

# Cultural Heritage Resource (CHR) Applicable Laws & Regulations

Course Workbook



 **FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**

 **Training, Mentorship &  
Professional Development**

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## CHR Applicable Laws and Regulations

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### Welcome

This courselet will introduce Cultural Heritage Resource (CHR) applicable laws, regulations and overbodies for:

- Framework Agreement on First Nation Land Management ([Framework Agreement](#))
- First Nation (FN) Land Code ([LC](#))
- First Nation Land Management Act ([FNLMA](#))
- Federal legislation
- Provincial legislation

This courselet:

Discusses how the location of CHR on different types of FN land holdings will determine the type of legislation and regulation that governs it

Introduces the topic of Intellectual Property Rights (IPR) legislation, which has very important implications for FN CHRs.

The material provided in this courselet is current to the date of the courselet. Thank you to the Landsm Advisory Board Resource Centre (LABRC) for aiding in the development of this courselet.

### Overview

It is important for Lands Governance Directors (LGD) to have a basic understanding of the various types of legislation that affects the FN's CHRs. A LGD will have to determine how CHRs are currently dealt with on First Nation I and so that they may identify the legislative and management gaps that may exist.

A FN's CHRs may be found in their treaty area if they are a treaty nation, in their traditional territory or on their reserve lands. CHRs may be located on any type of land, including Federal Reserve lands, National Parks, airports, military bases, fee-simple, privately owned, Provincial Parks and Protected Areas, Crown lands, Municipal owned, or other Provincial lands.

The location Of CHR on these different types of land holdings will determine the type of legislation and regulation that governs it. This courselet will introduce the following legislative over bodies:

- Framework Agreement and FN LCs
- First Nation Land Management Act
- Federal
- Provincial

## **Framework Agreement & CHRs**

### Introduction

Although there is no specific reference to CHRs in the [Framework Agreement](#), it provides for the ability of a FN to manage the reserve lands that are identified under a FN's LC, and specifically to manage the interests, rights and resources that belong to the land (Sections 2.1 and 2.2 of the Framework Agreement). The Framework Agreement (Section 5.3) also allows for a FN's LC to include provisions regarding any other matter respecting the management of First Nation Land.

Together these sections make it clear that culture and heritage sites, archaeological occurrences and other resources related to land and natural resource management are proper subjects for FN management and law-making in accordance with the Framework Agreement.

### Law Making

The primary way in which a FN will exercise its governance authority to manage the interests, rights and resources that belong to the land would be through law- making. This is addressed under Section 18.1 of the Framework Agreement, which states:

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 relations to First Nation land.

### Enforcement

With respect to FN laws enacted under a LC, the Framework Agreement says that a FN also has the ability to determine the type and level of enforcement that will occur under its LC and laws. There exists the power to:

- Establish offences that are punishable on summary conviction;
- Provide for fines, imprisonment, restitution, community service, and alternate means for achieving compliance, and
- Establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

### Dispute Resolution

Finally, dispute resolution processes need to be outlined or enabled in the FN LC and can be applied to the enforcement of any community laws, policies or regulations.

### Example: Importance of Incorporating FN CHR

The Elder MLA Isaac Shooyook of the Nunavut Legislative Assembly walked out in protest, during question period in protest of what he said was a lack of Inuit Traditional Knowledge (TK) in the government's practices and policies. Elder Shooyook is quoting as saying: "There is flowery language about incorporating traditional Inuit knowledge, yet many times the department [of culture and heritage] refuses to implement this knowledge". Recent discord in the Nunavut legislature suggests that

even governments representing large aboriginal populations find it difficult to be culturally sensitive to indigenous traditions.

See full article here: [Yahoo News](#) Picture Source: Yahoo News

## **First Nation Land Code and CHR**

### Introduction

A FN's LC reflects its priorities for land, environment and resource governance and management. In the various ratified LCs there are a number approaches to how CHRs are addressed.

### Culture and Traditions Clause

There is a general Culture and Traditions clause in a number of LCs which reflects the ability of the FN to ensure that all structures, organizations and procedures established by or under their LC will be operated or conducted in a manner that is in accordance with the FN's culture, traditions and customs. There is often another provision that relates to the ability of the FN to utilize their own language in the clarification of any LC provisions.

Picture source: [Canadian Encyclopaedia](#)



### Law Making Clause

Another common feature found in many LCs is the authority of Council to make Laws in relation to setting aside and regulating heritage land on their reserve lands. With law-making comes the necessity of Council to ensure that the appropriate means of community consultation is conducted in accordance with their LC prior to the enactment of the Law.

### Community Input Clause

Some LCs require community input to be received via a committee, and others require that community consultation is received at a Community Meeting of Members. There are some LCs that have a community approval requirement of a ratification vote for any proposed development on any site that has been designated as a heritage site under their Land Use Plan or to amend LC provisions that apply to cultural heritage sites.

### Example

The Sliammon FN in its LC provides for CHR as follows:

- In their declaration and preamble, speaks to their language, traditional system of governance, laws and ways, connection to the lands and resources, spiritual needs, and the value to protect its heritage, culture and traditions
- Identify their "cultural resources" to mean: an object, site or location of a traditional or cultural practice that is of historical, cultural or archaeological significance to the Sliammon FN
- Section 2.4 states: The structures, organizations, laws and procedures established by our under this Land Code shall be interpreted in accordance with the culture, traditions and customs of the Sliammon First Nation, unless otherwise provided
- Section 6.2 (a) enables their Council to make laws in relations to development, conservation, protection, management, use and possession of Sliammon Lands;
- Section 6.4 (e) enables their Council to make laws specifically related to archaeological assessment and protection of archaeological and Cultural Resources and (j) for setting aside and regulation of heritage sites
- Section 16.1 protects heritage sites by stipulating that no amendments may be made to a land use plan to develop or delete from the land use plan a heritage site designated under that plan unless the amendment receives prior approval by Ratification vote.

#### First Nations Land Management Act

The FNLMA is the Act that provides for the ratification of the Framework Agreement by Canada and brings the Framework Agreement into effect.

FNs become signatory to the Framework Agreement and then ratify that document through a vote.

## **Federal Legislation**

### Introduction

The federal government has enacted various laws that directly or indirectly affect FN CHRs. However, there is no comprehensive federal legislation regarding the ownership and control of CHRs on federal lands or the intangible heritage of FNs which creates a regulatory gap.

### Regulatory Gap

A regulatory gap is the absence of adequate laws (including regulations, monitoring, and enforcement systems) to govern an activity. A regulatory gap occurs on reserve lands where there is an absence of appropriate laws, applicable on reserve to govern complex land activities.

For example the provincial and territorial governments manage provincial and territorial lands and federal government manages federal lands, including Aboriginal lands. A regulatory gap creates uncertainty with respect to the protection and preservation of CHRs when land activity happens not only on reserve but off-reserve.

### Indian Act

The *Indian Act* offers very limited protection of some CHRs on-reserve lands. Section 91 of the *Indian Act* says that no person, may without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely, (a) an Indian grave house; (b) a carved grave pole; (c) a totem pole; (d) a carved house post; or (e) a rock embellished with paintings or carvings unless such objects are manufactured for sale by Indians.

In addition to Section 91, Section 92 prevents any officer or employee in the Department of Indian & Northern Affairs, any missionary engaged in mission work among Indians, or any school teacher on a reserve from trading for profit with an Indian or the direct or indirect selling of goods or chattels without a licence from the Minister. It goes on to state that no such license will be issued to a full-time officer or employee in the Department. So in other words any person working on behalf of the government or church is prohibited from possessing, selling, or purchasing any property found on-reserve lands without the permission from the Minister via a license.

### Department of Heritage

The [Department of Heritage](#) is responsible for policies and delivering programs that help all Canadians participate in their shared cultural and civic life. The primary activity of the Department of Canadian Heritage is to provide funding to communities and other organizations that promote culture, identity, the arts, heritage, official languages, citizenship and sport. This includes Aboriginal initiatives.

### Other Federal Bodies

Other federal bodies such as [Parks Canada](#) and [Transport Canada](#) have specific rules governing research and archaeological exploration on lands that they control or projects that they are providing funding to. These policies contain rules for permits and reports similar to those found in provincial and territorial legislation.

## **Federal Acts Affecting FN CHRs**

### Introduction

The Department of Justice maintains a website that contains all of the federal acts and regulations. Click on the link to go to their website: [Justice Canada](#)

Click on a federal Act listed in the menu on the left. These federal Acts are some of the Canadian legislation affecting FN's CHRs.

### Select an Act

#### Access to Information

[Access to Information Act R.S.C. 1985 c A-1](#). The purpose of this Act is to extend the present laws of Canada that provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

Canada's Access to information Act may affect an Aboriginal groups requests for confidentiality. For example, if a FN requests confidentiality on their TK, an environmental assessment (EA) practitioner will have to determine if the information can be protected given the provision of the Act. Click [here](#) for more information on this example.

#### Canada National Marine Conservation Areas Act

[Canada National Marine Conservation Areas Act](#) sc 2002, c 18

An Act respecting the national marine conservation areas of Canada. Preamble and s8(3) the government may establish facilities to "conduct scientific research and carry out studies based on traditional ecological knowledge, including traditional aboriginal ecological knowledge, in relation to marine conservation areas."

#### Canada National Parks Act

[Canada National Parks Act](#), S.C. 2000, c. 32,

This Act is regarding the national parks and national park reserves of Canada. Parks Canada is mandated to designate and maintain national parks. See ss. 16, 17, 32, 33 and 42 of this Act.

#### Canadian Multiculturalism Act

[Canadian Multiculturalism Act](#) R.s.c. 1985 (4th Supp.), c. 24, s. 3(1). There are a number of objectives under this Act.

They are to:

a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;

- b) recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future;
- c) promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to that participation;
- d) recognize the existence of communities whose members share a common origin and their historic contribution to Canadian society, and enhance their development;
- e) ensure that all individuals receive equal treatment and equal protection under the law, while respecting and valuing their diversity;
- f) encourage and assist the social, cultural, economic and political institutions of Canada to be both respectful and inclusive of Canada's multicultural character;
- g) promote the understanding and creativity that arise from the interaction between individuals and communities of different origins;
- h) foster the recognition and appreciation of the diverse cultures of Canadian society and promote the reflection and the evolving expressions of those cultures;
- i) preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada; and
- j) advance multiculturalism throughout Canada in harmony with the national commitment to the official languages of Canada.

#### CEAA

[Canadian Environmental Assessment Act](#) 2012 (CEAA) (S.C. 2012, c. 19, s. 52).

An Act to establish a federal EA process. Traditional knowledge and other types of community knowledge are considered in the assessment of proposed projects. S 247 requires the review officer to be knowledgeable about traditional aboriginal ecological knowledge.

#### CEPA

[Canadian Environmental Protection Act](#) (CEPA) 1999 (S.C. 1999, c. 33). An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development. Preamble recognizes the role of traditional aboriginal knowledge, in the process of making decisions relating to the protection of the environment and human health. S2(1)(i) relates to applying traditional aboriginal knowledge to identify and resolve environmental problems.

#### Copyright Act

[Copyright Act](#) R.S.C. 1985, C. C-42, 32.

An act respecting copyright in Canada. The Act defines the various things that may be protected under this law, who owns the copyright works, how the copyright materials may be managed, handled, rented, produced etc. and what constitutes an infringement. This Act refers to individual ownership (e.g. to stories, masks, crests, songs) not collective FN ownership.

#### Cultural Property Export and Import Act

[Cultural Property Export and Import Act](#), R.S.C. 1985, c. C-51. An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states.

#### Customs Act

[Customs Act](#) R.s.c. 1985, c. supp.). An Act respecting Customs. This applies to goods being brought into Canada or being exported from Canada.

#### Customs Tariff

[Customs Tariff](#) R.S.C. 1997, c. 36 An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof.

#### Department of Canadian Heritage Act

[Department of Canadian Heritage Act](#), S.C. 1995, c. 1 1, s.4. An Act to establish the Department of Canadian Heritage and to amend and repeal certain other Acts. General duties are related to Canadian identity and values, cultural development and heritage.

#### FNLMA

[First Nations Land Management Act](#), S.C. 1999, c. 24, s. 31

An Act providing for the ratification and the bringing into effect of the Framework Agreement. The Framework Agreement gives a FN the power to create a land management regime for their reserve lands and enables a FN to enact laws respecting interests, rights, and licenses in First Nation Land, and the development, conservation, protection, management, use and possession of First Nation Land.

#### Historic Sites & Monuments Act

[Historic Sites and Monuments Act](#), R.S.C. 1985, C. H-4 An Act to establish the Historic Sites and Monuments Board of Canada. The Board may receive and consider recommendations respecting the marking or commemoration of historic places, the establishment of historic museums and the administration, preservation and maintenance of historic places and historic museums, and shall advise the Minister in carrying out his powers under this Act.

#### Indian Act

[Indian Act](#), R.S.C. 1985, c. 1-5, s. 91 An Act respecting Indians. If a FN is signatory to the Framework Agreement and is in the [developmental phase](#) then the Act still applies to them. The Act offers very limited protection of some CHRs on-reserve lands.

#### Industrial Design Act

[Industrial Design Act](#), R.s.c. 1985, c. 1-9. An act respecting industrial design. In this Act "industrial design" means features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye.

The [Industrial Design](#) Act protects creators from unlawful imitation of their designs in order to encourage creativity and investment in the aesthetic features of manufactured articles. It applies whether these articles are made by hand, tool or machine.

#### Library & Archives of Canada Act

[Library and Archives of Canada Act](#), 2004, c. 11. An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

[Aboriginal documentary heritage](#) is found in the holdings of Library and Archives Canada.

#### Migratory Birds Convention Act

[Migratory Birds Convention Act](#), 1994 (S.C. 1994, c. 22). An Act to implement a Convention for the protection of migratory birds in Canada and the United States. Article II in regards to the long term conservation of migratory birds shall be managed in accordance with the use of aboriginal and indigenous knowledge, institutions and practices

#### Museums Act

[Museums Act](#) R.S.C. 1990, c. C-3, ss. 3, 5, and 9. An Act respecting museums. Under Section 9 the Capacity and powers for the Canadian Museum of History outlines its rights and powers such as to collect, sell destroy objects of historical or cultural interest and other museum material. The museum is working with aboriginal communities and individuals to resolve issues concerning [repatriation](#).

#### Oceans Act

[Oceans Act](#) (S.C. 1996, c. 31). An Act respecting the oceans of Canada. S42(j) Minister may "(j) conduct studies to obtain traditional ecological knowledge for the purpose of understanding oceans and their living resources and ecosystems.

#### Parks Canada Agency Act

[Parks Canada Agency Act](#), S.C. 1998, c. 31. An Act to establish the Parks Canada Agency and to amend other Acts as a consequence. In the Act's Preamble it states whereas it is in the national interest (e) to

commemorate places, people and events of national historic significance, including Canada's rich and ongoing aboriginal traditions.

#### Patent Act

[Patent Act](#), R.S.C. 1985, c. P-4. An Act respecting patents of invention. Inventions are any new or useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

#### Species at Risk Act

[Species at Risk Act](#) (S.C. 2002, c. 29) preamble; s 10.2(c), s 14, s 15 (2), S18

An act respecting the protection of wildlife species at risk in Canada. The roles of the aboriginal peoples of Canada and of wildlife management boards established under land claims agreements in the conservation of wildlife in Canada are essential. The traditional knowledge of the aboriginal peoples of Canada should be considered in the assessment of which species may be at risk and in developing and implementing recover measures. A Stewardship action plan must include methods of sharing information about species at risk, including community and aboriginal traditional knowledge. An Aboriginal Traditional Knowledge sub- committee must be established.

#### Status of the Artist Act

[Status of the Artist Act](#), S.C. 1992, c. 22, ss. 2 and 3

An Act respecting the status of the artist and professional relations between artists and producers in Canada.

#### Trade-marks Act

[Trade-marks Act](#), R.s.c. 1985, c. T-13

An Act relating to trade-marks and unfair competition. A trade-mark is a mark that is used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others.

#### Yukon Act

[Yukon Act](#), (S.C. 2002, c. 7)

An Act to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement and to repeal and make amendments to other Acts.

## **Other Relevant Acts and FN CHRs**

### Introduction

Modern treaties, Self-Government and land claim ratification statutes/agreements may contain negotiated culture and heritage provisions applicable to the individual FNs who are party to those agreements. The following are examples of such Acts.

#### An Act to give effect to Westbank Nation Self Government Agreement

[An Act to give effect to the Westbank First Nation Self Government Agreement](#) 2004, c. 17)

See Westbank First Nation Self-government agreement.

#### Cree-Naskapi (of Quebec) Act

[Cree-Naskapi \(of Quebec\) Act](#), S.C. 1984, c. 18, art. 21

The band government role is to promote and preserve the culture, values and traditions of the people. They have the power to make by-laws (e.g. "cultural activities").

[Gwich'in Land Claim Settlement Act](#), S.C. 1992, c. 53, s. 4

In this Act "protected area" means all areas and locations of land set apart and protected by government in the settlement area including historic parks and sites, national wild life areas, migratory bird sanctuaries, territorial parks, conservation areas and archaeological sites but does not include national parks. A protection area agreement may include protection of Gwich'in religious, cultural and historic sites. This act has a heritage resources (see clause 25).

[Maanulth First Nations Final Agreement Act](#), S.C. 2009, c. 18

[Nisga'a Final Agreement Act](#), S.C. 2000, c. 7

[Nunavut Land Claims Agreement Act](#), 1993, c. 29

Is an act ratifying an Agreement between the Inuit of the Nunavut Settlement Area and Canada. The [Agreement](#) deals with such matters as harvesting rights, heritage resources and archaeology.

[Tsawwassen First Nation Final Agreement Act](#), S.C. 2008, c. 32

#### Westbank First Nation Self Government Agreement

This Agreement gives Westbank the authority to make laws in relation to culture and language on Westbank First Nation (WFN) Lands but does not include law- making authority over IP. WFN and Canadian Museum of Civilization can negotiate protocols regarding WFN cultural material and ancestral hum remains.

[Yukon First Nations Land Claims Settlement Act](#), S.C. 1994, c. 34

[Yukon First Nations Self-Government Act, S.C.](#) 1994, c.35

## **Provincial Legislation**

### Introduction

Even though each province has a different structure to manage their CHR, the purpose of their legislation is consistent throughout, which is to promote the management and protection of CHRs. The legislation defines which CHRs are protected and outlines the required practices to how they are handled, managed and stored.

### CHR and Authority of the Province

In general, CHR that are found within the boundary of a province are under the authority of that province. This does not include reserve lands or other federal lands, where the provincial legislation does not apply. This means that the CHR in a FN's traditional territory are being managed by the province

### Provincial Gaps in FN CHR Protection

One of the most significant challenges that exist in regards to CHR is that the provincial legislation does not go far enough to include all of the resources that a FN may want to be protected. For example, FN sacred sites are not identified as an eligible resource recognized under the British Columbia (BC) [Heritage Conservation Act](#) for protection designation. This gap has resulted in conflicts between FNs and the Province and/or developers. There are provisions for a FN to negotiate an agreement to receive protection designation.

## **Examples of Provincial Legislation and FN CHR**

### Introduction

There are many examples of how provincial legislation does not recognize a FN CHR within provincial territories.

The following examples shows not only the conflict, but also some other issues that may arise due to the existing gap between provincial legislation and what CHR FNs recognize within their traditional lands.

### Bear Mountain Resort Development

One conflict arose in the events surrounding the Bear Mountain Resort development. This mountain is known to the local Coast Salish people as Spaet and is a sacred site.

Spaet, located within the proposed Bear Mountain Resort development, was a cave (karst system) that was of great environmental, cultural and spiritual significance to some local FNs. Some wanted the significance of the cave and its special ecosystem to be recognized and thus protected as an archaeological site under the BC *Heritage Conservation Act*.

Caves and sacred sites are not considered to have specific archaeological significance by the provincial authority and thus are not eligible for recognition under the Act. This refusal of the province to recognize the significance and importance of these sacred sites may contribute to conflicts between the proponents of a proposed development and the opposing FNs.

In this case, had there existed a mechanism for an agreement to be reached that recognized the spiritual sacredness of the site, much of the conflict and opposition to the development could have been avoided.

Picture: Spaet Mountain

Picture Source: [FNs Land Rights and Environmentalism in BC](#)



### Katzie First Nation

Another criticism of some provincial legislation is that when heritage resources are discovered by development activity, they aren't always reported. Reporting can represent delays to completion schedules and/or extra costs to complete archaeological assessment reports. In some cases the fines for the failure to report are considered minimal and just another cost to developers.

The [Katzie FN](#) have had to deal with development of a new road that will destroy a recently discovered Katzie heritage site. Due to construction schedule archaeologists have only been able to recover about 3% of the 91,000 square metre site's artifacts. It is believed that the road could have avoided the ancient site altogether but the political will simply wasn't there.

### Treaty 8

Treaty 8 FNs have dealt with the BC Heritage Conservation Act's significant challenges in regards to CHRs with a "[Heritage Conservation MOU](#)" which highlights:

- The importance of protection and conservation of their CHR during development projects and resource extraction
- The opportunity for the Treaty 8 FNs to provide valuable recommendations that the government must address when deciding on the permits for resource development

## Provincial Key Legislation

The below list of provinces/territories has key legislation that may apply to FN CHRs. Click next to see the Acts that apply to each province/territory. If any of the links are no longer active or "dead" when you click on an Act then enter the name of the Act into a search engine such as Google and you will be able to find a copy of it online.

- [British Columbia](#)
- [Alberta](#)
- [Saskatchewan](#)
- [Manitoba](#)
- [Ontario](#)
- [Quebec](#)
- [New Brunswick](#)
- [Nova Scotia](#)
- [Newfoundland/Labrador](#)
- [Nunavut](#)
- [Northwest Territories and Yukon](#)

### British Columbia

- [Heritage Conservation Act](#)
- [First peoples' Heritage, Language and Culture Act](#)
- [Museum Act](#)
- [Freedom Of Information and Protection Of Privacy Act](#)
- [Limitation Act](#)
- [Document Disposal Act](#)
- [Muskwa-kecchika Management Area Act](#)
- [Nisga'a Final Agreement Act](#)
- [Tsawwassen First Nation Final Agreement Act](#)
- [Maa-Nulth First Nations Final Agreement Act](#)

### Alberta

- [Historical Resources Act](#)
- [Cemeteries Act](#)
- [First Nations Sacred Ceremonial Objects Repatriation Act](#) and;
- [Blackfoot First Nations Sacred Ceremonial Objects Repatriation Regulation](#)
- [Foreign Cultural Property Immunity Act](#)
- [Personal/ Information and Protection Act](#)
- [Provincial Parks Act](#)
- [Glenbow-Alberta Institute Act](#)
- [Limitations Act](#)

### Saskatchewan

- [The Heritage Property Act](#)
- [Archives Act and Public Records Management Act](#)
- [Forest Resources Management Act](#)
- [Limitation Act](#)
- [The Freedom of Information and Protection of Privacy Act](#)
- [The Multiculturalism Act](#)
- [The Parks Act](#)
- [The Wanuskewin Heritage Park Act](#)
- [The Western Development Museum Act](#)

#### Manitoba

- [The Heritage Resources Act](#)
- [Heritage Manitoba Act](#)
- [Manitoba Habitat Heritage Act](#)
- [Foreign Cultural Objects Immunity From Seizure Act](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Provincial Parks Act](#)
- [Archives and Recordkeeping Act](#)
- [Limitations of Actions Act](#)

#### Ontario

- [Ontario Heritage Act](#)
- [Archives and Recordkeeping Act](#)
- [Funeral Burial and Cremation Services Act](#)
- [Foreign Cultural Objects from Immunity from Seizure Act](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Limitations Act](#)
- [Ministry of Citizenship and Culture Act](#)
- [Smoke Free Ontario Act](#)

#### Quebec

- [Cultural Heritage Act](#)
- [Archives Act](#)
- [An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information](#)
- [An Act Respecting Fabriques](#)
- [An Act Respecting the Cree Nation Government](#)
- [Code of Civil Procedure](#)
- [Sustainable Forest Development Act](#)
- [The Education Act for Cree Inuit and Naskapi Native Persons](#)

#### New Brunswick

- [Heritage Conservation Act](#)

- [Limitation of Actions Act](#)
- [Archives Act](#)
- [National Parks Act](#)
- [New Brunswick Museum Act](#)
- [Right to Information and Protection of Privacy Act](#)

#### Nova Scotia

- [Heritage Property Act](#)
- [Special Places Protection Act](#)

#### Prince Edward Island

- [Heritage Places Protection Act](#)
- [Ancient Burial Grounds Act](#)
- [Archaeology Act](#)
- [Archives and Records Act](#)
- [Charlottetown Area Municipalities Act](#)
- [City of Summerside Act](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Museum Act](#)

#### Newfoundland / Labrador

- [Historic Resources Act](#)
- [Archives Act](#)
- [Access to Information and Protection of Privacy Act](#)
- [Arts Council Act](#)
- [Limitations Act](#)
- [Municipalities Act](#)
- [Provincial Parks Act](#)

#### Nunavut

- [Northwest Territories Historical Resources Act](#)
- [Archaeological and Paleontological/ Sites Regulations](#)

#### Northwest Territories & Yukon

- [Northwest Territories Historical Resources Act](#)
- [Yukon Historic Resources Act](#)
- [Archaeological Sites Act](#)
- [Archaeological Sites Regulation](#)
- [Archives Act](#)
- [Access to Information and Protection of Privacy Act](#)
- [Limitation of Actions Act](#)
- [Scientists Act](#)

- [Territorial Parks Act](#)
- [Languages Act](#)

## **Who owns the CHR and the Law that Applies?**

### Land Claims

The question of who owns the CHRs and the law that applies to them is fact specific. Some modern land claims declare exclusive or joint title to archaeological resources discovered in lands that the treaty covers.

### Nunatsiavut

Any archaeological material found on land outside of the Labrador Inuit land is jointly vested in the Nunatsiavut Government and the Province.

### **British Columbia**

Similarly, various British Columbia land claim agreements provide that the ownership of artifacts found in the Aboriginal owned lands will rest with the FN unless another person establishes ownership.

### **Yukon/Northwest Territories**

In the Yukon, the Yukon FNs own the artifacts on their settlement lands. In the Northwest Territories, the Tlicho land claim agreement provides that Tlicho artifacts are the cultural patrimony of the Tlicho FN. The Tlicho Government is, by treaty, the custodian of heritage resources on Tlicho lands and shall notify government when a heritage resource, other than a Tlicho heritage resource, is found on Tlicho lands (an area of about 39,000 square kilometers).

### Section 35

FNs in Ontario, for example, are seeking Sec. 35 Constitution Act, 1982, Aboriginal rights declaration and protection for cultural heritage sites off reserve:

- Rights to protect burial and cultural sites from disturbance;
- Easement rights ensuring access to burial and cultural sites, for the purpose of ceremonies and cultural activities;
- Property rights in the cultural materials and human remains extracted from archaeological sites;
- Rights to have artifacts currently held in the possession of archaeologists or museums repatriated to FN communities

### Court Cases

Proof of an Aboriginal right was enunciated in Van Der Peet's "a practice, custom or tradition integral to the distinctive culture of Aboriginal people test." The court in *Hiawatha First Nation v Ontario (Minister of Environment)* is instructive on the courts adjudication of a burial ground and the Williams Treaty.

Seven FNs brought a claim to (among other claims) to protect a burial site that may be developed. The court positively found, after Aboriginal expert evidence, that the burial sites were of a primordial and cultural importance to the Anishnaabeg people and met the "integral to a distinctive culture test". However, in interpreting the Williams Treaty, the court found that the FNs surrendered those rights in a

"basket clause" where all rights, including burial rights were surrendered. This may not be the case in other Treaty areas in Canada.

To date, an Aboriginal right to access and protect burial grounds and other cultural heritage sites have not been recognized by Canadian courts. In fact, there may be a myriad of statutory requirements in one area and none in another area where CHRs may be found. However, the Aboriginal right to access and protect burial grounds and other cultural heritage sites may be rightly found to be Sec. 35 The *Constitution Act, 1982*, protected rights.

## **Intellectual Property**

### Introduction

FNs in Canada have since time immemorial been creators of TK in the forms of artwork, ecological knowledge, songs, stories etc. FNs are the custodians of their collective TK and have passed it on from generation to generation.

FNs have been struggling, within the existing Canadian IPRs legal regime, with how to protect and preserve their TK from:

- Misappropriation: Plagiarism and fraudulent use of the TK.
- Theft: Taking TK without express and freely granted permission
- Misuse: Using TK in a way contrary to the expressed FN community's views resulting in directly violating the intent and value of the knowledge and misleading interpretations

Therefore, the subject of IPRs is an important one for FNs.

### Framework Agreement/LC

Although the Framework Agreement recognizes no jurisdiction to enact laws regarding Intellectual Property (IP), the issue arises when collecting, storing, and using TK. Is using the current Canadian IPR laws to protect TK a viable option for FNs? There still exists the glaring difference between FN peoples' view of collective ownership of TK and the principles underlying Western legal institutions which consist of individual ownership, especially in regards to IP.

Is utilizing the governance powers under a FN LC of developing a FN's own CHR regime the way to go, or is the answer using both systems? This decision will be unique to each FN.

### Canada's IPR Law

Canada's Constitution empowers the federal government to make laws regarding copyrights, patents and, to some extent, trade- marks and other IPRs. Those federal laws profoundly impact matters of provincial jurisdiction, like education, healthcare, consumer protection, property and civil rights.

IP is governed both by provincial and federal jurisdiction, although most legislation and judicial activity occur at the federal level. Under the Constitution Act, 1867, patent and copyright laws are the exclusive jurisdiction of the Federal Government of Canada. While trademarks and industrial design are not specifically mentioned by the Constitution Act, the federal government has enacted legislation governing both. Canadian courts have upheld these pieces of legislation as being properly under the federal government's control.

These Canadian IPR laws and western legal system and concepts (individual ownership) often conflict with FN's collective rights.

### Definition

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.

### Types of IPR

The challenge for FNs in protecting their TK is identifying which IP law in Canada fulfills that need. This exploration may identify the need for additional Canadian legislation or the need for a FN with a LC to develop its own IP Regime.

There are different types of IPRs that protect the owner/inventor from unauthorized use by other people, but they apply to different creations and aspects of human creativity. Since people sometimes confuse the different forms of IP we will take a look at the following different types of IPRs:

- Patent
- Copyright
- Trade-marks
- Trade secrets
- Industrial Design

### **Patent**

In Canada's [Patent Act](#), to receive a [patent](#) inventors must meet the criteria of novelty, utility and inventive ingenuity. Thus patents are granted for novel and non-obvious inventions. Patents are the exclusive rights granted to an inventor in return for the public release of an invention or know-how. It protects new technological products and processes. A government grant giving the right to exclude others from making, using or selling an invention.

### Duration

Patent protection lasts for up to 20 years from the filing date. The patent application is available to the public 18 months after filing. Fees must be paid to maintain patent protection over the 20- year term. If they are not paid, the patent holder's rights lapse and the invention falls into the public domain. A patent gives the inventor the exclusive right to make, use or sell an invention for up to 20 years. This includes the right to exclude others from making, using or selling the invention.

### FN USE

Patents have been little used by FN communities in Canada. The benefit of patent rights is that they are recognized and enforceable, but the cost of obtaining and maintaining them is high. As a consequence, the preference has been to use trade secrecy rather than patents to protect inventions.

There is considerable uncertainty as to how patent law applies to TK. If a FN community files a patent for an invention derived from TK, questions may arise as to whether the criteria of novelty, inventive ingenuity and utility can be met.

Questions relating to public disclosure may also be raised when TK has been previously shared widely within a FN community, but not with outsiders.

### OWNERSHIP

Patents are granted to the first inventor to file an application in Canada. This means that even if a scientist or engineer can prove that they were the first to conceive the invention, the patent would go to a competing inventor who filed first.

Therefore, a patent application should be filed as soon as possible when a new product or invention is developed.

### **Copyright**

In Canada's [Copyright Act](#), copyright provides protection for original literary, artistic, dramatic or musical works (including computer programs), when they are expressed or fixed in a material form and three other subject matters known as: performance, sound recording, and communication signal.

Its purpose is to give [copyright](#) holders rights which they can sell, while promoting creativity and the orderly exchange of ideas. Creators may legally transfer their rights to another person or to a corporation in which case that party owns the copyright.

### DURATION

In Canada copyright protection usually lasts the entirety of the owners life plus 50 years. Once this period ends, the work becomes part of the public domain and can be used without permission or payment although there are some exceptions (e.g. photographs).

FN's may not want to use Copyright law because it does not allow a FN's legends and stories to be protected in perpetuity.

### OWNERSHIP

Copyright law gives the owners/creators the exclusive right to produce or reproduce its work or permit anyone else to. The owner controls how their work is copied and made available to the public. It prohibits others from copying the work without permission.

### **Trademarks**

In Canada's [Trade-marks Act](#), a trademark must be new and distinctive and used in the marketplace or intended for such use in the near future. A trade-mark can be one or more words, symbols or designs that are used along or in combination to distinguish the services/wares of one person or organization from those of others in the market place.

## DURATION

Trade-marks hold the longest term in Canada. They can be registered for 15 years and they can be held in perpetuity as long as they continue in use and are renewed every 15 years (which can be maintained by paying a renewal fee every 15 years). However the rule is to use it or lose it.

## OWNERSHIP

A trade-marks right is acquired through use or through an application to register a proposed mark. If someone creates a registrable mark but does not use it, they will not be allowed to retain ownership if another party adopts a similar mark and gives it wide, exposure.

Ownership of a trade- mark can be established through common law simply through use if the mark is not registered. Individuals, trade unions, organizations, companies, and partnerships all have the right to register marks of identification for their services or wares.

## FIRST NATION USE

Some FNs have used the "official mark" from Section 9 of the Trade- mark Act, to protect FN traditional symbols. It is a special kind of mark that prohibits the adoption, in connection with a business, of any badge, crest, emblem or mark" which has been used by any "public authority". FN groups have been granted the status of " public authority" under the Canadian Trade-marks Act and are able to prevent the registration of well-known FN designs and works by non-FN people.

For example the Snuneymuxw FN used the Trade-marks Act to protect ancient rock paintings (petroglyphs). They have requested that businesses and artists refrain from using the images. Registration also gives the FN the right to commence action against any party which reproduces the images without their permission.

For more information on the official mark protecting Aboriginal marks click on: [Boughton Law article](#)

## **Trade Secret**

### TRADE SECRET

In Canada, [trade secret](#) is addressed in the [Security of Information Act](#). In this Law trade secret means any information, including a formula, pattern, compilation, program, method, technique, process, negotiation position or strategy or any information contained or embodied in a product, device or mechanism where there must be some element of secrecy.

Matters of public or general knowledge in an industry cannot be the subject-matter of a trade secret. Its main purpose is to protect trade secrets and confidential information from public disclosure and unauthorized use (e.g. information about a product or process kept secret from competitors).

### DURATION

There is no fixed term for trade secrecy protection. Holders of trade secrets will continue to enjoy a competitive advantage until the knowledge becomes public, is outdated or is reverse engineered by competitors. Therefore, the length of trade secret protection can be long in some cases, and short in others.

## OWNERSHIP

The owner of trade secrets needs to document their creation and use, as well as the measures taken to keep them confidential.

## FN USE

FNs have considered using the trade secret legislation to protect certain types of TK and keep their legends a secret. It may be possible that TK can be protected in the same way as trade secrets; this protection likely applies only to secrets that have commercial value. It may be harder to use trade secrecy laws and practices to protect sacred TK from being misappropriated. It is also unclear how Canadian courts will view customary practices governing TK in FN communities when cases based on trade secrecy laws are involved, because there have been few court rulings anywhere in the world related to this issue.

Instead some FNs in Canada chose to sign confidentiality agreements with governments and non-Aboriginal businesses when sharing their TK (e.g. plants, medicines) instead of relying on Canadian trade secret law. Business partners and legal advisors are bound by these agreements not to disclose TK or unjustly gain from their access to it. Contracts may also be used to control the use of FN TK in data bases and access to this data.

## **INDUSTRIAL DESIGN**

Canada's [Industrial Design Act](#) protects the visual features of original shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.

In Canada the Industrial Designs Act protects the creator from unlawful imitation of their designs in order to encourage creativity and investment in the aesthetic features of manufactured articles.

## DURATION

Industrial designs receive the shortest term of protection in Canada which is 10 years, if a maintenance fee is paid before the first 5 years have passed. Once this time period is over, anyone can make use, rent or sell the design

## FIRST NATION USE

Some FNs find the Industrial Design Act's short duration (10 year period) and limited scope of IP protection (after 10 years non-aboriginal producers would be able to market identical designs) may be at odds with the goals of FN wanting to protect their TK from misappropriation.

## OWNERSHIP

Only the proprietor of a design may apply to have it registered for industrial design protection. The owner of a design will receive a certificate of registration to prove ownership and originality of a design giving the owner exclusive right to import, make or trade any article which incorporates the registered industrial design.

## **IPR Laws Incompatible with FNs TK**

### Introduction

Canada's IPR Regime is often incompatible with and can be detrimental to FN communities, although, they may be useful in some cases. As identified in the types of IPR slides we can see the uncertainty as to whether IPR law can address the collective nature of FN's TK. The value of using existing IP regimes is that the law is established, and can be enforced throughout Canada.

### INCOMPATIBILITY ISSUES

Some of the challenges and incompatibility issues with Canadian IP laws are:

- Protects the individual's property not the collective property rights of a FN
- Component based (protect individual inventions within a western knowledge system) and FN's TK is holistic (represents entire paradigms)
- Is a profit based proprietary system and the collective TK protection required by FNs is not usually part of an entrepreneurial system
- IPR are not perpetual, usually having a time frame (e.g. 20 years) and TK is perpetually owned by its FN community
- Required to be novel (new/original), whereas TK is old and has been passed down from generation to generation
- Its legal concepts have very specific requirements which do not meet TK IP requirements
- Protects only what is tangible (written/recorded intellectual ideas) and TK is usually intangible (oral and spiritual manifestations)
- Required to be innovative with full disclosure whereas FN's want their TK to be only disclosed on their communities terms
- Does not protect public domain knowledge and TK has been stolen and placed in public domain

### COST PROHIBITIVE

Even if a FN (if IP applies), goes through the process where they try to protect their IPRs, the prohibitive costs of registering and defending a patent or other IPR effectively limit its availability to the vast majority of FN communities.

### RESOURCES

For more information on Canadian IPR and FN TK:

Assembly of First Nations (AFN): [Aboriginal TK and IPR](#)

AFN: [Discussion Paper](#)

Indigenous & Northern Affairs Canada (INAC): [IP and Aboriginal Peoples](#)

## **Preserving – Protecting TK/IP on First Nation Lands**

### Introduction

Currently in Canada, there is no effective domestic legislation that clearly protects FN TK. Therefore it is left up to FN communities to ensure that the necessary measures and precautions are taken to protect their own TK.

However, there have been some cases where FNs have used Canadian IPR laws to protect their tradition-based creations.

### Misuse and Appropriation of FN IP

There is an immediate and direct need to protect, preserve and provide for the fair use of FN IP namely TK. One of the greatest areas of concern as it pertains to IPRs is that there has been great use of traditional information by non-aboriginals, such as corporations. One common example of misuse and appropriation of FN IP exists in the use of images and designs that are reproduced for profit without authorization, permission or compensation.

### Land Code

To ensure that FN's with a LC, protect and preserve their collective TK it is important that FN communities:

- Identify their IP
- Determine the best use of current Canadian IP systems
- Develop FN laws and new techniques that are more appropriate for protecting TK.

In the long term Canadian IP laws should be reformed and a separate legal regime within the IP system must be established in order to properly provide legal protection to TK. However, these new solutions, to this complex problem, are still a long way off. Therefore FN's with an enacted LC can work within their governance authorities to secure their TK.

### CHR Regime

It is important that a FN develop a CHR Regime that incorporates how to protect/preserve its IPR and identifies the appropriate law or tool to protect its FN culture and heritage. For example: Once such case is when a University study is funded by government resulting in copyright being given to those doing the study. As a consequence, FNs lose the ability to protect and have ownership of their own information

A FN should seek outside help such as IP consultants, IP lawyers, trademark or patent agents etc. when developing its IP regime. It is important that any informal guidelines be developed and supported by the community to ensure its effectiveness and the community follows them.

### CHR Mechanisms

Since we have identified that there are few legal mechanisms to help FN communities in protecting and preserving their collective TK and IPRs it is important that FNs with an enacted LC develop a CHR regime that has governance and management tools which:

- Identify what Canadian IPR laws exist, what types of IPRs exist and how they could protect a FN's

- Identify international law that protects FN's IP
- Identify what is sacred, what may be shared with others or used commercially
- Identify any gaps that exist in Canadian IPR law and how these gaps could be filled
- Identify how to manage, preserve and protect the FN's TK from misappropriation or being lost.

### Tools to Protect FN IPRs

Some of the governance and management mechanisms that can be used to preserve and protect your FN IPRs on First Nation Land are:

- LC (e.g. in which Council may [Tsawout LC](#) make laws in relations to First Nation Land including setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, spiritual sites and wildlife refuges)
- Laws (e.g. [Tsawout's Subdivision Development and Servicing Law's Schedule C](#)" General Requirements for Heritage Assessments on First Nation Land" policy's purpose is to maintain the integrity of STÅUTW history and heritage through the respectful treatment, protection, preservation, and management of STÅUTW heritage objects and sites on First Nation Land or FN enacting a TK protection law)
- Land Use Plan (LOP)/ Community Plans/Environmental Management Plan (e.g. [Lheidli T'enneh LUP](#) and [Tla'amin LUP](#) identifies traditional use areas and cultural heritage sites)
- Legal agreements and contracts (e.g. IP Agreements, Confidentiality Agreement which is designed to prevent the other party from using or disclosing the TK and EA contracts with a clause allowing the EA company to access TK but the FN retains control over FN's TK use and its IP)
- Guidelines/measures governing the use of its TK to prevent unwanted disclosure (e.g. on how a FN will share and protect their TK; ensure that 3rd parties secure proper and informed consent before FNs share their TK; the use of existing IP laws; the publication of TK, its use by others or the use of the community's symbols). For more information on TK guidelines see the [AFN Ethic Guide](#).

For more information on the examples used above and preservation of traditional information go to the "CHR: FN Traditional Information and Traditional Practices" courselet. For another example of how a FN LUP was used to protect TK and IP [click here](#).

### Example

Once example of the misuse and appropriation of a FN IP is the Cowichan sweater. The Cowichan FN of BC is famous for its Cowichan sweaters which are hand-knit from ancient designs. The yarn is hand dyed, using traditional colours. To protect its designs and techniques the band registered a certification mark that is used on all Cowichan sweaters and clothing products. When certification marks are used to indicate that goods/services meet a certain standard, the standard-setter owns the mark and provides licences to parties that meet the standard to use it. This mark helps consumers identify an authentic Cowichan product and protects the Cowichan products against imitation. The Cowichan Band Council has received a certification mark on the words and design for "Genuine Cowichan Approved" to protect articles of clothing such as sweaters

## **Intellectual Property Agreement**

### Introduction

FNs are hesitant to release their TK into the public domain because of concerns about confidentiality. FN people and communities will ultimately need to decide how best to protect their TK especially if a consultant needs to discuss, gather and record the FN's TK. Therefore, FNs are increasing their use of legal agreements and contracts that allow others to access TK while the FN retains control over its use. These agreements can be legally enforced through civil actions in the courts and can be an important part of a comprehensive solution.

### Protection is Key

As TK is increasingly being used in negotiations, development proposals and planning activities, it is important that measures are taken to ensure that IPRs are being protected. Just as the designs, songs and stories are sacred to FNs, so is the information regarding the relationship with the land and between living-things. A FN can protect its TK and IP and ensure that they remain the exclusive property of the FN by getting consultants, which may provide deliverables, to sign off on an IP agreement.

### IP Agreement

Prior to a community sharing any of its information with consultants or non-community members, the FN may want to enter into an agreement for the use of IP. This type of agreement is generally referred to as an Intellectual Property Agreement. The agreement would recognize the ownership of the information that is going to be utilized and should also describe how the information may be allowed to be used, who it may be shared with, and how it is stored.

### Questions to Ask

A FN may want to ask itself the following questions when developing an IP Agreement that protects their TK and IP:

- Who owns the IP?
- What are the rights and responsibilities of the party to the agreement?
- What the parties to the agreement can do with the TK and IP?
- How will the community and other parties be involved?
- How will the FN control and or limit how their TK will be used?

Any agreement should be prepared by an expert in contract and IP law.

## **International Initiatives to Protect TK**

### Introduction

There are many international frameworks which have worked on the protection of TK and the selected human rights instruments concerning protection of IP that belong to indigenous communities worldwide. It has only been recent that FNs have had to provide for the fair use of their IP and to enter into domestic and international debate on IPRs.

## Universal Declaration of Human Rights

Since the adoption of the [Universal Declaration of Human Rights](#) (UDHR) in 1948, IP has been considered a fundamental human right of all peoples. Article 27 of the UDHR provides that:

Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author

## United Nations Declaration on the Rights of Indigenous People

More recently the United Nations Declaration on the Rights of Indigenous Peoples (UNDRP) in 2007 describes both individual and collective rights of Indigenous peoples around the world. The UNDRIP addresses TK and IP in:

- Article 11 recognizes the Indigenous right to "maintain, protect and develop the past, present and future manifestations of their cultures."
- Article 24 asserts that Indigenous peoples have the right to their traditional medical knowledge.

### Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Canada initially opposed the UNDRIP, but in 2010 Canada signed the declaration. In 2016, Canada is promising to "implement" the declaration, but there is much speculation as to what that means (e.g. does Canada see this declaration as an aspiration document or a legal document).

## Resources

For further information:

[Centre for the Study of the Public Domain](#)

["Indigenous Knowledge system and IPR in the 21st Century" book review](#)

## Summary

### Introduction

CHRs are found on-reserve, in treaty areas or in a FN's traditional territory. Depending on their location, there are different types of legislative bodies that are responsible for the management and governance of CHRs. This courselet discussed how CHRs are referred to under the Framework Agreement and FN LCs, the FNLMA, Federal legislation and provincial legislation.

### Framework Agreement/Land Codes

Although neither the Framework Agreement nor the FNLMA make any specific reference to CHRs, the provisions that enable a FN to take over management and governance responsibilities for its reserve lands apply to CHRs located on-reserve.

Many of the LCs that currently exist include clauses which reflect the ability of the FN to ensure that all structures, organizations and procedures established by or under their LC will be conducted in a manner that is in accordance with their culture, traditions and customs. The law-making provisions of the LCs allow for a community to make laws in relation to setting aside and regulating heritage land on-reserve and respecting the development, conservation, protection, management, use and possession of First Nation Land.

### Federal/Provincial Legislation

There are many different types of federal legislation that apply to a FN's CHRs. Each province also has its own legislation for CHRs that are located within the provincial boundaries. Each province also has specific regulations and policies on how certain CHRs are handled, catalogued, disturbed, stored, preserved and/or protected. A LGD may want to familiarize themselves with the different types of legislation that impact their own community's CHRs.

### IPR Law

IPRs are defined in Canada 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. The types of IPRs that are discussed in this lesson are patents, copyrights, trade-marks, trade secrets and industrial designs. Although the Framework Agreement does not apply directly to IPRs, these rights are especially important with dealing with the collection, storing and use of FN TK. A LGD may therefore want to familiarize themselves with the subject so that they are being considered in activities, laws, policies, studies and research involving the use of traditional information and individual community member engagement.

FNs face the challenge:

- Of the unlicensed use by non- indigenous groups, such as corporations, of TK that has been developed over centuries
- That Canada IPR laws treat knowledge as private property whereas FNs TK is collective ownership

## Sources

1 Kleer, Nancy, "Recent Legal Developments on Consultation and Accommodation relating to Environmental and Archaeological Issues" (Paper delivered at The Canadian Institute, 6th Annual Forum on Aboriginal Law, Consultation and Accommodation, Toronto, Ontario, February 22-23, 2012), referencing the Labrador Inuit Land Claims Agreement, s 15 11 2.

2 R v Van derPeet, [1996] 2 SCR 507, 137 DLR (4th) 389.

3 Hiawatha First Nation v Ontario (Minister of Environment) 2007 CanLII 3485 (ON SCDC).

4 Ibid. The author notes that R v Howard [1994] 2 SCR 299, interpreted the 'basket clause' of the Williams Treaties and the court had evidence before it that the 1923 signatories understood the clause to be a broad release of Aboriginal Rights including those to burial grounds.

5 Section 35(1), Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), c 11.



## ACRONYM LIST

AFN	-	Assembly of First Nations
BC	-	British Columbia
CEAA	-	<i>Canadian Environmental Assessment Act</i>
CEPA	-	<i>Canadian Environmental Protection Act</i>
CHR	-	Cultural Heritage Resource
EA	-	Environmental Assessment
FN	-	First Nation
<i>FNLMA</i>	-	<i>First Nations Land Management Act</i>
<i>FRAMEWORK AGREEMENT -</i>		<i>Framework Agreement on First Nation Land Management</i>
INAC	-	Indigenous & Northern Affairs Canada
IP	-	Intellectual Property
IPR	-	Intellectual Property Rights
LABRC	-	Lands Advisory Board Resource Centre
LC	-	Land Code
LGD	-	Land Governance Director
LUP	-	Land Use Plan
TK	-	Traditional Knowledge
UDHR	-	Universal Declaration of Human Rights
UNDRP	-	United Nations Declaration on the Rights of Indigenous Peoples
WFN	-	Westbank First Nation



## GLOSSARY OF TERMS

### ARCHAEOLOGICAL ASSESSMENT REPORT

There are two (2) studies or reports which are generally generated in archaeological assessment processes: the archaeological overview assessment and the archaeological impact assessment as follows:

- An **archaeological overview assessment (AOA)** is a study that is conducted to identify the potential areas within a specific project area that would most likely contain archaeological sites or artifacts.
- An **archaeological impact assessment (AIA)** studies are initiated in response to development proposals which will potentially disturb or alter the landscape, thereby endangering archaeological sites

### ARCHAEOLOGICAL SITES

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.

### DEVELOPMENTAL

When referring to the *Framework Agreement* “developmental” means those First Nations who are signatories to the *Framework Agreement* and who are developing a Land Code, an Individual Agreement with Canada, and a community approval process to ratify the *Framework Agreement*, Land Code and Individual Agreement through a vote of the eligible voters.

### 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.

## **ENVIRONMENTAL MANAGEMENT PLAN**

An Environmental Management Plan defines a FN's approach to important environmental issues and organizes actions to achieve specified environmental goals.

## **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 RIGHTS (IPR)**

Intellectual property 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. 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.

## **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.

## **LANDS ADVISORY BOARD RESOURCE CENTRE**

Under the *Framework Agreement*, the First Nations have established a LABRC to assist the First Nations in implementing their own land management regimes. The LABRC is the technical body intended to support First Nations in the developmental and operational phases implementing the *Framework Agreement*

The LABRC’s functions are:

- Developing model land codes, laws and land management systems
- Developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations



- 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 -assisting a verifier when requested by the verifier
- Establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code
- 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
- Proposing regulations for First Nation land registration

## OPERATIONAL

When referring to the *Framework Agreement* “operational” means a First Nation which has ratified its Land Code and the Land Code is in **force**.

## 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. 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.



## **TRADITIONAL INFORMATION**

Traditional information is comprised of a number of types of information such as: traditional knowledge; traditional ecological knowledge; and, traditional land use.

## **TRADITIONAL KNOWLEDGE**

Traditional knowledge is information that is passed down from generation to generation and is considered to be a collective entity, similar to the traditional territory. Some of the general types of information that comprises traditional knowledge are the beliefs, practices, arts, and spirituality of a First Nation. A First Nation may have its own definition of Traditional Knowledge that is largely reliant on how the information is collected and how it is going to be shared or used.

**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 (form erly known as "LHEIT-LIT'EN"), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK C REE, 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 C REE, 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 t<sup>2</sup>ugt<sup>x</sup>g 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 a 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 valablement 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.

la première nation dûment approuvé par elle.

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

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

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

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

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

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

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

8.7 A verifier will not deal with disputes over funding.

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

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.

8.8 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 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.

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. CONDUCT OF COMMUNITY VOTE

## 9. TENUE DU SCRUTIN

9.1 Once the verifier confirms that the

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<sup>e</sup> 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 régler, régir ou interdire le zonage, l'aménagement, l'utilisation, le lotissement ou la mise en valeur des terres;
- b) pour créer et régler 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 possédera 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<sup>er</sup> 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.

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<sup>er</sup> 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<sup>(a)</sup>

### 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<sup>(b)</sup>
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



## 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.



## **SUMMARY OF THE FIRST NATION LAND MANAGEMENT ACT BILL C-49**

**“An Act providing for the ratification and bringing into effect of the *Framework Agreement on First Nation Land Management*”**

### **Introduction**

The *First Nation Land Management Act (FNLMA)* was required under the *Framework Agreement on First Nation Land Management (Framework Agreement)* for two purposes:

1. to ratify the *Framework Agreement*, and
2. 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 *FNLMA* is intended to be consistent with the *Framework Agreement* and to apply to the First Nations (FN) that are signatories to the *Framework Agreement* (set out in the schedule to the *FNLMA*). The *FNLMA* was previously introduced in Parliament on December 10, 1996, but the federal election that year prevented it from being enacted. The Bill was reintroduced as Bill C-49 in June of 1998. It was finally enacted and given royal assent on June 7, 1999.

### **Ratification**

The *Framework Agreement* is the document that sets out the terms and conditions under which a FN can establish its own land management regime and remove its reserve lands from the Minister's control under the *Indian Act*. However, the *Framework Agreement* cannot come into force until it is ratified by both Canada and two FNs. Three FNs have already ratified the *Framework Agreement*, and Canada has fulfilled its obligation by enacting the *FNLMA*.



**Lheidli T'enneh**

**Reserve Land Use Plan  
2005**

# Acknowledgments

The *Lheidli T'enneh Land Use Plan* is the result of a combination of efforts that should be acknowledged. First of all, the Elders of Lheidli T'enneh have provided a great deal of education and patience, enabling staff to learn about the land through both stories and studies, combining oral history with recall of survey issues and feasibility studies. Their guidance with respect to land and culture is the basis of this Plan.

The community of Lheidli T'enneh has also been very involved, providing recommendations for issues that need to be included in the *Lheidli T'enneh Land Use Plan* as well as feedback on community mapping, mail-outs, and general information sharing. This feedback helped us make each session better than the last. Added to this feedback, the community input sessions with the Youth Treaty Council opened our eyes to the unlimited possibilities for the future development of Lheidli T'enneh reserve lands and helped us remember that planning is the legacy for the future generations.

Lheidli T'enneh staff have also been very supportive and in some cases integral to the completion of the *Lheidli T'enneh Land Use Plan*. For their efforts the Treaty Office, (Ron Seymour, Vanessa West, Mike Bozoki, Marvin George & Teresa Dolman) Chris Thomas and most especially Gord Haines should be recognized and thanked. The Director of Treaty Policy and Research, Rick Krehbiel has provided a great deal of input to educate staff and ensure that this Plan is accurate in references to internal and external land management laws. Regina Toth, the Band's Land Manager has been a key player in bringing the Band to the forefront of the First Nations Land Management process. Lheidli T'enneh is one of the original 14 signatory Bands to sign the Framework Agreement and many of the operational Bands across Canada look to Lheidli T'enneh as a model for community consultation, planning and management because of her efforts.

Finally, the Lands Authority and its subcommittee the Land Use Planning Committee (LUPC) has provided a great deal of direction for the *Lheidli T'enneh Land Use Plan* content, framework and outcomes. Their direction and participation has made the *Lheidli T'enneh Land Use Plan* a successful participatory planning exercise. Ideally, participatory planning projects rely on the community to oversee the process and provide direction and education to the planner, but all too often the end result is a document that may or may not incorporate the voice of the community. Their knowledge and assistance throughout the process, especially in communication and facilitation with the community is invaluable and we are truly appreciative of their efforts. The current Land Use Planning Committee is comprised of the Lands Authority members Violet Bozoki, Kenora Stewart, Melody Buzas, Lyle Pius, Lenora White, and community representatives Ron Seymour, Frank Frederick Sr., Counselor David Baker and Shirley Gustason.

Doocha,

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# Executive Summary

The Lheidli T'enneh Land Use Plan (LUP) provides future land use and development direction for the existing Lheidli T'enneh reserves. These reserves include Ts'un'k'ut (Fort George Cemetery), Khast'an Lhughel (Shelley), Lhezbaonichek (Clesbaoneecheck) and Dzulhyazchun Tsalakoh (Salaquo) totaling 685.6 hectares (ha) or 1,695 acres (ac).

## BACKGROUND

This Land Use Plan has been prepared as a joint project between the Lands Authority and the Lheidli T'enneh Treaty Office. To assist in the preparation of the Plan, the Lands Authority formed a Land Use Planning Committee (LUPC) consisting of the 5 elected Lands Authority members as well as 4 additional community members. The LUPC has provided direction to staff with respect to traditional and cultural knowledge, community mapping sessions, issues identification, plan content, draft plan review and has served as a valuable resource throughout this project.

The Elders' Committee has contributed Carrier names and provided important cultural/heritage background information to ensure this Plan includes traditional use considerations when future land use decisions are made.

## LEGAL BASIS OF THE PLAN

The Lheidli T'enneh LUP has been prepared under the provisions of the Lheidli T'enneh Band Land Code. The Land Code provides the legal authority for the Band to plan, develop, conserve and manage their lands.

The final Plan must be approved by a vote open to all adult Lheidli T'enneh Band Members to become Lheidli T'enneh Law.

## COMMUNITY MAPPING

In order to obtain as much community input as possible 11 community mapping sessions and 3 information meetings were held with various Band committees and Community members between August 2004 and January 2005. These community mapping sessions provided Members with the opportunity to "see and touch" Lheidli reserve maps, share their thoughts on land use choices and indicate what land uses and developments they want for these lands in future. As part of this process Members also identified traditional use areas that may require further investigation/identification and protection to avoid future land use conflicts.

## COMMUNITY AND YOUTH LAND USE PRIORITIES

To summarize Members' input obtained at the community mapping sessions two maps were prepared for each reserve. These maps "paint a picture" of overall community and youth land use priorities. The Community Land Use Priorities included community input on one map. Youth

input was summarized on a separate map in order to recognize youth land use priorities separately.

These maps generally indicate Members wish to retain traditional uses as an important part of the reserves while providing for additional housing, recreation opportunities, community facilities and services for existing and future residents.

## **LAND USE DESIGNATIONS**

The Community and Youth Land Use Priorities Maps are the basis for the Land Use Designations for each reserve.

These Land Use Designations consist of the following:

- Traditional Use Area**
- Cultural Heritage Site**
- Community Development Area**
- Community Development Expansion Area**
- Natural Resource Development Area**
- Environmentally Sensitive Area**

Section 5 presents the Land Use Designations used throughout this plan and indicates what land uses and developments are permitted within each Land Use Designation. For example, housing is permitted in the Community Development Area but not in an Environmentally Sensitive Area.

The Land Use Designations are shown for each reserve on attached Map #14 through Map #17. These maps indicate what land uses can be developed in various areas on each reserve and provide the overall framework for the Lands Authority and land administrators to make land use decisions when development proposals are made.

## **IR#1A TS'UNK'UT**

This reserve consists of 0.9 ha (2.3 ac) and is located within the present boundaries of the City of Prince George's Fort George Park near the confluence of the Nechako and Fraser Rivers. The cemetery has primarily cultural/heritage value as the historical burial ground for Lheidli T'enneh Members.

### **Objective**

#### **Cemetery as a significant cultural heritage site for the Lheidli T'enneh First Nation.**

This reserve is proposed as a Cultural Heritage Site under the Land Code for continued use as a cemetery and to celebrate Lheidli cultural, history and traditions at the confluence of the Fraser and Nechako Rivers.

For IR#1A there are no Community or Youth Land Use Priorities Maps since this entire reserve will be a cultural heritage site. See Map #14 for the land use designations for IR #1A.

## **IR# 2 KHAŠT'AN LHUGHEL**

North and South Khašt'an Lhughel (Shelley) consist of 533 ha (1,318 ac) located **approximately 22 km** upstream from the confluence of the Fraser and Nechako Rivers. This reserve contains the primary community settlement area for Band Members with 36 homes.

### **Objective**

**Khašt'an Lhughel (Shelley) as a sustainable community with a variety of employment and housing opportunities together with education, social and recreation programs.**

This reserve is the primary Community Development Area and Community Development Expansion Area for Lheidli T'enneh. This reserve is proposed to provide existing and future Members with expanded housing opportunities and community facilities. See Map #15 for the land use designations for Khašt'an Lhughel (Shelley).

## **IR#3 LHEZBAONICHEK**

Lhezbaonichek (Clesbaoneecheck) is 124 ha (306 ac) and located on the Nechako River approximately 20 kilometres upstream from the confluence of the Nechako and Fraser Rivers.

### **Objective**

**Traditional Use with Community Development Expansion Area along North Nechako Road.**

This reserve may have potential as an alternate location for residential and related development in future dependent upon resolution of off site road upgrades and extension of power to this area. See Map #16 for the land use designations for Lhezbaonichek (Clesbaoneecheck).

## **IR# 4 DZULHYAZCHUN TSALAKOH**

Dzulhyazchun Tsalakoh (Salaquo) is 37 ha (91 ac) and located at the confluence of the Chilako and Nechako Rivers approximately 14 km upstream from Lhezbaonichek (Clesbaoneecheck).

### **Objective**

**Traditional Use with small-scale water based tourist facility adjacent to Nechako River.**

Due to significant development constraints (lack of legal/physical access, CNR main line, topography), this reserve is proposed for primarily traditional uses. This reserve does not have any future development potential with the exception of small-scale tourist facilities to support water-based tourism along the Nechako River. See Map #17 for the land use designations for Dzulhyazchun Tsalakoh (Salaquo).

## **PLAN IMPLEMENTATION**

This Plan will become Law based upon:

- Lands Authority recommendation to the Band Council under Section 24 of the Land Code;
- Members' approval by vote under Section 12 and 14 of the Land Code;
- Band Council enactment to bring the Plan into law.

This Plan will guide the Lands Authority and Council with respect to:

- Land use decision making on reserve lands;
- Preparation of a zoning law with detailed regulations and provisions with respect to issuance of permits and approvals for specific developments;
- Preparation of capital and operational plans with respect to development on reserve lands, and;
- Delivery of programs and services within existing and new community facilities on reserve lands.

# Section 1 - Introduction To The Plan

The *Lheidli T'enneh Land Use Plan* is a community-driven project that combines the land use and development priorities of the Membership with best planning practices in order to create an overall land use plan that guides the management of Lheidli T'enneh's land base. Essentially, the Land Use Plan (LUP) may be thought of as a tool that provides the community and administration with the information of what development can occur where.

Since the Band is in the final stage of Treaty negotiations and the probability of incorporating new settlement lands into the land base in the near future is very real, the *Lheidli T'enneh Land Use Plan* has been split into two phases. The first phase deals with the existing Lheidli T'enneh reserve parcels and the second phase with Treaty Settlement Lands.

This document is the first phase of the *Lheidli T'enneh Land Use Plan* focusing on Lheidli T'enneh's four existing reserve lands.<sup>1</sup> These four reserves and their approximate land area are presented below in Table 1 (see also Map #1 for the location of each reserve and proximity to the City of Prince George).

**Table 1 – Lheidli T'enneh Reserve Lands**

Reserve Number	Reserve Name	Area in Hectares (ha)
IR #1A	<b>Ts'unk'ut - Fort George Cemetery IR #1A</b>	1.0 ha
IR #2	<b>Khast'an Lhughel - North and South Shelley IR #2</b>	524.5 ha
IR #3	<b>Lhezbaonichek – Clesbaoneecheck IR #3</b>	123.0 ha
IR #4	<b>Dzulhyazchun Tsalakoh – Salaquo IR #4</b>	37.1 ha
<b>Total Area</b>		<b>685.6 ha</b>

## OUTLINE OF THE PLAN

Although the main goal of the *Lheidli T'enneh Land Use Plan* is to provide a land use and development plan, it was decided by community and staff that the secondary focus of the LUP is accessibility. In other words the *Lheidli T'enneh Land Use Plan* should be understandable to each person that reads it. The way in which we approached this is through education, by providing the reader with a brief understanding of the cultural, historical and legislative developments that have impacted the land use and land management practices of Lheidli T'enneh.

Owing to the educational aspect of the Plan, Sections 2 through 4 provide a detailed background to the processes that lead to the completion of the *Lheidli T'enneh Band Land Use Plan*. Specifically, Section 2 provides an overall introduction to the community through a discussion of culture, recent history of the land base and community demographics. Section 3 presents the history of land management on reserve as well as the legislative mandates under which this Plan operates. These include the First Nations Land Management Act, the Lheidli T'enneh Band Land Code and its law-making abilities regarding land use and land

<sup>1</sup> Up until February 2005 Fort George IR #1A did not have Indian Reserve status owing to a mistake made by INAC offices in the early 1900's. This oversight has been recently rectified through an Order In Council and the designation of this land as an Indian reserve is being filed with the First Nations Land Register System.

management. Section 4 discusses the planning processes, including Band Member input and presents the results from the community mapping sessions for both community and youth development priorities.

With respect to land use planning, Section 5 is broken down into four separate “mini” plans for each of the reserves (also known as sector plans). Each of these “mini” plans deals with the land use and development issues specific to each of Lheidli T'enneh's reserves. This includes planning strategies and a series of short, medium and long-term priorities for the future development of these lands.

Finally, Section 6 follows up the planning recommendations and strategies identified throughout the *Lheidli T'enneh Land Use Plan* by providing implementation strategies for the short, medium and long-term priorities identified. These implementation strategies provide a checklist for the Lands Authority and Land Management staff of the initiatives to be undertaken to implement the Plan under the Land Code and to meet the Band's demand for infrastructure, housing, community facilities, recreation, health and safety, development review, cultural heritage, wildlife, habitat and watershed management and economic development.

## FIRST NATIONS PLANNING

It is important to recognize that the *Lheidli T'enneh Land Use Plan* is an example of a First Nations planning exercise. We say this for two reasons, the first being that the Plan legislatively fulfills the requirements of Lheidli T'enneh Band Land Code for community approval and adoption.<sup>2</sup> Secondly because the planning area for the *Lheidli T'enneh Land Use Plan* is much more than the physical characteristics, it is the history and culture of the people. Like all First Nations, the Lheidli T'enneh people and culture are linked to the **land**. This is important to recognize because it bears on the existing land base, the ways in which the land is used now and the ways in which the land will be used in the future.

As part of the cultural significance of the land, the *Lheidli T'enneh Land Use Plan* has incorporated Carrier place names as a means to reclaim the original names and meaning of these places and as an educational tool to expose youth, Band Members and the non-Aboriginal community to the language and the history of the land. Although the Indian Lands Registry System (ILRS) names for the reserves differ, for the purposes of this Plan the Lheidli T'enneh names will be used with the ILRS names provided in brackets.

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<sup>2</sup> The Lheidli T'enneh Band Land Code was enacted under the Framework Agreement on First Nation Land Management and its implementation legislation; the *First Nations Land Management Act*. What is important to note is that the Framework Agreement is a First Nations' initiative (see Section 3 for a more detailed discussion).

## Section 2 – Community Introduction

Typically municipal plans provide an introduction of the planning area for which they were created. Usually these introductions are about the physical characteristics of the city or village such as location, land base, population, and relevant zoning or bylaws. They might also include a description of the planning objectives as defined by the planner or planners that created the plan. All of these elements are also a part of the *Lheidli T'enneh Land Use Plan*. However, in addition to these quantitative details, it is important to understand that the community shares a common culture and history and these have impacted the outcome of the Plan.

The purpose of Section 2 is to introduce the community of Lheidli T'enneh, first by understanding that Lheidli T'enneh culture has directed the plan and will continue to direct land and resource management. Second by examining the recent history of the reserve land base, and finally, by providing an overview of the Lheidli T'enneh population and factors that affect it.

### PEOPLE AND THE LAND

We are the *Lheidli T'enneh*. Our name translates as “people from where the rivers flow together.” According to our history, a large group of our people were led by Traditional Chiefs and Medicine People to the confluence of these two rivers. These rivers are known as the Nechako and the Fraser.

We traveled throughout our territory, a territory that was once separated into *keyohs*. Each *keyoh* was the responsibility of a clan. We hunted and gathered throughout our Traditional Territory. We traded with neighboring communities. There were no permanent settlements like we think of them today. Instead, there were seasonal villages and camps along the lakes and rivers throughout our territory. Lheidli, the site of present-day Prince George was one of these villages. It is clear to us that our ancestors occupied and used all of what we know as our Traditional Territory.

This is still true today.

This excerpt of Lheidli T'enneh land and occupancy was taken from the *Lheidli T'enneh Traditional Use Study* completed on June 19, 2000. These few paragraphs demonstrate that since time immemorial the Lheidli T'enneh people have been connected to the land employing a complex system of land and resource management that is entrenched in the culture of the Lheidli T'enneh people.

Traditionally, Lheidli T'enneh economy consisted of hunting, fishing, gathering and seasonal trade regulated and managed through a *bah'lhats* (potlatch) form of governance. Even the name *Lheidli T'enneh* (*Lheidli* refers to the actual location where the rivers meet and *T'enneh* refers to people from that place or territory) is drawn from the land, signifying the importance of the relationship between the people and the land.

## RECENT HISTORY OF LHEIDLI T'ENNEH LAND BASE

Between the years of 1892 and 1900 the Department of Indian Affairs established a total of four numbered reserves for Lheidli T'enneh (formerly the Fort George Indian Band). The total area of the reserve land base in 1910 consisted of 1237.4 hectares (ha). Today, the reserve land base consists of 685.6 ha. Like many other First Nations the influx of settlers, the upset in the traditional economy, the Indian Act and epidemics pressed the Band to sell off land, specifically, IR #1 and a section of IR #4. The following sections provide a brief outline of the recent history of the Lheidli T'enneh reserve lands with particular attention to the sites of Lheidli (Fort George IR #1) and Dzulhyazchun Tsalakoh (Salaquo IR #4).

### Fort George Indian Reserve #1 (Lheidli)

In 1892 the Fort George Indian Reserve #1 was established at the confluence of the Nechako and Fraser Rivers, the current site of the City of Prince George's downtown core. As the main residential site, IR #1 had an area of 1366 acres. By 1900, the Lheidli T'enneh (then the Fort George Indian Band) had three other reserves (IR #2, IR #3 and IR #4) and a population of approximately 144 Band Members. Fort George IR #1 remained the main residential site for the Lheidli T'enneh Nation until their removal in 1913 to IR #2 (Khast'an Lhughel).

In 1907 the Grand Trunk Pacific Railway Company (GTPR) announced its intentions to create a route across BC. With this announcement came the influx of real estate speculators, promoters, and settler activity to the Fort George Indian Reserve #1. By 1910 land promoters had created two separate town sites bordering the reserve, each marketed as terminal sites not only for the GTPR but also for about six or so "paper railways".

For the years between May 1908 and November 1911, IR #1 was the subject of a vicious land dispute between the Lheidli T'enneh Band, the GTPR, the Natural Resources Security Company (NRS), and provincial and federal government officials. Originally the GTPR wanted to use the northern portion of the reserve and the fee simple land to the west of it for the development of a train station and residential town site. However when the owners of the western lots wanted high prices for their lots the GTPR made plans to expropriate the reserve under the Railway Act. This idea never went ahead because the GTPR lawyers argued it would be difficult to prove that the entire area of the 1366 acre reserve was required for railway purposes.

Since the GTPR could not expropriate the land they tried to purchase the reserve from the Lheidli T'enneh Band. These negotiations took three and a half years, involved several court proceedings and in the end the GTPR bought IR #1 for \$125,000 and gave the Lheidli T'enneh Band seven months to leave the reserve. This transaction, including surrender of the reserve land, would not have been possible without the active participation of the Department of Indian Affairs and the Catholic Church. The surrender is now subject to a Specific Claim in the Federal Court of Canada and the Indian Claims Commission against the federal government.

### Fort George Cemetery IR #1A (Ts'unuk'ut)

After the "sale" of Fort George IR #1 to the Grand Trunk Pacific Railway in 1913, it was agreed that the cemetery consisting of 0.913 ha (2.3 ac) out of the original reserve would be returned to the Band as a reserve. The GTPR transferred the cemetery land to the (then) Department of Indian Affairs (DIA), but DIA failed to transfer this lot to BC in 1938 when the province transferred all Indian Reserves to Canada under *Order in Council 1036*.

This oversight was not identified until the Lheidli T'enneh Band Land Code was being finalized in 2000. An Order in Council was approved in early 2005 has now finalized this reserve designation and therefore the cemetery is formally designated as Indian Reserve. Upon final treaty settlement Canada will transfer title to the reserve to Lheidli T'enneh ownership.

### **Fort George (Shelley) IR #2 (Khas't'an Lhughel)**

Fort George (Shelley) IR #2 was one of the original numbered reserves set out by the Department of Indian Affairs. After Fort George IR #1 was transferred to the GTPR, IR #2 became the primary settlement area for the Lheidli T'enneh Membership.

### **Clesbaoneecheck IR #3 (Lhezbaonichek)**

Also one of the original numbered reserves, Clesbaoneecheck remains much the same as it was upon transfer to the Band. A further discussion of Clesbaoneecheck is found in Section 5.

### **Salaquo IR #4 (Dzulhyazchun Tsalakoh)**

In the early 1920's many communities were picking up the pieces from the fallout of the Spanish flu epidemic of 1918-1919.<sup>3</sup> Margaret Gagnon, a Lheidli Elder tells stories of the epidemic as the time when the Lheidli T'enneh started burying their dead rather than cremation because they couldn't keep up to the numbers of people dying.

In an effort to raise money for the community the Band passed a Band Council Resolution (BCR) in 1922 to surrender part of Salaquo IR #4 (42 acres) to the Government of Canada to be sold and the proceeds to be held for the Band. Later that year Canada sold the land to Mr. John McArthur from Winnipeg for \$856 and issued him a Letters Patent. To raise title to the property Mr. McArthur should have registered his Letters Patent with the BC Land Title Office, but this did not happen. As a result Mr. McArthur's title to the land did not appear in the BC Lands Titles Office or on the First Nations Land Registry.

At present, the land is deemed "no man's land" since Mr. McArthur did not raise title. Unfortunately the 42 acre surrender and the events around the sale of this land were not recognized at the community level until March of 2005. This leaves the Band with a number of outstanding questions about the proceeds from the sale, the entitlement of the land to Mr. McArthur's heirs and whether or not the Band wishes to obtain these lands as part of the final treaty settlement. These questions are currently under investigation.

## **COMMUNITY DEMOGRAPHICS**

Demographics are used to study patterns in populations. In land use planning, demographics such as age are frequently used to determine future infrastructure and service needs. For example if a community has more than 50% of its population under the age of 14 it is likely that that many of the services such as education, recreation, health and transportation will be geared

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<sup>3</sup> It is estimated that over 20 million people died worldwide, of those approximately 50,000 people were Canadians. Many historians believe that these numbers are even higher since many developing countries and remote communities did not register their death tolls.

towards supporting youth. The same could be said for an aging population whereby there might be more assisted living developments, healthcare and transportation services.

For the purposes of the *Lheidli T'enneh Land Use Plan* demographics are discussed in terms of populations. Like most First Nations, Lheidli T'enneh regards its Band Membership as two populations, the on-reserve population and the off-reserve population. The historical reason for this split is largely because of the Indian Act and Indian and Northern Affairs Canada (INAC) policies.<sup>4</sup>

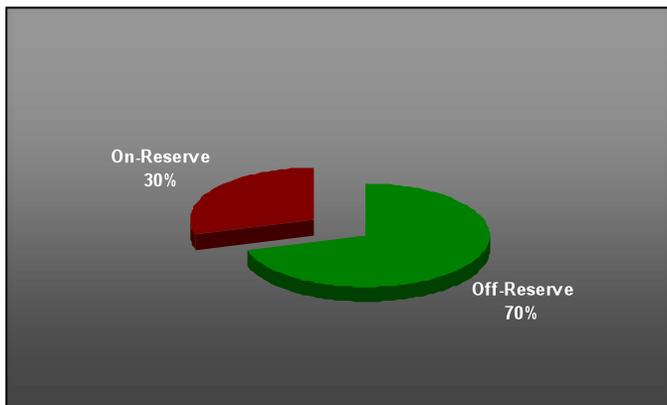
For example, at this time INAC only provides funding for physical infrastructure (including housing) and social programs and services for the on-reserve population. If an off reserve Band Member would like to move back to the reserve to access affordable housing and community health services the reality of this situation is that they will wait years for housing, simply because the funding received from INAC is never enough to keep up with the demand. Added to this situation, the division of the Membership established through policy is often embraced at the community level, such that Band Members living off reserve are often viewed as disconnected with the reserve community.

To date, Lheidli T'enneh has attempted to alleviate the separation between the Members living on and off reserve through intensive treaty-focused community consultation that encourages all Members to participate.<sup>5</sup> This consultation also includes youth specific activities and provides the necessary supports to ensure participation (such as transportation). Added to this, the Land Code requires community approvals for the creation of land laws, all major planning exercises and major land transactions.

### Ratio of On-Reserve Members to Off-Reserve Members

The following chart demonstrates that of the 309 registered Band Members (December 2004), 211 or 68% of Lheidli T'enneh Band Members live off reserve. The remaining 32% or 98 people live on reserve, either at IR #2 or IR #3.

**Chart 1 - Ratio of On-Reserve to Off-Reserve Members**



<sup>4</sup> To understand some of the assimilative policies enforced by the Department of Indian Affairs please see *A Narrow Vision, Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Titley: 1986).

<sup>5</sup> For the post treaty climate Lheidli T'enneh is also researching models in order to set up LTN locals in the urban centers with the highest percentages of Band Members).

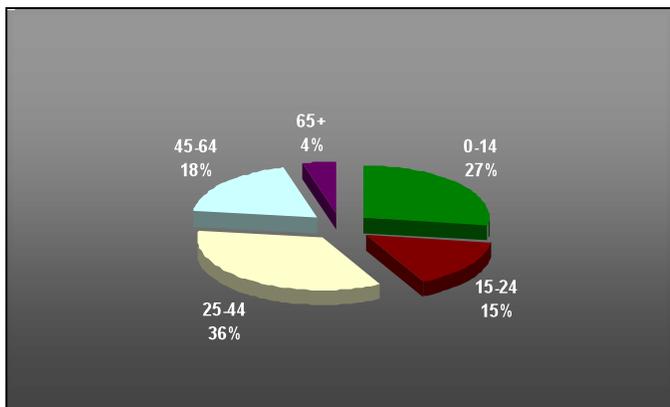
The on-reserve population of any First Nation is directly correlated to the availability of housing, community services, health and safety and overall standard of living (see Waldram *et al*: 2000). Since 76% of the Lheidli T'enneh housing was built after 1991, it is likely that a historical lack of housing contributed to the high percentage of Members living off-reserve. Other factors impacting the off-reserve population include legislative changes, such as Bill C-31 and the close proximity of the reserve lands to the urban centre of Prince George, where housing and services are more readily accessible.

### Age Demographics

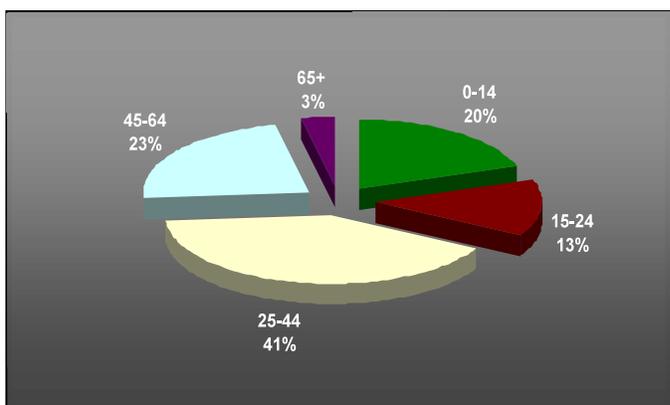
The age demographics for the Lheidli T'enneh on and off-reserve populations are demonstrated in Charts 2 and 3. For both populations there is a large percentage of Band Members under the age of 25 (40% for the on-reserve population and 34% for the off-reserve population). This demonstrates a younger population, which will create specific pressures for housing for new family formations, recreation and education. In planning for this demographic Lheidli T'enneh should focus on youth services for recreation and education and the development of affordable housing, such as attached housing units (apartments, condominiums and townhomes).

The remaining population over the age of 25 (60% for the on-reserve population and 66% for the off-reserve population) will create specific pressures for housing and health services. In planning for this demographic Lheidli T'enneh might consider developing specialized housing, including assisted living and other health services to accommodate elder Band Members.

**Chart 2 On-Reserve Population Demographics**



**Chart 3 Off-Reserve Population Demographics**



## POPULATION PROJECTIONS

As previously stated for Land Use Planning process population trends and projections are a key factor in determining the future infrastructure, capital and housing demands that will be placed on the community. By determining the population growth of both the on and off-reserve community, Lheidli T'enneh will be able to plan for and provide the physical and social resources and services necessary to develop the community.

### Historical Population Data

Since population demographics do not remain the same, community planners analyze the historical population data and trends in order to make projections about what the future community demographics might look like and plan for services 20 years from now. For the purposes of the Lheidli T'enneh Land Use Plan 20 years of historical data was used in order to derive geometric growth rates. The 20-year historical data is as follows:

**Table 2 - Lheidli T'enneh 20-Year Historical Population Data**

Year	On-Reserve	Off-Reserve	Total Membership
1984	67	25	92
1985	83	25	108
1986	85	35	120
*1987	85	35	120
1988	85	83	168
*1989	85	83	168
1990	39	139	178
1991	38	145	183
1992	39	166	205
1993	41	174	215
1994	53	170	223
1995	52	174	226
1996	51	191	242
1997	91	168	259
1998	91	173	264
1999	112	155	267
2000	109	179	288
2001	109	191	300
2002	108	193	301
2003	97	205	302
2004	98	211	309
Growth Rate	1.8	10.7	5.9

\* No data exists

### Future Population Projections

A number of population projections have been prepared for the Band in the past. The 1990 *Physical Development Plan for Lheit-Le-We-Tens* prepared by the Carrier Sekani Tribal Council (CSTC) projected a total Band population of 275 by the year 2010 with an on-reserve population

of 170. Based on actual 2005 Band population, the 1990 projections have underestimated the Band's total membership by 2010.

The 1998 *Lheidli T'enneh First Nation Physical Development Plan* prepared by C<sub>4</sub> Engineering Ltd. revised the 1990 population projections using 3 growth rates of 2.5%, 5% and 7% for the years 1998 to 2018. Using these 3 growth rates, future Lheidli T'enneh Membership was projected to increase to 434 (2.5%), 703 (5%) and 1025 (7%) by 2018. Using the same growth rates the on-reserve population was expected to increase to 291(2.5%), 387 (5%) and 537(7%).

Based upon review of the historical population data, previous population projections and further analysis, this Plan proposes using the geometric growth rate for the total Membership of 5.9% for both the on and off-reserve populations as indicated in the Table below.

**Table 3 - Lheidli T'enneh 20 Year Future Population Projections (at 5.9%)**

Year	On-Reserve	Off-Reserve	Total Membership
2005	104	223	327
2006	110	237	347
2007	116	251	367
2008	123	265	389
2009	131	281	412
2010	138	298	436
2011	146	315	462
2012	155	334	489
2013	164	353	518
2014	174	374	548
2015	184	396	581
2016	195	420	615
2017	206	445	651
2018	219	471	689
2019	232	499	730
2020	245	528	773
2021	260	559	819
2022	275	592	867
2023	291	627	918
2024	308	664	972
2025	327	703	1030

### **FACTORS TO AFFECT POPULATION OUTCOMES**

Between 1984 and 2004 the population of the Lheidli T'enneh Membership tripled. Aside from usual birth and death rates, there are a few factors contributing to the historical population increases as well as future population increases. These factors include:

#### **Bill C-31**

For most First Nations in Canada there have been two landmark years for large population increases, 1986 and 1996. In 1985 the Government of Canada passed Bill C-31 allowing those women and their dependants who had lost their Indian Status through enfranchisement to be

reinstated.<sup>6</sup> Owing to Bill C-31, in 1986 many First Nations saw dramatic increases in their populations (this particularly impacted the off-reserve population since mostly enfranchised Members and their children were living off reserve). Similarly, in 1999, INAC processed a large backlog of Bill C-31 applications resulting in another rapid increase of First Nations' populations.<sup>7</sup>

### **Treaty Ratification**

As mentioned, Lheidli T'enneh is in the final stages of treaty negotiations. Should the treaty be ratified and finalized there will be a greater land base (including lands within the City of Prince George), more resources for community services and infrastructure as well as management over who is eligible to be a Member of the Lheidli T'enneh Nation. Currently in order to be a Band Member, a person must also be a registered Indian. With treaty, a program for eligibility and enrollment will be implemented such that people with a family connection to Lheidli T'enneh may have the opportunity to become Band Members without being registered Indians. It is possible that Lheidli T'enneh will see a marked increase in the total Membership population due to the Eligibility and Enrollment program.

Also with treaty ratification is greater opportunity for the Membership to live on Lheidli T'enneh lands. Under the provisions of the Land Code, Lheidli T'enneh is currently examining models for reserve tenure such as leases, to prepare for both the increase in land base and the interest of the Membership wanting to live on or develop Lheidli T'enneh lands.

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<sup>6</sup> For a brief discussion of enfranchisement see [http://www.ainc-inac.gc.ca/pr/pub/matr/his\\_e.html](http://www.ainc-inac.gc.ca/pr/pub/matr/his_e.html)

<sup>7</sup> For more information regarding the processing of Bill C-31 files see the *INAC Population Projections for Canada and Regions 1998-2008* (2000).

## Section 3 – History of Land Management

The following section provides a brief history of Lheidli T'enneh land management practices. This is done for two reasons, the first is to provide information for those people with little or no knowledge of traditional land management or reserve land management under the Indian Act. Second, it outlines the First Nations Land Management Act and the processes that Lheidli T'enneh underwent to take over the management of their land base.

### TRADITIONAL LAND MANAGEMENT

As mentioned in Section 2, prior to contact Lheidli T'enneh had a very complex system of governance, the *bah'lhats*, which included the traditional ownership and management of land. Through the *bah'lhats* a family or clan would orally trace the boundaries of their *keyoh* and the people in attendance would bear witness to this, confirming the clan's "ownership" of their land. The *keyoh* provided all the resources necessary for survival and was managed by the family to ensure its preservation.

Today, although the *bah'lhats* are no longer practiced, and the *keyoh* system has diminished Lheidli T'enneh acknowledges the "ownership" of traditional land through both the collective understanding of the traditional territory and through recognition of occupancy, such as in a house prior to the establishment of the reserves, or use, such as hunting areas.

### THE INDIAN ACT AND LAND MANAGEMENT

First passed in 1876 this Canadian federal legislation sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources including culture. Upon its enactment, the Indian Act replaced traditional methods of governance and land management, leaving First Nations without control of their resources. Approximately 25% of the Indian Act deals with the management of reserve lands (the specific sections are discussed further in this section). Like most First Nations in Canada, the department of Indian and Northern Affairs Canada (INAC) administered Lheidli T'enneh reserve lands until the Band took over this authority under its Land Code in December 2000.

#### Reserve Land Tenure Under the Indian Act

It is important to recognize that under the Indian Act **fee simple tenure does exist on reserve**. As per Section 18(1) of the *Indian Act*, reserve land is owned by the Crown and set aside for the use and benefit of the First Nation occupying it. The most common forms of individual tenure on reserve exist as leases or Certificates of Possession, which are a unique form of tenure only existing on reserves.

Basically a Certificate of Possession (CP) is a legal document that gives an individual the right to possess and occupy a certain parcel of land. CP land may be passed to other Band Members such as in an estate or sold back to the Band, but it is not equivalent to fee simple tenure. CP parcels are still reserve lands and cannot be used as an asset for securing a mortgage or loan with a financial institution. Further, the Band Council may annex CP parcels for development.

## FIRST NATIONS LAND MANAGEMENT ACT (FNLMA)

On February 12, 1996 the Government of Canada (as represented by the Minister of Indian Affairs) and 13 First Nations, including Lheidli T'enneh, signed the *Framework Agreement on First Nation Land Management*.<sup>8</sup> The Framework Agreement outlined the requirements for a new land management process, where First Nations could opt out of the land related provisions of the *Indian Act* and have authority over reserve lands. The legislation for the Framework Agreement was introduced in Parliament as Bill C-49, the *First Nations Land Management Act* (FNLMA) and was enacted and given royal assent on June 17, 1999. The process is now known as the First Nations Land Management Initiative, or FNLMI for those people operating outside of the Act and as FNLMA for those operating within.

Every First Nation eligible to come under the FNLMA is required to follow the guidelines set out by the Framework Agreement for the creation and adoption of a land code. Once adopted, this land code replaces the land management provisions of the *Indian Act*. Specifically the following sections of the Act do not apply:

- Reserves (ss. 18-19)
- Possession of Lands in Reserves (ss. 20, 22-28)
- Trespass on Reserve (ss. 30-31)
- Sale or Barter of Produce (ss. 32-33)
- Roads and Bridges (s. 34)
- Lands Taken for Public Purposes (s. 35)
- Surrenders and Designations (ss. 37-41)
- Distribution of Real Property (ss. 49 and 50(4))
- Management of Reserves and Surrendered and Designated Lands (ss. 53-60)
- Farms (s. 71)
- Removal of Materials from Reserves (s. 93)
- Regulations made under section 57 of the *Indian Act*; and
- Regulations under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with the Framework Agreement or the Land Code or the laws of the First Nation.

One of the most valuable provisions of the FNLMA is that each First Nation is required to create a community approval process (s. 7 of the Framework Agreement) for the adoption of a land code (s. 5 of the Framework Agreement) as well as its individual agreement with the Minister (s. 6 of the Framework Agreement). The community approval process guarantees the distribution of information regarding the FNLMA to all Band Members and requires an approval vote from a minimum of 25% of all eligible voters, whether on or off-reserve. Basically the community approval process ensures the participation of the entire Membership, and provides an opportunity for informed, community-based decision-making.

In order to ensure that First Nations wanting to sign on to the FNLMA have the resources to do the Framework Agreement provided for the inclusion of a Lands Advisory Board (LAB) to assist individual First Nations with the development of their land code, addressing land management regulations, environmental assessment polices and reporting (ss. 38-41 of the Framework

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<sup>8</sup> One other First Nation was added in December 1997. Since the 14<sup>th</sup> First Nation was added before the FNLMA was enacted, the literature commonly refers to the efforts of the original 14 signatory First Nations.

Agreement).<sup>9</sup> As an added support, the LAB and the Government of Canada appoints an independent verifier to ensure that community approval process for the adoption of a land code is done in accordance with the Framework Agreement.

## **LHEIDLI T'ENNEH BAND LAND CODE**

The Lheidli T'enneh Band Land Code was ratified by a Membership vote on October 28, 2000, certified by the LAB verifier on November 15, 2000 and came into legal force and effect on December 1, 2000. Since that time, the Lheidli T'enneh Band Land Code has undergone one major amendment that was approved at a Meeting of Members (s. 12 of the Lheidli T'enneh Band Land Code) on March 7, 2003.

The Lheidli T'enneh Band Land Code represents a major shift in the management of the Lheidli T'enneh lands and resources as it provides the opportunity for Lheidli T'enneh to develop land management laws that previously would have been imposed by the Indian Act. Through the Land Code any issues regarding land use, conservation, possession, tenure and development can be reconciled through the law-making provisions (ss. 6-9) of the Lheidli T'enneh Band Land Code.

Ultimately the Lheidli T'enneh Land Code is a First Nations governmental approach to land use and land management that maintains the values of the people without deference to the Indian Act. It allows for the people of Lheidli T'enneh to make decisions about their land base and how it will be used for generations to come. The methods of land management traditionally used by the Lheidli T'enneh may have changed over time but the mechanism for consultation and community approval ensure that families are represented and decisions are made at the community level.

## **LANDS AUTHORITY**

In order to facilitate the functions of the Land Code and advise Chief and Council on all matters pertaining to Band lands, the Land Code provides for a body of elected Band Members known as the Lands Authority (LA) (see ss. 24-26 of the Lheidli T'enneh Land Code). The Lheidli T'enneh LA works directly with Lands Advisory Board and oversees the management of Band Lands as well as the distribution of information between administration and Band Members. The Lheidli T'enneh Lands Authority is currently composed of five elected eligible Band voters that may hold office for a maximum term of four years and one Chairperson that is appointed by Council (see section 25 of the Lheidli T'enneh Band Land Code).

The Lheidli T'enneh Band Land Use Plan comes from the function of the Lands Authority for the development of land management resources. In this case, a land use plan that maintains the guidelines of the Lheidli T'enneh Band Land Code and integrates community values for development.

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<sup>9</sup> Section 38 of the Framework Agreement provides that the composition of the Lands Advisory Board must have at least 3 members from First Nations that have ratified their land code.

## Section 4 – Land Use Planning Process

### PARTICIPATORY PLANNING

The Lheidli T'enneh Band Land Use Plan is based on the methods of participatory planning. The philosophy behind participatory planning is based on the premise that the *community knows best*. In other words, planning and development is directed through the input of the Lheidli T'enneh Band Members. This approach to planning land use and development breaks the cycle of top-down decision making processes that are so much a part of the historical relationship between government and First Nations. In addition community input creates a sense of community ownership over the planning outcomes, which is exactly the goal (as per the FNLMA and the Framework Agreement that guides it).

For this document, the input of the Band Membership has created a series of land use planning statements that have been summarized to form the *Lheidli T'enneh Land Use Plan*. However, it is important to recognize that the Lheidli T'enneh Land Use Plan is a living document and that the planning statements created through community participation are flexible and may change over time. Therefore it is crucial that this document be revisited every 5 years and be evaluated by the community to see if it still matches the priorities of the Membership.

### LAND USE PLANNING COMMITTEE

In order to ensure that the Lheidli T'enneh Band Land Use Plan is a community driven document from start to finish, a Land Use Planning Committee (LUPC) comprised of nine Band Members was appointed to oversee the process. The composition of the Land Use Planning Committee includes the five elected members of the Lands Authority (Violet Bozoki, Kenora Stewart, Melody Buzas, Lyle Pius, and Lenora White) with the addition of four other Band Members, (Frank Frederick Sr., Ron Seymour, Counselor David Baker and Shirley Gustason) who represent the Community Treaty Council.

Throughout the formation of the Lheidli T'enneh Band Land Use Plan, the LUPC provided direction on input processes, content, areas of concern, traditional knowledge of the land and assisted in the facilitation of community mapping sessions.

#### Community Mapping

Community input for the Lheidli T'enneh Band Land Use Plan was largely obtained through community mapping sessions. Community mapping is a tool for participatory planning that provides each participant with an opportunity to express **what** developments they would like to see and **where** they would like to put them.

For the Lheidli T'enneh Band Land Use Plan, a series of large maps representing each reserve were brought to community meetings so that Band Members had the opportunity to “see and touch” maps of the Lheidli T'enneh reserve lands and indicate what land uses and developments they want to see on Lheidli land. In addition to identifying development, Band Members also identified what areas are culturally significant and should be protected either for habitat management (plants and animals) or historical sites that should be protected from major resource developments such as forestry or mining. In the end Band Members transferred

knowledge about the land, teaching both the planners and each other about the past, present and future significance of each reserve and the area around it.

For the Plan, each of community mapping sessions began with three or four table-sized maps of either one or two of Lheidli T'enneh's reserves. Each map showed existing development and infrastructure as well as physical constraints to development such as the absence of road access, right of ways, slopes, floodplains and drainage courses. Working off the existing development maps, Band Members were provided with 1-hectare squares of different coloured paper with each colour representing a different land use (see Appendix 1 for a copy of the community mapping legend). Land uses included residential, community facilities, commercial, industrial, traditional use, tourism, recreation, and agriculture.

Through group discussion, Band Members placed various land use "squares" onto the maps usually by identifying specific developments and matching them back to the land use designations.<sup>10</sup> Once each map was completed, Members presented their maps and discussed the issues they faced in determining which land uses were applied to their map.

Under the direction of the LUPC, community mapping sessions were held with both the general Band Membership and **separately with the Lheidli T'enneh youth**. This was done without any population or demographic analysis but with the understanding that the Lheidli T'enneh youth are the future of the community and that their vision for community development should be solicited and presented separately.

In order to obtain community input and ensure that Members were not excluded a total of **11** community mapping sessions and **3** information meetings were held with the various community groups and general Band Membership. The breakdown of these community sessions is presented on the following page.

### Figure 1 – Youth Mapping Session



<sup>10</sup> It is true that not everyone agrees, but upon examination of the completed community maps almost all of them followed the same patterns for land use, regardless of which date or session they were completed on. Even the few maps that did not match often displayed similar developments, just placed in a different location. For example four maps of Shelley might show a sawmill (industrial land use) in the northeast corner of the reserve and one map placed a sawmill (industrial land use) in the northwest corner of the reserve. The result is still the same, that the Membership supports industrial development on reserve.

**Table 4 – Summary of Community Mapping Sessions & Information Meetings**

<b>Community Group</b>	<b>Date</b>	<b>Reserve(s) Mapped</b>
LUPC	August 26, 2004	Khast'an Lhughel (Shelley)
LUPC	September 30, 2004	Dzulhyazchun Tsalakoh (Salaquo)
LUPC	October 8, 2004	Lhezbaonichek (Clesbaoneecheck)
LUPC	November 8, 2004	Experimental Farm
CTC	October 26, 2004	Dzulhyazchun Tsalakoh (Salaquo) Lhezbaonichek (Clesbaoneecheck)
CTC	November 9, 2004	Khast'an Lhughel (Shelley)
CTC	December 7, 2004	Experimental Farm
YTC	November 4, 2004	Dzulhyazchun Tsalakoh (Salaquo) Lhezbaonichek (Clesbaoneecheck)
YTC	December 9, 2004	Khast'an Lhughel (Shelley)
General Community Meeting	January 16, 2005	Khast'an Lhughel (Shelley) Dzulhyazchun Tsalakoh (Salaquo) Lhezbaonichek (Clesbaoneecheck)
Staff Meeting	October 26, 2004	Lhezbaonichek (Clesbaoneecheck)
General Information	November 21, 2004	AGM
General Information	December 5, 2004	Treaty Update Meeting
Carrier Place Names Committee (Elders)	January 25, 2005	All Reserves & Names

LUPC = Land Use Planning Committee  
 CTC = Community Treaty Council  
 YTC = Youth Treaty Council

It should be noted that at the time of the completion of Lheidli T'enneh LUP the Band was nearing the completion of a Treaty process. Owing to this, two main community groups, the Community Treaty Council (CTC) and Youth Treaty Council (YTC) were regularly scheduled and attended by Band Members.<sup>11</sup>

This is important for two reasons; the first is that the makeup of the CTC provides for representation from each family as well as representation across ages and gender, and ensures participation from both the on and off-reserve population. This is the exact tenant of community input, that it is representative. Secondly, the CTC and YTC provided a readily available opportunity to coordinate and facilitate the community mapping sessions. Certainly this is a unique situation and might set the example for other First Nations wanting to undertake a community input process be it for treaty, land use planning or any other Band initiatives.

## **PRESENTATION OF RESULTS**

In order to present the results from the mapping sessions and general community input, the Land Use Planning Committee recommended that the information obtained from the mapping sessions be combined into two maps for each reserve. The first map is a presentation of the overall community identified land use priorities (see Maps #8, #10 and #12). The second set of

<sup>11</sup> The Lheidli T'enneh Community Treaty Council has a routine weekly meeting with attendance ranging from forty to sixty Band Members. The Youth Treaty Council has weekly or bi-weekly meetings with over 20 youth in attendance.

maps presents the outcomes from the youth community mapping sessions (see Maps #9, #11 and #13).

Once all the community mapping sessions were completed, each of the reserve maps were digitized and the most frequent land uses and their location presented the final map. For example, all of the community maps identified *Tourism* and *Traditional Use* as land uses for Dzulhyazchun Tsalakoh (Salaquo). In order to present the boundaries of separate land uses, each community map for Dzulhyazchun Tsalakoh (Salaquo) was digitized, visually examined and then the most frequent boundaries presented.

As mentioned previously, given the nature of Ts'unk'ut (Fort George Cemetery) as a cemetery, no mapping sessions were completed for this reserve. However, once the Band undertakes negotiations with the City of Prince George for the maintenance of the cemetery a similar exercise might be completed to determine a collective vision for the aesthetic of the cemetery.

## **SUMMARY OF COMMUNITY-IDENTIFIED DEVELOPMENT PRIORITIES**

From the community mapping sessions Lheidli T'enneh Band Members identified a large number of specific developments that they would like to see occur on reserve. Some of which included the preservation or upgrading of culturally significant sites and traditional use areas. The most frequently identified development for the reserves included:

- New Housing
- Camps
- Berry Picking
- Wild Rice
- Store
- Restaurant
- Education Centre
- Hospital/Health/Day Care Centre

Many of these developments were repeatedly identified throughout the community mapping sessions, indicating a collective vision for the values/principles to guide the development of each of the reserves. These value statements are as follows:

- Develop agricultural opportunities for Band and export purposes (wild rice, organic farming).
- Recognize sites for their historical cultural and spiritual importance (church, cemetery).
- Retain areas for traditional economic activities and use elders to educate youth (fishing, medicine plants).
- Develop new outdoor recreation activities for Members (formalizing existing trails and developing new trails and associated facilities).
- Develop new outdoor land and water based uses to attract, educate and cater to tourists and provide employment/income (river tours, bed/breakfast).
- Provide new commercial and industrial opportunities (gas station, general store).

- Develop community facility/facilities to provide programs and services (healing centre, health care, day care and Elders centre).
- Construct a variety of additional housing types (affordable Band housing (such as triplexes, Elder assisted living, single-family detached Band housing and high-end residential) and ensure that the Membership participates in the aesthetic and construction of housing.
- Develop or improve on and off site access to reserve lands.

## Section 5 – Reserve Land Use Strategies

This section contains specific strategies for land use for each of the four Lheidli T'enneh reserves listed below.

- Ts'unuk'ut (IR #1A Fort George Cemetery)
- Khast'an Lhughel (IR #2 North and South Shelley)
- Lhezbaonichek (IR #3 Clesbaoneecheck)
- Dzulhyazchun Tsalakoh (IR # 4 Salaquo)

This Plan takes into account community input, physical development plans, demographics, environmental characteristics, traditional use and engineering and environmental studies that have previously been completed on each of the reserves. The Plan should be used when making all land use and financial decisions related to reserve development. Also it should be noted that the *Lheidli T'enneh Land Use Plan* must be evaluated on a regular basis with a comprehensive review undertaken at least every 5 years.

### LAND USE DESIGNATIONS

Land use designations have been proposed for each reserve. The designations group similar and compatible land uses together under a number of comprehensive land use categories. The Land Use Designation Maps, numbered 14 through 17 indicate the location of land uses that are permitted within each of the reserves. Continuation of existing land uses, community and youth land use priorities and professional planning principles have been considered in developing these designations. The land use designations and their permitted uses are as follows:

#### **Traditional Use Area**

*This land use designation refers to an area where traditional uses including hunting, berry picking or other culturally significant activities historically occurred or currently take place. Generally, Traditional Use Areas are for the use and benefit of Lheidli T'enneh Band Members. These areas should be protected from incompatible land uses for the future in accordance with the future Zoning Law.*

#### **Cultural Heritage Site**

*This land use designation refers to a specific site such as a cache pit, culturally modified trees, cemetery, church or site where culturally significant activities occurred or currently take place. These sites should be identified, geo-referenced and protected and preserved for the future in accordance with the Land Code.*

#### **Community Development Area**

*This land use designation refers to existing residential and commercial uses at Khast'an Lhughel (Shelley) as well as the Band office, as well as community facilities and industrial uses serviced with or have the potential to be serviced with communal water and sewer systems in accordance with the future Zoning Law.*

#### **Community Development Expansion Area**

*This land use designation refers to areas designated for possible future expansion of the existing community development area at Khast'an Lhughel (Shelley) and potentially*

*Lhezbaonichek (Clesbaoneecheck). Prior to the development of these lands Lheidli T'enneh will adopt a zoning bylaw to ensure that new development conforms to the Plan and infrastructure requirements, and is compatible with adjacent uses.*

#### **Natural Resource Development Area**

*This land use designation refers to the development of Lheidli T'enneh's natural resources including forestry, fisheries, gravel, agriculture and even traditional plants such as berries for tourism.*

#### **Environmentally Sensitive Area**

*This land use designation refers to those lands within the 1:200 year floodplains, areas with slopes greater than 20%, wetlands, lands that require erosion control or shoreline protection and lands that may be flooded or uncovered due to changes in the bed and shore of the Fraser and Nechako Rivers. These areas should generally remain in their natural state. However, should proposals to develop these areas be submitted, the completion of specific environmental studies and the adoption of environmental mitigation measures processes for the protection and management of these areas will be required in accordance with the Land Code.*

### **INDIVIDUAL RESERVE PLANS**

Under this section, each of the reserves has an individual plan that addresses a number of planning issues. Depending on the location, existing development and future development potential some or all of the planning issues presented below are discussed in detail.

**Background** of the creation, major land transactions and physical characteristics for each reserve is provided.

**Community and Youth Land Use Priorities** are identified for each reserve. Most of the land use priorities come from the community and youth mapping sessions but also were taken from comments provided throughout the community input phases of this Plan. It is important to establish the community land use priorities within each individual plan so that future land uses remain consistent with community values.

**Development Opportunities and Constraints** are identified for each reserve. The reserves are geographically separated but all are located adjacent to the Fraser or Nechako River. They have a number of similarities and differences in terms of traditional uses, topography, floodplain, access, and future land use potential. It is important that development opportunities and constraints be considered when planning future land use and undertaking specific development projects such as housing or tourism uses.

**Planning Visions** are proposed for each reserve based upon the Band's overall Vision Statement. These reserve level Planning Visions "paint a picture" of what the future land use of these reserves is intended to be. This "picture" is based upon participatory planning using the community mapping results (as discussed in Section 4) and general community and youth land use priorities. Lheidli T'enneh youth played a significant part in defining these visions, and brought a unique and modern perspective to the issue.

**Objectives** provide specific direction on how the Planning Vision for each reserve should be implemented within each Land Use Designation.

**Permitted Uses** indicate the primary uses that shall be permitted within individual Land Use Designation and secondary uses that may be permitted by the Lands Authority.

**Planning Strategies** identify what measures need to be undertaken to implement the Planning Visions and Objectives for each reserve in accordance with the Land Use Designations and permitted uses. For example, these strategies identify what needs to be done to ensure housing is built in the appropriate location or protect traditional use areas from incompatible development such as industrial uses.

The Planning Strategies are prioritized into short, medium and long-term priorities to indicate what specific tasks need to be done and when they need to be done to implement the plan.

- Short term strategies need to be undertaken within 1 to 3 years.
- Medium term strategies should be undertaken between 4 and 10 years.
- Long term strategies may be undertaken after 10 years.

**It should be noted that these time periods may be flexible and are dependent on staff and capital resources available.**

It is important to remember that the reserves are not islands unto themselves. In implementing these strategies it is crucial to develop and maintain good relationships with neighbouring private landowners, BC Crown lands and Local Governments. It is especially important for Lheidli T'enneh, City of Prince George and Regional District of Fraser Fort George to work towards harmonization of land use plans where such plans impact mutual interests and jurisdictions. Cooperative administrative and political relationships will mutually benefit all three parties. It is also critical for local governments and Lheidli T'enneh to work together to determine the most cost effective manner to provide municipal services (road maintenance, fire protection) for the reserves and adjacent private landowners. In some cases, it may be more appropriate for Lheidli T'enneh to enter into municipal service agreements to "purchase" services from adjacent local governments. In future, it may also be appropriate for local governments to negotiate agreements and "purchase" services from Lheidli T'enneh.

## **IR# 1A TS'UNK'UT (FORT GEORGE CEMETERY)**

### **BACKGROUND**

The original Fort George IR #1 was established in 1892 at the confluence of the Fraser and Nechako River. At that time IR#1 consisted of 553 ha (1366 ac). This area included what is now the present-day downtown core of the City of Prince George.

When this reserve was “sold” to the Grand Trunk Pacific Railway (GTPR) in 1913, it was agreed that the cemetery consisting of 0.913 ha (2.3 ac) out of the original reserve would be returned to the Band as a reserve. The GTPR transferred the cemetery land (Block Z Plan B 3575 (LTO) Plan BC, 644 CLSR to the (then) Department of Indian Affairs (DIA), but DIA failed to transfer this lot to BC in 1938 when the province transferred all Indian Reserves to Canada under *Order in Council 1036*. This oversight was not identified until the Lheidli T'enneh Band Land Code was being finalized in 2000. An Order in Council was approved in early 2005 has now finalized this reserve designation and therefore the cemetery is formally designated as Indian Reserve. Upon final treaty settlement Canada will transfer title to the reserve to Lheidli T'enneh ownership.

Ts'unk'ut (Fort George Cemetery) is physically located within the present boundaries of the City of Prince George's Fort George Park near to the Exploration Place museum. The burial ground is located within the northern portion of Ts'unk'ut (Fort George Cemetery) and has approximately 27 existing marked and unmarked graves. Ts'unk'ut (Fort George Cemetery) is an active cemetery with burials occurring as recently as 2002 (four) and there is the potential to accommodate additional graves within the existing cemetery plan.

Primarily the cemetery has cultural and heritage value as the original burial ground for Lheidli people who lived at the confluence of the Nechako and Fraser Rivers. Due to the cemetery's physical location within Fort George Park, Ts'unk'ut (Fort George Cemetery) has the potential to increase its profile within the City of Prince George and Region.

### **DEVELOPMENT OPPORTUNITIES AND CONSTRAINTS**

Ts'unk'ut (Fort George Cemetery) provides a unique opportunity within Fort George Park to celebrate Lheidli T'enneh culture in two ways. First, there is an opportunity to enhance this reserve with additional educational and culture exhibits sensitive to its primary purpose as a burial ground. Second, there is an opportunity to partner with Exploration Place and Fort George Park to expand the existing museum utilizing adjacent lands such as Hudson Bay Slough. This partnership may take the form of a major cultural attraction and visitor destination in this area while respecting the integrity of the existing burial grounds.

The only major constraint that Ts'unk'ut (Fort George Cemetery) has is its internal location within Fort George Park where the existing reserve is surrounded by a major city park and trail. The existing cemetery is located among a number of passive recreational activities that also use Becott Way from 20<sup>th</sup> Avenue.

## **COMMUNITY AND YOUTH LAND USE PRIORITIES**

There were no community mapping sessions held specifically for Ts'unk'ut (Fort George Cemetery). The Lands Authority has been in ongoing discussions with the City of Prince George to resolve three issues related to Ts'unk'ut (Fort George Cemetery). The first is to strike a service agreement for the maintenance of the cemetery. The second is to accurately identify the location and names of deceased buried in individual unmarked plots. Finally, the Lands Authority along with Lheidli T'enneh Elders are in discussions with the City to have a 100m area around the boundaries of the cemetery be excavated in an archaeological dig (or appropriate methodology) for remains that may have been disturbed throughout the numerous City developments at the current site since the dissolution of IR #1.

## **PLANNING VISION FOR TS'UNK'UT**

**Ts'unk'ut (Fort George Cemetery) will be celebrated as a significant cultural/heritage site for the Lheidli T'enneh Nation.**

## **LAND USE DESIGNATIONS**

### **Cultural Heritage Site**

## **CULTURAL HERITAGE SITE OBJECTIVE**

Recognize Ts'unk'ut (Fort George Cemetery) as a cultural heritage site based upon to its cultural, spiritual and historic value and its continued use as a burial ground.

## **CULTURAL HERITAGE SITE PERMITTED LAND USES**

Primary uses shall include burials and appropriate exhibits celebrating Lheidli T'enneh culture and history.

No secondary uses may be permitted on this reserve.

## **PLANNING STRATEGIES (What to do and When)**

### **Short Term Priorities**

- Designate Ts'unk'ut (Fort George Cemetery) as Cultural Heritage site under the Lheidli T'enneh Land Code.
- Finalize a municipal service agreement with the City of Prince George to ensure Lheidli T'enneh participation in decisions related to landscaping and cemetery improvements/upgrades with an emphasis on a high aesthetic standard of grounds maintenance.

- Initiate Lheidli T'enneh joint comprehensive study with Regional District of Fraser Fort George and City of Prince George to determine the feasibility of developing a major Aboriginal cultural destination with attractions (such as a salmon feast) to highlight the importance of First Nations in the region and attract tourists/visitors to Fort George Park.

#### **Medium Term Priorities**

- Encourage burial ground as an active cemetery for Lheidli T'enneh Members and explore potential for designation of portion of City of Prince George cemetery expansion for future Lheidli T'enneh use.
- Ensure formal Lheidli T'enneh representation on City committees involved in future management, operation and site planning in Fort George Park and Exploration Place where adjacent activities may impact Ts'un'ut (Fort George Cemetery).
- Initiate discussions with Exploration Place to store and display artifacts to be transferred to Lheidli T'enneh as part of Final Treaty Settlement.
- Initiate negotiations with City of Prince George to form a partnership in the development of additional cultural/heritage exhibits at Exploration Place.

#### **Long Term Priorities**

- Develop appropriate information package to educate Members, the broader Prince George Community and tourists on the traditions, culture and history of Ts'un'ut (Fort George Cemetery).

## IR# 2 KHAST'AN LHUGHEL (NORTH AND SOUTH SHELLEY)

### BACKGROUND

This reserve was established in 1892 and was generally settled and developed following the “sale” of IR#1 after 1913. Khast'an Lhughel (Shelley) consists of 533 ha (1,318 ac) and is divided by the Fraser River creating North and South sides of the reserve. This reserve is approximately 22 kilometres upstream from the confluence of the Fraser and Nechako Rivers. The north side of the reserve was cleared progressively in the 1920s and 1930s, and then clear cut in 1966 and 1967 to expand agricultural production. Prior to that, sections of both sides of the reserve were cleared for housing and industrial activity such as the British Columbia Railway (BCR) Line.

North Khast'an Lhughel (Shelley) is 482 ha (1,192 ac) in size and is generally level with large areas of swampy land in proximity to Rancheree Lake and a number of intermittent watercourses draining to the south into the Fraser River. Access to the north side of the reserve is via Landooz Road to the west. Significant slopes occur primarily in the northwest portion of the reserve and along a bench dividing the existing fields and the water tower from the floodplain area west of the existing houses (see Map #2).

On the north side of the reserve, there are 20 houses, a cemetery, church, education center and a play area with the remainder of lands dedicated to agriculture. Also on the north side BC Hydro's 500 KV power line runs north and south through the reserve utilizing 21 ha (53 acres) of land paralleling the eastern boundary of the reserve. There is also a major gas transmission pipeline right of way (3.0 ha) on the western portion of the reserve in proximity to the BCR rail right of way (3.6 ha). The Lheidli T'enneh Final Treaty Agreement will potentially add significant lands (Salmon B and D, Shelley A blocks) adjacent to the existing reserve.

South Khast'an Lhughel (Shelley) is 51 ha (127 acres) in size with 16 houses, Band and Treaty office. Access to this reserve is via Whenun Road from Shelley Road to the west. A number of single family detached homes and an old mill site are located adjacent to the reserve in the village of Shelley located within the Regional District of Fraser Fort George. The Canadian National (CN) mainline traverses the reserve.<sup>12</sup> A significant hill is located to the south of the tracks. Existing housing and Band office are located north of the tracks together with a low lying area adjacent to the Fraser River. The Final Treaty Settlement may result in the addition of Lheidli T'enneh traditional territory (Beaver A, B, C blocks) abutting the south and east boundaries of the reserve.

### HISTORY OF LAND USE PLANNING

A number of plans have been completed for Khast'an Lhughel (Shelley) and Lhezbaonichek (Clesbaoneecheck) in recent years. The *Lheit'Le We-Tens 1990 Physical Development Plan* (PDP) discussed population trends, housing demand, current infrastructure and land use in detail. The 1990 PDP proposed future residential development for North Khast'an Lhughel (Shelley) and Lhezbaonichek (Clesbaoneecheck) with a community hall/office building, fire hall, sports fields, and primary school at North Khast'an Lhughel (Shelley). A cow/calf operation, a

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<sup>12</sup> The former Grand Trunk Pacific (now Canadian National Railway) line was originally established in 1914-15.

pre-fab modular housing plant, and welding shop were proposed for the existing hay fields and along Landooz Road at the western entrance to the reserve.

The 1998 *Lheidli T'enneh First Nation Physical Development Plan Update* revised the 1990 Plan. This Plan confirmed North Khas't'an Lhughel (Shelley) as the focus for new residential development with the other reserves remaining substantially in an undeveloped state. Future land uses identified for Khas't'an Lhughel (Shelley) included agricultural, natural, residential, commercial/industrial, recreational, community centre (fire hall, offices and research centre) and elementary school.

Community development plan options were proposed for low and high density residential lot subdivisions. The low density option was recommended because of larger lots, lower costs and retention of existing lifestyle. Total housing demand for the next 20 years was predicted to be 136 units including wait lists, new houses and replacements at a capital cost of \$7 million for new lots, infrastructure, community centre and elementary school.

## **EXISTING INFRASTRUCTURE**

### **Water Supply and Distribution System**

South Khas't'an Lhughel (Shelley) obtains its drinking water from groundwater via an existing well adjacent to the Fraser River. The water is pumped to the reservoir south of the CN right of way. From the reservoir water is distributed to individual homes by gravity via 150 mm diameter PVC mains, which include fire hydrants.

North Khas't'an Lhughel (Shelley) similarly obtains its drinking water from groundwater via an existing well and pumphouse adjacent to the Fraser River at the east end of Landooz Road. Water is pumped to the reservoir on the west side of the settlement and distributed to individual homes through 150 mm diameter PVC mains with fire hydrants.

Based upon CH2MHill's October 2003 Asset Condition Reporting System (ACRS) review there is no staff member responsible for operations and maintenance. The North water system appears to be well maintained with equipment tested and serviced regularly by a local Prince George firm. There does not appear to be a similar operation and maintenance arrangement for the South water system with the result that a number of deficiencies need to be addressed.

In August 2000 new standby wells were drilled next to the 2 existing production wells currently providing water to North and South Khas't'an Lhughel (Shelley). Hemmera Envirochem's *Hydrogeological Investigation North Shelley Community and South Shelley Community* reports (February 2002) compares the quantity and quality of water for both existing and new wells. Results of the chemical data for both North and South new standby wells and existing production wells indicate concentrations of calcium carbonate and manganese above the recommended Health Canada guidelines. The existing South reserve production well also exhibited concentrations of iron that exceed drinking water guidelines. However, these guidelines for hardness, manganese and iron are aesthetic objectives and not related strictly to health considerations.

A review of the pumping test data from the North standby well and existing production well suggest that the new standby well is capable of a much higher yield than the existing well. Therefore, should future development of a proposed subdivision necessitate increased drinking

water requirements, the new standby well could be used as the main drinking water source for the North community, while the existing production well could be used as a back-up if required.

The report indicates the existing South production well contained elevated iron concentrations that may indicate deterioration of the well piping, screening and casing. Given these conditions, it was recommended that the new well be completed as the main water supply for the South reserve and the existing well be replaced.

The Band currently has 2 capital projects funded by INAC to deal with the maintenance and replacement of various components of the water supply and distribution systems.

SProject 5295 Domestic Water Supply Improvements for North and South Khast'an Lhughel (Shelley) is scheduled for completion in 2006. This project will identify the remaining life span of both systems' supply and distribution components and identify repairs needed to ensure safe drinking water.

Project 4482 North Shelley Subdivision is also scheduled for completion in 2006. This project will examine options for developing additional serviced lots north of the existing housing including the development of a communal wastewater disposal system.

### **Fire Protection**

In 1996, 2000/2001 and 2003 the First Nations Emergency Services Society (FNESS), assessed community fire hazards and options for fire protection and fire suppression. A number of grass and brush fires resulted in damages to offices and homes in 2003. Lheidli T'enneh's funding proposal to INAC to provide fire protection for Khast'an Lhughel (Shelley) in 2004 outlined a number of options as follows:

- Service agreement with Regional District to provide limited fire protection for the south reserve by the Shell-Glen Volunteer Fire Department. This option is not realistic given the distance between the south reserve and the Shell-Glen Fire hall.
- Service agreement with City of Prince George to provided limited fire protection to the north reserve. The City advises that its nearest fire hall is too far away to be able to provide coverage.
- Residential sprinkler systems for each home or facility. This option has limited protection since properly equipped fire departments are still required to deal with other fires (such as grass and brush fires) that occur outside the structures. Such systems require regular maintenance to ensure their effectiveness.
- Installation of hose cabinets to provide fire protection until an adequately equipped fire department can be organized for the reserve. This option has some merit but is not recognized by insurance companies as adequate protection against fire.

Capital Project 5203 Fire Protection for Khast'an Lhughel (Shelley) has been completed by staff and Creekside Fire Protection in December 2004. The purpose of this project was to design fire hose cabinets for the storage of fire protection equipment for both the north and south reserves. The report recommends that both north and south water systems should be upgraded with pumps to increase existing water pressures and fire flow capacities for fire hoses to work properly. It also recommends that fire hydrants should be constructed in the vicinity of the barns

and storage facility to improve coverage in this area. Finally, a fully equipped and trained volunteer fire department needs to be established to supplement the initial protection provided by the fire hose cabinets. These steps are considered interim measures until a capital plan for a fire hall can be submitted to INAC.

Over and above the fire protection for the reserves, Lheidli T'enneh has entered into a partnership arrangement to undertake a Regional Emergency Response and Recovery Plan with the Regional District of Fraser Fort George. This Plan will identify potential risks that threaten the reserve and develop strategies to deal with these events. Risks identified to date at Khast'an Lhughel (Shelley) include the security of the CN/BCR rail lines, forest and brush fires, flooding and potential gas pipeline ruptures. One key issue that needs to be addressed in this Plan will be access from both south and north reserves in the case of an emergency. There is currently only one road access to each reserve. Previous studies have indicated there is a need to construct emergency road access and relocate Landooz Road to minimize the impact of potential flood events.

### **Wastewater Disposal**

Individual septic fields are utilized to provide wastewater disposal for all homes and buildings in North and South Khast'an Lhughel (Shelley). Hemmera Envirochem's 2002 report indicates that the existing North septic fields are not impacting the deeper aquifer where the existing production and standby wells are located. This report recommends continued operation of individual septic fields including the future installation of individual septic fields in the vicinity of the proposed subdivision. Similarly, the existing South reserve septic fields are not impacting the shallow groundwater in the vicinity of the existing production and standby wells. The report recommended continued use of septic fields as a domestic wastewater disposal method in this area as well.

However, Health Canada's position since 2000 has been that they will not approve any more septic systems in Khast'an Lhughel (Shelley) due to the 1:200 year floodplain, soil types and septic field infiltration during spring runoff. Projects 4477 and 5205 funded by INAC will conduct an assessment of existing septic systems and determine the necessity and extent of the repairs or replacements required to upgrade these systems, if required. This project will also examine the feasibility of constructing a communal wastewater disposal field or lagoon to replace existing individual septic fields. Hemmera's report indicates that more detailed soil testing is required in the vicinity of the potential community wastewater disposal field east of the existing reservoir.

A determination on the future use of individual or community wastewater disposal options is a key issue to be addressed in any future subdivision in North Khast'an Lhughel (Shelley).

### **Roads**

North Reserve Roads are gravel surfaced with open ditches. Landooz Road is the main access road to the north side of Khast'an Lhughel (Shelley) and approximately 2500 m length. This road is partially located with the 1:200 floodplain. Relocation of a portion of Landooz Road was completed in recent years to avoid the potential of an accident where the main Duke Energy gas transmission line crosses the road. Khast'an Road runs off Landooz Road and serves a number of houses. There is also an access road to the water reservoir for operations and maintenance. Lheidli T'enneh information provided to INAC in 2000 indicated these roads require upgrading and improvements to current standards to improve the road base and surface treatment as well as ditches.

South Khast'an Lhughel (Shelley) reserve roads are gravel surfaced with open ditches. The road surface is approximately 6 to 7.5 m. wide. The main access road is Whenun Road connecting to Shelley Road at the south end and terminating in a dead end at the north end of the community. Whenun Road is approximately 950 m in length within an 18 m. right of way on the reserve. Two short cul de sacs, T'ughus Rd and Sewh Rd have been developed off Whenun Road.

The South Shelley Road Access Feasibility Study completed by C4 Engineering in 2001 identified 2 options for Whenun Road. The first option proposed to construct a new road from Loopol Road in the south Shelley community on the west side of the reserve boundary to connect with Whenun Road on the reserve. This option would result in Whenun Road and the uncontrolled crossing over the CN tracks being closed to traffic. This option would require the purchase of land from Canfor to accommodate this road realignment.

The second option proposed would retain the existing road alignment and upgrade the existing CNR railway crossing by raising the road on both sides of the tracks. This road project would reduce the existing approach grades and improve sightlines for vehicles crossing the tracks. A crossing protection signal is also proposed under this option.

The study ultimately recommended option 1, the Whenun Road relocation, due to life cycle costs and safety considerations even though purchase of right of way and other land tenure issues are involved.

Capital project 4990 Khast'an Lhughel (Shelley) Road Improvements is underway to identify improvements required for approximately 3.2 km of roads and drainage on the reserve. The specific scope of the work for this project includes an assessment of existing road and drainage conditions as well as detailed design for road reconstruction and drainage improvements.

A new emergency road access is recommended above the 1:200 year floodplain on the north reserve. This new access will provide residents safe access to the BCR rail tracks that are located above the floodplain. In order to resolve the potential for flooding within certain sections of Landooz Road off the reserve to the west, further discussions need to occur with the Regional District of Fraser Fort George as part of the joint emergency planning process presently underway.

## **DEVELOPMENT OPPORTUNITIES AND CONSTRAINTS**

Khast'an Lhughel (Shelley) is a position to capitalize on a number of development opportunities due to the following strategic considerations:

- Adjacent CN/BCR rail tracks on both south and north reserves;
- Proximity to existing Canfor sawmill and pulp and paper operations;
- Adjacent to old mill site west of south reserve;
- Water frontage on Fraser River;
- Very productive agricultural land;
- Existing domestic water supply sources with potential for expansion;
- Proximity to the City of Prince George.

The major development constraints associated with this reserve include:

- Physical separation of the north and south reserve by the Fraser River;
- Significant land areas that are wetlands and susceptible to flooding;
- Significant slopes in the northwest part of the reserve and south of CN mainline;
- Potential upstream erosion hazard from the Fraser River (see discussion below).

### **Flood and Erosion Hazard**

North and South Khas't'an Lhughel (Shelley) have significant lands adjacent to the Fraser River within the 1:200 year floodplain (see Map #2). Fraser River bank erosion over the years has been extensive especially during strong spring runoffs. Flooding and bank erosion have the potential to threaten existing infrastructure (roads, wells, septic fields), create safety hazard for residents and inundate roads that are too low and susceptible to flooding.

*Flood and Erosion Damage Mitigation Plan Stage 1* report completed by UMA Engineering Ltd in January 2000 documents the flood and erosion hazard risks for Khas't'an Lhughel (Shelley). In addition, a number of capital projects have been initiated or completed in recent years to mitigate the impact of flooding and erosion hazard noted in this report.

In 1997 the North Shelley Erosion Protection Project Phase 1 (CPMS 2753) was completed to reduce the safety risk of steep banks caused by Fraser River slope erosion. Phase 1 resulted in the regrading of approximately 400 m of riverbank to a slope of 1.8:1 and the installation of a rip rap apron along the regraded section between the existing houses on Landooz Road and the Fraser River. Phase 2 of the Riverbank Erosion Protection Project has been partially funded by INAC. This project may result in the construction of an additional 450 m of rip rap bank protection directly downstream from Phase 1 if this project is fully funded.

*Fort George Indian Reserve Flood Protection* by Hay and Company Consultants Inc. 2001 notes a potential larger flood hazard at the north boundary of the reserve where future erosion of the banks of the Fraser River could result in the river partially diverting through an old channel and creating a significant flood hazard for North Khas't'an Lhughel (Shelley). The report recommends that a flood protection berm should be constructed near the north boundary of the reserve. With the recent relocation of the BCR right of way due to bank erosion in the area, the future impact of this risk on the reserve and mitigation measures need to be investigated further.

### **Environmental Assessment**

Morrow Environment Consultants *Phase 1 Environmental Site Assessment* (ESA) completed in 2000 identified a number of issues of potential environmental concern at Khas't'an Lhughel (Shelley).

These issues include minor spills of diesel fuel, individual garbage pits, use of oil on roads for dust control, equipment leakage from logging operations, abandoned vehicles and potential soil contamination associated with the CN, BC Rail and Duke Energy right of ways.

### **Economic Development**

The Economic Development Strategy Report for Lheidli T'enneh Band 1993 identifies a number of potential business ventures have been undertaken or identified for further investigation, some of which include:

- Log home building
- Hemp and flax farming
- Hemp processing
- Organic farming and market gardening
- Shingle and cant mill adjacent to the South reserve
- Dairy farming
- Cow/calf operation
- Slaughterhouse
- Specialty and wild game farming
- Ethno-tourism
- Education with Aboriginal content and focus
- Housing repairs and maintenance
- Information technology for other First Nations
- Waste recycling

Some of these uses may be developed on this reserve on existing agricultural lands in the area west of Landooz Road.

## **COMMUNITY AND YOUTH LAND USE PRIORITIES**

The community mapping sessions identified a wide range of future development priorities for Khast'an Lhughel (Shelley) including:

- Future housing for Band Members
- Employment generation (repair shop, fabricating)
- Protection of church/graveyard corridor
- Increased agricultural production
- Outdoor recreation (hockey, ball fields, soccer, golf)
- Recreation/Community Centre (health, education)
- Retention of existing traditional use areas for berry picking, medicine plants and hunting

The land use priorities are depicted on the Khast'an Lhughel (Shelley) Community and Youth Land Use Priority Maps #8 and #9 (see also Section 4). The maps completed throughout the community mapping sessions indicate a broad range of land uses with an emphasis on the provision of more housing and additional commercial and industrial uses. Certainly, there is a priority on developing a more self sufficient community with a variety of employment opportunities, community facilities, social services and recreational opportunities to serve existing and future residents and visitors.

Both community and youth priorities highlight both urban type land uses to meet the increasingly diverse needs of the reserve, as well as prioritizing retention of a rural lifestyle and access to traditional use areas.

## **PLANNING VISION FOR KHAST'AN LHUGHEL**

This reserve is the principal settlement area for the Lheidli T'enneh Membership. Based upon the Lheidli T'enneh Vision Statement, community mapping and community and youth land use priorities, the following Vision is proposed for this reserve.

**Khast'an Lhughel (Shelley) will be a sustainable community providing a variety of employment and housing opportunities, education, social and recreation programs to ensure a high quality of life for its residents.**

To implement this Planning Vision, the reserve has been divided into a number of land use designations. These designations have individual objectives, list of permitted uses and strategies to guide land use decisions.

### **LAND USE DESIGNATIONS**

**Community Development Area**  
**Community Development Expansion Area**  
**Cultural Heritage Site**  
**Traditional Use Area**  
**Natural Resource Development Area**  
**Environmentally Sensitive Area**  
**Cultural Heritage Site**

### **COMMUNITY DEVELOPMENT AREA OBJECTIVE**

To encourage the repair and replacement of existing houses and new homes on existing lots together with the development of compatible land uses to serve the residents.

### **COMMUNITY DEVELOPMENT AREA PERMITTED USES**

Primary uses shall be houses, duplexes and triplexes, with accessory uses including home occupations limited to use within the dwelling units, offices, commercial uses within Band office, playground, churches and similar uses.

Secondary uses may include community facilities (such as a community centre or fire hall), commercial retail uses, offices and home occupations with outdoor storage where there is little or no impact on adjacent residential uses.

### **COMMUNITY DEVELOPMENT EXPANSION AREA OBJECTIVE**

To provide for long term residential expansion in the area adjacent to existing community development north of the cemetery.

To provide for small scale commercial, industrial and other employment opportunities in the west Landooz Road area.

### **COMMUNITY DEVELOPMENT EXPANSION AREA PERMITTED USES**

Primary uses shall include residential expansion and agriculture (field crops) north of the cemetery.

Secondary uses may include temporary uses without permanent structures or buildings north of the cemetery, and commercial/industrial uses in the west Landooz Road area based upon a future sector plan for this area.

### **TRADITIONAL USE AREA OBJECTIVE**

To protect traditional use areas for future use by the Lheidli T'enneh Membership.

### **TRADITIONAL USE AREA PERMITTED USES**

Primary uses shall include hunting, berry picking, medicine plants, hunting, outdoor recreation.

Secondary uses may include low intensity agriculture (wild rice).

### **NATURAL RESOURCE DEVELOPMENT AREA OBJECTIVE**

To retain existing forested areas for future harvesting and explore potential for alternative field crop uses in existing field areas.

### **NATURAL RESOURCE DEVELOPMENT AREA PERMITTED USES**

Primary uses shall include hunting, forestry, silviculture, outdoor recreation, traditional uses for tourism.

Secondary uses may include accessory uses to primary uses (such as processing plants or greenhouses).

### **ENVIRONMENTALLY SENSITIVE AREA OBJECTIVE**

To minimize large scale development within the 1:200 year floodplain, wetlands and on significant slopes greater than 20%.

### **ENVIRONMENTALLY SENSITIVE AREA PERMITTED USES**

Primary uses shall include traditional uses, agriculture, forestry, outdoor recreational uses.

Secondary use may include building and structures associated with Primary Uses in accordance with future Zoning Law requirements.

## **CULTURAL HERITAGE SITE OBJECTIVE**

To celebrate the existing cemetery and church grounds as a cultural heritage site based upon its spiritual, cultural and historic value.

## **CULTURAL HERITAGE SITE PERMITTED USES**

Primary uses shall be a cemetery and church.

Secondary uses may include buildings and structures associated with the primary uses in accordance with future Zoning Law requirements.

## **PLANNING STRATEGIES (What to do and When)**

### **Short Term Priorities**

- Establish a Housing Task Force to complete a Housing policy including maintenance of wait lists, rental rates, repair, replacement of existing homes and new home construction as well as investigate future equity/tenure options and verify interest of community members in living on reserve.
- Focus housing efforts on repair, upgrading and replacement of homes on existing lots.
- Undertake training and education programs to ensure community members are able to participate fully in all aspect of Lheidli T'enneh administration and operation/maintenance responsibilities and other employment initiatives on and off reserve.
- Complete a subdivision design for North Khast'an Lhughel (Shelley) to meet demands for 50 to 60 lots over next 20 years and finalize recommend sewage disposal option with community member input.
- Undertake outline plan and design to extend existing water and sewer system on for North Khast'an Lhughel (Shelley) to the west of the Community Development Area to provide for potential commercial/industrial development and training opportunities (forestry, log building).
- Develop a program to fund Church restoration and consider lands between church and cemetery for special landscaping treatment.
- Allocate funds to complete the physical design and program development for community/education centre expansion.
- Review organic market gardening, hemp processing and shingle mill operations and revise plans to determine future direction for these business opportunities.
- Upgrade for North Khast'an Lhughel (Shelley) standby well in conjunction with development of new lots and use existing well as back up.

- Contract operation and maintenance responsibility for South Khast'an Lhughel (Shelley) water system and introduce training program for staff resources to assume this function for both water systems.
- Upgrade South Khast'an Lhughel (Shelley) reserve standby well to production well and use existing well as back up.
- Complete domestic water systems study and allocate capital funds to complete water supply/distribution improvements and meet fire protection requirements (pumps and additional fire hydrants).
- Review three options for north side sewage disposal and decide on preferred option for community sewage disposal field, lagoons or individual septic fields.
- Complete road improvements projects initiated in 2000 and access/allocate capital funds for recommended road construction and drainage improvements.
- Review road maintenance agreement with City of Prince George in conjunction with road construction and drainage improvements to determine whether agreement should be revised, renewed, or maintenance undertaken internally by Lheidli T'enneh for North Khast'an Lhughel (Shelley).
- Initiate land purchase for Whenun Road relocation.
- Install hose cabinets and begin the process of establishing volunteer fire departments for North and South Khast'an Lhugel (Shelley).
- Implement Regional Emergency Response and Recovery Plan recommendations and allocate funds to mitigate flood, fire and other risks (emergency road access, road relocations, rip rap bank protection).
- Build local government relationships with regular meetings, referrals, committee participation and joint projects (emergency planning, snow removal, regional growth strategy).
- Negotiate municipal servicing agreements with local governments as required (road maintenance) and review existing arrangements for garbage and street lighting.

### **Medium Term Priorities**

- Identify future requirements for shallow utilities (power, gas telephone, cable, fibre optics) and work with private companies to extend and upgrade existing services and provide for logical extension to new north subdivision in future.
- Explore options to identify Community Land for designation under Land Code after Final Treaty Settlement.
- Complete additional river bank erosion and rip rap projects based on Riverbank Erosion Protection Phase 2.

- Develop signage program for reserve including entrance signs to the reserve and community facilities.
- Review the need for hunting restrictions within the Community Development Expansion Area.
- Initiate agreement with Canfor for continued use of Northwood Bridge.
- Investigate need for North reserve boundary flood protection berm and other mitigation measures.
- Relocate Whenun Road north of CNR tracks in accordance with C<sub>4</sub> 2002 feasibility study.
- Revise Plan to include treaty settlement land base expansion when Final Treaty Settlement ratified.
- Initiate trails and park plan to provide for playground improvement expansion, new parks, trail development (outdoor hiking, snowmobiling, skiing) as well as tree planting and landscaping program for community.
- Identify appropriate fire hall location and undertake design with potential for this facility to be within or adjacent to community centre.
- Undertake feasibility study on upgrading or replacing existing Band office or potential inclusion in future community centre with one stop customer service for all programs and services. This study should also identify the advantages and disadvantages of a new administration office or satellite office off reserve.

### **Long Term Priorities**

- Investigate feasibility of pedestrian bridge over Fraser River to improve access and as part of regional cycling trail network
- Construct community centre offering full range of social, health, educational and recreation programs and services with potential inclusion of administration office.

## **IR#3 LHEZBAONICHEK (CLESBAONEECHECK)**

### **BACKGROUND**

Lhezbaonichek (Clesbaoneecheck) was surveyed and established in 1894. The reserve is 123 ha (304 ac) in size and located on the left bank of Nechako River within the Regional District of Fraser Fort George, upstream from the confluence of the Nechako and Fraser Rivers on the west boundary of the City of Prince George.

The reserve is mostly forested sloping from northwest to southeast and is bisected by North Nechako Road. This road continues to the Reid Lake area and is constructed to a gravel standard. North Nechako Road was formerly a private log haul road originally “permitted” through the reserve by Prince George Pulp and Paper. The responsibility for North Nechako Road beyond the City boundary is not certain. The road is not public in the legal sense because it is not owned and maintained by a government. The Regional District and BC Transportation do not wish to assume responsibility for this road due to concerns voiced by the Department of Fisheries and Oceans with respect to periodic road erosion (escarpment slumping) into the Nechako River. Resolution of this slumping problem to meet DFO requirements was estimated to cost just under \$1 million in 1985. BC Forestry Services has also stated that they are not interested in assuming responsibility of this road for the same reasons.

Lhezbaonichek (Clesbaoneecheck) is the former site of the Lheidli T’enneh Pow Wow Grounds and includes an existing stage area. Two residential dwellings and a drilled well are presently located on this reserve. The reserve also includes four low lying islands in the Nechako River. These islands tend to be susceptible to flooding dependent upon seasonal fluctuations in Nechako River water levels.

UMA Engineering Ltd. *Flood and Erosion Damage Mitigation Plan* assessment concluded that the two existing houses are approximately 2.5 m. above flood levels. The houses appear to be safe in a 1:200 year flood although flooding at the eastern boundary of the reserve with likely occur since this area is an old floodplain. As a result, flooding of North Nechako Road may require the existing residents to leave the reserve by the main gravel road to the west. Minor erosion is threatening the river frontage access road to one of the houses. This erosion will require the relocation of the road slightly to the north.

### **DEVELOPMENT OPPORTUNITES AND CONSTRAINTS**

The development opportunities associated with this reserve result from its location on the banks of the Nechako River. First, this allows the use of the river to cater to water users. Second, there is a potential for future residential development on-reserve, whether this be Band housing or high end residential lots similar to the Bayshore Estates to the east. However, there are two key constraints that need to be addressed prior to consideration of any significant development within the Community Development Expansion Area.

The first major constraint is access. North Nechako Road is currently a forest service road that needs to be upgraded east of the reserve to resolve the periodic slope failure of the bank and attendant road closures. Lheidli T’enneh needs to initiate a meeting of all involved to identify options and preferred solutions to upgrade this private logging road and stabilize the

escarpment prior to public road designation with future maintenance by the City of Prince George, Regional District of Fraser Fort George or potentially Lheidli T'enneh.

The second major constraint is that presently there is no BC Hydro power service to this reserve. Lheidli T'enneh should explore alternatives to extend power to Lhezbaonichek (Clesbaoneecheck) with BC Hydro and identify capital funding sources in conjunction with consideration of future residential development in the Community Development Expansion Area.

### **Environmental Assessment**

Morrow Environmental Consultants Phase 1 ESA (2000) identified a number of areas of generally low to moderate environmental concern.

Two areas of the reserve where unauthorized dumping occurred in the past have been cleaned up but require further investigation. Random dumping appears to have continued in recent years in various areas of the reserve. Similar to Khast'an Lhughel (Shelley) the use of oil for dust control and equipment leakage from previous logging operations have been noted.

A detailed list of potential concerns identified in the Phase 1 ESA and their relative degree of environmental risk are summarized in Appendix 2.

### **COMMUNITY AND YOUTH LAND USE PRIORITIES**

The community mapping sessions identified a wide range of future land use priorities for Lhezbaonichek (Clesbaoneecheck) including:

- Campsites/cabins
- Future housing (retirement assisted living, Band housing, high end housing)
- Berry picking, wild rice, herbs, medicine
- Services such as store, boat launch, restaurant, gas station
- Multi use trails and recreation facilities
- Tourism businesses (guiding outfitters, bed and breakfast
- Stage renovation (concerts, Pow Wow)

The upgrade of North Nechako Road and extension of power from BC Hydro were identified as two key issues that need to be resolved prior to any development occurring on this reserve. These land use priorities are depicted on the Community and Youth Land Use Priority Maps.

The Community Land Use Priorities Map (see Map #10) for Lhezbaonichek (Clesbaoneecheck) identifies the need to retain much of the reserve area for traditional uses (such as berry picking and fishing) and low impact tourism (guiding outfitters, boat launch and outdoor recreation uses, trails). All these uses have minimal environmental impact.

The eastern portion of the reserve abutting North Nechako Road contains two existing houses and the Pow Wow grounds. It is identified for future residential uses (high end residential, Band housing, retirement assisted living).

The Youth Community Land Use Priorities Map (see Map #11) identifies a broad range of land use priorities for this reserve including extensive commercial, community facilities, and

extensive residential land uses for most of Lhezbaonichek (Clesbaoneecheck). Youth land use priorities emphasize the development of a full range of housing, commercial, recreation and tourism uses generally associated with a self contained urban community and place much less importance on traditional and outdoor recreation uses.

The Community and Youth Land Use Priorities Maps identify housing and commercial uses in the easterly portion of this area abutting North Nechako Road. Both maps identify the islands for some traditional uses and recreation as well as uses related to the Nechako River such a fish camp and tourism related uses (restaurants, lodges, boat launch, campgrounds). Neither map supports future industrial development in the area.

The major difference between Community and Youth Land Use Priority Maps is the degree to which the youth priorities focus on developing a wider range of commercial uses (bank, hotel, Tim Horton's), larger community facilities (schools and hospitals) and housing dispersed throughout Lhezbaonichek (Clesbaoneecheck). The Community priorities identify a much narrower band of development along North Nechako Road with larger areas of land being retained in traditional use in the southwest and northern portion of the reserves with lower impact tourism and recreation uses in the bench areas above this road.

## **PLANNING VISION FOR LHEZBAONICHEK**

Based upon input received from Community Members and staff assessment of off site constraints, the following Vision statement is proposed for Lhezbaonichek (Clesbaoneecheck).

**Lhezbaonichek (Clesbaoneecheck) will retain Natural Resource Development and Traditional Use values and Environmentally Sensitive Areas with future provision for a Community Development Expansion Area.**

## **LAND USE DESIGNATIONS**

Based upon this Vision the following designations are proposed:

**Natural Resource Development Area**  
**Traditional Use**  
**Community Development Expansion Area**  
**Environmentally Sensitive Area**

## **NATURAL RESOURCE DEVELOPMENT AREA OBJECTIVE**

To retain the northwest area of Lhezbaonichek (Clesbaoneecheck) (designated as Natural Resource Development Area) area for future forestry operations and recreational opportunities (see Map #5).

## **NATURAL RESOURCE DEVELOPMENT AREA PERMITTED USES**

Primary uses shall include forestry, hunting, potential trails, outdoor recreation uses (hiking trails).

Secondary uses may include outdoor recreation facilities.

#### **TRADITIONAL USE AREA OBJECTIVE**

To retain this area for traditional berry picking and other similar uses.

#### **TRADITIONAL USE AREA PERMITTED USES**

Primary uses shall be hunting, berry picking, medicine plants, etc.

There are secondary uses permitted in this area.

#### **ENVIRONMENTALLY SENSITIVE AREA OBJECTIVE**

Minimize development within swampy areas adjacent to McPhee Creek, Duck Lake, and areas with slopes over 20%.

#### **ENVIRONMENTALLY SENSITIVE AREA PERMITTED USES**

Primary uses shall include traditional uses.

Secondary uses may include Traditional Uses and uses consistent with the Natural Resource Development uses subject to completion of an environmental impact assessment statement to ensure minimal impact within this area.

#### **COMMUNITY DEVELOPMENT EXPANSION AREA OBJECTIVE**

To provide for long term potential residential development adjacent to North Nechako Road dependent on adequate supplies of groundwater and soil suitability for septic fields as well as off-site road and power improvements.

#### **COMMUNITY DEVELOPMENT EXPANSION AREA PERMITTED USES**

Primary uses shall include individual housing sites and traditional uses.

Secondary uses may include Member or market housing, community facilities, tourist uses (boat launch, campsite) and commercial uses to support residential, community facilities, tourist and outdoor recreational uses.

## **PLANNING STRATEGIES (What to do and When)**

### **Short Term Priorities**

- Initiate stakeholders meeting with City of Prince George, Regional District of Fraser Fort George, Ministry of Transportation, BC Forest Services and Canfor to upgrade North Nechako Road east of the reserve and undertake remedial measures necessary to minimize future road closures due to slope failure.
- Revisit BC Hydro power options for the reserve and explore additional options to provide power to this area if and when the Community Development Expansion Area is developed.
- Complete site investigations of mounds and depressions to determine their suitability for designation as a Cultural Heritage Site and identify appropriate setbacks from other uses.
- Undertake erosion control measures as identified in *UMA Flood and Erosion Damage Mitigation Plan* as required to stabilize the banks adjacent to the Nechako River.

### **Medium Term Priorities**

- Complete water quality and quantity testing for the existing well and additional ground water testing to determine the potential for domestic water supply in this area prior to any consideration of future residential development in Community Development Expansion Area.
- Undertake soils investigation within the Community Development Expansion Area to determine the suitability of this area for individual or communal sewage disposal facilities.
- Determine the feasibility of developing youth and Elder cultural camp (cabins, multi purpose building) for education and cultural purposes with potential revenue generation from rental to other groups.
- Determine feasibility of upgrading existing stage and development of cultural and concert program.
- Identify boat launch location and extent of support services required (gas, bed and breakfast, parking, rest area) to accommodate existing water users and tourists.
- Initiate and pilot ethno tourism cultural corridor water based opportunities celebrating the history and culture of Lheidli T'enneh reserves and other points of interest on the Nechako River targeted to provide a unique visitor experience.

### **Long Term Priorities**

- Determine the feasibility of developing water frontage lots for community members or market housing in conjunction with North Nechako Road improvements and costs to extend power to the Community Development Expansion Area.

## **IR# 4 DZULHYAZCHUN TSALAKOH (SALAQUO)**

### **BACKGROUND**

Dzulhyazchun Tsalakoh (Salaquo) is approximately 37 ha (91 ac) in size and located on the right bank upstream from Lhezbaonichek (Clesbaoneecheck) at the confluence of the Chilako (Mud) River and Nechako River within the Regional District of Fraser Fort George. There is no legal, physical or private road access to this reserve. Pedestrian access to Dzulhyazchun Tsalakoh (Salaquo) is obtained from lands to the south where permission is required to traverse adjacent lands prior to walking over the CNR railway bridge to the reserve.

The reserve is generally forested with significant pine beetle kill (see Map #7). The Canadian National Railway main line between Prince George and Prince Rupert bisects the reserve. This mainline is elevated with fill through the west part of the reserve to achieve an acceptable grade for the bridge crossing on the west bank of the Chilako. The mainline returns to grade toward the east reserve boundary. The reserve is generally level to rolling north of the CNR mainline with a gravel bar area at the confluence of the Chilako and Nechako Rivers. Significant slopes occur in the southeast area of the reserve.

Field site visits have identified a number of culturally modified trees and caches in proximity to the original seasonal village site.

### **DEVELOPMENT OPPORTUNITIES AND CONSTRAINTS**

Development opportunities for this reserve are water based and rely on the potential of rafting, kayaking and canoeing on the Chilako and Nechako Rivers. Recognition of the historic seasonal village site and potential trail to link this site with the Cranbrook Hill Greenway are two other potential opportunities for this reserve.

Three major constraints provide significant barriers to future development of Dzulhyazchun Tsalakoh (Salaquo). First, there is no legal or physical access to Dzulhyazchun Tsalakoh (Salaquo) or any potential to obtain access without acquiring easements or purchasing adjacent properties. Second, the location and elevation of the CNR mainline through the reserve effectively divides the reserve into two separate areas, diminishing, if not totally eliminating, the potential for any significant development at the confluence of the Chilako and Nechako Rivers. Third, the slopes in the southeast area of the reserve may present a significant construction and maintenance cost should a road be constructed to provide vehicular access to this reserve via Crown lands to the east.

#### **Environmental Assessment**

Morrow Environmental Consultants Phase 1 ESA (2000) identified a number of minor environmental concerns within the existing CN railway right of way. They also noted an empty steel drum in the southwest corner of the reserve that does not appear to represent a potential environmental concern.

A detailed list of concerns and their relative degree of environmental risk are included in Appendix 2, Potential Concerns Identified as a Result of Phase 1 ESA.

## COMMUNITY AND YOUTH LAND USE PRIORITIES

The community mapping sessions identified a number of future land use priorities for Dzulhyazchun Tsalakoh (Salaquo) including:

- Tourism and support services (river tours, lodge, gas)
- Camps (youth fish camp, cultural, survival)
- Community and recreation facilities (trails, boat launch)
- Traditional use (berries)
- Agriculture (wild rice)
- Fishing (fish hatchery)
- Forestry (mature furniture grade pine)

The Dzulhyazchun Tsalakoh (Salaquo) Community Land Use Priorities Map (see Map #12) has summarized these uses into a number of categories for the purpose of depicting these priorities. This map identifies a number of traditional use areas associated with the seasonal village that was located at the confluence of the two rivers in the past. These uses include caches and culturally modified trees. In addition a number of smaller areas for residential, recreation and tourism priorities were highlighted in various areas of the reserve.

The Youth Land Use Priorities Map (see Map #13) indicates a large number of dispersed land use priorities throughout the reserve. This map places less emphasis on traditional uses, recreation and tourism uses, with higher priority placed on residential, commercial development and community facilities.

Both Community and Youth Land Use Priorities Maps identify the confluence of the Nechako and Chilako Rivers for traditional and tourism uses. While the youth priorities focus on a much higher level of urban type development, dependent on off site road and infrastructure improvements, the community map indicates a much higher priority for traditional and tourism uses.

## PLANNING VISION FOR DZULHYAZCHUN TSALAKOH

Based upon the input received from the Lheidli T'enneh Membership and staff assessment of off site development constraints, the following Vision statement is proposed for Dzulhyazchun Tsalakoh (Salaquo).

**Enhancement of Traditional Use focus with water based tourism priority linked to the Nechako River.**

## LAND USE DESIGNATIONS

Based upon this Vision the following designations for Dzulhyazchun Tsalakoh (Salaquo) are proposed:

- Traditional Use Area**
- Natural Resource Development Area**
- Environmentally Sensitive Area**

## **TRADITIONAL USE AREA OBJECTIVE**

To retain Dzulhyazchun Tsalakoh (Salaquo) in its primarily natural state with recognition of the original seasonal village site, culturally modified trees and caches.

## **TRADITIONAL USE AREA PERMITTED USES**

Primary uses shall include traditional uses and protection of original seasonal village sites, culturally modified trees and caches.

Secondary uses may include Natural Resource Development Area uses, shelter, recreational trails and water based tourism uses with appropriate setbacks from any future cultural heritage sites.

## **NATURAL RESOURCE DEVELOPMENT AREA OBJECTIVE**

To log pine beetle diseased trees in accordance with pine beetle management plan.

## **NATURAL RESOURCE DEVELOPMENT AREA PERMITTED USES**

Primary uses shall use include forestry and outdoor recreation.

Secondary uses may include Traditional Uses.

## **ENVIRONMENTALLY SENSITIVE AREA OBJECTIVE**

To retain low lying areas and significant slopes in their natural state.

## **ENVIRONMENTALLY SENSITIVE AREA PERMITTED USES**

Primary uses shall include traditional uses.

Secondary uses may include recreational trails, forestry.

## **PLANNING STRATEGIES (What to do and When)**

### **Short Term Priorities**

- Negotiate access easements, right of refusal or purchase of the lands to the west of the reserve to ensure legal access from Ollinger Road to this reserve.
- Determine whether use of existing CNR bridge for pedestrian access requires any CN approval to minimize Lheidli T'enneh liability.

- Complete GPS inventory reserve for caches and culturally modified trees and designate key areas as cultural heritage sites.
- Implement a pine beetle management plan for reserve and potentially adjacent private and Crown lands to remove diseased trees as required.
- Stockpile pine logs on site to construct shelter for water users and hikers in future.
- Lobby BC Provincial Government, Regional District of Fraser Fort George and City of Prince George to include a future trail link from the existing Cranbrook Hill Greenway to this reserve.

### **Medium Term Priorities**

- Undertake design of trail and rest area for hikers and water users with input from stakeholders.
- Contact Canadian National Railway, BC Provincial Government and affected land owners to obtain comments and/or acquire the necessary approvals for improvements required to develop the trail across the tracks and on Crown land.
- Undertake brushing and tree clearing for the trail with appropriate directional and historical signage as part of integration with Cranbrook Hill Greenway.
- Involve water users and other tourism stakeholders in determining feasibility for any overnight rest areas as part of a Nechako River cultural corridor.
- Initiate and pilot ethno tourism cultural corridor water based opportunities celebrating the history and culture of Lheidli T'enneh reserves and other points of interest on the Nechako River targeted to provide a unique visitor experience.

### **Long Term Priorities**

- Develop a shelter for water-based users and as a trail terminus for potential hikers from Cranbrook Hill Greenway.
- If access is obtained or purchased for lands west of Chilako River, determine the feasibility and capital costs to construct pedestrian bridge if more intensive water or trail based uses require improved public or community member access over CN bridge in future.

## Section 6 - Implementation

This section provides an overview of the strategies required to implement the *Lheidli T'enneh Land Use Plan*. The intention is to provide an easily accessible guide that summarizes the both the next steps for Plan implementation under the Land Code, as well as the development priorities for each reserve. A chart has been provided that reviews all of the short, medium and long-term priorities presented in Section 5. In addition, specific considerations have been made with respect to capital projects and housing projections.

### LAND USE PLAN APPROVAL AND AMENDMENT

In order for the Land Use Plan to become law, the following processes must be followed, as required by the Land Code:

- Recommendation by the Lands Authority to the Lheidli T'enneh Membership under Section 24 of the Land Code;
- Approval by Lheidli T'enneh Membership at a meeting held to consider the Plan under Section 12 of the Land Code;
- Band Council Resolution to approve the Plan under Section 7 of the Land Code.
- Amendments to this plan are also required to follow the processes set out above for the initial approval of the plan.

### DISPUTE RESOLUTION

After approval of the *Lheidli T'enneh Land Use Plan*, any dispute that arises with respect to Plan interpretation or decisions made by the Lands Authority may be referred to a Dispute Resolution Panel. Dispute resolution will follow the guidelines as set out in the Land Code. The Lands Authority shall appoint the members of the Dispute Resolution Panel. The Panel shall provide appropriate notice to affected parties, consider any submissions and make decisions in a timely manner. In order to ensure fair and consistent judgments of the panel, it is recommended that a Band Council Resolution be implemented that adds detail to the processes for hearing disputes set out in the Land Code.

### ZONING LAW

Upon approval of this Plan, the Lands Authority, in consultation with Band Members, shall undertake the preparation of a Zoning Law for the lands contained in this Plan and develop processes and procedures for development review and the issuance of approvals for specific developments. This Zoning Law shall follow the same approval process as a Land Use Plan.

## ENVIRONMENTAL SITE ASSESSMENTS

Phase 2 and 3 Environmental Site Assessments for the specific sites identified in Phase 1 should be undertaken in 2005 and 2006. This will ensure remediation of any environmental problems is carried out prior to transfer of titles for the reserves from Canada to Lheidli T'enneh.

## LOCAL GOVERNMENT RELATIONSHIPS

Building and maintaining good relationships with other governments is an important goal included in this Land Use Plan. The following list reiterates the recommended projects and negotiations which will involve the local governments of the City of Prince George and the Regional District of Fraser Fort George:

- Finalize a Municipal Service Agreement with the City of Prince George, guaranteeing the Band's participation over decision making for Ts'un'k'ut (Fort George Cemetery), as well as ensuring Band representation on any committees whose decisions affect the cemetery.
- Increase the visibility of Lheidli T'enneh at Exploration Place and Fort George Park through the installation of additional cultural and heritage exhibits, and development of an educational package for the public.
- Review the Road Maintenance Agreement with the City of Prince George for North Khast'an Lhughel (Shelley).
- Initiate a meeting of all involved and affected to upgrade North Nechako Road east of Lhezbaonichek (Clesbaoneecheck).
- Lobby Provincial Government and local governments to include a future trail link from existing Cranbrook Hill Greenway to Dzulhyazchun Tsalakoh (Salaquo).

## CAPITAL PLAN AND PROJECT PRIORITIES

Based upon recommendations and actions outlined in this Land Use Plan and the forthcoming Comprehensive Community Development Plan, Council shall prepare a Capital Plan to guide future annual budgets and capital project priorities including applications to obtain capital funding from the Federal Government of Canada, the Provincial Government of BC, and other funding sources.

### Housing

Currently Khast'an Lhughel (Shelley) is the primary residential community for Lheidli T'enneh. However with the possibility of a treaty settlement, Lheidli T'enneh may acquire developable lands within city limits to provide land for future housing. As such, the discussion on housing is provided in this Section to ensure that **housing needs are considered in the context of future land and development opportunities** and should be passed through the Membership for approval of location.

As mentioned in Section 2, as of December 2004, Lheidli T'enneh had 309 registered Band Members. Of those 211 or 68% of the Membership live off reserve. The remaining 32% or 98 people live on reserve (95 at Khast'an Lhughel (Shelley) and 3 at Lhezbaonichek (Clesbaoneecheck)). Currently there are a total of 37 housing units located at both North and South Khast'an Lhughel (Shelley). Of these, the Band owns 35 homes, one home is privately owned and the other is condemned. This results in an average household size of 2.6 persons. In addition, there are two housing units at Lhezbaonichek (Clesbaoneecheck).

Between 1984 and 2004 total Band Membership more than tripled due to Bill C-31 and natural population increase (see Section 2 for 20-year historical population data). This population boom has resulted in an eightfold increase of Band Members living off reserve over the last 20 years (25 to 211). During the same time period, the number of Members living on reserve increased by only a third from 66 to 98 Members.

As discussed in Section 2, a number of future population projections have been prepared for the Band in the past. These various reports derive housing needs based on future population projections.

The 1990 *Physical Development Plan for Lheit-Le-We-Tens* prepared by the Carrier Sekani Tribal Council (CSTC) projected a total Band population of 275 by the year 2010 with 170 living in Khast'an Lhughel (Shelley). This projection was expected to generate a housing demand of 81 units by 2010 including some replacement of existing homes and construction of new homes to accommodate on and off reserve population increase. Based on actual 2005 Band population, the 1990 projections have underestimated the Band's total membership by 2010. On the other hand, these projections have overestimated the number of residents expected to be living at Khast'an Lhughel (Shelley) in the next 5 years unless there is sufficient demand and capital funds available to accommodate significant housing on this reserve.

The *Lheidli T'enneh First Nation Physical Development Plan* (1998) revised the population projections using 3 growth rates from 1998 to 2018 of 2.5%, 5% and 7%. These rates exclude the impact of Bill C-31 Membership re-instatements (see Section 2). The 1998 Physical Development Plan population and housing projections for the reserve in 2005 indicated that there would be 207 and 231 residents on the reserve with 69 and 77 houses required to accommodate this demand. This projection is more than double the actual number of residents and houses living at Khast'an Lhughel (Shelley) in 2004.

As demonstrated in Section 2, by the year 2020 it is projected the Band will have total population of approximately 500 members with approximately 300 living on reserve and 200 living off reserve. These projections result in the need for **approximately 50 to 60 new houses** to meet on reserve housing demand plus the replacement and/or repair of the existing 36 homes resulting in a total of 90 to 100 houses by 2020.

A significant variable with respect to future on reserve population and housing demand is the number off-reserve Band Members who may wish to move to Khast'an Lhughel (Shelley) upon final treaty settlement and in subsequent years. The 1995 Community Assessment indicates that over 70% of off-reserve Members who responded to this survey would prefer to live on reserve if there were better housing, community services and job opportunities. It is important to update Membership interest in moving to the reserve as part of projecting housing demand and to consider the development of newly acquired treaty settlement lands

## **PROGRAMS**

Based upon recommendations and actions outlined in this Plan and the subsequent Comprehensive Community Development Plan, Council shall implement service delivery programs (housing, education, health care, economic development) using this Plan as a guide in making decisions.

## **IMPLEMENTATION STRATEGIES**

The chart attached on the next page summarizes the short, medium and long-term priorities for all reserves as identified throughout the Plan. It can easily be presented a stand-alone document for reference with respect to other Lheidli T'enneh programs. These priorities should be used to guide Lheidli T'enneh's annual budget and long-term capital spending for the development of each of the reserves.

<b>RESERVE</b>	<b>SHORT TERM PRIORITIES</b>	<b>MEDIUM TERM PRIORITIES</b>	<b>LONG TERM PRIORITIES</b>
<b>TS'UNK'UT (Fort George Cemetery)</b>	Designate Ts'unk'ut as Cultural Heritage Site.	Encourage burial ground as active cemetery for Lheidli T'enneh Members.	Develop educational package detailing traditions and culture of Lheidli T'enneh, and history of Ts'unk'ut.
	Finalize a municipal service agreement with the City of Prince George ensuring Band's participation in decisions over cemetery.	Ensure Band representation on committees involved in decision making which may impact Ts'unk'ut.	
	Initiate comprehensive study to determine the feasibility of developing a major Aboriginal cultural destination.	Initiate negotiations with City of Prince George to develop additional cultural/heritage exhibits at Exploration Place.	
<b>KHAST'AN LHUGHEL (Shelley)</b>	Establish a Housing Task Force and complete a Housing policy.	Identify future requirements for shallow utilities and work with private companies to extend and upgrade existing services.	Investigate feasibility of pedestrian bridge over Fraser River.
	Focus housing efforts on repair, upgrading and replacement of homes on existing lots	Explore options to identify Community Land for designation under Land Code after Final Treaty Settlement.	Construct community centre offering full range of social, health, educational and recreation programs.
	Undertake training and education programs for administration, operation and maintenance, and other employment initiatives.	Complete additional river bank erosion and rip rap projects based on Riverbank Erosion Protection Phase 2.	
	Complete North Subdivision design to meet demands for 50 to 60 lots over next 20 years.	Develop signage program for reserve	
	Outline plan and design to extend existing water and sewer system on north reserve to the west Community Development Area.	Review the need for hunting restrictions within the Community Development Expansion Area.	

<b>RESERVE</b>	<b>SHORT TERM PRIORITIES</b>	<b>MEDIUM TERM PRIORITIES</b>	<b>LONG TERM PRIORITIES</b>
<b>KHAST'AN LHUGHEL (Shelley)</b>	Develop a program to fund Church restoration.	Initiate agreement with Canfor for continued use of Northwood Bridge.	
	Complete the design and program development for community/education centre expansion.	Investigate need for North reserve boundary flood protection berm and other mitigation measures.	
	Review organic market gardening, hemp processing and shingle mill operations.	Relocate Whenun Road north of CNR tracks in accordance with 2002 report.	
	Upgrade North standby well and use existing well as back up.	Revise Plan to include treaty settlement land base expansion when Final Treaty Settlement ratified.	
	Contract operation and maintenance responsibility for South water system/train staff to assume this responsibility for both water systems.	Initiate trails and park plan to provide for recreation facilities and tree planting and landscaping program for community.	
	Upgrade South reserve standby well and use existing well as back up.	Identify appropriate fire hall location and undertake design.	
	Complete domestic water systems study and complete water supply/distribution improvements to meet fire protection requirements.	Undertake feasibility study on upgrading or replacing existing Band office.	
	Review and decide on options for north side sewage disposal.		
	Complete Road Improvements project.		
	Review road maintenance agreement with City of Prince George.		
	Initiate land purchase for Whenun Road relocation.		
	Install hose cabinets and establish volunteer fire departments.		
	Implement Regional Emergency Response and Recovery Plan recommendations to mitigate flood, fire and other risks.		

RESERVE	SHORT TERM PRIORITIES	MEDIUM TERM PRIORITIES	LONG TERM PRIORITIES
<b>KHAST'AN LHUGHEL (Shelley)</b>	Build local government relationships.		
	Negotiate municipal servicing agreements with local governments as required.		
<b>Lhezbaonichek (Clesbaoneecheck)</b>	Initiate stakeholders meeting to upgrade and maintain North Nechako Road east of the reserve.	Complete water quality and quantity testing for the existing well and additional ground water testing.	Determine the feasibility of developing water frontage lots for community members or market housing.
	Investigate BC Hydro power options for the reserve, explore additional options to provide power to this area.	Undertake soils investigation within the Community Development Expansion Area.	
	Complete site investigations to determine location of Cultural Heritage Sites.	Determine the feasibility of developing youth and seniors cultural camp.	
	Undertake erosion control measures to stabilize the banks adjacent to the Nechako River.	Determine feasibility of upgrading existing stage and development of cultural and concert program	
		Identify boat launch location and extent of support services required.	
		Initiate and pilot ethno tourism cultural corridor water based opportunities.	
<b>Dzulhyazchun Tsalakoh (Salaquo)</b>	Secure legal access from Ollinger Road to Reserve.	Undertake design of trail and rest area for hikers and water users.	Develop a shelter for water-based users and as a trail terminus for potential hikers from Cranbrook Hill Greenway.
	Determine whether use of existing CNR bridge for pedestrian access requires any CN approval.	Contact stakeholders to acquire the necessary approvals to develop the trail across the tracks and on Crown land.	Determine the feasibility and capital costs to construct pedestrian bridge
	Complete GPS inventory reserve for caches and culturally modified trees and	Undertake brushing and tree clearing for the trail as part of integration with	

	designate key areas as cultural heritage sites.	Cranbrook Hill Greenway.	
<b>RESERVE</b>	<b>SHORT TERM PRIORITIES</b>	<b>MEDIUM TERM PRIORITIES</b>	<b>LONG TERM PRIORITIES</b>
<b>Dzulhyazchun Tsalakoh (Salaquo)</b>	Implement pine beetle management plan to remove diseased trees as required.	Determine feasibility for overnight rest areas as part of a Nechako River cultural corridor.	
	Stockpile pine logs on site to construct shelter for water users and hikers in future.	Initiate ethno tourism cultural corridor water based opportunities.	
	Lobby governments to include a future trail link from the existing Cranbrook Hill Greenway to this reserve.		



# **SLIAMMON FIRST NATION**

## **AMENDED LAND CODE**

**dated for reference December 2011**

**APPROVED**



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## SLIAMMON FIRST NATION AMENDED LAND CODE

### DECLARATION OF THE SLIAMMON FIRST NATION

**We are known collectively as the Sliammon First Nation and through this Land Code, we declare our sovereignty and jurisdiction. We speak our Sliammon language and are part of the larger grouping of the Coast Salish peoples.**

**Since the beginning of time, our people have lived on the lands that the Creator provided for our Ancestors. They lived by our traditional system of governance that sustained us and our lands and resources for thousands of years. Our society governed all forms of environmental, social and political relations through a sophisticated system of traditional laws, as is our traditional way.**

**It is from this proud history that Sliammon derives our inherent right of self-government. With jurisdiction and responsible leadership, we will create economic and employment opportunities to sustain and improve the quality of life for present and future generations.**

### PREAMBLE

**WHEREAS** the Sliammon First Nation, as it has always done, continues to occupy its lands and based on its traditional teachings, it will empower its Members to be healthy, self-governing stewards of its lands and resources, today and always;

**AND WHEREAS** the Sliammon First Nation honours its connection to the land, resources and elements of the natural world that provide for its physical and spiritual needs;

**AND WHEREAS** the Sliammon First Nation recognizes its responsibility to protect the land and its resources for future generations and to protect the rights of the Sliammon First Nation and its Members;

**AND WHEREAS** the Members of the Sliammon First Nation are a proud, united people whose purpose is to promote a healthy and prosperous future that ensures the continued existence of the Sliammon First Nation as a strong political, social and cultural community that aspires to move ahead as an organized, highly-motivated, determined and self-reliant nation;

**AND WHEREAS** the Sliammon First Nation values the need to respect, protect and promote its heritage, culture and traditions as the driving force of its success and destiny while understanding that these practices may change and require contemporary expression;



**AND WHEREAS** Sliammon First Nation wished to manage its land and resources under First Nation Land Management by entering into the Framework Agreement and Individual Agreement with Canada;

**AND WHEREAS** the Framework Agreement, Individual Agreement and *Sliammon First Nation Land Code* were ratified by Sliammon First Nation on March 20, 2004;

**AND WHEREAS** the *Sliammon First Nation Land Code* came into force on September 30, 2004;

**AND WHEREAS** the *Sliammon First Nation Land Code* provides for its amendment with the approval of Members at a Meeting of Members;

**NOW THEREFORE, THE SLIAMMON FIRST NATION LAND CODE IS HEREBY AMENDED.**

## PART 1 PRELIMINARY MATTERS

### 1. Amendment and New Title

Amendment

1.1 The *Sliammon First Nation Land Code* is hereby repealed and replaced with this law.

New Title

1.2 This law may be cited as the *Sliammon First Nation Amended Land Code*.

### 2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

“Act” means the *First Nations Land Management Act*, S.C. 1999, c. 24;

“Adjudicator” means the person appointed by Council to the Office of the Adjudicator;

“Canada” means Her Majesty the Queen in Right of Canada;

“Chief” means the lawfully elected Chief of Sliammon First Nation;



“Common-law Marriage” means two persons not married to each other that have lived together as Spouses for a period of not less than one year;

“Community Lands” means any Sliammon Lands in which all Members have a common interest;

“Community Land Code Meeting” means a Community Land Code Meeting convened in accordance with sections 11.2 or 11.3 of Part 3;

“Council” means the lawfully elected government of the Sliammon First Nation and includes the Chief;

“Cultural Resource” means an object, site or location of a traditional or cultural practice that is of historical, cultural or archaeological significance to the Sliammon First Nation;

“Eligible Voter” means a Member who has attained the age of 18 years on or before the day of the vote;

“Extended Family”, in relation to a person, means the person’s Immediate Family, grandparent, uncle, aunt, cousin or grandchild;

“First Nation Land Register” means the First Nation Land Register established by the Minister under subsection 25(1) of the Act;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between Canada and fourteen First Nations on February 12, 1996, and includes any amendments to the agreement;

“Immediate Family”, in relation to a person, means the person’s parent, sister, brother, child or Spouse;

“Indian Act” means the *Indian Act*, RSC 1985, c.I-5;

“Individual Agreement” means the agreement, dated July 30<sup>th</sup>, 2004, entered into between the Sliammon First Nation and Canada in accordance with clause 6.1 of the Framework Agreement and subsection 6(3) of the Act;

“Land Code” means this *Sliammon First Nation Amended Land Code*;

“Lands Authority” means the Lands Authority established under the *Sliammon First Nation Land Code*;



“Lands Committee” means the Lands Committee established under section 28.1;

“Lands Manager” means the person appointed by Council to manage the Sliammon Lands Office;

“Law” means a law enacted under this Land Code but does not include a Resolution;

“Majority” means fifty percent plus one (50% + 1);

“Meeting of Members” means a Meeting of Members convened in accordance with sections 13.5 and 13.6 of Part 3;

“Member” means a person registered on the Membership List;

“Membership List” means the list of names of Members maintained by Sliammon First Nation;

“Minister” means the Minister of Aboriginal Affairs and Northern Development;

“Office of the Adjudicator” is the Office of Adjudicator established under section 40.1 of Part 8;

“Ratification Vote” means a Ratification Vote convened in accordance with section 14.3 of Part 3;

“Resolution” means a formal motion moved by a Council member, seconded by another Council member and passed by a quorum of Council at a duly convened meeting;

“Sliammon First Nation” means the Sliammon First Nation band within the meaning of the *Indian Act* for whose use and benefit in common the Sliammon Lands has been set apart by Canada;

“Sliammon Lands” means the lands described in section 5.1;

“Sliammon Lands Office” means the office established by Council to assist in the management and administration of Sliammon Lands;

“Sliammon Lands Register” means the register of Sliammon Lands maintained by the Sliammon Lands Office;

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by Common-law Marriage; and



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

#### Paramountcy

- 2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the Sliammon First Nation, this Land Code shall prevail to the extent of the inconsistency or conflict.
- 2.3 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.

#### Culture and Traditions

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

#### Non-abrogation

- 2.5 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other right or freedom that pertains now or in the future to the Sliammon First Nation or its Members.
- 2.6 This Land Code is not intended to affect the eligibility of the Sliammon First Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the Sliammon First Nation has not assumed responsibility for such services or programs.

#### Interpretation

- 2.7 This Land Code shall be interpreted in a fair, large and liberal manner.
- 2.8 The principles set out in the Preamble to this Land Code may be used to interpret this Land Code.
- 2.9 In this Land Code:
- (a) the use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, shall be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;



- (b) 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”;
- (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- (f) 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.

#### Fiduciary Relationships

- 2.10 This Land Code is not intended to abrogate the fiduciary relationships between Canada, the Sliammon First Nation and its Members.

#### Land and Interests Affected

- 2.11 A reference to “land” in this Land Code is, unless the context otherwise requires, a reference to Sliammon Lands and all rights and resources in and of such land, including:
- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada or the Sliammon First Nation; and
  - (b) all the interests and licences granted to the Sliammon First Nation by Canada listed in the Individual Agreement.

### **3. Authority to Govern**

#### Origin of Authority

- 3.1 By enacting this Land Code the Sliammon First Nation is giving effect to its aboriginal title to that portion of its territories comprised of Sliammon Lands.



## Flow of Authority

- 3.2 The authority of the Sliammon First Nation to govern its land and resources flows from its aboriginal title and inherent right of self-government.
- 3.3 Through this Land Code, the Sliammon First Nation will exercise its inherent right of self-government and provide for governance that is accessible, stable, effective, accountable and transparent.

**4. Purpose**

## Purpose

- 4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to Sliammon Lands and by which the Sliammon First Nation shall exercise authority over that land.

**5. Description of Sliammon Lands**

## Sliammon Lands

- 5.1 The Sliammon Lands that is subject to this Land Code has the same meaning as “first nation land” in the Act and more specifically means the lands described under section 2 of the Individual Agreement as follows:
- (a) Tee shoh sum, Sliammon Indian Reserve No. 1, being those lands within the Province of British Columbia, Canada, as described in the following documents which either set aside lands as reserve for the benefit of the Sliammon First Nation, or alternatively remove these lands from reserve status:
    - (i) the lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry as number 8042;
    - (ii) the lands described in the Order in Council of the Privy Council No. 2632, dated November 30, 1932 and recorded in the Indian Lands Registry as number 9381-316;
    - (iii) the lands described in Order in Council of the Privy Council No. 1404, dated July 13, 1933 and recorded in the Indian Lands Registry as number 9382-316; and



- (iv) the lands described in Order in Council of the Privy Council No. 1968-1213, dated June 28, 1968 and recorded in the Indian Lands Registry as number 253606.
- (b) Ah gyk son, Harwood Island Indian Reserve No. 2, being those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Sliammon First Nation:
  - (i) the lands described in Order in Council of the Privy Council No. 1973-3159 dated October 16, 1973, and recorded in the Indian Lands Registry as number X18885.
- (c) Pah Kee ahjim, Paukeanum Indian Reserve No. 3, being those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Sliammon First Nation:
  - (i) the lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry as number 8042.
- (d) Toh Kwon\_non, Toquana Indian Reserve No. 4, being those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Sliammon First Nation:
  - (i) the lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry as number 8042.
- (e) Tohk\_natch, Tokenatch Indian Reserve No. 5, being those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Sliammon First Nation:
  - (i) the lands described in Provincial Order in Council No. 1036, dated July 29, 1938 and recorded in the Indian Lands Registry as number 8042.
- (f) Kah kee ky, Kahkaykay Indian Reserve No. 6, being those lands within the Province of British Columbia, Canada, as described in the following document which sets aside lands as reserve for the benefit of the Sliammon First Nation:
  - (i) the lands described in Provincial Order in Council No. 1036, dated July 29, 1938, and recorded in the Indian Lands Registry as number 8042.



## Additional Land

- 5.2 The following lands may be made subject to this Land Code if they are, or become, reserve land and the following conditions are met:
- (a) any land owned jointly by the Sliammon First Nation and one or more other First Nations, when the First Nations agree upon a joint management scheme for that land; and
  - (b) any land or interest acquired by the Sliammon First Nation after this Land Code comes into force, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for Sliammon First Nation use.

## Land Exchange

- 5.3 For greater certainty, section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 17.

## Inclusion of Land or Interest

- 5.4 If the relevant conditions in section 5.2 are met, Council shall call a Community Land Code Meeting in accordance with sections 11.3 and 11.14 and, after receiving input from Members, Council may, by Resolution, declare the land or interest to be subject to this Land Code.

## PART 2 SLIAMMON FIRST NATION LEGISLATION

### 6. Law-Making Powers

## General

- 6.1 Council shall develop laws consistent with this Land Code regarding the management, administration, use and protection of Sliammon Lands.

## Council May Make Laws

- 6.2 Without limiting the generality of section 6.1, Council may make laws in relation to:
- (a) development, conservation, protection, management, use and possession of Sliammon Lands;



- (b) interests in and licences to use Sliammon Lands;
- (c) any matter necessary to give effect to this Land Code; and
- (d) any matter necessary or ancillary to a law in relation to Sliammon Lands.

6.3 Council may make regulations authorized to be made under a law.

Examples of Laws

6.4 For greater certainty, Council may make laws in relation to Sliammon Lands including:

- (a) zoning and land use planning;
- (b) regulation, control, authorization and prohibition of the occupation and development of land;
- (c) creation, regulation and prohibition of interests and licences;
- (d) environmental assessment and environmental protection;
- (e) archaeological assessment and protection of archaeological and Cultural Resources;
- (f) provision of local services and imposition of user charges;
- (g) enforcement of laws;
- (h) provision of services for the resolution, outside the courts, of disputes;
- (i) setting aside and regulation of parks, parklands and recreational lands;
- (j) setting aside and regulation of heritage lands;
- (k) rules and procedures for the receipt, management, expenditure, investment and borrowing of moneys, including the establishment of administrative structures to manage such moneys;
- (l) creation of management and administrative bodies or agencies;
- (m) removal and punishment of persons trespassing upon Sliammon Lands or



frequenting Sliammon Lands for prohibited purposes;

- (n) public nuisance and private nuisance;
- (o) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (p) construction and maintenance of boundary and internal fences;
- (q) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works; and
- (r) regulation of traffic and transportation.

6.5 Council shall perform all the duties and functions, and exercise all the powers, of the Sliammon First Nation that are not specifically assigned to an individual or body established under this Land Code.

6.6 Notwithstanding section 6.5, Council may, by Resolution, delegate administrative authority to an individual or body established or authorized under this Land Code.

## **7. Law-Making Procedure**

### General

7.1 Council shall enact laws under this Land Code in accordance with this part.

### Development of Laws

7.2 The development of a draft law shall be initiated by:

- (a) a Resolution, setting out the specific subject matter of the proposed law; or
- (b) a petition presented to Council signed by at least forty (40) Eligible Voters, setting out the request for development of a law and setting out the specific subject matter of the proposed law.

### First Reading: Draft Law

7.3 Upon completion of the draft law, Council shall table it at a regular meeting of Council for consideration.



Decision on Draft Law

7.4 After considering the draft law, Council shall, by Resolution:

- (a) accept the draft law in principle;
- (b) reject the draft law; or
- (c) direct further work on the draft law and specify a return date to re-table the draft law at a future Council meeting.

Explanation for Rejection

7.5 Upon the request of any Eligible Voter, Council shall explain the reasons for rejecting a draft law.

Second Reading: Community Land Code Meeting on Draft Law

7.6 If Council has accepted the draft law in principle, Council shall schedule a Community Land Code Meeting in accordance with sections 11.3 and 11.14 for the purpose of consulting with Members on the draft law.

Written Notice of Meeting

7.7 The notice of the Community Land Code Meeting shall include:

- (a) a summary of the draft law;
- (b) notification that a full copy of the draft law may be obtained by Members at the Sliammon First Nation administration building;
- (c) an invitation for Members to provide written comments to Council on the draft law; and
- (d) the return date by which Members must provide written comments to Council, which date shall be at least twenty (20) days from the date of the Meeting of Members.

Conduct of Meeting

7.8 Copies of the draft law shall be made available to Members attending the Community Land Code Meeting.



7.9 At the Community Land Code Meeting, Council or its delegate shall explain the purpose and provisions of the draft law, and invite questions and comments by Members.

Council Shall Consider Comments

7.10 After the expiry of the time specified under subsection 7.7(d) for written comments from Members, Council shall consider any comments received, the needs of the community and any other relevant matters, and shall prepare or cause to be prepared a final draft law.

Third Reading: Final Draft Law

7.11 Upon completion of the final draft law, Council shall table it at a regular meeting of Council for consideration.

Decision on Final Draft

7.12 Subject to section 12.1 (*Matters Requiring Approval at Meeting of Members*) and section 14.1 (*Matters Requiring Approval by Ratification Vote*), after considering the final draft law Council shall, by Resolution:

- (a) enact the final draft law;
- (b) make changes to the final draft law;
- (c) reject the final draft law;
- (d) schedule a Community Land Code Meeting in accordance with sections 7.6 and 7.7 for consideration of the final draft law by Members; or
- (e) refer the final draft law for approval by Eligible Voters at a Meeting of Members or in a Ratification Vote.

Written Notice of Approval Meeting

7.13 If a Meeting of Members or a Ratification Vote is called under subsection 7.12(e), section 12.1 or section 14.1 to approve the final draft law, the notice of the meeting or vote shall include:

- (a) a summary of the final draft law; and
- (b) notification that a full copy of the final draft law may be obtained by Members at the Sliammon First Nation administration building.



Enactment of Law by Council

7.14 A law is enacted on the date that it is approved and adopted by Resolution of Council.

Enactment of Law by Eligible Voters

7.15 If a law is approved by Eligible Voters at a Meeting of Members or in a Ratification Vote, the law shall be deemed to be enacted on the date of its approval and it shall have the same force and effect as a law enacted by Resolution of Council.

Enactment of Law on Urgent Matters

7.16 Council may enact a law without calling a Community Land Code Meeting, Meeting of Members or a Ratification Vote if Council is reasonably of the opinion that the law is required urgently to protect Sliammon Lands or Members.

7.17 A law enacted under section 7.16 shall be deemed to have been repealed and to have no force and effect as of twenty-eight (28) days after its enactment, but it may be re-enacted in accordance with this part.

Amendments

7.18 A law may be repealed or amended by following the procedure specified in the law.

7.19 If a law does not specify a procedure for its repeal or amendment, the law may be repealed or amended by the same procedure that was followed to enact it.

Commencement Date

7.20 If the date of commencement is not specified in a law, the law shall come into force on the date of its enactment.

**8. Regulation-Making Procedure**

8.1 Council may initiate the development of a regulation by Resolution.

8.2 Council may, at any time and in any manner Council considers advisable, consult with Members regarding a proposed regulation.

8.3 A regulation is enacted on the date that it is approved and adopted by Resolution.



**9. Publication of Laws and Regulations**

Publication

9.1 All laws and regulations enacted by Resolution shall be published in the minutes of Council meeting.

Posting Laws

- 9.2 Within seven (7) days after a law or regulation has been enacted, Council shall:
- (a) post a copy of the law or regulation in a public area of the Sliammon First Nation administration offices; and
  - (b) deposit an original copy of the law or regulation in the register of laws referred to in section 9.3.

Register of Laws

9.3 Council shall cause to be kept, at the Sliammon First Nation administration offices, a register of laws containing the original copy of all laws and regulations, including any that have been repealed or that are no longer in force.

9.4 Any person may have, during regular business hours at the Sliammon First Nation administration offices, reasonable access to the register of laws.

Copies for Any Person

9.5 Any person may obtain a copy of a law or regulation upon payment of such reasonable fee as may be set by Council.

9.6 Section 9.5 does not preclude Council from making copies of a law or regulation available to Members without a fee.

**PART 3  
MEMBER INPUT AND APPROVALS**

**10. Rights of Eligible Voters**

Rights of Eligible Voters

10.1 Every Eligible Voter may vote at a Meeting of Members and in a Ratification Vote.



## **11. Community Land Code Meetings**

### Community Consultations

- 11.1 The Council, Lands Manager and Lands Committee may hold Community Land Code Meetings to consult with Members on matters relating to Sliammon Lands.
- 11.2 If a Community Land Code Meeting is called under section 11.1, notice shall be given to Members by any method that the Council, Lands Manager or Lands Committee may consider appropriate in the circumstances.

### Written Notice of Community Land Code Meeting

- 11.3 If a Community Land Code Meeting is required to be held under this Land Code, written notice of the meeting shall be provided to Eligible Voters at least ten (10) business days before the date of the meeting by:
  - (a) a notice delivered or mailed to Eligible Voters at their last known address; or
  - (b) publication of a notice in the Sliammon First Nation newsletter delivered or mailed to Eligible Voters at their last known address; and
  - (c) posting of a notice in a public area of the Sliammon First Nation administration offices.
- 11.4 The written notice of a Community Land Code Meeting shall:
  - (a) specify the date, time and place of the meeting; and
  - (b) include a summary of the matter to be discussed at the meeting.

### Who May Attend a Community Land Code Meeting

- 11.5 Any Member may attend a Community Land Code Meeting.

## **12. Meeting of Members**

### Matters Requiring Approval by Members

- 12.1 Approval at a Meeting of Members shall be obtained for:
  - (a) subject to section 16, any land use plan or amendment to a land use plan;
  - (b) a conflict of interest under section 20.10;



- (c) a law enacted under section 38;
  - (d) an amendment to this Land Code; and
  - (e) any law or class of law that Council, by Resolution, declares to be subject to this section.
- 12.2 Subject to section 12.3, any matter requiring approval at a Meeting of Members must receive a Majority vote in favour of the matter in accordance with section 13.3.
- 12.3 Council may, by Resolution, provide that any matter that requires approval at a Meeting of Members may instead be decided by:
- (a) mail-in ballots in accordance with the same standards of quorum and approval that apply under section 13.3; or
  - (b) a Ratification Vote.

### **13. Procedure at a Meeting of Members**

#### Quorum for a Meeting of Members

- 13.1 The quorum for a Meeting of Members is twenty-five percent (25%) of Eligible Voters.

#### Voting at a Meeting of Members

- 13.2 Voting at a Meeting of Members shall be conducted by a combination of ballots cast in person at the meeting and mail-in ballots.

#### Requirements for Approval at a Meeting of Members

- 13.3 A matter shall be considered to be approved at a Meeting of Members if:
- (a) at least 25% of Eligible Voters cast a ballot either in person at the meeting or by mail-in ballot; and
  - (b) the Majority of Eligible Voters who cast a ballot vote in favour of the matter.
- 13.4 Voting in person at a Meeting of Members shall be by secret ballot.



Written Notice of a Meeting of Members

- 13.5 Written notice of a Meeting of Members shall be given to Eligible Voters at least ten (10) business days before the meeting by:
- (a) a notice delivered or mailed to Eligible Voters at their last known address; or
  - (b) publication of a notice in the Sliammon First Nation newsletter delivered or mailed to Eligible Voters at their last known address; and
  - (c) posting of a notice in a public area of the Sliammon First Nation administration offices.
- 13.6 The written notice of a Meeting of Members shall:
- (a) specify the date, time and place of the meeting; and
  - (b) include a summary of the matter to be discussed and decided at the meeting.

Who May Attend a Meeting of Members

- 13.7 Any Member may attend a Meeting of Members.
- 13.8 Council may, by Resolution, declare a Meeting of Members to be a closed meeting that only Members and any other persons identified in the Resolution may attend.

Council May Schedule More Meetings

- 13.9 Council may schedule more than one Meeting of Members to discuss and decide a matter that requires approval at a Meeting of Members.

**14. Ratification Votes**

Matters Requiring Approval by Ratification Vote

- 14.1 Approval by a Ratification Vote shall be obtained for:
- (a) development on a heritage site designated in a land use plan;
  - (b) voluntary exchange of Sliammon Lands;
  - (c) expropriation of a Member's interest;



- (d) amendment to the Individual Agreement that reduces the amount of funding provided by Canada; and
- (e) any law or class of law that Council, by Resolution, declares to be subject to this section.

#### Individual Agreement

- 14.2 For greater certainty, an amendment to, or renewal of, the Individual Agreement shall not require approval by a Ratification Vote unless the amendment or renewal reduces the amount of funding provided by Canada.

#### Ratification Vote Process

- 14.3 Subject to section 14.4, a Ratification Vote under this Land Code shall be conducted in substantially the same manner as that set out in the *Sliammon First Nation Community Ratification Process* that was used to ratify the *Sliammon First Nation Land Code*.

#### No Verifier Required

- 14.4 A Verifier is not required for a Ratification Vote under this Land Code.

#### Requirements for Approval by Ratification Vote

- 14.5 A matter shall be considered approved by a Ratification Vote if:
- (a) at least the Majority of Eligible Voters participate in the vote; and
  - (b) the Majority of those participating in the vote cast a vote in favour of the matter.

## PART 4 EXPROPRIATION AND LAND EXCHANGE

### 15. Expropriation by Sliammon First Nation

#### Rights and Interests That May be Expropriated

- 15.1 An interest or licence in Sliammon Lands or in any building or other structure on such land may only be expropriated by the Sliammon First Nation in accordance with the Framework Agreement and a law enacted in accordance with section 15.3.



## Community Purposes

- 15.2 The Sliammon First Nation may expropriate only for a necessary community purpose or works of the Sliammon First Nation, including a fire hall, sewage or water treatment facility, community center, public work, road, school, day-care facility, hospital, health-care facility or retirement home.

## Expropriation Laws

- 15.3 Council shall enact a law setting out the rights and procedures for expropriation, including provisions in relation to:
- (a) taking possession of the interest or licence;
  - (b) transfer of the interest or licence;
  - (c) notice of expropriation;
  - (d) service of a notice of expropriation;
  - (e) entitlement to compensation;
  - (f) determination of the amount of compensation; and
  - (g) the method of payment of compensation.

## Public Report

- 15.4 Before the Sliammon First Nation may expropriate an interest or licence, Council shall:
- (a) prepare a report on the reasons for the expropriation; and
  - (b) post a copy of the report in the Sliammon First Nation administration offices.

## Rights that May Not be Expropriated

- 15.5 An interest of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the Sliammon First Nation.

## Mutual Agreement

- 15.6 Sliammon First Nation may expropriate only after a good faith effort to acquire, by mutual agreement, the interest or licence in Sliammon Lands.



## Limitation

- 15.7 The law enacted under section 15.3 shall include provisions having the following effect:
- (a) an expropriation shall be made only for the smallest interest necessary and for the shortest time necessary; and
  - (b) where less than a full interest is expropriated, a person whose interest is expropriated may continue to use and occupy the land for purposes that are not inconsistent with the expropriation.

## Notice and Compensation

- 15.8 The Sliammon First Nation shall, in accordance with a law enacted under section 15.3 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 holder of the interest or licence being expropriated.

## Compensation Calculation

- 15.9 The total value of compensation under subsection 15.8(b) shall be based on:
- (a) the fair market value of the interest or licence being expropriated;
  - (b) the replacement value of any improvement to the land being expropriated;
  - (c) the damages attributable to any disturbance; and
  - (d) damages for any reduction in the value of a remaining interest.

## Market Value

- 15.10 The fair 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 on Sliammon Lands by a willing seller to a willing buyer.

## Dispute Resolution

- 15.11 Subject to section 15.13, the resolution of disputes concerning the right of the Sliammon



First Nation to expropriate shall be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.

- 15.12 The 60 day period referred to in clause 32.6 of the Framework Agreement shall be applied, as appropriate in the circumstances, by the neutral evaluator.
- 15.13 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) a dispute concerning the right of the holder of an expropriated interest or licence to compensation; and
  - (b) a dispute concerning the amount of compensation.

## **16. Heritage Sites**

### Approval of Amendments

- 16.1 No amendment may be made to a land use plan to develop or delete from the land use plan a heritage site designated under that plan unless the amendment receives prior approval by a Ratification Vote.

## **17. Voluntary Land Exchange**

### Conditions for a Land Exchange

- 17.1 The Sliammon First Nation may agree with another party to exchange Sliammon Lands for 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 approved by a Ratification Vote.

### Land to be Received

- 17.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the Sliammon First Nation:
- (a) is of equal or greater area than the Sliammon Lands to be exchanged;
  - (b) is of a value comparable to the appraised value of the Sliammon Lands to be exchanged; and



- (c) is eligible to become a reserve under the *Indian Act* and Sliammon Lands subject to this Land Code.

#### Negotiators

- 17.4 A person who negotiates a land exchange on behalf of the Sliammon First Nation shall be designated by Resolution.

#### Additional Land

- 17.5 The Sliammon First Nation may receive additional compensation, including money or other land in addition to the land referred to in section 17.3.
- 17.6 Such other land may be held by the Sliammon First Nation in fee simple or other manner.

#### Federal Consent

- 17.7 Before the Sliammon First Nation concludes a land exchange agreement, it shall receive a written statement from Canada stating that Canada:
- (a) consents to set aside as a reserve the land to be received in the land exchange under section 17.3, as of the date of the land exchange or such later date as Council may specify by Resolution; and
  - (b) consents to the manner and form of the exchange as set out in the land exchange agreement.

#### Community Notice

- 17.8 At such time as negotiation of a land exchange agreement is concluded, and at least twenty-one (21) days before the Ratification Vote provided for in section 17.2, Council shall provide the following information to the Members:
- (a) a description of the Sliammon Lands to be exchanged;
  - (b) a description of the land to be received by the Sliammon First Nation;
  - (c) a description of any other compensation to be received;
  - (d) a report of a certified land appraiser stating that the conditions in subsections 17.3(a) and (b) have been met;
  - (e) a copy of the land exchange agreement; and



- (f) a copy of the statement from Canada referred to in section 17.7.

Process of Land Exchange

17.9 A land exchange agreement shall provide that:

- (a) the other party to the exchange shall transfer to Canada the title to the land that is to be set aside as a reserve;
- (b) Council shall pass a Resolution authorizing Canada to transfer title to the Sliammon Lands being exchanged, in accordance with the land exchange agreement; and
- (c) a copy of the instruments transferring title to the relevant parcels of land shall be registered in the Sliammon Lands Register and the First Nation Land Register.

**PART 5  
ACCOUNTABILITY**

**18. Application**

18.1 This part applies only to conflicts of interest and financial matters in relation to the management and administration of Sliammon Lands under this Land Code.

**19. Conflict of Interest**

General Duties and Definitions

- 19.1 No member of Council shall be involved in any transaction or matter where they are in a conflict of interest or appear to be in a conflict of interest.
- 19.2 A conflict of interest exists where a member of Council or a member of their Immediate Family has a personal or business interest in a transaction or matter under consideration by Council which competes, or appears to compete with the interests of the Sliammon First Nation or the objective exercise of the Council members' powers, duties, functions or responsibilities.
- 19.3 No conflict of interest or appearance of a conflict of interest exists where:
- (a) the member of Council or a member of their Immediate Family holds an interest



in the same manner and under the same conditions as other Members;

- (b) Council enacts a law or develops a policy providing members of Council with reasonable remuneration, vacation, sick leave or other benefits for services as elected officials of the Sliammon First Nation; or
- (c) the interests are so remote or insignificant that they could not be reasonably regarded as likely to influence the individual Council member in the exercise of a power or performance of a duty or a function.

## **20. Procedure for a Conflict of Interest or Appearance of a Conflict of Interest**

- 20.1 A member of Council who has, or believes that they have, a conflict of interest shall disclose the nature and extent of the conflict of interest at the first Council meeting after the conflict becomes known to the member of Council, whether or not the transaction or matter giving rise to the conflict has been concluded.
- 20.2 Where the interest of a member of Council has not been disclosed as required by section 20.1 by reason of the member of Council's absence from the meeting at which the matter was first raised, the member of Council shall disclose the interest and comply with this Part at the next meeting of Council.
- 20.3 A member of Council may request a decision of Council on whether there is a conflict of interest.
- 20.4 After declaring the conflict of interest, the member of Council shall:
- (a) leave the meeting during consideration of the matter in question;
  - (b) not be counted in the quorum; and
  - (c) not participate in the discussion or vote on the matter in question.
- 20.5 A member of Council who is in a conflict of interest shall not attempt in any way or at any time to influence the discussion or vote on the matter in question.
- 20.6 Every declaration of a conflict of interest and the details thereof shall be recorded in the minutes of the Council meeting.
- 20.7 Notwithstanding section 19.1, Council may approve a transaction or matter by Resolution where:



- (a) the member of Council has complied with subsections 20.1 through 20.5; and
  - (b) Council determines the transaction or matter is fair and reasonable.
- 20.8 Where a member of Council is shown to have withheld material information or to have provided false or misleading information for consideration in a Resolution approving a transaction or matter under section 20.7, the Resolution shall be without force and effect.
- 20.9 A Resolution authorizing a transaction or matter may be made conditional upon the member of Council taking such steps as Council may prescribe to protect the interests of Council or the Sliammon First Nation or to maintain trust in the conduct of Council's activities.
- 20.10 Where as a result of a conflict of interest a quorum of Council cannot be met, the matter shall be decided at a Meeting of Members.
- 20.11 Notice of a Meeting of Members under section 20.10 shall be provided in accordance with sections 13.5 and 13.6 and shall further include:
- (a) notification that a report on the matter may be obtained at the Sliammon First Nation administration offices; and
  - (b) a statement that a determination of the matter shall be made by a vote of the Eligible Voters in accordance with section 13.3.
- 20.12 At the Meeting of Members Council shall present the report on the matter and invite questions and comments by the Members.
- 20.13 The Eligible Voters present at the Meeting of Members shall vote on whether to approve or reject the transaction or matter, with or without conditions, or make such other decision as may be appropriate in the circumstances.
- 20.14 The decision of the Eligible Voters present at the Meeting of Members shall be recorded in the minutes and, where required, shall have the same effect as a Resolution under section 20.7.

## **21. Competition with Sliammon First Nation Businesses**

- 21.1 No Member of Council shall, during their term of office, engage as a partner, officer, director, shareholder, advisor, employee, or in any other capacity, in any business that is in competition with a business carried on by the Sliammon First Nation, without first complying with the provisions of section 20.7.



**22. Financial Management**

Financial Management and Policy

- 22.1 Council shall continue or implement a system of financial planning and financial administration for the management of Sliammon First Nation moneys through which Council, Sliammon First Nation employees and other persons who manage moneys in relation to Sliammon Lands are accountable to the Members within the meaning of clause 5.2(d) of the Framework Agreement.
- 22.2 Council may, in accordance with this Land Code, adopt a financial policy to further manage moneys in relation to Sliammon Lands.

Establishment of Bank Accounts

- 22.3 Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts:
  - (a) transfer payments received from Canada for the management and administration of Sliammon Lands;
  - (b) moneys received by the Sliammon First Nation from the grant or disposition of interests or licences in Sliammon Lands;
  - (c) all fees, fines, charges and levies collected under a law or Resolution;
  - (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licences in Sliammon Lands; and
  - (e) any other land revenue received by the Sliammon First Nation.

Signing Officers

- 22.4 Council shall authorize the signing officers of the Sliammon First Nation to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under section 22.3.

Fiscal Year

- 22.5 The fiscal year of the Sliammon First Nation shall begin on April 1 of each year and end on March 31 of the following year.



## Adoption of Budget

- 22.6 Council shall, by Resolution prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 22.7 Prior to adopting a budget referred to in section 22.6, Council shall consult with the Lands Manager.

## Procedure

- 22.8 After adopting a land management budget or supplementary budget, Council shall, as soon as practicable, make a copy of the budget or supplementary budget available at the Sliammon First Nation administration offices for inspection by Members.

## Expenditures

- 22.9 Council may not expend moneys in relation to Sliammon Lands or commit itself, by contract or otherwise, to expend moneys in relation to Sliammon Lands unless the expenditure is authorized by a Sliammon Law or an adopted budget.

## Other Laws and Policies

- 22.10 Council shall establish a process for determining:
- (a) fees and rents for interests and licences in Sliammon Lands; and
  - (b) fees for services provided in relation to Sliammon Lands and compliance with this Land Code.

**23. Financial Records**

## Financial Records

- 23.1 The Sliammon First Nation shall keep financial records in accordance with generally accepted accounting principles.

## Offences

- 23.2 A person who has control of the financial records of the Sliammon First Nation and who impedes or obstructs anyone from exercising a right to inspect those records is guilty of an offence.



Preparation of Financial Statement

- 23.3 Within 90 days after the end of each fiscal year, Council shall prepare a financial statement in comparative form, containing:
- (a) a balance sheet;
  - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
  - (c) any other information necessary for a fair presentation of the financial position of Sliammon First Nation in relation to Sliammon Lands.

Consolidated Accounts

- 23.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the Sliammon First Nation.

**24. Audit**

Appointment of Auditor

- 24.1 For each fiscal year, Council shall appoint a duly accredited auditor to audit the financial records of the Sliammon First Nation in relation to Sliammon Lands.

Vacancy in Office

- 24.2 If a vacancy occurs during the term of an auditor, Council shall forthwith appoint a new auditor for the remainder of the former auditor's term.

Remuneration

- 24.3 An appointment under section 24.1 shall contain a statement approving the remuneration to be paid to the auditor.

Duty of Auditor

- 24.4 The auditor shall, within 120 days after the end of the Sliammon First Nation's fiscal year, prepare and submit to Council an audit report on the Sliammon First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the Sliammon First Nation in accordance with generally accepted accounting principles applied on a basis consistent



with that applied in the previous fiscal year.

Access to Records

24.5 The auditor may at any reasonable time inspect any financial records of the Sliammon First Nation and the financial records of any person or body authorized to administer money in relation to Sliammon Lands.

Presentation of Audit Report

24.6 Council shall present the audit report at a Meeting of Members.

**25. Annual Report**

Publish Annual Report

25.1 Council shall ensure, within thirty (30) days of receiving an audit report under section 24.4, that an annual report on Sliammon Lands management is prepared.

25.2 The annual report prepared under section 25.1 shall include:

- (a) an annual review of land management activities;
- (b) a copy and explanation of the audit report as it applies to Sliammon Lands; and
- (c) such other matters as may be directed by Council or reasonably requested by the Lands Manager.

**26. Access to Financial Information**

Access Law

26.1 Council shall, in consultation with the Lands Manager, develop policies and procedures setting out the rights and procedures by which Members and other persons may exercise access to Sliammon First Nation financial information.

26.2 The policies and procedures developed under section 26.1 shall:

- (a) take protection of privacy into account; and
- (b) provide that a Member may, during normal business hours at the Sliammon First Nation administration offices, inspect a copy of the audit report, the annual report on Sliammon Lands management, the budget or the supplementary budget.



**PART 6**  
**ADMINISTRATION OF SLIAMMON LANDS**

**27. Sliammon Lands Office**

27.1 The Sliammon Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Land Code and any other applicable law.

27.2 Without limiting the generality of section 27.1, the Sliammon Lands Office shall:

- (a) administer Sliammon Lands in accordance with this Land Code and any other applicable law or regulation;
- (b) develop forms of written instruments for use in registering or recording interests or licences in the Sliammon Lands in the Sliammon Lands Register if it is deemed necessary and advisable by the Sliammon Lands Office;
- (c) process applications for the registration or recording of written instruments and documents in the Sliammon Lands Register in relation to interests or licences in Sliammon Lands;
- (d) provide electronic copies of applications for the registration and recording of written instruments and documents in the Sliammon Lands Register in relation to interests or licences in Sliammon Lands to the First Nation Land Register;
- (e) arrange for the execution of written instruments and documents on behalf of Sliammon First Nation;
- (f) maintain and protect records in relation to Sliammon Lands; and
- (g) perform such other duties and functions consistent with this Land Code as Council may direct.

Lands Manager

27.3 The Lands Manager shall manage the Sliammon Lands Office and perform such duties and responsibilities delegated or assigned to the Lands Manager under this Land Code or any other applicable law.

27.4 In consultation with Council, the Lands Manager may develop policies and procedures required for the proper administration and management of the Sliammon Lands Office and the Sliammon Lands Register.



- 27.5 Without limiting the generality of sections 27.1, 27.3 and 27.4, the Lands Manager shall:
- (a) oversee the day-to-day operations of the Sliammon Lands Office;
  - (b) advise the Lands Committee and Council on matters in relation to Sliammon Lands;
  - (c) make recommendations to the Lands Committee and Council on the development of laws, policies and procedures in relation to Sliammon Lands;
  - (d) subject to Part 8 (Dispute Resolution), hold regular and special meetings with Members to discuss issues related to Sliammon Lands, and make recommendations to the Lands Committee and Council on the resolution of such issues;
  - (e) assist in the exchange of information between Members and Council regarding Sliammon Lands issues;
  - (f) oversee community consultations under this Land Code;
  - (g) schedule and oversee Land Committee elections;
  - (h) monitor community approvals under this Land Code; and
  - (i) perform such other duties and functions consistent with this Land Code as Council may direct.

## **28. Lands Committee**

### Lands Committee Established

28.1 The Lands Authority is hereby dissolved and the Lands Committee is established.

28.2 The Lands Committee shall:

- (a) assist the Lands Manager with administrative decisions in relation to Sliammon Lands;
- (b) review draft laws and provide comments to Council;
- (c) recommend to Council laws, policies and procedures in relation to Sliammon



Lands;

- (d) consult with Members on land issues; and
- (e) perform such other duties and functions as Council or the Lands Manager may direct.

#### Composition

28.3 The Lands Committee shall be composed of:

- (a) the Lands Manager;
- (b) one member of Council appointed by Council; and
- (c) four (4) members elected at a Community Land Code Meeting.

#### Eligibility for Election to Lands Committee

28.4 Any Eligible Voter, whether or not resident on Sliammon Lands, shall be eligible for election to the Lands Committee, except for the following:

- (a) a person convicted of an offence by way of indictment or felony conviction within five (5) years prior to the date of the election; and
- (b) any person convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

#### Staggered Terms of Office

28.5 Subject to section 28.8, Lands Committee members shall hold the following terms of office:

- (a) Council shall appoint a member of Council as soon as practicable following Council elections and that member shall sit on the committee until the next Council election;
- (b) the Lands Manager shall sit on the committee for as long as he or she holds the position of Lands Manager;
- (c) elected members shall sit on the committee for a maximum of four (4) years, but they are not precluded from being elected for further terms; and



- (d) an election for two (2) elected positions on the committee shall be held every two years to ensure that elected members serve staggered terms.

#### Elections

28.6 Elections for Land Committee members shall be held at a Community Land Code Meeting called by the Lands Manager in accordance with sections 11.3 and 11.4.

#### Voting at Elections

28.7 Every Eligible Voter may vote at a Lands Committee election.

#### Vacancies

28.8 The office of a Lands Committee member shall become vacant if that member:

- (a) resigns;
- (b) is convicted of an offence under the *Criminal Code*;
- (c) is no longer the Lands Manager;
- (d) is an elected member who ceases to be an Eligible Voter;
- (e) is an appointed member who ceases to be a member of Council;
- (f) dies or becomes mentally incapacitated.; or
- (g) is terminated under section 28.9.

#### Terminations

28.9 The Council may, by Resolution, terminate the remaining term of a Lands Committee member if:

- (a) the member is absent from three (3) consecutive Lands Committee meetings for a reason other than illness or incapacity without being authorized to be absent by the chairperson; or
- (b) the member fails to perform any of his or her duties in good faith and in accordance with the terms of this Land Code.

#### Council Fills Vacancies



- 28.10 Council may appoint a new member to the Lands Committee to fill a vacancy under section 28.8.
- 28.11 The member appointed under section 28.10 shall serve out the balance of the term of the member whose office was vacated.
- 28.12 The Council may develop policies regarding the eligibility criteria for appointments to the Lands Committee

Chairperson of Lands Committee

- 28.13 The Lands Manager shall be the chairperson of the Lands Committee.
- 28.14 The Lands Committee shall select an alternate chairperson to perform the functions of the chairperson if the Lands Manager is unavailable.

Rules and Procedures of Lands Committee

- 28.15 In consultation with Council, the Lands Manager shall establish rules and procedures governing Lands Committee elections.
- 28.16 In consultation with Council and the Lands Committee, the Lands Manager may establish policies, rules and procedures governing committee meetings and the administration of the general affairs of the committee.

**29. Officers, Employees and Contractors**

General

- 29.1 Council shall provide for the appointment of officers and the hiring of other employees to administer this Land Code in an effective and fiscally responsible manner in accordance with this Land Code and any other applicable law.

Appointment of Lands Manager

- 29.2 Council shall, by Resolution, appoint a Lands Manager and an alternate to act in the place of the Lands Manager when he or she is absent.

Standards and Qualifications of Employees

- 29.3 The Lands Manager may, subject to the approval of Council, establish a process for determining standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code.



### 30. Registration of Interests and Licences

#### Sliammon Lands Register

30.1 The Sliammon Lands Office shall maintain the Sliammon Lands Register in substantially the same form and with the same content as the First Nation Land Register.

#### Enforcement of Interests and Licences

30.2 An interest or licence in Sliammon Lands created or granted after September 30, 2004, is not enforceable unless it is registered or recorded in the Sliammon Lands Register.

#### Duty to Deposit

30.3 The Sliammon Lands Office shall ensure that an original copy of the following instruments received is registered or recorded in the Sliammon Lands Register and the First Nation Land Register:

- (a) an interest or licence in Sliammon Lands granted by Sliammon First Nation;
- (b) an interest in Sliammon Lands transferred or assigned by Sliammon First Nation; and
- (c) this Land Code and any amendment to this Land Code.

30.4 Every person who receives an interest or licence in Sliammon Lands shall register or record an original copy of the relevant instrument in the Sliammon Lands Register.

30.5 The deposit of an instrument in the Sliammon Lands Register and the First Nation Lands Register does not imply that the instrument is validly made or that it has been registered as opposed to having been recorded.

#### Registration of Consent or Approval

30.6 No instrument that requires the consent of Council, approval of the Sliammon Lands Office, or approval of Members at a Meeting of Members or in a Ratification Vote may be registered or recorded in the Sliammon Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.

30.7 Notwithstanding section 30.1, nothing in this Land Code precludes Council from enacting a law providing for the maintenance of the Sliammon Lands Register in such other land registry system or facility as may meet the requirements of the Sliammon First Nation.

#### Registration Fees



- 30.8 The Sliammon Lands Office may establish and charge reasonable fees for services provided to the public including processing applications for the registration or recording of instruments in the Sliammon Lands Register.
- 30.9 Section 30.8 does not preclude the Sliammon Lands Office from providing services to Members without a fee.

## PART 7 INTERESTS AND LICENCES IN SLIAMMON LANDS

### 31. Interests and Licences

#### General

- 31.1 The occupation, use and development of Sliammon Lands is subject to this Land Code and any other applicable law.

#### No Interest or Licence Created

- 31.2 No person may acquire an interest or licence in Sliammon Lands by use, occupation or by any other means that is not authorized under this Land Code or a law enacted under it.

#### All Dispositions in Writing

- 31.3 An interest or licence in Sliammon Lands may only be created, granted, disposed of, assigned or transferred by a written instrument issued in accordance with this Land Code.

#### Non-Members

- 31.4 A person who is not a Member may hold a lease, licence, easement, mortgage or permit in Sliammon Lands.

#### Grants to Non-Members

- 31.5 The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in Sliammon Lands to a person who is not a Member.
- 31.6 Notwithstanding section 31.5, if Council has consented to the original grant of a lease in Sliammon Lands to a person who is not a Member, that leasehold interest may be subsequently mortgaged, transferred or assigned without the consent of Council or approval of Members.



## **32. Existing Interests**

### Continuation of Existing Interests

- 32.1 An interest or licence in Sliammon Lands, whether held by a Member or a person other than a Member, that is in effect on September 30, 2004 shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.
- 32.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction:
- (a) cancel or correct any interest or licence in Sliammon Lands issued or allotted in error, by mistake or by fraud; and
  - (b) issue a replacement instrument if required.

## **33. New Interests and Licences**

### Authority to Make Grants

- 33.1 Subject to this Land Code, Council may grant:
- (a) interests in Community Lands; and
  - (b) licences and permits to take resources from Community Lands.

### Conditional Grant

- 33.2 The grant of an interest, licence or permit in Community Lands may be made subject to conditions.

### Role of Lands Manager

- 33.3 The Lands Manager may advise Council on the granting of interests, licences and permits in Community Lands and may be authorized to act as a delegate of Council under this part.

## **34. Permanent Interests of Members**

### Nature of Interest

- 34.1 Council may enact laws providing for an interest in Sliammon Lands that entitles a Member holding that interest to:



- (a) permanent possession of the land;
- (b) benefit from the resources in and of the land;
- (c) grant subsidiary interests, licences and permits in the land;
- (d) transfer, devise or otherwise dispose of the land to another Member; and
- (e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

34.2 For greater certainty, no interest under section 34.1 may be granted to or held by a person who is not a Member.

#### Transfer and Assignment of Interests

34.3 Members may transfer or assign their interest in Sliammon Lands to the Sliammon First Nation or a Member without the consent of Council or approval of Members.

34.4 For greater certainty, Members may transfer their interest to themselves.

### **35. Limits on Mortgages and Seizures**

#### Protections

35.1 In accordance with the Framework Agreement and the Act, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to Sliammon Lands.

35.2 The Sliammon Lands Office and the Lands Manager shall not be responsible or liable for ensuring that a lease in Sliammon Lands permits the leasehold interest to be mortgaged or charged, that the lease is in good standing or that the leaseholder is in compliance with the terms of the lease.

35.3 Disputes in relation to mortgages of leases shall be determined as follows:

- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or
- (b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.



Mortgage of a Leasehold Interest in Sliammon Lands Held by a Person Who is Not a Member

- 35.4 A leasehold interest in Sliammon Lands held by a person who is not a Member is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members.

Mortgage of Leasehold Interests in Community Lands or in Sliammon Lands Held by a Member

- 35.5 The interest of a Member in Sliammon Lands which is not a leasehold interest may be subject to a mortgage or charge only to the Sliammon First Nation or a Member.
- 35.6 An Indian, as that term is defined in the *Indian Act*, including a Member, may grant a lease to him or herself in the same manner as to another person.
- 35.7 The leasehold interest in Sliammon Lands of an Indian, as that term is defined in the *Indian Act*, including a Member, may be subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members, and the mortgagee has the same legal and equitable rights it would have if the leasehold interest was held by a non-Indian.
- 35.8 A leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by the mortgagee.

Default in Mortgage

- 35.9 In the event of default in the terms of a mortgage or charge of a leasehold interest in Sliammon Lands, the leasehold interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the mortgage or charge was registered in the Sliammon Lands Register; and
  - (b) reasonable notice of the foreclosure was provided to Council.

Power of Redemption

- 35.10 If Council exercises an option to redeem with respect to a leasehold interest under subsection 35.8(b), the Sliammon First Nation becomes the lessee of the leasehold lands and, with the consent of the lender, takes the position of the mortgagor or chargor for all purposes after the date of redemption.

**36. Residency and Access Rights**



## Right of Residence

36.1 The following persons may reside on Sliammon Lands:

- (a) a Member;
- (b) a Member who has been allocated a residential lot by Council;
- (c) a Spouse and child of a Member referred to in subsection (b);
- (d) a Member with a registered interest in Sliammon Lands;
- (e) an invitee of a Member referred to in subsection (b) or (c); and
- (f) a lessee or permittee, in accordance with the provisions of the instrument granting the lease or permit.

36.2 A right of residence under section 36.1 does not imply any financial obligation on the part of the Sliammon First Nation.

## Right of Access

36.3 The following persons have a right of access to Sliammon Lands:

- (a) a lessee or mortgagee of Sliammon Lands;
- (b) an invitee of a lessee of Sliammon Lands;
- (c) a permittee and any person who is granted a right of access under the permit;
- (d) a Member;
- (e) a Member's Spouse and children;
- (f) a person who is authorized by a government body or any other public body, established by or under an enactment of the Sliammon First Nation, Canada or British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey;
- (g) a person authorized in writing by Council or the Lands Manager; or
- (h) a person authorized by any applicable law.



## Public Access

- 36.4 A person may have access to Sliammon Lands for social or business purposes if that person:
- (a) does not trespass on occupied land;
  - (b) does not interfere with an interest or licence in land;
  - (c) complies with all applicable laws; and
  - (d) no Resolution has been enacted prohibiting that person from having access to Sliammon Lands.

## Trespass

- 36.5 Any person who resides on, enters or remains on Sliammon Lands other than in accordance with a right of residence or access under this Land Code is guilty of an offence.

## Civil Remedies

- 36.6 Subject to any law enacted under this Land Code, all civil remedies for trespass are preserved.

**37. Transfers on Death or Mental Incompetence**

- 37.1 A Member who receives an interest in Sliammon Lands by testamentary disposition, succession or through a declaration of mental incompetence is entitled to have that interest registered in the Sliammon Lands Register provided that the written instrument transferring the interest is duly executed by the person duly appointed under the *Indian Act* as the personal representative of the estate of the deceased or the mentally incompetent Member.
- 37.2 A Member who purchases an interest in Sliammon Lands under subsection 50(2) of the *Indian Act* is entitled to have that interest registered in the Sliammon Lands Register provided that:
- (1) the written instrument transferring the interest is duly executed by the person duly authorized under the *Indian Act* to transfer the interest; and



- (2) Council has, by Resolution, consented to the written instrument transferring the interest to the purchasing Member.

37.3 Council may, by Resolution, authorize the Lands Manager to act as a delegate of Council under section 37.2.

37.4 An interest in Sliammon Lands that reverts to Sliammon First Nation under subsection 50(3) of the *Indian Act* shall become Community Lands on the date of reversion or on such other date that the Minister or the Minister's duly authorized delegate may specify.

### **38. Spousal Property Law**

#### Development of Rules and Procedures

38.1 Council shall enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage of a Member to:

- (a) the use, occupancy and possession of an interest in Sliammon Lands held by the Member; and
- (b) the division of that interest in land.

#### Enactment of Rules and Procedures

38.2 The rules and procedures contained in the spousal property law shall be developed by the Lands Manager in consultation with Members.

#### General Principles

38.3 The rules and procedures developed under section 38.2 shall take into account the following general principles:

- (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of the children;
- (b) each Spouse should have an equal right to possession of the matrimonial home;
- (c) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;



- (d) the rules and procedures shall not discriminate on the basis of sex;
- (e) a mortgage of lease of spousal property shall not be set aside if the mortgagee acquired it for value and acted in good faith; and
- (f) only Members are entitled to hold a permanent interest in Sliammon Lands or a charge against a permanent interest in Sliammon Lands.

## PART 8 DISPUTE RESOLUTION

### 39. Informal Resolution of Disputes

Intent

- 39.1 The Sliammon First Nation intends that whenever possible, a dispute in relation to Sliammon Lands shall be resolved through informal discussion by the parties to the dispute and nothing in this part shall be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this part.

### 40. Adjudicator Established

Office of the Adjudicator

- 40.1 The Office of the Adjudicator is hereby established to hear and resolve disputes in relation to Sliammon Lands in accordance with this Land Code and any other applicable laws and policies.
- 40.2 The Adjudicator shall be a Barrister and Solicitor and a member of the Law Society of British Columbia who is independent of the parties to a dispute and to other interests in the dispute.

### 41. Application Procedure

Reference to Adjudicator

- 41.1 The following persons may notify the Lands Manager that they wish to refer the dispute to the Adjudicator for resolution under this part:
- (a) a Member who claims an interest in Sliammon Lands based on a registered interest;
  - (b) a person who has a dispute with another person or with the Sliammon First Nation



- in relation to the possession, use or occupation of Sliammon Lands;
- (c) the Sliammon First Nation when asserting an interest in Sliammon Lands; and
- (d) the Sliammon First Nation when disputing the possession, use or occupation of Sliammon Lands.

#### Dispute Resolution Not Available

- 41.2 Dispute resolution processes under this Land Code are not available under this part for disputes in relation to:
- (a) mortgages of lease;
  - (b) decisions relating to housing allocation; or
  - (c) decisions of Council to grant or refuse to grant an interest or licence in Sliammon Lands.

#### Disputes Originating Prior to Land Code

- 41.3 Disputes that originated before September 30, 2004 may be decided under this part.

#### Demonstration of Reasonable Effort to Resolve

- 41.4 Persons applying for adjudication under section 41.1 shall demonstrate that they have made reasonable efforts to resolve the dispute.

#### Limitation Period

- 41.5 Parties may request a referral to the Adjudicator no later than:
- (a) 60 days after the day the decision, act or omission that is the subject of the dispute occurred; or
  - (b) 30 days after an attempt to resolve the dispute informally, in accordance with section 41.4, has failed.

## **42. Referral to Adjudicator**

#### Lands Manager Shall Establish Procedures

- 42.1 In consultation with the Lands Committee and Council, the Lands Manager shall establish procedures for referring disputes to an Adjudicator.
- 42.2 Subject to section 42.3, the Lands Manager shall, in a timely manner as required to settle



the dispute, appoint the Adjudicator in accordance with the procedures established by Council.

#### Agreement to be Bound

- 42.3 The Lands Manager shall not refer a dispute to the Adjudicator unless all parties to the dispute agree to be bound by the decision of the Adjudicator, in a form prescribed by Council in consultation with the Lands Manager.

### **43. Duties and Powers of the Adjudicator**

#### Duty to Act Impartially

- 43.1 The Adjudicator shall act impartially and without bias or favour to any party in a dispute.  
Offense
- 43.2 It is an offense for a person to act, or attempt to act, in an improper way to influence the decision of the Adjudicator.

#### Rejection of Application

- 43.3 In addition to any other penalty provided for an offence under section 43.2, the Adjudicator may refuse to hear or decide an application if, regardless of whether a person has been found to have committed an offence under section 43.2, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision.

#### Rules of Adjudicator

- 43.4 The Adjudicator may, consistent with this Land Code, establish rules for procedure at hearings and for the general conduct of proceedings.

#### Professional Services

- 43.5 Prior to retaining the services of any professionals to assist in fulfilling his or her functions, the Adjudicator shall notify the parties to the dispute of the proposed professionals and their estimated services and costs.
- 43.6 Upon agreement of the parties, the Adjudicator may retain the services of professionals to assist in fulfilling his or her functions, in which case they shall make best efforts to use professional services available in the community who do not have a conflict of interest.
- 43.7 The Adjudicator may refuse to hear or decide an application if one or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.



43.8 The Adjudicator may, after hearing a dispute:

- (a) confirm or reverse the decision in dispute, in whole or in part;
- (b) substitute the Adjudicator's own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute for reconsideration by the decision-maker; or
- (e) refer the matter to a court of competent jurisdiction or other forum.

#### Decisions

43.9 The Adjudicator shall give written reasons for a decision and shall sign the written reasons.

43.10 Subject to section 45.1(Appeal of Decision) a decision of the Adjudicator is binding.

43.11 An order from an Adjudicator may be entered into court and enforced through the court of competent jurisdiction.

## **44. Costs**

#### Costs

44.1 Unless otherwise ordered by the Adjudicator under section 44.2 or by an appellate court, the parties to a dispute shall bear their own costs and an equal share of the costs of the adjudication process.

44.2 The Adjudicator has the authority to order one, both or all of the parties to pay some or all of the costs of the adjudication process, including but not limited to the costs of the Adjudicator and any professionals retained, taking into account:

- (a) the reasonableness of the parties in their positions;
- (b) the conduct of the parties;
- (c) the result of the adjudication;
- (d) the use of professional services; and



- (e) any other relevant factor.

#### Sliammon First Nation Liability

44.3 For greater certainty, the Sliammon First Nation shall not be liable or responsible for the costs of adjudication under this part, or of any dispute resolution process, where the Sliammon First Nation is not a party.

### **45. Appeals and Alternate Forums**

#### Appeal of Decision

45.1 Subject to any exception established by a law, a decision of the Adjudicator may be appealed to a court of competent jurisdiction.

#### Alternate Forums

45.2 Nothing in this part precludes Council from establishing additional processes or laws for resolving disputes, which processes may include facilitated discussion, mediation, administrative appeals, or referral to another forum.

## **PART 9 OTHER MATTERS**

### **46. Liability**

#### Liability Coverage

46.1 Council shall arrange for, maintain and pay insurance coverage for:

- (a) liability of the Sliammon First Nation in relation to Sliammon Lands; and
- (b) personal liability of the Sliammon First Nation's officers and employees for acts done or omitted to be done in good faith while engaged in carrying out duties in relation to Sliammon Lands.

#### Extent of Coverage

46.2 Council shall determine the extent of insurance coverage under section 46.1.



## **47. Offences**

### Application of Criminal Code

47.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code and offences under a Law.

### Justices of the Peace

47.2 Council may enact Laws in relation to appointment of justices of the peace for the enforcement of this Land Code and Laws.

### Provincial Courts

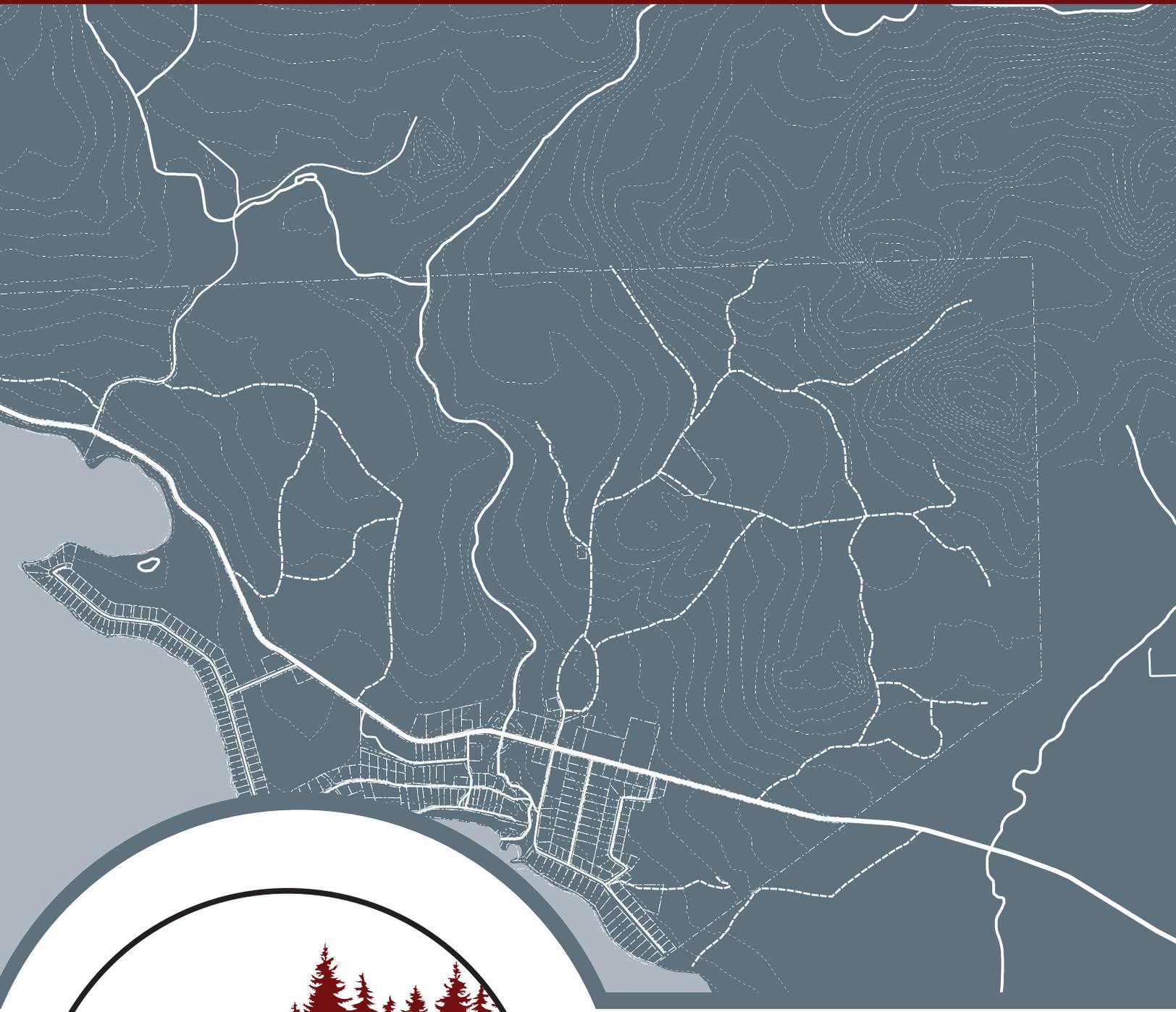
47.3 If no justice of the peace is appointed, this Land Code and Laws shall be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court or any court of competent jurisdiction as the case may require.

## **48. Amendments to Land Code**

48.1 Amendments to this Land Code shall be approved at a Meeting of Members.

## **49. Commencement**

49.1 This Land Code shall come into force on the date that it is approved at a Meeting of Members.



# **TLA'AMIN**

## **LAND USE PLAN**

MARCH 2010



**A note about names**

*This Land Use Plan uses spellings from our official phonetic place names list. Tla'amin is also used instead of the mispronunciation, Sliammon. Older project reports referenced in this Land Use Plan go by their original titles and use English place names that were given after contact. Tla'amin people were not consulted in their own territory and these place names legally went into effect. Please see the Glossary for more information.*



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## **1.0 INTRODUCTION**

### **1.1 SUMMARY**

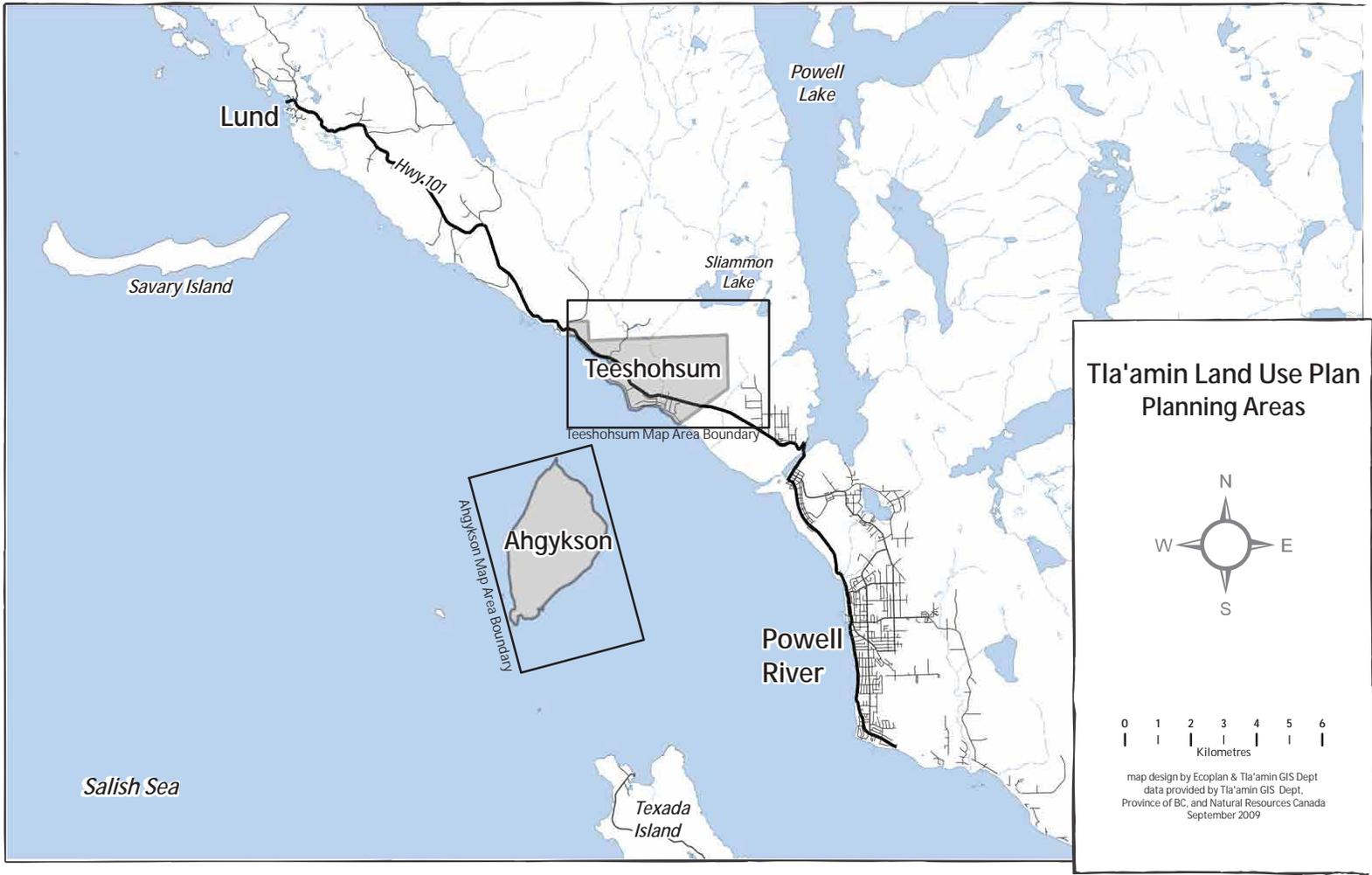
Our Land Use Plan directs **land use and development** on Teeshohsum (Sliammon IR 1) and Ahgykson (Harwood Island IR 2). It establishes direction by describing our vision and broad concepts for how we use and develop these lands. It also describes **how, where and when** people will be allowed use and develop **specific areas** within these lands.

This plan includes a **framework** for **land use decisions** that are to be made for all of our lands and properties, and **guidelines** on **how new development will be reviewed**, by whom, and when. It provides certainty around development in Teeshohsum and on Ahgykson and is a tool for **fair, transparent and consistent decision-making** by staff and leadership. This plan will help us move forward with important capital projects and upgrades (e.g., new water and sewer services, roads, new community facilities, etc.). It also supports our ongoing economic development planning and implementation.

Our Land Use Plan includes:

- General **land use designations** for our lands with a list of potential uses for each designation;
- **Zoning designations and regulations** for our main population centre, Teeshohsum;
- **Guidelines** to protect **environmentally** and **culturally sensitive areas**; and,
- A **development review process** that provides a **clear, transparent and strategic** framework for future land-use decision-making.

The objectives, principles and policies of this Land Use Plan are enacted under our Land Code through the **Tla'amin Land Use and Development Law**. All members, staff and leadership are bound to this law, as are any third-party development partners we may work with in the future.







## 1.2 PLANNING APPROACH

This Land Use Plan incorporates the same Tla'amin teachings that have guided our past planning work. The following teachings are particularly important to our land use decisions and policies:

- **Accountability (Yeeqotltlet)** – Regular and relevant reporting will be made throughout the process to elected leaders and community members with responsibility at the forefront of planning.
- **Communication (Qwakwistowtl)** – Work diligently to ensure two way consultation process is in place to provide clear and accurate information from the many perspectives of our people.
- **Fairness (Thahthxwen)** – Make every effort to ensure that everyone is given equal opportunity to witness and be included in the process through consensus decision-making.
- **Honesty (Ganuxwet)** – Be truthful, sincere and practical in the information provided to our people. Transparency and openness will resolve peoples concerns.
- **Respect (Teestahm)** – Honor our ancestors, our connection to the land and a sustainable future for our children by keeping them at the forefront of all processes.

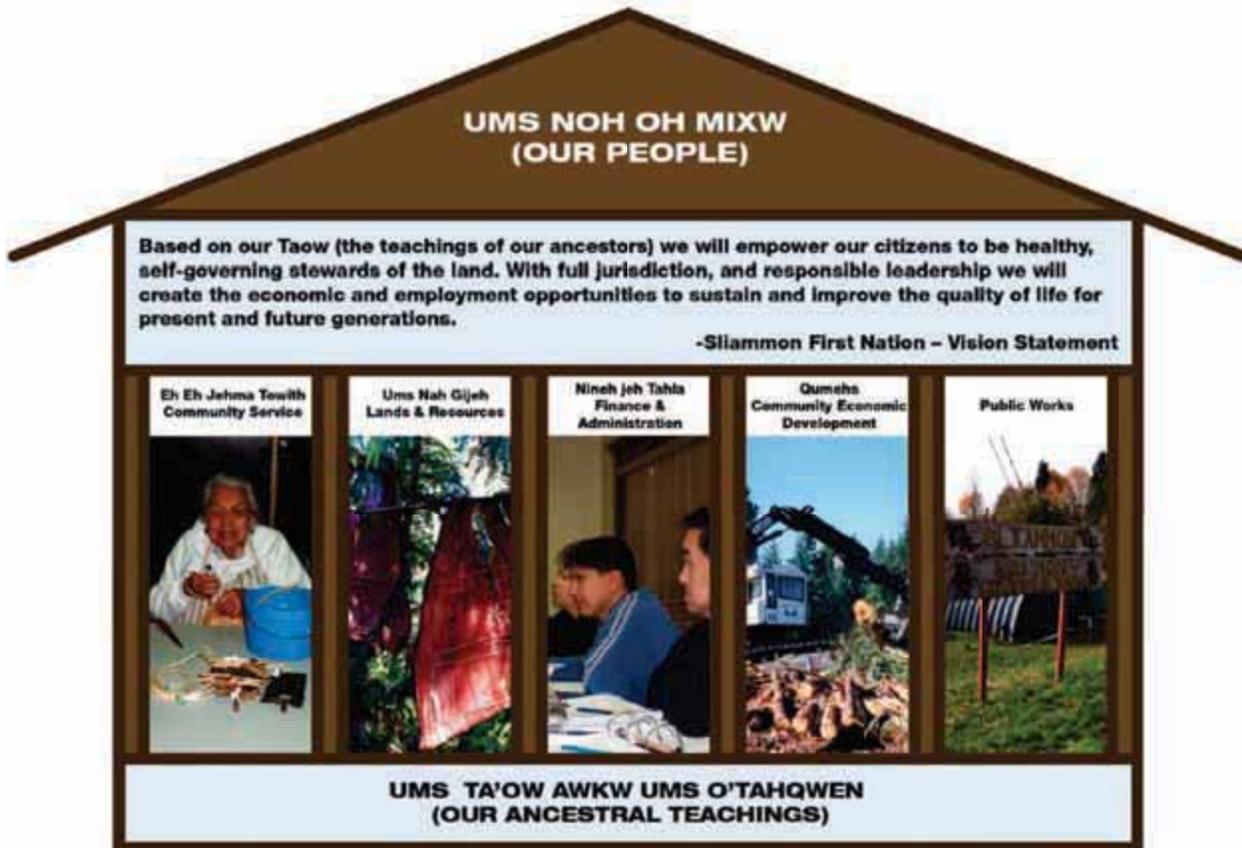
Over the past two decades, we have carried out a considerable amount of land use planning work. These projects generated a number of relevant and important land use policies and preliminary land use designations which informed and guided our final Land Use Plan.

Our past planning work is extremely important not only for the policies they created, but because of the **extensive member engagement** that was part of them, including the active involvement of many Elders who are no longer with us. These initiatives also required **considerable staff time and leadership input**. Our Land Use Plan carefully **built upon, confirmed and incorporated** this community feedback

The House of Governance model illustrated on the facing page was first developed for the 2004 *Reflecting on Traditional Governance* report and refined in 2007 for our *Comprehensive Community Plan*. Presented in the form of a longhouse, the Land Use Plan incorporated the model and was led by its Vision Statement. The components of the longhouse include:

- **Outer House Structure** – represents the Nation and all of the things that encompass the Governing of the Nation.
- **Foundation** – is comprised of Ums t'aow awkw ums O'tahqwen (our ancestral teachings) and signifies our inherent rights through the respect that Tla'amin have for the teachings and the land they left us, and the guidance they still provide.
- **Rafters** – the Tla'amin people are at the top in the rafters as a reminder that we are here for our people above all else.

- **Support Beam** – our vision statement is shown as the support beam across the top that connects everything in the house.
- **House Posts** – the organizational level is made up of house posts for each area of the Nation. Finance & Administration is shown as the central house post to signify the central role it plays in relation to the other house posts.







## 2.0 WHERE HAVE WE BEEN?

*This section begins the story of our Land Use Plan. It provides a brief overview of our history and the two small reserves this Land Use Plan applies to. It also provides details on the planning process we used and summarizes the work we did with our community in developing the plan.*

<b>2.1</b>	<b>People and History</b>	<b>12</b>
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<b>2.4</b>	<b>Working with our Community</b>	<b>16</b>



## 2.1 PEOPLE AND HISTORY

Since the beginning of time, our people have lived on the lands that the Creator provided for our ancestors. Our creation stories speak of how the Creator put Tla'amin people on this land. We have a deep connection to it, established at the time of our birth when our umbilical cord was buried into the ground.

This connection is nourished by our teachings, which show how we are bound to the forests and waters of our territory. Our people have depended on this land for their survival since time immemorial. Archaeologists date some of the known archaeological sites to over 8,000 years ago.

Our teachings tell us about a vast traditional territory that once belonged to Tla'amin people. This traditional territory stretched along the northern Sunshine Coast, extending along both sides of the Straight of Georgia. The entire territory occupied an area about 400 square kilometers, and consisted of numerous temporary and permanent settlements within the region.

It is from our proud and long history that we derive our inherent right to self-government. With jurisdiction and responsible leadership, we will create economic and employment opportunities to sustain and improve the quality of life for present and future generations.

### TEESHOSUM COMMEMORATIVE MAP

The map on the next page was started in 2004 when Elders were working on several Governance and Language project initiatives that kept coming back to discussions about where people lived and worked, life changing events and the people that passed on years before. There was very valuable information in the conversations, so we decided to get a blank map and start identifying Elders' earliest memories to the best of their recollection of where the main residences were on I.R.#1 prior to 1945. The Elders wanted to commemorate the memory of many of the early Teeshohsum residents. Prior to this families that held vast tracts of lands throughout the traditional territory.

Catastrophic disease, the church and residential schools, and the great fires (including the 1918 fire) were just some of the reasons Elders talked about people centralizing at Teeshohsum. Reserves were issued in 1879 and provincial laws followed about being on reserve from dusk till dawn. In 1900, Christian names were issued to simplify status and band membership and some people were automatically transferred out of their nation when they married. Some people were able to maintain fishing, hunting and trapping cabins located throughout the territory and continued to move according to seasonal gathering patterns. More recently, the commercial fishing and forestry sector took many people from the community for extended periods each year and many were forced to sign away status (enfranchise) so they could work off reserve.

The first lot surveys were carried out on Teeshohsum by the Department of Indian Affairs in 1958 which started a decades long battle over traditional properties versus Department of Indian Affairs certificates of possession which are registered legal interests.

The commemorative map celebrates our collective past at Teeshohsum and those Elders who lived and worked there in the early part of last century.





## 2.2 PAST PLANS

This Land Use Plan **builds on previous planning** and capacity building projects and initiatives. Over the past two decades, we have carried out a considerable amount of land use planning work for our reserves, Treaty Settlement Lands and with neighbouring local governments and other First Nations. These projects generated a number of **important and relevant land use policies**, many of which are carried over into this plan.

- •  **1) Physical Development Plan Update for Sliammon Indian Reserve No. 1 (1996)**  
This plan established long term development goals, land use goals and a capital plan. While out dated, it is the only current plan that addresses infrastructure planning and engineering for Teeshohsum.
- •  **2) Highest & Best Use Analysis of Treaty Settlement and Reserve Land (2003)**  
This analysis addresses characteristics of the land, the market for a variety of uses, the constraints and opportunities, and ultimately the highest and best use Tla'amin lands.
- •  **3) Land and Resource Management Plan for Sliammon Reserve Lands (2003)**  
This plan established a community vision for reserve lands, general land use designations and management objectives. The plan's designations provided the foundation of the new Land Use Plan.
- •  **4) Land and Water Use Plan for Tla'amin Traditional Territory (2005)**  
An expression of Tla'amin interests across the traditional territory and a guide for land use allocation and resource management decision-making.
- •  **5) Sliammon Comprehensive Community Plan (2007)**  
This plan established a community vision for community development, updated zoning for reserve lands and technical background report with population projections.
- •  **6) Sliammon First Nation Environmental Management Framework (2007)**  
This agreement established a strategy for managing environmental issues on reserve lands.
- •  **7) Sliammon- Powell River Regional District Harmonization Project (2008)**  
This project made recommendations for harmonized land use planning in buffer zones between Sliammon lands and Powell River Regional District lands.
- •  **8) Sliammon Reserve Land Interest Verification Project - Phases 1 & 2 (2008)**  
This project made recommendations for resolving outstanding land disputes on Teeshohsum.
- •  **9) Sliammon - SFU Archaeology and Heritage Stewardship Project (2008 - 2012)**  
This project is expanding the inventory of archaeological sites and making recommendations on heritage stewardship.
- •  **10) Sliammon Woodlot License Plan (2009)**  
This plan outlines a tree harvest and replanting program for Sliammon's community woodlot that covers a large portion of Teeshohsum, north of the main village area.



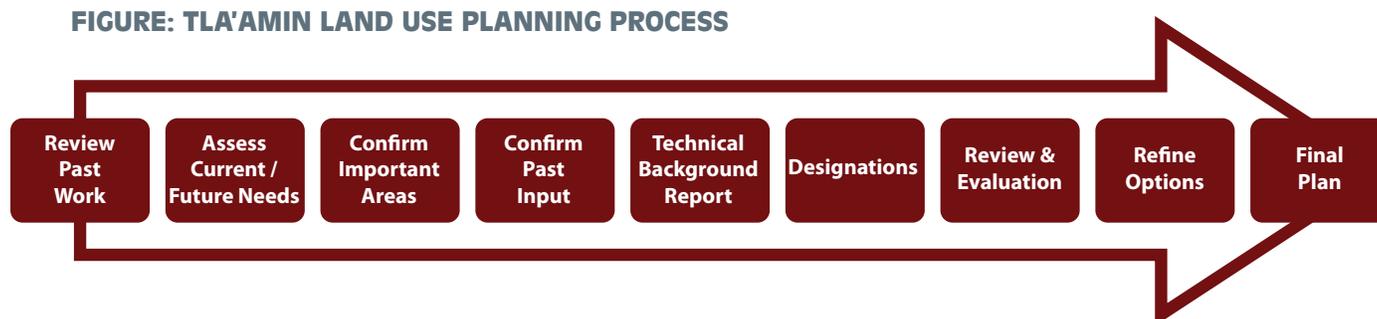
### HOW IT ALL FITS TOGETHER

This graphic illustrates where the Land Use Plan fits in relation to our major laws and policies. It shows how this Land Use Plan fits under our Land Code and will be implemented through two laws, the Tla'amin Land Use and Development Law and the Tla'amin Building Law.

## 2.3 PLANNING PROCESS

Our Land Use Plan project started in August 2009. It included community input at each step and review by Tla'amin leadership at key junctures. The key steps in our process are illustrated in the graphic below.

FIGURE: TLA'AMIN LAND USE PLANNING PROCESS



1. Review past planning work and identify planning gaps and information needs;
2. Assess current and future needs for housing and community facilities;
3. Confirm culturally and environmentally sensitive areas and other land development constraints;
4. Confirm community-identified values and preferences from past plans;
5. *Technical Background Report* summarizing first four steps;
6. Generate land use designations based on past planning work, modified where necessary and appropriate;
7. Review options with community and leadership to determine critical choices and preferences, as well as decisions/opportunities that require further information (e.g., new administration building location, new sewage treatment facility, potential in-vessel composting system, etc.);
8. Refine preferred options to develop 'best' option; and,
9. Develop Final Land Use plan that directs Tla'amin towards the preferred option.

## 2.4 WORKING WITH OUR COMMUNITY

As already highlighted in Section 1.2, the development of this plan was **community-based and member-driven**. It involved on- and off-reserve members, Elders, youth and staff, leadership and committees.

Our approach recognized the fact that there were many other important initiatives underway in our community. Our **Constitution, Treaty**, and ongoing **Land Code** work have all required extensive and ongoing community engagement and input. This plan respects those efforts by including the community input from those processes.

Some of our Land Use Plan engagement activities are summarized below.

- **Project Support Team:** A core project team of senior staff (including one Councilor) met regularly to help guide the project and to work with our consultant team.
- **Steering Committee:** An advisory group made up of additional senior staff was established and met at key project junctures.
- **Chief and Council:** Our leadership kept up-to-date on the project through three presentations and working sessions, and provided direction on critical decisions. A Council representative was also a member of the Project Support Team.
- **Project web site:** We set up a project website ([www.sliammon-lup.ca](http://www.sliammon-lup.ca)) where we posted all project information. Visitors could download copies of project materials or provide information through on-line surveys and questionnaires.
- **Community survey:** About 20% of our adult, on-reserve population (a very high response rate!) completed a questionnaire. The survey confirmed Land Use Plan directions and themes.
- **Community posters:** We developed a series of Community Information Posters that we displayed at community venues around Teeshohsum and at community events.
- **Neh Motl articles:** We produced regular monthly articles for Neh Motl to keep community members up-to-date on the project.
- **Elders' presentation:** A summary of the project was provided to 20 Elders at a luncheon and they completed questionnaires.
- **Community open houses:** We organized two open houses to gather input and feedback. Almost 40 people attended our first open house in December 2009, while 17 attended an open house in February 2010.
- **Chief and Council AGMs:** The Project Support Team attended an AGM in Teeshohsum and in Vancouver to gather input on components of the land use plan.





## **3.0 WHERE ARE WE NOW?**

*This section provides an overview of our lands within Teeshohsum and Ahgykson. It summarizes how we are currently using these lands and talks about what opportunities, needs, and constraints we considered while developing our Land Use Plan.*

<b>3.1</b>	<b>Our Lands</b>	<b>20</b>
<b>3.2</b>	<b>Our People</b>	<b>20</b>
<b>3.3</b>	<b>Our Community Needs</b>	<b>21</b>
<b>3.4</b>	<b>Land Development Considerations</b>	<b>26</b>



## 3.1 OUR LANDS

### TEESHOSUM

Located 130 km northwest from Vancouver on the northern Sunshine Coast and just outside the City of Powell River, Teeshohsum has been an important settlement area for our people throughout our history and is our main village site today.

Teeshohsum is currently our only populated reserve. Given the infrastructure and services already in place there, and the existing population, our Land Use Plan recommends that Teeshohsum remain the main area for residential and commercial development well into the future. This recommendation has been made previously by the Highest & Best Use Analysis of Treaty Settlement and Reserve Land (2003).

### AHGYKSON

Located in the Salish Sea (Georgia Strait) about two kilometres south west of Teeshohsum, Ahgykson is our largest reserve at 848 hectares (2,095 acres). It is entirely undeveloped and a popular hunting, traditional gathering and camping destination for our members. There are also many important archaeological sites on the island. Ahgykson is the largest uninhabited island of all the Gulf Islands.

Ahgykson is abundant with natural resources. It is lined with sandy beaches, has several aquifers providing fresh water and has significant wildlife habitat value. Silica deposits have also been identified. Unfortunately, beaches on the south-east coast of the island have been contaminated by pulp mill effluent from Powell River and there have been shellfish closures there.

Extensive past community engagement has clearly shown that most community members have significant concerns around protecting the natural and cultural resources of Ahgykson and would like to see the island left as natural as possible.

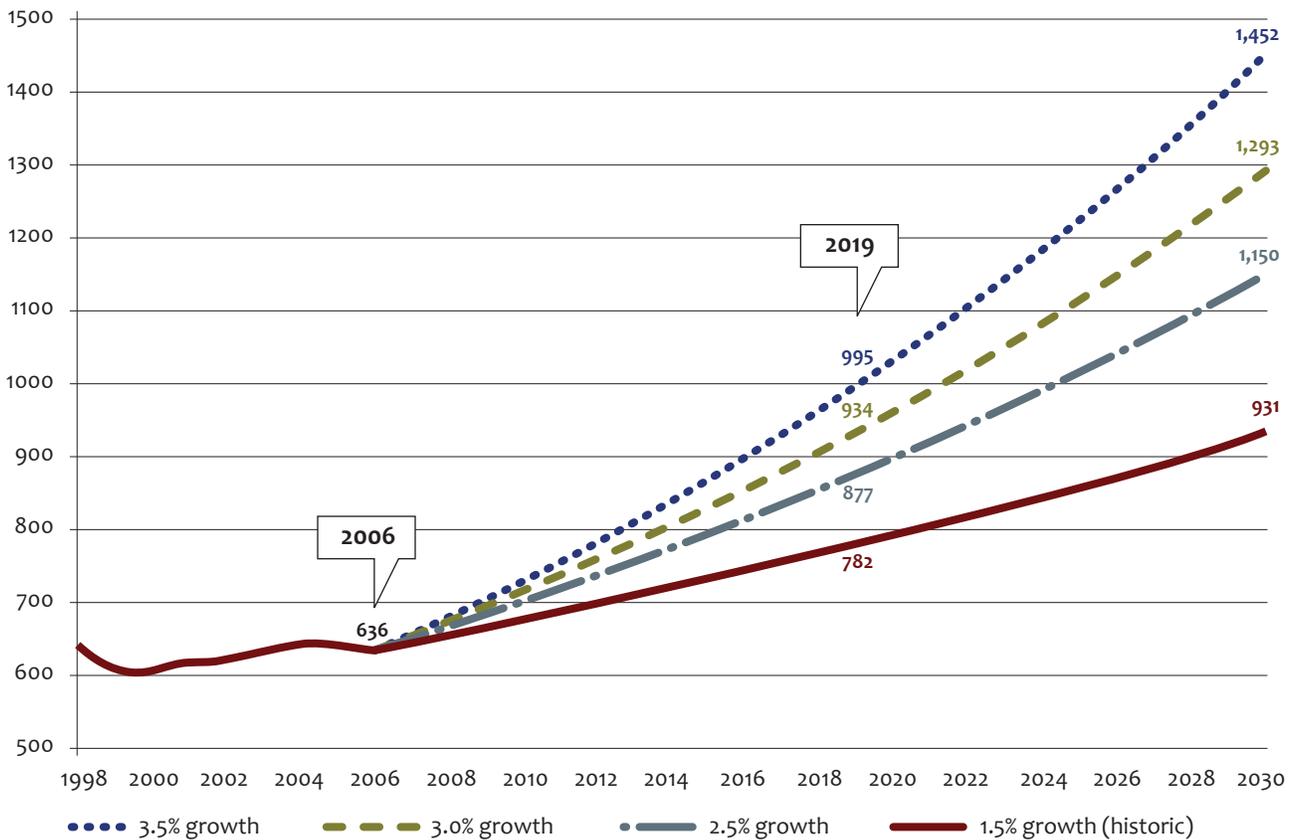
## 3.2 OUR PEOPLE

In 2009, our total membership was estimated at about 1,000 people. Of these, almost 700 lived in Teeshohsum<sup>1</sup>, or almost 70% of our population. Based on past population trends, it is expected that between 782 and 995 members could be living in Teeshohsum in 10-years time. Of course, our future on-reserve population will depend on a number of factors, including the diversity of housing available to members (i.e., homes for families, single people, Elders, etc.), the regional economy, and general living conditions in Teeshohsum. If current growth trends continue, Teeshohsum could conservatively be home to between 930 and 1,150 people by 2030.

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1 Sliammon Comprehensive Community Plan – Community profile (2007).

FIGURE: TLA'AMIN ON- RESERVE POPULATION FORECAST, 2009 TO 2030



### 3.3 OUR COMMUNITY NEEDS

To help us determine what kinds of land uses should be permitted, we first had to determine **what our community's needs** were and then find out how much land we would need to meet them. Some of the questions we asked included:

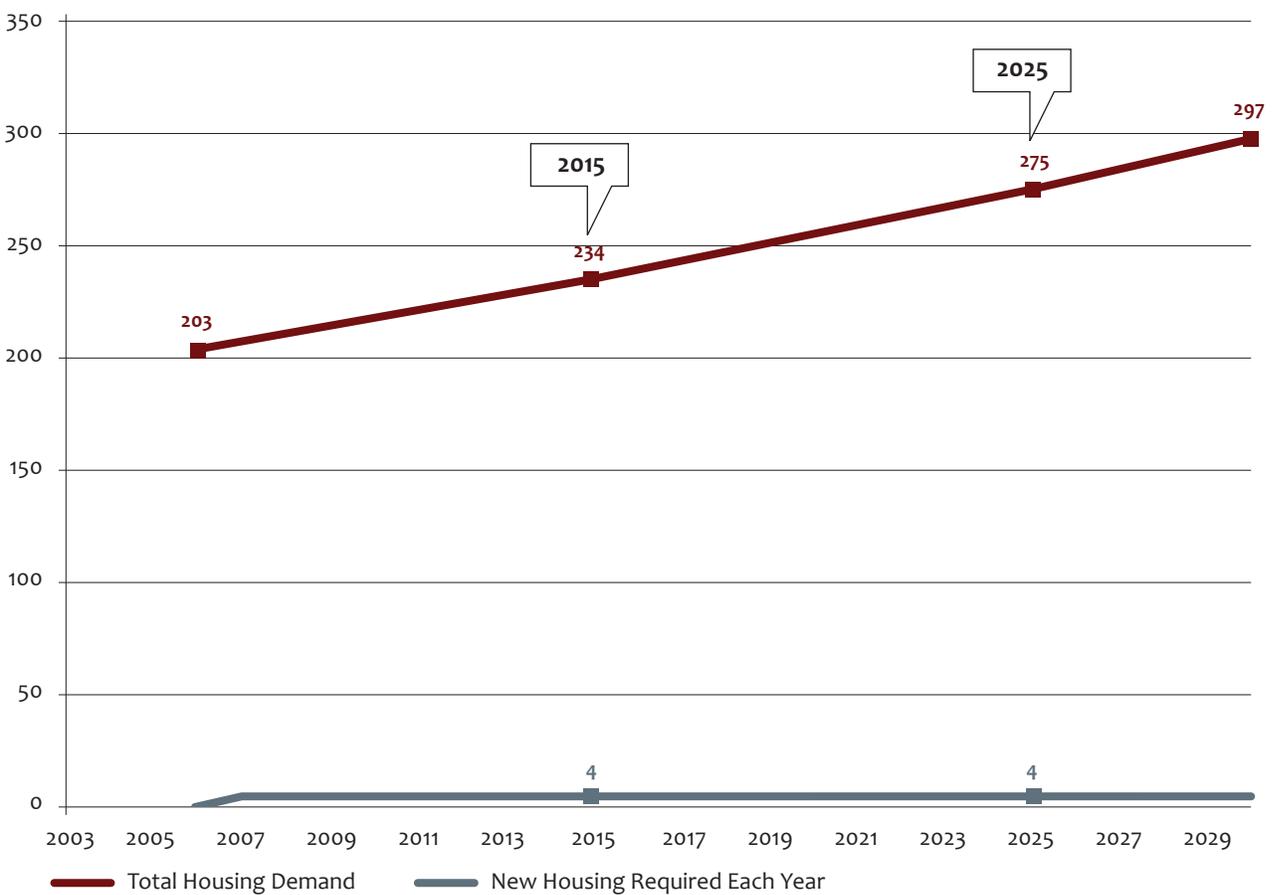
- What are our members' housing needs? How much housing is needed? What kind of housing is needed (e.g., single family, multi-family, social housing, Section 10 housing, etc.) and how will this need change over time?
- What kinds of new facilities are needed and why?
- How can we use our lands to generate revenue for the Band and to generate economic opportunities for our members?

### 3.3.1 Housing

Despite having no real housing wait list, **member housing** is still a key community concern. In particular, variety and choice of housing types was highlighted as an important need. Currently, our housing stock is mostly limited to detached single-family homes that do not meet the needs of all our members.

As illustrated in the chart, our housing needs are projected to grow over the next 20-years. The housing projections are based on our on-reserve population and demographic projections. They use the current rate of 3.13 people per dwelling unit. This shows that we will need approximately **95 new homes over the next 20-years** if our historic growth rate of about 1.6% continues into the future. If a higher growth rate was experienced (i.e., 3.5%), we would require almost 240 new homes over the next 20-years.

**FIGURE: TEESHOSUM HOUSING PROJECTIONS, 2009 TO 2030**



Currently, we are still working on the development of a new, 54-lot subdivision between our Health Centre and the Klahanie lease-hold lands that would address our short term needs (i.e., 10-years). From 2020 to 2030, following the completion of our new subdivision, we would need to build an average of **5 new housing units per year**.

**TABLE: TEESHOHSUM MEMBER HOUSING OPPORTUNITIES AND CAPACITY**

Housing Opportunities	Quantity or Land Area	Unit Capacity	Population Capacity
Vacant, serviced Lots	1 lot	4 residences, plus suites or duplexes	12 to 16 people
New subdivision west of Health Centre	9.8 hectares (24.2 acres)	54 residences, plus suites or duplexes	169 to 180 people
Addition of suites to existing member housing	203 current housing units	20 new suites or detached cottage units (10% uptake)	30 to 45 people
<b>Total potential capacity</b>		<b>58 residences plus 20+ suites or cottage units</b>	<b>210 to 240 people</b>
<b>Additional 20-year capacity required to meet maximum population projections</b>	<b>At 7.5 units per hectare: 10 hectares (24.7 acres)</b>	<b>up to 75 units</b>	<b>up to 240 people</b>

Assumptions:

- 3.13 persons per household for primary residential units
- 2.2 persons per household for suites, duplex units, and rental units
- 1 of 10 residential units includes a secondary suite, detached cottage, or is a duplex
- 230 to 450 new Teeshohsum residents (members) in 20 years

### 3.3.2 Facilities

Our top community facility needs as identified in our 2007 Comprehensive Community Plan and confirmed during this project include a new **Administration Building, a Cultural Facility, Longhouse** and a new **Elders Centre and Lodge**. We have carried out preliminary planning and feasibility work on these facilities, including location and siting preferences. The following table summarizes our facility needs.

**TABLE: TEESHOHSUM FACILITY NEEDS**

Facility	Current Planning Phase	Location(s)	Land Area required
<b>Administration Building and Cultural Facility</b>	<ul style="list-style-type: none"> <li>• 2007 Cultural Building &amp; Admin Facility Report</li> </ul>	<ul style="list-style-type: none"> <li>• 2007 facility report and member vote selected site near Salish Centre</li> <li>• Land recently cleared across from Xwup-Xwup store for facility</li> </ul>	.8 hectares (2 acres)
<b>Elders' Facility</b>	<ul style="list-style-type: none"> <li>• 2005 Feasibility Study</li> </ul>	<ul style="list-style-type: none"> <li>• Potential site adjacent to Health Centre</li> </ul>	.1 hectares (.25 acres)
<b>Cemetery</b>	<ul style="list-style-type: none"> <li>• 2006 CCP community visioning identified potential site</li> </ul>	<ul style="list-style-type: none"> <li>• Potential site across Highway 101 from Salish Centre</li> </ul>	4 hectares (10 acres)

Facility	Current Planning Phase	Location(s)	Land Area required
Longhouse	<ul style="list-style-type: none"> <li>• Discussion only</li> <li>• 2006 CCP community visioning identified potential site</li> </ul>	<ul style="list-style-type: none"> <li>• Potential site north of Highway 101 above Salish Centre</li> </ul>	2 hectares (5 acres) for facility & parking, screening
Youth Centre	<ul style="list-style-type: none"> <li>• 2009 discussion only</li> <li>• Project of new Tla'amin Youth Wellness Society</li> </ul>	<ul style="list-style-type: none"> <li>• Proponent wants to locate it in 'Village Centre' near Salish Centre and Health Centre</li> </ul>	.1 hectares (.25 acres)
Wellness Centre	<ul style="list-style-type: none"> <li>• 2009 discussion only</li> <li>• Project of new Tla'amin Youth Wellness Society</li> </ul>	<ul style="list-style-type: none"> <li>• Proponent wants to locate it in 'Village Centre' near Salish Centre and Health Centre</li> </ul>	.1 hectares (.25 acres)
<b>TOTAL</b>			<b>7.1 hectares (17.5 acres)</b>

### 3.3.3 Economic Development

Our lands are the foundation of our economic development initiatives. As such, they must be able to provide **adequate opportunities for business development, revenue-generation and member employment**. While this land use plan recognizes the importance of economic development, it also understands that additional work, including the creation of an Economic Development Strategy, is required to properly determine our land requirements for economic development.

For Teeshohsum, our use of land for economic development consists primarily of **leasehold residential housing** and some limited commercial forestry. Currently, Teeshohsum includes the 111-lot Klahanie subdivision and 29-lot Southview subdivision, both of which are leased out to non-members and are significant revenue generators for Tla'amin.

Over the years, numerous development opportunities have been proposed, but few have been implemented. It is worth noting that the current Economic Development designations in this Land Use were based on specific development ideas that included everything from a golf course to a computer manufacturing facility. While some of the concepts still could be further explored and tested for financial feasibility, some, we know, are not likely feasible in the short- or long-term (e.g., computer manufacturing facility)

The table below summarizes some of the concepts and their status. Newer ideas developed through the land use planning process are also noted.

**TABLE: TLA'AMIN ECONOMIC DEVELOPMENT OPPORTUNITIES AND LAND NEEDS**

<b>Development Opportunity</b>	<b>Current Planning Phase</b>	<b>Potential Location(s)</b>	<b>Land Area required or designated</b>
<b>New Lease-Hold Subdivision(s)</b>	<ul style="list-style-type: none"> <li>• Discussion only</li> <li>• Feasibility to be determined</li> </ul>	Southview extension, north west corner of Teeshohsum above Highway 101	18.5 hectares (45 acres)
		Klahanie extension, Scuttle Bay area below Highway 101	3.5 hectares (9 acres)
<b>Industrial Park / Light Manufacturing</b>	<ul style="list-style-type: none"> <li>• Identified in CCP</li> <li>• No detailed planning</li> <li>• Feasibility to be determined</li> </ul>	Land designated above Highway 101, north west of Salish Centre	2.65 hectares (6.55 acres)
<b>Office space</b>	<ul style="list-style-type: none"> <li>• Discussion only</li> <li>• Feasibility to be determined</li> </ul>	Economic Development designated land across from Xwup-Xwup	2.48 hectares (6.12 acres)
<b>Computer Manufacturing Facility</b>	<ul style="list-style-type: none"> <li>• Identified in CCP</li> <li>• Unlikely due to technical and business feasibility</li> </ul>	NA	NA
<b>Golf Course</b>	<ul style="list-style-type: none"> <li>• Identified in CCP</li> <li>• No detailed planning</li> <li>• Likely need to be linked to lease-hold housing project to be feasible</li> </ul>	Forested land above Scuttle Bay, above Highway 101	56.5 hectares (140 acres)
<b>Winery</b>	<ul style="list-style-type: none"> <li>• Identified in CCP</li> <li>• No detailed planning</li> <li>• Unlikely in short-term</li> </ul>	Forested land above Scuttle Bay, above Highway 101	81 hectares (200 acres)
<b>Gravel pit</b>	<ul style="list-style-type: none"> <li>• Potential site of moderate quality on Teeshohsum</li> </ul>	North-east corner of Teeshohsum	50 hectares (125 acres)
<b>Eco-tourism</b>	<ul style="list-style-type: none"> <li>• Identified in CCP</li> <li>• No detailed planning</li> </ul>	Numerous opportunities and sites, particularly on Ahgykson	4 hectares (10 acres)

## 3.4 LAND DEVELOPMENT CONSIDERATIONS

### 3.4.1 Land Requirements

We will require up to 17 hectares (42 acres) to meet our community housing and facilities needs on Teeshohsum over the next 20-years. We have ensured that adequate and appropriate land is available to accommodate these needs through our land use designations and zoning.

Because our Economic Development requirements and opportunities are not yet clarified, we have identified specific land areas that are most suitable for economic uses or leasehold housing. Suitability includes factors such as proximity to infrastructure and access to major roads. These areas are large enough to accommodate a wide range of potential economic activities.

**TABLE: COMMUNITY LAND NEEDS AND REQUIREMENTS**

Community Need	Current Designated land area	Additional Land Requirements	Notes
Member housing	42.2 hectares (104.3 acres)	10 hectares (24.7 acres)	<ul style="list-style-type: none"> <li>• There are no members currently on our housing wait list. Our new subdivision could potentially meet our housing needs for 10-years. After 2020, we would need to build an average of 5 units per year to meet expected demands.</li> <li>• There are many ways to build housing that would reduce our land requirements and make servicing each house more cost effective.</li> <li>• The addition of secondary suites or cottages with existing homes would create more opportunities for our elders, our young people, and young families to live on reserve.</li> <li>• Additional member housing sites identified in Community Use designation north of Highway 101 above Salish Centre and below Xwup-Xwup store</li> </ul>
Community facilities	7.7 hectares (19 acres)	7.1 hectares (17.5 acres)	<ul style="list-style-type: none"> <li>• If we build our new Administration and Cultural facility as planned, we could use the old Administration site for housing or cemetery expansion.</li> <li>• As our community grows, we will consider and plan for new facility needs within each new area of development.</li> </ul>
Economic development – Leasehold Housing	18.7 hectares (47.74 acres)	22 to 30 hectares (54 to 74 acres)	<ul style="list-style-type: none"> <li>• Enough space to expand our leasehold housing above our Southview subdivision and next to our Klahanie subdivisions. Potential to develop 54 to 150+ new leasehold lots depending on lot layout, sizing and servicing.</li> </ul>



### 3.4.2 Development Constraints

We identified and mapped general land constraints for both Teeshohsum and Ahgykson. Constraints are limitations to development that either make new development impossible or limit it. Examples of land constraints include:

- **physical constraints** (e.g., steep and unstable slopes, high water table levels, flood threat, etc.);
- **cultural constraints** (e.g., known archaeological sites, cultural sites, etc.); and,
- **environmental constraints** (sensitive ecological areas like Sliammon Creek and the foreshore, etc.).

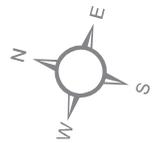
Knowing the location of these constraints also helped us better understand where our development opportunities are.

#### **WATER AND SEWER**

We also know that our current infrastructure and servicing capacity will limit development. Teeshohsum is nearing capacity for water services, so new residential and community facilities may require increased water services capacity or improved demand management strategies. We are in the process of addressing our future water needs and the management of this critical resource.

Our current sewer facility for Teeshohsum is also nearing maximum capacity. We are currently in planning stages to develop a new system to address current and future needs.

# Ahgykson Land Use Constraints



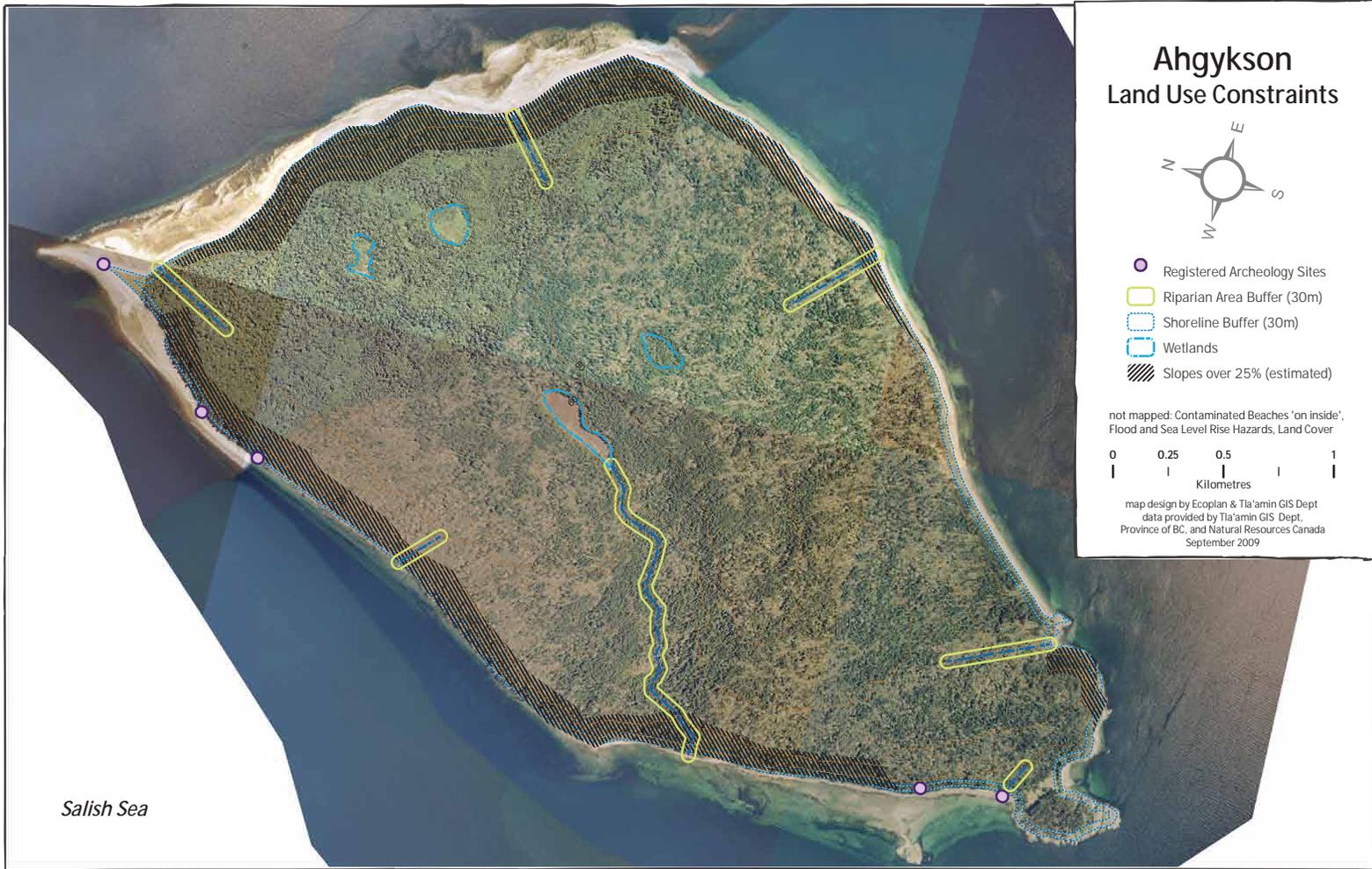
- Registered Archeology Sites
- Riparian Area Buffer (30m)
- Shoreline Buffer (30m)
- Wetlands
- Slopes over 25% (estimated)

not mapped: Contaminated Beaches 'on inside',  
Flood and Sea Level Rise Hazards, Land Cover

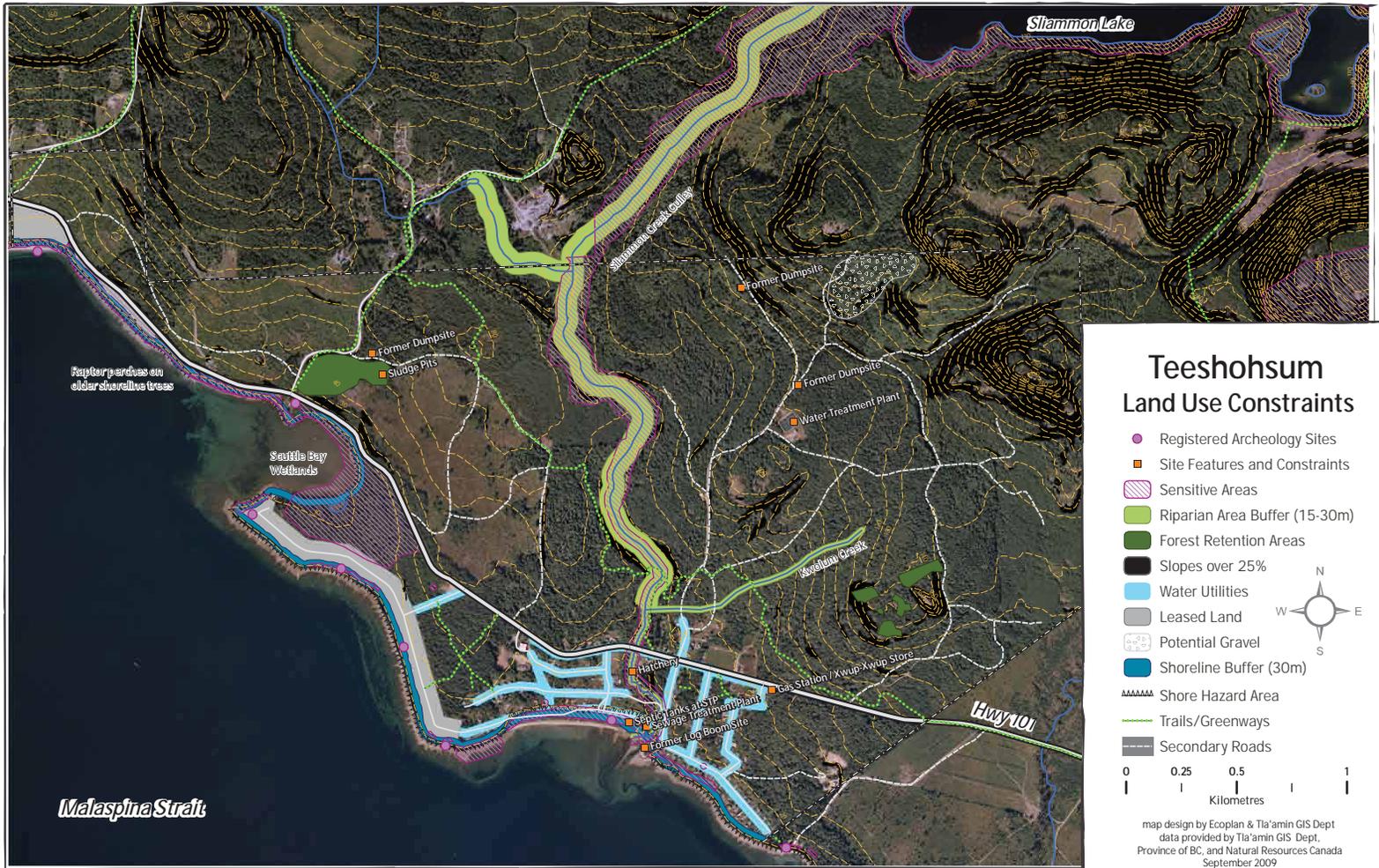


map design by Ecoplan & Tla'amin GIS Dept  
data provided by Tla'amin GIS Dept,  
Province of BC, and Natural Resources Canada  
September 2009

Salish Sea







Redberry arduous on  
elder shorelines trees

Seafille Bay  
Wetlands

Malaspina Strait

Slammom Lake

Shishamuk Creek Gully

Former Dumpsite

Former Dumpsite  
Sludge Pits

Former Dumpsite

Water Treatment Plant

Kosolone Creek

Hatchery

Gas Station / Xwup Xwup Store

Septic Tanks at STP  
Sewage Treatment Plant

Former Log Boom Site

Hwy 101







## **4.0 WHERE DO WE WANT TO GO?**

*This section describes our land use vision and the larger, strategic community development objectives we used to guide our land use planning process.*

<b>4.1</b>	<b>Our Land Use Vision</b>	<b>34</b>
<b>4.2</b>	<b>Our Land Use Objectives</b>	<b>36</b>
<b>4.3</b>	<b>Anticipating the Future</b>	<b>37</b>



## 4.1 OUR LAND USE VISION

Our vision statement from our 2007 *Comprehensive Community Plan* reads:

***Based on our Taow, we will empower our citizens to be healthy, self-governing stewards of the land. With full jurisdiction, and responsible leadership we will create the economic and employment opportunities to sustain and improve the quality of life for present and future generations.***

Our Land Use Plan supports this vision.

When reviewing member feedback provided during past planning initiatives (e.g., *Sliammon Comprehensive Community Plan*, 2007) and feedback provided specific to this process, we heard some consistent ideas and thoughts from our members. We heard:

Teeshohsum is our home community

- This should be the core location for new member housing and facilities.
- Facilities should feel welcoming & accommodate the diverse needs of our membership.

A good Community is more than just houses

- Our community should be where we work, learn, play and gather.
- Our community should include parks, open spaces and natural areas.

Teeshohsum and Ahgykson must both sustain Tla'amin culture

- Our facilities in Teeshohsum should include a cultural centre.
- Special areas should be protected for ceremonial activities.
- Certain historic and cultural areas should be protected from all development.

Ahgykson should be protected

- Development on Ahgykson should be limited to traditional and cultural activities, or small-scale eco-tourism where practical and feasible.

Land use decisions for our lands must be transparent and involve members

- Development on our lands affects everyone, so members should be involved in reviewing major projects.
- Development review should be open, transparent and accountable.



## 4.2 OUR LAND USE OBJECTIVES

Our 2003 *Land & Resource Management Plan for Sliammon Reserve Lands (LRMP)* developed preliminary land use designations that were refined in this Land Use Plan. The LRMP also identified management objectives for the land use designations which are summarized below.

Because of overlapping objectives and designations, our Land Use Plan combined the Uhmsnahkayeh (Watershed Management) designation with the Yeexmet tums gijeh (Sensitive) designation to simplify and improve the designations. The management objectives for both designations were brought forward in the new designation.

**TABLE: TLA'AMIN LAND USE DESIGNATION MANAGEMENT OBJECTIVES**

Designation	Management Objectives
Ookts oht yiqush (Community Use)	<ul style="list-style-type: none"> <li>• Encourage diverse housing options to meet demographic needs</li> <li>• Encourage infill of existing serviced areas</li> <li>• Provide adequate recreational, cultural, government amenities</li> <li>• Maintain and enhance the rural village character in Teeshohsum</li> <li>• Promote sustainability (e.g., community gardens, orchards)</li> <li>• Encourage home-based businesses</li> </ul>
Nineh jeh tahla (Economic Development)	<ul style="list-style-type: none"> <li>• Minimize environmental and community impacts</li> <li>• Permit community-supportive commercial recreation facilities</li> </ul>
Uhmsnah jehjeum (Forest Management)	<ul style="list-style-type: none"> <li>• Promote and support sustainable forestry</li> <li>• Create a multi-use community forest (i.e., recreational and commercial uses)</li> <li>• Permit all traditional and cultural uses of Tla'amin forestlands</li> </ul>
Uhmsnah kootlkoo (Marine Management)	<ul style="list-style-type: none"> <li>• Encourage sustainable use of intertidal and coastal resources</li> <li>• Recognize area as Tla'amin "asset in common"</li> <li>• Permit traditional and cultural uses</li> </ul>
Yeexmet tums gijeh (Sensitive Area)	<ul style="list-style-type: none"> <li>• Protect traditional and cultural use sites whenever possible</li> <li>• Protect known archaeological sites whenever possible</li> <li>• Protect and buffer riparian habitat fish</li> <li>• Permit and support traditional and cultural uses</li> <li>• Accommodate non-consumptive uses, including sensitive recreational uses</li> </ul>

### 4.3 ANTICIPATING THE FUTURE

A challenging aspect of describing ‘Where Do We Want to Go?’ is the uncertain risks posed by the effects of climate change. Scientific debate has from “*Is this a real threat?*” to “*What will happen, by how much, and what can we do about it?*” This threat plays a significant role in shaping our long-term vision for our land.

Climate change scientists predict that BC will experience (and in some cases already is experiencing) the following impacts due to climate change<sup>2</sup>:

- Increasing temperatures will shift ecosystems to the north and to higher elevations.
- Increasing water temperatures will disturb aquatic ecosystems.
- Shifts in weather and precipitation patterns may disturb ecosystems that are sensitive to these cycles, as well as water supply infrastructure that is designed for specific conditions
- Coastal storm activity will increase in intensity and frequency, exposing coastal housing and infrastructure to greater risk.
- More intense and more frequent storms may damage and interrupt the provision of basic services such as water, power, fuel, and transportation.
- Sea levels could rise by as much as 1.2 metres, causing permanent flooding of low-lying areas and increasing the impacts of flood and storm events.

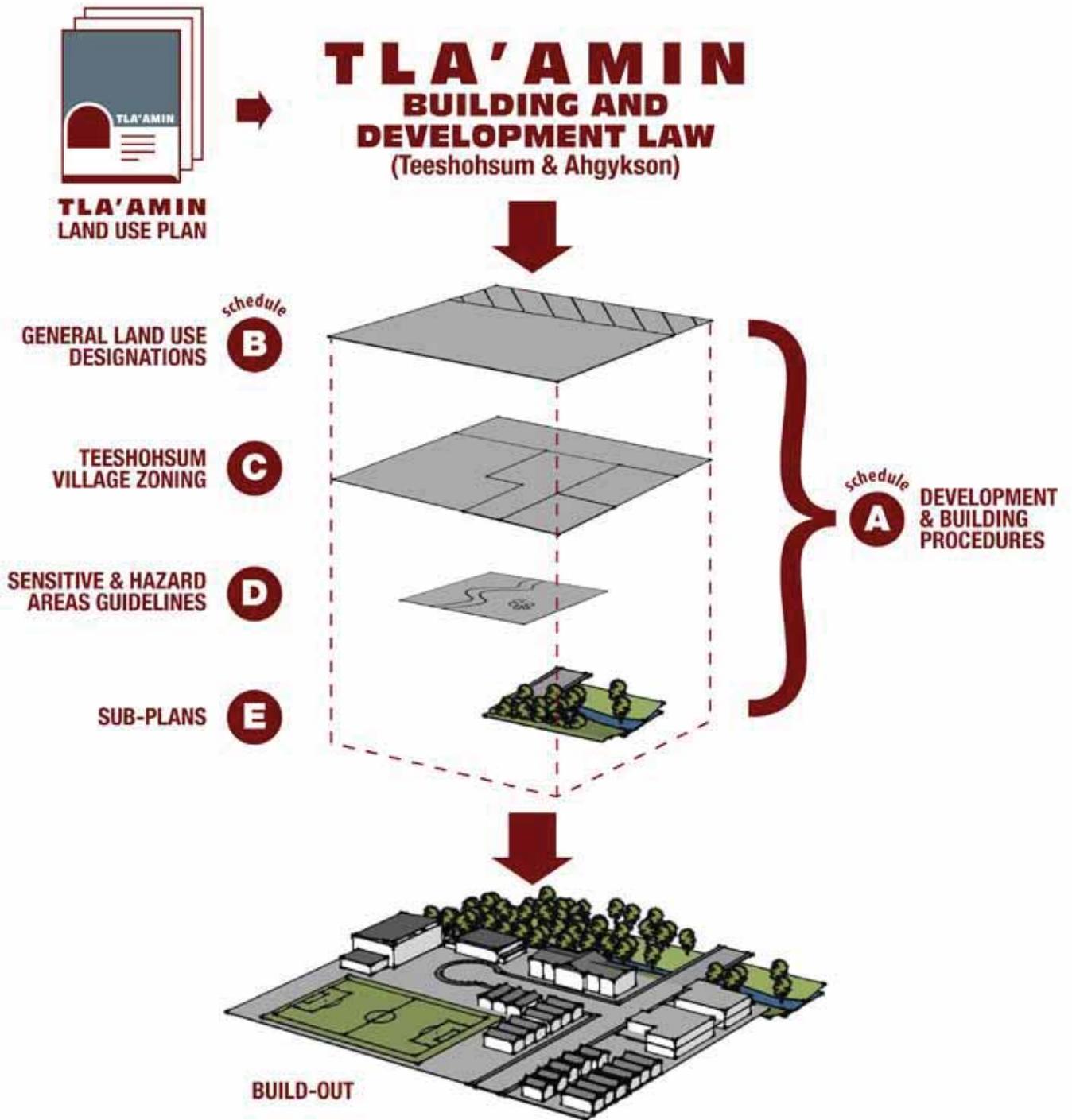
An example of our uncertainty is the projected height of actual sea level rise. Current provincial estimates for our traditional territory range from 0.04 to 1.03 metres by the year 2100<sup>3</sup>. Considering our time living on these lands, that year is not far away.

We want to manage our exposure to climate change risks and start preparing now. Though many of these impacts are beyond our ability to control, we can manage our exposure to hazards and our use of water and energy. The following summary of strategies refers to guidelines found elsewhere in this plan.

Strategy	Plan Component
Minimize the need to drive by providing our members with local facilities and resources	Schedule B: General Land Use Designations locate most housing within walking distance of our commercial and community services.
Be prepared for sea level rise	Schedule D-2: Hazard Areas Guidelines recommend a 30-metre setback from high water and a minimum flood elevation level to protect future developments.
Protect important ecological features and maximize ecological functioning	Schedule D-1: Sensitive Areas Guidelines recommend the protection of environmentally sensitive areas such as riparian corridors and wetlands.

<sup>2</sup> Adapted from “Climate Change Adaptation: Planning for BC”, Harford et al. November 2008

<sup>3</sup> British Columbia Coast and Marine Environment Project, BC Ministry of Environment. 2006





## **5.0 HOW DO WE GET THERE?**

*This section summarizes the policies, guidelines and sub-plans that together make up the technical Land Use Plan for Teeshohsum and Ahgykson.*

*The graphic on the facing page illustrates how the different policies and guidelines fit together to create a comprehensive planning framework where development proposals go through a number of layers, or filters, as they are evaluated and refined.*

*The policies, guidelines and sub-plans that are attached as Schedules to this Land Use Plan describe how the Land Use Plan is enacted and implemented for day-to-day planning through the Tla’amin Building Law and the Tla’amin Land Use and Development Law – Teeshohsum.*

<b>5.1</b>	<b>Development and Building Procedures</b>	<b>40</b>
<b>5.2</b>	<b>Land Use Policies and Guidelines</b>	<b>41</b>



## 5.1 DEVELOPMENT AND BUILDING PROCEDURES

This section summarizes how our Land Use Plan policies will be implemented through Tla'amin laws and harmonized with those of our neighbours.

### 5.1.1 Development and Building Review

Our development and building review procedures are attached as **Schedule A**.

Our development and building procedures describe how development on our lands is reviewed and new buildings approved. The policies are established for the benefit of our community and our members to ensure that:

- Everyone is **treated fairly and equally**;
- Development planning is a **transparent and efficient process**;
- Land is developed and buildings constructed in a manner that **protects the health and safety** of members, residents, and visitors to Teeshohsum and Ahgykson; and,
- Land is developed and buildings constructed in a manner that **achieves community development objectives**.

With few exceptions, a permit will be required for all construction and land development. The process by which permits are reviewed and issued is defined and enforced by the **Tla'amin Land Use and Development Law** and the **Tla'amin Building Law**.

### 5.1.2 Land Use Harmonization

We are committed to working with our neighbours to ensure that land uses in Teeshohsum and on Ahgykson do not conflict with those in neighbouring jurisdictions, and vice versa.

Our Land Use Plan acknowledges and respects the existing **protocols** we have already established with the **City of Powell River** and the **Regional District of Powell River**. The following protocols and related planning initiatives are specifically acknowledged:

- Sliammon – City of Powell River Protocol Agreement on Culture, Heritage and Economic Development (2004) *Note: currently under a review and amendment process to strengthen cultural site protection*
- Sliammon – Powell River Regional District Protocol Agreement for Communication and Cooperation (2004)
- Sliammon – Powell River Regional District Harmonization Project (2007)

## 5.2 LAND USE POLICIES AND GUIDELINES

### 5.2.1 General Land Use Designations

Our general land use designation policies are attached as **Schedule B**.

Our Land Use Plan provides **general land use designations** for Teeshohsum and Ahgykson. The designations are established to ensure:

- **Future development** occurs in appropriate areas; and,
- Land is allocated in a way that **meets community development objectives** for both Ahgykson and Teeshohsum.

The land use designations guide all land use and development decisions. Zoning designations, development plans, permitted developments, and land management activities in any specific area should conform to the **management objectives** and **allowed uses** of the land use designation for that area.

Our land use designations were first created for our 2003 *Land & Resource Management Plan for Sliammon Reserve Lands* and carried over into our 2007 *Sliammon Comprehensive Community Plan*. While we maintained the designations, the list of permitted uses for them was further refined.

The land use designations were unanimously endorsed by Tla'amin Council on November 16, 2009.

### 5.2.2 Teeshohsum Village Zoning

Teeshohsum Village Zoning policies are attached as **Schedule C**.

Specific **zones** are established within Teeshohsum to provide additional development control in our main population centre. The zoning establishes **specific policies** regarding the size and shape of parcels, the activities and intensity of uses that might occur on those parcels, and the siting and configuration of buildings on those parcels in Teeshohsum.

Teeshohsum zoning is implemented through the **Tla'amin Land Use and Development Law** and must be considered during the planning and development of any land or structures in Teeshohsum.

### 5.2.3 Sensitive and Hazard Area Guidelines

These development guideline policies are attached as **Schedule D**.

- **Sensitive Areas:** Our people have been present in Teeshohsum and on Ahgykson for thousands of years. While we have identified many important archeological and cultural sites, many more wait to be discovered. These guidelines will help protect historic sites and sacred places from being damaged or lost during land development. We also accept our role of stewards of our lands and waters and take the challenge very seriously. These guidelines describe important ecological areas and illustrate how we will protect them from development activities.

Sensitive Areas guidelines are established to ensure that future lands are allocated and buildings constructed in a manner that protect our culture, heritage, and natural environment from damage or degradation due to construction and development impacts. Any construction work that we do in the indicated Sensitive Areas should consider these guidelines, including site works, landscaping, and the construction of homes or community buildings.

- **Hazard Areas:** As a coastal people, we are especially exposed to the threats posed by ocean storm surges and the potential impacts of sea level rise. These guidelines are established to ensure that future lands are allocated and buildings constructed in a manner that protect our people from harm and our investments in buildings and infrastructure from unnecessary damage due to coastal hazards. Any construction work that we do in the indicated Hazard Areas should consider these guidelines, including site works, landscaping, and the construction of homes or community buildings.

#### DEVELOPMENT PLANNING, DESIGN AND CONSTRUCTION GUIDELINES

We are planning on creating special guidelines that will represent our commitment to developing our lands in the most environmentally sustainable, economically responsible and socially appropriate manner possible. We accept our role of *stewards of our lands* and take the challenge very seriously. We expect all our development partners – from our members to our joint-venture collaborators - to work with us to ensure that our new developments meet the highest standards.

When completed, our planning, design and construction guidelines will be used in conjunction with our Land Use Plan, to achieve the following goals:

- All new development will *respect the natural environment* and take a holistic approach to *integrate new buildings* with the land and the particular site.
- All new buildings will *minimize resource consumption* (energy, water, land, and materials).
- All new buildings will be built to last and will *protect the health and safety* those living, working and playing in them.
- All new development will be *cost-effective* and make our homes and community facilities more affordable to build and maintain over the long-term.

## 5.2.4 Transportation & Servicing and Community Facility Sub-Plans

These sub-plan policies are attached as **Schedule E**.

This section describes two sub-plans that should be **referred to during all phases of land use planning, development planning, and construction**.

- **Transportation & Servicing:** As land is developed on our reserve and our on-reserve membership increases, we will need to expand our services infrastructure, our transportation network, and our mobility-related amenities. This sub-plan conceptually describes the key features of our transportation and servicing needs that will support our land use plan.
- **Community Facilities:** This sub-plan describes the community facilities that will support and strengthen our community and encourage our members to be physically and socially active in our community, such as outdoor spaces, parks, recreation facilities and community facilities. The plan conceptually describes those features and their general location.







## **6.0 HAVE WE ARRIVED?**

*The final step in our planning approach asks the question “Have we arrived?” It involves the monitoring and evaluation of our Land Use Plan to make sure that it is works as anticipated, and helps us meet our vision and land management objectives.*

<b>6.1</b>	<b>Monitoring and evaluation</b>	<b>46</b>
<b>6.2</b>	<b>Amendments</b>	<b>47</b>



## 6.1 MONITORING AND EVALUATION

We see our Land Use Plan as a **living document**. We will actively track our progress in meeting our vision and achieving our community development objectives. We will also review our Plan with leadership and members, and modify plan policies and guidelines as required.

This plan includes the following regular review period, benchmarks and general monitoring and evaluation framework.

### STEP 1: PLAN LAUNCH – INITIAL TRAINING

- Tla’amin Community Planner (or equivalent) to conduct a **familiarization workshop** on the on the Tla’amin Land Use and Development Law, Tla’amin Building Law, and the Tla’amin Land Use Plan for all **senior staff**.
- Tla’amin Planner to conduct a **familiarization workshop** on the on the Tla’amin Land Use and Development Law, Tla’amin Building Law, and the Tla’amin Land Use Plan for **Chief and Council**.

### STEP 2: ANNUAL REPORTING

- Tla’amin Planner to prepare **bi-annual report** (i.e., every six months) that summarizes any new developments, approvals, etc. The Planning report is to be presented to Council and distributed to members and staff via the Neh motl newsletter.

### STEP 3: LEADERSHIP TRAINING

- Tla’amin Planner to conduct **familiarization workshop** on the Tla’amin Land Use and Development Law, Tla’amin Building Law, and the Tla’amin Land Use Plan within four months of beginning of term **with each new Council**.

### STEP 4: FORMAL REVIEW

- Tla’amin Planner to conduct a formal evaluation of the Tla’amin Land Use and Development Law, Tla’amin Building Law, and the Tla’amin Land Use Plan every **six years**. Formal review to include an assessment of:
  - Development review process – *Is it working? Are decisions transparent, accountable and transparent? Does the community understand and support the Land Use Plan?*
  - Land Use Plan enforcement – *Has enforcement been required? Did it work? Could it be improved?*
  - Development Guidelines – *Based on current conditions, do the sea-level rise areas need revising? Have cultural and ecological resources been adequately protected?*
  - Data and mapping – *Based on new development, is Tla’amin mapping and land development data up-to-date?*
  - Plan coordination and integration – *Is the Land Use Plan still supporting Comprehensive Community Plan objectives? Does it need to be coordinated with other planning initiatives that may have started up?*

## 6.2 AMENDMENTS

We will need to revise and amend our Land Use Plan's policy Schedules and corresponding laws as our community develops and expands, and as new information and/or issues requiring our attention and action arise (e.g., new archeological sites are identified). Any development plan that proposes to deviate from this Land Use Plan or its Schedules will first require that the appropriate policies be amended.

The policy Schedules in this Land Use Plan may be revised from time to time as directed and approved by Tla'amin Council by Council motion. The Tla'amin Planner (or equivalent) will guide the amendment process. The Schedules may be amended individually with the revised Schedule replacing the old Schedule. The date of amendment will be noted along with addition and/or deletion and attached to the Land Use Plan. Amendments will also be published in Neh motl and posted in the Band Administration building for general community information.

An amendment process for the Tla'amin Land Use and Development Law and the Tla'amin Building Law require an amendment process outlined in those laws.







# SCHEDULES AND POLICIES

*The guidelines and sub-plans attached as Schedules to this Land Use Plan describe how the Land Use Plan is enacted and implemented for day-to-day planning. The policies and information included here as Schedules B and C will be incorporated into the Tla’amin Land Use and Development Law – Teeshohsum. The Development Procedures described in Schedule A will also be incorporated into this law. The Building Procedures described in Schedule A will be incorporated into the Tla’amin Building Law, which will regulate the actual construction of buildings and structures.*

*While the main section of our Land Use Plan established our vision and objectives for how our community develops over time, these Schedules describe how they are to be achieved at the policy and development review level in compliance with the Tla’amin Land Code.*

*These policies can be changed and amended over time where and when required, as long as they meet our land use management objectives, this Land Use Plan’s intent, and our guiding principles (Ta’ow).*

*Amendments to the Tla’amin Building Law and the Tla’amin Land Use and Development Law require an amendment process outlined in those laws.*

*The schedules include:*

<b>A: Development and Building Procedures</b>	<b>51</b>
<b>B: General Land Use Designations</b>	<b>59</b>
<b>C: Teeshohsum Village Zoning</b>	<b>67</b>
<b>D: Sensitive and Hazard Areas Guidelines</b>	<b>73</b>
<b>E: Sub-Plans – Transportation &amp; Servicing, Community Facilities</b>	<b>83</b>





# A: DEVELOPMENT & BUILDING PROCEDURES

## PURPOSE

Development and Building Procedures policies describe the process by which a proponent may be given permission to develop land or construct a structure on our lands. They are established for the benefit of all Tla'amin members and other community members living and working on Tla'amin lands to ensure that:

- Everyone is **treated fairly**;
- Development planning is a **transparent and efficient process**;
- Land is developed and buildings constructed in a manner that protects the health and safety of members, residents, and visitors to Teeshohsum and Ahgykson;
- Land is developed and buildings constructed in a manner that **achieves community objectives**;
- Land is developed and buildings constructed in **compliance with the Tla'amin Land Code**.

## APPLICATION

A permit is required for all construction and land development. The process by which permits are reviewed and issued is defined and enforced by the **Tla'amin Development and Land Use Law** and the **Tla'amin Building Law**.

The two permit types are:

- **Development Permit:** A Development Permit must be obtained for subdivisions, new construction of any building or facility, and renovations that change the size or use of a building or structure. A Development Permit approves the location, size and use of any parcel of land or of any building on that parcel, and allows the proponent to apply for a Building Permit. Development Permits ensure that land development and proposed building projects conform to the Tla'amin Land Use Plan and zoning and development laws. These are issued in accordance with the **Tla'amin Development and Land Use Law**.
- **Building Permit:** Building Permits allow a proponent to begin and proceed with the construction of landscapes and structures. These permits ensure that individual buildings and structures meet the requirements of the B.C. Building Code. In Teeshohsum, a Building Permit cannot be issued until a Development Permit is first issued. Building permits are issued in accordance with the Tla'amin Building Law.

In **general terms**, Development and Building Permits are required in the following circumstances (Note: Please review Tla'amin Building Law and Tla'amin Land Use and Development Law – Teeshohsum for full requirements).

**A.1 A Development Permit is required before proceeding with:**

- a. Any project requiring a Building Permit, except renovations that do not change the size, use, or location of a building or structure;
- b. Construction of, additions to, demolition of, or relocation of a building or other structure, except a structure with an area less than 9.2 square metres (100 square feet) if it is not located within a Sensitive Area;
- c. Any construction or landscaping within 91 metres (300 feet) of a water body or waterway, measured from the high-water boundary or top of bank;
- d. Any construction or landscaping within an identified Hazard Area or Sensitive Area;
- e. Landscaping that includes removal of mature trees or native vegetation, installation of impervious paving, removal of soil, or alterations to drainage patterns;
- f. Changes to the use of a parcel of land or existing structure;
- g. Filling of land; and,
- h. New signage.<sup>1</sup>

**A.2 A Development Permit is not required for:**

- a. Minor repairs that do not expand or alter the size, use, or location of a structure; and,
- b. Fences or other landscaping outside of Sensitive Areas that do not alter site drainage or remove trees larger than 20cm (7.9 inches) diameter when measured at chest height.

**A.3 A Building Permit is required before proceeding with:**

- a. Construction of a building or structure;
- b. Installation of a manufactured home or modular home;
- c. Construction requiring modifications or additions to any building utility such as plumbing, wiring, electrical, heating, and gas or other fuel systems equipment and fittings, except as noted in A.4.e;
- d. Construction or installation of a pool;
- e. Moving a building or structure;
- f. Demolition of a building or structure; and
- g. Construction of a masonry fireplace, the installation of a wood burning appliance or a chimney.

**A.4 A Building Permit is not required for:**

- a. Buildings or structures exempted by Division A, Part 1 of the BC Building Code, or as expressly provided in the Tla'amin Building Law;

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<sup>1</sup> For example, the construction of a parking lot requires a Development Permit because it changes the use of a parcel of land and may involve new signage, fill, and alterations to drainage patterns.

- b. Fences under 1.5 metres (5 feet) in height;
- c. Decks that are not over 0.6 metres (2 feet) above grade;
- d. Repairs to an existing fireplace, wood burning appliance or factory constructed chimney or masonry chimney;
- e. The repair or replacement of a valve, faucet, fixture, sprinkler head or piping in a plumbing system if no change in piping configuration is required; and
- f. Recreational vehicles used for temporary accommodation (less than 30-days) for recreation or vacation purposes only; and,
- g. Structures such as greenhouses or storage facilities, that are constructed of a wood, steel or plastic frame covered with sheet polyethylene, fabric, tarps or glass that are intended to be used temporarily on a seasonal basis and will be removed seasonally.

## IMPLEMENTATION – TLA’AMIN PLANNER

The Tla’amin Lands Department shall be responsible for development and building permitting under the Tla’amin Land Use Plan, Land Use and Development Law, and Building Law. Subject to available funding, it is anticipated that in the longer term (i.e., Treaty Effective Date) a new ‘Tla’amin Planner’ position will be created to ensure the effective administration of Tla’amin Land Use Plan, Land Use and Development Law, and Building Law. For the initial implementation of the Tla’amin Land Use Plan, and until a new position is created, the Tla’amin Land Use Coordinator working in partnership with the Tla’amin Lands Manager will carry out the duties of the Tla’amin Planner.

### A.5 The duties of the Tla’amin Planner are:

- a. To monitor Tla’amin member and leaseholder compliance with the **Tla’amin Building Law** and **Tla’amin Land Use and Development Law**;
- b. To enforce the Tla’amin Building Law and Tla’amin Land Use and Development Law **where expressly provided** in those laws;
- c. Process and manage **Development Permit** applications;
- d. Process and manage **Building Permit** applications with the assistance of a qualified Building Inspector(s) where necessary and required;
- e. Prepare basic information concerning land use planning and act as a resource person for Tla’amin departments, members and Council on land use planning processes, procedures and laws; and,
- f. Work with other Tla’amin departments in a coordinated effort toward achieving the community development objectives identified in both the Tla’amin Land Use Plan and Sliammon Comprehensive Community Plan.

As proposed, a qualified Building Inspector(s) will support the Tla’amin Planner on a fee-for-service basis with building inspections and enforcement of the **Tla’amin Building Law**.

- A.6** The duties of the Building Inspector(s) are:
- a. To support the Tla’amin Planner in the **management and enforcement** of the **Tla’amin Building Law**;
  - b. To work with the Tla’amin Planner in the processing of **Building Permit** applications.
  - c. To conduct **building inspections** as required by the Tla’amin Building Law and BC Building Code; and
  - d. To support the Tla’amin Planner in the enforcement of the Tla’amin Building Law **where expressly provided** in that law.

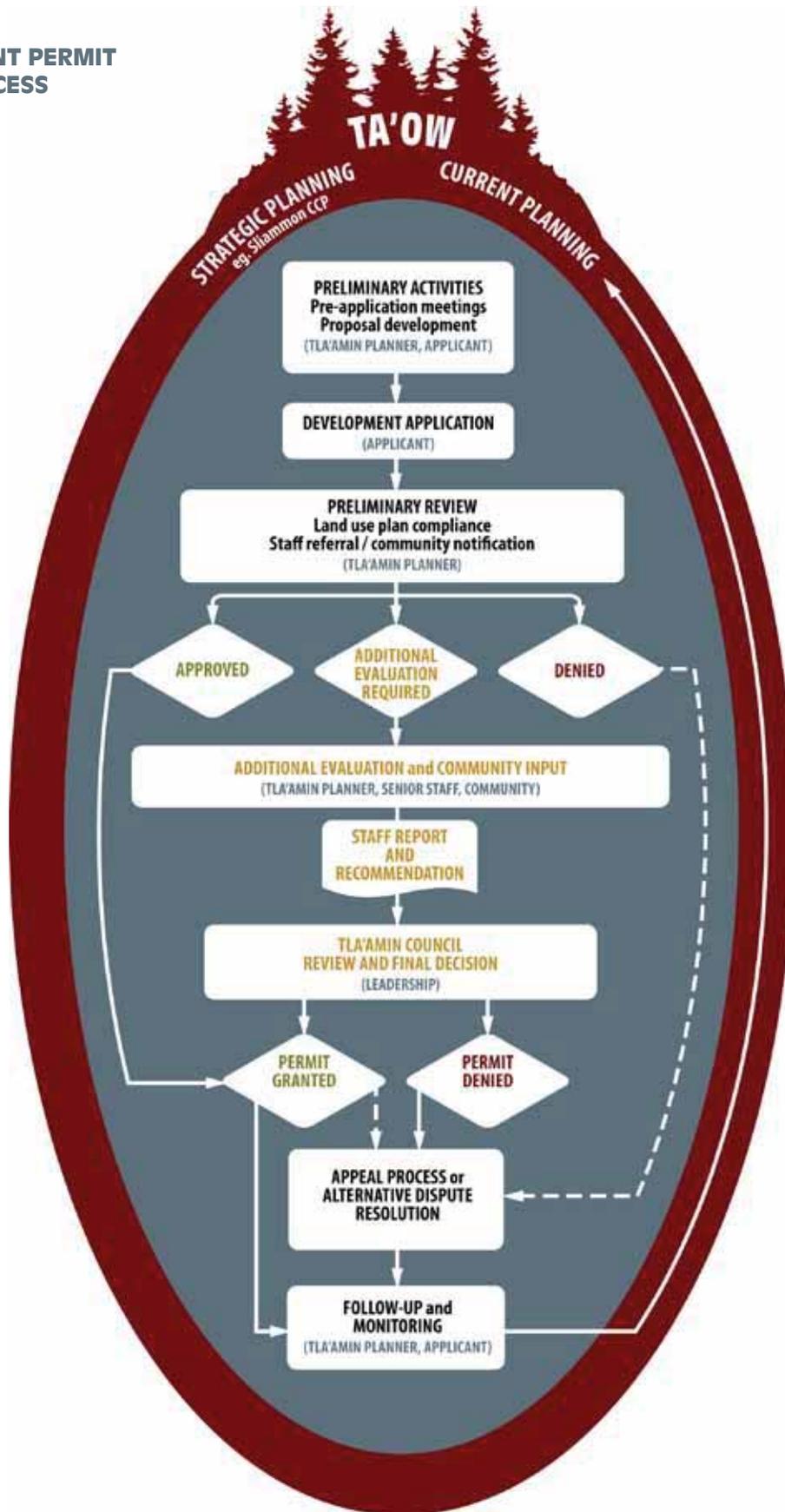
**GENERAL PROCEDURES – DEVELOPMENT & BUILDING PERMIT REVIEW** .....

A generalized development review and permitting process is illustrated. Detailed procedures and requirements are provided in **Tla’amin Land Use and Development Law** and in the **Tla’amin Building Law**.

As illustrated, Tla’amin Council controls the issuance of Development Permits. The Tla’amin Planner (or equivalent) with the support of a contracted Building Inspector issue Building Permits. For Development Permits, the **Tla’amin Planner** will guide and facilitate the review process and make reports and recommendations to Council on Development Permit applications.

As the law-making body on the reserve, Council will not be **directly** involved in the enforcement of either the Tla’amin Building Law, or the Tla’amin Land Use and Development Law. A Chief or Council member cannot interfere in individual cases, for example, by seeking preferred or punitive treatment on behalf of certain individuals or groups.

**FIGURE:  
DEVELOPMENT PERMIT  
REVIEW PROCESS**



## DEVELOPMENT PERMIT PROCEDURES

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The **generalized** Development Permit Review Process applies to:

- Any **minor projects** such as residential home improvements and renovations that change the size, use, or location of a building, multifamily conversions, and new construction of a home on a single lot; and,
- Any **major development projects** that include subdividing and developing land, constructing community facilities or new streets and infrastructure, and any other activities having a long-term impact on land use and community resources.
- Individual parcels only. For example, a permit may be granted to subdivide a parcel of land and develop that land to service the newly created parcels. Following this process, an additional development permit will be required for construction on each of the new parcels.

### 1. Preliminary Meeting

- a. The proponent meets with the Tla'amin Lands Department and Tla'amin Planner (or equivalent) and other staff as necessary to review the site location, potential constraints, and application requirements;
- b. For **major projects** involving Band-owned lands or properties, the proponent may be a person designated by Council.
- c. The proponent identifies the location of their project and describes their intentions to the staff (sketch plans should be provided if possible but are not required);
- d. The Tla'amin Planner (or equivalent) reviews the permitting process and requirements with the proponent, identifies any special conditions that could constrain the project, and provides application materials (i.e., forms); and,
- e. For **major projects**:
  - i. The Tla'amin Planner (or equivalent) prepares a report describing the proposed project, preliminary comments from staff and committees, and the preliminary considerations described above and submits report to Council; and,
  - ii. Council may deny that the project should proceed, or approve that the project should continue and request that further evaluation be conducted.

### 2. Application

- a. Applicants are encouraged to seek assistance from the Tla'amin Lands Department and Tla'amin Planner (or equivalent) for the development of their application package;
- b. Applications are submitted to the Tla'amin Lands Department; and,
- c. Applications can be submitted by the owner of the property or the owner's agent (builder, architect, etc) and will include the materials required by the Tla'amin Land Use and Development Law.

### 3. Review

- a. The Tla'amin Lands Department and Tla'amin Planner (or equivalent) reviews the application to ensure compliance with the Tla'amin Land Use and Development Law and to ensure it meets the objectives of the Tla'amin Land Use Plan;
- b. The Tla'amin Lands Department may reject an application for insufficient or incomplete information or for non-compliance with the Tla'amin Land Use and Development Law;
- c. The Tla'amin Planner (or equivalent) distributes the application for review by other Tla'amin staff as necessary, or as required by the Tla'amin Land Use and Development Law;
- d. The Tla'amin Planner (or equivalent) will make the application available for public review using a method and time period defined by the Tla'amin Land Use and Development Law.
- e. Within the prescribed time period, any member or staff may submit comments of approval or concern relating to the proposal to the Tla'amin Lands Department, with these comments being included as information in the Approval Review package;
- f. For **major projects**:
  - i. Where necessary, or if Council requests further evaluation, the Tla'amin Lands Department and Tla'amin Planner (or equivalent) will conduct a more in depth review of the potential project as per the requirements laid out in the Tla'amin Land Use and Development Law; and
  - ii. Member input will be solicited during this phase of project as per the requirements laid out in the Tla'amin Land Use and Development Law.

### 4. Approval

- a. The Tla'amin Planner (or equivalent) submits an Approval Review package, including the full application with comments and a recommendation, to Council for their considerations and recommendation. The Council may:
  - i. Deny issuance of a permit for having insufficient or incomplete information or for non-compliance with Tla'amin Land Use and Development Law;
  - ii. Defer consideration of the application and recommend further review or evaluation required prior to further consideration;
  - iii. Authorize the issuance of a permit subject to specific conditions as determined by Council; or,
  - iv. Authorize the issuance of a permit with no changes.

### 5. Additional Evaluation or Review

- a. If Council defers approval, Council should provide direction regarding further review or evaluation, including any study or member consultation.

- b. If approval is conditionally granted, Council will provide direction on the subject conditions.
- c. Following deferred or conditional approval, the proponent and staff will arrange to review, amend, and resubmit the proposal as necessary. This review may include revisions to the plans and specifications, consultation with relevant committees, or broader member consultation. It may also include legal review or expert analysis where necessary.

**6. Final Approval**

- a. When Council grants an approval with no changes, the Tla’amin Planner (or equivalent) will issue a development permit that allows the project to continue.
- b. A **Building Permit is required for all subsequent construction activities**. The procedure for Building Permits and inspections is established in the **Tla’amin Building Law**.

**7. Implementation**

- a. Upon Council approval to continue the project, the Tla’amin Lands Department and Tla’amin Planner (or equivalent) will initiate appropriate development procedures.

**8. Appeals**

- a. The proponent can appeal a decision as described in the Tla’amin Land Use and Development Law.
- b. Council will not reconsider a permit application for a parcel that has previously been refused a permit for 6 months following the date of the refusal.

**PROCEDURES – BUILDING PERMITS** .....

Building permits will be issued according the authority and procedures described in the **Tla’amin Building Law**.

## **B: GENERAL LAND USE DESIGNATIONS**

### **PURPOSE**

The land use designations are established to ensure **future development occurs in appropriate areas** and that land is allocated in a way that **meets community objectives** on Ahgykson and in Teeshohsum. The designations set out broad management objectives and provide broad guidelines on allowed uses for designated land areas.

### **APPLICATION**

The land use designations guide all land use and development decisions. Zoning designations, development plans, permitted developments, and land management activities in any specific area should conform to the **management objectives** and **allowed uses** of the land use designation for that area.

### **MANAGEMENT OBJECTIVES**

The following management objectives are established for the land use designations and should be considered during the planning and development of any land or structures in Teeshohsum or on Ahgykson. The management objectives were first developed for the 2003 *Tla'amin Land and Resource Management Plan*.

#### **OOKTS OHT YIQUSH (COMMUNITY USE)<sup>2</sup>**

**B.1** Management objectives for the Ookts oht yiqush (Community Use) designation are:

- a. Encourage diverse housing options to meet demographic needs;
- b. Encourage infill of existing serviced areas;
- c. Provide adequate recreational, cultural, government amenities;
- d. Maintain and enhance the rural village character in Teeshohsum;
- e. Promote sustainability (e.g., community gardens, orchards); and,
- f. Encourage home-based businesses.

#### **NINEH JEH TAHLA (ECONOMIC DEVELOPMENT)**

**B.2** Management objectives for the Nineh jeh tahla (Economic Development) designation are:

- a. Promote and support sustainable economic development opportunities;
- b. Encourage and expand a diversified local economy with increased employment opportunities;

<sup>2</sup> The English names for the land use areas are not literal translations. Please see the Glossary for a fuller description of the Tla'amin names.

- c. Provide opportunities for industrial and commercial development of a type and scale compatible with the natural environment;
- d. Minimize environmental and community impacts; and,
- e. Permit community-supportive commercial recreation facilities.

**UHMSNAH JEHJEUM (FOREST MANAGEMENT)**

**B.3** Management objectives for the Uhmsnah jehjeum (Forest Management) designation are:

- a. Promote and support sustainable forestry;
- b. Create a multi-use community forest (i.e., recreational and commercial uses); and,
- c. Permit all traditional and cultural uses of Tla’amin forestlands.

**UHMSNAH KOOTLKO (MARINE MANAGEMENT)**

**B.4** Management objectives for the Uhmsnah kootlko (Marine Management) designation are:

- a. Encourage sustainable use of intertidal and coastal resources;
- b. Recognize area as Tla’amin’s valuable “asset in common”; and,
- c. Permit and support traditional and cultural uses and activities<sup>3</sup>.

**YEEXMET TUMS GIJEH (SENSITIVE AREA)**

**B.5** Management objectives for the Yeexmet tums gijeh (Sensitive Area) designation are:

- a. Protect traditional and cultural use sites whenever possible;
- b. Protect known archaeological sites whenever possible;
- c. Protect and buffer riparian habitat fish;
- d. Permit and support traditional and cultural uses and activities; and,
- e. Accommodate non-consumptive uses, including sensitive recreational uses.

**ALLOWED USES**

**OOKTS OHT YIQUSH (COMMUNITY USE)**

**B.6** To support the Ookts oht yiqush (Community Use) designation’s management objectives the following uses are allowed in the designation:

- a. Member housing (single- and multi-family, Elders, other options)
- b. Non-member, leasehold housing (single-family)
- c. Parks and recreation facilities (fields & ancillary buildings)

<sup>3</sup> “traditional cultural uses and activities” means activities and uses historically or traditionally carried out by Tla’amin members, and recognized by the community as traditional or cultural, and does not include large scale, commercial, industrial or mechanized excavation of land, extraction of resources, construction of structures, or development of land;

- d. Tla'amin program offices (administration and program delivery)
- e. Community facilities (gym, meeting space, program offices, youth centre)
- f. Cultural facilities and buildings (Longhouse, Cultural Centre)
- g. Elders Care facility
- h. Health Centre
- i. Schools and day care, including adult education
- j. Cemetery
- k. Local food production (e.g., community gardens, orchards)
- l. Supporting infrastructure (water, sewer, power, roads)

#### **NINEH JEH TAHLA (ECONOMIC DEVELOPMENT)**

**B.7** To support the Nineh jeh tahla (Economic Development) designation's management objectives the following uses are allowed:

- a. Commercial retail (Tla'amin-owned/joint venture, leased)
- b. Commercial enterprises (Tla'amin-owned/joint venture, leased)
- c. Commercial office (aboriginal professional and leased)
- d. Light industrial and manufacturing (e.g., value-added wood products manufacturing, in-vessel composting, etc.)
- e. Supporting infrastructure (water, sewer, power, roads)

#### **UHMSNAH JEHJEUM (FOREST MANAGEMENT)**

**B.8** To support the Uhmsnah jehjeum (Forest Management) designation's management objectives the following uses are allowed:

- a. Timber harvesting and restoration
- b. Traditional and cultural uses and activities
- c. Non-timber forest products
- d. Agro-forestry and agriculture
- e. Limited eco- and cultural tourism
- f. Habitat protection and stewardship

#### **UHMSNAH KOOTLKOO (MARINE MANAGEMENT)**

**B.9** To support the Uhmsnah kootlkoo (Marine Management) designation's management objectives the following uses are allowed:

- a. Traditional and cultural uses and activities
- b. Limited eco- and cultural tourism and recreation
- c. Shellfish/fin fish harvesting (commercial/food)

- d. Habitat protection and stewardship

**YEEXMET TUMS GIJEH (SENSITIVE AREA)**

**B.10** To support the Yeexmet tums gijeh (Sensitive Area) designation’s management objectives the following uses are allowed:

- a. Protected environmental areas (i.e., creeks, foreshore, wetlands, etc.)
- b. Protected wildlife areas (i.e., eagle and heron nesting sites, etc.)
- c. Protected cultural areas (i.e., traditional use sites, archaeological sites, etc.)
- d. Traditional and cultural uses and activities
- e. Limited eco- and cultural tourism

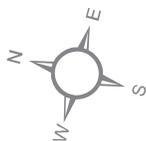
**DESIGNATIONS MAPS – TEESHOHSUM & AHGYKSON** .....

**B.11** Designations are allocated to the land areas indicated on the following maps.



# Ahgykson Land Use Designations

as adopted by Council Nov 16, 2009

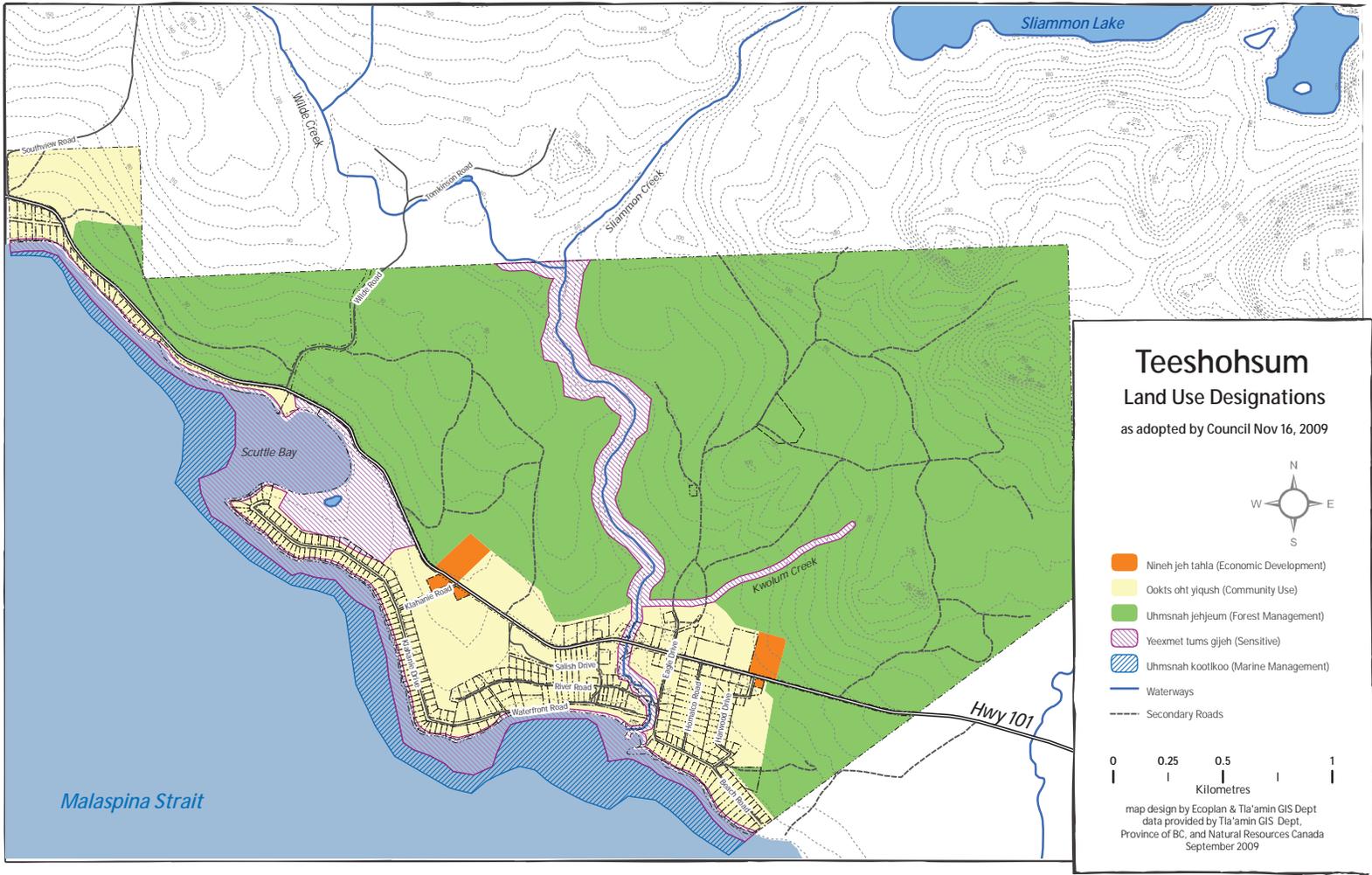


- Nineh jeh tahla (Economic Development)
- Ookts oht yiqush (Community Use)
- Uhmsnah jehjeum (Forest Management)
- Yeexmet tums gijeh (Sensitive)
- Uhmsnah kootkoo (Marine Management)
- Waterways



map design by Ecoplan & Tla'amin GIS Dept  
 data provided by Tla'amin GIS Dept,  
 Province of BC, and Natural Resources Canada  
 September 2009







## C: TEESHOHSUM VILLAGE ZONING

### PURPOSE

Specific **zones** are established within Teeshohsum to provide additional development control in our main population centre. The zoning establishes **specific policies** regarding the size and shape of parcels, the activities and intensity of uses that might occur on those parcels, and the siting and configuration of buildings on those parcels in Teeshohsum.

### APPLICATION

Teeshohsum zoning is implemented through the **Tla'amin Land Use and Development Law** and must be considered during the planning and development of any land or structures in Teeshohsum.

### GENERAL ZONING PROVISIONS

Teeshohsum is divided into the following zones, as shown on the Zoning Map:

- a. **L** – Limited Use Areas
- b. **CF** – Community Facilities
- c. **TR** – Tla'amin Residential (Member Housing)
- d. **LR** – Leasehold Residential (Leased Housing)
- e. **I** – Light Industrial
- f. **TC** – Tla'amin Commercial
- g. **TF** – Tla'amin Forest
- h. **U** – Utilities

General permitted uses in the zones are:

- a. **L – Limited Use Areas**
  - Traditional and cultural uses and activities;
  - Recreational, tourism, or education activities that are related to the promotion and dissemination of Tla'amin culture;
  - Hunting, fishing, trapping;
  - Ecological restoration; and,
  - Conservation activities and areas.
- b. **CF – Community Facilities**
  - A community centre;
  - A recreation facility;

- A cultural centre;
- A school;
- Any space for the purpose of supporting community programs and activities;
- Band administration offices;
- A health clinic;
- Elders' care facility;
- Elders housing;
- Supportive housing;
- A cemetery;
- Outdoor sports and recreation facilities;
- Community gardens;
- Conservation areas;
- Trails;
- Boat yards and docks;
- Cemeteries; and,
- A use accessory to any of the foregoing permitted uses.

**c. TR – Tla'amin Residential (TR) - Tla'amin Member and Tla'amin Citizen Housing**

- A single family dwelling;
- A two family dwelling
- A duplex dwelling;
- A semi-detached dwelling;
- A triplex dwelling;
- A group home;
- A home daycare;
- A mobile home dwelling;
- A home occupation;
- A cottage industry;
- A park or playground; and,
- A use accessory to any of the foregoing permitted uses.

**d. LR – Leasehold Residential (LR) - Leased non-Tla'amin Member and Tla'amin Citizen**

- A single family dwelling;
- A two family dwelling

- A duplex dwelling;
- A semi-detached dwelling;
- A home daycare;
- A home occupation;
- A cottage industry;
- A park or playground; and,
- A use accessory to any of the foregoing permitted uses.

**e. I – Light Industrial**

- Manufacturing;
- Packaging;
- Food processing;
- Storage or warehousing;
- An automobile service station, commercial garage or automobile business, including sales and rentals;
- Industrial equipment sales and service;
- A garden nursery and/or commercial greenhouse;
- A business or professional office;
- Vocational instruction;
- A caretaker’s residence; or
- A use accessory to any of the foregoing permitted uses.

**f. TC – Tla’amin Commercial**

- An automobile service station, commercial garage or automobile business, including sales and rentals;
- A car wash;
- A bank or other financial institution;
- A personal service shop;
- A boat, snowmobile, trailer or cycle business, including sales and rentals;
- A business or professional office;
- A convenience store;
- A laundry or dry cleaning establishment;
- A restaurant or other eating establishment;
- A commercial kitchen used for processing or preparation of food;
- A hotel;



- Tourist accommodations;
- A post office;
- A recreational use;
- A retail store;
- Apartments, caretakers residence, or other residence (conditionally); or
- A use accessory to any of the foregoing permitted uses.

**g. TF – Tla’amin Forest**

- Silviculture;
- Log yarding and loading;
- Portable sawmills;
- Fish hatcheries;
- Public utilities;
- Traditional cultural uses and activities;
- Recreational, tourism, or education activities;
- Hunting, fishing, trapping;
- Ecological restoration; and,
- Conservation areas.

**h. U – Utilities**

- Housing of equipment related to utility services and infrastructure;
- Offices relating to utility management and maintenance;
- Storage of maintenance equipment and vehicles;
- Communication towers and equipment; and,
- Other uses relating to infrastructure and delivery of infrastructure services.





# D: SENSITIVE & HAZARD AREAS GUIDELINES

## D1: Cultural And Environmental Areas Guidelines

### PURPOSE

The Sensitive Areas Design Guidelines are established to ensure that future lands are allocated and buildings constructed in a manner that protect our culture, heritage, and natural environment from damage or degradation due to construction and development impacts. Any construction work that we do in the indicated Sensitive Areas should consider these guidelines, including site works, landscaping, and the construction of homes or community buildings. The 2006 *Sliammon First Nation Handbook for Emergencies and Disasters* and the 2007 *Sliammon Environmental Management Framework* should both be referenced when assessing hazard areas.

### APPLICATION

These guidelines are implemented through the Tla'amin Land Use and Development Law and must be enforced during the planning and development of any land or structures that (1) fall within or near an area designated Yeexmet tums gijeh (Sensitive Area), or (2) that are in or near a Sensitive Area as determined by a pre-development survey and /or by Tla'amin Council.

### MAPPING AND DELINEATION

- D.1** This map was developed using current data indicating all known culturally significant, historic, or environmentally significant areas (December 2009). It is very likely that other sites exist that have not been mapped or identified, and that the actual boundaries of the mapped areas will require more accurate surveying on the ground. Information on the nature, importance, extent, and use of these areas are not indicated and should be examined on a case by case basis.
- D.2** It should be assumed that all lands on Teeshohsum and Ahgykson are potentially sensitive lands, and all major projects should employ a site specific survey as well as a monitoring program during any excavation.

### TYPES OF CULTURALLY AND ENVIRONMENTALLY SENSITIVE AREAS

Sensitive areas include **culturally and environmentally sensitive places and features**.

- D.3** Culturally sensitive features include:
- a. Archaeological sites;
  - b. Areas that are currently used for cultural activities; and,
  - c. Culturally significant landmarks or landscape features.

- D.4** Environmentally sensitive areas include:
- a. Waterways (fish-bearing and non-fish bearing);
  - b. Wetlands;
  - c. Estuaries;
  - d. The edge of the sea and the intertidal zone;
  - e. Riparian areas associated with a, b, c, and d;
  - f. Coastal bluffs;
  - g. Areas with high habitat value and rare or endangered species; and,
  - h. Heron and raptor nesting trees.

## **DESIGN GUIDELINES**

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### **CONSTRUCTION AND DEVELOPMENT PLANNING AND MONITORING**

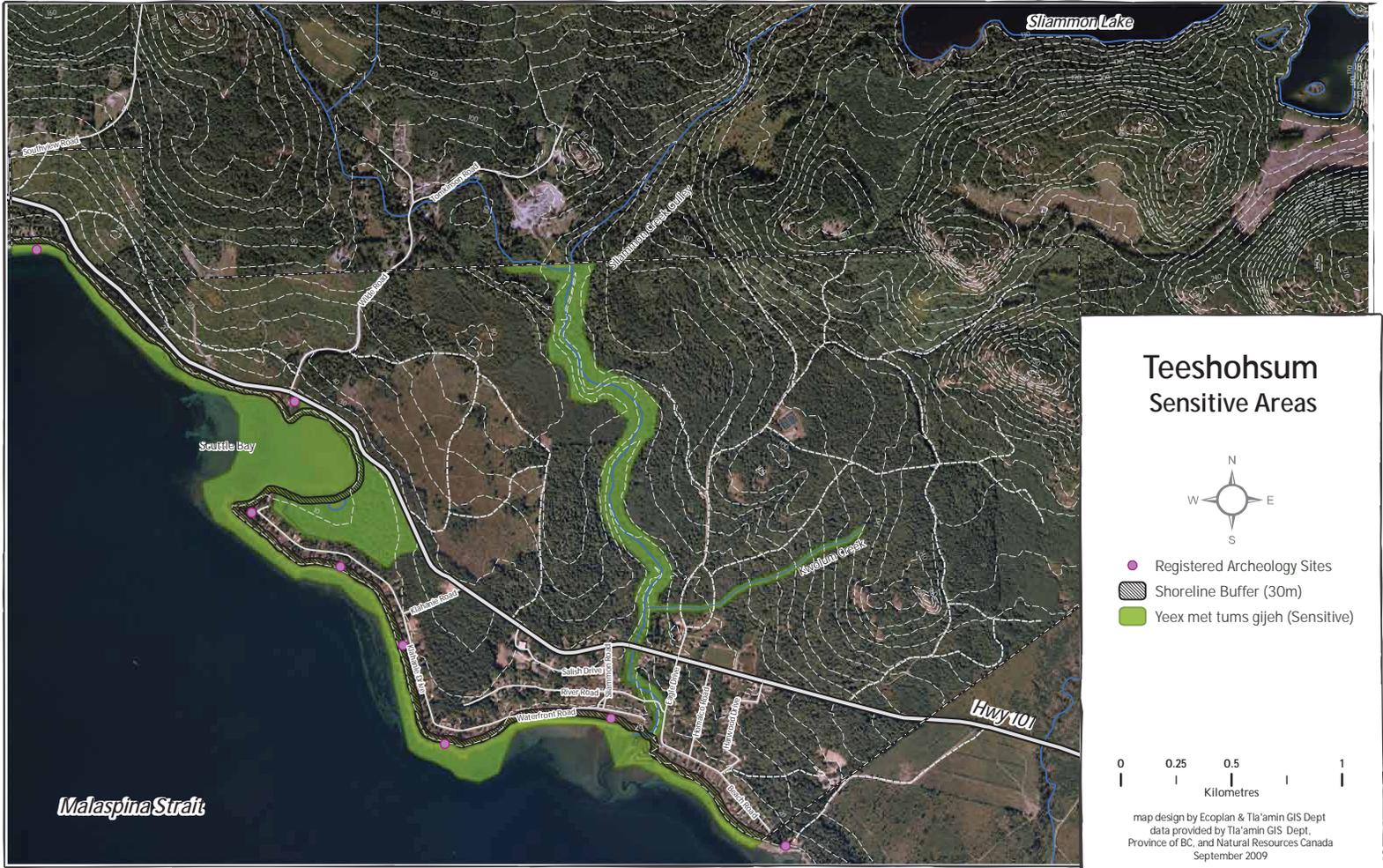
- D.5** All major projects should include a professional archaeological assessment and survey, conducted during preliminary planning phases, indicating known or potential cultural sites within or adjacent to the project area.
- D.6** All major projects should include a professional environmental assessment and survey, conducted during preliminary planning phases, indicating environmentally sensitive sites within or adjacent to the project area.
- D.7** Major projects include any extensive site works (such as dikes or sports fields), subdivisions, band related or community facility, or multifamily building.
- D.8** A designated qualified person should observe any excavation activity.

### **TIMING OF CONSTRUCTION**

- D.9** Waterways should be protected from sedimentation and erosion by coordinating grading and excavation activities during dry months of the year.
- D.10** Nesting sites should be protected by avoiding construction activities when eggs or young are present in the nest.

### **TREE AND SOIL PROTECTION**

- D.11** On any construction site, mature trees and woody vegetation should be retained to the maximum extent possible.
- D.12** A tree protection plan should be submitted with any development application. This plan should indicate the type and location of all existing trees and vegetation, trees and vegetation identified for removal, and the location of construction fencing to be erected to protect those areas identified for protection. Trees and landscaping identified for protection should be indicated on any site plans and grading and drainage plans.



*Malaspina Strait*



**BUILDING SETBACKS**

- D.13** No building should be constructed within:
- 15 metres (50 feet) of the perimeter of a known cultural site;
  - 15 metres (50 feet) of the top of bank of Sliammon or Kwolan Creeks within any areas designated 'Ookts oht yiqush (Community Use)';
  - 30 metres (100 feet) of the top of bank of Sliammon or Kwolan Creeks within any areas designated 'Uhmsnah jehjeum (Forest Management)';
  - 30 metres (100 feet) of the natural boundary of the sea;
  - 100 metres (300 feet) of an eagle nesting tree;
  - 200 metres (600 feet) of any other raptor nesting tree; and,
  - 200 metres (600 feet) of any heron nesting trees or colony.
- D.14** Structures in sensitive areas may be allowed where they will not impact any culturally or environmentally sensitive feature and not inhibit the possibility for future archaeological work. This may include structures such as interpretive signage, footpaths, landscaping, or boardwalks.
- D.15** Improvements to non-conforming structures (those that are already built within prescribed sensitive areas setbacks) should not further extend into these setbacks.

**FENCING AND LIMITS TO CONSTRUCTION RELATED ACTIVITIES**

- D.16** Construction fencing should be erected at or outside the drip line of the canopy of any tree identified for protection.
- D.17** High visibility construction fencing should be erected prior to any other construction activity that delineates the maximum limit of construction related activity according to the setbacks described herein.
- D.18** Where the sensitive area is a riparian zone or waterway and is down slope from the construction area, sediment fencing should also be erected prior to any other construction activity that delineates the maximum limit of construction related activity according to the setbacks described herein. The sediment fencing should not be removed until construction is complete and all bare soils have been revegetated.
- D.19** No construction related activity can occur within 10 metres (30 feet) of the perimeter of a cultural site, including excavation, earthworks, material storage, waste storage, machinery or vehicle storage or operations, and vehicle access and loading or unloading.
- D.20** Within areas designated Ookts oht yiqush (Community Use) or adjacent Yeexmet tums gijeh (Sensitive) areas, no construction related activity can occur within 15 metres (50 feet) of the top of bank of Sliammon or Kwolan Creeks, including excavation, earthworks, material storage, waste storage, machinery or vehicle storage or operations, and vehicle access and loading or unloading.
- D.21** Within areas designated Uhmsnah jehjeum (Forest Management) or adjacent Yeexmet tums gijeh (Sensitive) areas, no construction related activity can occur within 30 metres of the top of bank of Sliammon or Kwolan Creeks, including excavation, earthworks, material storage, waste storage, machinery or vehicle storage or operations, and vehicle access and loading or unloading.

## **D2: HAZARD AREAS GUIDELINES**

### **PURPOSE**

The Hazards Areas Design Guidelines are established to ensure that future lands are allocated and buildings constructed in a manner that protect residents and people working in and on Tla’amin lands from harm and buildings and infrastructure from unnecessary damage due to coastal hazards. Any construction work that we do in the indicated Hazard Areas should consider these guidelines, including site works, landscaping, and the construction of homes or community buildings.

### **APPLICATION**

- D.22** These guidelines should be referred to during the planning and development of any land or structures that fall within the Shore Hazard Area or Steep Slopes Areas indicated by the Hazard Areas map.
- D.23** These guidelines should be enforced upon the determination of a qualified surveyor that the land or structure falls within the delineated areas described below.

### **MAPPING AND DELINEATION**

The Hazard Areas map indicates estimated hazard areas and is intended for reference only. Actual hazard area delineations are described below and should be measured on site during site design and construction.

- D.24** The natural boundary of the sea is located at the limit of permanent terrestrial vegetation.
- D.25** Until such time that a specific study is available delineating the extents of coastal hazards including sea level rise and climate change impacts, the Shore Hazard Area is any land that lies between 0 and 3 vertical metres (10 feet) above the natural boundary of the sea.
- D.26** The Steep Slopes Hazard Area includes any portion of land that is steeper than a 25% grade (22.5 degrees incline).

### **DESIGN GUIDELINES**

#### **SETBACKS**

- D.27** Buildings should be setback 30 horizontal metres (100 feet) from the natural boundary of the sea.
- D.28** Landfill or structural support for a coastal development or type of development shall be permitted a setback of 15 metres (50 feet) from the natural boundary of the sea where the sea frontage is protected from erosion by a natural bedrock formation or works designed by a professional engineer and maintained by the owner of the land.





- D.29** The setbacks may be increased on a site-specific basis such as for exposed erodible beaches and/or in areas of known erosion hazard.
- D.30** Where the building site is at the top of a steep coastal bluff and where the toe of the bluff is subject to erosion and/or is closer than 15 metres (50 feet) from the natural boundary of the sea, the setback shall be a horizontal distance equal to 3.0 times the height of the bluff as measured from the toe of the bluff. For practical application, this setback condition will require site-specific interpretation and could result in the use of a minimum distance measured back from the crest of the bluff. This setback may be reduced provided the reduction is supported by a report prepared by a suitably qualified professional.
- D.31** Where a building may be located near any other steep slope, safe setbacks from the toe or top of that slope must be determined by a qualified professional.

#### **FLOOD CONSTRUCTION LEVEL**

- D.32** The Flood Construction Level shall be at least 2.0 vertical metres (6 feet) higher than the natural boundary of the sea.
- D.33** No habitable floor space or framing supporting habitable floors (including sills, joists and sheathing) should be constructed below the Flood Construction Level (FCL).
- D.34** Areas below the FCL should not be used for the installation of furnaces, major electrical switchgear, or other fixed equipment susceptible to damage by floodwater.
- D.35** The following spaces and structures will be allowed an exception from the Flood Construction Level requirement, subject to the condition that all enclosed areas built below the Flood Construction Level must provide an unobstructed means of pedestrian ingress and egress:
- a. Renovation of an existing building or structure that does not involve an addition or the 'finishing' of a basement for regular habitation;
  - b. Additions to legally non-conforming structures, at the original non-conforming floor elevation, that would increase the size of the building or structure by less than 25 percent of the floor area existing at the time of enactment of such flood proofing requirements, provided that the degree of nonconformity regarding setback is not increased;
  - c. That portion of a building or structure that is to be used as a carport, garage or entryway;
  - d. Other minor buildings such as storage buildings, porches and domestic greenhouses;
  - e. Parking areas;
  - f. Boat related facilities such as docks, ramps, and piers;
  - g. Recreation shelters, stands, campsite washhouses and other outdoor facilities susceptible to only marginal damage by floodwaters do not require flood proofing by elevation.

**ELEVATION BY LANDFILL**

**D.36** Where landfill is used to raise the natural ground elevation, it should be adequately compacted and the toe of the landfill slope should be no closer to the natural boundary than the prescribed setback. In addition, the face of the landfill slope should be adequately protected against erosion from flood flows, wave action, ice or other debris. The fill must not adversely impact neighbouring properties by increasing the surface water elevation or directing flows toward those properties.

**EXISTING COASTAL LOTS AND BUILDINGS**

**D.37** In the case of the existing lots, where the above setback distances prevent construction, and where it is not possible to provide sufficient protection through works designed by a suitably qualified professional, the approving officer may: (1) agree to modifying setback requirements to permit construction provided this is augmented through a restrictive covenant stipulating the hazard, building requirements, and liability disclaimer; or, (2) agree to waive other setback or yard requirements as required by any other building and construction bylaws.

**STEEP SLOPES**

**D.38** On any portion of land that is steeper than 25 % (22.5 degree incline), there should be no construction or clearing, grading, or excavation of land.

# E: SUB-PLANS

## E1: TRANSPORTATION AND SERVICING

### PURPOSE

As land is developed in Teeshohsum and our population increases, we will need to expand our services infrastructure, our transportation network, and our mobility-related amenities. This Sub-plan conceptually describes the key features of our transportation and servicing needs that will support our land use plan.

### APPLICATION

- E.1** Staff and Council should consider this Sub-plan during any development planning process.
- E.2** This Sub-plan should be referred to during the Development Permit review process (Application & Review stage).
- E.3** Development applications should consider how they could expedite the realization of the transportation and servicing concept identified in this Sub-plan.

### FEATURES – TRANSPORTATION & SERVICING CONCEPT PLAN

The table summarizes key features of the long-range Transportation and Servicing Concept Plan.

**TABLE: FEATURES OF THE 'TRANSPORTATION AND SERVICING PLAN'**

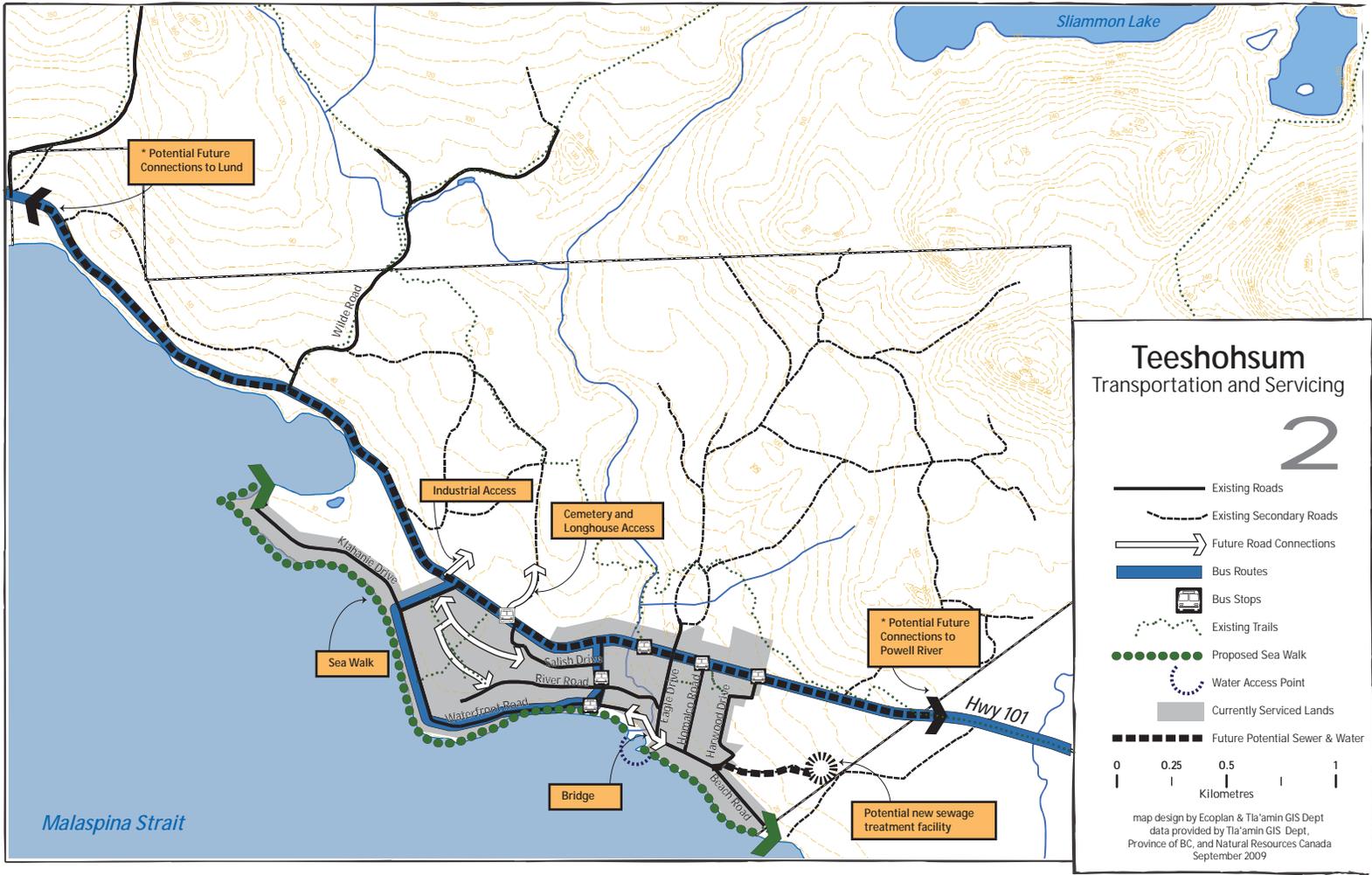
<b>Future Road Connections</b>	Several areas have been identified for future development, such as the economic development areas and the new Longhouse and Cemetery sites north of the highway. These areas will require road access. Other new roads are indicated where our neighbourhoods require better connectivity. Wherever possible, new roads should create connections between different areas of our community.
<b>Sidewalks and Accessibility (not shown)</b>	As we develop new neighbourhoods and build new streets, we should remember that some people feel safer on a sidewalk. Many of those people are pushing strollers, pulling wagons with children, or using a walker or a wheelchair to get around. We should include sidewalks on our streets and remember to include ramps at every street crossing so that these members can feel safe and get around more comfortably.
<b>Transit routes and stops</b>	Existing transit routes and stops are identified along with potential future extensions and/or stops that would connect our neighbourhoods to new community facilities.
<b>Trails</b>	There are a number of existing trails passing through our lands. We will continue to expand this network of trails, and develop a waterfront 'Seawalk' to emphasize and attract our members to this key feature of our community.



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<b>Ocean Access points</b>	Our shoreline is already an important part of our community. We will improve this area and identify an area where members can launch and moor boats and small craft over the long-term.
<b>Water and Sewer Services</b>	It is our intent to extend sewer and water servicing along Highway 101 to provide services “from end-to-end” of Teeshohsum. Spur lines would be developed for new Community Use and Economic Development developments where and when developed. In the future, sewage treatment facilities could be improved and expanded to provide fee-for-service sewage treatment to portions of the City of Powell River and properties located in the Powell River Regional District to the north of Teeshohsum along Highway 101.

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## E2: COMMUNITY FACILITIES

### PURPOSE

This sub-plan describes the **community facilities that will support and strengthen our community** and encourage residents to be physically and socially active in our community, such as outdoor spaces, parks, recreation facilities and community facilities. The plan conceptually describes those features and their general location.

### APPLICATION

- E.4** Staff and Council should refer to this Sub-plan during any facility planning or development project.
- E.5** This Sub-plan should be referred to during the Development Permit review process (Application & Review stage).
- E.6** Development applications should consider how they could expedite the realization of the transportation and servicing concept identified in this Sub-plan.

### FEATURES – TRANSPORTATION & SERVICING CONCEPT PLAN

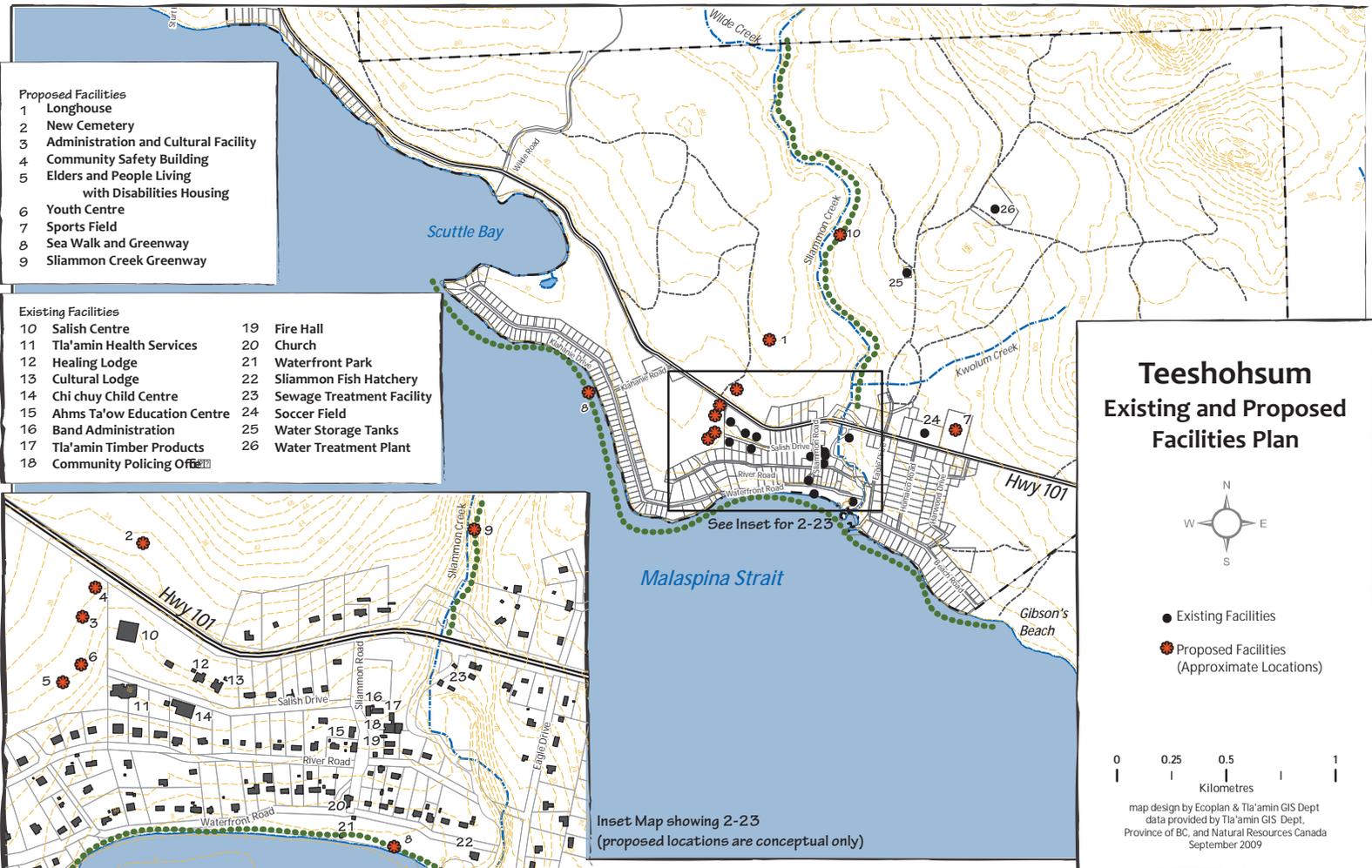
The table summarizes key features of the long-range Community Facilities Concept Plan.

**TABLE: FEATURES OF THE 'COMMUNITY FACILITIES PLAN'**

Parks & Recreation		
Name	Status	Description
<b>Salish Centre</b> 	Existing Proposed improvements	Completed in 1976, this older facility was renovated (interior and exterior) fall/winter 2009/2010. It includes a full-sized gym and offices for Development Corporation and Treaty Society. It is used extensively for all community functions.  Once a new Administration Building is completed, we hope to move our Development Corporation and Treaty Society offices and replace them with a fitness centre with multi-purpose rooms for special classes.
<b>Sports Field</b> 	Existing Proposed improvements	There is currently one well-used grass soccer field and clubhouse building. Many members have expressed interest in developing a second all-weather field immediately adjacent to the existing field that would allow Tla'amin to host larger soccer and multi-use field sport tournaments.

<b>Parks &amp; Recreation (continued)</b>		
<b>Name</b>	<b>Status</b>	<b>Description</b>
<b>Waterfront Park</b> 	Existing Improvements proposed	Our Waterfront Park is an important community hub. This park shall remain our principal community park and be upgraded over time to include a community barbecue/event area, an accessible waterfront walkway/boardwalk and a canoe storage shed. We will also plant areas with native species for cultural learning.
<b>Sea Walk and Greenway</b>	Proposed	<p>Our beach and foreshore is an important feature of our lands and should be accessible to all of our members. We will respect and restore the vegetation along the shore, set new buildings well away from the high water mark, and continue to designate that setback area as a community green space.</p> <p>Our long-term goal is to develop a Sea Walk pathway that would run from Scuttle Bay to Gibson’s Beach. Portions could be developed to protect especially sensitive or threatened lands from storm surges. Future connections could connect it northward to Lund and south to Powell River. The pathway would be quite naturalized in places and minimize visual impacts to waterfront homes. Connections to this pathway from residential areas using existing right-of-ways would be included in each neighbourhood and any new subdivisions.</p>
<b>Sliammon Creek Greenway</b>	Proposed	Our creeks run through the heart of our lands and will be protected from development and restored wherever possible. Small pathways will follow the creeks, connecting neighbourhoods to each other, to the ocean, and to community facilities.

<b>Community Health and Well-Being</b>		
<b>Name</b>	<b>Status</b>	<b>Description</b>
<b>Tla’amin Health Services</b> 	Existing	Our newest facility was completed in 2006. The Health Centre provides community health care services to our members in addition to community meeting space.
<b>Elders Cultural Lodge</b> 	Existing	Built as a residential group home in 1982, the facility offers cultural and language programs.



- Proposed Facilities**
- 1 Longhouse
  - 2 New Cemetery
  - 3 Administration and Cultural Facility
  - 4 Community Safety Building
  - 5 Elders and People Living with Disabilities Housing
  - 6 Youth Centre
  - 7 Sports Field
  - 8 Sea Walk and Greenway
  - 9 Slammom Creek Greenway

- Existing Facilities**
- 10 Salish Centre
  - 11 Tla'amin Health Services
  - 12 Healing Lodge
  - 13 Cultural Lodge
  - 14 Chi chuy Child Centre
  - 15 Ahms Ta'ow Education Centre
  - 16 Band Administration
  - 17 Tla'amin Timber Products
  - 18 Community Policing Office
  - 19 Fire Hall
  - 20 Church
  - 21 Waterfront Park
  - 22 Slammom Fish Hatchery
  - 23 Sewage Treatment Facility
  - 24 Soccer Field
  - 25 Water Storage Tanks
  - 26 Water Treatment Plant

## Teeshohsum Existing and Proposed Facilities Plan

- Existing Facilities
- Proposed Facilities (Approximate Locations)

Kilometres

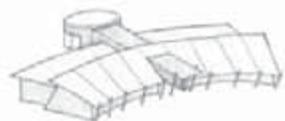
map design by Ecoplan & Tla'amin GIS Dept  
 data provided by Tla'amin GIS Dept,  
 Province of BC, and Natural Resources Canada  
 September 2009

**Inset Map showing 2-23**  
(proposed locations are conceptual only)



**Community Health and Well-Being (continued)**

Name	Status	Description
<b>Elders and People Living with Disabilities Housing</b>	Proposed	To be located near the existing Health Centre, staff and members have both shown high interest and support for development of the facility. It would include several supportive housing units for our Elders who require them.



<b>Healing Lodge</b>	Existing	The facility provides healing programs for Tla'amin members.
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**Education and Culture**

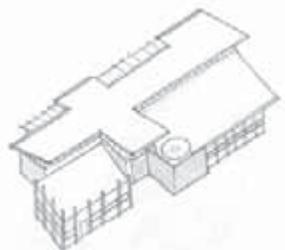
Name	Status	Description
<b>Ahms Ta'ow Education Centre</b>	Existing	Built in 1954 as a Residential Day School, Ahms Ta'ow is open to people of all ages and provides courses and educational facilities. The facility includes a small playground and community garden. The facility, playground and community garden will all be maintained for future use.



<b>Chi chuy Child Development and Resource Centre</b>	Existing	Our licensed daycare, preschool and kindergarten teaches and promotes important cultural values. It was built in 1996 and serves both members and neighbouring communities.
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<b>Tla'amin Cultural Centre</b>	Proposed	A Cultural Facility with a small museum/display space, gift shop, and artefact storage is proposed to be developed with the proposed new Administration Building.
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<b>Services, Utilities &amp; Public Safety</b>		
<b>Name</b>	<b>Status</b>	<b>Description</b>
<p><b>Fire hall</b></p> 	<p>Existing New facility proposed</p>	<p>Built in 1975, the hall houses our fire truck and is staffed by a volunteer crew that provides first response for fire and other emergencies in Teeshohsum.</p> <p>We would like to develop a new Community Safety building closer to the village centre and Highway 101 and improve our fire safety services when funding becomes available.</p>
<p><b>Community Policing Office (Old RCMP Building)</b></p> 	<p>Existing New facility proposed</p>	<p>The station is located in a late 1980s portable that needs upgrading and/or replacement.</p> <p>Our proposed new Community Safety building closer to the village centre could include space for a community policing office.</p>
<p><b>Maintenance Shed</b></p> 	<p>Existing</p>	<p>This older structure houses building materials and supplies and was constructed in the late 1970s. While it is still functional, some upgrades and repairs are necessary.</p>
<p><b>Water Treatment Plant</b></p> 	<p>Existing</p>	<p>Our state-of-the-art water treatment plant was built in 1999 and provides high quality water for Teeshohsum and the Klahanie subdivision.</p>
<b>Government Services</b>		
<b>Name</b>	<b>Status</b>	<b>Description</b>
<p><b>Administration Building</b></p> 	<p>Existing New facility proposed</p>	<p>This old army building was moved here in 1973 and provides administration office space. The facility includes two older portables.</p> <p>There are plans to replace it. While two locations have been suggested, two rounds of community consultation (one during the Comprehensive Community Plan in 2007 and one during the Land Use Plan in 2009) confirm overwhelming member support to locate it next to the Salish Centre rather than a second location next to the soccer field.</p>

Government Services (continued)		
Name	Status	Description
<b>Tla'amin Timber Products</b> 	Existing New facility proposed	<p>Built in 1977, these portables house our forestry company, GIS and associated departments. The building requires upgrades and repairs.</p> <p>The offices could be relocated to the proposed new Administration Building or another location closer to the Salish Centre and other community buildings.</p>
Other Facilities		
Name	Status	Description
<b>Sacred Heart Church</b> 	Existing	Originally built in 1896, it was rebuilt after burning down in 1918. Our community still regularly uses it.
<b>Cemetery</b> 	Existing New facility proposed	Our cemetery has been used since 1897, and is nearing capacity. We have selected a site for a new cemetery across the highway from the Salish Centre we plan to develop soon.
<b>Salmon Hatchery</b> 	Existing Improvements proposed	Built in stages beginning in 1976, our fish hatchery includes a number of buildings and facilities. Some require upgrades and renovations.



## GLOSSARY

This Land Use Plan uses Tla’amin words and spellings from our official Sliammon Culture, Heritage and Language Committee phonetic place names list. These names will be changed legally in the BC Geographical Naming system through the Treaty Process.

### TEESHOHSUM

This area was issued Reserve status in 1945 and incorrectly registered as Sliammon IR #1, a mispronunciation of Tla’amin, which refers to the people - not the place. The name Teeshohsum translates to “waters milky white with herring spawn” which was a descriptor of the abundance of this important resource to the people in the ancient village situated around the bay. Teeshohsum is currently the main village site for the Tla’amin people and includes numerous culturally and spiritually significant sites.

### AHGYKSON

This area was issued Reserve status in 1945 and incorrectly registered as Harwood Island IR #2. In 1798 Captain Vancouver named the island after a navy surgeon aboard the HMS Providence. The name Ahgykson translates to “pointed nose” in reference to the island’s shape. Ahgykson was a village site for thousands of years, as evidenced by numerous archaeological sites. Today, many Tla’amin people still use Ahgykson to hunt, fish and gather a variety of traditional foods and medicines.

.....

Although there are many related terms in the language, these were the closest we could find for shoo-oh (selecting areas) to zone and manage for the benefit of future generations.

### NINEH JEH TAHLA

The name for our “economic development designation” refers to dealing with economic and monetary matters.

### OOKTS OHT YIQUSH

The name for our “community use designation” refers to collectively shared areas that everyone is allowed to use.

### UHMSNAH JEHJEUM

The name for our “forest management designation” refers to taking care of our wooded areas and its resources.

### UHMSNAH KOOTLKOO

The name for our “marine management designation” refers to taking care of our salt water and its resources.

### YEEXMET TUMS GIJEH

The name for our “sensitive area designation” refers to protecting and taking care of special spiritual, cultural and sensitive habitat places.

**Tla'amin First Nation**

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Powell River, B.C. V8A 4Z3  
604 483 9646

[www.sliammonfirstnation.com](http://www.sliammonfirstnation.com)





**TSAWOUT FIRST NATION  
LAND CODE**

**CONSOLIDATED VERSION**

**Including amendments approved by  
Ratification Vote on June 25, 2013**

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## PREAMBLE

**WHEREAS** the Members of the STÁUTW First Nation have a profound and sacred relationship with the islands, points, land, boulders, four winds, trees, birds, animals, fishes, fire and water of its territorial homeland, encompassing all 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;

**AND WHEREAS** the STÁUTW First Nation is a member of the Saanich Nation and a party to a Douglas Treaty;

**AND WHEREAS** the traditional teachings of the Saanich Peoples speak of the obligation of the people of STÁUTW First Nation to care for and respect each other, future generations, the land and the other living things of the land, and by enacting this Land Code, the First Nation is continuing this special responsibility;

**AND WHEREAS** the authority of the STÁUTW First Nation to govern its lands and resources flows from XALS, the Creator to the people of the First Nation, and from the people to the Chief and Council according to the culture, traditions, customs and laws of the First Nation;

**AND WHEREAS** the STÁUTW First Nation wishes to enhance opportunities for its members to participate in governance matters and to benefit equitably from its lands and resources;

**AND WHEREAS** the Members of the STÁUTW First Nation wish to include and give effect to their customary laws, interests and traditions in discharging their governing jurisdiction and authority;

**AND WHEREAS** the STÁUTW First Nation wishes to reassume management of its lands and resources, rather than having them managed on its behalf under the *Indian Act*, thereby enabling the First Nation to become more accountable and economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, cultural and social development;

**AND WHEREAS** the STÁUTW First Nation wishes to reassume management of its lands and resources by entering into the Framework Agreement on First Nation Land Management concluded between Her Majesty in right of Canada and fourteen first nations on February 12, 1996, as amended;

**NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE STÁUTW FIRST NATION.**

## PART 1 PRELIMINARY MATTERS

### 1. Title

1.1 The title of this enactment is the *Tsawout First Nation Land Code*.

### 2. Interpretation

#### Definitions

2.1 The following definitions apply in this Land Code:

“Act” means the *First Nations Land Management Act*, S.C. 1999, c.24;

“Chair” means the Chair of the Land Management Committee selected under section 24.1.

“Common-law Spouse” means a person who has been living with another person of either gender in a marriage-like relationship for a continuous period of at least two years; [amended, June 25, 2013]

“Community Land” means any First Nation Land that is not subject to a Permanent Interest; [amended, June 25, 2013]

“Council” means the Chief and Council of the First Nation;

“Douglas Treaty” means the Douglas Treaty for South Saanich of February 1852;

“Easement” means a non-exclusive interest in First Nation Land granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, giving one person (the grantee) the right to use the land of another (the grantor) for a right of way or to provide utility or other services to the land of the grantor, and is limited to only such interest as is necessary to give effect to the Easement granted; [new, June 25, 2013]

“Eligible Voter” means, for the purpose of voting in respect of matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“Extended Family” means, in respect of an individual, the individual’s Immediate Family, grandparent, parent, uncle, aunt, sister, or brother;

“First Nation” means the Tsawout First Nation as named in the Act;

“First Nation Land” means a First Nation reserve or any portion thereof that is subject to this Land Code;

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development in accordance with clause 51.1 of the Framework Agreement;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen first nations on February 12, 1996, as amended;

“Immediate Family” means, in respect of an individual, the individual’s child, Spouse or grandchild;

“*Indian Act*” means the *Indian Act*, R.S.C. 1985, c. I-5;

“Individual Agreement” means the Individual First Nation Agreement made between the Tsawout First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Instrument” means a formal legal document;

“Interest” means an interest in First Nation Land and includes a Permanent Interest, Leasehold, Mortgage, Permit and Easement but for greater certainty does not include title to that land; [new, June 25, 2013]

“Land Code” means this *Tsawout First Nation Land Code*;

“Land Management Committee” means the Land Management Committee established under section 22.1;

“Lands Manager” means the Tsawout First Nation employee responsible for the administration of First Nation Land;

“Law” means a Law or regulation enacted under this Land Code but does not include a Resolution; [amended, June 25, 2013]

“Leasehold” means an interest in First Nation Land granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, including a Sub-Lease, giving a person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including any renewal or extension period; [new, June 25, 2013]

“License” means a permission granted under this Land Code to use, develop or extract specified Natural Resources from a specified parcel or parcels of First Nation Land but which does not grant an interest in, or possession to, First Nation Land; [new, June 25, 2013]

“Meeting of Members” means a meeting of First Nation Members under Part 3;

“Member” means an individual whose name appears or is entitled to appear on the Tsawout First Nation membership list;

“Mortgage” means a charge on an Interest in First Nation Land in favour of another as security for a debt; [new, June 25, 2013]

“Natural Resources” means any materials or substances on, under or in First Nation Land in their natural state which, when removed, have economic or other value; [new, June 25, 2013]

“Panel” means the Dispute Resolution Panel established under section 37.1;

“Person” includes a body corporate;

“Permanent Interest” means a Certificate of Possession issued under section 20(2) of the *Indian Act* or equivalent tenure issued under this Land Code;

“Permit” means an interest in First Nation Land other than a Permanent Interest, Leasehold or an Easement, granted under this Land Code or, prior to the date of this Land Code, the *Indian Act*, giving a person the right to use a specified parcel or parcels of First Nation Land for a specified purpose. A Permit does not convey any right of exclusive possession in the land, does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted, and does not include a regulatory authorization granted under a Law that does not convey an interest in the land; [new, June 25, 2013]

“Ratification Vote” means a vote under section 13;

“Registered Interest” means an Interest in First Nation Land registered under section 25;

“Resolution” means a resolution of Council made pursuant to the consent of a majority of the councillors of the First Nation present at a meeting of the Council duly convened; [amended, June 25, 2013]

“Spouse” means a person who is married to another person, including through an Aboriginal customary marriage, or who is a Common Law Spouse; [amended, June 25, 2013]

“Sub-Lease” means a Leasehold in which the person transferring the interest is the holder of the Leasehold; [new, June 25, 2013]

“STÁUTW” means the Tsawout First Nation;

“Tsawout Lands Register” means the register maintained by the First Nation under section 25.1; and

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

#### Paramountcy

- 2.2 If there is an inconsistency or conflict between this Land Code and any other enactment of the First Nation, this Land Code will prevail to the extent of the inconsistency or conflict.
- 2.3 If there is an inconsistency or conflict between this Land Code and the Douglas Treaty, the Douglas Treaty will prevail to the extent of the inconsistency or conflict.
- 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.

#### Culture and Traditions

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

#### Interpretation

- 2.6 This Land Code will be interpreted in a fair, large and liberal manner.
- 2.7 In this Land Code:
- (a) the use of the word “will” denotes 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;
  - (b) 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”;
  - (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
  - (d) a reference to a statute includes every amendment to it, every regulation made under it and any Law enacted in substitution for it or in replacement of it;

- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- (f) 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.

#### Language

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

#### Non-abrogation

- 2.9 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the First Nation or its Members.
- 2.10 This Land Code is not intended to affect the eligibility of the First Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the First Nation has not assumed responsibility for such services or programs.

#### Fiduciary Relationship

- 2.11 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the First Nation and its Members.

#### Lands and Interests Included

- 2.12 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and includes all rights and resources in and of First Nation land, including:
- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable Natural Resources in and of that land, to the extent that these are under the jurisdiction of Canada or the First Nation; and
  - (b) all the interests and licenses granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

### **3. Authority to Govern**

#### Source of Authority

- 3.1 The authority of the First Nation to govern its land and resources flows from its inherent right of self-government and its rights, including aboriginal title and those rights defined in the Douglas Treaty.

#### **4. Purpose**

##### Purpose

- 4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to First Nation Land and through which Tsawout First Nation will exercise authority over those lands.

##### Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when the First Nation approves this Land Code.

#### **5. Description of First Nation Land**

##### First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code is:

- (a) East Saanich Indian Reserve No. 2, being the whole of those Reserve Lands within the Province of British Columbia, Canada in the South Saanich District, more particularly described as:

All that portion of land bounded by the exterior rectilinear boundaries as shown on Plan 58751 recorded in the Canada Lands Surveys Records (CLSR), and the ordinary high water mark (OHWM) of Cordova Channel and Saanichton Bay as shown on Plan 89661 CLSR.

Excepting thereout and therefrom;

All that portion required for road as shown on Plan RD1599 having a width of 4.572 metres (15 feet).

Total lands, excluding mines and minerals, containing 238 hectares, (588 acres) more or less.

The above described Reserve Lands are subject to:

An easement in favour of Vancouver Island Power Co., registered in the Indian Lands Registry (ILR) as Nos. 1030-2, 53730, 53731 and 53732;

An easement in favour of Public Works Canada, registered in the ILR as Nos. 1031-2 and 248898;

An easement agreement with the Capital Regional District, registered in the ILR as No. 124326 and modified by Document No. 298951, assigned to the Tsawout First Nation by Document No. 298955.

The rights and reservations contained in provincial Order in Council 1938-1036, registered in the ILR as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

- (b) Fulford Harbour Indian Reserve No. 5, being the whole of those Reserve Lands within the Province of British Columbia, Canada in the Cowichan District, more particularly described as:

All that portion of land bounded by the exterior rectilinear boundaries as shown on Plan 74885 recorded in the Canada Lands Surveys Records (CLSR), and the ordinary high water mark of Fulford Harbour as shown on Plan 88602 CLSR.

Total lands, excluding mines and minerals, containing 21 hectares, (51 acres) more or less.

The above described Reserve Lands are subject to:

The rights and reservations contained in provincial Order in Council 1938-1036, registered in the Indian Lands Registry (ILR) as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

#### Additional Lands

- 5.2 The following lands may be made subject to this Land Code if they are, or become, reserve lands and the relevant conditions are met:

- (a) lands owned jointly or in common by the First Nation and another First Nation, if the First Nations agree upon a joint management scheme for those lands, including:
- i. Indian Reserve 06835, Saturna Island No. 7, Cowichan District, E. half of section 12, and west half of section 13 on easterly point of Saturna Island, south entrance to Strait of Georgia;
  - ii. Indian Reserve 06836, Pender Island No. 8, Cowichan District on Hay Point west side of South Pender Island;
  - iii. Indian Reserve 06837, Bare Island No. 9, Cowichan District, the whole of Mandarte Island, at the head of Haro Strait; and
  - iv. Indian Reserve 06838, Goldstream No. 13, Goldstream and Highland Districts, at south end of Finlayson Arm and mouth of the Goldstream River; and

- (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use.
- 5.3 Section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 15.1.
- 5.4 If the relevant conditions in section 5.2 are met, Council will call a Meeting of Members and, after receiving input at that meeting, may enact a Law declaring the land or interest to be subject to this Land Code.

## **PART 2 FIRST NATION LEGISLATION**

### **6. Law-Making Powers**

Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) the development, conservation, protection, management, use and possession of First Nation Land;
  - (b) Interests and Licenses in relation to First Nation Land;
  - (c) any matter necessary to give effect to this Land Code; and
  - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to First Nation Land including:
- (a) zoning and land use planning;
  - (b) economic development of Community Land;
  - (c) regulation, control, authorization and prohibition of the occupation and development of land;
  - (d) creation, regulation and prohibition of Interests and Licenses;
  - (e) environmental assessment and protection;
  - (f) provision of local services and the imposition of user charges;

- (g) provision of services for the resolution, outside the courts, of disputes;
- (h) administrative appeals from a decision to grant or refuse to grant an interest in First Nation Land;
- (i) authorization and regulation of subdivisions and the conduct of surveys;
- (j) setting aside, protection and regulation of parks, parklands and recreational lands;
- (k) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, spiritual sites and wildlife refuges;
- (l) rules and procedures for the receipt, management, expenditure, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;
- (m) creation of management and administrative bodies or agencies;
- (n) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (o) public nuisance and private nuisance;
- (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (q) construction and maintenance of boundary and internal fences;
- (r) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (s) setting aside of lands for community purposes or works;
- (t) regulation of traffic and transportation; and
- (u) procedures that apply to the transfer, by testamentary disposition or succession, of an interest in First Nation Land.

#### Administration

- 6.3 Council will perform all the duties and functions, and exercise all the powers, of the First Nation that are not specifically assigned to an individual or body established under this Land Code.

## Delegation

- 6.4 Notwithstanding section 6.3 Council may by enacting a Law, delegate administrative authority in relation to a Law enacted under section 6.1 to an individual or body established or authorized under this Land Code.

**7. Law-Making Procedure**

## Introduction of Laws

- 7.1 A proposed Law may be introduced at a meeting of Council by:
- (a) a representative of the Land Management Committee or other body composed of Members that may be authorized by Council to do so;
  - (b) a member of Council; or
  - (c) the Lands Manager.

## Tabling and Posting of Proposed Laws

- 7.2 A proposed Law will be:
- (a) deposited with the Chair of the Land Management Committee at least 30 days before the proposed Law is voted upon;
  - (b) posted in the First Nation administration offices and other public places on First Nation Land at least 28 days before the proposed Law is voted upon; and
  - (c) tabled at a meeting of Council at least 21 days before the proposed Law is voted upon.

7.3 [repealed, June 25, 2013]

7.4 [repealed, June 25, 2013]

7.5 [repealed, June 25, 2013]

7.6 [repealed, June 25, 2013]

## Urgent Matters

- 7.7 Council may enact a Law without the preliminary steps required under section 7.2 if Council is reasonably of the opinion that the Law is needed urgently to protect First Nation Land or Members.

7.8 A Law enacted under section 7.7 will be deemed to be repealed and will have no force and effect twenty-eight days after it is enacted, but may be re-enacted in accordance with section 7.2.

Approval of Law by Council

7.9 A Law is enacted if it is approved by Council.

Certification of Laws

7.10 The original copy of a Law or Resolution relating to First Nation Land will be signed by the members of Council present at the meeting at which the Law is enacted.

Law Coming Into Force

7.11 A Law comes into force on:

- (a) the date it is enacted; or
- (b) such other date as may be set by the Law.

7.12 A Law may be repealed or amended by following the procedure set out in this Section, unless the Law to be amended specifies a different procedure, in which case the procedure set out in the Law applies. [new; June 25, 2013]

**8. Publication of Laws**

Publication

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

Posting Laws

8.2 Within seven days after a Law has been enacted, Council will post a copy of the Law in the First Nation administration offices.

Register of Laws

8.3 Council will cause to be kept at the First Nation administration offices a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are otherwise no longer in force.

8.4 Any person may, during regular business hours at the First Nation administration offices, have reasonable access to the register of Laws.

Copies for Any Person

- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.

### **PART 3**

## **COMMUNITY CONSULTATION AND APPROVALS**

### **9. Rights of Eligible Voters**

Rights of Eligible Voters

- 9.1 An Eligible Voter has the right to vote at a Meeting of Members and in a Ratification Vote.

### **10. Community Input**

Prior Meeting of Members

- 10.1 Council will call a Meeting of Members to receive input prior to voting upon a Law in respect of:
- (a) a land use plan;
  - (b) a subdivision plan;
  - (c) declaring land or an interest in land referred to in section 5.2 to be subject to this Land Code;
  - (d) a heritage site, cultural site, traditional site, spiritual site or wildlife refuge;
  - (e) an environmentally sensitive property;
  - (f) environmental assessment;
  - (g) the transfer or assignment of Interests in First Nation Land;
  - (h) spousal property under section 35;
  - (i) any other matter or class of matters that Council by Resolution declares to be subject to this section.

## Process to Implement Laws

- 10.2 Council will, in consultation with the Land Management Committee and within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Laws referred to in section 10.1.
- 10.3 Nothing in this Land Code precludes Council or the Land Management Committee from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts, to develop and implement the Laws referred to in section 10.1

**11. Approval at a Meeting of Members**

## Approval at Meeting

- 11.1 Approval at a Meeting of Members must be obtained for:
- (a) a land use plan;
  - (b) amendment of a land use plan;
  - (c) a spousal property law under section 35 or a substantive amendment to such a law; and
  - (d) a Law or class of Law that Council, by Resolution, declares to be subject to this section. [*amended, June 25, 2013*]

**12. Procedure at a Meeting of Members**

## Voting

- 12.1 Decisions at a Meeting of Members will be made by a majority vote of the Eligible Voters present at the meeting.

## Quorum

- 12.2 The quorum for a Meeting of Members is ten percent of the Eligible Voters.

## Notice of Meeting

- 12.3 Council will give written notice of a Meeting of Members that:
- (a) specifies the date, time and place of the meeting; and
  - (b) contains a brief description of the matters to be discussed and decided at the meeting.

Manner of Notice

- 12.4 Written notice of a Meeting of Members under section 12.3 will be given by:
- (a) posting the notice in public places on First Nation Land at least 21 days before the meeting;
  - (b) mailing the notice to Eligible Voters at their last known address at least 21 days before the meeting;
  - (c) publishing the notice in a community newsletter or local newspaper at least ten days before the meeting; or
  - (d) such other methods as Council may consider appropriate.

Who May Attend

- 12.5 A Member has a right to attend a Meeting of Members.
- 12.6 A person other than a Member may attend a Meeting of Members with permission of Council.

Other Meetings

- 12.7 Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members, provided that any vote taken at a Meeting of Members will not be accumulated with any vote taken at a subsequent Meeting of Members.

Procedural Laws

- 12.8 Council may make Laws respecting procedures for Meetings of Members.
- 12.9 A Law enacted under section 12.8 may provide that, in the event that a Meeting of Members does not achieve quorum or otherwise fails to decide a matter, or as an alternative to a Meeting of Members, the matter that requires a Meeting of Members may be decided by the Eligible Voters by means of a Ratification Vote. [*amended, June 25, 2013*]
- 12.10 [*repealed, June 25, 2013*]

**13. Ratification Votes**

Approval by Ratification Vote

- 13.1 Approval by a Ratification Vote must be obtained for:
- (a) a voluntary exchange of First Nation Land under section 15.1;

- (b) amendment of the Individual Agreement that reduces the amount of funding provided by Canada;
- (c) amendment of this Land Code;
- (d) creation of a Permanent Interest in Community Land;
- (e) expropriation of a Member's Interest under section 14.9; and
- (f) enactment of a Law or class of Laws that Council, by Resolution, declares to be subject to this section.

#### Individual Agreement with Canada

- 13.2 For greater certainty, an amendment to, or renewal of, the Individual Agreement will not require approval by a Ratification Vote unless the amendment or renewal reduces the amount of funding provided by Canada.

#### Ratification Process

- 13.3 A Ratification Vote required under this Land Code will be conducted, with any necessary modifications appropriate in the circumstances, in substantially the same manner as that provided in the *Tsawout First Nation Community Ratification Process* that was used to ratify this Land Code.

#### Minimum Requirements for Approval

- 13.4 A matter will be considered approved by a Ratification Vote if at least 10 percent of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote by secret ballot in favour of the matter. [*amended, June 25, 2013*]

#### No Verifier

- 13.5 A Verifier is not required in a Ratification Vote under this Part.

## PART 4 PROTECTION OF LAND

### 14. Expropriation by First Nation

#### Rights and Interests That May Be Expropriated

- 14.1 An Interest or License in First Nation Land or in any building or other structure on such land may be expropriated by the First Nation in accordance with the Framework Agreement and a Law enacted in accordance with section 14.5.

## Community Purposes

- 14.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.
- 14.3 Notwithstanding section 14.2, an Interest granted by a Member in First Nation Land may be expropriated if:
- (a) the Interest to be expropriated is determined to be fraudulent or to have been granted for an illegal purpose; or
  - (b) the Interest is determined to be not in the best interests of the First Nation.
- 14.4 No expropriation may be made under section 14.3 unless:
- (a) the holder of the Interest is given a reasonable opportunity to address and rectify the concerns of the Member or the First Nation and fails within a reasonable time to do so;
  - (b) the Member consents to the expropriation;
  - (c) the expropriated Interest reverts to the Member; and
  - (d) the expropriation is carried out in accordance with this Part.

## Expropriation Law

- 14.5 Council will enact a Law respecting rights and procedures for expropriations, including provisions in respect of:
- (a) taking possession of the expropriated Interest or License;
  - (b) transfer of the expropriated Interest or License;
  - (c) notice of expropriation;
  - (d) service of the notice of expropriation;
  - (e) entitlement to compensation;
  - (f) determination of the amount of compensation; and
  - (g) the method of payment of compensation.

## Public Report

- 14.6 Before the First Nation expropriates an Interest or License, Council will:
- (a) prepare a report on the reasons for the expropriation;
  - (b) post a copy of the report in the First Nation administration offices; and
  - (c) mail a copy of the report to each Eligible Voter at their last known address.

## Rights That May Not Be Expropriated

- 14.7 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the First Nation.

## Acquisition By Mutual Agreement

- 14.8 The First Nation may expropriate an Interest or License only after a good faith effort to acquire, by mutual agreement, the Interest or License.

## Approval by Ratification Vote

- 14.9 Expropriation of a Member's Interest is of no force and effect unless the proposed expropriation has received prior approval by a Ratification Vote.

## Compensation for Rights and Interests

- 14.10 The First Nation will, in accordance with its Laws and the Framework Agreement:
- (a) serve reasonable notice of expropriation on each affected holder of an Interest or License to be expropriated; and
  - (b) pay fair and reasonable compensation to the holder of the Interest or License to be expropriated.

## Compensation Calculations

- 14.11 The total value of compensation payable under section 14.10(b) will be based on:
- (a) the fair market value of the Interest or License being expropriated;
  - (b) the replacement value of any improvement to the land being expropriated;
  - (c) the damages attributable to any disturbance; and
  - (d) damages for reduction in the value of any remaining Interest.

Fair Market Value

14.12 The fair market value of an expropriated Interest or License will be deemed to be equivalent to the amount that would have been paid for the Interest or License if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

14.13 Subject to section 14.15, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.

14.14 The sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

14.15 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

- (a) a dispute concerning the right of the holder of an expropriated Interest or License to compensation; and
- (b) a dispute concerning the amount of compensation.

**15. Voluntary Land Exchange and Protection**

Conditions for a Land Exchange

15.1 The First Nation may by agreement with another party exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

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

Land To Be Received

15.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:

- (a) is of equal or greater area than the First Nation Land to be exchanged;
- (b) is of a value comparable to the appraised value of the First Nation Land to be exchanged; and

- (c) is eligible to become a reserve under the *Indian Act* and First Nation Land subject to this Land Code.

## Negotiators

- 15.4 A person who negotiates a land exchange agreement on behalf of the First Nation must be designated by Resolution.

## Additional Compensation

- 15.5 The First Nation may receive additional compensation, including money or other land, in addition to the land referred to in section 15.3.

- 15.6 Such other land may be held by the First Nation in fee simple or otherwise.

## Federal Consent

- 15.7 Before the First Nation concludes a land exchange agreement, it must receive a written statement from Canada stating that Her Majesty in right of Canada:

- (a) consents to set apart as a reserve the land to be received in the land exchange, as of the date of the land exchange or such later date as Council may specify by Resolution; and
- (b) consents to the manner and form of the land exchange as set out in the land exchange agreement.

## Notice

- 15.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in section 15.2, Council or the Land Management Committee will provide the following information to Members:

- (a) a description of the First Nation Land to be exchanged;
- (b) a description of the land to be received by the First Nation;
- (c) a description of any additional compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in sections 15.3 (a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the statement referred to in section 15.7.

Process of Land Exchange

- 15.9 A land exchange agreement will provide that:
- (a) the other party to the exchange will transfer to Canada the title to the land that is to be set apart as a reserve;
  - (b) Council will pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and
  - (c) a copy of the instruments transferring title to the relevant parcels of land will be registered in the Tsawout Lands Register and the First Nation Lands Register.

**PART 5  
CONFLICT OF INTEREST**

**16. Conflict of Interest**

Application of Rules

- 16.1 Section 16.2 applies to:
- (a) a member of Council who is dealing with any matter before Council that is related to First Nation Land;
  - (b) an employee of the First Nation who is dealing with any matter that is related to First Nation Land; and
  - (c) a member of a board, committee, Panel or other body of the First Nation that is dealing with any matter that is related to First Nation Land.

Duty to Report and Abstain

- 16.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, an individual's Immediate Family or a business in which an individual holds an interest, that individual will:
- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
  - (b) take no part in any deliberations on the matter; and
  - (c) take no part in a vote on the matter.

Common Interests

16.3 Section 16.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Eligible Voters

16.4 If Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, Council may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Law or Resolution.

Inability to Act

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

Disputes

16.6 Determination of whether a breach of this Part has occurred may be referred to the Panel.

**PART 6  
LAND ADMINISTRATION**

**17. Financial Management**

Application

17.1 This part applies only to financial matters in relation to First Nation Land that is administered under this Land Code.

Establishment of Bank Accounts

17.2 Council will maintain one or more financial accounts in a financial institution and will deposit in those accounts:

- (a) transfer payments received from Canada for the management and administration of First Nation Land;
- (b) moneys received by the First Nation from the grant or disposition of interests or licenses in First Nation Land;
- (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of Interests and Licenses in First Nation land;

- (e) monies held in trust for a Member in respect of a current lease managed by the First Nation, provided that nothing prevents Council and such Member from agreeing in writing that the Member will assume management of the lease and release the First Nation from further obligation under this section; and
- (f) any other land revenue received by the First Nation.

17.3 Council will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which Council, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to the Members in accordance with clause 5.2(d) of the Framework Agreement.

Signing Officers

17.4 Council will authorize the signing officers of the First Nation to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under section 17.2.

Fiscal Year

17.5 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

17.6 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.

17.7 Prior to adopting a budget referred to in section 17.6, Council will consult with the Land Management Committee.

Procedure

17.8 After adopting a land management budget or supplementary budget, Council will as soon as practicable:

- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and
- (b) post a copy of the budget or supplementary budget at the First Nation administration offices for inspection by Members during ordinary business hours.

If No Budget

- 17.9 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

Expenditures

- 17.10 Council may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an approved budget.

Financial Policy

- 17.11 Council may, in accordance with this Land Code, adopt financial policies and rules to further manage moneys related to First Nation Land.

**18. Financial Records**

Financial Records

- 18.1 Council will keep financial records in accordance with generally accepted accounting principles.

Offences

- 18.2 Any person who has control of the financial records of the First Nation and who:
- (a) impedes or obstructs anyone from exercising a right to inspect those records; or
  - (b) fails to give all reasonable assistance to anyone exercising a right to inspect those financial records,
- is guilty of an offence under this Land Code.

Preparation of Financial Statement

- 18.3 Within ninety days after the end of each fiscal year Council will prepare a financial statement in comparative form containing:
- (a) a balance sheet;
  - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
  - (c) any other information necessary for a full and fair presentation of the financial position of the First Nation in relation to First Nation Land.

Consolidated Accounts

18.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

**19. Audit**

Appointment of Auditor

19.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.

19.2 The auditor appointed under section 19.1 will be the auditor appointed for the consolidated audit of the other accounts, audits and reports of the First Nation.

Duty of Auditor

19.3 The auditor will, within 120 days after the end of the First Nation fiscal year, prepare and submit to Council an audit report on the First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the First Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

19.4 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

19.5 Council will present the auditor's report at a Meeting of Members.

19.6 Where practicable Council will distribute the auditor's report to Members in advance of the Meeting of Members.

**20. Annual Report**

Publish Annual Report

20.1 Council will, within thirty days after receiving an audit report under section 19.3, prepare and table with the Land Management Committee an annual report on First Nation Land management.

20.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;

- (b) a copy and explanation of the audit report as it applies to First Nation Land;
- (c) a report on any proceedings and decisions under the Dispute Resolution provisions of Part 8; and
- (d) such other matters as may be directed by Council or reasonably requested by the Land Management Committee.

## **21. Access to Financial Information**

Copies for Members

- 21.1 Any person may, during normal business hours at the First Nation administration offices, have reasonable access to:
- (a) the auditor's report; and
  - (b) the annual report.
- 21.2 A Member may, during normal business hours at the First Nation administration office, upon payment of a reasonable fee set by Resolution, obtain a copy of the auditor's report, annual report on First Nation Land management, budget or supplementary budget.

## **22. Land Management Committee**

Land Management Committee Established

- 22.1 A Land Management Committee is hereby established to:
- (a) assist with the development of the First Nation Land administration system;
  - (b) advise Council and First Nation staff on matters respecting First Nation Land;
  - (c) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
  - (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to Council on the resolution of such issues;
  - (e) assist in the exchange of information regarding First Nation Land matters between Members and Council;
  - (f) oversee community consultations and approvals under this Land Code;
  - (g) conduct the resolution of disputes under section 43.1; and
  - (h) perform such other duties and functions as Council may direct.

Delegation

- 22.1.1 The Land Management Committee will delegate the duties of the Land Management Committee, other than the duties under section 17.7, section 20, section 22.5 and any other duties that Council may direct, to a sub-committee of the Land Management Committee composed of five members of the Land Management Committee including the Chair. [new, June 25, 2013]
- 22.1.2 Council will appoint one member of the Council to sit as a non-voting member of the sub-committee established under section 22.2.1, and to act as a liaison between the Land Management Committee and Council. [new, June 25, 2013]
- 22.1.3 A quorum of the sub-committee is three members who are members of the Land Management Committee [new, June 25, 2013]
- 22.1.4 The term of members of the sub-committee is two years unless otherwise specified in rules or procedures established under section 22.5. [new, June 25, 2013]
- 22.1.5 The sub-committee established under section 22.1.1 will report on its activities to the Land Management Committee of the whole on a quarterly basis, or such other period as may be specified in rules or procedures established under section 22.5, but for greater certainty, duties carried out and decisions made by the sub-committee are not subject to reconsideration by the Land Management Committee of the whole. [new, June 25, 2013]

## Development of Land Related Rules and Procedures

- 22.2 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the community and the Land Management Committee, establish rules and procedures that address the following matters:
- (a) the process and criteria for granting Interests and Licenses in First Nation Land; [amended, June 25, 2013]
  - (b) environmental protection and environmental assessment in relation to First Nation Land;
  - (c) resolution of disputes in relation to First Nation Land;
  - (d) First Nation Land use planning and zoning;
  - (e) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code; and
  - (f) section 35 respecting spousal property and the policy upon which that section is based.

## Determination of Fees and Rent

- 22.3 The Land Management Committee will recommend to Council a process for determining:
- (a) fees and rent for Interests and Licenses in First Nation Land;
  - (b) fees for services provided in relation to First Nation Land and compliance with this Land Code; and
  - (c) processes and criteria for managing the First Nation's obligations in relation to revenue from lands.

## Implementation of Policies

- 22.4 Rules, procedures and processes developed in accordance with section 22.2 and 22.3 will be considered by Council for implementation as Laws, Resolutions, policies or amendments to this Land Code.

## Internal Procedures

- 22.5 The Land Management Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 22.6 Subject to Council requirements in respect of financial obligations, the Land Management Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by Land Management Committee members; and
  - (b) establish programs for the orientation and education of Land Management Committee members.

**23. Land Management Committee Membership**

## Composition

- 23.1 The Land Management Committee will be made up of Eligible Voters appointed by Council in a manner so as to provide for a broad representation of the First Nation community. [amended, June 25, 2013]
- 23.1.1 A quorum of the Land Management Committee is at least two thirds of the number of members currently appointed to serve office on the Land Management Committee. [new, June 25, 2013]

## Eligibility

- 23.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be appointed to the Land Management Committee under paragraph 23.1, except for:
- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment or felony conviction within five years prior to the date of the appointment;
  - (b) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct; and
  - (c) an Eligible Voter who is a salaried staff member of the First Nation or member of Council unless that Eligible Voter resigns as a staff member or member of Council upon being appointed to the Land Management Committee. [*amended, June 25, 2013*]

## Interim Land Management Committee

- 23.3 The interim Land Management Committee as it exists on the date of the Ratification Vote and as set out in Schedule A to this Land Code will hold office and carry out the duties of the Land Management Committee until the first Land Management Committee appointed under section 23.1 takes office. [*amended, June 25, 2013*]

23.4 [*repealed, June 25, 2013*]

## Term

- 23.5 A person that is appointed as a member of the Land Management Committee shall hold office for a term of four years, unless specified otherwise in a Law enacted under section 23.7. [*amended, June 25, 2013*]

No Limit on Terms in Office

- 23.6 Nothing precludes an incumbent member of the Land Management Committee from being appointed for a further term. [*amended, June 25, 2013*]

Appointment Law

- 23.7 Council will enact a Law to establish the procedure for Land Management Committee appointments. [*amended, June 25, 2013*]

- 23.8 A Law enacted under section 23.7 shall include:

- (a) If applicable, such additional transitional rules as may be necessary for the first Land Management Committee;
- (b) a process to increase or decrease the number of members of the Land Management Committee to provide for broad representation of the First Nation

community provided that in no case shall the number of members of the Committee be more than sixteen; and

- (c) a process to consult with elders, heads of families, and Members concerning the appointment of the Land Management Committee. [amended, June 25, 2013]

Vacancy on Land Management Committee

23.9 The office of a member of the Land Management Committee becomes vacant if the member, while holding office:

- (a) is or becomes ineligible to hold office under section 23.2;
- (b) ceases to be a Member;
- (c) is elected to Council or accepts employment as an employee of the First Nation;
- (d) is absent for three meetings of the Land Management Committee for a reason other than illness or incapacity without being authorized to be absent by the Chair of the Land Management Committee;
- (e) fails to disclose a conflict of interest as required under Part 5 of the Land Code;
- (f) dies or becomes mentally incompetent; or
- (g) resigns in writing. [amended, June 25, 2013]

Vacancy in Term

23.10 Where the office of a member of the Land Management Committee becomes vacant more than 90 days before the date when another appointment of Land Management Committee members would ordinarily be held, Council will forthwith appoint a replacement. [amended, June 25, 2013]

23.11 [repealed, June 25, 2013]

Balance of Term of Office

23.12 The term of a member of the Land Management Committee appointed under section 23.10 will be the balance of the term in respect of which the vacancy occurred. [amended, June 25, 2013]

Attributes of Committee Members

23.13 Having accepted an appointment to the Land Management Committee, a member of the Land Management Committee will accept the duties and obligations of membership and

agree to observe and carry out those duties and obligations according to the terms and conditions of this Land Code. [amended, June 25, 2013]

23.14 Members of the Land Management Committee will endeavor to demonstrate the following attributes:

- (a) impartiality, honesty and integrity;
- (b) responsibility and accountability; and
- (c) confidentiality.

## **24. Chair of the Land Management Committee**

Chair

24.1 The members of the Land Management Committee will select a Chair from among their members.

Alternate Chair

24.2 If the Chair is unavailable or unable to perform the functions of office, the Land Management Committee will appoint another member of the Land Management Committee to serve as Acting Chair.

Duties of the Chair

24.3 The duties of the Chair are to:

- (a) chair meetings of the Land Management Committee;
- (b) ensure that financial statements relating to all activities of the Land Management Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with Council;
- (c) report to Council and the Members on the activities of the Land Management Committee;
- (d) monitor the presentation of the audited annual financial statements under section 19.5; and
- (e) perform such other duties as Council or the Land Management Committee may reasonably prescribe.

**25. Registration of Interests**

## Tsawout Lands Register

- 25.1 Council will maintain a Tsawout Lands Register in, at a minimum, the same form and with the same content as the First Nation Lands Register.
- 25.2 An Interest in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Tsawout Lands Register. [*amended, June 25, 2013*]
- 25.3 No instrument that requires the consent of Council or approval by the Members may be registered in the Tsawout Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.
- 25.4 Every person who receives an Interest in First Nation Land from a Member will deposit an original copy of the instrument in the Tsawout Lands Register. [*amended, June 25, 2013*]
- 25.4.1 Neither the First Nation, the Council, the Lands Manager, or any First Nation employee shall be liable for ensuring that an instrument that affects or purports to affect First Nation Land:
- (a) is validly made;
  - (b) complies with the Land Code or any Law;
  - (c) should be registered or recorded; or
  - (d) will be accepted for registration or recording in the First Nation Lands Register. [*new, June 25, 2013*]

## First Nation Lands Register

- 25.5 Council will ensure that a duplicate copy of the following instruments is deposited in the First Nation Lands Register:
- (a) a grant of an Interest in First Nation Land;
  - (b) a transfer or assignment of an Interest in First Nation Land;
  - (c) a land use plan or subdivision plan; and
  - (d) this Land Code and any amendment to this Land Code. [*amended, June 25, 2013*]

- 25.6 Notwithstanding section 25.1, nothing precludes Council from enacting a Law providing for maintenance of the Tsawout Lands Register in such other land register system or facility as may meet the requirements of the Tsawout Lands Register.

## PART 7 INTERESTS AND LICENSES IN LAND

### 26. Limits on Interests and Licenses

#### All Dispositions in Writing

- 26.1 An Interest in, or License in relation to, First Nation Land may only be created, granted, disposed of, assigned or transferred by an instrument issued in accordance with this Land Code. [*amended, June 25, 2013*]

#### Standards

- 26.2 Council may, after full and fair consideration of any recommendations made by the Land Management Committee, establish mandatory standards, criteria and forms for Interests and Licenses in First Nation Land.

#### Improper Transactions Void

- 26.3 A deed, lease, contract, document, agreement or other instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an Interest or License in relation to First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

#### Non-Members

- 26.4 Subject to section 26.5, a person who is not a Member may hold an Interest or License in First Nation Land. [*amended, June 25, 2013*]
- 26.5 A person who is not a Member may not hold a Permanent Interest in First Nation Land.

#### Grants to Non-Members

- 26.6 Subject to section 26.7, the written consent of Council must be obtained for any grant or disposition of an Interest or License in First Nation Land to a person who is not a Member. [*amended, June 25, 2013*]
- 26.7 Unless a document creating or disposing of an Interest expressly states otherwise, the following transactions do not require the written consent of Council:
- (a) Sub-Leases; and
  - (b) assignments of Sub-Leases. [*new, June 25, 2013*]

## 27. Existing Interests

### Continuation of Existing Interests

- 27.1 An Interest or License in First Nation Land that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that Interest or License.
- 27.2 For greater certainty, section 27.1 applies to a Permanent Interest in First Nation Land.
- 27.3 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any Interest or License issued or allotted in error, by mistake or by fraud.

## 28. New Interests and Licenses

### Authority to Make Dispositions

- 28.1 Council may under this Land Code grant:
- (a) Interests in Community Land; and
  - (b) Licenses to take Natural Resources from Community Land. [*amended, June 25, 2013*]

### Conditional Grant

- 28.2 The grant of an Interest or License under section 28.1 may be made subject to conditions. [*amended, June 25, 2013*]

### Role of the Land Management Committee

- 28.3 The Land Management Committee will advise Council on the granting of Interests and Licenses and may be authorized to act as a delegate of Council under section 6.4 in the granting of such Interests and Licenses. [*amended, June 25, 2013*]
- 28.4 Council in consultation with the Land Management Committee will develop and enact a Law establishing a process that:
- (a) Sets out the principles and factors that Council must consider when deciding whether to grant or dispose of an Interest or License in Community Land;
  - (b) Requires the Land Management Committee to make a written recommendation concerning all of the following:
    - i. a proposed grant or disposition of an Interest in Community Land for a term of twenty-five years or more;

- ii. a proposed renewal of a grant or disposition of an Interest in Community Land for a term of twenty-five years or more, or that would have the effect of extending the original grant or disposition for a term exceeding twenty-five years;
  - iii. a proposed License to take Natural Resources from Community Land;
  - iv. a proposed Mortgage of a Leasehold in Community Land for a term exceeding twenty-five years; and
  - v. any other proposed grant or disposition that Council, by Resolution, declares to be subject to this section.
- (c) Sets out the authority of Council to grant or dispose of an Interest or License contrary to a recommendation of the Land Management Committee; and
- (d) dispute resolution. [amended, June 25, 2013]

28.5 For greater certainty, an Interest under paragraph 28.4(b)(i) includes a Permanent Interest. [new, June 25, 2013]

## **29. Permanent Interests**

### Application

- 29.1 This section applies to Certificates of Possession allocated under the *Indian Act* and to equivalent tenures that create a Permanent Interest under this Land Code.
- 29.2 Subject to section 26, a Permanent Interest in respect of a parcel of land is an interest that entitles the Member holding that interest to:
- (a) permanent possession of the land;
  - (b) develop and benefit from the Natural Resources of the land;
  - (c) grant subsidiary Interests in the land, including Leaseholds, Permits and Easements;
  - (d) transfer, devise or otherwise dispose of the land to another Member;
  - (e) subject to all Laws, and any applicable laws, grant Licenses to take Natural Resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances; and
  - (f) any other rights, consistent with this Land Code, that are attached to certificates of possession under the *Indian Act*. [amended, June 25, 2013]

- 29.3 Prior to a grant of a Permanent Interest in First Nation Land, the Land Management Committee will review the proposed interest and advise Council and the proposed grantee of the proposed interest as to measures that may be necessary or desirable to:
- (a) protect the interests of the First Nation in respect of the proposed Permanent Interest; or
  - (b) protect the interests of the proposed grantee of the Permanent Interest.

### **30. Allocation of Land**

#### Allocation of Residential Lots

- 30.1 Council may, by lease, rental arrangement or other disposition in accordance with this Land Code, allocate lots of available Community Land to Members for residential purposes.
- 30.2 A person who is not a member may not be allocated a residential lot.
- 30.3 Council may enact Laws providing for Interests in First Nation Land that entitle a Member holding such an interest to:
- (a) benefit from the Natural Resources in and of that land;
  - (b) grant subsidiary Interests and Licenses in that land, including Leaseholds, Permits and Easements; and
  - (c) transfer, devise or otherwise dispose of that land to another Member.  
[amended, June 25, 2013]
- 30.4 Council may issue a certificate of the Interest to a Member for a lot allocated to that Member.

### **31. Transfer and Assignment of Interests**

#### Transfer of Interests

- 31.1 A Member may transfer or assign in writing an Interest held by that Member in First Nation Land to another Member or the First Nation.

#### Consent of Council

- 31.2 Except for transfers or assignments under section 31.1 or section 26.7 and transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under section 35:

- (a) there will be no transfer or assignment of an Interest or License in First Nation Land without the written consent of Council; and
- (b) the grant of an Interest or License is deemed to include section 31.2(a) as a condition of any subsequent transfer or assignment. [*amended, June 25, 2013*]

31.3 For greater certainty, section 31.2 does not apply to a Permanent Interest.

Ceasing to be a Member

31.4 A person who ceases to be a Member shall within six months of ceasing to be a Member transfer any Permanent Interest that he or she holds to the First Nation or to another Member. [*new, June 25, 2013*]

31.5 Where a Member does not transfer his or her Permanent Interest in accordance with section 31.4 the Permanent Interest shall, six months and one day after the person ceases to be a Member, be cancelled and the Interest shall revert to the First Nation. [*new, June 25, 2013*]

31.6 Where a Permanent Interest reverts to the First Nation under section 31.5, the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any Interest he or she held prior to the date that the Permanent Interest reverts to the First Nation. [*new, June 25, 2013*]

## **32. Limits on Mortgages, Seizures and Tax**

Protections

32.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to First Nation Land.

Mortgage of Member's Interest

32.2 The Permanent Interest of a Member in First Nation Land under section 29 may be subject to a mortgage or charge only to the First Nation.

Mortgages of Leasehold Interests with Consent

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

Time Limit

32.4 The term of a charge or mortgage of a Leasehold will not exceed the lesser of:

- (a) the term of the lease;
- (b) 25 years; or

- (c) such other period as may receive approval in accordance with the process established pursuant to a Law enacted under section 28.4. [amended, June 25, 2013]

#### Default in Mortgage

32.5 In the event of default in the terms of a charge or mortgage of a Leasehold, the Leasehold is not subject to possession by the chargee or mortgagee, 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 received approval by the Members where required;
- (c) the charge or mortgage was registered in the Tsawout Lands Register; and
- (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.

32.6 For greater certainty, section 32.5 applies to a charge or mortgage between Members.

#### Power of Redemption

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

### **33. Residency and Access Rights**

#### Civil Remedies

33.1 Subject to a Law enacted under section 6.2(n) all civil remedies for trespass are preserved.

#### No Obligation on the First Nation

33.2 A right of residence or access does not imply any financial obligation on the part of the First Nation.

#### No Liability on the First Nation

33.3 No liability is imposed upon the First Nation in respect of any person exercising a right of access in accordance with this Land Code for injuries or damages suffered on account of the condition or state of First Nation Land.

### 34. Transfers on Death or Mental Incompetence

Right of Widow or Widower

34.1 In the event that:

- (a) a Member holding an Interest in First Nation Land dies intestate and is survived by a Spouse or dependant who does not hold a Registered Interest in that land; or
- (b) a Member holding an Interest in First Nation Land is declared incompetent due to mental incapacity,

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's Interest is disposed of under this section.

34.2 A Spouse or dependant referred to in section 34.1, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's Interest, and Council will, subject to this Land Code, decide the application on its merits.

Recommendation of Family Members

34.3 In the event that:

- (a) no other provision has been made by a Member referred to in section 34.1 for the disposition of the Interest in the First Nation Land;
- (b) the Member's Spouse or dependant does not within a reasonable time make application under section 34.2; or
- (c) a member of the Member's Immediate Family disputes the continued residence on or use of the land by the Member's Spouse or dependant,

Council will take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Panel if requested, recommend who among them is to receive the Interest in the land.

34.4 If a Member referred to in section 34.1 has no Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the Interest, Council will decide who is to receive the Interest and may consult the Member's Extended Family or call a Meeting of Members to provide advice on the disposition of the Interest.

34.5 Subject to this Land Code, Council will make best efforts to implement a recommendation made under section 34.3 or 34.4.

34.6 For greater certainty, nothing in sections 34.1 to 34.5, both inclusive, is intended to affect the ability of a Member's spouse or dependant to dispose of assets or improvements other than the Member's Interest in First Nation Land.

### **35. Spousal Property Law**

#### Development of Rules and Procedures

35.1 Within twelve months after the date this Land Code comes into effect Council will enact a spousal property Law prescribing rules and procedures applicable on the breakdown of a marriage to:

- (a) the use, occupancy and possession of First Nation Land; and
- (b) the division of Interests in that land.

#### Enactment of Rules and Procedures

35.2 The rules and procedures contained in the spousal property Law will be developed by the Land Management Committee in consultation with the community.

#### General Principles

35.3 The rules and procedures developed by the Land Management Committee under section 35.2 will take into account the following general principles:

- (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home;
- (b) the Spouses should resolve spousal property matters by contract or agreement;
- (c) each Spouse should have an equal right to possession of the matrimonial home;
- (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
- (e) the rules and procedures will not discriminate on the basis of sex; and
- (f) only Members are entitled to hold a spousal interest in First Nation Land or a charge against a spousal interest in First Nation Land.

#### Interim Law

35.4 Council may enact an interim spousal property Law at any time within the twelve month period prescribed in section 35.1.

- 35.5 A Law enacted under section 35.4 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 35.1.

## **PART 8 DISPUTE RESOLUTION**

### **36. Intent**

- 36.1 The intent of this Part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy First Nation Land:
- (a) do so harmoniously with due respect for the rights of others and of the First Nation; and
  - (b) have access to First Nation procedures to resolve disputes.

#### Informal Discussions

- 36.2 The First Nation intends that wherever possible, a dispute in relation to First Nation Land will be resolved through informal discussion by the parties to the dispute and nothing in this Part will be construed to limit the ability of any person to settle a dispute without recourse to this Part.

#### Staged Processes

- 36.3 The First Nation further intends that a dispute in relation to First Nation Land that is not resolved by informal discussion will, except as otherwise provided, progress in sequence through the following stages provided for in this Part:
- (a) facilitated discussions;
  - (b) mediation;
  - (c) hearing by the Dispute Resolution Panel; and
  - (d) arbitration.

#### Who May File A Dispute

- 36.4 The following persons may file a Notice of Dispute under this Part:
- (a) a Member who claims an Interest in First Nation Land based on a Registered Interest;

- (b) a person who has a dispute with another person or with the First Nation in relation to the possession, use or occupation of First Nation Land;
- (c) the First Nation when asserting an Interest in First Nation Land; and
- (d) the First Nation when disputing the possession, use or occupation of First Nation Land.

36.5 For greater certainty, disputes that originated before this Land Code comes into effect may be decided under this Part.

#### Dispute Resolution Not Available

36.6 Dispute resolution is not available under this Part for disputes in relation to:

- (a) decisions relating to housing allocation;
- (b) decisions of Council to grant or refuse to grant an Interest or License in First Nation Land; or
- (c) any dispute to which a spousal property law enacted under section 35 applies. [amended, June 25, 2013]

#### Duty of Fairness

36.7 All persons involved in a dispute under this Part must 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

36.8 Council may prescribe such rules, policies, procedures, forms and reasonable fees not inconsistent with this Land Code, as may be necessary to give effect to this Part including implementation of recommendations of the Panel made under section 41.6;

#### Civil Remedies Preserved

36.9 Nothing in this Part will be construed to prevent a party to a dispute from applying to have the dispute resolved in a court of competent jurisdiction.

36.10 A party to a dispute may not commence proceedings under section 36.9 unless:

- (a) proceedings under this Part have been completed; or

- (b) the parties to the dispute have consented.

Challenge to Validity of Law

- 36.11 Nothing in this Part will be construed to prevent a party to a dispute from challenging the validity of a Law in a court of competent jurisdiction.

Appeal of Decision

- 36.12 Subject to any exception established by Law a decision of the Panel may be appealed to the Federal Court of Canada.

**37. Dispute Resolution Panel**

Panel to be Established

- 37.1 Council will within 60 days of the coming into effect of this Land Code establish a Dispute Resolution Panel.

Panel Members

- 37.2 The Panel will be composed of seven Members, no less than four of whom must be Eligible Voters and no more than three of whom must be non-Members.
- 37.3 Council and the Land Management Committee may, for the purpose of identifying members of a Panel, establish an eligibility list from which members of a Panel may be appointed to hear a dispute.

Chair of the Dispute Resolution Panel

- 37.4 The Panel will select one of its members to act as Chair of the Panel.

Term of Office

- 37.5 For the first Panel established under this Part, Council will, upon the recommendation of the Land Management Committee, appoint three members for a term of two years and four members for a term of four years.
- 37.6 Thereafter, appointments to the Panel will be for a term of four years provided that if an appointment is made to replace a Panel member who is unable or unwilling to complete a term, the appointment will be made for the remainder of the term of the Panel member being replaced.
- 37.7 Council will, upon the recommendation of the Land Management Committee, appoint or re-appoint members of the Panel at least thirty days prior to the expiry of the term of the member of the Panel whose term is the subject of the appointment or re-appointment.

Advisors, Mediators and Arbitrators

37.8 Council, upon the recommendation of the Land Management Committee may appoint or contract with expert advisors, mediators, arbitrators, professionals or other Persons to assist in resolving disputes under this Part.

### **38. Procedure to File a Dispute**

38.1 A person who wishes to resolve a dispute with another person or the First Nation in relation to the possession, use or occupation of First Nation Land may file a written Notice of Dispute with the Lands Manager setting out:

- (a) the nature of the dispute;
- (b) the facts and supporting arguments upon which the Person filing the Notice of Dispute relies; and
- (c) the relief that is sought.

#### Limitation Period

38.2 A Notice of Dispute must be filed within thirty days of the Person filing the Notice of Dispute becoming aware of the decision, act or omission being disputed.

38.3 Section 38.2 does not apply to disputes under section 36.5.

### **39. Facilitated Discussions**

#### First Stage Procedure

39.1 Within 30 days of receiving a Notice of Dispute under section 38.1 the Lands Manager will prepare and deliver a report on the dispute and a copy of the Notice of Dispute to the Chair of the Panel.

39.2 As soon as practicable after receiving a report and Notice of Dispute under section 39.1 the Chair of the Panel or, at the request of the Chair of the Panel, another person not affected by the dispute and designated by the Chair of the Panel for that purpose, will make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

#### Timing

39.3 In setting the date and time of the meeting referred to in section 39.2 the Chair of the Panel or other person appointed for the purposes of section 39.2 may consider any need to:

- (a) obtain further information;

- (b) give notice of the dispute to others who have or may have an interest in the dispute; or
- (c) obtain professional advice in relation to the dispute.

39.4 Where the Chair of the Panel or other person appointed under section 39.2 concludes that the dispute cannot be resolved through facilitated discussions, he may in his sole discretion direct that the dispute proceed to mediation or hearing by the Panel.

#### **40. Mediation**

##### Appointment

- 40.1 A mediator will be selected jointly by the parties to the dispute and the Panel.
- 40.2 If the parties to the dispute and the Panel are unable to agree on a mediator, the Panel will hear the dispute.

##### Authorities

- 40.3 A mediator has no jurisdiction to decide the dispute without the agreement of the parties to the dispute.
- 40.4 At the conclusion of mediation, the mediator will submit a written report on the mediation proceedings to the parties to the dispute and the Panel.

#### **41. Hearing by Dispute Resolution Panel**

##### Hearing of Disputes

- 41.1 If a dispute is not resolved by mediation, the Panel will hear the dispute at a place and time to be determined by the Panel.

##### Hearing Procedures

- 41.2 Unless otherwise provided in this Part, the Dispute Resolution Panel will establish procedures consistent with this Land Code for hearing disputes by the Dispute Resolution Panel.

##### Hearing by Three Members

- 41.3 A dispute will be heard by three members of the Panel who have no interest or conflict of interest in the dispute, selected as follows:
- (a) one Panelist appointed by each of the primary parties to the dispute from among the Eligible Voters listed on the eligibility list; and

- (b) one Panelist selected by the Panelists appointed under section 41.3(a) from among the non-Members listed on the eligibility list, who will act as the chair of the Panel.

41.4 Where the Parties to a dispute are unable to agree on an appointment under section 41.3(a) or the appointees are unable to agree on a chair under section 41.3(b), the appointment or chair, as the case may be, will be decided by an Arbitration Panel under this Part.

#### Decision-making Authority

41.5 The Panel may, after hearing a dispute:

- (a) confirm in whole or in part the decision that is the subject of the dispute;
- (b) reverse in whole or in part the decision that is the subject of the dispute;
- (c) substitute its own decision for the decision in dispute;
- (d) direct that an action be taken or ceased;
- (e) refer the subject of the dispute for reconsideration by the decision maker;
- (f) make an order to give effect to its decision, including any necessary order for the survey of an Interest in First Nation Land, the registration of an Interest in First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order; or
- (g) refer the matter to arbitration under section 42.1.

#### Recommendations by Panel

41.6 In addition to making a determination under section 41.5, the Panel may:

- (a) recommend to Council the suspension of any Law or decision made by Council for such period as may be necessary for Council to reconsider, amend or repeal such law or decision, provided that any amendment or repeal of a Law is made in a manner consistent with this Land Code; or
- (b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

#### Interim Decisions

41.7 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers necessary to preserve the rights of the parties to the dispute or to preserve or protect an Interest in First Nation Land.

Decisions in Writing

41.8 Decisions of the Panel will be in writing.

Decisions Final and Binding

41.9 Subject to section 36.12, a decision of the Panel is final and binding.

Improper Influence

41.10 Any attempt by a person who has filed a Notice of Dispute to improperly influence a decision of the Panel will, in addition to any other remedies which may be available, result in the termination of proceedings under this Part and the matter being disputed will remain in effect as originally decided.

**42. Arbitration Panel**

Referral to Arbitration Panel

42.1 The Panel may refer a matter to an Arbitration Panel where:

- (a) the Dispute Resolution Panel is unable to decide the dispute; or
- (b) the parties to the dispute request that non-Members resolve the dispute.

Conditions

42.2 The Panel may not refer a matter to an Arbitration Panel unless all parties to the dispute agree:

- (a) to share equally in the costs of the Arbitration Panel; and
- (b) to be bound by the decision of the Arbitration Panel.

Arbitration Panel

42.3 An Arbitration Panel will consist of three panel members selected as follows:

- (a) one panel member selected by each party to the dispute, or where there are more than two parties to a dispute, by the two principal parties to the dispute;
- (b) one panel member agreed to by all parties to the dispute, who will sit as the Chair of the Panel.

Other Evidence

42.4 An Arbitration Panel may hear and consider evidence from an expert advisor, professional or other Person.

Decision-making Authority

42.5 The Arbitration Panel may, after hearing a dispute:

- (a) make any decision that the Panel may make under section 41.5; and
- (b) make any recommendation that the Panel may make under section 41.6.

Reasons for Decisions

42.6 The Arbitration Panel will give written reasons for their decision within thirty days after the date of the decision.

Binding Decisions

42.7 Subject to section 36.12, a decision of the Arbitration Panel is final and binding.

**43. Disputes by the First Nation**

Lands Management Committee

43.1 Where the First Nation disputes the possession, use or occupation of First Nation Land, the Land Management Committee will conduct the dispute resolution proceedings under this Part.

Land Management Committee to report

43.2 Upon conclusion of proceedings under this Part, the Land Management Committee will report upon the proceedings and decisions to a Meeting of Members in the annual report.

Civil Proceedings Only

43.3 For greater certainty, the authority of the Land Management Committee under section 43.1 relates only to proceedings under this Part and not to the prosecution of an offence under a Law.

No time limit

43.4 Section 38.2 does not apply to the First Nation in a dispute under section 43.1.

Costs

43.5 Unless otherwise ordered or provided in this Land Code the Parties to a dispute will bear their own costs.

## PART 9 OTHER MATTERS

### 44. Liability

#### Liability Insurance

- 44.1 Council will arrange for, maintain and pay insurance coverage for:
- (a) liability of the First Nation in relation to First Nation Land; and
  - (b) the First Nation's officers and employees engaged in carrying out any matter related to First Nation Land to indemnify them against personal liability for acts done in good faith arising from those activities.

#### Extent of Coverage

- 44.2 Council will determine the extent of insurance coverage under section 45.1.
- 44.3 Every employee of the First Nation whose responsibilities include administration of First Nation Land or collecting or accounting for revenue from First Nation Land must be bondable.

### 45. Offences

#### Application of the Criminal Code

- 45.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code and under a Law.

#### Justices of the Peace

- 45.2 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

#### Courts

- 45.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or the British Columbia Supreme Court, as the case may be.

### 46. Amendment

#### Approval by Members

- 46.1 Amendment of this Land Code must receive approval by Ratification Vote.

**47. Commencement**

Coming into Effect

47.1 This Land Code will come into effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada by a Ratification Vote; and
- (b) this Land Code has been certified by the verifier in accordance with the Framework Agreement.

Effective Date

47.2 This Land Code will come into effect on the later of:

- (a) the first day of the month following certification of this Land Code by the verifier;  
or
- (b) the date the Individual Agreement is executed by Canada.

**SCHEDULE A**

**INTERIM LAND MANAGEMENT COMMITTEE**

**(Section 23.3)**

**CHAIR**

Helen JACK

**FAMILY REPRESENTATIVES**

**VOTING REPRESENTATIVES**

**ALTERNATES**

Lou CLAXTON  
Vernon HARRY  
Richard HORNE  
Helen JACK  
Irvine JIMMY  
Herb PELKEY  
Jeannie SAM  
Willie THOMAS  
Harvey UNDERWOOD  
Tony UNDERWOOD  
Ralph UNDERWOOD  
Joey PELKEY, Sr.

Belinda CLAXTON (Co-chair)  
Ernie HARRY  
Karen HARRY  
Samantha ETZEL  
Kevin WILSON  
Frank PELKEY  
Stan SAM  
Cecelia THOMAS  
Floyd UNDERWOOD  
Gus UNDERWOOD  
Bruce UNDERWOOD  
Joey PELKEY, Jr.

***EX-OFFICIO***

Chief Allan CLAXTON



**STÁUTW (TSAWOUT) FIRST NATION  
SUBDIVISION, DEVELOPMENT AND SERVICING LAW  
No. 02-2012**

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**WHEREAS:**

- A. The members of the STÁUTW First Nation have in common inherent rights, customs, and traditions and the inherent right to self-government which are recognized in the Douglas Treaty and affirmed by Section 35 of the *Constitution Act*, 1982;
- B. The STÁUTW First Nation also chose to assume control of its Indian reserve lands and resources pursuant to the *First Nation Land Management Act*, S.C. 1999, c. 24 by entering into the Individual Agreement on First Nation Land Management between Tsawout First Nation and Her Majesty the Queen in Right of Canada, and by adopting the Tsawout First Nation Land Code, which came into force and effect on May 29, 2007; and
- C. Under the *Tsawout First Nation Land Code*, the Council is authorized to make laws respecting the development, conservation, protection, management, use and possession of First Nation Land, including without limitation, laws relating to development, provision of local services, imposition of user charges, and authorization of subdivisions.

**NOW THEREFORE this Tsawout First Nation Subdivision, Development and Servicing Law is hereby enacted as a Law of the Tsawout First Nation.**

**PART 1. NAME**

- 1.1 This Law may be cited as the *Tsawout First Nation Subdivision, Development and Servicing Law, No. 02-2012*.

**PART 2. PURPOSE**

- 2.1 The purpose of this Law is to promote environmentally sustainable, healthy, safe, convenient and well-planned use of First Nation Land.

**PART 3. WHERE THIS LAW APPLIES**

- 3.1 The provisions of this Law apply to the whole area of First Nation Land as defined in the *Tsawout First Nation Land Code*.

**PART 4. DEFINITIONS**

- 4.1 For the purposes of this Law, and unless they are otherwise defined in this Law, terms have the same definitions as in the *Tsawout First Nation Land Code*.

4.2 For the purposes of this Law, the following definitions apply:

"Lands Manager" means the Tsawout First Nation employee responsible for the administration of First Nation Land, or a person authorized by Council to act as his or her delegate;

"Law" means this *Subdivision, Development and Servicing Law, 02-2012*, and includes its Schedules;

"MMCD" means Master Municipal Construction Documents as prepared by the Master Municipal Construction Documents Association;

"Person" means any natural person, corporation, and, except where stated otherwise, any person who is a Member of the First Nation;

"Registered Professional" has the same definition as in the *British Columbia Building Code*;

"Tree" means a living, erect, self supporting woody plant that is 5 metres or more in height or 10 centimeters in diameter or greater at 1.4 metres above the ground at the base of the tree and any *Arbutus (Arbutus menziesii)* of any size.

## **PART 5. GENERAL PROVISIONS**

5.1 Headings in this Law are for reference purposes only, and do not form part of this Law.

5.2 In the event that all or any part of any Part, section or paragraph of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.

5.3 In this Law, references to a Part (e.g. Part 1), section (e.g. section 1.1), paragraph (e.g. paragraph 3.4(a)) is a reference to the specified Part, section, or paragraph of this Law, except where otherwise stated.

## **PART 6. SUBDIVISION, DEVELOPMENT AND SERVICING**

### *Prohibited Activities without Authorization*

6.1 None of the following are permitted within First Nation Land except in strict conformity with the requirements of this Law and any other applicable Laws:

- (a) subdivision;
- (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares;
- (c) development;

- (d) installation of roads, intersections, sewer, water and other infrastructure or connection to any existing roads or infrastructure for the purpose of new development;
  - (e) construction, alteration, enlargement, addition, demolition or removal of industrial, commercial or residential structures, including the installation, demolition or removal of swimming pools, fences and decks;
  - (f) deposit or removal of more than 10 cubic metres of soil, gravel or other materials; and
  - (g) cutting, removal or alteration of any Tree.
- 6.2 Without limiting the generality of section 6.1, the following are prohibited:
- (a) subdivision or partitioning of one or more parcels of First Nation Land without subdivision approval by Council in accordance with this Law;
  - (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares without approval by Council;
  - (c) construction or use of a street access or exit driveway that is within 7.5 metres of the point of intersection of the road allowance lines of two streets or a street and a lane when such road allowance intersects at an angle of 135° or less; and
  - (d) carrying out any of the activities set out in paragraphs 6.1 (c), (d), (e) or (g) without a Development Permit.
- 6.3 Despite sections 6.1 and 6.2, and unless they are to be constructed, carried out, or installed within 30 metres of a water body, or they involve the likely release of a polluting substance into a water body, the following do not require any approvals under this Law in and of themselves:
- (a) construction, alteration, enlargement, addition, demolition or removal of any structure the footprint of which is and remains less than 20 square metres;
  - (b) construction or finishing of trails, driveways, or internal roads for single family residential sites on which the internal road or driveway is completely within a single parcel of land;
  - (c) landscaping and minor yard work which does not require an excavation deeper than 1.5 metres or the removal or deposit of more than 10 cubic metres of soil, gravel or other material; and
  - (d) installation of trailers and temporary structures provided such trailers and temporary structures have no hook-ups or connections to services.

## **PART 7. APPLICATIONS AND APPROVALS**

- 7.1 Every applicant applying for an approval to carry out a project, development, activity or procedure set out in section 6.1 or 6.2 shall pay the prescribed fees and submit an application to the Lands Manager in the prescribed form that meets the applicable requirements set out in the following:
- (a) Schedule A - General Engineering Requirements for Land Development on First Nation Land;
  - (b) Schedule B - General Requirements for Environmental Assessments on First Nation Land;

- (c) Schedule C - General Requirements for Heritage Assessments on First Nation Land;
- (d) Schedule D – General Requirements for Timber Harvesting on First Nation Land;
- (e) the British Columbia Building Code (including a completed Schedule B forming part of Subsection 2.2.7, Division C of the British Columbia Building Code); and
- (f) In any directions from Registered Professionals.

- 7.2 Applications shall be reviewed and processed in stages, generally in the following order:
- (a) Rezoning (if required under any applicable Tsawout zoning and land use law);
  - (b) Subdivision;
  - (c) Approval in Principle of Conceptual Plan;
  - (d) Development Permit Approval;
  - (e) Substantial Completion; and
  - (f) Completion.

- 7.3 Applicants shall pay the prescribed fee, post any required bonds, and submit the prescribed application form for each relevant stage set out in this Part.

#### *Concurrent Re-zoning Applications*

- 7.4 An applicant may apply for approvals under this Law concurrently with a re-zoning application under any applicable Tsawout zoning or land use law. In the case of concurrent applications:
- (a) all fees payable under both Laws are due at the time of application; and
  - (b) the applicant is required to provide completed applications under both Laws.

#### *Single Family Exemptions*

- 7.5 Despite paragraph 7.1(c), a heritage assessment is not required for construction, alteration, enlargement, addition, demolition or removal of single family homes for Tsawout Members unless the proposed activity requires an excavation deeper than 1.5 metres and/or the deposit or removal of more than 10 cubic metres of soil, gravel or other materials.

#### *Review by Land Management Committee and other Departments*

- 7.6 As soon as practicable after receiving the prescribed fees and a complete application under this Part, the Lands Manager shall:
- (a) refer the application to a meeting of the Land Management Committee along with all relevant information and documentation;
  - (b) circulate the application and all relevant information and documentation to internal Tsawout departments for comment;
  - (c) for applications for subdivisions, multi-family structures, or significant increases in density, refer the application to all adjacent Permanent Interest holders on First Nation Land; and

(d) if appropriate, refer aspects of the application to the District of Central Saanich.

- 7.7 The Land Management Committee or Lands Manager shall review the application and shall provide recommendations to Council about:
- (a) whether the application should be approved or not; and
  - (b) any suggested modifications, terms or conditions that should be set by Council.

#### *Principles and Factors in Reviewing Applications*

- 7.8 For each application, the Land Management Committee shall consider the following general principles and factors:
- (a) the promotion of health, safety, convenience and welfare of Tsawout members and of residents and occupants and other persons who have a lawful interest in First Nation Land;
  - (b) well-planned and orderly development of First Nation Land and the preservation of amenities and special features of First Nation Land;
  - (c) compliance with any applicable Tsawout land use plan, Tsawout zoning and land use law, other Tsawout Law, and applicable federal, provincial and municipal laws and standards;
  - (d) environmental protection and enhancement;
  - (e) adherence to Tsawout housing policies;
  - (f) provision of community benefits including land and/or funds to Tsawout for the development of community amenities;
  - (g) protection and enhancement of cultural and heritage resources and sites;
  - (h) compatibility with Tsawout and Saanich culture;
  - (i) viewscales, aesthetics and visual qualities;
  - (j) ensuring adequate parking, access and emergency access;
  - (k) the character of the proposed activity or project in relation to the character of the zone, neighbourhood, and the buildings already erected;
  - (l) the conservation of property values;
  - (m) potential impacts on adjacent uses, owners and occupants;
  - (n) the development of the zone, neighbourhood and Reserve in a manner that contributes to the economic, environmental, cultural and community health of Tsawout and its Members and the occupants of Tsawout Land;
  - (o) any information provided and any approvals already granted by Council, including any terms or conditions, in relation to the same project or the same parcels of land; and
  - (p) any other factors which may have an impact on the community or First Nation Land.

#### *Examples of Recommendations*

- 7.9 In making recommendations to Council, the Land Management Committee may make any relevant recommendations including:
- (a) any recommendation relating to the general factors set out in section 7.8;

- (b) whether there should be bonds, deposits or irrevocable letters of credit posted by the applicant and, if so, in what percentage or amount;
- (c) dedication of up to 5% of the area included in the application for parks, greenspace or community use or a cash donation or other contribution in lieu;
- (d) preferred lot reconfigurations to ensure viable subdivisions;
- (e) construction of intersections, access and emergency access routes;
- (f) construction of parking spaces;
- (g) construction of sidewalks;
- (h) purchase and installation of street lights;
- (i) completion of servicing agreements with the District of Central Saanich;
- (j) provision of updated plans, reports or studies, including as-built drawings after the completion of the project;
- (k) requirements for staging or sequencing of the project including requirements for interim reports;
- (l) set-backs or buffers including set-backs or buffers from property lines and environmental features;
- (m) noise and dust prevention or mitigation measures; and
- (n) any other relevant terms or conditions.

7.10 The Lands Manager shall ensure that recommendations from the Land Management Committee are written up within 7 days after the Land Management Committee meeting.

*Lands Manager May Request Further Information*

7.11 After reviewing the recommendations from the Land Management Committee and any comments received pursuant to section 7.6, the Lands Manager may request further information, plans, reports, or other relevant material from the applicant which the applicant shall provide.

*Timelines*

7.12 The Lands Manager shall as soon as practicable after having received the comments under section 7.6 and 7.7, or within 7 days of having received the additional information requested under section 7.11, forward the application to Council along with:

- (a) all relevant documents, maps, plans, reports and other information;
- (b) recommendations from the Land Management Committee;
- (c) any comments received from adjacent land-owners, interest-holders or Members;
- (d) any comments or recommendations from the Lands Manager and other Tsawout managers or departments; and
- (e) any comments from the District of Central Saanich.

### *Council Decisions*

- 7.13 As soon as practicable after receiving the application and information set out in section 7.12, Council shall decide whether or not to approve the application and, without limiting the generality of Council's authority, Council may:
- (a) reject the application; or
  - (b) approve the application with any reasonable terms or conditions, including, but not limited to terms or conditions relating to the items set out in sections 7.8 and 7.9.

### *Notice of Completion*

- 7.14 The Lands Manager shall not issue a Notice of Completion until:
- (a) the Tsawout lands department has received final as-constructed drawings and plans in digital form and to MMCD standards;
  - (b) each Registered Professional of record for the project has completed Schedule C-B forming part of subsection 2.2.7, Division C of the British Columbia Building Code;
  - (c) water and sanitary sewer connection permits have been issued;
  - (d) the proponent and Registered Professional has certified that any conditions of the Development Permit have been complied with; and
  - (e) the applicant has fulfilled all other reasonable requirements of the First Nation.

## **PART 8. OFFENCES, PENALTIES AND ENFORCEMENT**

### *Penalties*

- 8.1 A person who contravenes this Law, the terms or conditions of an authorization issued under this Law, or an order made by a Court pursuant to this Law, is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than three months, or to both.
- 8.2 A fine payable under paragraph 8.1 shall be remitted to the Tsawout First Nation by the Court, after reasonable Court costs have been deducted.

### *Enforcement and Stop Work Orders*

- 8.3 The Lands Manager and any Tsawout contractor or employee acting under his or her authority may, at all reasonable times, enter upon any property for the purpose of administering and enforcing this Law. No person shall prevent or obstruct, or attempt to prevent or obstruct, the entry of any authorized official upon any property as authorized under this Law.
- 8.4 In addition to any other applicable fine, penalty or remedy, Council or the Lands Manager may at any time:

- (a) issue a Stop Work Order to order any Person who has not received full and proper authorization under this Law to cease carrying out any activity, use or construction listed under section 6.1 or 6.2 or any related activity, use or construction;
- (b) order any structures, works or installations carried out in violation of this Law to be removed within 30 days, failing which Council may order them to be removed or may have them removed at the expense of the Permanent Interest holder or the Person who constructed or installed the structures, works or installations without proper authorization;
- (c) seize and detain any timber, any product manufactured from timber, or any other natural resource when they have reasonable grounds to believe it was not obtained in accordance with the terms of this Law or its Schedules or the terms of any authorization under this Law or its Schedules.

8.5 A Stop Work Order imposed under section 8.4:

- (a) may be registered in Court and enforced as a court order; and
- (b) continues in force until the condition that led to it is remedied or until the activity that is the subject of the Stop Work Order receives a permit or authorization under this Law.

8.6 If materials are seized under section 8.4:

- (a) they may be removed to a place that is appropriate for their protection and, if in the care of a carrier at the time of seizure, the carrier may be directed to move the materials to the place so designated;
- (b) the costs of transportation and other charges incurred in the event of a seizure will be included in the costs of seizure and are chargeable to a party found in breach of this Law; and
- (c) seizure shall not prejudice or affect any lien to which a carrier may be entitled in respect of the materials to the time of such seizure.

## **PART 9. AMENDING PROCEDURES**

### *Substantive Amendments*

9.1 Substantive amendments to this Law may only be made in accordance with section 7 under Part 2 of the Land Code and, if the amendment relates to a matter listed in paragraph 10.1 (a) through (i) of the Land Code, subsection 10.1 under Part 3 of the Land Code.

### *Minor Amendments*

9.2 Despite section 9.1 of this Law, Council may adopt minor amendments to this Law by unanimous decision at a duly convened meeting, and expressed by band council resolution.

9.3 For the purposes of section 9.2, minor amendments include:  
(a) amendments to correct typographical errors;

- (b) amendments required to reference any relevant new or amended First Nation laws;
- (c) amendments ordered by any court of competent jurisdiction; and
- (d) amendments which serve to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.

**PART 10. REPEAL AND OTHER BYLAWS**

- 10.1 The *Tsawout First Nation Land Development Procedures Law*, No. 01-2010 is hereby repealed in its entirety.
- 10.2 The *Tsawout First Nation Waterworks Bylaw No. 2006-2* and the *Tsawout First Nation Sanitary Sewer System Bylaw No. SEW 2005-01* continue in force and effect except to the extent of any inconsistency with this Law, in which case this Law prevails.

**PART 11. COMING INTO FORCE**

*Date Law Comes into Force*

- 11.1 This Law shall come into force and effect on the date it is enacted by Resolution after complying with the requirements of section 7 of Part 2 of the *Tsawout First Nation Land Code*.

**THIS LAW IS HEREBY ENACTED by Council at a duly convened meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2012 at \_\_\_\_\_, British Columbia.**

A quorum consists of **five (5)** Council members.

_____ Chief Harvey Underwood	_____ Councillor Allan Claxton
_____ Councillor Louie Claxton	_____ Councillor Eugena (Samantha) Etzel
_____ Councillor Toby Joseph	_____ Councillor Stanley Sam
_____ Councillor Antoine Underwood	_____ Councillor George Underwood

**STÁUTW (Tsawout) First Nation  
General Engineering Requirements for Land  
Development on First Nation Land**

**SCHEDULE "A"**

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012  
PARAGRAPH 7.1(A)**

To be Approved by Tsawout First Nation Council  
[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION  
GENERAL ENGINEERING REQUIREMENTS FOR LAND DEVELOPMENT  
ON FIRST NATION LAND**

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**STÁUTW (Tsawout) FIRST NATION  
GENERAL ENGINEERING REQUIREMENTS FOR LAND DEVELOPMENT  
ON FIRST NATION LAND**

Tsawout First Nation requires that a Conceptual Design be deemed satisfactory by Tsawout Council and receive an **Approval in Principle** before any development may proceed. A Final Design must be deemed satisfactory by Tsawout Council before the **Tsawout Development Permit** is issued.

Information items to be provided at the **Conceptual Design/ Approval in Principle Design** stage are indicated by **[Conceptual]**, and those to be provided at the **Final Design/ Development Permit** stage are indicated by **[Final]**.

The applicant is advised that the requirements below are general in nature and are meant to be a guide for submission only. It is possible that some listed requirements may be waived and other new requirements may become applicable as more information on the development is submitted. If the applicant or their consultant or agent regards any of the listed items to be not applicable, they may request a waiver and provide sufficient justification to support their request.

The applicant is further advised that a **Tsawout Development Permit** must be obtained before any improvement or construction work on Tsawout First Nation Lands may begin, irrespective of whether or not a lease is applicable or has been executed. Any work constructed before obtaining the **Tsawout Development Permit** is potentially illegal and is done at the applicant's or developer's own risk. If the applicant cannot produce satisfactory evidence to prove that any construction pre-Development Permit meets all Tsawout laws and standards, such work has to be removed and replaced, all at the applicant's own cost.

The below requirements are based on Aboriginal Affairs and Northern Development Canada's (AANDC) requirements with some modifications. Tsawout plans to eventually transition to MMCD-based guidelines and it is recommended that applicants follow MMCD requirements where such requirements exceed those of the *INAC Standards*.

## **GENERAL**

### **1. Professional Seal and Signature [Conceptual and Final]**

All submission reports, designs, drawings, calculations, specifications and technical documents shall bear the seal and signature of a Registered Professional (Professional Engineer or Registered Architect) qualified for the work. Where applicable, each registered professional of record must submit a BC Building Code Schedule B "Assurance of Professional Design and Commitment for Field Review."

- Provided for Conceptual*
- Provided for Final*

## 2. INAC Standards [Conceptual and Final]

State on the design drawings that all work is designed to meet or exceed the higher of *INAC Standards* as defined in the *INAC Codes Standards and Guidelines* and MMCD standards for design drawings. A copy of the *INAC Codes-Standards and Guidelines* is contained in the *INAC General Information Package for Leasing*, or may be obtained from INAC upon request. If work is proposed to be designed to standards other than the *INAC Standards* or MMCD, provide certifications of equivalence from a Registered Professional and obtain pre-approval from Tsawout by providing justifications and a copy of the relevant section of the standard used.

- Provided for Conceptual*
- Provided for Final*

## 3. General Plans [Conceptual and Final]

Provide:

1. a Location Plan showing the geographical area of the proposed development and surrounding roads, highways and topographic features;
  - Provided for Conceptual*
  - Provided for Final*
2. a Layout Plan showing the Lease Area and legal description of the lands to be developed and the boundaries of the Tsawout First Nation Reserve and an outline of the footprint proposed development, and
  - Provided for Conceptual*
  - Provided for Final*
3. a detailed Site Plan showing all existing and proposed works, buildings, streets, lanes, highways, intersections, driveways, parking and loading areas, sidewalks, street lighting, utilities and utility easements, streams and other topographic features of the site.
  - Provided for Conceptual*
  - Provided for Final*

## 4. Geotechnical Assessment [Conceptual]

Provide a geotechnical assessment to verify the viability of the development on site. Include the existing and proposed grades and their relations to the elevations on adjoining properties, and details of any necessary excavations.

- Provided for Conceptual*

## 5. Off-Site Work [Conceptual and Final]

If work relating to the development is required to be constructed outside of the Lease Area or will encroach onto private or other CP properties, obtain rights-of-way or other legal permissions to accommodate the work. Show such rights-of-way or other permissions on design drawings.

- Provided for Conceptual*
- Provided for Final*

## **BUILDING**

### **6. Building Plans [Conceptual and Final]**

Provide conceptual plan and elevations of proposed buildings *[Conceptual]* and detailed design drawings of architectural, structural, mechanical, plumbing, fire protection and electrical works *[Final]*.

- Provided for Conceptual*
- Provided for Final*

### **7. Schedule [Conceptual]**

Provide a proposed schedule of construction and an estimated start and completion date.

- Provided for Conceptual*

### **8. Professional Certifications [Final]**

Provide copy of relevant signed and sealed BC Building Code Schedules A, B-1 and B-2, or equivalent letters of assurance, on architectural, structural, mechanical, plumbing, fire suppression systems, electrical and geotechnical works for the proposed buildings.

- Provided for Final*

## **WATER SERVICE**

### **9. Conceptual Water Design [Conceptual]**

Indicate domestic and fire flow requirements, and the proposed water source to meet these demands. Indicate the minimum fire flow available to the development and the minimum pressure available under Maximum Day Plus Fire Flow conditions.

- Provided for Conceptual*

### **10. Conceptual Water Design Drawings [Conceptual]**

Provide conceptual design drawings to show the existing and the proposed water works to service the development.

- Provided for Conceptual*

### **11. Water Supply from Own Well [Conceptual]**

Water supply from the development's own well is only permitted for agricultural/landscaping uses. Domestic and fire flow needs must be met through water supply from an existing water distribution system (see 13).

- Provided for Conceptual*

### **12. Water Supply from Surface Water [Conceptual]**

Water supply from a surface water body is only permitted for agricultural/landscaping uses. Domestic and fire flow needs must be met through water supply from an existing water distribution system (see 13).

- Provided for Conceptual*

**13. Water Supply from Existing System [Conceptual]**

Verify by network analysis calculations or other means that the existing water distribution system has the capacity to deliver the required domestic and fire flow to the development.

- Provided for Conceptual*

**14. Hydrant Locations [Conceptual]**

Indicate sufficient hydrants on the conceptual design drawings such that no current or future proposed building is more than 75 m from a hydrant.

- Provided for Conceptual*

**15. Watermain Looping [Conceptual]**

Loop watermains whenever possible to provide redundancy and improve fire flow.

- Provided for Conceptual*

**16. Water Service Agreement – where connecting to a water system other than the Tsawout First Nation water service [Conceptual and Final]**

Provide letter of intent or draft servicing agreement [*Conceptual*] and signed servicing agreement [*Final*] with the owner of the existing water system for providing water service to the development.

- Provided for Conceptual*
- Provided for Final*

**17. Water Service Permit – where connecting to Tsawout First Nation’s water service [Final]**

Provide completed application for a Water Service Permit as required under the *Tsawout First Nation Waterworks Bylaw No. 2006-2*, as amended from time to time [*Final*] for providing water service to the development. Permit is to be issued once the requirements of the Bylaw have been met.

- Provided for Final*

**18. Decommissioning Plan for Abandoning Existing Well [Conceptual]**

Provide a decommissioning plan if any existing well is to be abandoned.

- Provided for Conceptual*

**19. Detailed Water Design Drawings [Final]**

Provide detailed design drawings for all proposed water works and treatment facilities to service the development. In particular, show details of connection point to an off-site distribution system, horizontal and vertical profiles of watermains, offsets of watermain from reference objects, horizontal and vertical separation with a sewer, material specifications, trench details, water meters, and details of appurtenances such as valves, air valves, chambers, hydrants, thrust blocks and bearing areas.

- Provided for Final*

**20. Disinfection of New Watermain [Final]**

Indicate on design drawing method and procedure for disinfecting a new watermain. Indicate on design drawing method of disposal of chlorinated water after completing watermain disinfection such that aquatic life will not be adversely impacted.

- Provided for Final*

**21. Service Connection Details, Standards and Identification [Final]**

Show on design drawings water service connection details and specify service connections to meet the Canadian Plumbing Code. Specify on design drawings blue marker stakes for identification of any future water service connections.

- Provided for Final*

**SANITARY SERVICE**

**22. Conceptual Sanitary Design Drawings [Conceptual]**

Provide conceptual design drawings to show the existing and the proposed sanitary facilities to service the development. Developments must be serviced by an existing sanitary sewer system.

- Provided for Conceptual*

**23. Sanitary Service from Existing System [Conceptual]**

Verify, through network analysis calculations or other means, that the existing sewer system has the spare capacity to service the development.

- Provided for Conceptual*

**24. Sanitary Service Agreement - where connecting to a sanitary sewer system other than Tsawout First Nation sanitary sewer system [Conceptual and Final]**

Provide a letter of intent or draft servicing agreement [*Conceptual*] and signed servicing agreement [*Final*] with the owner of the existing sewer system for providing sanitary service to the development.

- Provided for Conceptual*

- Provided for Final*

**25. Sanitary Sewer Connection Permit - where connecting to the Tsawout First Nation sanitary sewer system [Final]**

Provide a completed Application for Sewer Connection as required under the *Tsawout First Nation Sanitary Sewer System Bylaw No. 2005-01*, as amended from time to time [*Final*] for providing sanitary sewer service to the development. Permit is to be issued once the requirements of the Bylaw have been met.

- Provided for Final*

**26. Oil Separator [Conceptual]**

Provide oil separator (at a standard which meets or exceeds the requirements applicable in the District of Central Saanich) for discharge to either the sanitary or the storm system from restaurants, gas stations, machine shops, and anywhere oil can be discharged or spilled.

- Provided for Conceptual*

**27. Decommissioning Plan for Abandoning Existing Septic Facilities [Conceptual]**

Provide a decommissioning plan if any existing septic facilities are to be abandoned. Plan to meet or exceed standards applicable in the District of Central Saanich.

- Provided for Conceptual*

**28. Detailed Sanitary Design Drawings [Final]**

Provide detailed design calculations and drawings for all proposed sanitary works to service the development. In particular, show horizontal and vertical profiles of the sewers and forcemains, offsets of sewer and forcemain from reference objects, material specifications, sewer slopes, invert elevations, manhole rim elevations, sewer trench details, forcemain thrust block bearing areas, and details of manholes, cleanouts, oil separators, air valves and chambers.

- Provided for Final*

**29. Effluent Permit Limits [Final]**

Verify that the Effluent Quality Parameters discharged to a disposal or reclaimed water use facility do not exceed the *Waste Management Act Municipal Sewage Regulation* limits for the particular facility.

- Provided for Final*

**30. Service Connection Details, Standards and Identification [Final]**

Show on design drawings sewer service connection details. Provide inspection chamber. Specify service connection to meet the Canadian Plumbing Code. Specify on design drawings red marker stakes for identification of any future sewer service connections.

- Provided for Final*

**DRAINAGE**

**31. Stormwater Management Plan [Conceptual]**

Provide a stormwater management plan showing how the post-development Minor (1:2 Year) and Major (1:50 Year) flows are to be managed. Show grading of lot and in-conduit, in-ditch, and overland flow paths. Registered Professional must confirm that the Stormwater Management Plan meets or exceeds the requirements applicable in the District of Central Saanich.

- Provided for Conceptual*

**32. Stormwater Disposal by Drywell [Conceptual]**

If stormwater runoff is proposed to be disposed of by drywells, verify by calculations that the drywells have the capacity to dispose of a Minor (1:2 year) storm flow.

- Provided for Conceptual*

**33. Stormwater Disposal to Surface Water Body [Conceptual]**

If any stormwater runoff is proposed to be discharged into an adjacent surface water body, provide details of sediment control devices and confirm permission with Department of Fisheries and Oceans and Environment Canada.

*Provided for Conceptual*

**34. Stormwater Disposal to Roadside Ditch [Conceptual]**

If any stormwater runoff is proposed to be discharged into an adjacent roadside ditch, confirm permission with the owner of the roadside ditch (either the First Nation, municipal, regional or provincial jurisdiction).

*Provided for Conceptual*

**35. 200 Year Flood Level [Conceptual]**

State on the conceptual design drawing that the building habitable floor slab elevation is not less than 0.6 m above the 1:200 year flood level.

*Provided for Conceptual*

**36. Tidal Surge Elevation [Conceptual]**

State on the conceptual design drawing that the building habitable floor slab elevation is above a safe tidal surge elevation.

*Provided for Conceptual*

**37. Detailed Drainage Design Drawings [Final]**

Provide detailed design drawings for all proposed drainage works servicing the development. In particular, show horizontal and vertical profiles of storm sewers and ditches, offsets of storm sewer from reference objects, material specifications, sewer slopes, invert elevations, manhole rim elevations, trench details, and details of manholes, cleanouts, oil and debris separators, drywells, silt traps and detention ponds.

*Provided for Final*

**TOTAL ESTIMATED COST OF WORKS AND SERVICES**

**38. Total Estimated Cost of Works and Services [Conceptual]**

Provide total estimated cost of works and services excluding off-site works and services which are the subject of a servicing agreement with the District of Central Saanich: \$\_\_\_\_\_

*Provided for Conceptual*

**ROADS, ACCESS AND PARKING**

**39. Parking [Conceptual]**

Provide the estimated number of parking spaces required for the development and the plans to accommodate them. Minimum number of parking spaces and dimensions must be consistent with the requirements applicable in the District of Central Saanich.

*Provided for Conceptual*

**40. Traffic Volume [Conceptual]**

Provide the estimated volume of traffic in trips per day that will be generated by the development, and an analysis of the impact of the traffic to be generated on the use of nearby and adjacent land.

- Provided for Conceptual*

**41. Conceptual Road Design Drawings [Conceptual]**

Provide conceptual design drawings to show the existing and the proposed access and road facilities to service the development, including entry and exit routes and access by fire and emergency vehicles.

- Provided for Conceptual*

**42. Cul-de-Sac Length [Conceptual]**

Limit length of any cul-de-sac to 150 m maximum in consideration of emergency access and deployment of fire fighting equipment.

- Provided for Conceptual*

**43. Utilities in Adjacent or Public Roads [Conceptual]**

If utilities servicing the development are to be laid crossing or within the fronting road allowance, confirm permission with the owner of the fronting road (adjacent CP-holder, Tsawout, the District of Central Saanich, or the provincial government)

- Provided for Conceptual*

**44. Bridge Across Creek [Conceptual]**

Confirm permission from Department of Fisheries and Oceans for access bridge across river or creek.

- Provided for Conceptual*

**45. Access Permit [Conceptual and Final]**

Provide letter of intent [**Conceptual**] and access permit, easement or right-of-way [**Final**] from the owner of the fronting road (adjacent CP-holder, Tsawout, the District of Central Saanich, or the provincial government) for allowing access to the development.

- Provided for Conceptual*
- Provided for Final*

**46. Detailed Parking Design [Final]**

Provide detailed design calculations and drawings for all proposed parking areas and spaces.

- Provided for Final*

**47. Detailed Road Design Drawings [Final]**

Provide detailed design calculations and drawings for all proposed roads and access to service the development.

- Provided for Final*

**48. Road Details [Final]**

Show design speed, horizontal and vertical road profile, vertical curve data, cross sections, intersection details and pavement structure on design drawings.

- Provided for Final*

**49. Signage [Conceptual and Final]**

Show the proposed [*Conceptual*] and actual [*Final*] location, size, height, colour, lighting and orientation of all signs.

- Provided for Conceptual*
- Provided for Final*

**GREENSPACE AND AMENITIES**

**50. Greenspace and Public Amenities [Conceptual and Final]**

Show the proposed [*Conceptual*] and actual [*Final*] location and treatment of parks, green space, common areas, open spaces, trails, landscaping, fences, recreation features and any other public amenities.

- Provided for Conceptual*
- Provided for Final*

**51. Community Services [Conceptual]**

Identify the local community services and public facilities that would be affected by the development, including the projected increase in users of existing community services and public facilities, potential increased costs to Tsawout, and strategies to mitigate any negative impacts to community services and public facilities.

- Provided for Conceptual*

**FUEL HANDLING**

**52. Fuel Storage and Dispensing [Final]**

For gas station development, provide details of fuel storage tanks, connection piping, dispenser pumps, spill containment, alarm system and an emergency response plan.

- Provided for Final*

**FIRE PROTECTION**

**53. Fire Protection Service Agreement [Conceptual and Final]**

Provide letter of intent [*Conceptual*] and service agreement [*Final*] with either Tsawout or the District of Central Saanich for providing fire protection service to the development.

- Provided for Conceptual*
- Provided for Final*

**54. Tsawout's Fire Fighting Capability [Conceptual]**

If fire protection service is to be obtained from Tsawout, verify the existing capability of Tsawout's equipment and resources to respond to and provide fire fighting service to the development.

- Provided for Conceptual*

**UTILITIES**

**55. Utility Service Agreements [Conceptual and Final]**

Provide letter of intent [**Conceptual**] and service agreement [**Final**] with utility companies for electricity, telephone, gas and solid waste disposal services.

- Provided for Conceptual*
- Provided for Final*

**COMPLETION DOCUMENTATION**

**56. Health Canada Permits for Individual Homes [Final]**

Provide written commitment from the Professional Engineer or Registered Architect to provide Health Canada permits for in-ground sewage disposal for individual homes [**Final**]. Actual permits are to be provided as part of the completion documentation.

- Provided for Final*

**57. Restaurant Permit [Final]**

Provide written commitment from the Proponent to provide a copy of Ministry of Health Permit to Operate A Food Service Establishment if kitchen or restaurant service is proposed [**Final**]. Actual permit is to be provided as part of the completion documentation.

- Provided for Final*

**58. Registration of Rights of Way, Permits and Easements [Final]**

Provide written commitment from the Professional Engineer or Registered Architect to provide copies of all registered rights of way plans, permits and easements [**Final**]. Actual plans and proof of registration must be provided as part of the completion documentation.

- Provided for Final*

**59. Registration of Fuel Storage Tanks [Final]**

Provide written commitment from the Professional Engineer or Registered Architect to provide a copy of the registration of all underground storage tanks and exterior aboveground storage tanks larger than 4000 litres [**Final**]. Actual registration documents are to be provided as part of the completion documentation.

- Provided for Final*

**60. Construction Supervision [Final]**

Provide written commitment from the Professional Engineer to provide all necessary construction supervision, inspection, site testing and record keeping during construction of the site work *[Final]*.

*Provided for Final*

**61. O&M Manuals [Final]**

Provide written commitment from the Professional Engineer or Registered Architect to provide Operation & Maintenance Manuals for the electrical and mechanical systems upon completion *[Final]*. Actual Operation & Maintenance Manuals are to be provided as part of the completion documentation.

*Provided for Final*

**62. As-Built Drawings [Final]**

Provide written commitment from the Professional Engineer or Registered Architect to provide accurate as-built drawings upon completion *[Final]*. Actual as-built drawings are to be provided as part of the completion documentation for all buildings, structures, roads, and works.

*Provided for Final*

**63. Completion Report [Final]**

Provide written commitment from the Professional Engineer or Registered Architect to provide a completion report detailing work progress, inspection records, testing results, and problems encountered on site *[Final]*. Actual completion report is to be provided as part of the completion documentation.

*Provided for Final*

**64. Completion Certification [Final]**

Provide written commitment from the Co-ordinating Registered Professional who signed the BC Building Code Schedule A for the building to provide the BC Building Code Schedules C-A and C-B *[Final]*.

*Provided for Final*

Provide written commitment from the Professional Engineer submitting the supporting services plans to provide an Engineer's Certificate certifying that all work is constructed in accordance with approved drawings and specifications *[Final]*.

*Provided for Final*

Actual Schedules C-A and C-B and Engineer's Certificate are to be provided as part of the completion documentation.

*Provided for Final*

**STÁUTW (Tsawout) First Nation  
General Requirements for Environmental  
Assessments on First Nation Land**

**SCHEDULE “B”**

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012 PARAGRAPH  
7.1(B)**

To be approved by Tsawout First Nation Council

[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION  
GENERAL REQUIREMENTS FOR ENVIRONMENTAL ASSESSMENTS ON  
FIRST NATION LAND**

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# THE STÁUTW (TSAWOUT) GENERAL REQUIREMENTS FOR ENVIRONMENTAL ASSESSMENT ON FIRST NATION LANDS

## 1. INTRODUCTION

An environmental assessment 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”

(International Association of Impact Assessment)

An environmental assessment examines effects of proposed Projects on soil, air quality, water quality and supply, vegetation, fisheries, wildlife, traffic, noise, community health, economic development, archaeology and a variety of other social, economic, and environmental topics. An environmental assessment also examines the Cumulative Effects of a proposed Project combined with other past and foreseeable future human activities. Environmental assessments also identify ways of avoiding or reducing adverse Environmental Effects.

An environmental assessment is a planning tool, a means of reviewing the effects of development, a process of community engagement, and an instrument for complying with regulatory requirements.

The STÁUTW (Tsawout) First Nation seeks the following benefits through the conduct of environmental assessment of activities on, or uses of, its lands:

- ❖ Gather information sufficient to enable the Tsawout First Nation to exercise its decision-making authority over use of its lands
- ❖ Identify components of proposed Projects or plans that could adversely affect natural or human environments, the community, or the economy
- ❖ Propose ways of avoiding or minimizing adverse effects on environment, society and culture
- ❖ Improve Project design, construction, and operation
- ❖ Engage the community in the process of reviewing proposed developments
- ❖ Support better development decisions

## 2. DEFINITIONS

- 2.1 Unless otherwise defined in Schedule 1 of these Requirements, definitions in these Requirements have the same meaning as in the *Subdivision, Development, and Servicing Law* and the *Tsawout First Nation Land Code*.

### **3. APPLICATION OF THESE REQUIREMENTS**

- 3.1 These Requirements apply to:
- (a) all Projects to which the *Tsawout Subdivision, Development and Servicing Law, 2012-02* applies;
  - (b) any grant or disposition of a lease, license or permit in First Nation Land which must be approved by Council under section 26.6 of the Land Code;
  - (c) any grant by Council of an interest, licence or permit in Band Land under section 28.1 of the Land Code;
  - (d) land developments on First Nation Land that are approved, regulated, funded or undertaken by the Tsawout First Nation; and
  - (e) preparation of Tsawout First Nation land use plans or regulations that specify proposed uses of land, or changes in land use designations (amendments to subdivision, land use, or zoning plans or regulations) for commercial, industrial, or institutional uses.
- 3.2 As a matter of general application, the scope of an environmental assessment shall be commensurate with the size and complexity of a Project and its potential Environmental Effects.
- 3.3 Nothing in these Requirements limits the Lands Manager's ability to:
- (a) require an environmental assessment as part of a Subdivision Approval, Development Permit or leasing, permitting or licensing process if the Lands Manager determines, in his or her sole discretion, that an environmental assessment is warranted in the particular circumstances; or
  - (b) waive the requirement for an environmental assessment of a Project if the Lands Manager determines that an Environmental Assessment is not warranted in the particular circumstances because the proposed Project clearly does not have the potential to cause adverse Environmental Effects; subject to the powers of Council under section 3.4.
- 3.4 A decision by the Lands Manager to waive the requirement for an environmental assessment is subject to review by Council.
- 3.5 A decision by the Lands Manager to proceed with an environmental assessment is not subject to review by Council.

### **4. PROJECTS AND APPROVALS THAT ARE EXEMPT FROM THE REQUIREMENT FOR AN ENVIRONMENTAL ASSESSMENT**

- 4.1 Environmental assessments are not required under the following circumstances, unless otherwise determined by Council:
- (a) administrative actions that do not affect land or resources;
  - (b) emergency repairs or action needed on an urgent basis to avert or respond to emergencies; or

(c) responses to accidents or threats to public health.

4.2 Consistent with the approach taken by the *Canadian Environmental Assessment Act Exclusion List Regulation*, 2007, an environmental assessment will not be required for a Project proposed to occur on First Nation Land that meets all of the following criteria:

- (a) the affected land is more than 30 meters from a water body, environmentally sensitive area (as shown in the Tsawout *Comprehensive Community Plan* 2011), fish habitat, migratory bird habitat, or land considered important for cultural reasons, including traditional use areas;
- (b) the Project complies with prevailing Tsawout First Nation land use plans, zoning designations, and subdivision regulations;
- (c) for Projects involving construction or expansion of a structure, the Project is on a lot serviced by sewer and water;
- (d) the Project would result in the cutting of not more than 7 Trees of 50 cm diameter or less at 1.4 meters height or not more than 4 Trees of 50 cm diameter or greater at 1.4 meters height and would not result in the clearing of more than 10% of the trees from the individual Lot;
- (e) the Project would not emit or release substances that have the potential to pollute air or water;
- (f) the Project would not result in increases of more than 30 vehicle trips per day to and from First Nation Lands;
- (g) the Project would not add more than 20 residents to First Nation Lands; and
- (h) for commercial or industrial development, the Project would not employ more than 10 people.

4.3 Notwithstanding section 4.2, Council may request an environmental assessment where community members have raised a reasonable concern or where Council believes on reasonable grounds that the Project may have harmful Environmental Effects

## **5. HARMONIZING ENVIRONMENTAL ASSESSMENTS CONDUCTED BY MULTIPLE PARTIES**

5.1 The Tsawout First Nation recognizes that federal departments have statutory requirements to conduct environmental assessments on First Nation Land under the *Canadian Environmental Assessment Act* (CEAA) under certain circumstances, and components of Projects occurring on lands adjacent to the reserve may be subject to assessment under the *British Columbia Environmental Assessment Act* (BCEAA). In an effort to avoid duplication, when the Tsawout First Nation determines that an environmental assessment is required for a Project occurring on its lands, or when other governments inform the Tsawout First Nation that their respective legislation requires conduct of an environmental assessment on Tsawout First Nation land or adjacent to Tsawout First Nation land, then the Lands Manager will make best efforts to schedule a meeting of the parties to seek agreement on the following issues:

- (a) the agency and individual that will be the main contact and coordinator of the environmental assessment for each involved jurisdiction;
  - (b) the common information requirements under the federal, provincial and Tsawout First Nation's environmental assessment processes;
  - (c) the manner by which the parties will develop a specific work plan for each Project undergoing a multi-jurisdictional environmental assessment;
  - (d) how the parties will co-ordinate their environmental assessment decisions and associated regulatory decisions with respect to a Project; and
  - (e) for future Projects, how each party will notify the others when an environmental assessment process is initiated under that jurisdictions' law.
- 5.2 Tsawout First Nation recognizes that under clause 25.6 of the Framework Agreement, the Tsawout First Nation and Canada will make best efforts to ensure the Tsawout First Nation's environmental assessment process will be used where there is overlapping jurisdiction. This priority will be reflected in any environmental assessment harmonization plan developed between the Tsawout First Nation, Canada, and British Columbia under clause 25.7 of the Framework Agreement.

## **6. THE TSAWOUT FIRST NATION ENVIRONMENTAL ASSESSMENT PROCESS**

- 6.1 For most Projects, the procedures outlined in Part 7 will be followed. Council or the Lands Manager may alter or amend steps as appropriate. The Tsawout First Nation environmental assessment process is designed to meet the requirements of the Framework Agreement, including:
- (a) that an environmental assessment is triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a Project on First Nation Land (Clause 25.4 of Framework Agreement, Section 21(3) of FNLMA),
  - (b) the environmental assessment process must be consistent with requirements of the *Canadian Environmental Assessment Act* (Clause 25.3 of Framework Agreement), and
  - (c) environmental assessments must be conducted as early as possible in the planning stages of the Project, before an irrevocable decision is made (Clause 25.4 of Framework Agreement).
- 6.2 For Projects determined to require an environmental assessment, the Proponent must ensure that an environmental assessment is completed before other approvals are considered by the Tsawout First Nation. Such approvals include negotiating impact benefit agreements, or issuing permits under Tsawout First Nation laws. It is recommended that the Proponent complete all required environmental assessments prior to completing any lease or sub-lease agreements.

## 7. ENVIRONMENTAL ASSESSMENT STEPS

### **Step 1: Lands Manager determines whether environmental assessment is required**

- (a) For all Projects identified in Part 3, a detailed Project Description will be prepared by the Proponent and submitted to the Lands Manager. Appendix “A” contains a Project Description template to guide the Proponent’s submission.
- (b) Upon receipt of the Project Description, the Lands Manager may forward, or may direct the Proponent to forward, the Project Description to Aboriginal Affairs and Northern Development Canada, the Lands Advisory Board, Fisheries and Oceans Canada, the Canadian Wildlife Service, the District of Central Saanich, the Capital Regional District, or other government departments or authorities. The involvement of other government departments is based on whether those departments have decisions to make or can contribute expert or specialist advice.
- (c) Using the information contained in the Project Description, the Lands Manager will determine whether an environmental assessment is required. This decision must be made within 20 working days of receipt of a Project Description deemed complete by the Lands Manager and the Proponent will be provided notice of the decision within that time. The Lands Manager may determine that a further 20 working days is required to obtain input from other government departments or authorities who have been forwarded the Project Description and will provide notice to the Proponent within the first 20 day timeframe if further time is required. Under section 3.5, a decision that an environmental assessment is required is not reviewable by Council.
- (d) Under section 3.4, Council may review a determination by the Lands Manager that an environmental assessment is not required for a Project. The Lands Manager will inform Council as soon as practicable of a determination not to require an environmental assessment and provide them with a report setting out the reasons for the determination. Within 15 working days of receiving the Land Manager’s determination, Council will either: 1) confirm the determination of the Lands Manager; or, 2) require an environmental assessment notwithstanding the Lands Manager’s determination. Council may extend this time by 5 working days by providing notice to the Proponent. If further time is required by Council, they will seek agreement with the Proponent on an appropriate timeline for finalizing Council’s decision.
- (e) A determination that no environmental assessment is required under these Requirements does not exempt the Proponent from complying with federal environmental assessment requirements or the need to obtain permits under applicable Tsawout First Nation, federal, or provincial laws and regulations.
- (f) If the Lands Manager determines that a Project requires preparation of a Tsawout First Nation environmental assessment, the Lands Manager will report this determination to the Proponent and Council.

- (g) The Lands Manager will post a notice of his or her determination with respect to requiring an environmental assessment in the Tsawout administration office and/or on the Tsawout First Nation website within five working days after the determination is provided to the Proponent.

**Step 2: Determine the scope and Terms of Reference for the environmental assessment**

- (a) If a Project requires preparation of an environmental assessment, the Lands Manager will oversee the development of, and approve, Terms of Reference for the environmental assessment.
- (b) Although the Proponent bears responsibility for preparing the Terms of Reference, the Proponent is strongly advised to conduct this step in consultation with the Lands Manager or a Tsawout Environmental Specialist to ensure that the environmental assessment will include information considered necessary by the Tsawout First Nation. This consultation is critical to avoid delays in the environmental assessment process.
- (c) As shown in Generic Terms of Reference in Appendix “B”, an environmental assessment report typically includes the following major headings:
  - 1. **Project setting:** Physical, ecological, social, cultural, and economic setting of the area potentially affected by a Project.
  - 2. **Project description:** Including design, construction, operation, and decommissioning.
  - 3. **Project Effects and Mitigation:** Identification of potential Environmental Effects, assessment of the impacts and description of Mitigation measures.
  - 4. **Cumulative Effects assessment:** Combined environmental, cultural or socio-economic impacts that accumulate from a series of actions, contaminants, or Projects.
  - 5. **Commitments:** Clear statement of commitments by the Proponent to implement the Mitigation measures described in the environmental assessment.
  - 6. **Conclusion:** A summary and conclusion of the significance of identified adverse Environmental Effects.
- (d) Appendix “C” of this document contains a list of potential topics to be studied in an environmental assessment. The Lands Manager may require that an environmental assessment includes some or all of the topics listed in Appendix “C”, or additional topics at the Lands Manager’s sole discretion.
- (e) During preparation of the Terms of Reference, the Proponent will identify any liability concerns and potential requirements for professional expertise and input to mediate those concerns.
- (f) The Terms of Reference for an environmental assessment should describe the process to be applied in preparing the assessment, including a list of agencies or individuals to be contacted, description of reports or other deliverables to be prepared, including special studies, and a timeline for the conduct of the work, including meetings and submission of deliverables. The

- Terms of Reference will specify, where appropriate, the professional qualifications of personnel that will prepare the environmental assessment.
- (g) The Lands Manager may retain the assistance of specialists in relevant fields to assist in reviewing Terms of Reference submitted by the Proponent. The Proponent is required to cover any costs incurred by the Tsawout First Nation in retaining such specialist assistance.
  - (h) Where the Project has the potential to have a significant effect on Band Land or resources, or on the interests of the Tsawout community as a whole, the Lands Manager may: (a) refer the draft Terms of Reference to the Land Management Committee, and, (b) engage the Tsawout community in a review of the Terms of Reference for the environmental assessment. The Lands Manager may circulate the draft Terms of Reference to other governments for review and comment, as deemed necessary and appropriate by the Lands Manager.
  - (i) Following review, the Lands Manager will determine whether the Terms of Reference include the issues necessary for inclusion in the subsequent environmental assessment, and whether the process for preparing the environmental assessment is considered adequate. The Lands Manager will inform the Proponent of this determination.

### **Step 3: Conduct the analysis and prepare the environmental assessment report**

- (a) After the Terms of Reference have been approved by the Lands Manager, the Proponent will assume responsibility for conducting the environmental assessment. Typically, the Proponent retains professionals with the requisite expertise to study specified issues, identify potential Environmental Effects, propose measures to mitigate those effects, and prepare resulting reports.
- (b) The Proponent will prepare and submit a stand-alone draft environmental assessment report to the Lands Manager. The report will be accompanied by a table indicating that the topics and actions specified in the Terms of Reference have been completed and will identify the preparers of the report and describe their professional qualifications.
- (c) The Tsawout First Nation desires clear environmental assessments that provide information on specified topics and reach clear conclusions about Environmental Effects and Mitigation. Excessive data collection, superfluous text, or unnecessarily complex analysis is discouraged. Honest and unbiased assessment of impacts is an absolute requirement. Failure to meet this requirement will result in the Proponent being required to revise and re-submit the report.

### **Step 4: Review the draft environmental assessment report**

- (a) The Lands Manager will determine the process for reviewing the draft environmental assessment and will specify the parties to be involved. The Proponent will be expected to cover the Tsawout First Nation's costs incurred in reviewing the draft environmental assessment report.
- (b) An important function of an environmental assessment is to communicate findings to the community. For large Projects with the potential to affect the

entire community, open houses or workshops may be conducted. For smaller Projects, it may be adequate to notify the membership that a report is available for members' review and comment.

- (c) The Lands Manager will forward the draft environmental assessment report to the Land Management Committee, and may direct the Proponent to circulate the draft environmental assessment report to federal or provincial agencies or to local governments for their review and comment.
- (d) The Lands Manager may seek independent review of the draft environmental assessment report by expert specialists. The Project Proponent is required to cover the Tsawout First Nation's costs in retaining such specialists.
- (e) The Lands Manager will submit comments on the draft environmental assessment report to the Proponent.

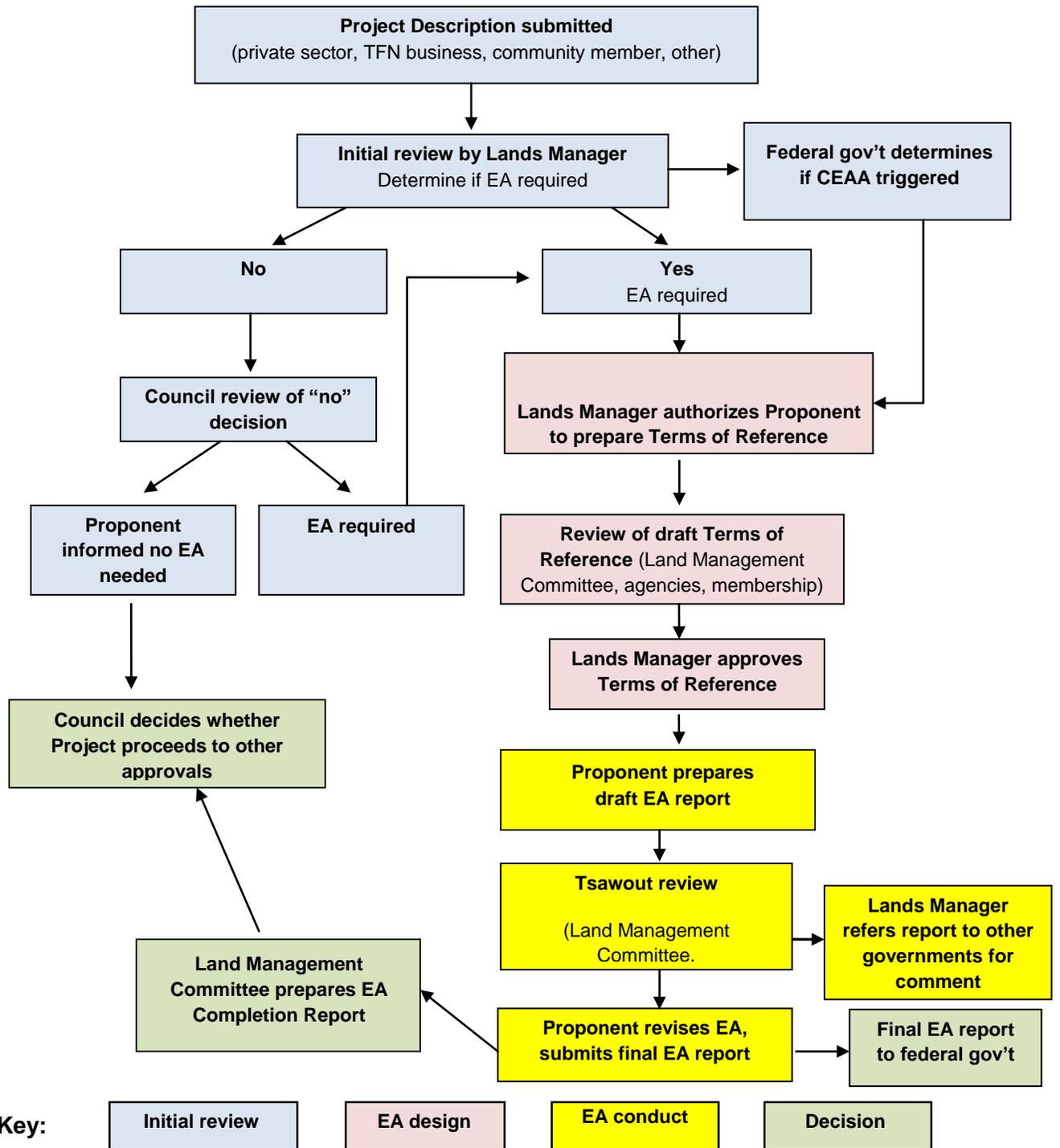
#### **Step 5: Make the environmental assessment decision**

- (a) Responding to the comments on the draft environmental assessment report provided by the Lands Manager, the Proponent will amend the draft report and submit to the Lands Manager a revised final version of the document.
- (b) The Lands Manager will convene the Land Management Committee to review the final environmental assessment report. The Lands Manager also may:
  - i. obtain comment from specialist experts at the cost of the Proponent,
  - ii. circulate the report to staff of other government agencies, and
  - iii. make the report available to the community for comment.
- (c) The Lands Manager, on behalf of the Land Management Committee, will prepare an environmental assessment completion report that:
  - i. Summarizes comments from the Land Management Committee, specialists, the community, or others on the quality and findings of the environmental assessment report;
  - ii. Presents conclusions about the nature and significance of potential Environmental Effects and the effectiveness of Mitigation measures identified; and
  - iii. Provides the comments of the Lands Manager and the Land Management Committee on: 1) the implications of allowing the Project to proceed to other approval processes; and, 2) what conditions may be attached to future approvals or permits that would likely mitigate identified environmental impacts or enhance identified benefits.
- (d) Neither the environmental assessment report nor the environmental assessment completion report will conclude whether a Project should proceed, but rather will focus on the potential effects of implementing a Project. Decisions about Project approval or rejection reside with Council, primarily through permits and other approvals issued under the *Tsawout Subdivision, Development and Servicing Law*. Permits may also be required under other applicable legislation (e.g., *Fisheries Act*) the issuance of which is not controlled by the Tsawout First Nation.

#### **Step 6: Implement Mitigation and follow-up program, as appropriate**

- (a) The Mitigation measures identified in the report will be incorporated into any design plans, site plans, timber-harvesting Development Permits, construction tender, and implemented with the Project. If so instructed by the Lands Manager, a Proponent may be required to prepare an Environmental Protection Plan that specifies how impacts will be avoided or mitigated, how land will be restored following construction, etc. Mitigation measures will also form part of the conditions of a development permit.
- (b) Where appropriate and required by the Lands Manager, the Proponent will prepare and conduct a monitoring program to verify the findings of the environmental assessment and to assess the effectiveness of the Mitigation measures. Alternatively, the Proponent may fund monitoring to be conducted by the Tsawout First Nation, subject to mutual agreement of the Proponent and the Lands Manager.

**FIGURE 1: Process for conducting an environmental assessment**



## APPENDIX “A”: Project Description Template

Proponents are to complete this Project Description and submit to the Tsawout First Nation Lands Manager. Submission of this form initiates the Tsawout First Nation environmental assessment process.

### 1.0 GENERAL INFORMATION

#### 1.1 Contact Information

Project Title	
Proponent Contact (job title)	
Address	
Telephone Number	
Fax Number	
Email	

*If Applicable:*

Co-Proponent Name	
Contact and title	
Address	
Telephone Number	
Fax Number	
Email	

*If Applicable:*

Environmental Consultant	
Contact and title	
Address	
Telephone Number	
Fax Number	
Email	

Reserve Name and Number:

- E. Saanich I.R. No. 2
- Fulford Harbour I.R. No. 5

#### 1.2 Potential Regulatory Requirements

a) Is there Federal financial support for this Project?  Yes  No

If yes, then from which department?

---

b) Is there Tsawout First Nation financial support for this Project?  Yes  No

c) Please list other environmental assessment regimes or potential permits, approvals, or authorizations from Canada, the province, municipal, or international governments to which the Project may be subject or require (e.g. *Fisheries Act, SARA, Canadian Environmental Protection Act, Provincial water licence, municipal rezoning, etc.*)?

---

---

---

## **2.0 PROJECT INFORMATION**

### **2.1 Project Title**

---

---

### **2.2 Project Description**

a) Project rationale (need for the Project, goals, purpose)

---

---

---

b) Briefly describe the Project (its market, permanent or temporary structures, affected land area, etc.)

---

---

---

---

c) Are there subsequent phases or expansion, or other facilities or activities associated with the Project that are not included in this Project Description? Yes\_\_\_ No \_\_\_

If “yes,” please describe:

---

d) Does this Project involve cutting of trees on Tsawout First Nation land? If so, how many, species, size, health?

---

e) Estimated capital cost: \_\_\_\_\_

### **2.3 Detailed Project Location**

Geographical Location and/or GPS Coordinates:

---

Legal Land Description:

---

Attach a detailed map of the Project footprint and affected area, conceptual plans, and other facility designs or plans if available.

### **2.4 Resource and Material Requirements**

a) Does this Project involve gravel, sand, or any other non-metallic minerals from Tsawout First Nation land? If yes, which reserve? What raw materials will be processed (including gravel, metals, or others)?

---

---

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b) What are the energy sources for the operation of this development (propane, natural gas, electrical, diesel etc.)? How much energy will be required for its operation?

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---

---

c) How much water will be used, for what purpose, and from what source?

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### **2.5 Waste Disposal**

a) What types of wastes will be generated during construction and operation of this Project?

---

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---

b) How and where will wastes be disposed?

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---

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### **2.6 Associated Infrastructure**

a) Describe infrastructure required by this Project (roads, transit, water supply, power, sewers, other).

---

### **2.7 Project activities**

a)Project construction:

- Start and finish date: \_\_\_\_\_

- List activities in sequence:

---

---

---

- Number of workers

- Total

---

- Per average day

---

- Tsawout First Nation members

---

- Vehicles per day (trucks and cars, maximum and daily average):

---

- Where will vehicles park:

---

b) Project operation:

- Project activities:

---

---

---

- Number of workers

- Total

---

- Per average day

---

- Tsawout First Nation members

---

- Vehicles per day (trucks and cars, maximum and daily average)

---

- Where will vehicles park:

---

- Noise generation:

---

- Air, water, or other emissions:

---

---

c) Decommissioning:

- Activities:

---

---

- Materials generated and method of disposal:

---

---

### 3.0 ENVIRONMENTAL FEATURES

a) Map and describe the environmental features in the area of the development.

- i. Site topography (for facilities and access)
- ii. Soils (type and depth, productivity, erodability)
- iii. Surface water, such as lakes or streams, nearby
- iv. Watercourse crossings or development near water
- v. Wetlands or estuaries
- vi. Aquifers
- vii. Vegetation
- viii. Wildlife habitat
- ix. Fish habitat
- x. Other areas of special concern or environmentally sensitive areas
- xi. Known species as identified in the SARA in or adjacent to the proposed Project area
- xii. Registered or unregistered archaeological sites or features
- xiii. Areas of moderate to high archaeological potential
- xiv. Areas used for traditional aboriginal purposes
- xv. Visual aesthetic character

b) Other additional information you may want to provide (e.g., community or cultural issues, consultation):

---

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#### 4.0 Regulatory requirements

a) Describe permits or approvals needed, and whether applications have been submitted to:

- Tsawout First Nation:

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- Local or regional government:

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- Federal government:

---

- Provincial government:

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## APPENDIX “B”: Generic Terms of Reference for Environmental Assessments

This guide is intended to aid the Project Proponent in preparing Terms of Reference for an environmental assessment. The level of detail to be included should be commensurate with the size, complexity, and potential impacts of a proposed Project.

<b>Summary</b>	Briefly describe the Project and the findings of the environmental assessment.
<b>1. Introduction</b>	<p>Provide contextual background information on the Project and the Proponent and Project justification.</p> <p>1.1 Proponent Information            1.2 Project Overview (including title and location)            1.3 Regulatory Framework (e.g. funding source, required permits or approvals)</p>
<b>2. Project description</b>	<p>Provide a detailed Project description, covering site preparation, construction, operation, and decommissioning.</p> <p><i>Note: For Projects involving cutting of timber, the description must include the RPF’s breakdown of volume and species (based upon a timber cruise) to be cut from the subject area and the proposed harvesting system.</i></p> <p>2.1 Project background and rationale (why is the Project necessary or desirable?)            2.2 Location of Project area likely to be affected (include maps)            2.3 Project facilities and associated infrastructure            2.4 Construction activities            2.5 Operational activities (including materials consumed, energy requirements and sources, emissions, traffic, numbers of employees, numbers of customers, etc.)            2.6 Decommissioning plans            2.7 Alternative means of carrying out the Project and alternatives to the Project, including the alternative of not proceeding with the Project            2.8 Relationship of the Project to First Nation Lands and community</p>

<p><b>3. Project Setting</b></p>	<p>Provide a detailed description of the existing environment in the Project area including landscape, water bodies, archaeology, natural resources, wildlife habitat, land use (traditional and contemporary uses, natural resource harvesting, residential and commercial uses, etc.). Indicate the areas affected by the Project. Outline known historical and contemporary uses by the Tsawout First Nation.</p> <p>3.1 Geophysical setting  3.2 Atmospheric setting  3.3 Aquatic setting (marine and fresh water, ground water, drainage, water quality)  3.4 Terrestrial setting (vegetation, wildlife, fisheries, species of cultural importance, species at risk)  3.5 Land use setting (past, present, and planned uses; land capability and suitability, archaeological potential)  3.6 Socio-economic setting (traditional and contemporary economy, community features and activities, visual aesthetic character)  3.7 First Nations traditional use</p>
<p><b>4. Agency input</b></p>	<p>Describe input obtained from other government departments (e.g. Department of Fisheries and Oceans, Environment Canada, Parks Canada, Health Canada, Forests, Lands and Natural Resource Operations, Heritage Conservation Branch, etc.), and provincial and local governments, as appropriate. Summarize relevant reports or studies, regulatory requirements or policies, environmental quality standards, etc. Describe relevance of local and regional land use plans to use of land, provision of services, etc. on Tsawout First Nation lands.</p>
<p><b>5. Engagement of interested parties</b></p>	<p>Describe how the following potential interested parties were engaged in the preparation of the environmental assessment:</p> <ul style="list-style-type: none"> <li>• The Tsawout community;</li> <li>• Residents or certificate of possession holders adjacent to, or otherwise affected by, the proposed Project;</li> <li>• Lease holders;</li> <li>• Users of resources potentially affected by the Project;</li> </ul>

	<ul style="list-style-type: none"> <li>• Owners or users of adjacent non-reserve properties that might be affected; and</li> <li>• Tsawout staff.</li> </ul> <p>Identify issues and concerns raised by the foregoing groups and explain how the concerns were addressed in the environmental assessment.</p>
<p><b>6. Project effects</b></p>	<p>For each of the headings in Section 3, identify specific potential Project effects. Ensure that potential Project effects identified by interested parties are included in the environmental assessment. Describe the methods used to assess Project impacts, including data sources, field investigations, sampling, and analysis.<sup>1</sup></p> <p>For each potential Project effect, describe:</p> <ul style="list-style-type: none"> <li>• The nature of the impact (narrative description);</li> <li>• Spatial extent (footprint, local, regional);</li> <li>• Temporal extent (short term, medium term, long term);</li> <li>• Reversibility (full, partial, irreversible);</li> <li>• Ecological implications (description);</li> <li>• Magnitude (low, moderate, high); and</li> <li>• Significance (significant or less than significant).</li> </ul> <p>Identify Mitigation measures that could avoid, reduce, or compensate for identified impacts, and identify the effect of the Mitigation measures on the impact. Describe residual impacts after Mitigation.</p> <p>Where a Project causes interactions with species at risk, specific Mitigation measures must be identified. Mitigation strategies for species at risk are hierarchical with avoidance being preferred (e.g. timing, design/location change), followed by minimization through Project modification or implementation under special conditions, and lastly, compensatory Mitigation (e.g. replacement of lost habitat).</p>

<sup>1</sup> It is the Proponent's responsibility to obtain permission for access to, or egress from, the Reserve for all phases of the Project including access to Certificate of Possession or Permanent Interest Holders' lands.

	<p>Identify Cumulative Effects of the proposed Project in combination with past and foreseeable future Projects or human activities. Excessively large study areas for Cumulative Effects assessment (e.g., the Capital Regional District, entire Saanich Peninsula) should be avoided unless necessary to characterize a specific impact.</p> <p>6.1 Impact Assessment Methodology  6.2 Construction Phase – Effects Assessment  6.3 Operations and Maintenance Phase – Effects Assessment  6.4 Decommissioning – Effects Assessment  6.5 Accidents and Malfunctions  6.6 Effects of the Environment on the Project  6.7 Cumulative Effects</p>
<b>7. Commitment to Mitigation</b>	<p>Summarize the Mitigation measures developed in Section 6, and provide a clear and unequivocal commitment by the Proponent to fully implement the specified Mitigation measures. The Mitigation measures may also be used as conditions of a lease, permit, or funding agreement.</p> <p>7.1 Summary of Mitigation measures  7.2 Proponent’s commitment to implement Mitigation measures</p>
<b>8. Conclusion</b>	<p>Provide a narrative summary of the Environmental Effects associated with the proposed Project. Identify significance and proposed Mitigation strategies. Discuss planned monitoring activities.</p> <p>Provide a brief text or table summary of Project effects and significance, and a conclusion about the potential environmental, socioeconomic, and cultural effects of the proposed Project.</p> <p>8.1 Summary and table  8.2 Conclusion</p>
<b>9. References</b>	<p>Provide full references of reports reviewed, websites accessed, and personal communications.</p>
<b>10. Appendices</b>	<p>Append relevant studies conducted, laboratory results, summaries of community comments, etc.</p>

## **APPENDIX “C”: Potential topics for inclusion in environmental assessments**

1. Soils and Geology
  - a. Stability and earth conditions
  - b. Major changes in topography or modification of significant geological features
  - c. Soil erosion, compaction, degradation, or contamination
  - d. Changes in erosion or deposition rates that affect aquatic process, form, and function
  - e. Import and deposit of soil or fill
2. Air Quality
  - a. Substantial air emissions or deterioration of ambient air quality
  - b. The creation of objectionable odours
3. Aquatic Ecosystems
  - a. Physical alterations to natural stream channels or riparian zones
  - b. Changes in flow regime, drainage patterns, infiltration rates, or surface water runoff (including increases in effective impervious cover)
  - c. Alterations to the level or frequency of flooding
  - d. Discharges into surface waters that affect surface water quality (e.g., sediment load, temperature, dissolved oxygen, turbidity)
  - e. Changes in aquatic biota (e.g., invertebrate biodiversity, or plant or algae growth)
  - f. Changes in the quality or quantity of groundwater
4. Vegetation
  - a. Destruction or degradation of native plant habitat (including terrestrial, riparian, or aquatic vegetation communities)
  - b. Destruction or damage to any valued, sensitive, or culturally important trees or other plants (e.g. cedar, fir, arbutus, dogwood), including plants of community, landscape, or heritage importance
  - c. Reduction of the numbers or distribution of rare, threatened, or endangered plant species or plant communities
5. Animal life
  - a. Significant changes to the population numbers or distribution of native animal species (including birds, mammals, reptiles, fish, benthic organisms, or insects)
  - b. Any change to the numbers or distribution of rare, threatened or endangered animal species
  - c. Degradation of existing or potential fish habitat, or wildlife habitat or corridors (including the effects of light, noise, or human activity)
  - d. Interference in the life cycle of fish or birds (including nests or breeding behaviours)

6. Land use and population
  - a. Change to the present or planned land use in an area
  - b. Alteration of the supply of commercial or industrial space
  - c. Changes to population demographics, distribution, and density
7. Mobility, transportation, and circulation
  - a. Effects on transportation systems or potential increases in vehicular volumes or movements
  - b. Impacts on parking facilities, or creation of demand for new parking
  - c. Increases in traffic hazards to motor vehicles, bicyclists, or pedestrians
  - d. Alteration of access to or change in pedestrian, bicycle, and transit mobility including provision and continuity of service
  - e. Potential to increase need for, or provision of, special needs transportation
8. Public services and utilities
  - a. Increased demand on fire, police, or other emergency services
  - b. Increased school enrolment, or demand for parks or other recreational facilities for all age groups
  - c. Need for new or expanded public utilities including sanitary sewers, water mains, storm drains, or garbage collection
  - d. Potential to increase maintenance demands for existing facilities that are required to accommodate the proposed land use, including social services
9. Aesthetics and built environment
  - a. Obstructs a scenic vista or view open to the public
  - b. Potential to create an aesthetically offensive site open to public view
  - c. Destruction or modification of a significant landscape feature or viewpoint
  - d. Suitability and quality of urban design and impact on surrounding built environment
  - e. Consistency with “smart growth” principles of complete, compact, liveable, and efficient communities
10. Employment and economy
  - a. Potential to affect existing employment or creation of new employment (permanent or temporary, full-time or part-time)
  - b. Effect on existing commercial or industrial business
  - c. Potential effect on planned economic development Projects or activities
  - d. Cost or benefit to community (i.e. change tax base and service level)
11. Nuisance (noise, light, glare, odour) and hazards
  - a. Increase in existing noise levels (other than normal residential noise)
  - b. Creation of new, different, or unusual noise or noise production at inappropriate times (e.g., late at night)
  - c. Production of new light or glare
  - d. Creation of shading or reduced access to sunlight
  - e. Production of offensive odours and airborne particles

- f. Production of potentially dangerous transmission waves (i.e., magnetic or microwave)
- g. Creation of potential human health hazards

12. Navigable waters

- a. Obstruction or reduction of navigability of marine or fresh water courses
- b. Requirement for federal navigable waters approvals

13. Cultural resources (Proponent should reference data collected to comply with the General Requirements for Heritage Assessments)

- a. Potential to alter or destroy an archaeological site
- b. Effects on areas of cultural importance (for spiritual, traditional use, ceremonial, resource, or other purposes)
- c. Effects on historic buildings, structures, objects, or landscapes

14. Cumulative Effects

- a. Other past or potential future Projects or human activities in the study area
- b. Identification of potential Cumulative Effects of the proposed Project with other past or potential future Projects or human activities in the study area
- c. Potential actions to mitigate identified Cumulative Effects
- d. Assessment of residual Cumulative Effects

### SCHEDULE 1: Definitions

<b>CEAA</b>	The Canadian Environmental Assessment Act
<b>Cumulative Effect</b>	The combined environmental, cultural or socio-economic impacts that accumulate from a series of actions, contaminants, or Projects. Although each action may seem to have a small impact, the combined effect can be significant.
<b>Environmental Effect</b>	Any change a Project may cause in the physical environment, biota, or human communities, including archaeological features, heritage resources, traditional use areas, or economic activities or potential, health and socio-economic conditions, and includes Cumulative Effects.
<b>Mitigation</b>	The avoidance, elimination, reduction, or control of the adverse Environmental Effects of a Project, including restitution for damage to the environment caused by such effects through replacement, restoration, compensation or other means.
<b>Project</b>	“Project” is an initiative that has the potential to affect Tsawout First Nation environment (land, air, water, biota, or cultural features) and to affect Tsawout First Nation society, culture, or economic well-being. A Project includes a development, a subdivision, or a grant or disposition of a lease, licence or permit in First Nation Land that must be approved by Council under the Land Code or a Law under the Land Code.
<b>Proponent</b>	With respect to a Project, the person, business, other body, government (including the First Nation government) or government agency that proposes a Project. Proponents can be developers, proposed lessees, licence or permit holders, a First Nation member, or Council.
<b>Scoping</b>	The part of the EA process that determines the topics to be examined, the level of detail, spatial extent or “boundaries” of the EA investigation, and groups or agencies to be involved.
<b>SARA</b>	<i>The Species at Risk Act</i> . Federal legislation to protect rare, threatened, or endangered species. A Proponent through an EA must ensure that the potential for Environmental Effects on a species at risk and its habitat, as defined by SARA, have been adequately assessed.
<b>Pre-Construction Phase</b>	Involves the design, feasibility study, geotechnical investigations, etc., associated with the Project, and precedes land-disturbing activities.
<b>RPF</b>	Registered Professional Forester
<b>Construction Phase</b>	Involves site preparation, grading, excavation, material delivery and storage, utility installation, construction, and finishing of a Project.
<b>Post-Construction Phase</b>	Site restoration, remediation, monitoring, and similar activities occurring after completion of Project construction.

**STÁUTW (Tsawout) First Nation  
General Requirements for Heritage  
Assessments on First Nation Land**

**SCHEDULE “C”**

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012 PARAGRAPH  
7.1(c)**

To be approved by Tsawout First Nation Council

[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION  
GENERAL REQUIREMENTS FOR HERITAGE ASSESSMENT  
ON FIRST NATION LAND**

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## **STÁUTW (TSAWOUT) FIRST NATION GENERAL REQUIREMENTS FOR HERITAGE ASSESSMENTS ON FIRST NATION LAND**

### **1. APPLICATION OF THESE REQUIREMENTS**

- 1.1 These Requirements apply to:
- (a) all projects on First Nation Land which require a Development Permit under the *Tsawout Subdivision, Development and Servicing Law*;
  - (b) any grant or disposition of a lease, license or permit in First Nation Land which must be approved by Council under section 26.6 of the Land Code;
  - (c) any grant by Council of an interest, licence or permit in Band Land under section 28.1 of the Land Code;
  - (d) archaeological studies, cultural heritage studies, and/or STAUTW Heritage Resource Management-Related investigations carried out on First Nation Land; and
  - (e) other ground-altering activities not exempted from these Requirements by the *Tsawout Subdivision, Development and Servicing Law*.
- 1.2 For the purposes of these Requirements, First Nation Land means a First Nation reserve or any portion thereof that is subject to the *Tsawout First Nation Land Code*, which came into force and effect on May 29, 2007.

### **2. PURPOSE**

- 2.1 The purpose of this Policy is to maintain the integrity of STÁUTW history and heritage through the respectful treatment, protection, preservation, and management of STÁUTW heritage objects and sites on First Nation Land.

### **3. ASSESSMENT REQUIREMENTS**

- 3.1 All potential ground-altering activities, including development-related disturbances and impacts to STÁUTW Heritage Sites and Objects must be considered, assessed, and mitigated through the application of these Requirements. All Heritage Resource assessments and investigations must be conducted by a professional archaeologist who has been approved by Council to carry out assessments and investigations on Tsawout First Nation land.
- 3.2 Proponents of all projects to which these Requirements apply are required to follow, in substantially all respects, the processes, guidelines and procedures required by the BC Archaeology Branch, as outlined in the *British Columbia Archaeological Resource Management Handbook*, as amended or replaced from time to time.
- 3.3 The BC Archaeology Branch takes the position that it has no jurisdiction over archaeological resources on First Nation Land, and as such, all reports and

forms must be provided to the Tsawout Lands Department, with a copy to the Douglas Treaty Office, at the following addresses:

Attention: Lands Manager  
Tsawout First Nation  
7728 Tetayut Road  
Saanichton B.C. V8M 2C3  
Phone: 250-652-9101  
Fax: 250-652-9114  
Email: \_\_\_\_\_

Copy to: Douglas Treaty Office  
Tsawout First Nation  
7728 Tetayut Road  
Saanichton B.C. V8M 2C3  
Phone: 250-652-9101  
Fax: 250-652-9114  
Email: \_\_\_\_\_

- 3.4 The exception is site inventory forms, which shall be provided to the BC Archaeology Branch, with a copy to Tsawout First Nation Lands Department and Douglas Treaty Office.
- 3.5 An Archaeological Overview Assessment (as that term is defined and understood by the BC Archaeology Branch) is required for each of the following:
  - (a) Projects requiring a Development Permit under the *Tsawout Subdivision, Development and Servicing Law*, unless exempted from this requirement under the *Law*;
  - (b) any grant, or disposition of a lease, license or permit in First Nation Land which must be approved by Council under section 26.6 of the Land Code;
  - (c) any grant by Council of an interest, licence or permit in Band Land under section 28.1 of the Land Code;
- 3.6 Other ground-altering activities not exempted from these Requirements by the *Subdivision, Development and Servicing Law*.
- 3.7 An exemption to the requirement for an Archaeological Overview Assessment may be granted on application where:
  - (a) the site of the proposed application has been previously developed; and
  - (b) the Land Management Committee is satisfied that the type and character of the proposed development is such that its potential to disturb or otherwise negatively affect STÁUTW Heritage Sites or Objects is minimal.

#### **4. RESEARCH**

- 4.1 Archaeological studies and/or STÁUTW Heritage Resource Management-Related investigations must be conducted by qualified researchers with an appropriate level of experience and training who have been approved by Council to conduct such research on Tsawout First Nation land. All such research on First Nation Land must be carried out in accordance with the processes, guidelines and procedures required by the BC Archaeology Branch, as outlined in the *British Columbia Archaeological Resource Management Handbook*. Reports and forms must be provided to the Tsawout Lands Department. As noted above, site inventory forms should be provided to the BC Archaeology Branch.

#### **5. ACCESS TO LAND**

- 5.1 Nothing in these Requirements authorizes entry onto land held individually under a Certificate of Possession or Permanent Interest without permission of the CP/Permanent Interest Holder.

#### **6. INCORPORATION OF RESULTS INTO DEVELOPMENT PERMIT / COUNCIL APPROVAL CONDITIONS**

- 6.1 Council will take into account the results of assessments and investigations conducted pursuant to these Requirements, including any mitigation measures identified, in deciding whether the project should proceed (i.e., whether or not a development permit should be issued under the *Tsawout Subdivision, Development and Servicing Law*, or whether Council should consent to the grant/disposition, as the case may be). The development permit/ consent may be granted with conditions as Council deems necessary to implement the mitigation measures.
- 6.2 Where required or appropriate, Council may required a follow-up program to be designed and implemented to verify that the assessment was accurate and the mitigation measures were effective.

#### **7. COMPLIANCE**

- 7.1 Failure to comply with these Requirements when conducting archaeological work or a STÁUTW Heritage resource investigation may result in the researcher being disqualified from conducting research or investigations on Tsawout First Nation lands in the future.
- 7.2 Failure to complete the required assessments, including reporting requirements, may result in denial or delays in processing of the proponent's development permit application, or any other application, for Council's consent.

**STÁUTW (Tsawout) First Nation  
General Requirements for Timber Harvesting  
on First Nation Land**

**SCHEDULE “D”**

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012**

**PARAGRAPH 7.1(D)**

To be approved by Tsawout First Nation Council

[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION  
GENERAL REQUIREMENTS FOR TIMBER HARVESTING ON FIRST NATION LAND**

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**STAUTW (Tsawout) FIRST NATION GENERAL REQUIREMENTS FOR TIMBER  
HARVESTING ON FIRST NATION LANDS**

**SCHEDULE "D"**

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012  
PARAGRAPH 7.1(D)**

**PREAMBLE**

We the Council of STÁUTW (Tsawout) First Nation make these Requirements in recognition that the long-term health of Tsawout First Nation Land must be maintained and protected for the benefit of current and future generations and that the use and maintenance of forest resources plays an important role in the economic, social, cultural, physical and spiritual well-being of Tsawout First Nation citizens.

**1. APPLICATION OF THESE REQUIREMENTS**

1.1 These requirements apply to:

- (a) all timber harvesting activities on First Nation Land which require a Development Permit under the *Tsawout Subdivision, Development and Servicing Law, 02-2012*;
- (b) any grant or disposition of a lease, licence or permit in or on First Nation Land which must be approved by Council under section 26.6 of the Land Code; and
- (c) any grant or approval by Council of an interest, lease, licence or permit relating to or including timber harvesting activities in or on Band Land under section 28.1 of the Land Code.

1.2 For the purposes of these Requirements, First Nation Land means a First Nation reserve or any portion thereof that is subject to the *Tsawout First Nation Land Code*.

**2. PURPOSE**

2.1 The purpose of this Policy is to maintain the integrity of the Tsawout First Nation local environment, land values, visual integrity, traditional uses and cultural heritage through the respectful treatment, protection, preservation, and management of Tsawout First Nation timber and forest resources.

**3. INTERPRETATION**

3.1 Unless otherwise defined in Schedule A to these Requirements, the words in these Requirements have the same definitions as those in the *Tsawout First*

*Nation Land Code and the Tsawout First Nation Subdivision, Development and Servicing Law.*

- 3.2 In these Requirements, “Registered Professional” means a person who is certified as a professional arboricultural consultant, is a landscape architect registered with the British Columbia Society of Landscape Architects, or is a Registered Professional Forester.

#### **4. PRELIMINARY PROPOSED HARVEST PLAN**

- 4.1 In addition to these Requirements, applicants for a Development Permit for Timber Harvesting on Tsawout First Nation Land must also meet all relevant requirements set out in the *Tsawout First Nation Subdivision, Development and Servicing Law*.
- 4.2 Applicants must submit to the Tsawout Lands Department a preliminary proposed harvest plan which includes the following information:
- (a) the area of land proposed for harvesting;
  - (b) the species and volume of timber proposed to be harvested;
  - (c) the location of scaling;
  - (d) who will be the parties to the Development Permit for timber harvesting;
  - (e) who will be the designated purchaser of the timber;
  - (f) whether the timber will be exported from First Nation Land or not;
  - (g) who will obtain a timber mark;
  - (h) where the timber is in whole or in part on Band Land, the proposed benefits to be provided to Tsawout First Nation; and
  - (i) where the timber is in whole or in part on Certificate of Possession or Permanent Interest land, a written authorization in the prescribed form from the holder of that interest permitting the harvesting to occur and supporting the proposal.

#### **5. RESPONSE TO PRELIMINARY PROPOSAL**

- 5.1 The Lands Manager will review the preliminary proposed harvest plan and will inform the applicant in writing within 10 working days of receipt whether the preliminary harvest plan was approved, rejected, or requires modification prior to approval. If approved, the applicant may proceed with preparing an application.
- 5.2 By approving the preliminary harvest plan, the Lands Manager makes no representation to the applicant that the application will ultimately be approved by Council.

## **6. APPLICATION REQUIREMENTS**

- 6.1 The applicant will be responsible for the costs of the review of the application by the Lands Manager. The applicant may request a meeting to discuss those costs in advance of the review.
- 6.2 The applicant must prepare and submit the following:
- (a) an environmental assessment and species at risk assessment conducted in accordance with the Tsawout First Nation General Requirements for Environmental Assessments;
  - (b) an Archeological Overview Assessment conducted in accordance with the Tsawout First Nation General Requirements for Heritage Assessments;
  - (c) a comprehensive logging plan which includes the description of the areas, volumes and species to be logged, the methods and equipment to be used, the season of the logging, a complete 1:5,000 scale logging plan map; a 1:20,000 scale overview map, and any potential problems or environmental concerns and their appropriate mediations;
  - (d) an encumbrance check carried out on the First Nations Land Registry and a GPS survey with accuracy to within 1 metre;
  - (e) other relevant information, including any input provided by the Department of Fisheries and Oceans, Parks Canada, Environment Canada, the BC Ministry of Forests, Lands and Natural Resources or their successors and any other bodies where there is a potential for impact on their areas of concern, expertise or existing encumbrances;
  - (f) a silviculture prescription or site plan in the provincial format prepared by a registered professional forester where it is intended that the lands be returned to a forested state; and
  - (g) a copy of the environmental assessment of the proposal and Council's decision respecting any significant environmental, economic or cultural concerns and the mitigation measures to be used.

## **7. EXEMPTIONS FROM CERTAIN REQUIREMENTS**

- 7.1 Where the proposed harvesting is to take place on Band Land, the Lands Manager may exempt the applicant from certain of the measures set out in section 6 where the proposed harvesting activity:
- (a) is for timber for non-commercial use such as firewood for personal, longhouse, or Elder use; and
  - (b) would result in the cutting of not more than 4 Trees of 50 centimetres diameter or less at 1.4 metres height or not more than 2 Trees of 50 centimeters diameter or greater at 1.4 meters height; and
  - (c) would not result in clearing more than 5% of the Trees from the individual lot;
  - (d) does not include Arbutus; and
  - (e) has been reviewed by a Registered Professional for any concerns or issues and any concerns have been provided in writing to the Lands Manager.

- 7.2 Where the proposed harvesting is to take place on Permanent Interest lands, the Lands Manager may exempt the applicant from certain of the measures set out in section 6 where the proposed harvesting activity:
- (a) is for timber for non-commercial use; and
  - (b) would result in the cutting of not more than 7 Trees of 50 cm diameter or less at 1.4 metres height or not more than 4 Trees of 50 cm diameter or greater at 1.4 meters height; and
  - (c) would not result in clearing more than 10% of the Trees from the individual lot;
  - (d) does not include Arbutus; and
  - (e) has been reviewed by a Registered Professional for any concerns or issues and any concerns have been provided in writing to the Lands Manager.
- 7.3 Where a Development Permit is issued under 7.1 and 7.2, the Lands Manager may provide in the permit that a minimum of 2 tree seedlings of the same or similar species will be planted for each Tree to be cut, such seedlings to be of species native to Vancouver Island and maintained for a period of not less than two years, or, in lieu of such planting, providing payment to the Tsawout First Nation of fifty dollars per Tree to be cut, such payment to be made before a permit is issued.
- 7.4 The Lands Manager may issue a Development Permit forthwith for the removal of a tree where the tree is dead, dying, severely damaged, unstable or severely leaning and in danger of falling.
- 7.5 The Lands Manager will provide notice to the Lands Management Committee of any determinations made under this Part and the Lands Management Committee may request an opportunity to reconsider the application and render their own determination in place of the Land Manager's.
- 7.6 For Development Permits issued under this Part, the Lands Manager will inform the applicant within 3 working days of submission of all of the required information whether a Development Permit will be granted and will notify the applicant within that time of any terms and conditions the Land Manager deems necessary to fulfill the purpose of these Requirements. If the Land Management Committee requires a re-determination, that time will be extended by 7 days.

## **8. PERMITTING**

- 8.1 The Lands Manager will review the application and will make a recommendation to the Lands Management Committee as to whether it should be approved. If the Land Management Committee supports approval, they will instruct the Lands Manager to prepare and forward to Council a draft Development Permit which will incorporate at least the following:
- (a) the parties to the Development Permit;

- (b) the volume and species of timber to be harvested and sold;
- (c) the location of the timber to be harvested detailed on 1:5,000 scale map(s);
- (d) the date the permit will expire;
- (e) the party responsible for the harvesting;
- (f) stumpage for species and grades of timber;
- (g) the location of scaling;
- (h) the contingency plan for any fuel or waste spillage;
- (i) the details of any performance bonds or security deposits required;
- (j) utilization standards and harvesting practices;
- (k) actions to be taken for environment and non-timber values protection;
- (l) environmental assessment and SARA reports;
- (m) evidence of appropriate insurance coverage and WCB clearance letter; and
- (n) scaling and timber mark requirements.

8.2 The Lands Management Committee may review the draft Development Permit prior to submission to Council where the Permit is in relation to Band Land.

## **9. ACCESS TO LAND**

9.1 Nothing in these Requirements authorizes entry onto land held individually under a Certificate of Possession or Permanent Interest without permission of the Certificate of Possession/Permanent Interest Holder.

## **10. STUMPAGE AND SCALING**

10.1 All scaling will be done by a licensed scaler at the applicant or permittee's cost at the place of cutting or on First Nation Land or at a designated scaling site. Stumpage to be paid to the First Nation, as set out in the Development Permit, will be based on species and grade determined in consultation with a registered professional forester.

## **11. INCORPORATION OF RESULTS INTO DEVELOPMENT PERMIT / COUNCIL APPROVAL CONDITIONS**

11.1 Council will take into account the results of assessments, investigations and reports conducted pursuant to these Requirements and pursuant to the *Subdivision, Development and Servicing Law*, including any mitigation measures or contingency plans identified, in deciding whether the harvesting should proceed (i.e., whether or not a Development Permit should be issued under the *Tsawout Subdivision, Development and Servicing Law*, or whether Council should consent to the grant/disposition, as the case may be). The development permit/ consent may be granted with such conditions as Council deems necessary to implement appropriate mitigation measures and to ensure that sufficient and fair benefits are enjoyed by the First Nation.

- 11.2 Where required or appropriate, Council may require a follow-up program to be designed and implemented to verify that the assessment was accurate and the mitigation measures were effective. For example, the land is reforested in accordance with a silvaculture or site plan and the trees have reached a free-to-grow status.

## **12. COMPLIANCE**

- 12.1 Failure to comply with these Requirements, the *Subdivision, Development and Servicing Law 02-2012* as amended from time to time, and/or the terms of any issued Development Permit for Timber Harvesting may result in fine, seizure of timber or equipment, civil action or criminal proceedings under section XXVII of the *Criminal Code of Canada*.



United Nations

United Nations  
**DECLARATION**  
on the **RIGHTS**  
of **INDIGENOUS**  
**PEOPLES**



United Nations

United Nations Declaration  
on the Rights of Indigenous Peoples





## **Resolution adopted by the General Assembly**

[*without reference to a Main Committee (A/61/L.67 and Add.1)*]

### **61/295. United Nations Declaration on the Rights of Indigenous Peoples**

*The General Assembly,*

*Taking note* of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,<sup>1</sup> by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

*Recalling* its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

*Adopts* the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting  
13 September 2007*

#### **Annex**

### **United Nations Declaration on the Rights of Indigenous Peoples**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

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<sup>1</sup>See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social

progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> and the International Covenant on Civil and Political Rights,<sup>2</sup> as well as the Vienna Declaration and Programme of Action,<sup>3</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

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<sup>2</sup>See resolution 2200 A (XXI), annex.

<sup>3</sup>A/CONF.157/24 (Part I), chap. III.

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

*Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>4</sup> and international human rights law.

*Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3*

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to

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<sup>4</sup>Resolution 217 A (III).

their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6*

Every indigenous individual has the right to a nationality.

*Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

*Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

*Article 11*

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

*Article 12*

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

### *Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

### *Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

### *Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

*Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

*Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

*Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

*Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

*Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources

equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

*Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

*Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

*Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

*Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

*Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

*Article 38*

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law

and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

# FRAMEWORK AGREEMENT

## DEVELOPMENTAL PHASE

COMPLETING YOUR LAND CODE & INDIVIDUAL AGREEMENT

### SUPPORT & FACILITATION

**LABRC**

- PROVIDE EXPERTISE
- RESOLVE DIFFICULTIES
- DEVELOP MODEL
  - Law
  - Land codes
  - Land mgmt systems

• ASSIST FN'S TO DEVELOP & IMPLEMENT:

- Laws
- Land code
- Land mgmt systems
- Curriculum & training
- Environmental assessments
- Protection regimes

### LANDS COMMITTEE

- DEVELOP:
  - Land code
  - Ratification process
- OVERSEE RATIFICATION PROCESS
- ENSURE FA COMPLIANCE
- CERTIFY LAND CODES
- RESOLVE DISPUTES

### LANDS COORDINATOR

- COORDINATE:
  - Land code development
  - Individual agreement negotiation

### NEGOTIATION

GOC PROVIDES

- Land description
- ESA Phase 1
- OFF Statement
- Revenue Account Statement

**GOWT OF CANADA**

