (a) administration or distribution of an estate;
- (b) decisions relating to housing allocations;
- (c) decisions of Council to grant or refuse to grant an Interest or Licence in Name First Nation Land to a non-Member;
- (d) decisions on expropriation under this *Land Code*; and
- (e) prosecution or conviction of an offence under a Land law or under criminal law.

Duty of Fairness

40.6 All persons involved in a dispute under this part shall be:

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

Rules and
Procedures

40.7 Council may prescribe such laws, resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this *Land Code*, as may

be necessary to give effect to this part including:

- (a) facilitated discussions, negotiations, mediations and arbitrations;
- (b) terms of office for panelists;
- (c) remuneration of facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other persons retained to assist in the resolution of disputes;
- (d) code of conduct for facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other persons retained to assist in the resolution of disputes;
- (e) disclosure and confidentiality;
- (f) imposition of time limitations for submitting a notice of dispute and referring a matter or dispute to the Panel;
- (g) implementing recommendations of the Panel; and
- (h) any other matter necessary to give effect to this part.

Waiver of Liability

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

41. Roster Panel Established

Appointment to Roster Panel

- 41.1 The Roster Panel shall be composed of a maximum of twenty (20) panelists.

Ineligible

- 41.2 Notwithstanding the general rules of conflict of interest in the *Land Code*, no Council member, or employee of Name First Nation or person already serving on another board, body, or committee related to Name First Nation Land shall sit on the Roster Panel.

Representation

- 41.3 Council shall appoint the Roster panelists, and shall ensure that, where possible, the Roster panelists represent the various elements of the community.

Rules of Roster Panel

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

42. Impartiality of the Dispute Resolution Panel

Duty to Act Impartially

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

Offence

- 42.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

Rejection of Application

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

Rules of Conduct for Parties to a Dispute

- 42.4 The Roster Panel shall establish rules of conduct for the parties to a dispute.

43. Arbitration by the Dispute Resolution Panel

Disputes

- 43.1 Applications for resolution by the Panel shall be submitted to the Lands Department.

Panel of Three Chosen From Roster Panel

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

- (a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute;

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

Panel Established

43.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to Name First Nation Land.

**Dispute resolution
not available**

43.4 For greater certainty, the Panel shall not hear disputes in respect of matters that are not subject to dispute resolution under this *Land Code*.

44. Powers of the Dispute Resolution Panel

Power of the Panel

44.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute back for a new decision; or
- (e) make an order to give effect to its decision, including any necessary order for the survey of an Interest in Name First Nation Land, the registration of an Interest in Name First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

Recommendations by Panel

44.2 In addition to making a determination in respect to a particular dispute, the Panel may recommend to Council:

- (a) the suspension of any Land law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land law or decision, provided that any amendment or repeal of a Land law is made in a manner consistent with this *Land Code*; or
- (b) any other recommendation that it deems reasonable and necessary in the circumstances.

Interim Decisions

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

Professional Services

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

Written Decisions

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

Appeal of Decision

- 44.6 A decision of the Panel is binding but, subject to review by the Federal Court (Trial Division).

PART 9 OTHER MATTERS

45. Liability

Liability Coverage

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

Extent of coverage

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

46. Offences

Application of the
Criminal Code

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

Fines & Imprisonment

46.2 Unless some other procedure is provided for by a Name First Nation Land law, any person who commits an offence under this *Land Code* or a Name First Nation Land 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 fine and imprisonment, provided however, that offences related to Name First Nation environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

47. Revisions to *Land Code*

Revisions

47.1 A ratification vote is not required for revisions made to this *Land Code* that do not change the substance of this *Land Code*. Council may, from time to time, arrange and revise this *Land Code*. Revisions include:

- (a) an amendment of the description of Name First Nation Land subject to this *Land Code* and Individual Agreement;
- (b) a reference in this *Land Code* to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this *Land Code* to an Act or parts thereof that have expired, have been repealed or suspended;
- (d) changes in this *Land Code* as are required to reconcile seeming inconsistencies with other acts;

- (e) minor improvements in the language as may be required to bring out more clearly the intention of the Name First Nation without changing the substance of this *Land Code*; and
- (f) correct editing, grammatical or typographical errors.

48. Commencement

Preconditions

- 48.1 This *Land Code* shall take effect if the community approves this *Land Code* and the Individual Agreement with Canada and this *Land Code* has been certified by the verifier pursuant to the *Framework Agreement*.

Commencement date

- 48.2 This *Land Code* shall take effect on the first day of the month following the certification of this *Land Code* by the verifier.

APPENDIX “A”

Description of the Name First Nation Land as listed as ANNEX “G” in the Individual Agreement on First Nation Land Management between Name First Nation and Canada.

ANNEX “G”

[INSERT ANNEX “G” OF INDIVIDUAL AGREEMENT HERE]



LAND CODE SUMMARY

There are 9 Sections in this Land Code:

Part 1: Preliminary Matters

This introduces the Land Code to the reader and defines how the document should be read. There is a description of the terms that will be used in the document, an explanation of where the authority to govern comes from, what the purpose of the Land Code is and what lands the Land Code applies to (the reserve land description).

Part 2: First Nations Legislation

This section outlines what law making power the First Nation will have out of the Land Code and the procedure for how new land laws will be created and implemented (including where they will be published and when they take effect) under the Land Code.

Part 3: Community Consultation and Approvals

This section defines how and what the process is for implementing various elements of the Land Code. For example, approving a land use plan or enacting land laws requires community approval under the conditions defined in this section. Furthermore, this section touches on the procedures for a “meeting of members”, and the ratification process and approval thresholds are for passing laws or other matters such as: i.e. development of a heritage site, amendment to the Land Code, or any other matter.

Part 4: Protection of Land

This section outlines some of the key protections the Land Code offers- and the special conditions by which the First Nation could expropriate land (only by community approval through ratification vote) and the conditions for calculating compensation, but also the rights that may not be expropriated. This section also defines the necessity for a law on heritage sites, and ensures no development or amendment can be made to the land use plan to get rid of a heritage site created under this law. Finally this section states that an agreement is necessary for the First Nation to exchange land with another party (i.e. First Nation, Province, and Federal Government) and there are conditions to be met for lands to be received (such as the need for an appointed negotiator, freedom of receiving additional compensation or land in trust, and federal commitment to add any lands to the existing reserve base).

Part 5: Accountability

This section really has to do with how the Land Code is administered by First Nation including the rules for a “conflict of interest” and the duty to report and abstain from participation in land matters where there is a conflict. Also in the context of conflict of interest this section defines the non-application of these rules for common interests, dealing with disputes and penalties.

This section also applies to how financial management, audit and financial reporting will be conducted – establishing separate lands bank accounts, signing officers, bonding, signing



authorities, and the adoption of the fiscal year for operations and reporting. This section also goes into detail about the specific rules for a year to year lands budget and financial policy. The final part of this section is about financial records and the member's right to access information on year to year financial statements, audit report, the annual report on lands, and the penalties for interference or obstructing the inspection of these records by another member- and the coordination and roles responsible for creating and making these documents public (i.e. auditor and council).

Part 6: Land Administration

This section starts off by establishing the Lands Committee - it defines the composition, eligibility requirements, selection method, term of office and dealing with vacancies. This section also defines how revenue monies from lands will be handled (from fees, leases etc.), how the registration of land interests (leases, permits, licences) will be conducted and how it is captured through First Nations Land Registry System (FNLRS) and a duplicate register if directed.

Part 7: Interests in Land

This section relates more to the operation of the First Nation's lands administration and how it will address existing interests (e.g. CPs) and new land related interests (e.g. CPs or allocations). This section defines that there will need to be written documents, standards created, and that consent will be necessary to process any granting or disposing of assignments of land. This section defines the rights of CP holders and the procedure for cancelling a CP, the transfer and use of a CP, and the situation when a CP holder ceases to be a member. This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law (to be made into a Matrimonial Real Property law)

Part 8: Dispute Resolution

This section is created to address how possible disputes that could arise by any benefactor (e.g. First Nation member) of the Land Code and how the process for addressing disputes will be conducted. For example, an adjudicator would be established to resolve disputes in relation to lands unless members could come to some resolve by way of an informal resolution of disputes. The section sets out the powers for the adjudicator, adjudication procedures and decisions and the member's ability to appeal these decisions and expectations around costs.

Part 9: Other Matters

This section defines four (or more) items to address common issues such as:

1. Liability- the need for director and officers insurance for Lands Committee members,
2. Offences and enforcement- what are offences and what is the penalty,
3. Amendments to Land Code- specifically the process for amending this Land Code,
4. Commencement- defines when the actual start date will be.



Cultural Heritage Resources Table		
CHR Type	Defined (Example)	Other Information
Archaeological Sites and Artifacts	An archaeological site may be defined as any property that contains an artifact or any other physical evidence of past human use or activity that is of a cultural heritage value or interest.	<p>For example, village and settlement sites, camps and burial grounds.</p> <p>An artifact is any object, material or substance that is made, modified, used deposited or affected by human action and is of cultural heritage value or interest. For example tools, pottery, art or clothing.</p>
Ancestral Remains	Ancestral Remains refers to the discovery of previously unidentified, buried human remains that are of ancestry to a First Nation.	In most instances, the provincial authority will have law or policy in place to deal with the discovery of human remains. However, each First Nation may have its own traditional practices that require special protocols to be conducted in the event of ancestral remains discovery and subsequent handling.
Sacred Sites	Sacred Sites are the products of cultural and spiritual beliefs and place of practice. They may not be apparent to people not familiar with the First Nation and its traditions and customs.	Examples of sacred sites may include the locations of ceremonial practices, where rock paintings (pictographs and/or petroglyphs) exist, where transformations occur, areas said to be created or inhabited by supernatural beings, and/or birth & death sites.
Cultural Resources	Cultural resources include materials that are accessed for use in traditional and cultural activities.	Some cultural resources are ceremonial plants sage, sweet grass, cedar or other materials and large trees utilized in carvings for totems or to make canoes. Animals harvested for food or ceremonial processes are also considered to be cultural resources
Cultural Sites	Cultural sites are the locations where cultural resource harvesting and use takes place. These places	Examples of cultural sites include: moose or other animal kill sites, sites of traditional foods acquisition, locations of where medicinal plants



	are commonly referred to as harvest sites or areas, although the term may be applied to other cultural activities as well.	grow and are picked and also where materials used in traditional arts and crafts are obtained and the location of spiritual practices.
Historic Sites and Buildings	Historic sites and buildings are often very old buildings, and the sites where significant historical events have occurred.	Structures that were built prior to a specified date, that have some cultural significance in the community or have some architecturally significant characteristics may be considered a historic or heritage building. Historic Sites may be the location of an important event.
Traditional Arts and Crafts	Traditional arts and crafts are considered to be a whole host of activities that are related to the making of things with one's hands and own personal skill.	Carvings, designs, weavings and paintings are all examples of traditional arts and crafts.
Food and Medicinal Gathering	Harvesting areas that contain concentrations of particular plant and animals often actively managed and utilized in a traditional fashion.	For example Camas, fiddleheads, various berries, bitter root, wild cucumber, wintergreen, shellfish etc.
First Nation Language	First Nation language contains a spiritual vibration, cultural, historical, scientific and ecological knowledge and is a key component to First Nation spiritual and cultural identity.	More than 65 dialects make up the 11 groups of Aboriginal language in Canada. Only the Northwest Territories and Nunavut give official status to native languages.



Example of Land Based and Non-Land Based Activities

Land Based Activities	Natural Occurrences	Non-land Based
<ul style="list-style-type: none">• Urban or rural residential development• Natural Resource extraction:<ul style="list-style-type: none">◦ Forestry◦ Mining◦ Oil & Gas• Small or large scale industrial, such as manufacturing or processing plants or factories• Agriculture• Water (development on water lots and changes in water courses)• Fish & wildlife harvesting	<ul style="list-style-type: none">• Flooding• Fires• Erosion & accretion• Earthquakes• Widespread illness and disease• Volcanic eruptions• Climate change• Hurricane• Tornadoes• Wind Storms• Desertification	<ul style="list-style-type: none">• Loss of traditional knowledge holder before they have been able to share their traditional knowledge• Colonization/missionizing• Government assimilation policies including the banning of traditional practices• Residential schools• Loss of language



FN CHR Activities Table

Land Based Activities	Natural Occurrences	Non-land Based



THE GENESIS OF THE DUTY TO CONSULT AND THE SUPREME COURT

The judicial genesis of the legal duty of consultation began with a series of Aboriginal right and title decisions providing the foundational principles of the duty to consult.

Guerin

Beginning prior to the repatriation of Canada's constitution, the Supreme Court in *Guerin*¹ found that the Crown had violated its fiduciary duty to the band by failing to consult with them when they accepted a lesser lease and unilaterally changed the legal position of the band, without their knowledge or consent. Justice Dickson stated "In obtaining, without consultation, a much less valuable lease than the promised, the Crown, breached the fiduciary obligation it owed the band."

Sparrow

Then in 1990, the Supreme Court in *Sparrow*² deliberated its first post 1982 Aboriginal rights case to explore the content of s. 35 of the *Constitution Act, 1982*³ where the court expressly limited Crown power and conduct by affirming a duty to consult with West Coast Salish asserting their inherent and constitutionally protected right to fish through a 'justification test' where the duty to consult is one factor to be considered when justifying an infringement on Aboriginal rights.

Van der Peet

In 1996 the Supreme Court further developed foundational principles on the duty to consult in their adjudication of the definition of an Aboriginal right in *R v Van der Peet*.⁴ Van Der Peet is important for proving CHRs off reserve.

Nikal

Next in 1996, another Supreme Court decision constraining crown power and affirming the duty to consult regarding resources to which Aboriginal peoples make claim was made in *Nikal*, where Cory J. wrote: "So long as every reasonable effort is made to inform and to consult, such efforts would suffice to meet the justification requirement".⁵

¹ *Guerin v The Queen*, [1984] 2 SCR 335, 13 DLR (4th) 321.

² *R v Sparrow*, [1990] 1 SCR 1075, 70 DLR (4th) 385.

³ Section 35(1), *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), c 11.

⁴ *R v Van der Peet*, [1996] 2 SCR 507, 137 DLR (4th) 389.

⁵ *R v Nikal*, [1996] SCR 1013



Gladstone

Similarly, the court in *R v Gladstone*⁶ applied and modified the *Sparrow* justification test to the Heiltsuk Aboriginal right to harvest and sell herring spawn on kelp. The court held, "Questions relevant to the determination of whether the government has granted priority to aboriginal rights holders are those enumerated in *Sparrow* relating to consultation and compensation, as well as questions such as whether the government has accommodated the exercise of the Aboriginal right to participate in the fishery..."

Delgamuukw

Then, in 1997 the Supreme Court in *R v Delgamuukw*⁷ expanded the scope of the duty to consult with the introduction of a 'spectrum' on consultation, holding the greater the impact of the rights, the greater the consultation and in some cases, consent would be required.

The Supreme Court 2004 Trilogy

Eight years later, the Supreme Court released what has become termed as the "trilogy" of cases on the duty to consult in:

1. *Haida Nation v British Columbia (Minister of Forests)*,⁸
2. *Taku River Tlingit v. British Columbia (Project Assessment Director)*,⁹
3. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*.¹⁰

Haida and *Taku* delineated a constitutional duty to consult and accommodate Aboriginal rights holders.¹¹ These decisions were in the context of "asserted but

⁶ *Gladstone v Canada, (Attorney General)*, [1996] 2 SCR 723, 4 CNLR at 52

⁷ *R v Delgamuukw*, [1997] 3 SCR 1010 at para 114

⁸ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511.

⁹ *Taku River, Tlingit First Nation v British Columbia (Project Assessment Director)*, 2003 SCC 74, [2004] 2 SCR 550.

¹⁰ *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 SCR 388.

¹¹ The legal tests and principles expounded by the Supreme Court on the duty to consult guide lower courts to make the same determinations. There exist several lower courts decisions in Canada which articulate the duty to consult Aboriginal rights holders that spans both the 1990's increasing after the 2005 *Haida* trilogy, through to 2010. *R v Bones*, [1990] BCJ No 2897 dismissed on appeal, *R v Bones*, 1993 CanLII 936 (BCSC), *R v Jack*, [1995] BCJ No 2632 (BCCA), *Halfway River First Nation v British Columbia (Minister of Forests)*, (1999) 64 BCLR (3d) 206 (BCCA), *Musqueam Indian Band v British Columbia (Minister of Sustainable Resource Management)*, 2005 BCCA 128, *Tsilhqot'in Nation v British Columbia*, [2006] BCCA 2, *R v Douglas*, [2006] BCSC 284, *Hupacasath First Nation v B.C. (Minister of Forest)*, [2005] BCJ No. 2653, *Hupacasath First Nation v British Columbia (Minister of Forests)*, [2006] 1 CNLR 22 (BCSC), *Native Council of Nova Scotia v Attorney General of Canada*, [2006] 2 CNLR 103 (FC), *R v Douglas*, [2006] 2 CNLR 140 (BCSC), *R v Douglas*, [2007] 3 CNLR 277 (BCCA), *R v Kapp*, CA 277, *Kruger v*



unproven” Aboriginal right claims confirming the Crown’s duty when it has knowledge, real or constructive of the potential existence of and Aboriginal right or title and contemplate conduct that may adversely affect it. The broad principles in both cases inform the jurisprudence on the duty to consult Aboriginal right claims and are used in the Treaty rights context as *Mikisew* has demonstrated.

In *Haida*, at issue was the question of what duty, if any, does the government owe the Haida people and whether they are required to consult with them about decisions to harvest the forests and further, to accommodate their concerns before they have proven their title to land and their Aboriginal rights. In its ruling, the court found that the Haida’s claim to title to the area is strong. The Supreme Court provided several important principles on the duty to consult by holding that a claim of Aboriginal title to land exists even if not yet proven in court:

- “The government’s duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown, which must be understood generously. While the asserted but unproven Aboriginal rights and title are insufficiently specific for the honour of the Crown to mandate that the Crown act as a fiduciary, the Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof.
- The court held that the foundation of the duty in the Crown’s honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.¹²
- The court held that consultation and accommodation before final claims resolution preserve the Aboriginal interest and is an essential corollary to the honourable process of reconciliation that s. 35 of the *Constitution Act, 1982*, demands any consultation process. It held, “...pending settlement, the Crown is bound by its honour of tie response to Aboriginal concerns.”¹³
- The court reiterated the ‘spectrum’ that assesses the strength of the claim and the seriousness of the adverse impact on that claim, in determining what type of consultation is required. The range is notification to deep consultation.¹⁴

In *Taku River*, the Tlingit First Nation opposed the effects of a proposal to reopen the Tulsequah Chief mine by building an industrial highway through the heart of the Tlingit’s traditional territory. The Taku River First Nation participated in an ‘environmental

Betsiamites First Nation [2006] QCCA 567, *Ahousaht Indian Band v Canada (Minister of Fisheries and Oceans)*, [2007] 4 CNLR 1 (FC), *Tsilhqot’in Nation v British Columbia*, [2008] 1 CNLR 112 (BCSC), *Standing Buffalo First Nation v Enbridge Pipelines Inc.*, 2009 FCA 308 (CanLII), and others.

¹² *Haida* supra note 16 at para 35.

¹³ *Haida* supra note 16 at para 31, 32,35, 43-45.

¹⁴ *Ibid* at para 43-45.



assessment' process but disagreed with its report and sought to quash the approval of the project. The Tlingit raised concerns about the possible impacts on the wildlife and other traditional uses, as well as their title claim. The court found that the First Nations role in the environmental assessment was sufficient to uphold the Province's honour and met the requirements of the duty. By participating in the environmental review process, which included measures to address its concerns, the court held that the Province was not under a duty to reach an agreement with the Tlingit people and their failure to do so did not breach its obligations. The court expected that the process of permitting and development of a land use strategy, the Crown would fulfill its honourable obligations. The court rejected the Province's 'impoverished vision of the honour of the Crown' by arguing before the determination of rights through litigation or conclusion of a treaty, it owes only a common law "duty of fair dealing." The Taku court affirmed the principle that the honour of the Crown, prior to proof of asserted rights or title, to be given full effect in order to promote the process of reconciliation mandated by s. 35(1) of the *Constitution Act, 1982*.¹⁵

The last in the trilogy was the treaty rights case of *Mikisew*.¹⁶ The duty to consult doctrine was extended to Treaty rights when the Mikisew Cree opposed a winter road that would have a 'injurious' effect on the Mikisew traditional lifestyle of hunting by crossing traplines and interrupting migration patterns. The Supreme court held that:

- The "taking up of lands" in Treaty 8 required the Crown to consult with the Mikisew Cree to ensure that there was a honourable process in the taking up of lands.¹⁷
- The duty to consult arises in relation to Government action that has a potential impact on Treaty Rights.¹⁸
- What is known in the context of the right is more substantial in the Treaty context rendering the rights 'test' less relevant.¹⁹

The court found that there was inadequate consultation and sent the matter back to the Crown to deal with the project in light of its decision.

Rio Tinto

The Supreme Court then did not revisit the duty to consult until 2010 in the *Rio Tinto*²⁰ case where issues of various administrative bodies were implementing the duty to consult duty.

¹⁵ *Taku River supra* note 17.

¹⁶ *Mikisew supra* note 16.

¹⁷ *Ibid* at para 18.

¹⁸ *Ibid* at para 67.

¹⁹ *Ibid* at para 21.

²⁰ *Rio Tinto Alcan v Carrier Sekani Tribal Counsel*, 2010 SCC 43 [2010] e SCR 650.



Others

Next the court released the cases of *Moses*,²¹ *Little Salmon*,²² *Behn v Moulton Contracting*,²³ and *Ross River*,²⁴ delineating further the contours of the duty to consult.

TSILHQOT'IN

In June 2014, the Supreme Court of Canada released a watershed decision in *Tsilhqot'in v British Columbia*²⁵, granting, for the first time, a declaration of Aboriginal title. The ruling ends a protracted legal battle that began in 1998 when the Tsilhqot'in Nation objected to the Province of British Columbia issuing third party logging authorizations in their traditional territory.²⁶ In short, this decision affirmed the territorial nature of Aboriginal title, and rejected the legal test advanced by Canada and the provinces based on small spots or site-specific occupation. The Supreme Court also granted a declaration that British Columbia breached its duty to consult the Tsilhqot'in with regard to its forestry authorizations. This case is important for First Nations where a claim of title area also contains cultural heritage resource sites. It also demonstrates the paradox in the current Canadian common law Aboriginal Rights and Title paradigm where the original inhabitants of this land, the Aboriginal people, must prove prior occupation to the new comers, according to their tests.

In *Tsilhqot'in* Supreme Court concluded that the trial judge was correct in finding that the Tsilhqot'in had established title to 1,750 square kilometers of land, and reaffirmed and clarified the test it had previously established in *Delgamuukw*²⁷ for proof of

²¹ *Quebec (Attorney General) v Moses*, 2010 SCC 17 [2010] 2 SCR 557.

²² *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 [2010] 3 SCR 103.

²³ *Behn v Moulton Contracting Ltd* 2013 SCC 26.

²⁴ *Ross River Dena Council v Government of Yukon*, 2012 YKCA 13, with leave to appeal to the Supreme Court denied in 2013.

²⁵ *Tsilhqot'in v British Columbia*, 2014 SCC 44, [2014] 2 SCR 256.

²⁶ *Ibid.*, at para 1 to 9. The Tsilhqot'in Nation is comprised of six Indian Act bands, one of which is the Xeni Gwet'in Indian Band. In 1998, in response to proposed logging that had been authorized in the 1980s, Chief Roger William of the Xeni Gwet'in Indian Band brought an action, on behalf of the Tsilhqot'in, against the Province of British Columbia and the Government of Canada. The logging was to occur in the Trapline Territory, a region that the Tsilhqot'in claimed lay within their traditional territory. William sought several declarations, including that: the Tsilhqot'in hold Aboriginal title over 4,380 square kilometers of the region including the Tachelach'ed area and the Trapline Territory (Claim Area); the First Nations in the area hold Aboriginal rights to hunt and trap, to trade in skins and pelts taken from the Claim Area (as a means of securing a moderate livelihood), and to capture and use wild horses; and any forestry activity in the area unjustifiably infringed the existing Aboriginal rights. After a 339 day trial spanning five years in the BC Supreme Court, the trial judge accepted a "territorial theory" of establishing title and found title over 40% of the Claim Area. On appeal, the BC Court of Appeal rejected the lower trial Court's approach and held that Aboriginal title must be demonstrated on a "site-specific basis" requiring intensive presence at a particular site.

²⁷ *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010.



Aboriginal title, underscoring that the criteria of occupation: sufficiency, continuity, and exclusivity were established by the evidence in this case.

Some of the key findings were:

- That Aboriginal title was not limited to village sites but also extends to lands that are used for hunting, fishing, trapping, foraging and other cultural purposes or practices.²⁸
- Aboriginal title may also extend “beyond physically occupied sites, to surrounding lands over which a Nation has effective control.” The Supreme Court endorsed further examples of Aboriginal occupation sufficient to ground title including “warning off trespassers,” “cutting trees,” “fishing in tracts of water” and “perambulation.”²⁹
- The court also affirmed the importance of not only of the common law perspective, but also, the Aboriginal perspective on title including Aboriginal laws, practices, customs and traditions relating to indigenous land tenure and use holding the principle of occupation must also reflect the way of life of Aboriginal people.³⁰
- The Court reasoned that Aboriginal titleholders have the “right to the benefits associated with the land, to use it, enjoy it and profit from its economic development” such that “the Crown does not retain a beneficial interest in Aboriginal title land.”³¹
- That the Government owes a duty to consult and “not merely rights of first refusal,” and breached their duty in this case.³²
- That Provincial law of general application will continue to apply to Aboriginal title lands, subject to government meeting a “justification” test.³³

The Supreme Court warned that if governments do not meet their obligations to justify infringements to Aboriginal title, and do not act consistent with their fiduciary duties, their actions would not be protected.

²⁸ *Tsilhqot’in*, *supra*, note 1.

²⁹ *Ibid.* The Supreme Court held that the criterion of exclusivity may be established by proof of keeping others out, requiring permission for access to the land, the existence of trespass laws, treaties made with other Aboriginal groups, or even a lack of challenges to occupancy showing the Nation’s intention and capacity to control its lands.

³⁰ *Ibid.*

³¹ *Ibid.* Expanding on its reasons in *Delgamuukw*, the Supreme Court concluded Aboriginal title confers possession and ownership rights including: the right to decide how the land will be used; the right to the economic benefits of the land; and the right to pro-actively use and manage the land.

³² *Ibid.*

³³ *Ibid.*

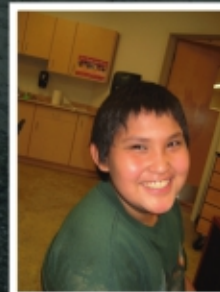


Tsilhqot'in confirms the existing jurisprudence on Aboriginal title and helps to protect cultural heritage resources located in asserted Aboriginal title lands by holding the Crown to its fiduciary duty of consultation and accommodation until title is confirmed. The Supreme Court decision requires the Crown (and industry) to meaningfully engage with Aboriginal title holders when proposing any action in their territories. This engagement can no longer be limited, and instead, through the First Nation's right of enjoyment and occupancy of title land; their right to possess title land; their right to economic benefits of title land; and the right to pro-actively use and manage title land. Implicit in these rights, are the right to manage cultural heritage resources located on both proven and asserted Title lands and the duty of the Government to consult with the Aboriginal title holder.

OUR VISION FOR TOMORROW



A COMPREHENSIVE COMMUNITY PLAN



FOR DISCUSSION WITH THE
TSAWOUT COMMUNITY 2011

“

As Saanich people we strive to be whole in the spiritual, cultural, physical and emotional sense. We continue to develop a healthy community which seeks a balance between our traditional values and today's economy, as the stewards of our lands and resources.”

CCP Vision Statement
2010

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HELLO & WELCOME

First I would like to thank the Lands Committee for all the guidance and work they provided for the development of this new Comprehensive Community Plan. I would also like to take this time to thank the band members for their participation in the development of this new plan.

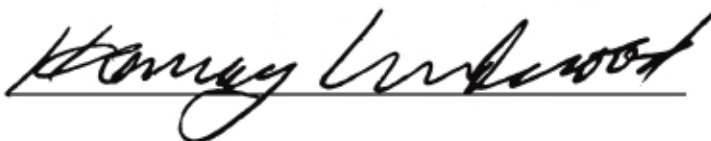
I believe that controlling one's destiny is very important for you, the community and for our current and future leaders. One way to control our own destiny is through the development of a Tsawout First Nation Comprehensive Community Plan. The community plan is just that, a plan developed in conjunction with the community's core values and priorities. The development of this type of plan allows the community the opportunity to be very proactive in terms of outlining our long-term community goals.

4 Upon your review of this new plan you will find that this allows Tsawout to plan for the future in a manner that meets the community's needs. This plan is focused towards the long term and has considered all aspects of our community; such as our cultural and traditional values, our various social issues and needs, our health concerns, the development of our infrastructure, the economic enhancement of the community, our governance and our own control over our lands and resources.

This plan has been respectful of our past and as such will allow Tsawout to move forward in a very progressive manner.

After you have had a chance to review this plan in greater detail I believe that you will feel very excited about the community vision offered through this plan.

Thanks again for being a part of this exciting new concept for Tsawout.

A handwritten signature in black ink, appearing to read "Harvey Underwood", written over a horizontal line.

Chief Harvey Underwood



WHAT IS A COMPREHENSIVE COMMUNITY PLAN?



WHAT IS A COMPREHENSIVE COMMUNITY PLAN?

A Comprehensive Community Plan (CCP) is a plan that is developed by and for the community. The CCP helps First Nations to plan for future development in a way that meets the community's needs. The plan takes a long-term view and takes into consideration all aspects of community life, such as culture, governance, land and resources, health, education, infrastructure development, social issues and the economy.



WHAT ARE THE BENEFITS OF PLANNING TO TSAWOUT?

- Empowers the community to create positive change.
- Celebrates Culture and Tradition as part of the planning process.
- Promotes healing and cooperation as members work together.
- Improves governance and community decision making.
- Promotes accountability and transparency to community members.
- Helps to plan for the best use of land and resources.
- Creates economic opportunities by helping to attract investment with other businesses, building relationships with other First Nations, municipalities and private sector partners.
- Acts as a blueprint for community development.
- Creates a communications tool for education and awareness.
- Supports funding applications.

6



The CCP helps to identify Tsawout's core values and priorities, a vision for the future, and a way of achieving that vision through a clearly defined set of steps. The plan also sets out the type of land uses which will be permitted within specific areas of the community.

The CCP does not force landowners to develop their land. It provides direction to landowners if they wish to consider development. The CCP provides a way for the Band and landowners to work together towards a common vision. It is up to the landowner to make decisions about their property regarding development. For instance, a landowner will still be entitled to use his/her land for family purposes; however if he or she wishes to develop a portion for economic benefits, a formal approval process will be required.

Planning allows a community to play an active role in moving in the direction that it desires. It also allows a community to react appropriately to challenges and opportunities.

Having a plan will allow Tsawout to work with developers or other governments in a way that ensures that the community vision and goals are met when development takes place on the reserve.

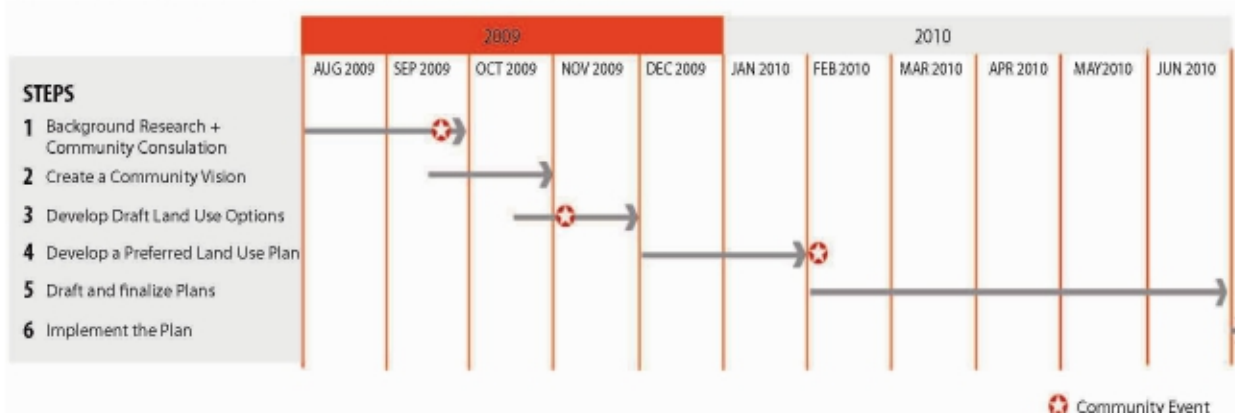
EXISTING LEASES:

The CCP recognizes existing lease agreements.

The CCP process marks the first time in Tsawout's history that a community approach to planning and development has taken place. This process is the first key step in helping to ease tensions within the community, as it will help to bring the community together towards common goals.

CCP PROCESS TIMELINE:

Tsawout has been involved with the CCP process since August 2009. The diagram below shows important milestones in the process, and when community consultations were held.



TIMESPAN OF THE PLAN

Although this plan has a long range vision of 20 years, it should be reviewed or updated every 5-10 years to ensure that the changing community needs are being met.

WHO IS INVOLVED IN COMMUNITY PLANNING?

Community Consultation

For the CCP to truly represent community members, the planning process was designed to include Tsawout community members. Opportunities for suggestions and input were offered at important stages through the planning process.



COMMUNITY CONSULTATION INVOLVED:

- Public meetings to identify key issues and establish a framework for the community's vision.
- Public open houses to identify land use development options.
- Community surveys distributed to Tsawout households that identified community values, priorities and areas of improvement.
- Information on the CCP process included within community newsletters sent to each household.
- Presentation of land use options to the Band Council, Lands Advisory Committee and Band members.
- Training sessions with the Lands Advisory Committee.
- Family meetings facilitated held by Lands Department staff.

LANDS ADVISORY COMMITTEE MEMBERS

BELOW: TSAWOUT LAND ADVISORY FIELD TRIP TO T'SOU-KE.

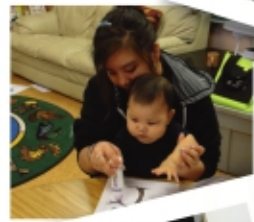


Irvine Jimmy
Vernon Harry
Walter Jimmy
Fred Underwood
Dave Underwood Jr.
Helen Jack
Belinda Claxton
Edith Pelkey
Perry LaFortune
Gus Underwood Sr.
Herb Pelkey
Jeanie Sam

William Thomas
Mavis Underwood
Ralph Underwood
Rena Dulay



TSAWOUT'S GROWTH PAST, PRESENT & FUTURE



OUR LANDS: SENĆOŦEN TERRITORIAL DECLARATION

We, the SENĆOŦEN Indian People, declare on this 21st day of June, 2006 that we hold the absolute rights and title to our Territorial Homeland as indicated on the accompanying map of which all our territory is named in the SENĆOŦEN language.

We do not recognize any past attempts to separate us from our homeland. We recognize that there were Treaty's of Peaceful Co-existence entered into with the early settlers, but this did not involve the sale of rights or land.

Our SENĆOŦEN Territorial Homelands encompass all our Spiritual Places, medicine and fruit gathering places, fishing stations, hunting and trapping areas, winter and summer homesites, burial sites, meditation places and all territories in between these places outlined on our Territorial Map.

The sacred connection the SENĆOŦEN speaking people have with their homeland establishes our Territorial Title and can never be broken by the Federal or Provincial Government by Acts of Parliament or by any Canadian Court of Law. This declaration is put forth to stop the erosion of our culture, our land, our rights and to also establish a clear understanding of our Territorial

Title to our homelands.

We will, from this day forward, expect the Governments of British Columbia and Canada to respect the Territorial Title of the SENĆOŦEN Indian People to their homelands as outlined in our Territorial Map. The SENĆOŦEN Territorial Title is a communal title which is the foundation of the

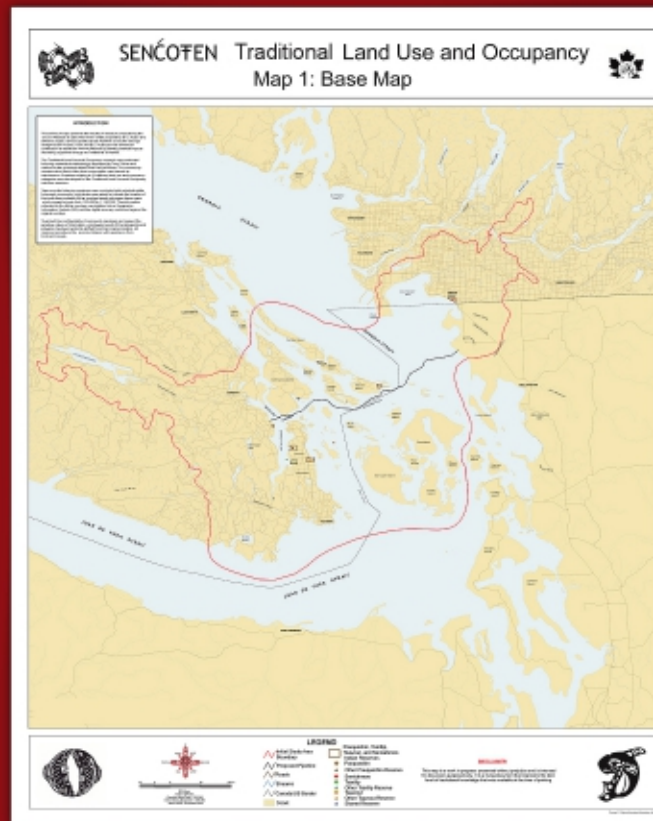
SENĆOŦEN Indian Culture. This Title was granted thousands of years ago to the first SENĆOŦEN Indian People by the Creator of the earth. He instructed the SENĆOŦEN people to look after the land if they wanted their culture to survive.

Because this Territorial Title cannot be bought or sold, we therefore declare in our final words that our SENĆOŦEN Territorial Homeland and inherent rights are not

for sale. We will from this day forward take the necessary actions to govern our SENĆOŦEN Territorial Homeland by home rule.

Signed on behalf of all the SENĆOŦEN People.

Chief Ed Mitchell, Pauquachin First Nation; Chief Chris Tom, Tsartlip First Nation; Chief Allan Claxton, Tsawout First Nation; Chief Willard Cook, Semiahmoo First Nation; Chief Vern Jacks, Tseycum First Nation.



OUR LANDS: TSAWOUT IR NO. 2 & FULFORD IR NO. 5

POPULATION

The total population living on East Saanich IR No. 2 is estimated at 1,640 people, of which less than a third is registered Tsawout members. Tsawout's population will rise from 585 to 798 people by 2016. The majority of the residents on IR No. 2 are non-Tsawout band members living in mobile home parks on leased lands.



TSAWOUT POPULATION, IR No. 2	# OF PEOPLE
Total Population Living on Tsawout IR No. 2 (Source: Statistics Canada, 2007)	1,640
Aboriginal Identity Population On-Reserve	585
Aboriginal Identity Population Off-Reserve	222
Non - Aboriginal Identity Population On-Reserve	1050

LAND USES

The majority of East Saanich IR No. 2 is made up of residential developments and mobile home parks, with a modest mix of community facilities and commercial developments, including motels, campgrounds, restaurants, offices, band offices and a gas station. Most of the developments are on property owned by Certificate of Possession Holders (CP). Of the private dwellings on the reserve, only a small percentage accommodates Tsawout Nation households.

All commercial uses are developed on CP land – found near the Patricia Bay Highway and Mt. Newton Cross Rd intersection. Several environmentally sensitive areas can also be found on East Saanich IR No. 2 including the Tixen (also known as the Cordova) Spit, Tetayut Creek and a Meadow/Marsh area, located down by the sewage treatment plant.

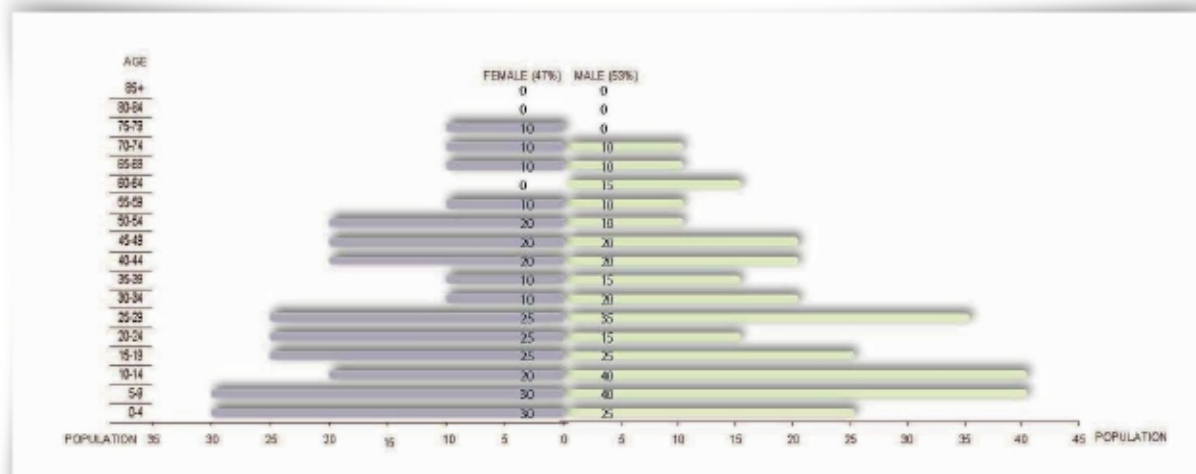


Fulford Harbour is vegetated with second growth Douglas Fir and Arbutus trees. The site is rocky and has good views to the south. The Reserve has limited access and no services. Fulford Harbour IR No. 5 is currently unpopulated.

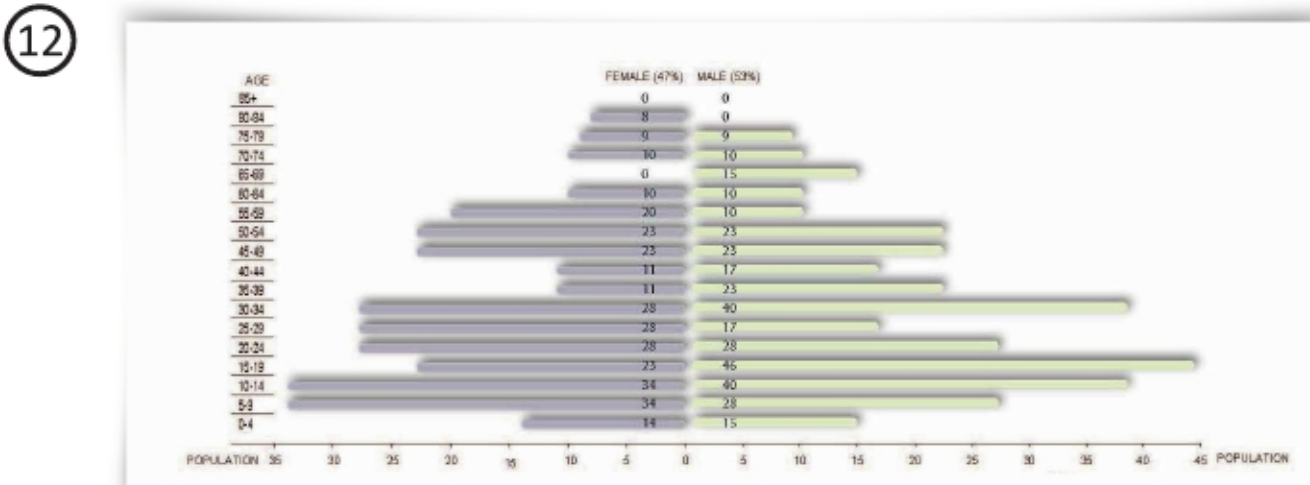
POPULATION PROJECTIONS

The following population projection pyramids were developed by the Tsawout Lands Department.

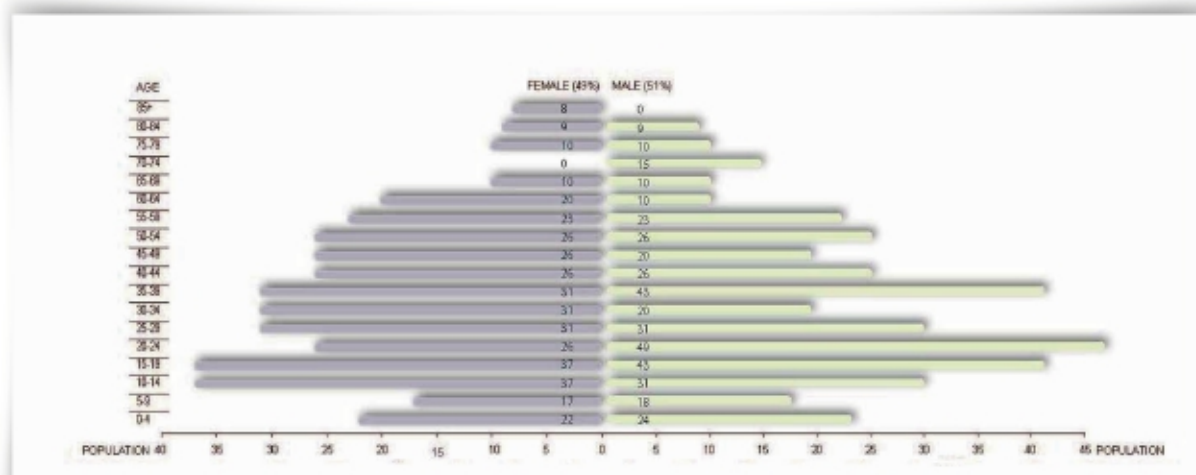
Population 2006



Population 2011



Population 2016





TSAWOUT'S VISIONS, GOALS & OBJECTIVES

VISIONS, GOALS & OBJECTIVES

When asked to identify things that make Tsawout a good place to live, most people spoke of the community's beautiful location by the water, the culture and SENĆOŦEN language, and family ties as Tsawout's strongest assets. On the other hand, the community identified issues of substance abuse, lack of respect and unity, lack of employment opportunities, and lack of care around homes as barriers to making Tsawout a better place to live. Because of these challenges, the most frequently expressed desire is for improved health in the community, in particular the elimination of drug and alcohol abuse, especially amongst youth. Increased housing and use or knowledge of the SENĆOŦEN language was also repeatedly mentioned.

14



OTHER COMMON RESPONSES

- Greater availability of recreational services and programs for youth and elders.
- A greater sense of pride in the community or better care of the land and homes.
- Greater availability of housing/land to address overcrowding issues.

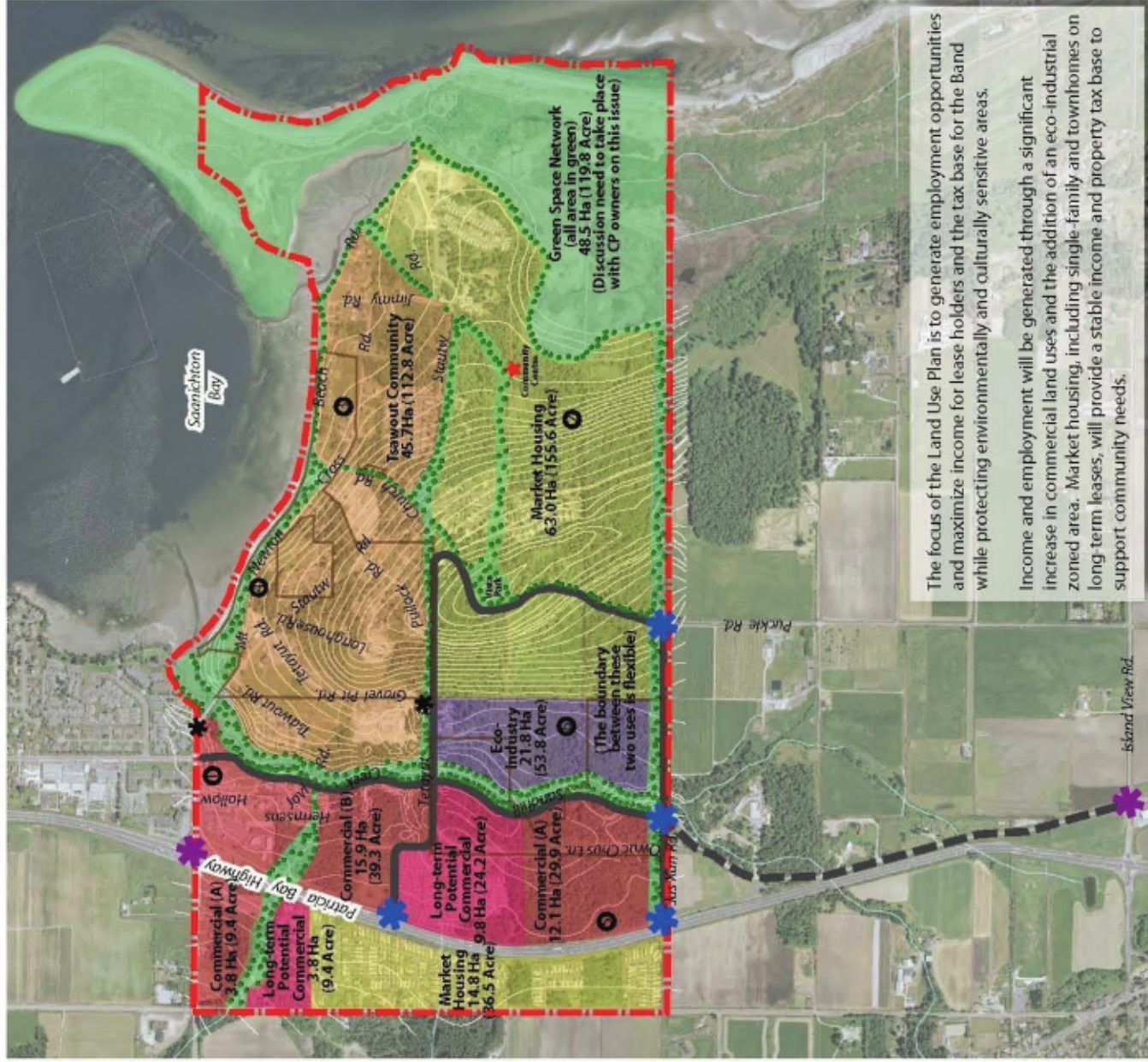


Tsawout IR#2 Preferred Land Use Map

LEGEND

	Ha	Acre	% of Total
Tsawout Community	49.0	122.5	20.6%
Market Housing	78.5	196.3	32.9%
Commercial	30.3	75.8	12.7%
(A) Large Scale	14.9	37.3	6.3%
(B) Small Scale	15.4	38.5	6.5%
Potential Long Term Commercial	13.1	32.8	5.5%
Eco-Industry	14.5	36.3	6.1%
Green Space	53.0	132.5	22.2%
Total	238.4	596.2	100%

Controlled Vehicular Access	★	Community Centre	★
Improved Access	✱	Study Area	✱
Existing Access	✱		
Proposed New Road	—		
Existing Route	—		
Band Land	□		



The focus of the Land Use Plan is to generate employment opportunities and maximize income for lease holders and the tax base for the Band while protecting environmentally and culturally sensitive areas.

Income and employment will be generated through a significant increase in commercial land uses and the addition of an eco-industrial zoned area. Market housing, including single-family and townhomes on long-term leases, will provide a stable income and property tax base to support community needs.

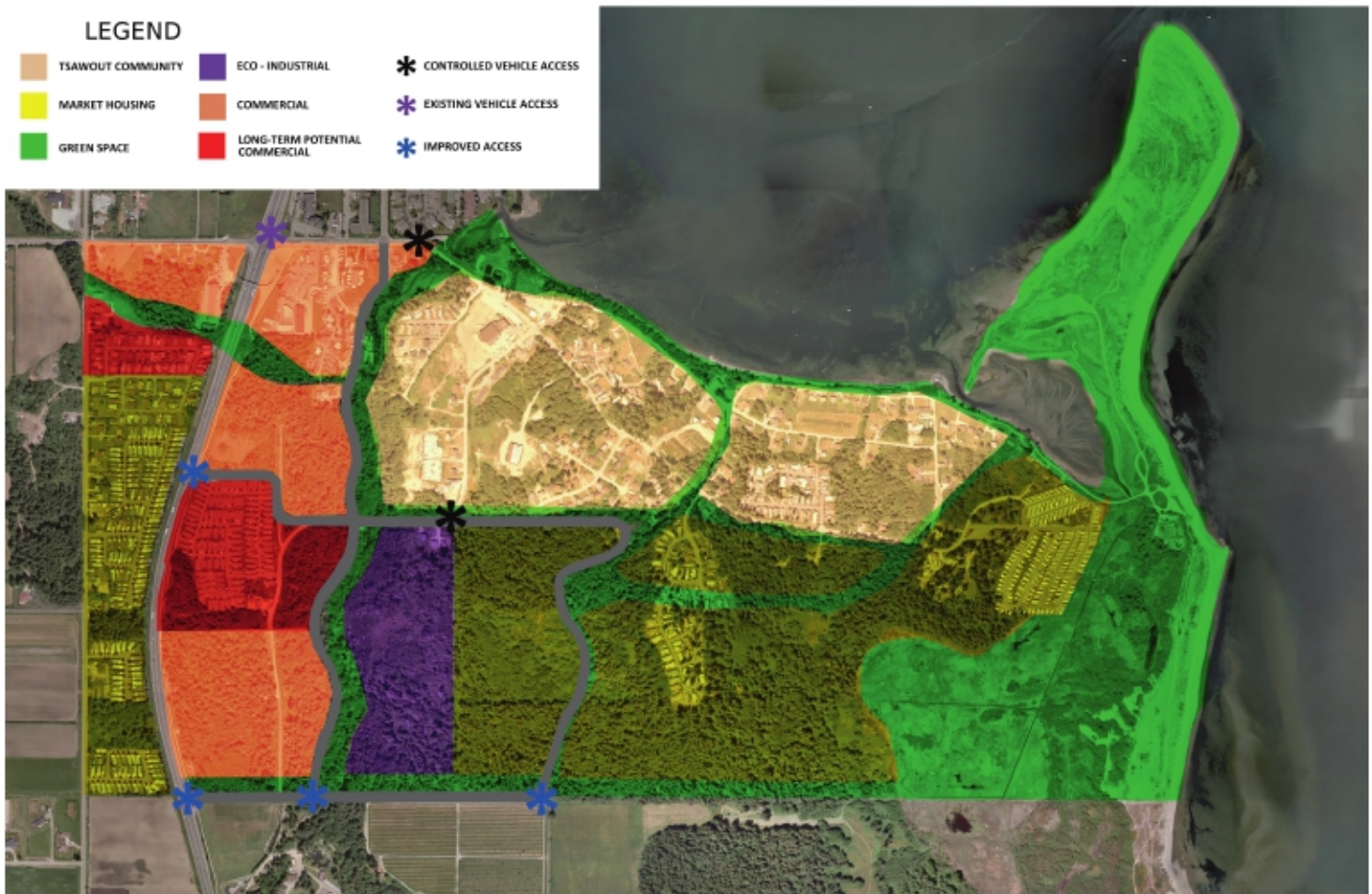
TSAWOUT'S LAND USE PLAN

The plan was developed under the following assumptions:

- Land use changes may occur once current leases have expired or terminations successfully negotiated;
- Improved access to Pat Bay Highway and within the reserve is achieved;
- Completion or build-out will take decades; and
- Boundaries of each land use designation, as depicted in the Land Use Map (Figure 3-10), are intended to be flexible and can be adjusted as the community sees fit.

LEGEND

 TSAWOUT COMMUNITY	 ECO - INDUSTRIAL	 CONTROLLED VEHICLE ACCESS
 MARKET HOUSING	 COMMERCIAL	 EXISTING VEHICLE ACCESS
 GREEN SPACE	 LONG-TERM POTENTIAL COMMERCIAL	 IMPROVED ACCESS



16

The Tsawout Land Use Plan was created based on community input and aims to achieve the community's vision and objectives by:

Creating job opportunities on reserve for members by designating a large area of land for commercial and eco-industrial development. Commercial development is focused along Pat Bay Highway for the best access and exposure.





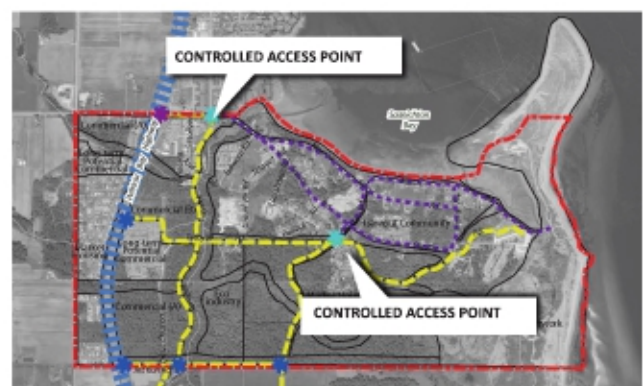
Protecting environmentally and culturally sensitive areas including Tixen Spit, Tetayut Creek, Brackish Meadow/Salt area, and shoreline. This will include providing for more green space through a network of trails and open spaces throughout the plan area.

Locating the heart of the community along the waterfront within the Tsawout Village.



Maximizing income for the Band and landowners through tax and lease revenue from commercial, eco-industrial and high quality market housing development.

Protecting access to and circulation within the Tsawout Village from outside traffic (including on-reserve mobile home traffic) by creating restriction points around the Village and alternate points of access.





18

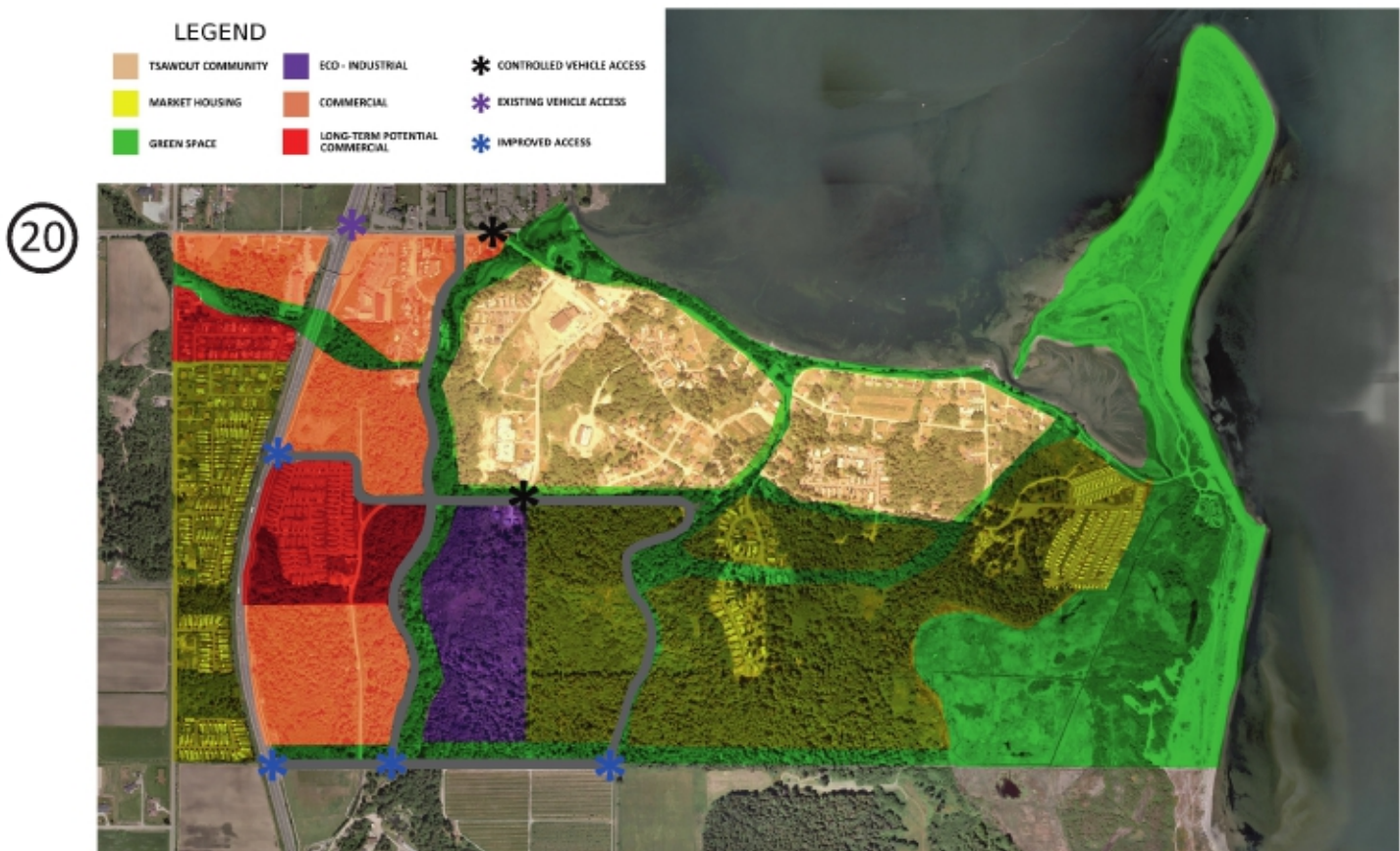


PHYSICAL DEVELOPMENT ISSUES & POLICIES

A NEW APPROACH

This chapter discusses community issues related to the physical development of the reserve and creates policies that help define how lands and buildings should be developed.

By accepting the CCP, Tsawout is accepting a new cooperative process which puts the community's well-being at the forefront of all development efforts, while retaining CP holder rights.



The Tsawout CCP Land Use Map has been designed to make the best use of development opportunities on the reserve and accomplish various community goals. However, several important issues and concerns need to be resolved before the community can move forward with the plan. This relies upon the willingness of families and community members to work together to resolve conflicts and let go of historical tensions.

TSAWOUT VILLAGE

Tsawout Village is to remain the heart of the community, where members (on and off reserve) will feel safe and at home, sufficiently housed, and can participate in a variety of community activities. It is a mixed land-use area with both housing and community amenities.



OBJECTIVE

To designate the waterfront area of IR No.2 for new homes, services, as well as community and recreational facilities for the benefit of Tsawout members.

POLICY HIGHLIGHTS

- Encourage a range of housing types, ie townhouses, duplexes, and single family homes.
- Consider homes using green standards and technologies, such as solar panels.
- Create park space with interconnected trails throughout the Tsawout village.



COMMERCIAL DISTRICT

The location of Tsawout East Saanich IR No. 2 along the Pat Bay Highway presents great potential for commercial development to transform Tsawout into a prosperous community. By developing the areas outlined in the Land Use Plan for commercial development, Tsawout could meet several of the goals that were identified in the community survey.

OBJECTIVE

To realize the development potential that could be unlocked on the lands along to the Pat Bay Highway and to provide services and generate employment and prosperity for the community.



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POLICY HIGHLIGHTS

- Locate all commercial development along the Pat Bay Highway.
- Consider converting existing residential uses within the commercial district, in the long-term, to commercial uses.
- Protect local ecosystems (e.g. Tetayut Creek) through the establishment of riverbank setbacks or buffer landscaping.
- Encourage developers and businesses to employ Tsawout members during construction and operation.
- Consider designing the commercial development to reflect the traditions of the Saanich people.



ECO-INDUSTRIAL DISTRICT

Eco-Industrial parks are industrial parks where a group of businesses share operating costs, and exchange and recycle resources such as waste, water and energy. Eco-Industrial businesses aim to increase economic gains, while improving the environment. The eco-industrial park could provide the community with a source of well paying jobs, lease revenue and annual property taxation.

OBJECTIVE

To designate an area of Tsawout where clean, green industries can develop and create well paying jobs for Tsawout members.



POLICY HIGHLIGHTS

- Encourage the development of industries that can employ members of the Tsawout Community.
- Explore the creation of new forms of energy that can provide heat and hot water throughout the reserve.
- Encourage environmentally friendly industries.
- Ensure vehicle traffic is diverted away from residential areas.
- Create improved access to the Pat Bay Highway.

MARKET HOUSING DISTRICT

Tsawout's market housing has been primarily through the mobile home parks, which provide a monthly pad rent to the CP holder and property taxes to the community. This form of housing does not maximize tax revenues, however, the advantage of this housing type is that it is easily developed and affordable.

OBJECTIVE

To provide a range of quality housing that will create significant benefits for the Band and CP holders from property tax and lease revenue.

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Tsawout has an opportunity to provide greater revenues to the CP holder and higher taxation revenue to the membership through the use of higher quality modular housing, and allowing for higher densities. Denser and more compact housing also provides an environmental benefit by increasing green space. Setting land aside for parks and trails would help to increase the quality of life for the community.

POLICY HIGHLIGHTS

- Encourage a variety of housing types, sizes and styles.
- Preserve natural areas by grouping living spaces together.
- Require residential areas to include green space, trails and parks for residents.
- Ensure traffic is diverted away from the Tsawout Village.

ROADS & SERVICING

The provision of new roads, the upgrading of existing ones and the provision of community sewer systems plays a major role in the shaping of the community. The road system and pedestrian walkway system on Tsawout land will be developed in a manner which supports the use of public transportation and the safe movement of vehicles and pedestrians.



POLICY HIGHLIGHT

A development must demonstrate how it can be tied in with the current BC Transit system.

PESTICIDES

There are many negative impacts to a community with the use of pesticides. This includes but is not limited to, human health, both domestic and wild animal health, degradation of the soil, and contamination of the water courses which drain into the ocean.



POLICY

Until the Tsawout First Nation Pesticide law is completed, the standards and regulations as outlined in the Saanich, Pesticide Bylaw # 9054 applies to all Tsawout First Nation Lands. Discussion with the Lands Manager will be required on a case by case situation.



SOCIAL ISSUES & POLICIES

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To achieve the vision, the community also needs to look beyond physical development policies towards a broader set of community policies that can create positive changes in the community. This chapter includes policies relating to social concerns identified by the community, through community surveys and public meetings. The social issues are related to culture, employment, health and education, safety, and governance.

CULTURE

Establishment of the following cultural policies clearly shows the community's intention to enhance and preserve its traditions as a unified First Nation. This plan supports and encourages the passing of traditional knowledge from Elders to youth.

OBJECTIVE

To preserve and enhance the knowledge and practice of Tsawout culture, traditions, and values.



POLICY HIGHLIGHTS

- Consider a cultural centre where Tsawout heritage can be showcased and taught to all people. Locating the cultural centre within the commercial district can enhance its exposure to visitors and tourists.
- Develop programs where the SENĆOŦEN language and other Tsawout traditions, such as fishing and basket weaving, are taught to members of all ages. These programs should be offered locally and ensure that they are accessible to all members by being affordable and convenient.
- In the future, incorporation of SENĆOŦEN text in official community documents will be considered.
- Uphold traditional Tsawout festivals and celebrations and encourage attendance by all members.
- Develop policies/guidelines for developers to conduct a cultural impact analysis prior to all developments on the reserve.

EMPLOYMENT

Training opportunities can help community members become better qualified to fulfill job requirements. Several members have suggested that training and employment opportunities for Tsawout members are required as a part of development agreement negotiations. In other words, developers would be required to train and/or employ a certain number of Tsawout members during the construction and/or operation of their development on the reserve.

OBJECTIVE

To seek a wide range of employment, revenue and taxation opportunities that accommodates the needs and skills of the Tsawout community, including opportunities for youth and people with disabilities.

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POLICIES

- Create employment and training contracts, where appropriate, as part of development agreements for the construction and/or operation of businesses and developments on the reserve.
- Prioritize jobs within the Band for qualified Band members, where practical.
- Develop a 'central job database', such as a job bank, website or notice board, where members can easily access information on job openings and skills training opportunities.

HEALTH, SAFETY & EDUCATION

Matters of community health, safety and education are essential to achieving Tsawout's vision of being whole in the physical and emotional sense.

Many community members desire a healthy Tsawout First Nation with members living a healthy and active lifestyle, and eating nourishing foods. The biggest health concern in Tsawout that has been identified from the community survey is drug and alcohol abuse. Respondents noted the need to alleviate the situation by finding resources, and by providing opportunities for healthy activities within the reserve.

OBJECTIVE

To create a healthy, safe and well educated community where members of all ages can participate in all aspects of community life.



POLICY HIGHLIGHTS - HEALTH & SAFETY

Maintain and enhance recreation lands, facilities, and services for enjoyment by members of all ages. This can include sports fields, youth programs at the gymnasium and recreational activities for Elders.

Set medium and long-term targets to measure health levels and report on the progress every year .



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- Work with the Band's health administrators (e.g. Coordinator of Mental Health Services, Community Health Nurse) and/or other health authorities to continue making health programs and services better. More sources of funding from the public and private sectors and non-governmental organizations can be found and areas for staff training can be identified.
- Establish a strategic plan and terms of reference for the Community Safety Committee.
- Incorporate Crime Prevention Through Environmental Design (CPTED) principles/features throughout the community. This can be sidewalks, lighting in public areas, and landscaping to avoid hidden areas.
- Work with the RCMP and Central Saanich to address key concerns about policing within the reserve.

POLICY HIGHLIGHTS - EDUCATION

- Set medium and long-term targets to measure educational attainments/outcomes and report on the progress every year.
- Provide resources and notices of skills training opportunities for members on and off reserve. This can be included on the Band's website and through the community newsletter.
- Work with local area school boards where Tsawout youth attend.



- Incorporate First Nation (Saanich) history and traditions, such as the SENĆOŦEN language, into school curricula.
- Decrease school drop-out rates.
- Create a mentorship program with community role models to mentor youth. This can enhance and complement the education youth are receiving within their schools and is an opportunity for Elders/adult community members to teach the youth about Tsawout history, traditions and culture.

GOVERNANCE

Among many things, good governance builds trust within the community and is critical to achieving Tsawout's vision, as well as the sustainability of the community plan. Accountability and transparency, as a part of good governance, can help members feel that they are being treated fairly and empower them to take part in community decision-making.

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OBJECTIVE

To promote good governance and decision making in an open and transparent manner, while respecting aboriginal and treaty rights.

POLICY HIGHLIGHTS

Encourage Chief and Council, Committees, and each Administrative Department to regularly report to the members on their performance on a semi-annual or annual basis.

- Prevent development on lands that would negatively impact or interfere with Treaty Rights.
- Promote active, timely and regular flow of information to the community via email, website, newsletters, and other means of communication.
- Involve youth in community decision making; such as but not limited to creating a youth representative position(s) on Council and Committees or youth council.
- Develop community consultations for Council, Lands Advisory Committee, and the Lands Department for all matters concerning community well being.



INFRASTRUCTURE

INFRASTRUCTURE

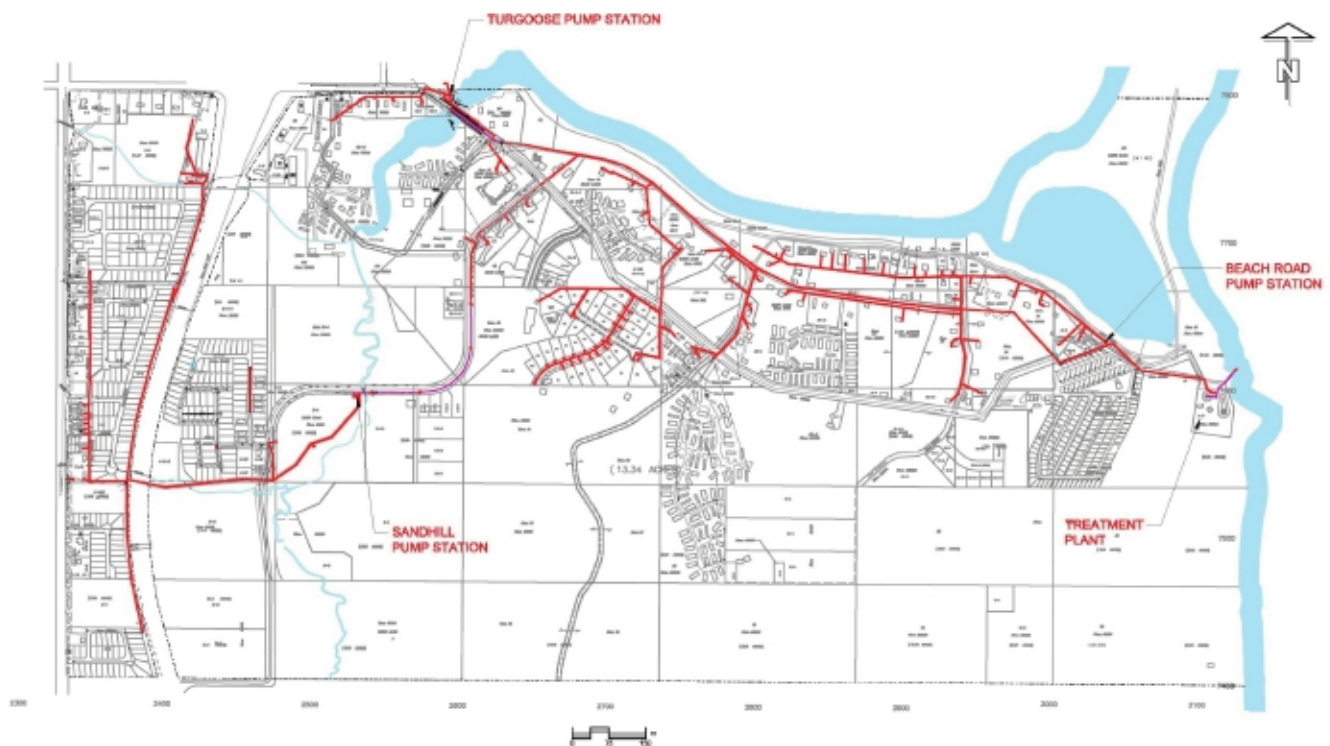
OBJECTIVE

To create and maintain a high standard of infrastructure.

POLICIES

- Create a subdivision servicing standards law to address infrastructure outside of the existing Sewer and Water lines. This new law could be used by Tsawout staff when reviewing development applications.
- Require developers to address all aspects of the servicing standards document before final approval is granted by Council.
- Apply infrastructure upgrades in a phased manner, to reduce the up-front expenditure.
- Conduct a Community Impact Analysis and obtain the necessary permits.

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ENVIRONMENTALLY SENSITIVE AREAS

ENVIRONMENTALLY SENSITIVE AREAS

The preservation and enhancement of existing streams, marshes, foreshore and adjacent waters, and delicate eco-systems on Tsawout is an important goal of the community. Many of these areas also contain significant cultural value as they are traditional sites for hunting and gathering food. At the same time, protection of environmentally sensitive areas (ESA's) on Tsawout will need to be carefully balanced and managed with development objectives. Development impacts on ESA's should be minimized, monitored and considered early in and throughout the planning/development process and as outlined in the Community Impact Analysis Policy.

A total of 53 hectares (132.5 acres) has been identified as green space on Tsawout, as outlined below.

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OBJECTIVE

To preserve and manage environmentally sensitive areas on Tsawout.

POLICIES

- Engage community members, especially youth, and local environmental groups to help identify and monitor environmentally sensitive areas.
- Designate a buffer zone, as shown on the Land Use Plan, for the protection of wetlands and riparian areas – a ‘no development’ zone.
- Require environmental impact assessments/studies prior to any development building next to environmentally sensitive areas, water lots and riparian protection zones.
- Preserve, enhance and protect natural features along the foreshore.
- Encourage the retention of natural vegetation along marine shores, and other sensitive areas.
- Create a “green network” of open spaces and pedestrian/cyclist friendly trails that connect them throughout the Reserve.







WHAT HAPPENS NEXT?

WHAT ARE OUR NEXT STEPS?

This chapter proposes a set of feasible strategies or tools to help implement “Our Vision for Tomorrow” and assist with completing the policies set out within the Comprehensive Community Plan. As with the CCP process, the success of the implementation strategies will rely on the involvement of community members as well as other stakeholders, and even more so, the willingness of members to work together in order to realize the greater good, which is the well-being of the larger community.

STEPS TO ACHIEVING THE PLAN

- Preparing Sub Area Plans
- Establishing an Economic Development Corporation
- Creating Training Programs
- Securing Highway Access Improvements
- Creating Development Control Tools
- Development Financing Tools
- Development Permit Areas
- Community Impact Assessments

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PREPARING SUB-AREA PLANS

Sub-area plans would give the community greater control in articulating the design, function, access and processes when developing specific areas on the reserve.

CREATING AN ECONOMIC DEVELOPMENT CORPORATION

To a reasonable extent, the community plan has focused on economic development opportunities and the generation of wealth for the Band and its members. An effective way of facilitating and accelerating these opportunities is through the establishment of an Economic Development Corporation (EDC) – a model sometimes used by other First Nations communities.

If developed, the EDC would not duplicate or replace the role of the Lands Advisory Committee or Lands Department, who would oversee and manage the development approval processes.

EDC ROLES

- Bring landowners and the Band together on issues of land acquisition, boundary disputes and access improvements.
- Meet with the development and real estate community or other stakeholders.
- Promote East Saanich Tsawout as an attractive place to invest.
- Help with negotiating costs and revenue sharing arrangements.

CREATING TRAINING PROGRAMS

Training programs can expand Tsawout members' employability skills and help them compete in today's economy. By working with developers to arrange training opportunities as a part of development agreements, the program can be targeted to the skills required for jobs on the reserve.



For skills targeted towards jobs outside of the reserve, the Band may choose to approach other agencies to provide training. The Band may also want to consult with its members and local employers to the skills needed for today's job market in order to provide the most meaningful and practical training.

SECURING HIGHWAY ACCESS IMPROVEMENTS

Access improvements to the Pat Bay Highway and within the Reserve are an essential pre-condition to accomplishing the plan. Maintaining a partnership with the Ministry of Transportation and Infrastructure and District of Central Saanich is vital to achieve these improvements, which can provide benefits for all parties in the long run.



CREATING DEVELOPMENT CONTROLS

Creating development controls will allow the Band to regulate development on the reserve in an organized and fair manner.

DEVELOPMENT CONTROLS INCLUDE:

1. Zoning Laws
2. Subdivision Servicing Standards
3. Phasing
4. Design Guidelines/Standards

DEVELOPING FINANCING TOOLS

Tsawout can use a variety of tools to collect or raise funds from developments which can fund the infrastructure associated with growth.

Financing tools include:

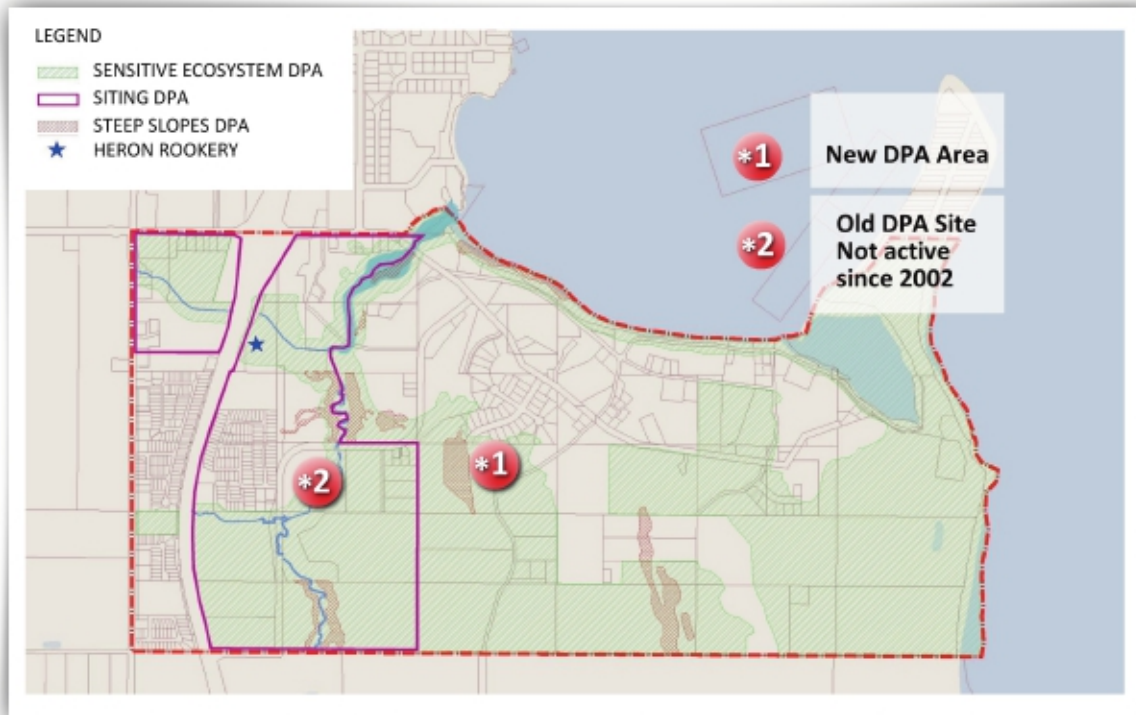
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1. **Development Cost Charges (DCCs)** – fees the Band can charge for the provision, construction, alteration or expansion of facilities related to: roads, sewage, water, drainage, parks and sidewalks.
 2. **Utilities** – fees the Band can charge to construct, operate and manage water, sewer and drainage infrastructure.
 3. **Developer Amenity Contributions** – monetary support the Band can ask from a developer for the preparation of 'soft infrastructure', such as community facilities, fire halls, social housing and other Band programs.
 4. **Property Taxation** – taxes the Band can charge to provide communal services to facilitate asset management requirements, such as water, sewer, buildings, trails/parks, roads, etc.



The Band should continue to actively pursue grant opportunities and other sources of government funding to support community needs and other possible sources of funding used elsewhere, such as Property Transfer Tax.

DEVELOPMENT PERMIT AREAS

A Development Permit is a planning tool for sites, buildings and structures that need special protection or development control. These permits must be approved by the Chief and Council and may require security to ensure that the conditions of the permit have been achieved. The authority to create development permits is contained within Section 6 of the Tsawout First Nation Land Code.



COMMUNITY IMPACT ASSESSMENTS

As outlined in the General Development Policy, if any development occurs, care must be taken to minimize the impact to the natural environment, the existing neighbours and the community. A community impact assessment may be required prior to the start of the development project. Refer to a copy of the Tsawout First Nation Community Impact Assessment policy and the Lands Manager to determine if an analysis is required.





MOVING FORWARD WITH THE PLAN

Use of CCP Workers to deliver the summary materials.	Copies of the summary delivered to each household. September 2011 - October 2011
Open Houses with a meal and a draw (minimum of two).	Discuss specific sections of the plan with the community.
Newsletter Updates	September 2011 - November 2011

QUESTIONS & ANSWERS

WHAT IS A COMPREHENSIVE PLAN?

To help better your understanding of this process you need to know that a Long-Range plan is different from Short-Range plan, also known also known as Strategic Plan.

A Comprehensive Plan is a guiding tool for our nation. This plan is a creation of our wants and needs through involvement of our membership and the governance of Tsawout. The vision statement outlined at the beginning of this document will be what the plan will try to accomplish for our future. The plan and future sub-plans reviews the geographical area of Tsawout East Saanich I.R. #2 (and in future - Fulford Harbour Reserve), and analyzes:

- Land Use
- Transportation/Traffic/Infrastructure Planning
- Environmentally Sensitive Areas or Park/Green Space
- Housing (Village housing/residential market housing developments)
- Public Facilities
- Social/Education Planning to incorporate band members future educational & training gaps and needs
- Economic Development (Development Corporation, Commercial, Eco-Industrial plans, etc.)

This process helps us create objectives, goals, needs, and policies for each area.

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WHY IS A COMPREHENSIVE PLAN IMPORTANT?

The Comprehensive Plan is important because it is a guide for the community, the band council, administration and interested parties looking to invest in Tsawout. The plan will create objectives, goals, and policies so that Tsawout can take the necessary steps to make sure that the community measures up to our vision for quality of life. The plan is a guide to help our community through growth and development as we move into the future.

OTHER PLANS AND PROJECTS?

In addition to this plan, Tsawout is working on a Strategic Plan, setting up an Education Department, a large commercial development, expansion of the Tsawout cemetery and the TIXEN Conservation Plan.

QUESTIONS & ANSWERS

HOW CAN THE BAND & LANDOWNERS USE THE PLAN?

The community plan, including the land use plan within it, is a tool that the Band can use for planning and controlling development on the reserve. The Band can help ensure that the development or uses are appropriate and meet the needs and wishes of the community. For instance, industrial area land uses are not to be built in the middle of a residential area. The plan can also be used to communicate the community's intention to developers, neighbouring municipalities, and the provincial or federal government.

COMPREHENSIVE PLAN VS STRATEGIC PLAN?

Comprehensive Plan = Long Range Plan

This is a broader plan for Tsawout and the geographical area of East Saanich I.R #2 and in the future, the Fulford Harbour reserve. It is a 15 to 20 year future look at all categories of planning that is of importance such as infrastructure, planning for roads, sewer and water utilities, land use, green space and recreation. This also involves stakeholders so that the Goals & Policies are created through the input of the community.

Strategic Plan = Short Range Plan

This is an in-detail plan of a sub-category from the Comprehensive Plan. The plan timeframe is short, unlike the Comprehensive Plan. It is a plan for the next few years instead of 10 years. This plan looks at one or a few planning projects and details how it will be accomplished.

HOW WILL THE PLAN TARGET YOUTH AND INFANTS?

This CCP allows the current leadership and the community to plan for the future of Tsawout. As the youth and infants are the future of Tsawout, this plan has been made to address their concerns. This CCP enables Tsawout to plan for future development and considers all aspects of Tsawout community life.

GLOSSARY

Certificate of Possession (CP)

Evidence of an individual Band member's rights to possess a particular portion of land on Tsawout.

Ecosystem

A natural system that consists of living things, their physical environment and their respective life cycle. An ecosystem is best described as a geographical area of various sizes where plants, animals, the physical landscape and the local climate can all interact collectively.

Community Impact Assessment

An analysis done to determine what impact, if any, a development application may have on the community. This includes any or all of the following:

- Roads
- Natural Environment
- Sewer and Water Lines
- Douglas Treaty Issues
- Community Services



NOTES:

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NOTES:



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