

Introduction to Environmental Site Assessments

Course Workbook



 **FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

 **Training, Mentorship &
Professional Development**

Last updated: 2018

Introduction to Environmental Site Assessment

https://labrc.com/public/courselet/Environmental_Site_Assessment/player.html

Welcome to Environmental Site Assessments and the Framework Agreement on First Nation Land Management Framework Agreement) course. This course is designed to assist Lands Governance Directors and Lands Managers (LGDs) to Interpret the findings of Environmental Site Assessments the Developmental phase prior to their reserves becoming Operational under the Framework Agreement To develop Terms of Reference for future Environmental Site Assessments.

The material provided in this course is current to date of course. Thank you to the environmental experts to the Lands Advisory Board (LAB), for aiding in the development this course.

Course learning objectives:

This courselet will help Lands Governance Directors (LGDs) to:

- Interpret the findings of Environmental Site Assessments the Developmental phase prior to their reserves becoming Operational under the Framework Agreement
- To develop Terms of Reference for future ESAs

Module 1: The ESA and the Framework Agreement

What are Environmental Site Assessments?

ESAs confirm the absence or presence of contamination.

ESAs originally were developed to provide information to banks or other mortgage lenders about the environmental liability associated with properties.

Hence, ESAs focus on identifying contaminants that could reduce the value of a property or that could result in risk or liability associated with environmental or human health effects of contaminated land.

Important concepts:

Signatory Chiefs

The original Framework Agreement signatory Chiefs wanted their First Nations to have a clear picture of:

- What issues would impact their First Nation's own land governance activities
- What Canada would fix
- What lands that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) would continue to manage and to identify these lands

Informed consent

The parties that designed the Framework, decided that before a First Nation could make informed decisions about transferring authority to manage First Nations Lands a Phase I ESA should be conducted

during the developmental phase. A Phase I ESA provides information about contamination that may be present on a reserve. Additional studies are needed to establish the actual presence, extent, and risk posed by contamination. ESA information is part of the due diligence required for a First Nation to make informed decisions about the transfer of land management authority.

ESA and the Framework Agreement

The Chiefs that negotiated the Framework Agreement needed a way for their FNs to identify and describe what environmental issues was a result of Indian Act management, mismanagement or neglect. Canada agreed that they needed to provide FNs with this environmental information.

Canada under Section 6.3 of the Framework Agreement has committed to provide a First Nation, at its request, with all existing information, in Canada's possession, respecting any potential or actual environmental problems with the proposed First Nation reserve lands.

Canada's Responsibility: In order for Canada to provide FNs with this environmental information, Canada determined that a Phase I ESA was required. The lands on which the Phase I ESA will be conducted include the existing reserve lands of the First Nation.

A Phase I ESA aids both parties to understand the condition of reserve lands before it is transferred over to the First Nation. This information may be inadequate to fully describe the condition of reserve lands.

Excluded Lands: Section 4.4 of the Framework Agreement provides for the First Nation and Canada (both need to agree) to exclude reserve lands from First Nation jurisdiction and the application of the Land Code.

These lands can be excluded if they are in an environmentally unsound condition and if those lands cannot be remedied by technical or financial means prior to the Land Code being submitted for community approval or if lands are uninhabitable or unusable due to natural disaster.

Individual Agreement: In the Framework Agreement Canada and First Nations are to enter into an Individual Agreement, to allow First Nations to exercise jurisdiction, management and administration of their reserve lands and resources. Before Canada can transfer the reserve lands in the Individual agreement a First Nation needs to know the environmental status of those lands.

Individual agreement process: As part of the Individual Agreement process, a Phase I ESA shall be completed by a qualified Environmental Assessor (QEA) to determine the environmental condition of the reserve lands of the First Nation.

The Phase I may identify that there is a need for a Phase II and Phase III ESAs to be done. These Phase I recommendations can form part of a workplan identified in the Individual Agreement. These additional phases will be done while a First Nation is operational.

Individual agreement workplans: Because Phase 1 ESA's do not identify the entire extent of contamination on reserve land, a First Nation ideally should ensure that it's Individual Agreement and work plan contain a commitment by Canada to assist the First Nation in identifying contaminated sites on reserve and a timeline to remediate them.

It is imperative that the nature and scope of further environmental work be included in the Individual Agreement work plan before a FN signs off on its Individual Agreement. Because Canada has funded

only Phase I ESAs for most developmental First Nations, it is important for an operational First Nation to continue to pressure Canada to implement work plans contained in Individual Agreements that involve follow up to Phase I ESAs continuing to remediation of known contaminated sites.

EAS's Before & After Land Code in Effect

Introduction: Since Canada has established a Phase I ESA is required before lands can be transferred over to a First Nation, we will take a further look at Phase I ESAs before a Land Code (LC comes into effect and look at what, if any, ESAs need to be done after a Land Code is in effect.

is done

Phase I: A [Phase I ESA](#) through the Developmental Phase and is captured in Annex A of [the Implementation of Parts I and II of the Framework \(ID\)](#). A Phase I ESA, if required, is the responsibility of CIRNAC and therefore, is funded by them. In Annex B, of the ID, the parties (CIRNAC /FN) agree to fulfill their developmental activities and their respective roles and responsibilities.

Phase II: Since Canada only does a Phase I ESA during the developmental phase process a Phase II ESA will in all likelihood be done after the Land Code is in effect. If Phase II ESAs (and additional investigations, if needed) cannot be completed before selecting lands to be included in an Individual Agreement, the ESAs should be conducted as soon as feasible after a First Nation becomes operational.

Legacy Issues: Although the parties had hoped that First Nations would be assuming jurisdiction over lands that had been thoroughly remediated, they quickly found out that the resolution of *Indian Act* legacy issues needed significant time and resources to complete.

There were instances where First Nations who did a Phase II found that the Phase II process "held up" ratification votes because of late funding or disagreement over findings or testing methodology. These indefinite delays due to outstanding *Indian Act* issues greatly expanded the cost and time of the developmental phase.

Other ESAs after Land Code Vote: The parties agreed that the intention of the Framework Agreement is to recognize First Nation governance authority over lands and resources, not "solve" Canada's ongoing responsibilities by delaying First Nations indefinitely because of unforeseen legacy issues. Hence, it was agreed that only an identification of the outstanding *Indian Act* obligations would be undertaken and a workplan for their follow up would be included in the Individual Agreement.

Since the Phase II ESA did not include any remediation, it was decided by the parties to complete it and any other further ESAs post Land Code ratification vote.

Decision Making Authority:

Introduction

Before we can get into describing ESAs and more specifically Phase I ESAs, it is important to know who has the sole decision-making authority over reserve lands before and after a First Nation approves and enacts its Land Code.

Indian Act

To understand decision making authority on reserve lands before a Land Code takes effect one must look to the *Indian Act*. The *Indian Act* vests sole decision-making authority over reserve lands in Canada through the Minister of Indian Affairs. This includes managing, regulating, maintaining and protecting reserve lands. As one can imagine, this hasn't always been done in a proper fashion. The architects of the Framework Agreement were aware of the copious issues that exist on reserve lands and in no way were First Nations willing to let Canada "Off the Hook" for the creation of these persistent situations.

Before a Land Code Takes Effect

Canada continues to be responsible for all errors or omissions occurring during the time of its management (before a LC takes effect). Section 50.1 of the Framework Agreement states:

- 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.

Canada indemnifies a First Nation for any loss suffered by the First Nation as a result of an act or omission of Canada prior to the coming into force of its Land Code. Therefore, Canada may be liable for any environmental damages to First Nation Land before the Land Code comes into effect.

Canada's environmental responsibility includes the following:

Canada indemnifies a First Nation for any loss suffered by the First Nation as a result of an act or omission of Canada prior to the coming into force of its Land Code. Therefore, Canada may be liable for any environmental damages to First Nation Land before the Land Code comes into effect.

Canada's environmental responsibility includes the following:

- Responsible for any known and/or existing contaminated sites
- Liable for any of its actions that may have caused the problem
- Responsible for cleanup of any environmental contamination

Click on: [Canada's Responsibility for Contamination Before a Land Code is in Effect](#)

After a Land Code Takes Effect

After a Land Code takes effect it is the First Nation that is liable for its acts or omissions on First Nation Lands. Section 50.2 of the

Framework agreement says:

- 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.

The principle applies vis-a-vis Canada, to acts and omissions of the First Nation, after the Land Code comes into effect.

Text from photo: The Chiefs wanted to ensure that the special relationship to the crown is retained and the title to First Nation Land is not affected by the Framework Agreement or the Legislation.

So under Clause 1.4 of the Framework Agreement the Crown (federal government) still has responsibility towards First Nations as long as their First Nation Land remains reserve lands.

What this means is that Canada will still retain a fiduciary obligation to the First Nation respecting First Nation Lands. But the transfer to the First Nation of its reserve lands listed in its Land Code and responsibility for matters respecting the management of First Nation Lands that, before Land Code enactment, were provided for in the 30+ sections of the *Indian Act*, will, in practice, effectively eliminate Canada's liability exposure respecting those matters.

Individual Agreement:

Thus, part of the negotiation of the Individual Agreement includes identifying, and where possible, remediation of contaminated sites that exist prior to the First Nation's Land Code coming into force.

In the developmental phase, Canada funds only a Phase I ESA, in this process.

Use of ESA Information after a Land Code is in Effect

After a Land Code is in effect, ESA reports provide a very important tool in a First Nation carrying out its environmental governance, EA and EP responsibilities.

Phase I ESA Information Collected

The information collected during the conduct of the Phase I ESAs, which is primarily used to determine whether human or ecological risks are present, is important even after a Land Code is in effect.

It is important for the LGD/Lands Manager to know how best to use and respond to this information by knowing:

- When to use the information when dealing with lands instruments that grant interest in reserve lands
- That an ESA report's information becomes stale dated
- To follow up on the Environmental work plan's Phase II and III work attached to the Individual Agreement
- To preserve ESA information to support environmental management and planning tasks
- How to interpret ESA Workplans

Land Instruments

The LGD/Lands Manager must ensure that the results and recommendations of ESAs and EAS are incorporated into the terms and conditions of land instruments granting interests in reserve land, (e.g., who is responsible for environmental clean-up, risk management and monitoring?).

Re-assessment

Re-assessment of an ESA may be undertaken at the recommendation of a qualified QEA if, based on listed criteria, it is determined that changes to land use or environmental law and policy are significant enough to render the report stale dated.

Phase II and III work

Phase II and III work will be completed during the Operational Phase, which does not happen until the Land Code comes into effect. However, they are identified during the developmental phase and form part of the Individual Agreement work plan signed off by Canada and the First Nation. It is important that the LGD/Lands Manager review the Individual Agreement and identify the work yet to be done.

ESA Management and Planning

A First Nation should preserve ESA information so that it can support operational environmental management work and environmental planning tasks, such as:

- Use in the Environmental Management Plan's (EMP) Step 1 description of the environmental issues faced by a First Nation
- Providing information to other First Nations departments that may be seeking land for housing, administrative buildings, industrial areas, or commercial development so that the potential risks and costs of development on contaminated land can be considered
- Using the ESA information when seeking bank or other funding for land development
- Aiding the preparers of EAS as they describe the environmental condition of land proposed for development and to analyze potential environmental impacts

ESA Report Work Programs

When reviewing the results of previous ESAs, the reader must pay close attention to the studies' actual work programs, because relying on a general description, such as "Phase II ESA," may be insufficient to explain the level of investigation that was conducted and how the results should be used. Similar attention to actual content is important when developing a scope of work for future ESAs.

EMP and ESA Information

The FN ESA reports, particularly the Phase

I ESA reports, and the Individual Agreement are important documents that will aid a LGD/Lands Managers in preparing for and completing an EMP. The LGD/Lands Manager will need to consider the ways in which the First Nation can use the results of these documents and related studies in preparing and implementing the First Nation's EMP. The questions a LGD/Lands Manager should be asking are:

- Were Phase II ESAs conducted?
- What were their findings?
- What other ESA-related documents are in your First Nation's files?
- What are the implications of their findings for risk to human health or ecosystems?
- If only Phase I ESAs were conducted for your reserve, were any APECs identified?
- Were additional studies conducted to verify the presence or absence of actual contamination?
- What kinds of land uses occur on your reserve that could result in contamination?
- Have these uses been included in ESAs?
- What gaps exist in your understanding of environmental condition of reserves? What steps should be followed to fill those gaps?

- What does it say about the preparation of ESAs?
- What does it say about Canada's responsibility for contamination on reserves?

Module 2: What are ESA's?

What are Environmental Site Assessments?

ESAs confirm the absence or presence of contamination.

ESAs originally were developed to provide information to banks or other mortgage lenders about the environmental liability associated with properties.

Hence, ESAs focus on identifying contaminants that could reduce the value of a property or that could result in risk or liability associated with environmental or human health effects of contaminated land.

Technical Content of ESA (tabs interactive)

Introduction:

The technical content of ESAs are based on the specifications contained in Canadian Standards Association (CSA) Standards. This Standard establishes the principles and practices that are applicable to a Phase I and Phase II ESA. It is intended to provide a consistent framework and minimum requirements for conducting ESAs that can accommodate broader regulatory and liability requirements, as well as address pertinent site-specific requirements. The CSA standard establishes the kinds of investigations to be conducted for several "phases" of ESAs. The CSA has been accepted in Canada as reasonable environmental 'due diligence' for property transactions. It is acknowledged as appropriate environmental 'risk assessment' for real estate investments.

Phase I ESA (picture)

Phase I ESAs are guided by CSA Standard Z-768-01 (R2016) and establish the principles and practices that are applicable. This framework involves preparing for and undertaking an investigation and interpreting and reporting on the information gathered. A Phase I only determines the potential for contamination to exist on a property, and are based on a site inspection, review of maps, reports, historical files, and interviews with landowners and government officials. CSA standards do not require sampling in a Phase I ESA, which instead identifies "Areas of Potential Environmental Concern (APEC)" Some First Nations have.

Phase II ESA

Phase II ESAs are guided by the CSA Standard Z769-00 (R2013). Phase II ESAs are intended to test the results of a Phase I ESA, and to determine whether contamination actually exists on a site. This framework involves developing a sampling plan, preparing for and undertaking an investigation for

sampling and measuring, and interpreting and reporting on the information gathered. This Standard is intended as a follow-up to CSA Standard Z768- 01 (R2016).

Soil, water, and air samples may be collected and subjected to field or laboratory tests. Analysis may reveal the presence of metals, hydrocarbons, solvents, or other contaminants of concern. The results of these tests are typically compared with federal guidelines and provincial standards. If contaminant concentrations exceed these established levels, then "Areas of Environmental Concern (AEC)" may be identified.

Phase III ESA

Phase III ESAs examines the need for, and methods of, remediating identified contamination on a site. If delineation was not conducted during the Phase II investigations, Phase III sampling is conducted to delineate the physical extent of previously identified contamination. Phase III investigations may involve intensive testing, sampling, and monitoring, "fate and transport" studies and other modeling, and the design of feasibility studies for remediation and remedial plans. A Phase III study normally involves assessment of alternative cleanup methods, risk management strategies, and costs and logistics.

Phase III reports detail the steps needed to minimize human or ecological risk, to perform site cleanup, and conduct follow-up monitoring for residual contaminants. If a Phase II confirms contamination and determines that unacceptable levels of contamination exist, a Phase III Remedial Investigation should be carried out to determine what approach should be taken to clean up or contain the contaminants present at the site. *Insert link: Phase II and Phase III ESAs Summary*

INFORMATION HERE:

What is the Purpose of the Phase I ESA in the Development Process?

The objective of the Phase I ESA, done during the developmental phase, is to determine the environmental health/condition of the First Nation reserve lands and resources, prior to First Nations taking control back of:

- Jurisdiction over reserve lands
- Governance and law-making authority
- Land and resources management and planning
- Administration

1. What is the purpose of the phase I ESA?

A Phase I ESA conducted during the developmental phase is intended to:

- Identify and list known APECs (usually contamination) based on available information,
- Recommend areas for further study (usually a Phase II ESA)
- Provide a First Nation with information supporting decisions about lands to be excluded from the Land Code or provisions to be included in the Individual Agreement.

It is important that the ESA identify all the APECs on a reserve, because this information will establish the extent of environmental issues that occurred during Canada's management of reserve lands.

2. What does a phase I ESA do?

Phase I ESA identifies and reports on actual and potential site contaminants found on First Nation reserves and on any other environmental concerns, therefore, it does:

- Records review: All environmental reports in possession of CIRNAC and the First Nation are reviewed for previous use of land to identify potential sources of contamination,
- Site visits: Site inspection is conducted to enable identification of actual and potential site contamination
- Interviews: Conducts interviews of knowledgeable FNs members about land use and contamination
- Identifies any existing regulatory concerns/violations (i.e. Fisheries Act)
- Information evaluation: Evaluation of information, reporting and recommend further investigations, as required
- Reporting: Progress reports, minutes of meetings, draft reports and final report
- Identifying areas for potential follow up under a Phase II and III ESA and recommends further investigations, as warranted
- Provide a Class C estimate of the cost associated for each APEC identified in the Phase II and/or remedial investigations recommended.

There is no testing is done in Phase I ESA.

3. How is the First Nation Community Involved?

Community involvement and education of community members and Councils is critical to an effective Phase I ESA and environmental program.

Community understanding of the environmental condition of a First Nation Lands, the need for environmental laws, and appropriate care of the land will help to build a constituency to support development and implementation of a First Nation's Land Code and Individual Agreement during the developmental phase, which leads to improved environmental quality of reserves.

4. What is contaminated in the phase I ESA report?

The contents of a Phase I ESA report can contain the following:

- The results of all interviews
- A copy of the site visit record of observation for each reserve
- The draft report shall have a Conclusions section which can state that the Phase I ESA revealed:
- No evidence of contamination in connection with the subject areas
- Those subject areas or sites where evidence of actual and potential contamination exists
- Other environmental issues
- It can describe and recommend methods to reduce the level of uncertainty (e.g. confirm, refute, or delineate the presence of contamination) and provide a rationale for proposing such methods
- Provide documentation, including references and key exhibits, to support the findings and conclusions contained in the draft report
- It shall reference applicable federal, provincial/territorial, and local legislation and published guidelines used as a basis for findings or conclusions in Phase I ESA.

Phase I ESA Deign

As part of the Framework Agreement process an ESA shall be completed by a QEA to determine the environmental condition of the First Nation reserve lands. CIRNAC has designed a Phase I ESA Terms of Reference (TOR) for developmental First Nations.

Terms of reference:

The Phase I ESA TOR template document "[Statement of Work Phase I ESA for First Nations](#)", is designed specifically for the purposes of the Framework Agreement. The TOR invites proposals to conduct a Phase I ESA using the CSA Standards Z-768-01 (R201 6). CIRNAC's ESA template should be considered a guideline, not a rigid requirement. A First Nation can propose changes to the template's wording to better reflect conditions or concerns on their First Nation Land.

Main Characteristics:

The main characteristics of this approach to ESAs are:

- Creation of a Joint Management Committee (JMC) to guide the process. Lands Advisory Board Resource Centre (LABRC) technicians provide support as requested/required to First Nations in reviewing ESA Terms of Reference as well as draft and final reports
- A QEA firm conducts an ESA
- The JMC oversees the progress of ESAs
- CIRNAC provides funding to the First Nation for the ESA, and the First Nation manages the funds or the First Nation requests that CIRNAC contracts directly with a firm to conduct the ESA work
- Capacity building for First Nations staff is often included in work programs, either "job shadowing" or other field assistance to the QEAs conducting the ESAs
- Elders or other staff may provide the QEAs with information on site history, traditional use, cultural areas, etc.
- Protection of intellectual property

Funding of Phase I ESAs

Canada bears the cost of conducting Phase I ESAs for developmental First Nations because the studies:

- Help fulfil Canada's commitment under the Framework Agreement to provide First Nation's with environmental information about their reserves
- Facilitate a First Nation's decisions that enable Canada to transfer land management authority to the First Nation through an Individual Agreement
- Identify Canada's ongoing environmental liabilities

Phase I ESA Roles & Responsibilities

It is the First Nation and Canada through the Joint Management Committee (JMC), and Qualified Environmental Assessor (QEA) who conduct and have responsibilities under the Phase I ESA The LABRC provides assistance as required/requested.

The JMC is crucial to the success of the Phase I ESA. It is comprised of a First Nation and CIRNAC representative. The main objective of the JMC is project management of the Phase I ESA.

A QEA will be hired to carry out the work and maintains constant communication with the JMC. The QEA must have a familiarity and working knowledge of the CSA standards for undertaking a Phase I ESA.

[Phase I ESA Roles and Responsibilities chart](#)

Steps in the Phase I ESA (steps 1-10)

1. CIRNAC provides First Nations with Terms of Reference

If there is a need to conduct an ESA, CIRNAC provides the template TOR to the First Nation for review and comment. A First Nation's review and comment of the TOR is an important step as each First Nation may have unique requirements. Often there are special considerations such as remote sites, adjacent properties, recent development activity, traditional knowledge, that should be included in the TOR.

There may be reasons why a First Nation does not require an ESA. Sometimes ESAs have been completed for other reasons that are already complete and not stale dated (more than 5 years). In this instance, ESAs under this process may not be required.

2. First Nation/CIRNAC Meet on TOR

The First Nation/CIRNAC meet to discuss the TOR scope, timing, necessary changes and who will contract directly with a qualified firm. Depending on when the contract is awarded, seasonal weather can affect the completion of site visits due to flooding, erosion, or snow. It is important to consider these factors when planning the overall completion of the developmental phase. It is not usual that house to house visits/inspections are included.

3. TOR is Finalized

TOR is finalized and forwarded to firms for estimate (max \$25k) - No testing is required during this phase. A record review, interviews and a site visit should not exceed \$25k. JMC will review and evaluate the QEA's project proposals according to the established criteria set out in the TOR and approve the successful bidder.

4. JMC meet to discuss/pick firm

Once all proposals have been submitted the JMC meets to discuss and pick a firm based on the TOR and the proposal evaluation criteria. Sometimes a First Nation may choose to sole source a contract with a firm of their choice, in this instance CIRNAC will transfer the resources to the First Nation to complete the phase I ESA.

5. JMC meet with winning firm

JMC meets with winning firm to discuss timing, payment, special considerations. Sometimes a firm may require permission to enter First Nation lands and possibly even an escort or guide for navigating the land. Often payment is provided at various stages as per the TOR and timing considerations are discussed at this point depending on the developmental completion goals/season of the First Nation.

6. Firm conducts phase I ESA

Firm conducts records review, interviews and site visit. Often various federal, provincial and municipal government departments are consulted for historical data relevant to the ESA report, brief site visits are usually restricted to particular sites and public buildings to look for surficial stains, odours and other obvious evidence of contamination or the lack thereof.

7. Firm prepares draft report

Firm prepares draft report and forwards to JMC for comment. This is an opportunity to ensure the report is written to the satisfaction of the JMC. Often a priority of issues is requested to ensure that any follow up is highlighted for the sites that are in most need of attention.

8. Final Review and Final prepared

Once the JMC has reviewed the draft they will provide comments to the firm prior to the firm finalizing its Phase I ESA report. The firm will review JMC comments and the final report is prepared.

9. Final report accepted

The firm will present the final report of findings to the JMC for acceptance by the JMC.

10. Recommendations

Recommendations for phase II prepared for inclusion into the Individual Agreement. The firm will have a one- or two-page executive summary that outlines the findings and suspected/confirmed sites that are contaminated. These pages are appended to the Individual Agreement for follow up at a future date.

Click on link for a [printable chart of the Steps 1 to 10 for a Phase I ESA](#).

Identifying Activities of Different Types of ESAs

We will now take a look at the different kinds of activities to be conducted in Phase I, II and III ESAs. Activities conducted in Phase III or higher ESAs are more variable.

Phase I ESA Activities:

The activities required for completing a Phase I ESA are:

- Records Review (i.e. reviewing environmental files and information about past and present uses of the site)
- Interviews (i.e. gathering information from elders about past and present uses of the site)
- Site Visit
- Evaluation of information and reporting

The result determines the need for further site-specific investigation such as the need for any type of intrusive sampling and analysis or may indicate that further investigation is not warranted.

Phase II ESA Activities:

The activities required for completing a Phase II ESA focus on gathering specific information as required about the property and can include:

- Collection of laboratory analyses of samples of soil groundwater, or other materials
- Above/underground storage tank content
- Sampling Polychlorinated Biphenyl's (PCB)
- Directly measuring conditions such as noise levels or radiation
- Evaluate the potential migration of contamination

The result determines the need for remedial work plan and may also allow the determination of whether conditions or events at the site are causing or likely to cause adverse effects and will require notification to the appropriate regulatory authority. There are also detailed Phase II ESAs, limited Phase II ESAs, and Supplementary Phase II ESAs. The extent of a contaminated area may be delineated in a Phase II ESA or conducted in a separate Phase III ESA.

Phase II ESA Activities:

Phase III ESAs may include:

- Conducting an intrusive investigation comprising of further test pitting and sampling to characterize and delineate a contaminant (e.g. petroleum hydrocarbon impacts in soil and groundwater that were previously identified in a Phase II)
- Undertake groundwater monitoring
- Collection and submission of soil and groundwater samples for laboratory analyses of contaminants of concern
- Develop a Remedial Action Plan

Actual site remediation or such work may occur in separate a study that follows a Phase III ESA.

Crown-Indigenous Relations and Northern Affairs Canada's Approach

CIRNAC's approach to contaminated site studies features a combination of:

- CSA-based approaches to contaminated site assessment (i.e., Phase I and II ESAs)
- Use of guidelines developed by the [Canadian Council of Ministers of the Environment \(CCME\)](#)
- The Treasury Board's Policy on the Management of Real Property
- CIRNAC applies the [Contaminated Sites Management Policies](#)

Remediation

If an ESA identifies contamination, INAC (now CIRNAC) requires additional studies before agreeing to remediate sites. For example, CIRNAC expects human and ecological risk assessments to be conducted, complying with requirements of Health Canada and Environment Canada. The ability to obtain funding to remediate a contaminated site can be affected by the "scores" achieved under the National Classification System for Contaminated Sites (NCSCS) rating system. The NCSCS rating system rates the severity of contaminated site risks on reserve lands. Click on Link for: [NCSCS Guidance Document](#) and Supplemental Guide. *Need to find this Guide

When is an ESA Required?

Because ESAs focus on identifying contaminants, areas free of human activity need not be subject to an ESA. Wilderness areas that have not been subject to resource extraction, road building, or other human occupancy do not require an ESA. Virtually all other kinds of land use (e.g. residential, industrial etc.), however, may have experienced contamination from intentional or inadvertent human actions.

(Insert picture of clock) If there are land and resource activities that are occurring on a reserve, or may have occurred in the past, an ESA should be conducted to determine the likelihood, extent, and severity of contamination, for example:

- During the Developmental Phase ESAs should be completed before land is transferred
- During the Operational Phase before a change in use could expose people or ecosystems to contamination

In the above circumstances, ESAs can limit the liability for the First Nation, Canada, the property owner or manager.

Kinds of Activities that Result in Contamination (this will go with above information)

A Lands Governance Director/Lands Manager will need to know the kinds of activities that could result in contamination, and therefore be subject to an ESA. (air quality picture)

Agricultural land: Activity: Pesticide use, fuel spills, fertilizer use (particularly manure), waste from livestock or food processing operations.

Golf courses: Activity: Pesticide use, fuel spills, runoff from structures, fertilizer use, import of contaminated fill.

Residential Areas: Activity: Contaminated fill, road runoff, domestic pesticide & fertilizer use, home businesses (e.g. auto repair and service), fuel tank leaks and spills, smoke from wood stoves and fireplaces, unsafe disposal of paints and solvents.

Logging: Activities: Fuel spills, herbicide use, contaminated fill for road base.

Mining: Activities: Creation of acid rock drainage, increased metal concentration in runoff, leaks and spills from mineral processing areas, fuel spills.

Commercial and Industrial Areas: Activity: Disposal of chemicals, solvents, metals on ground or in storm drains, fuel storage & spills (above ground & below ground), open storage of organic/inorganic wastes.

Railroads: Activities: Metals in spillage from bulk carriers, contaminated rail ballast, creosote from railroad ties, fuel spills, air emissions from locomotives.

Landfills and Other Sites: Activities: Air pollution from emissions into atmosphere, ground water pollution from chemicals or solvents, fires that release gases such as methane.

Limits to Use of ESA Information

Almost all ESAs are based on sampling of soil, water, or air. Not only is sampling an economical way to assess the environment, but sampling is virtually the only way to understand contamination issues on reserve lands.

Limitations of ESA:

ESAs focus on contamination, and typically say little about the condition of habitat, erosion and sedimentation risk, or similar environmental topics. Because they are based on available information, ESAs may not identify all contaminated areas. Future studies may identify contamination problems.

Collecting Samples:

Collecting samples that accurately represent the real world can be complex. People who design site assessment work programs, collect and analyze samples, and report results typically have university degrees or college certificates in environmental science and technology or engineering. People with suitable education and experience are sometimes called QEA or Qualified Environmental Professionals. Sampling and analysis can be expensive, so the designers of sampling programs need to balance the desire for a high level of confidence in results (often requiring large number of samples) with the cost of collecting and analyzing samples.

Challenges of Sampling

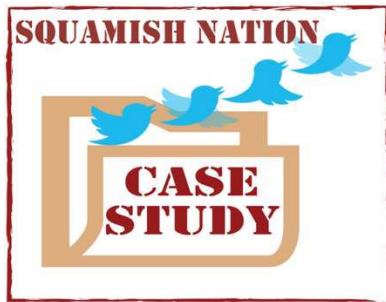
The following example might highlight the challenges of sampling and the care needed in using the results.

- Imagine a 1-ha parcel on which soil from several sources has been dumped to a depth of 4m.
- Some of the fill came from a potentially contaminated source, and some did not.
- Hence, the contamination is not uniformly distributed throughout the fill, but is concentrated in scattered pockets.
- A robust sampling program might involve drilling 20 holes (of, say, 10 cm in diameter) and 4m deep on the 1-ha site.
- Each drill core could extract 0.4 m³ of soil, from which "stratified" samples would be collected, totaling perhaps 1,000 cm³ for each hole.
- The total sample volume from the 20 drill holes would be 20,000 cm³, or 0.02 m³.
- The results of the sampling program would be based on laboratory analysis of this 0.02 m³ of soil.
- In this example, the ESA results and conclusions about the condition of the site would be based on testing less than 1/10,000th of 1 % of the total soil volume on the parcel.
- The sampling program might miss areas of contamination and underestimate the potential risk.
- Alternatively, one of the samples might include a "nugget" of contamination, which could overstate the risk.
- This example is not intended to deter First Nations from conducting ESAs, but rather to encourage caution in interpreting the findings and ensure that an expert in the field is consulted.

Case Study- Squamish Nation ESA – Contaminated Soils

The Squamish Nation undertook a Phase I ESA during their developmental phase. Because of the historical industrial operations on some of Squamish Nation reserves and potential contaminated sites identified in the Phase I ESA, the Nation and Canada did quite an extensive contaminated sites identification and remediation program during the negotiation of the Individual Agreement.

To see the full case study click on: The [Squamish Nation Experience](#) – Challenges Regarding Off Site Contaminated Fill.



Risk Assessment and NCSCS Scores

The risk assessments and NCSCS scores that determine the priority of sites for remediation are based on models and assumptions, and typically use information from ESAs and forecasts about future human use, which introduces considerable uncertainty in the results. The findings of these risk assessments and scoring systems should be considered as guidelines and estimates, not hard-and-fast facts.



ACRONYM LIST

AEC	-	Areas of Environmental Concern
APEC	-	Areas of Potential Environmental Concern
CCME	-	Canadian Council of Ministers of the Environment
CSA	-	Canadian Standards Association
EA	-	Environmental Assessment
EMP	-	Environmental Management Plan
EP	-	Environmental Protection
ESA	-	Environmental Site Assessment
FN	-	First Nation
<i>FRAMEWORK AGREEMENT</i>	-	<i>Framework Agreement on First Nation Land Management</i>
ID	-	Implementation of Phase I & II of the <i>Framework Agreement</i>
INAC	-	Indigenous & Northern Development Canada
JMC	-	Joint Management Committee
LAB	-	Lands Advisory Board
LABRC	-	Lands Advisory Board Resource Centre
LC	-	Land Code
LGD	-	Land Governance Director
NCSCS	-	National Classification System for Contaminated Sites
PCB	-	Polychlorinated Biphenyls
QEA	-	Qualified Environmental Assessor
TOR	-	Terms of Reference



GLOSSARY OF TERMS

ADVERSE EFFECTS

An undesirable or harmful effect to an organism, indicated by some result such as mortality, altered food consumption, altered body and organ weights, altered enzyme concentrations or visible pathological changes.

CLEAN UP

The removal of a chemical substance or hazardous material from the environment to prevent, minimize or mitigate damage to public health, safety or welfare, or the environment, that may result from the presence of the chemical substance or hazardous material. The clean-up is carried out to specified clean-up criteria.

CONTAMINANT

Any physical, chemical, biological or radiological substance in air, soil or water that has an adverse effect. Any chemical substance whose concentration exceeds background concentrations or which is not naturally occurring in the environment.

CONTAMINATED SITE

A contaminated site is defined as a site at which substances occur at concentrations: (1) above background levels and pose or are likely to pose an immediate or long-term hazard to human health or the environment, or (2) exceeding levels specified in policies and regulations.

CONTAMINATION

Contamination: the introduction into soil, air or water of a chemical, organic or radioactive material or live organism that will adversely affect the quality of that medium.

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.

DUE DILIGENCE



The *Framework Agreement* requires a vote of membership for both the Land Code and Individual Agreement. A vote is not possible unless membership is making an informed decision. This involves an understanding of the implications of assuming management of the lands by becoming fully informed of their legal obligations, liabilities and responsibilities before making a final decision on whether or not to approve a Land Code and Individual Agreement and also making an informed decision as to which lands to include or exclude from the Land Code.

First Nations, as part of carrying out due diligence will also:

- (1) Make reasonable inquiries to confirm the facts on which the approval decision is to be based (e.g. that leases are valid or that an environmental site assessment is satisfactory)
- (2) Assure itself of the ability of the other party (i.e. Canada) to carry out its responsibilities under the *Framework Agreement* and Individual Agreement, all for the purpose of evaluating the risks to the First Nation of approving a Land Code.

Under a Land Code the First Nation has the authority to make decisions on their land and resources. In order for a First Nation to make informed decisions they must understand the implications of the project, permit etc. regarding lands and resources by becoming fully informed of their legal obligations, liabilities and responsibilities before making a final decision on whether or not to approve it.

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 (EMP)

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

ENVIRONMENTAL PROTECTION

Environmental protection is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce attendant risks to environmental and human health and safety. The adverse effects of exposure to contaminants may result from direct or indirect contamination of soils, water, and air from hazardous materials and uncontrolled exposure to those contaminants.

ENVIRONMENTAL SITE ASSESSMENT (ESA)

A systematic due diligence process that includes studies, services and investigations to identify and assess contaminated areas. The results of ESAs may be used to plan site management and remediation efforts.

FIDUCIARY

A fiduciary relationship is a trust relationship. In the context of the *Framework Agreement*, the Crown continues to hold title to reserve land, as a trustee, for the use and benefit of a First Nation. The special relationship between the Crown and First Nations also may include other matters which are fiduciary in nature.

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.

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.

GROUNDWATER

Groundwater is all subsurface water that occurs beneath the water table in rocks and geologic formations that are fully saturated.

IMPLEMENTATION OF PARTS I & II of the *FRAMEWORK AGREEMENT*

The “Implementation” document deals with Parts I & II of the *Framework Agreement on First Nation Land Management*. It is a planning document that identifies the respective activities of each First Nation and Canada to facilitate a cooperative effort and coordinate the steps necessary to achieve a vote of the Land Code and Individual Agreement within 2 years.

INDEMNIFY

Indemnify means to protect against damage, loss or injury; to compensate for loss or damage; and to provide security for financial reimbursement to an individual in case of a specified loss incurred by the person. For example: an insurance company indemnifies their policyholders against damage caused by such things as fire, theft, and flooding, which are specified by the terms of the contract between the company and the insured.

In the context of the *Framework Agreement*, the Crown agrees to reimburse, or indemnify, a First Nation if the First Nation is successfully sued over a matter for which Canada was at fault and which happened before the First Nation's Land Code came into effect. Similarly, the First Nation agrees to reimburse, or indemnify, the Crown if the Crown is successfully sued over a matter for which the First Nation was at fault and which happened after the First Nation's land code came into effect.

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.

INDIVIDUAL AGREEMENT

An Individual Agreement between each community and Canada 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,



e.g. the interests in land held by Canada that are to be transferred to the First Nation, the transfer of revenues and an interim environmental assessment process, and the funding to be provided by Canada to the First Nation for land management.

INTELLECTUAL PROPERTY

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

JOINT MANAGEMENT COMMITTEE

Joint Management Committee is a project management committee comprised of the First Nation and Aboriginal Affairs and Northern Development Canada (AANDC). One vote each to the First nation and AANDC, and decisions are by consensus.

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

Under Sections 38, 39, and 40 of the *Framework Agreement*, the First Nations have established a First Nation Land Advisory Board (LAB) to provide:

- Developmental First Nations political, technical, legal, advisory and financial support
- Operational First Nations assistance in implementing the *Framework Agreement* and their own land management regimes.

The LAB is composed of Chiefs regionally elected from the Operational First Nations.

Some of the LAB’s functions include:



- Establishing a resource centre
- Providing strategic direction to the Resource Centre
- Proposing to the Minister such amendments to the *Framework Agreement* and the federal legislation, as it considers necessary or advisable in consultation with First Nations
- Negotiating a funding method with the Minister, and performing such other functions or services for a First Nation as are agreed to between the LAB and the First Nation.

The LAB established a resource centre to carry out many of its technical functions and this body is the Lands Advisory Board Resource Centre (LABRC).

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

LIABILITY

Liability: obligations arising from past transactions or events, the settlement of which may result in the transfer or use of assets, or the provision of services or other economic benefits in the future.

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**.



PHASE I ENVIRONMENTAL SITE ASSESSMENT

A **Phase I ESA** identifies potential liabilities associated with contaminants in soil, sediment, ground or surface water through site inspection and historical review. No testing is done in Phase I. The key aspects of a Phase I ESA are records review, site visits, interviews, information evaluation, reporting and identifying areas for potential follow up under a Phase II and III ESA. The limitation of Phase I ESA is that it only identifies **potential** contamination.

POLYCHLORINATED BIPHENYLS (PCBs)

Polychlorinated biphenyls (PCBs) are industrial chemicals which were used in the maintenance of rail lines and hydro utilities, as well as manufacturing of electrical equipment, heat exchangers, hydraulic systems, and several other specialized applications.

QUALIFIED ENVIRONMENTAL ASSESSOR

Qualified Environmental Assessor is a person or business entity who carries out a Phase I Environmental Site Assessment, including but not limited to professional or association designation in earth sciences, engineering, biology, chemistry, and environmental auditing.

REMEDIATION

Remediation is defined by Environment Canada as the improvement of a contaminated site to prevent, minimize or mitigate damage to human health or the environment.

Remediation involves the development and application of a planned approach that removes, destroys, contains or otherwise reduces the availability of contaminants to receptors of concern. Remediation may involve clean-up of contaminants, or “risk management” that limits exposure to contaminants that are not or cannot be removed.

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.

RISK MANAGEMENT

Risk management is the selection and implementation of a strategy of control of risk, followed by monitoring and evaluation of the effectiveness of that strategy.

Risk management may include direct remedial actions or other strategies that reduce the probability, intensity, frequency or duration of the exposure to contamination. The latter may include institutional controls such as zoning designations, land use restrictions, or orders. The decision to select a particular strategy may involve considering the information obtained from a risk assessment. Implementation typically involves a commitment of resources and communication with affected parties. Monitoring and evaluation may include environmental sampling, post-remedial surveillance, protective epidemiology, and analysis of new health risk information, as well as ensuring compliance.

Canada's Responsibility for Contamination Before the Land Code Vote

Inventory of Contaminated Land	Liability
<p>Section 6.3 of the Framework Agreement</p> <ul style="list-style-type: none"> • Before a First Nation develops its land code, Canada is supposed to provide a First Nation, at its request, with “all existing information, in Canada’s possession, respecting any potential or actual environmental problems with the proposed First Nation land” (Framework Agreement s. 6.3) 	<p>Canada may be liable for any environmental damages to First Nation Land before the Land Code comes into effect. This will depend on the facts or circumstances of each case.</p>
<p>Phase I Environmental Site Assessment</p> <ul style="list-style-type: none"> • Such existing information may be inadequate to fully describe the condition of reserve lands, so Canada’s policy is to fund the preparation of Phase I Environmental Site Assessments (ESAs), which: <ul style="list-style-type: none"> ➤ review reports on previous use of land to identify potential sources of contamination ➤ conduct site inspections ➤ interview knowledgeable First Nations members about land use and contamination 	<p>Canada’s liability for such “legacy” contamination does not end when a First Nation adopts a Land Code.</p>
<p>Individual Agreement</p> <ul style="list-style-type: none"> • Before approving an <u>Individual Agreement</u>, a First Nations should meet with Indigenous and Northern Affairs Canada (INAC) to resolve responsibility for contamination and remediation. • It is imperative that the nature and scope of further environmental work be included in the Individual Agreement work plan before a First Nation signs off on its Individual Agreement. • Because Phase 1 ESA’s do not identify the entire extent of contamination on reserve land, a First Nation ideally should ensure that it’s Individual Agreement and work plan contain a commitment by Canada to assist the First Nation in identifying contaminated sites on reserve and a timeline to remediate them. 	<p>Canada will not necessarily remediate identified contaminated sites. A variety of studies and ratings must be conducted, and funding must be available.</p> <p>For Canada’s official policy on site remediation, go to: https://www.aadnc-aandc.gc.ca/eng/1100100034643/110010034644</p>

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

(signed in 1996)

Includes modifications resulting from

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

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

(signé en 1996)

Comprend les changements apportés par
les modifications suivantes

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

Framework Agreement on First Nation Land Management

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

BETWEEN:

THE FOLLOWING FIRST NATIONS:

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

AND

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

WHEREAS:

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

The First Nations should have the option of

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

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

ENTRE :

LES PREMIÈRES NATIONS
SUIVANTES :

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

ET

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

ATTENDU QUE :

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

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

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

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

The Parties understand that this Agreement must be ratified;

NOW THEREFORE,

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

PART I PRELIMINARY MATTERS

1. INTERPRETATION

1.1 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

1. 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 Québec.

2. FIRST NATION LAND

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

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

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

3. INDIAN OIL AND GAS

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

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

2. TERRES D'UNE PREMIÈRE NATION

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

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

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

3. PÉTROLE ET GAZ DES INDIENS

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

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

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

4. RESERVES

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

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

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

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

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

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

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

4. RÉSERVES

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

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

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

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

a) l'environnement y est si dégradé que

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

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

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

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

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

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

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

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

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

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

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

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

4.6 The First Nation will make provision to

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

PART II OPTING IN PROCEDURE

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

PARTIE II PROCÉDURE D'ADHÉSION

5. DEVELOPMENT OF A LAND CODE

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

5.2 The land code of a First Nation will

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

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

(i) licenses and leases, and

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

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

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

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

5. ÉLABORATION D'UN CODE FONCIER

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

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

a) la description des terres qui y sont assujetties;

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

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

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

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

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

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

the land code;

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

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

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

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

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

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

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

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

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

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

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

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

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

5.3 Peuvent également figurer dans le code foncier :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its

Canada et la première nation.

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

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

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

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

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

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

7. APPROBATION DE LA COMMUNAUTÉ

7.1 Le code foncier de la première nation

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

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

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

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

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

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

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

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

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

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

7.3 Le code foncier et l'accord distinct sont réputés 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.

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

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

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

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

8.7 A verifier will not deal with disputes over funding.

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

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

9. CONDUCT OF COMMUNITY VOTE

9.1 Once the verifier confirms that the

la première nation dûment approuvé par elle.

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

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

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

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

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

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

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

9. TENUE DU SCRUTIN

9.1 Après que le vérificateur ait décidé que

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

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

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

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

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

10. CERTIFICATION OF LAND CODE

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

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

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

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

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

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

10. CERTIFICATION DU CODE FONCIER

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

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

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

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

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

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

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

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

11. DISPUTED VOTE

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

10.2 Sur réception de la copie du code foncier, de l'accord distinct signée 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

16.1 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.

16. INTÉRÊTS DES TIERS

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

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

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

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

17. EXPROPRIATION BY FIRST NATIONS

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

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

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

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

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

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

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

17. EXPROPRIATION PAR LES PREMIÈRES NATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IV FIRST NATION LAW MAKING

18. LAW MAKING POWERS

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

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

(a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;

(b) laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;

(c) laws on environmental assessment and protection;

(d) laws on the provision of local

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

PARTIE IV POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

18. POUVOIRS DE LÉGIFÉRER

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

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

a) pour réglementer, régir ou interdire le zonage, l'aménagement, l'utilisation, le lotissement ou la mise en valeur des terres;

b) pour créer et réglementer les permis et les intérêts ou les droits fonciers relatifs aux terres de première nation ou prévoir des interdictions à cet égard;

c) pour régir la protection de l'environnement et l'évaluation environnementale;

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

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

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

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

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

19. ENFORCEMENT OF FIRST NATION LAWS

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

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

(b) provide for fines, imprisonment,

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

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

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

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

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

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

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

a) créer des infractions punissables par procédure sommaire;

b) prévoir des peines, notamment les

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

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

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

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

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

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

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

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

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

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

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

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

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

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

remuneration.

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

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

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

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

20. APPLICATION OF FEDERAL LAWS

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

leur mandat, leur destitution et leur rémunération.

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

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

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

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

20. APPLICATION DES LOIS FÉDÉRALES

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

federal legislation.

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

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

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

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

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

où elles sont incompatibles avec la loi de ratification.

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

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

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

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

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

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

22. EXISTING FIRST NATION BY-LAWS

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

PART V ENVIRONMENT

23. GENERAL PRINCIPLES

23.1 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

23. 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 la province accepte 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 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, d'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

26.1 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.

26. 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

28.1 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

28. 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.

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

32.1 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

les 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

32. 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

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

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

42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

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

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

40.2.3 Le Conseil consultatif des terres doit recevoir et inscrire l'adhésion d'une première nation qui est Partie au présent accord, intervenue après le 1^{er} janvier 2001, et aviser le ministre de la signature de l'accord par celle-ci.

41. 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

43.1 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

43. 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.

différents 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

46.1 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

46. 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

48.1 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

48. 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

51.1 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.

51. REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Le Canada est tenu d'établir un

Lands Register to record documents respecting First Nation land or interests or land rights in First Nation land. It will be administered by Canada as a subsystem of the existing Reserve Land Register.

51.2 A separate register will be maintained for each First Nation with a land code in effect.

51.3 The Governor in Council will be authorized in the federal legislation to make regulations respecting the First Nation Lands Register. These regulations will be developed by the Lands Advisory Board and the Minister.

52. STATUS OF DOCUMENTS

52.1 The Statutory Instruments Act, or any successor legislation, will not apply to a land code or to First Nation laws.

53. PROVINCIAL RELATIONS

53.1 Where Canada and a First Nation intend to enter into an agreement that is not referred to in this Agreement but is required to implement this Agreement and where it deals with matters that normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province to be a party to the negotiations and resulting agreement.

registre des terres de premières nations où seront consignés les documents relatifs aux terres de premières nations ou aux intérêts ou aux droits fonciers sur celles-ci. Ce registre sera administré par le Canada à titre de sous-système du registre actuel des terres de réserve.

51.2 Un registre distinct sera créé pour chaque première nation ayant un code foncier en vigueur.

51.3 La loi de ratification autorisera le gouverneur en conseil à prendre un règlement concernant le registre des terres de premières nations. Ce règlement sera élaboré conjointement par le Conseil consultatif des terres et le ministre.

52. STATUT DES DOCUMENTS

52.1 La Loi sur les textes réglementaires ou les lois qui pourraient la remplacer, ne s'appliqueront pas au code foncier, ni aux textes législatifs des premières nations.

53. RAPPORT AVEC LES PROVINCES

53.1 Si le Canada et une première nation entendent conclure une entente qui n'est pas mentionnée dans le présent accord mais qui est nécessaire à la mise en oeuvre du présent accord, et si cette entente traite des questions qui relèvent normalement de la compétence des provinces ou risque d'avoir des effets importants à l'extérieur des terres de première nation, le Canada et la première nation inviteront la province concernée à participer aux négociations de l'entente ainsi qu'à l'entente qui en résulte.

54. TIME LIMITS

54.1 The time limits in this Agreement for the doing of anything may be waived on consent.

55. OTHER REGIMES

55.1 Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.

55.2 Sub-clause 38.1 and clause 57 do not apply to a First Nation to which sub-clause 55.1 applies.

56. REVIEW PROCESS

56.1 The Lands Advisory Board will, on a continuing basis, consult with representatives of the Parties for the purpose of assessing the effectiveness of this Agreement and the federal legislation.

56.2 Within four years of the federal legislation coming into force, the Minister and the Lands Advisory Board or their representatives will jointly conduct a review of this Agreement. It will focus on the following issues, among others:

- (a) the functioning of land management under this Agreement;
- (b) the adequacy and appropriateness of the funding arrangements;

54. DÉLAIS

54.1 Les Parties peuvent, par consentement mutuel, renoncer aux délais prévus par le présent accord.

55. 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.

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 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.

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. AMENDMENTS

57. MODIFICATIONS

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.

57.1 Le présent accord peut être modifié jusqu'au 1^{er} septembre 2003 avec le consentement des parties, pourvu que les modifications à la Partie VIII soient apportées avec le consentement du Canada et des deux tiers des premières nations qui étaient Parties initiales au présent accord.

57.2 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.

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

58.1 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.

58. PRÉAMBULE

58.1 Les dispositions figurant au préambule font partie du présent accord.

59. ENTRÉE EN VIGUEUR

59.1 Le présent accord entrera en vigueur pour ce qui est du Canada et d'une première nation au moment où le Canada et cette première nation auront tous deux ratifié le présent accord conformément à la Partie X.

59.2 Malgré le paragraphe 59.1, les dispositions du présent accord nécessaires à sa ratification par une première nation avant que le Canada ne l'ait ratifié entrent en vigueur le jour où le Canada et cette première nation auront tous deux signé le présent accord.

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY

INTRODUCTION

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. One other First Nation was added as of December 1997. The Agreement was ratified by Canada through the *First Nations Land Management Act*, assented to June 17, 1999

The Agreement is an initiative by these 14 First Nations to take over the governance and management control of their lands and resources. This First Nation designed and driven *Framework Agreement* with Canada has expanded from the original 14 First Nation signatories to 84 First Nation Signatories in 2013. The *Framework Agreement* applies only to those First Nations who choose to ratify it.

The *Framework Agreement* is not a treaty and does not affect existing treaty or other constitutional rights of the First nations. .

The *Framework Agreement* provides the option to govern and manage reserve lands outside the *Indian Act*. The option to regain control of reserve land through a land code can only be undertaken with the consent of the community. A land code replaces approximately 30 sections of the *Indian Act*.

TAKING CONTROL OF LAND GOVERNANCE

A First Nation signatory to the *Framework Agreement* develops its land governance system by creating its own Land Code, drafting a community ratification process and entering into an individual Agreement with Canada. The specific steps are set out in the *Framework Agreement*:

The Land Code: Drafted and approved by the community, will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Minister of Indian Affairs and Northern Development will no longer be involved in the management and decision making of a First Nation's reserve lands. The Land Code does not have to be approved by the Minister or AANDC.

The Land Code is drafted by each First Nation and provides for the following matters:

- Identifies the reserve lands to be governed by the First Nation under its Land Code,
- Sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others,
- Provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under the Indian Oil and Gas Act),
- Provides the procedures for making and publishing First Nation land laws,
- Provides conflict of interest rules,
- Provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage,
- Identifies a dispute resolution process,
- Sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes,
- Allows the delegation of certain land management responsibilities,
- Sets out the procedure for amending the Land Code,
- Deals with any other matter respecting the governance of First Nation reserve land and resources.

Individual Transfer Agreement: An Individual Agreement between each community and the Minister will be negotiated to deal with such matters as:

- The reserve lands to be managed by the First Nation,
- The specifics of the transfer of the administration of land from Canada to the First Nation,
- The transitional and operational funding to be provided by Canada to the First Nation for land governance.

Community Ratification Process: In order for the First Nation to assume control over its lands, the Land Code and the Individual Agreement must be ratified by the voting age members of the First Nation. All members of the First Nation who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the Land Code and the Individual Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

Federal Legislation: Canada agreed to ratify the *Framework Agreement* by enacting federal legislation that is consistent with the *Framework Agreement*. The *First Nations Land Management Act* was enacted and given royal assent on June 17, 1999.

Verification: An independent person selected jointly by the First Nation and Canada, called a Verifier, confirms that the community ratification process and Land Code are consistent with the *Framework Agreement*. The Verifier monitors the community ratification process to ensure that the rules are followed.

Recognition of Land Governance Authority: If the community ratifies their own Land Code and the Individual Agreement, control over First Nation lands and resources are no longer be subject to the *Indian Act*, but recognized to be under the governance authority of the First Nation.

TITLE TO FIRST NATIONS

Reserve lands under the *Indian Act* are held by Her Majesty and are set apart for the use and benefit of a First Nation. This will not change under the *Framework Agreement*. These lands remain a federal responsibility under section 91(24) of the *Constitution Act, 1867*. In addition, the First Nation's land will be protected against future surrender for sale.

LEGAL STATUS AND POWERS OF FIRST NATIONS

The *Framework Agreement* provides First Nations with all the legal status and powers needed to govern and manage their lands and resources. While First Nations will not be able to sell their land, they will be able to lease or develop their lands and resources, subject to any limits imposed by their own community Land Code.

Law-Making Powers: A First Nation governing its lands under a Land Code will have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation land. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must be made separately pursuant to section 83 of the *Indian Act*. The First Nation's Council can also continue to make by-laws under section 81 of the *Indian Act*.

Land Management: The *Framework Agreement* provides the First Nation with all the powers of an owner in relation to its First Nation Land, except for control over title or the power to sell it. The First Nation's Council can manage land and resources, as well as revenues from the land and resources, in accordance with its Land Code.

Third Party Interests: Interests in First Nation land held by third parties, or by Canada, will continue in effect according to their terms and conditions under a Land Code. No new interests or licences may be acquired or granted except in accordance with the Land Code.

First Nation Expropriation: The First Nation will have the option to acquire lands for community purposes upon payment of fair compensation to those whose interests are affected.

Accountability: A Land Code will make provision for a First Nation to report to its members and to be accountable for the governance of their lands, resources and revenues.

Marriage Breakdown: A First Nation will be able make rules on the rights of spouses to interests in First Nation land if their marriage breaks down. The community must, within 12 months of passage of its Land Code, develop and enact rules and procedures on this topic. The new rules and procedures will ensure the equality of women and men.

Registration of Interests: All documents pertaining to land interests of a reserve will be recorded in the First Nation Land Registry System (FNLRS).

The FNLRS is:

- Electronic
- Provides for Instant Registration
- Priority based
- Paperless
- Backed by Regulation (Unlike the *Indian Act* registry system)

The FNLRS system and regulations are landmark achievements. These regulations made it possible for reserve to have greater land certainty, mortgageability, title insurance and drastically reduced or eliminated land transaction costs

PROTECTION OF FIRST NATION LAND

The preserving of the quantity and quality of existing First Nations lands is a fundamental principle of the *Framework Agreement*. Some aspects of this principle are summarized below:

Taxation and Seizure under Legal Process: The current exemption of reserve lands, and personal property situated on-reserve, will continue under the relevant provisions of the *Indian Act*.

Environmental Protection: A First Nation with a land code in effect will be required to develop an environmental protection regime. A First Nation will have the power to make environmental assessment and protection laws and will harmonize these laws with federal and respective provincial environmental laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation lands for other lands. Provision can be made in its Land Code for a procedure to negotiate and approve such exchanges. An exchange of land cannot occur without the consent of the First Nation community.

No Provincial Expropriation: Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Restricted Federal Expropriation: Canada's power to expropriate First Nation land is greatly restricted. That power can only be exercised with Cabinet approval and only when the expropriation is justified and necessary for a federal public purpose that serves

the national interest. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished.

Enforcement: The First Nation will have full power to enforce its land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own Justice of the Peace or special prosecutor to try offences created under a Land Code or a First Nation law. First Nation laws may make provision for search and seizure, fines, imprisonment, restitution, community service or alternate means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will remain liable for and will indemnify a First Nation for losses suffered as a result of any act or omission by Canada, or its agents, that occurred before the Land Code comes into effect. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own processes for dealing with disputes in relations to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between the First Nations and Canada on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside the courts.

LANDS ADVISORY BOARD AND RESOURCE CENTRE

The First Nations party to the *Framework Agreement* established a Lands Advisory Board and Resource Centre to assist them in implementing their own land governance regimes, including developing model land codes, laws, documents, agreements and management systems.

FIRST NATIONS INVOLVED

The following is a list of the 40 First Nations who signed the *Framework Agreement* and who have enacted Land Codes pursuant to the *Framework Agreement*.

BC

1. Beecher Bay
2. Kitselas
3. Leq' a: mel
4. Lheidli T'enneh
5. Matsqui
6. Musqueam
7. Seabird Island
8. Shx'wha:y Village
9. Skawahlook
10. Sliammon
11. Snaw Naw As (Nanoose)
12. Songhees
13. Squiala
14. Sumas
15. Tsawout
16. Tsawwassen^(a)

MB

1. Chemawawin
2. Opaskwayak
3. Swan Lake

17. Tsekani (McLeod Lake)
18. Ts'kw'aylaxw (Pavilion)
19. T'sou-ke
20. Tsleil-Waututh
21. Tzeachten
22. Westbank^(b)
23. We Wai Kai (Cape Mudge)
24. We Wai Kum (Campbell River)

SK

1. Kahkewistahaw
2. Kinistin
3. Muskeg Lake
4. Muskoday
5. Whitecap Dakota
6. Flying Dust

ON

1. Anishinaabeg of Naongashiing
2. Georgina Island
3. Henvey Inlet
4. Mississauga
5. Nipissing
6. Scugog Island
7. Whitefish Lake

(a) Now implementing treaty

(b) Now implementing full self-government

**IMPLEMENTATION DOCUMENT
FOR PARTS I & II OF THE
*FRAMEWORK AGREEMENT ON FIRST
NATION LAND MANAGEMENT***

**ACTIVITIES,
MILESTONES & FUNDING**

< **First Nation** >

(hereinafter referred to as “the First Nation”)

&

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE INC.
(hereinafter referred to as the “Resource Centre”)

&

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by Aboriginal Affairs and Northern Development Canada
(hereinafter referred to as “AANDC”)

The First Nation, Resource Centre, AANDC are collectively referred to as the "Parties".

1] **Implementation of Parts I & II of the Framework Agreement**

This document deals with the Parts I & II of the *Framework Agreement on First Nation Land Management [Framework Agreement]*. The timeframe for the Parties to complete activities is 24 months. The attached **Annex A** identifies the milestones to be completed by the First Nation. The First Nation may choose to complete activities in addition to those identified in **Annex A** to fulfill their requirements under Parts I & II of the *Framework Agreement*. **Annex B** identifies the consolidated activities by all Parties for this developmental phase.

[2] **Funding Available**

Canada is providing the Resource Centre with the funding for distribution to the First Nations completing Parts I & II of the *Framework Agreement*:

- \$75,000 per First Nation (Year One) for milestones completed during Quarters 1, 2, 3 & 4;
- \$75,000 per First Nation (Year Two) for milestones completed during Quarters 5, 6, 7 & 8;
- \$150,000 per First Nation is the maximum amount available for activities required under Parts I & II of the *Framework Agreement*; and
- The full amount of \$150,000 is available to the First Nation if the First Nation completes all of the activities in less than 24 months.

Annex C outlines the payment schedule of funding to the First Nation. The release of these funds by the Resource Centre to the First Nation is contingent upon the Resource Centre receiving these funds from AANDC.

[3] **Accelerated Implementation**

The Resource Centre receives funding from AANDC on a quarterly basis. The First Nation will be reimbursed for accelerated implementation, at the same rate as the Resource Centre receives this funding from AANDC.

[4] **Extension**

The First Nation may request an extension of time beyond the 24 months by written notice to the Resource Centre and AANDC. Any time extension granted shall be confirmed in writing by the Resource Centre, AANDC.

[5] **Effective Date**

This Implementation Document comes into force effective _____, 2014 and terminates 24 months later [unless there is an extension granted], or the date of the Community vote, whichever comes earlier.

Signature

Name
Signed on behalf of the First Nation

Signature

Name
Signed on behalf of the Resource Centre

Signature

Name
Signed on behalf of AANDC

Annex A: First Nation Milestones to Implement Parts I & II of the *Framework Agreement*

Land Code		Individual Agreement		Community Ratification Vote	
FA	Milestone	FA	Milestone	FA	Milestone
5.1 - 5.4	Review: [i] model Land Code template; [ii] examples of Land Codes designed by other FNs	6.2	Appoint representative		Review: [i] model template of a Community ratification plan; [ii] examples of plans implemented by other FNs
5.1 - 5.4	Prepare draft #1 of Community Land Code using model template & sample Land Codes by other FNs	6.1	Discuss with AANDC: [i] operational funding to implement Land Code; [ii] details of administration transfer process under Individual Agreement [IA]	7.7 [a- g]	Prepare a strategy for taking reasonable steps to locate and inform eligible voters on-reserve & off-reserve [EVs]
5.1 - 5.4	Complete draft # 2 of Land Code following Community engagement	6.3 [a]	Discuss with AANDC their list of "interests or land rights and licences" in reserve lands governed by Land Code	8.1; 44. 1	Discuss with RC selection of a Verifier from list of pre-approved Verifiers
5.1 - 5.4	Complete draft # 3 of Land Code following Community engagement	6.3 [b]	Discuss with AANDC "any actual or potential environmental problems" on reserve lands governed by Land Code	8.1; 44. 1	Advise RC & AANDC of Verifier selection
5.1 - 5.4	Complete legal review of draft Land Code	6.3 [b]	If an environmental site assessment [ESA] is conducted [AANDC will fund], FN will contract with the environmental firm	8.2	Host conference call to discuss presentations at the all party meeting
8.3 [a]	Discuss with Verifier any changes required to finalize Land Code	6.3 [c]	Discuss with AANDC any other information Canada possesses that materially affects interests or land rights and licences in reserve lands	8.2	Host meeting with RC, AANDC, NRCan & Verifier to discuss activities and completion date of respective responsibilities
9.1	Once Verifier confirms Land Code & Community ratification plan are consistent with FA, submit Land Code & IA to Community for approval	6.2	Discuss with AANDC their schedule and work plan to prepare IA	7.2	Prepare list of EVs
10. 4 [1]	Certified copies of Land Code made available at appropriate places	4.2 - 4.3	Discuss with NRCan their schedule their schedule for the Research Report [LDR] & any proposed surveys; discuss access to reserve lands for required FA surveys	7.6 a	Take reasonable steps to locate EVs and inform them of their right to participate and in the manner in which that right can be exercised.
		4.4 - 4.6	If applicable, discuss with AANDC, NRCan & RC any reserve lands considered for exclusion	7.8	Take appropriate measures to inform 3 rd parties, with an interest or land right in reserve lands, of: [i] FA; [ii] federal legislation; [iii] proposed Land Code; [iv] date of Community vote; advise Verifier of completion
		4.1 - 4.3	Review with RC and provide feedback to NRCan on draft Land Description	7.3 - 7.5	Select a ratification option under the Framework Agreement [clauses 7.3-7.5] for Community vote; notify Verifier & AANDC
		6.1	Sign the IA with the Minister; provide a copy to Verifier	7.6 b	Forward to EV on list information explaining the content of: [i] FA; [ii] federal legislation; [iii] IA; [iv] proposed Land Code; send copy of information & list of recipients to Verifier
				8.3 [b]	Finalize list of EV
				8.3 [c]	Submit to Verifier completion of steps taken to conform with FA Clauses 7.6 & 7.7
				7.2	Submit final list of EV to verifier
				9.1	Conduct the community vote
				10. 1	If Community approves Land Code & IA, Council sends a true copy of documents to Verifier with statement that documents were properly approved

Annex B: Consolidated Activities of the Parties

Legend for Activity Areas: Land Code [LC], Community Vote [CV], Verifier [V]; Individual Agreement [IA]: General [G], Funding [\$], Environmental Site Assessment [ESA], Land Description Report [LDR]		LC	CV	V	IA: G	IA: \$	IA: ESA	IA: LDR	
Quarter 1	1	First Nation [FN]: Appoint representative							
	2	FN: Review model LC template & LCs by other FNs	LC						
	3	FN: Review model template of Community Ratification Process [CRP] & CRP by other FNs		CV					
	4	FN: Prepare strategy to locate & inform Eligible Voters [EVs], on & off reserve.		CV					
	5	AANDC: Develop a work plan to prepare the Individual Agreement [IA]				G			
	6	NRCan: Begin research process & start preparation of Research Report [LDR]						LDR	
	7	AANDC: Discuss with FN the need for an Environmental Site Assessment [ESA]					ESA		
	8	FN: Advise AANDC of any known "actual or potential environmental problems" on their reserve lands					ESA		
	9	FN: If ESA is required [AANDC funds], contract with the environmental firm					ESA		
	10	FN: Coordinate a conference call with the Parties to arrange a future meeting & their respective presentations							
	11	FN: Discuss with Resource Centre [RC] the selection of a Verifier from the list of pre-approved Verifiers			V				
Quarter 2	12	FN: Advise RC & AANDC of Verifier selection			V				
	13	FN: Begin discussions with AANDC & NRCan on the process & anticipated timing for completing the IA				G			
	14	FN: Host meeting of all Parties to discuss their respective activities; NRCan: discuss any issues arising from the Research Report, proposed surveys [including access to reserve lands] & schedule to prepare LDR	LC	CV	V		\$	ESA	LDR
	15	AANDC: Provide to FN the current list of Indian Act interests & other information held by Canada [FA: 6.3c]				G			
	16	FN: Respond to AANDC on their list of "interests or land rights & licences" in the FN reserve lands				G			
	17	AANDC & RC: Explain to FN the level of operational funding & the calculation process which determined the FN's funding category of Tier 1, 2, or 3					\$		
	18	AANDC: Explain to FN the calculation of the revenue money total to be included in the IA annex					\$		
	19	FN & NRCan: At the end of Quarter 2, discuss any changes to the schedule and preparation of the LDR						LDR	
Quarter 3	20	FN: Prepare draft #1 of LC using model template & sample LCs by other FNs.	LC						
	21	FN: Prepare preliminary list of EVs.		CV					
	22	FN: Discuss with AANDC any other information held by Canada affecting interests/land rights/licences in FN's reserve lands.				G			
	23	NRCan: Update FN on the status of surveys & LDR						LDR	
	24	Parties: If applicable, discuss any reserve lands considered for exclusion.				G			
	25	FN & AANDC: Discuss draft ESA report					ESA		
	26	FN & AANDC: If applicable, discuss a list of outstanding land issues to be resolved, either before the vote, or post-vote				G			
Quarter 4	27	Parties: Discuss update on the schedule to complete the IA.				G			
	28	FN: Prepare draft #2 of LC following Community engagement	LC						
	29	FN: Prepare a Community Ratification Process document [CRP] identifying how EVs will be located & informed of their right to participate in the CV & the process by which they can exercise their right		CV					
	30	FN: Submit CRP to Verifier		CV	V				
	31	FN: Update Verifier on steps taken to locate EVs & inform them of their right to participate & process to exercise this right		CV	V				
	32	FN & AANDC: Finalize ESA report					ESA		
	33	NRCan: Update FN on the status of the LDR						LDR	
	34	FN & AANDC: If applicable, update discussions of any list of outstanding land issues to be resolved				G			
Quarter 5	35	FN: Complete draft #3 of LC following community engagement & submit to Verifier	LC		V				
	36	FN & NRCan: Discuss the status, or completion, of the LDR						LDR	

	37	FN & AANDC: Discuss final list of Indian Act interests provided and any other information [FA 6.3c]				G			
	38	FN & AANDC: Discuss revenue total to be identified in the IA					\$		
	39	FN & AANDC: Complete IA				G			
	40	FN & Verifier: Confirm CRP compliance with FA clauses 7.6 & 7.7		CV					
	41	FN: Implement CRP by taking appropriate measures to inform 3rd parties [with an interest or land right in reserve lands] of: FA & FNLMA, LC, & CV date in accordance with CRP; then advise Verifier of measures completed	LC	CV		G			
	42	FN: Update Verifier on steps taken to locate EVs & inform them of their right to participate & process to exercise this right		CV	V				
	43	FN: Select ratification option under the FA [clauses 7.3-7.5] & notify the Parties		CV					
Quarter 6	44	FN & NRCan: Discuss the status, or completion, of the LDR							LDR
	45	FN: Complete LC following comments provided by Verifier	LC						
	46	FN: Complete legal review of LC	LC						
	47	FN: Complete legal review of IA				G			
	48	FN & Verifier: Finalize compliance of LC with FA							
	49	FN & AANDC: Either initial the IA, or officially sign, the IA				G			
	50	FN: Complete final list of Evs		CV					
	51	FN: Ensure that all EVs on list have received information explaining the content of: [i] FA; [ii] FNLMA; [iii] IA; & [iv] LC							
	52	FN: Update Verifier on steps taken to locate EVs & inform them of their right to participate & process to exercise this right	LC	CV		G			
Quarter 7	53	FN: Submit final list of EVs to Verifier		CV	V				
	54	FN: Appoint Ratification Officer, if using a Ratification Officer		CV					
	55	FN: Discuss with Verifier any additional changes that may be required to finalize the LC	LC		V				
	56	FN: Submit to Verifier confirmation of any final steps required to conform with FA clauses 7.6 & 7.7		CV					
	57	FN: Submit final LC & IA to Community in accordance with CRP	LC			G			
Quarterly 8	58	FN: Conduct vote on LC & IA	LC			G			
	59	FN: If Community approves LC & IA, send a true copy of documents to Verifier & state documents were properly approved	LC			G			
	60	FN: Request Minister to sign IA, if IA was only initialled in step 49				G			
	61	FN: Provide signed copy of IA to Verifier				G			
	62	FN: If Community votes to ratify the LC & IA, ensure certified copies of LC are available at appropriate places							

Annex C: First Nation Funding & Payment Schedule

Payment Schedule	Year 1	Year 2
Year 1 – Payment 1 upon signing the CAPP [see explanation in (a) below]	\$18,750	
Year 1 – Payment 2 (reimbursement for the completion of Q1 & Q2 activities)	\$18,750	
Year 1 – Payment 3 (reimbursement for the completion of Q3 activities)	\$18,750	
Year 1 – Payment 4 (reimbursement for the completion of Q4 activities)	\$18,750	
Year 2 - Payment 5 (reimbursement for the completion of Q5 activities)		\$18,750
Year 2 - Payment 6 (reimbursement for the completion of Q6 activities)		\$18,750
Year 2 - Payment 7 (reimbursement for the completion of Q7 activities)		\$18,750
Year 2 - Payment 8 (reimbursement for the completion of Q8 activities)		\$18,750
Maximum contribution	\$75,000	\$75,000

First Nation Payment Process

- a. Payment of \$18,750 will be released upon the signing of this document by the First Nation and the Resource Centre for First Nation participation in the completion of the Individual Agreement.
- b. Payments identified in Annex B will follow the completion of implementation activities.
- c. Claim forms & instructions, as well as milestone funding amounts & reporting requirements, are available & explained at: www.labrc.com/resources

ANNOTATED VERSION
IMPORTANT

DO NOT SEND OUT A DRAFT AGREEMENT WITH ANY FOOTNOTES OR ANNOTATIONS OR COMMENTS IN IT.

EXCEPT WHERE INDICATED IN THE FOOTNOTES, DO NOT CHANGE OR DELETE ANY WORDING OF ANY CLAUSES WITHOUT PRIOR CONSULTATION WITH JUSTICE CANADA.

INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN

_____ **FIRST NATION**

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

_____, 20__

REVISED MAY 7, 2012– FOR USE IN PROVINCES OTHER THAN QUEBEC

TABLE OF CONTENTS

1. INTERPRETATION..... 3

2. INFORMATION PROVIDED BY CANADA 4

3. TRANSFER OF LAND ADMINISTRATION 5

4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION..... 5

5. OPERATIONAL FUNDING 6

6. TRANSFER OF REVENUES 6

7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION..... 7

8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS 7

9. AMENDMENTS..... 8

10. NOTICES BETWEEN THE PARTIES 8

11. DISPUTE RESOLUTION 9

12. DATE OF COMING INTO FORCE.....9

SIGNATURE BLOCK.....10

ANNEX "A" - FUNDING PROVIDED BY CANADA..... 11

ANNEX "B" -DETAILS FOR THE REVENUE MONEYS TRANSFER..... 12

ANNEX "C" - LIST OF INTERESTS AND LICENCES GRANTED
BY CANADA..... 13

ANNEX "D" - LIST OF ALL EXISTING INFORMATION IN CANADA'S POSSESSION
RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH
THE FIRST NATION LANDS 14

ANNEX "E" - LIST OF OTHER MATERIAL INFORMATION PROVIDED BY
CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENSES..... 15

ANNEX "F" - INTERIM ENVIRONMENTAL ASSESSMENT PROCESS 16

REVISED MAY 7, 2012 – FOR USE IN PROVINCES OTHER THAN QUEBEC

ANNEX "G" - LEGAL DESCRIPTION OF _____FIRST NATION LAND 17

THIS AGREEMENT made in duplicate this ____ day of _____, 20__.

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

_____ **FIRST NATION**, as represented by their Chief and Council (hereinafter called the “_____ First Nation@ or the “First Nation”)

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (hereinafter called “Canada”) as represented by the Minister of Indian Affairs and Northern Development (hereinafter called “the Minister”)

(@the Parties@)

WHEREAS the Framework Agreement on First Nation Land Management was signed by Canada and fourteen first nations in 1996 (the “Framework Agreement”) and was ratified and brought into effect by the *First Nations Land Management Act*, S.C. 1999, c. 24 (the “Act”);

AND WHEREAS the First Nation has been added as a signatory to the Framework Agreement by an *adhesion* signed by the First Nation and Canada on _____;¹

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of _____ First Nation Land in accordance with the Framework Agreement and the Act;

AND WHEREAS clause 6.1 of the Framework Agreement and subsection 6(3) of the Act require the First Nation to enter into an individual agreement with the Minister for the purpose of providing for the specifics of the transfer of administration;

AND WHEREAS subsection 6(3) of the Act further requires that the individual agreement provide for the date and other terms of the transfer to the First Nation of Canada’s rights and obligations as grantor of interests and licenses in or in relation

1. This whereas clause should be removed if the First Nation is one of the original fourteen First Nations.

to the land, the environmental assessment process that will apply to projects until the enactment of applicable First Nation laws, and any other relevant matter;

AND WHEREAS clause 6.1 of the Framework Agreement further requires that the individual agreement settle the actual level of operational funding to be provided to the First Nation;

NOW THEREFORE, in consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree as follows:

1. INTERPRETATION

1.1 In this Agreement,

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

“this Agreement” means this Individual Agreement on First Nation Land Management, including the Annexes attached hereto, and any documents incorporated by reference, all as amended from time to time;

“_____ First Nation Land” means the land to which the Land Code will apply and more specifically means the Reserves known as _____ and _____ as described in the Legal Description Report(s) referred to in Annex “G” and includes all the interests in and resources of the land that are within the legislative authority of Parliament, but does not include the Excluded Land;²

“Excluded Land” means a portion of a reserve excluded from application of the Land Code pursuant to section 7 of the Act, the description of which is set out in Legal Description Report(s) referred to in Annex “G”;³

“Fiscal Year” means Canada’s fiscal year as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended;

“Framework Agreement” has the same meaning as in the Act;

“Funding Arrangement” means an agreement between Canada and the _____ First Nation, or between Canada and a Tribal Council of

2. The reference to “Excluded Land” should only be used if the First Nations requests that land be excluded and if the Minister agrees to the request.

3. Do not include this definition if there is no Excluded Land.

which the First Nation is a member, for the purpose of providing funding, during the Fiscal Year(s) identified in that agreement, for the programs and services referred to in that agreement;⁴

“*Indian Act*” means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

“*Land Code*” means the _____ First Nation Land Code, developed in accordance with clause 5 of the Framework Agreement and section 6 of the Act;

“Minister” means the Minister of Indian Affairs and Northern Development and his or her duly authorized representatives;

“Operational Funding” means the resources to be provided by Canada to the _____ First Nation pursuant to clause 30.1 of the Framework Agreement to manage First Nation lands and make, administer and enforce its laws under a land code, and includes financial resources, as described in clause 27 of the Framework Agreement, to establish and maintain environmental assessment and environmental protection regimes;

“Operational Funding Formula” means the method approved by Canada for allocating to First Nations such Operational Funding as may have been appropriated by Parliament for that purpose.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Framework Agreement, the Act or the *Indian Act* have the same meanings when used in this Agreement.
- 1.3 This Agreement is to be interpreted in a manner that is consistent with the Framework Agreement and the Act.
- 1.4 In the event of any inconsistency or conflict between the wording in any Article set out in the main body of this Agreement and the wording in any Annex attached hereto, the wording set out in the Article shall prevail.

2. INFORMATION PROVIDED BY CANADA

- 2.1 In accordance with clause 6.3 of the Framework Agreement, the Minister has provided the First Nation with the following information:
 - (a) a list, attached as Annex “C”, and copies, or access to copies, of all the interests and licences granted by Canada in or in relation to the

4. The definition of “Funding Agreement” may need to be amended to adapt it to regional circumstances and/or changes in government funding policies.

_____ First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;

- (b) a list, attached as Annex A D, and copies of all existing information in Canada=s possession, respecting any actual or potential environmental problems with the _____ First Nation Land; and
- (c) a list, attached as Annex A E, and copies of any other information in Canada=s possession that materially affects the interests and licences mentioned in clause 2.1(a).

2.2 The First Nation hereby acknowledges that it has received or been provided access to all the documents referred to in clause 2.1.

3. TRANSFER OF LAND ADMINISTRATION

3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the _____ First Nation Land in accordance with section 18 of the Act and clause 12 of the Framework Agreement.

3.2 As provided in subsection 16(3) of the Act, Canada hereby transfers to the First Nation all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to _____ First Nation Land that exist on the coming into force of the Land Code.

3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement, the Framework Agreement and the Act, the following:

- (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a license in or in relation to _____ First Nation Land; and
- (b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada=s responsibility.

3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to section 39 of the Act, which provides for the continuation of the application of the *Indian Oil and Gas Act*.

4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION

- 4.1 The First Nation hereby accepts the transfer of land administration described in Article 3 of this Agreement, including, without limitation, the transfer of all the rights and obligations of Canada as grantor of the interests and licenses referred to in clause 3.2 of this Agreement.
- 4.2 As of the date the Land Code comes into force, and in accordance with the Framework Agreement and section 18 of the Act:
- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement and section 38 of the Act, cease to apply and Canada retains no powers and obligations in relation to _____ First Nation Land under these provisions;
 - (b) the First Nation shall commence administering _____ First Nation Land pursuant to its Land Code.

5. OPERATIONAL FUNDING

- 5.1 In accordance with clause 30.1 of the Framework Agreement, and subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Canada shall provide Operational Funding to the _____ First Nation as indicated in Annex “A” in accordance with the Operational Funding Formula as amended from time to time.
- 5.2 The Operational Funding referred to in clauses 5.1 will be incorporated by the Parties into the _____ First Nation’s Funding Arrangement in effect in the year in which the payment is to be made. For greater certainty, payment of Operational Funding will be subject to the terms and conditions of the Funding Arrangement into which it is incorporated.
- 5.3 The _____ First Nation acknowledges that all obligations of Canada to fund the _____ First Nation, as required by Part V (Environment) and Part VI (Funding) of the Framework Agreement, have been addressed by the Operational Funding Formula.

6. TRANSFER OF REVENUES

- 6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue moneys referred to in section 19 of the Act and clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex “B”.

- 6.2 Revenue moneys transferred pursuant to clause 6.1 shall be deposited in the First Nation=s account at such financial institution as the First Nation may direct by notice in writing.
- 6.3 For greater certainty, the transfer of the revenue moneys does not release the First Nation from its commitment to reimburse Canada for any amount paid as a result of a default under any loan entered into by the First Nation or any of its members and guaranteed by Canada in accordance with the terms and conditions relating to ministerial loan guarantees.
- 6.4 For greater certainty, all Indian moneys deemed to be capital moneys pursuant to section 62 of the *Indian Act* are not to be transferred to the First Nation pursuant to this Agreement.

7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION

- 7.1 Immediately following approval of the Land Code and this Agreement by the members of the First Nation, the First Nation shall give written notice (the “Notice of Transfer of Administration”), by registered mail, to each holder of an interest or a licence in or in relation to _____ First Nation Land that is listed or referred to in Annex “C”.
- 7.2 The Notice of Transfer of Administration shall state that
- (a) the administration of _____ First Nation Land and Canada=s rights in _____ First Nation Land, other than title, have been transferred to the First Nation effective the date the Land Code comes into force;
 - (b) the holder of the interest or license shall pay to the First Nation, all amounts owing, payable or due under the interest or licence on or after that date; and
 - (c) as of that date, the First Nation shall be responsible for the exercise of the powers and authorities, and the performance of any covenants, terms and conditions, under that instrument which, but for the transfer of administration, would have been Canada’s responsibility.
- 7.3 The _____ First Nation shall deliver to Canada a copy of every Notice of Transfer of Administration and a copy of every acknowledgement of receipt of the Notice of Transfer of Administration received by the First Nation within 30 days of the issuance or receipt of the same.

- 7.4 The Notice obligations set out in this Article do not apply in respect of a holder of an interest or license who is a member of the First Nation.

8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

- 8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex “F” shall apply to projects on _____ First Nation land until the coming into force of First Nation laws enacted in relation to that subject.

9. AMENDMENTS

- 9.1 This Agreement may be amended by agreement of the Parties.
- 9.2 Any amendment to this Agreement shall be in writing and executed by the duly authorized representatives of the Parties.

10. NOTICES BETWEEN THE PARTIES

- 10.1 Any notice or other official communication under this Agreement between the Parties shall be in writing addressed to the Party for whom it is intended.
- 10.2 The notice referred to in clause 10.1 shall be effective using any one of the following methods and shall be deemed to have been given as at the date specified for each method:
 - (a) by personal delivery, on the date upon which notice is delivered;
 - (b) by registered mail or courier, the date upon which receipt of the notice is acknowledged by the other party; or
 - (c) by facsimile or electronic mail, the date upon which the notice is transmitted and receipt of such transmission by the other party can be confirmed or deemed.
- 10.3 The addresses of the Parties for the purpose of any notice or other official communication are:

Canada:

Director, Lands and Trust Services
Department of Indian Affairs and Northern Development
_____ Region

[insert address of regional office]

[insert fax number for regional office]

_____ First Nation

[Insert title of recipient]

[insert address of First Nation]

[insert fax number for First Nation]

11. DISPUTE RESOLUTION

11.1 For greater certainty, any dispute arising from the implementation, application or administration of this Agreement may be resolved in accordance with the Dispute Resolution provisions set out in Part IX of the Framework Agreement.

12. DATE OF COMING INTO FORCE

12.1 The Parties acknowledge that, in order to be effective, the Land Code and this Agreement must be approved by the members of the First Nation in accordance with the Framework Agreement and the Act.

12.2 Articles 7, 9 and 10 of this Agreement shall come into force as of the day the First Nation and the Minister sign this Agreement.

12.3 The remainder of this Agreement shall come into full force and effect on the date the Land Code comes into force.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Her Majesty the Queen in right of Canada,
as represented by the Minister of Indian
Affairs and Northern Development

[Name of First Nation]

Minister of Indian Affairs and Northern
Development

[Name of Chief]

Councillor

Councillor

Councillor

ANNEX “A”

FUNDING PROVIDED BY CANADA⁵

- (a) The Operational Funding Formula in effect for Fiscal Years 2012-2013, 2013-2014, 2014-2015, and 2015-2016 is described in the Memorandum of Understanding on Funding dated for reference the 19th day of October, 2011, between the Operational First Nation signatories to the Framework Agreement and Canada (the “MOU”).
- (b) The MOU sets out three tiers of funding levels. The _____ First Nation has been identified under a Tier _____ funding level. The amount for that Tier for Fiscal Year 2012-2013 is shown in the table below. That amount shall be prorated based on the number of months from the date that the Land Code comes into force to the end of the Fiscal Year, and the _____ First Nation shall be paid the prorated amount for that year.
- (c) As part of the Operational Funding, Transitional and Environmental Funding will be provided for the year the Land Code comes into force and for the subsequent Fiscal Year, as shown in the Table below.
- (d) The amount of Operational Funding to be paid during each of Fiscal Years 2013-2014, 2014-2015, and 2015-2016 are shown in the table below.
- (e) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after March 31, 2016 will be calculated and provided in accordance with the Operational Funding Formula as amended from time to time.

OPERATIONAL FUNDING	
2012-2013 Fiscal Year	\$ [Insert Tier funding level] (This amount shall be prorated in accordance with para. (b) above.)
2012-2013 Fiscal Year	\$75,000.00 - One Time Transitional and Environmental Funding per 1 st Fiscal Year
2013-2014 Fiscal Year	\$75,000.00 - One Time Transitional and Environmental Funding per 2 nd

5. This Annex is referred to in clause 5 of the Individual Agreement. The authority for funding is Clause 30 of the *Framework Agreement*.

OPERATIONAL FUNDING	
	Fiscal Year
FISCAL years from April 1, 2013 to March 31, 2016	[\$insert Tier funding level] per Fiscal Year
Subsequent FISCAL Years	Subject to paragraph (e) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time.

ANNEX “B”

DETAILS FOR THE REVENUE MONEYS TRANSFER⁶

1. As of the ___ day of _____, _____, Canada is holding \$_____ of revenue moneys for the use and benefit of the First Nation or its members. This amount is included for information purposes only and is subject to change.
2. **Initial Transfer.** Within thirty (30) days of the Land Code coming into force, Canada shall transfer to the First Nation all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.
3. **Subsequent Transfers.** Canada shall, on a semi-annual basis, transfer to the First Nation any interest that is paid into the First Nation’s revenue moneys account thereafter pursuant to subsection 61(2) of the *Indian Act*. This includes any interest paid on capital moneys of the First Nation while these moneys, if any, are being held in Canada’s Consolidated Revenue Fund. The first such subsequent transfer shall be made in the month of April or October, whichever month comes first after the month of the initial transfer.

6. The authority for this Annex is section 19 of the Act and clause 12.8 of the *Framework Agreement*. This Annex is referred to in clause 6 of the Individual Agreement. Clause 6.1 of the Individual Agreement and this Annex are designed for a situation where the First Nation has included all of its reserves in the land code. Clause 6.1 and this Annex do not deal with the situation where the First Nation has excluded a portion of the reserve or where the First Nation has more than one reserve and has excluded one or more of those reserves from the land code. Clause 6.1 and this Annex will need to be revised to deal with those special situations.

ANNEX “C”

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA⁷

All interests and licenses granted by Canada in or in relation to the _____
First Nation Land that are recorded in the Reserve Land Register and the Surrendered and
Designated Lands Register are listed in the attached reports.⁸

OR

All interests and licenses granted by Canada in or in relation to the _____
First Nation Land that are recorded in the Reserve Land Register and the Surrendered and
Designated Lands Register are listed in reports that are available for review at the
_____ First Nation Land Management Office located at **[enter location of
FN office]**:

- § Reserve General Abstract Reports for:
 - § Enter name and Number of reserve(s)

- § Lawful Possessors Reports for:
 - § Enter name and Number of reserve(s)

- § Lease or Permits Reports for:
 - § Enter name and Number of reserve(s)

The above reports identify all interests or licenses granted by Canada that are registered in the Indian Lands Registry System (ILRS).⁹ The following is a list of interests granted by Canada that have not been registered or are pending registration in the ILRS. Copies of these interests shall be provided to the First Nation.¹⁰

[List interests]

7. As per clause 6.3 of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, “a list of all the interests and licenses, 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*.” This Annex is referred to in clauses 2 of the Individual Agreement.

8. Use this clause if you are attaching the ILRS reports to the IA.

10. Use this clause if you are not attaching the ILRS reports to the IA. Please note that not all reserves contain lawful possessors, leases, or permits. Therefore, these reports are limited to reserves where these interests are present.

10. Add this clause if there are interests that have not been registered in the ILRS. The words “granted by Canada” are included so that FNs do not assume that this refers to un-regularized interests.

ANNEX “D”

**LIST OF ALL EXISTING INFORMATION IN CANADA’S POSSESSION RESPECTING
ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST
NATION LANDS¹¹**

11. As per clause 6.3 of the Framework Agreement, Canada must provide to the First Nation, as soon as practicable, “all existing information, in Canada’s possession, respecting any actual or potential environmental problems with the proposed First Nation land.” Accordingly, the title, date and author of any Environmental Site Assessment Report must be set out in this Annex, such as Phase 1 and Phase 2 reports. Any other information on actual or potential contamination contained in INAC’s files should be provided to the First Nation, and listed in this Annex by title, date, and author. This Annex is referred to in clause 2 of the Individual Agreement.

ANNEX “E”

LIST OF OTHER INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENSES¹²

12. As per clause 6.3(c) of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, “any other information in Canada’s possession that materially affects the interests and licenses mentioned in clause 6.3(a).” Accordingly, INAC must identify information in Canada’s possession regarding outstanding issues that materially affects the interests and licenses. This information could be compiled into an outstanding issues report (it will be compiled as part of the Community Approval Process Plan (CAPP)). INAC should consult with its Regional Legal Counsel prior to assigning responsibility for any issue to Canada (only if it is an issue that requires legal advice). This Annex is referred to in clause 2 of the Individual Agreement.

ANNEX “F”

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

- (1) In this Annex,
 - a. “CEAA 1992” means the *Canadian Environmental Assessment Act, S.C. 1992, c. 37* [repealed, 2012, c. 19, s. 66], as it read immediately prior to its repeal;
 - b. “CEAA 2012” means the *Canadian Environmental Assessment Act, 2012, S.C. 2012, c. 19, s. 52*, as amended from time to time.
- (2) The Parties agree that the provisions on environmental assessment in this Annex are without prejudice to any subsequent environmental assessment process they may agree upon in accordance with Clause 25.1 of the Framework Agreement for incorporation in First Nation laws respecting environmental assessment. The provisions in this Annex apply until replaced by First Nation laws respecting environmental assessment.
- (3) During the interim period prior to the enactment and coming into force of First Nations Laws with respect to environmental assessment of projects on _____ First Nation Land, the First Nation shall conduct environmental assessments of projects on _____ First Nation Land in a manner that is consistent either with the requirements of CEAA 1992 and clause (4) below or with the requirements of CEAA 2012 (or any federal environmental assessment legislation that may replace CEAA 2012 in the future). All assessments shall be conducted at the expense of the First Nation or of the proponent of the project.
- (4) The following provisions apply to an environmental assessment process conducted in a manner that is consistent with CEAA 1992:
 - a. When the First Nation is considering the approval, regulation, funding or undertaking of a project on _____ First Nation Land that is not described in the exclusion list as defined in CEAA 1992, the Council of the First Nation shall ensure that an environmental assessment of the project is carried out, at the expense of the First Nation or the proponent, in accordance with a process that is consistent with that of CEAA 1992. Such assessment shall be carried out as early as practicable in the planning stages of the project before an irrevocable decision is made.
 - b. The First Nation shall not approve, regulate, fund, or undertake the project unless the Council has concluded, taking into consideration the results of the environmental assessment, any economically and technically feasible mitigation measures identified as necessary during

the assessment, and any public comments received during the assessment, that the project is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.

- c. If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall ensure that all mitigation measures referred to in paragraph b. are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Council shall also consider whether a follow-up program, as defined in CEEA 1992, is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

ANNEX “G”

LEGAL DESCRIPTION OF _____ FIRST NATION LAND¹³

13. According to subsection 6(3) of the Act, the Individual Agreement must describe the land that is subject to the Land Code. This Annex is referred to in the definition of First Nation land in clause 1.1 of the Individual Agreement. The Legal Description of the First Nation Land is contained in the First Nations Land Management Legal Description Report prepared by Natural Resources Canada. The final Report can be set out in this Annex or it can be incorporated by reference to the date, title, and author.

Phase I Environmental Site Assessment (ESA) Roles and Responsibility Chart (Sample)

Joint Management Committee (JMC)	Indigenous and Northern Affairs Canada (INAC)	First Nation (FN)	Qualified Environmental Assessor (QEA)
<ul style="list-style-type: none"> INAC and FN representative review and accept the Statement to Work for distribution to QEA 	<ul style="list-style-type: none"> Sets up a JMC and appoints a representative 	<ul style="list-style-type: none"> Sets up a JMC and appoints a representative Lands Advisory Board Resource Centre (LABC) aids the FN throughout the Phase I ESA work, as required/requested by the FN 	<ul style="list-style-type: none"> Submits a proposal to conduct the Phase I ESA work as per the Statement of Work
<ul style="list-style-type: none"> Reviews and evaluates the project proposal according to the established criteria 	<ul style="list-style-type: none"> Will provide the FN with sufficient funding to pay for a qualified environmental contractor to conduct the Phase I ESA 	<ul style="list-style-type: none"> Usually the FN Representative on the JMC or a FN Project Manager manages the budget and workplan and all Project Management Procedures (scope management, issues management, risk management, etc.). 	<ul style="list-style-type: none"> Contracts with the FN and submits invoices to the FN
<ul style="list-style-type: none"> Identification and selection of QEA (Consultants) for submitting a proposal to conduct the ESA as per this Statement of Work 	<ul style="list-style-type: none"> Review and expedite the acquisition of ESA funding through the INAC funding mechanism and ensure compliance to all reporting and deliverable schedules 	<ul style="list-style-type: none"> Identifies a FN member to facilitate access to respective reserves lands, shadowing the QEA as a capacity exercise and dissemination of the Phase I ESA information to Chief and Council or membership 	<ul style="list-style-type: none"> Maintains communications with the JMC throughout the contract and conducts its activities
<ul style="list-style-type: none"> Approves the successful bidder 	<ul style="list-style-type: none"> Provide within a reasonable time, to the QEA, access to and collection of all environmental records and information for 	<ul style="list-style-type: none"> Provides, within a reasonable time, all environmental records in its possession to the QEA 	<ul style="list-style-type: none"> Provide copies of all correspondence, does timely progress reports, and prepares minutes of meetings and submits to the JMC

Phase I Environmental Site Assessment (ESA) Roles and Responsibility Chart (Sample)

Joint Management Committee (JMC)	Indigenous and Northern Affairs Canada (INAC)	First Nation (FN)	Qualified Environmental Assessor (QEA)
	review, in its possession, to the QEA		
<ul style="list-style-type: none"> Organizes a preliminary meeting to include the JMC and the QEA in order to outline the logistics of the work to be undertaken 	<ul style="list-style-type: none"> Approves extra funding for the JMC's approved additional work required and cost thereof, which was submitted by the QEA. 	<ul style="list-style-type: none"> FN assists the QEA, in conjunction with the JMC, to define a community consultation process 	<ul style="list-style-type: none"> Collecting and reviewing records from INAC, FN and other sources (e.g. other federal government departments, provincial governments, local governments and agencies, etc.) that has information pertinent to the assessment
<ul style="list-style-type: none"> Oversees the management of the work, budget of the project and maintaining communications with each other throughout the contract 	<ul style="list-style-type: none"> Receives from QEA 2 hard copies and either 1 CD-ROM or 1 memory stick of the final report 	<ul style="list-style-type: none"> Assists the QEA in the collection of community knowledge and setting up necessary interviews (e.g. current and historical land use, identifying known or suspected contamination) 	<ul style="list-style-type: none"> Contracts a FN member to facilitate access to respective reserve lands, shadowing the QEA as a capacity exercise and dissemination of the Phase I ESA information to the Chief and Council or membership
<ul style="list-style-type: none"> Coordinates the access to and collection of INAC records and information on behalf of the QEA in a timely manner 		<ul style="list-style-type: none"> FN provides QEA a list of all commercial ventures on the reserve including a contact name, a map of reserve housing, and any relevant information on traditional knowledge 	<ul style="list-style-type: none"> Conducts an inspection of the exterior of community structures and in some cases residential structures and conducts an inspection of interior community structures only as required
<ul style="list-style-type: none"> Assists the QEA to define a community consultation process 		<ul style="list-style-type: none"> After completion of records review, shall assist QEA to conduct site visits (e.g. someone who is familiar with the subject property such as a trapper, fisherman etc.) 	<ul style="list-style-type: none"> Advises the JMC immediately in writing of any additional work required and cost thereof. No work is to be undertaken which is additional or supplemental to or in substitution of the work specified, unless prior approved by the JMC
<ul style="list-style-type: none"> Reviews all documents prior to their finalization 		<ul style="list-style-type: none"> Helps the QEA gain access to lease properties as required 	<ul style="list-style-type: none"> With assistance from the FN assists the QEA, in conjunction with the JMC, to define a community consultation process

Phase I Environmental Site Assessment (ESA) Roles and Responsibility Chart (Sample)

Joint Management Committee (JMC)	Indigenous and Northern Affairs Canada (INAC)	First Nation (FN)	Qualified Environmental Assessor (QEA)
<ul style="list-style-type: none"> Reviews QEA report on any additional work required and cost thereof. No work is to be undertaken which is additional or supplemental to or in substitution of the work specified, unless prior approved by the JMC. JMC either approves or rejects the additional work and seeks the extra funding to do the work from INAC 		<ul style="list-style-type: none"> If required (by request of the JMC), provide a list of residential and/or community structures to be inspected for indication of contamination 	<ul style="list-style-type: none"> After completion of records review, shall conduct site visits, with the assistance of the FN
<ul style="list-style-type: none"> Protection of intellectual property 		<ul style="list-style-type: none"> Ensures formats for figures and drawings used by the QEA is compatible with the FN GIS requirements 	<ul style="list-style-type: none"> With assistance from the FN collects community knowledge and setting up necessary interviews Protection of intellectual property
<ul style="list-style-type: none"> Preparation of the next Phase of ESA Statement of Work 		<ul style="list-style-type: none"> Receives from QEA 2 hard copies and either 1 CD-ROM or 1 memory stick of the final report 	<ul style="list-style-type: none"> Advising the JMC of the discovery of an immediate health and safety hazard associated with a contaminated site and identifying temporary emergency measures, if necessary, to eliminate or control these
<ul style="list-style-type: none"> Reviews the draft report outlining the results of the findings prior to their finalization (e.g. areas of actual or potential contamination) and recommend methods to reduce the level of uncertainty (confirm, refute, or delineate the presence of contamination) 			<ul style="list-style-type: none"> To carry Workman's Compensation Insurance and a minimum of \$2,000,00 comprehensive general insurance

Phase I Environmental Site Assessment (ESA) Roles and Responsibility Chart (Sample)

Joint Management Committee (JMC)	Indigenous and Northern Affairs Canada (INAC)	First Nation (FN)	Qualified Environmental Assessor (QEA)
			<ul style="list-style-type: none"> Upon completion of the Phase I ESA work, shall prepare and present to the JMC a draft report outlining the results of the findings (e.g. areas of actual or potential contamination) and recommend methods to reduce the level of uncertainty (confirm, refute, or delineate the presence of contamination)
			<ul style="list-style-type: none"> The QEA will present the draft report of findings to the FN community as describe in Section III of the TOR, on an agreed to date
			<ul style="list-style-type: none"> Does a final report following review and comment on the draft report by the JMC Optional, at the request of the FN, the QEA can present the final report at a community meeting
			<ul style="list-style-type: none"> Providing and assisting with storage and data collected during the Phase I ESA in a manner required/compatible by FN's technology
			<ul style="list-style-type: none"> Providing 2 hard copies and either 1 of CD-ROM or memory stick of the final report to the FN and to INAC



PHASE I ENVIRONMENTAL SITE ASSESSMENT

WHAT IS A PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)?

A **Phase I ESA** identifies the potential presence of contaminants in soil, sediment, groundwater or surface water through site inspection and review of reports and historical information. Sampling and analysis of soil or water typically is not conducted in a Phase I ESA. The key aspects of a Phase I ESA are records review, site visits, interviews, information evaluation, reporting and identifying “areas of potential environmental concern” (APECs), which may be studied further in a Phase II and III ESA.

Indigenous and Northern Affairs Canada (INAC) usually funds Phase II and III ESAs after a Land Code has been enacted. The limitation of Phase I ESA is that it only identifies **potential** contamination. It is important that a Phase I ESA identifies all APECs, because this list will establish the extent of potential contamination that has occurred while reserves were managed by INAC. Phase II and III ESAs (which involve sampling) are needed to determine whether contamination actually exists, its extent, and implications for remediation. The parties to the Phase I ESA are the First Nation (FN) and Canada (INAC). Lands Advisory Board provides assistance when requested.

WHY IS PHASE I ESA REQUIRED IN THE DEVELOPMENTAL PROCESS?

Canada provides a FN, at its request, with “all existing information, in Canada’s possession, respecting any potential or actual environmental problems with the proposed FN land”. Such existing information may be inadequate to fully describe the condition of reserve lands, so Canada’s policy is to fund the preparation of Phase I ESAs.

WHY IS PHASE I ESA IMPORTANT TO THE INDIVIDUAL AGREEMENT?

Because the Phase I ESA helps to describe the environmental condition of reserves and identifies areas for further investigation, results of the Phase I ESA will be summarized in the Individual Agreement.

Because Phase I ESAs do not determine the actual presence or extent of contamination on reserve land, a FN should ensure that its Individual Agreement and work plan contain a commitment by Canada to assist the FN in identifying contaminated sites on reserve and a timeline to remediate them. Therefore, before



approving an Individual Agreement, a FN should meet with INAC to confirm responsibility for further studies and remediation of identified contamination. It is imperative that the nature and scope of further environmental work be included in the work plan before a FN signs its Individual Agreement.

WHAT WORK IS TO BE CARRIED OUT DURING A PHASE I ESA?

INAC has a Statement of Work (SOW) template that outlines the scope of the work to be carried out during a Phase I ESA, including records review, interviews (e.g. with elders), site visits, evaluation of information and reporting, project management, project scheduling, insurance and safety, standards requirements, special requirements, submission of proposals, proposal evaluation criteria and budget. A FN may wish to identify additional ESA tasks to be conducted.

WHO OVERSEES THE PHASE I ESA WORK?

A Joint Management Committee (JMC) is usually established to oversee and manage the Phase I ESA work. The JMC's responsibilities are outlined in the Statement of Work (SOW). The SOW also outlines the responsibilities of the qualified Environmental Assessor that will be carrying out the Phase I ESA.

The JMC committee is comprised of FN and INAC representatives. A FN may wish to retain their own technical advisor to participate in JMC deliberations.

CASE STUDY

THE SQUAMISH NATION EXPERIENCE – CHALLENGES REGARDING OFF SITE CONTAMINATED FILL

Introduction

The Squamish Nation undertook a Phase I ESA during their developmental phase. Because of the historical industrial operations on some of Squamish Nation reserves and potential contaminated sites identified in the Phase I ESA, the Nation and Canada did quite an extensive contaminated sites identification and remediation program during the negotiation of the Individual Agreement.

Phase I ESA

The Squamish Nation and Canada undertook a Phase I ESA for its 24 reserves. The Nation has lands that are identified as:

- Urban (within cities of North and West Vancouver)
- Rural (accessible by road, uses underground storage/septic tanks)
- Remote (has several little islands reachable only by boat)

The Nation had to negotiate hard for Canada to agree to fund the process through the Federal Contaminated Sites Action Plan (FCSAP) program. The Nation argued that it has some of the most valuable reserve land in all of Canada much of which had historically been used for industrial operations with insufficient leasing provisions in place to protect the environment.

Phase II ESA

Phase II ESAs were required on most of the Nation reserves. Human health and ecological risk assessments of several areas of environmental concern (AEC) were undertaken.

Contaminants Identified in imported fill

Some AECs identified on Xwmélch'tstn (Capilano IR No.5) were part of a historical gravel pit operation. The pit was subsequently filled with unsuitable, imported fill from several untracked sources. Primary contaminants identified were hydrocarbons and creosote to a depth of 8 metres in some places.

The Nation's Capilano Master Plan identified the AEC covered two different categories of land use as follows:

- Residential
- Commercial development.

Challenges of Sampling

There were some challenges when it came to identifying the AECs as follows:

- How many drilling holes needed to be done and where to drill as the potential contamination covered a vast area
- Some of the lands identified to have potential contamination were located on lands with homes located on top of it, therefore, permission from the residents to do test pits on those lands was required
- The question arose regarding how extensive and how much of the commercial land was to be soil tested and which parts

There was concern if the Nation did not do a thorough enough sampling program that it might miss areas of contamination and underestimate the potential risk.

Commercial Development Use

The FCSAP program funded the remediation of the part of the AEC that was identified as a commercial site. The remediation involved excavation and off-site disposal of soil above the Canadian Council of Ministers of the Environment (CCME) commercial standards because the site is designated for commercial use in the Capilano Master Plan, December 2004.

6,345 cubic metres (12,971 tonnes) of soil was excavated and classified and 1,037 cubic meters (2,075 tonnes) of soil was disposed offsite.

Residential Use

Parcel G is an area of land on Xwmélch'tstn that is approximately 22 hectares in size and that is designated in the Squamish Nation Capilano Master Plan for residential development for Squamish Nation members. Contamination of Parcel G is primarily hydrocarbons and some metals caused by unsuitable filling of the large gravel pit that historically operated on Xwmélch'tstn.

The environmental investigations and remediation that have been required for the project have not been funded by Aboriginal Affairs and Northern Development Canada (AANDC), despite the similarity with the commercial area on Xwmélch'tstn that was remediated by AANDC under FCSAP. The Nation has funded the environmental work through its own-source revenues because of the urgent need for housing for its

members. Given membership growth and an aging population the demand for on-reserve housing by Squamish members exceeds 800 (in 2012) members and their family.

The area has been and will be developed in eight phases. Phases 1 to 3 have been completed and the Nation is seeking further capital funds from AANDC to complete the project. The eight phase project will result in 318 additional lots for Squamish Nation member housing.

Remediation

Three AECs were remediated by excavation and offsite disposal of contaminated soils during the process and it was determined that many sites could be risk managed.

Although there is still work to be done, the information obtained during the developmental process has been and will be valuable to the Nation.

The Nation's remediation planning has enabled it to construct the first four phases of the project in areas with the least amount of contamination and to address the contamination on a lot by lot basis. Discussions between the Nation and AANDC, regarding funding of environmental clean-up during future phases of the project, is ongoing.

STATEMENT OF WORK

Phase I Environmental Site Assessment (ESA)

for

(Name of Band)

1. Introduction

The Government of Canada and the xxxxxx First Nation are to enter into an individual agreement, based on the *First Nations Lands Management Act* (Bill C-49), to transfer the management of the First Nations' lands and resources from the Government of Canada to the First Nation. As part of this process, an environmental site assessment (ESA) is to be completed by a Qualified Environmental Assessor(s) (QEA) to determine the environmental condition of the reserve lands of the xxxxxx First Nation.

The xxxxxx First Nation is inviting proposals to conduct a Phase I Environmental Site Assessment (ESA) based on the Canadian Standards Association (CAN/CSA) Standard Z-768-01 Phase I Environmental Site Assessment, henceforth referred to as CSA Standard). These Terms of Reference (TOR) outline the requirements for completing the Phase I ESA

The four key aspects of a Phase I ESA are:

- i) A Records Review
- ii) Interviews
- iii) A Site Visit; and
- iv) Evaluation of information and reporting

The lands on which the assessment will be conducted include the existing Reserve lands of the xxxxx First Nation. The xxxxxx First Nation has # (x) Reserve, although they share another Reserve with other First Nations (remove statement if co-share nations are not part of an aggregate FNLMA application). xxxxx I.R. No. x, which would be under the FNLMA regime, covers approximately ± xxxx hectares (see Natural Resources Canada's website and Registry Index Plan).

II. Objective

The objective of the Phase I ESA is to determine the environmental condition of the reserve lands of the xxxxxx First Nation prior to transferring the management of the First Nations' lands and resources from the Government of Canada to the First Nation.

The Phase I ESA will:

- identify and report on actual and potential site contamination;
- identify and report on any other environmental concerns;

- identify any existing regulatory concerns/violations (i.e., Fisheries Act, Indian Reserve Waste Disposal Regulation, etc.); and
- Provide the Federal Government (INAC) a Class C estimate of the cost associated for each APEC identified in the Phase II investigation recommendations.
- Results of the Phase I ESA must be presented in Tabular format to include APEC Site Name, Environmental Risk (High, Medium, Low), PCOC's, and site investigation recommendations (Please see Section VII – Evaluation of Information and Reporting for Table format).

III. Scope of Work

The Phase I ESA is to be undertaken in a manner that will ensure the active participation of the First Nation in the collection of community knowledge. The QEA, in conjunction with the Joint Management Committee (JMC), is to define a community consultation process designed to be carried out throughout the Phase I ESA in order to:

- maintain a liaison with the community;
- provide a mechanism for resolving any concerns that arise during the work;
- ensure an efficient and cost-effective assessment; and,
- ensure a fully informed study and sharing of information between the community and the Assessor.

For budget purposes the consultation process will include as a minimum, an initial meeting with the Joint Management Committee at the outset of the project to discuss implementation, or a community open house to introduce the Contractor and the work to complete and one Band community open house for presentation of the draft report.

The QEA will have a familiarity and working knowledge of the CSA standards for undertaking a Phase I ESA. The tasks to be carried out under the Phase I ESA are to be based on those as outlined in the CSA Standard, which includes but are not necessarily limited to the following sections (Section IV to VII):

IV. Records Review:

In conducting a Records Review, the Assessor will document each source of information examined even if the source reveals nil findings or no response is received. Information should be reviewed back to the first use which may have affected a sites environmental condition (e.g. prior to development) as well as neighbouring properties where warranted. The following factors shall be considered in determining search distances:

- i) current and historical land use on the subject property and neighbouring properties; and
- ii) known or suspected contamination on the subject property and on neighbouring properties.

The QEA is to review the records of xxxxxx First Nation and INAC, which are to be provided

within a reasonable time frame. The INAC representative on the Joint Management Committee is responsible for collecting all relevant INAC records to be provided to the QEA. The First Nation representative on the Joint Management Committee will be responsible for providing the QEA with a list of all commercial ventures on the reserve including a contact name, a map of reserve housing, and any relevant information on traditional knowledge and known archaeological sites. The xxxx First Nation will also provide the QEA all relevant past and current environmental assessment reports and documents which are in their possession. The QEA will be responsible for collecting and reviewing records from any other source (e.g. other federal government departments, provincial governments, local governments and agencies, etc) that has information pertinent to the assessment.

Records may include but are not limited to:

- Those specific and unique to reserves and held by INAC within the following databases:
 - Integrated Capital Management System (ICMS)
 - Capital Project Management System (CPMS)
 - Integrated Environmental Management System (IEMS)
 - Indian Land Registry System (ILRS)
 - Fuel Storage Tank Registration System (FNESS)
 - Dangerous Goods Incident Reports;
 - Internal Environmental Reports (No Security)
- Previous site assessment records (e.g. Environmental Issues Inventory (EII), Environmental Management Framework (EMF), Environmental Management System (EMS));
- All pertinent engineering reports;
- Aerial photographs identifying general site usage, structures and improvements (e.g. tank farms, waste disposal areas, pits, drainage areas, adjacent land use, etc);
- Property use records;
- For commercial and industrial properties, where available, company records;
- Hydrogeological, geological and geotechnical reports pertaining to the environmental condition of properties to be assessed;
- Regulatory information from appropriate agencies (e.g. provincial, federal, regional or municipal) including past, pending, outstanding, or continuing prosecutions, work orders, control orders or complaints related to environmental compliance, BC contaminated sites registry, violations of environmental statutes and regulations, and spill reports, Health Canada records, and pertinent information held in the National Pollutant Release Inventory,
- Species at Risk databases: BC Species and Ecosystems Explorer, SARA Registry
- Information that may be found in the files of the BC Ministry of Highways and Transportation, xxxx Regional District, (*Name of First Nations*), BC Hydro, xxxx Gas, City of XXXX, and
- Other relevant records such as geological and soil maps, biophysical maps of traditional land use, topographic maps, well water data, air quality data, public health concerns, and utility company records.

V. Interviews

The QEA will interview those persons who may be able to corroborate or augment the information gathered in the Records Review and/or the scheduled Site Visit or provide information useful for planning the Site Visit. The persons to be interviewed may include members of the First Nation community, elders, site personnel, third parties, government officials (e.g. environment officers, public environment health officers). At least one consultation event with First Nation members and elders should be included as part of the interview process.

The questions to be asked in the interviews should pertain to current or past activities and events that may affect the environmental conditions at the subject areas or sites. It is at the discretion of the Joint Management Committee in collaboration with the QEA as to the methodology used for questions and interviews which will be conducted in person.

The results of all interviews shall be reported on in the Phase I ESA report.

VI. Site Visit

A. General

The Site Visit should be conducted after completion of the Records Review in order for the QEA to target the specific areas and sites to be visited and observed. Every effort shall be made to ensure that site visits are conducted during periods when snow will not be an inhibiting factor. It may be necessary to observe structures on the site as well as adjoining properties on reserve. The QEA should be accompanied by a Band member or someone else (as determined by the First Nation) who is familiar with the subject property. A copy of the Site visit record for each reserve should be included as an Appendix to the report. The QEA will be responsible to work with the First Nation to gain site access to lease properties as required.

The record of observations should identify and describe for each subject area or site:

- the method used to make the observations (e.g. use of checklists);
- general limitations including those imposed by physical obstructions and limiting conditions (e.g. snow, rain, denied access, etc.);
- current uses or evidence of past uses of the subject areas that involve, or have involved, such activities as the use, treatment, storage, disposal, leased operations, generation of hazardous materials, land filling, or storage of wastewater. Where relevant, the QEA should also consider, to the extent possible, the current or past uses of the adjoining and surrounding property;
- an inventory of hazardous materials, including wastes, with the approximate quantities of material, types of containers, and storage conditions;
- unidentified substances with the approximate quantities of material, types of containers, and storage conditions;
- storage tanks with the approximate age, size, and, where possible, the contents of each as well as the location of abandoned or previously removed tanks, vent pipes, fill pipes, or access

- ways indicating underground storage tanks;
- confirm registration of all AST and UST as per Environment Canada's *Storage Tank Systems for Petroleum Products and Allied Products Regulations*;
- the presence, condition and, where possible, contents of storage containers;
- strong, pungent, or noxious odours, and their possible sources;
- sources of community potable water and if applicable individual water wells;
- the potential presence and/or storage of certain substances such as:
 - i) polychlorinated biphenyls (PCBs)
 - ii) asbestos-containing materials (ACMs)
 - iii) lead
 - iv) ozone-depleting substances (ODSs)
 - v) urea formaldehyde foam insulation (UFFI)
 - vi) pesticides, herbicides, fungicides (including wood preservatives), chemicals
 - vii) radioactive materials
 - viii) acid generating rocks
 - ix) waste wood and other waste materials containing dioxins, furans, PAHs (e.g. pentachlorophenol, creosote, waste crankcase oil, etc.)
 - x) Perfluoro-octane sulfonate PFOS
- other anthropogenic source environmental concerns which may include, but are not limited to, for example, operational and compliance issues such as those related to community solid waste and community sewage disposal, fuel handling, and water quality and supply, or issues related to, for example, anthropogenic source impacts on endangered habitats and species, culturally significant sites or environmental impacts from adjoining properties e.g., xxxxx, cemetery sites (old & new), etc.

b. Exterior Observations of Structures

The exterior of community structures or improvements within the subject area shall be inspected for indications of contamination. In general, **all residential structures are to be excluded**. However, there may be particular circumstances where specific residential structures should be inspected. In such instances, it will be the responsibility of the Joint Management Committee to provide the QEA with a list of those residential structures to be inspected.

The QEA shall also observe and, where necessary, describe:

- topographic conditions of the property and surrounding area
- abandoned and existing wells (e.g. water, oil, gas, disposal)
- the method of sewage disposal, artificial pits and lagoons
- stained materials and stressed vegetation
- wastewater or liquid discharge
- surface water features (e.g. ditches, streams, rivers, ponds, lakes)
- disposal of minerals and waste rock/tailings
- public thoroughfares (e.g. roads, streets, parking facilities, rights of way)

c. Interior Observations of Structures

Where required, the interior of community structures within the subject area shall be inspected for indications of contamination. Stains on floors, walls, or ceilings shall be identified and described including the likely source of the stains. Any migration paths for the contaminants away from the source shall be described. The QEA will note the location and condition of any floor drains and sumps that show any evidence of contamination. **Residential structures are to be excluded unless specific ones are listed for inspection by request** of the Joint Management Committee.

VII. Evaluation of Information and Reporting

Upon completion of the Phase I ESA work, the QEA shall prepare and present to the JMC a draft report outlining the results of the findings obtained in the Records Review, Site Visit, and Interviews. It shall clearly identify areas of actual or potential contamination and the basis for all findings. Areas of actual or potential contaminants shall be located using Geographic Positioning Systems (G.P.S.). All formats for figures and drawings should be compatible with the xxxx First Nation's Geographical Information System (G.I.S.) requirements. **(Please note: Reserve lands are federal lands, and therefore federal law, guidelines, standards and practices are applicable)**. Provincial laws may be referenced where, in the absence of federal law, provincial laws, standards and guidelines may have application. It should also indicate the relative degree of uncertainty associated with evidence of potential contamination including the potential for impacting surface and groundwater resources and air quality in areas adjacent to the subject area including any transboundary impacts.

The Phase I ESA should include a summary of species of risk with home ranges which include the site area.

The Phase I ESA draft report should follow a format similar to Appendix C (attached) in the Canadian Standards Association (CAN/CSA) Standard Z-768-01 *Phase I Environmental Site Assessment*. All findings, including nil findings, resulting from the investigations performed shall be included in the draft report. The draft report should describe where a task could not be performed due to limiting conditions.

The draft report shall have a Conclusions section which states that the Phase I ESA has revealed:

- no evidence of contamination in connection with the subject areas;
- those subject areas or sites where evidence of **potential** contamination exists (list and describe);
- those subject areas or sites where evidence of **actual** contamination exists (list and describe);
- those subject areas or sites where evidence of **actual and potential** contamination exists (list and describe), and
- other environmental issues (Best Practice Issues, list of species at risk with ranges which include the area of the site).

In addition, the following Table should be completed:

PHASE I CONCLUSIONS: Results and Recommendations							
Site/Area	Label (ESSIMS/IEMS Inventory #)	Classification of Risk Contamination		Contaminants of Potential Concern	Description of Contamination or Risk	Recommended Action (#boreholes/ testpits/ monitoring wells, geophysics, etc.)	JMC Decision
		Potential	Actual				

As part of the conclusions, the QEA shall describe and recommend methods to reduce the level of uncertainty (e.g. confirm, refute, or delineate the presence of contamination) and provide a rationale for proposing such methods. The date to which the conclusions relate shall be specified in the draft report.

The draft report shall provide documentation, including references and key exhibits, to support the findings and conclusions contained in the draft report. It shall reference applicable federal, provincial/territorial, and local legislation and published guidelines used as a basis for findings or conclusions in Phase I ESA. Any identified concerns should be clearly identified on appropriately scaled figures/plans which also show general layouts on the reserves. **Please Note Google Earth Map used for preparing report figures to show environmental issues must be clear and of high resolution. Figures also must be relative to present day site conditions.**

The final report will be completed by the QEA following review and comment on the draft report by the Joint Management Committee (JMC).

VIII. Project Management

The Joint Management Committee (JMC) is composed of:

- (Persons Name), representing the (Band Name) First Nation,
- (Name of INAC Rep), representing INAC.

The Joint Management Committee is responsible for:

- To review and accept the Statement to Work for distribution to QEA (Consultant)
- Identification and selection of QEA (Consultants) for submitting a proposal to conduct the ESA as per this Statement of Work;
- Reviewing and evaluating the project proposal according to the established criteria;
- Approving the successful bidder;
- Overseeing the management of the work;
- Organizing a preliminary meeting to include the Committee and the Assessor in order to outline the logistics of the work to be undertaken, and
- Reviewing all documents prior to their finalization.

- Preparation of the next Phase of ESA Statement of Work;
- Protection of intellectual property.

INAC BC Region is responsible for:

- Coordinating the access to and collection of departmental records and information on behalf of the Qualified Environmental Assessor in a timely manner.
- Review and expedite the acquisition of ESA funding through INAC funding mechanism and ensure compliance to all reporting and deliverable schedules.

The Qualified Environmental Assessor is responsible for:

- Maintaining communications with the Joint Management Committee (JMC) throughout the contract;
- Providing copies of all correspondence to the Joint Management Committee (JMC);
- Advising the Joint Management Committee (JMC) immediately in writing of any additional work required. **No work is to be undertaken which is additional or supplemental to or in substitution of the work specified unless approved by the JMC.**
- Preparing the minutes of all meetings and providing copies to all participants;
- Advising the Joint Management Committee (JMC) of the discovery of an immediate health and safety hazard associated with a contaminated site and identifying temporary emergency measures, if necessary, to eliminate or control these;
- Protection of intellectual property;
- Providing and assisting with storage and data collected during the Phase I ESA in a manner required by (*Band Name*) FN's technology, and
- Providing two (2) hard copies and either one (1) CD-ROM or one (1) memory stick **Final report** to the First Nation and to INAC. Please note the **DRAFT Phase 1 ESA can be submitted in unsecured Adobe PDF format.**

IX. Project Scheduling

The QEA may be required to submit a progress report to the JMC on as needed basis. The JMC will provide the QEA with review comments on the draft within 30 days of its receipt. The **final report** shall be received by the JMC by March xxx, 20XX. If required, revised schedules for completion of the remaining tasks shall be submitted to the Joint Management Committee (JMC).

The QEA will present the draft report of findings to the Joint Management Committee (JMC) and Band community as described in Section III of the SoW, on an agreed to date.

X. Insurance and Safety

The successful bidder on the proposal is required to carry Workman's Compensation Insurance and a minimum of \$2,000,000 comprehensive general insurance including bodily injury; property damage; third party liability coverage for activities performed by the Assessor resulting in an

accident involving a third party; and professional liability insurance against errors and omissions. The Government of Canada, the Lands Advisory Board and/or the xxxxx First Nation shall not be responsible for bodily injury and/or property damage caused by the employees of the successful bidder.

XI. Standard Requirements

The QEA shall use the metric system for calculations, drawings, specifications, etc. GPS coordinates of all suspect sites shall be included.

The QEA shall treat as confidential and make available all information, data, photos, drawings, field and interview notes, etc. gathered as part of the project only to the xxxxx First Nation and INAC. Any queries about the project from the public, news media or others shall be referred to the JMC or designated Band Project Manager.

XII. Special Requirements

As part of INAC's capacity development initiative, the QEA shall contract a First Nation member(s) for the Phase I ESA. The First Nation member(s) duties will include facilitation of access to the respective First Nation's Reserve lands, shadowing the QEA as a capacity building exercise in the planning, conduct and reporting of the Phase I ESA, and dissemination of the Phase I ESA information to the Chief and Council and/or the membership of the xxxxx First Nation and to the Joint Management Committee (JMC) representative of the member First Nation. The total estimated time for first nation member(s) involved for this requirement is xxx days at a rate of pay of \$xx/day, or \$xxxx. **Ensure to enter the cost as separate line item in the provided Detailed Cost Worksheet.**

XIII. Submission of Proposal

The QEA is required to submit (1) one digital PDF copy of the Phase I ESA project proposal by the deadline date. Please provide (1) one hard copy of same shortly after the deadline date. Please submit to:

- (Band Name) First Nation
xxxxxxx
xxxxxxx, BC
xxxxxx
Attention: *Name of Band Rep, xxxxx Manager*
- Indigenous Affairs and Northern Development Canada
600-1138 Melville St.,
Vancouver, BC V6E 4S3
Attention: *Name of INAC rep*

Deadline for submission of proposals is by xxxx, 20XX.

The proposal will be set out in a letter format and will include the following:

- The proposed methodology to be used to meet the specifications as described in the above Terms of Reference using the CSA Standard for conducting a Phase I ESA;
- A profile setting out the company's qualifications and experience with projects of a similar nature including contact names for references on the identified projects;
- The personnel to be assigned to the project (i.e., name, qualifications and experience) and their individual roles and responsibilities within the project;
- Proposed schedule outlining the relative timing of all project events;
- Fee schedule (i.e. hourly rates of assigned personnel, disbursements and travel costs) of all activities to be undertaken;
- The total cost estimate for completing the project

Personnel changes will not be allowed without valid justification and concurrence of the JMC.

Any questions regarding the preparation of the proposal should be directed to Mr/Ms, xxxx First Nation, who can be reached at xxx-xxx-xxx and/or fax at xxx-xxx-xxx or [email](#) address or *Name of INAC rep for INAC* who can be reached at (xxx) xxx-xxxx and/or fax at (604) 775-7149 or *email of INAC rep*. To ensure the openness of the procurement process, answers to specific questions relevant to all those bidding on this project will be forwarded to all parties tendering.

XIII. Proposal Evaluation Criteria

The QEA's proposal shall provide information in sufficient detail to show a complete understanding of the requirements of the project.

The project proposal shall be reviewed by the Joint Management Committee (JMC) and evaluated according to this Terms of Reference and the following criteria:

1. Comprehension of project scope and objectives	15%
2. Capability of the firm to carry out project (past experience, similar projects, resources)	10%
3. Assessors' project team (First Nation past experience, level of expertise)	30%
4. Approach and Methodology	10%
5. Scheduling and availability	5%
6. Professional Fees and expenses	30%

TOTAL	100%

XIV. Budget

The lowest of any tender need not be accepted.

From Z768-01, Appendix C - Phase I ESA Report Format

Proposed Section Headings

1. EXECUTIVE SUMMARY
2. INTRODUCTION
3. SITE DESCRIPTION
4. RECORDS REVIEW
5. SITE VISIT
6. INTERVIEWS
7. FINDINGS
8. EVALUATION OF FINDINGS
9. CONCLUSIONS
10. QUALIFICATIONS OF ASSESSOR
11. REFERENCES AND SUPPORTING DOCUMENTATION
12. APPENDICES
 - A. - Maps, Figures, Photographs
 - B. - Ownership/Historical Documentation
 - C. - Regulatory Documentation
 - D. - Documentation of Interviews
 - E. - Contract between Client and Consulting firm

Terms and Definitions

Adjoining properties: Any properties those are contiguous or immediately adjacent to the property being assessed.

Assessor: A person or business entity who carries out a Phase I ESA

Certificate of Possession (CP) Holder: A Band member who has possession of a registered tract of land. This portion of land is not considered common Band land.

Community Structures: Those buildings and improvements consisting of any physical object attached to the land with some degree of permanence which are located on the subject area and are generally considered to belong to the First Nation community. Examples include, schools, community centers, commercial and industrial buildings, maintenance facilities, etc.

Contamination: The presence in soil, water, groundwater, air, or structures of a material condition that may adversely affect human health and the natural environment (e.g. soil, water, land, buildings).

Environmental Issues Inventory (EII) An INAC multi-phased initiative, begun in 1992, to identify, document, assess and remediate environmental problems on inhabited reserves.

Hazardous material: A material that may, on exposure, constitute an identifiable risk to human health or the natural environment.

Intellectual Property: A form of creative endeavour that can be protected through a trademark, patent, copyright, industrial design or integrated circuit topography.

Joint Management Committee (JMC): Project management committee comprised of the First Nation and INAC. One vote each to the First nation and INAC, and decisions are by consensus.

Project Manager: The person with authority in xxxx First Nation to manage the Phase I ESA project, which includes leading the planning and the development of all project deliverables. The project manager is responsible for managing the budget and workplan and all Project Management Procedures (scope management, issues management, risk management, etc.).

Property: Land and any improvements to land, consisting of any physical object attached to the land with some degree of permanence. The terms A property and A site are used interchangeably in this Terms of Reference.

QEA: Qualified Environmental Assessor means a person or business who, through a combination of education and related work experience, has acquired an in-depth knowledge and understanding of bio-physical research, assessment and testing.

Phase I Environmental Site Assessment (ESA) Steps 1 to 10

Step	Task	Description
1	If an Environmental Site Assessment (ESA) is required, Indigenous and Northern Affairs Canada (INAC) provides a First Nation (FN) with a Terms of Reference (TOR) template for review and comment	<p>If there is a need to conduct an ESA, INAC provides the template TOR to the FN for review and comment.</p> <p>A FN's review and comment of the TOR is an important step as each FN may have unique requirements. Often there are special considerations such as remote sites, adjacent properties, recent development activity, traditional knowledge that should be included in the TOR</p> <p>There may be reasons why a FN does not require an ESA. Sometimes ESAs have been completed for other reasons that are already complete and not stale dated (more than 5 years). In this instance, ESAs under this process may not be required.</p>
2	FN/INAC meet to discuss the TOR	<p>The FN/INAC meet to discuss the TOR scope, timing, necessary changes and who will contract directly with a qualified firm.</p> <p>Depending on when the contract is awarded, seasonal weather can affect the completion of site visits due to flooding, erosion, or snow.</p> <p>It is important to consider these factors when planning the overall completion of the developmental phase. It is not usual that house to house visits/inspections are included.</p>
3	TOR is finalized	TOR is finalized and forwarded to firms for estimate (max \$25k) – No testing is required during this phase. A record review, interviews and a site visit should not exceed \$25k.
4	JMC meets to discuss and pick firm	Once all proposals have been submitted JMC meets to discuss and pick a firm based on the TOR and the proposed evaluation criteria.

Phase I Environmental Site Assessment (ESA) Steps 1 to 10

Step	Task	Description
		Sometimes a FN may choose to sole source a contract with a firm of their choice, in this instance INAC will transfer the resources to the FN to complete the Phase I ESA.
5	JMC meets with winning firm	<p>JMC meets with winning firm to discuss timing, payment, special considerations.</p> <p>Sometimes a firm may require permission to enter FN lands and possibly even an escort or guide for navigating the FN Land.</p> <p>Often payment is provided at various stages as per the TOR and timing considerations are discussed at this point depending on the developmental completion goals/season of the FN.</p>
6	Firm conducts the Phase I ESA	<p>Firm conducts records review, interviews and site visit</p> <p>Often various federal, provincial and municipal government departments are consulted for historical data relevant to the ESA report, brief site visits are usually restricted to particular sites and public buildings to look for surficial stains, odors and other obvious evidence of contamination or the lack thereof.</p>
7	Firm prepares draft Phase I ESA report	<p>Firm prepares draft report and forwards to JMC for comment.</p> <p>This is an opportunity to ensure the report is written to the satisfaction of the JMC. Often a priority of issues is requested to ensure that any follow up is highlighted for the sites that are in most need of attention.</p>
8	JMC provides comments and final report prepared	<p>Once the JMC has reviewed the draft they will provide comments to the firm prior to the firm finalizing its Phase I report.</p> <p>The firm will review JMC comments and the final report is prepared.</p>

Phase I Environmental Site Assessment (ESA) Steps 1 to 10

Step	Task	Description
9	Final report accepted by JMC	The firm will present the final report of findings to the JMC for acceptance by the JMC.
10	Recommendations for phase II prepared for inclusion into the Individual Agreement.	Recommendations for phase II prepared for inclusion into the Individual Agreement. The firm will have a one or two page executive summary that outlines the findings and suspected/confirmed sites that are contaminated. These pages are appended to the Individual Agreement for follow up at a future date.

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

DEVELOPMENTAL roles & responsibilities

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

INDEPENDENT VERIFIER

- OVERSEE RATIFICATION PROCESS
- ENSURE FA COMPLIANCE
- CERTIFY LAND CODES
- RESOLVE DISPUTES

NEGOTIATION • GOC PROVIDES

- Land description
- ESA Phase 1
- OFF Statement
- Revenue Account Statement

GOVT OF CANADA

