

Preparing to Develop an Environmental Assessment Regime

Course Workbook



 **FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

 **Training, Mentorship &
PD Professional Development**

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Preparing to Develop an Environmental Assessment Regime

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Welcome:

Welcome to the Preparing to Develop an Environmental Assessment (EA) Regime courselet.

This courselet describes:

- What makes a good EA regime
- What does not

This information needs to be considered in the context of the kinds of development likely to occur on First Nation Land and the operational First Nation (FN) capacity to design and oversee EAs.

The material provided in this courselet is current to the date of the courselet. Federal and provincial EA laws and procedures are subject to frequent changes. If a FN needs to reference other's EA regulations, the FN should ensure they are using the latest versions. Thank you to the environmental experts to the for aiding in the development of this courselet.

Requirements under the Framework Agreement

Procedural Requirements Under the Framework Agreement on First Nation Land Management (Framework Agreement), operational FNs may enact laws respecting EA.

Under [clause 25.1](#) of the Framework Agreement, signatory FNs agree to "make best efforts" to develop an EA process within one year of the coming into effect, or a longer period to which the FN and the Minister agree.

Substantive Requirements

The Framework Agreement contains minimum standards that a FN's EA process must meet, namely:

- EAS must be carried out for all projects carried out on First Nation Land that are approved, regulated, funded or undertaken by the FN. (Clause 25.4 of Framework Agreement)
- The EA process must be consistent with requirements of the Canadian *Environmental Assessment Act* (CEAA). (Clause 25.3 of Framework Agreement)
- EAS must occur as early as possible in the planning stages of the project before an irrevocable decision is made. (Clause 25.4 of Framework Agreement)

Interim EA Process

Interim EA Process:

The "Interim Environmental Assessment Process" is the process a FN will use to conduct EAS on reserve lands from the date the FN's LC is enacted until the FN's EA process and laws are developed. The FN's Interim EA process is included in the [Individual Agreement](#) and it is important for the FN to ensure this process meets the needs, capacity and objectives of a FN. Most FNs' Interim EA Processes are set out in Annex "F" to their Individual Agreements and the processes are similar but not identical among FNs.

Canadian Environmental Assessment Act:

The Interim EA processes require that projects on reserve lands that are approved, regulated, funded or undertaken by the FN cannot proceed until the FN ensures that Canada, the FN or the proponent of a project carries out an EA that is consistent with CEAA or the intent of CEAA, as amended from time to time. Depending upon what the FN agreed to in their Individual Agreement, in some cases, Canada still decides if a project may proceed and in other cases the operational FN will make that decision.

Project on First Nation:

Most Interim EA processes apply to projects on First Nation Land that are to be:

- Approved
- Regulated
- Funded
- Undertaken by a FN

FN's EA Regime:

Introduction:

Although there is a requirement, under clause 25.2 of the Framework Agreement, for FNs and Canada to agree on the Interim EA Process * in the Individual Agreement, the Framework Agreement does not require that Canada approve or agree to a FN's Final Environmental Assessment Regime established by a FN's EA Law ("EA Regime").

*Canada and the FN's agreement on an Interim EA Process is formalized in the Individual Agreement.

Canada's Role in a FN's Environmental Assessment Regime:

Prior to the 2012 amendments, the Framework Agreement required that FNs and Canada enter into an agreement before the FN could exercise their environmental powers (i.e., implement an EA regime). However, no environmental management agreements were ever negotiated, and the 2012 amendments to the Framework Agreement removed that requirement. Canada's approval of a FN's EA Regime is not a requirement of the Framework Agreement.

FNs are only required to obtain Canada's approval of their final EA Regime if the FNs agreed to that requirement in their Individual Agreements. Such federal approval usually is seen only in Individual Agreements signed before 2012. More recent Individual Agreements only contain an agreement regarding the FN's interim EA Process that will apply until the enactment and coming into force of the FN's EA laws. These Individual Agreements do not contain a requirement for Canada's agreement or approval of the FN's final EA regime or EA laws (e.g. [Wasauksing-Canada Individual Agreement](#)).

What are the Roles of Canada and Provinces?

Requirements Regarding Harmonization of FNs and Federal EA Processes:

As previously discussed, after a FN becomes operational, Canada still retains some EA jurisdiction on First Nation Lands. The Framework Agreement contemplates this issue and in clause 25.7 states that a FN and Canada agree to develop a plan to "harmonize" their EA regimes and processes.

Intention of Harmonizing Agreements:

In the "Federal-Provincial EA Processes" courselet, the section on "Harmonization Agreements" explains that such agreements are intended to:

- Reduce duplication
- Prevent delays
- Increase predictability in the EA process for a project that triggers more than one government's EA process'

FN-Federal Provincial EA Harmonization Agreements:

Harmonization agreements associated with EAS may include the procedures and guidelines for the following topics:

- What agency and individual will be the main contact and coordinator of the EA of each jurisdiction?
- How will each party notify the other when an EA process is triggered under that jurisdictions' law?
- What are the common information requirements under the federal, provincial and FN's EA laws?
- How will the lead party for an EA be determined?
- How will the parties develop a specific work plan for each project undergoing a multi-jurisdictional EA?
- How will the parties co-ordinate their EA decisions and associated regulatory decisions with respect to a project?

Overlapping Jurisdiction:



LGDs should note that clause 25.6 of the Framework Agreement provides that a FN and Canada will make best efforts to ensure the FN's EA process will be used where there is overlapping jurisdiction. This priority should be reflected in a FN- Federal-Provincial EA harmonization plan.

Other Agreements:

A FN may find it useful to enter into agreements with Canada or provinces on specific environmental matters related to EA. The sections of the Framework Agreement pertaining to these agreements are:

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.

Using an EA Regime Effectively

Other EA Requirements Affecting a FN:

EA requirements of other government agencies continue to apply, regardless of whether a FN has its own EA regime. Other EA requirements that could affect a FN include:

- Complying with [Section 67 of CEAA](#) (see Courselet on Federal and Provincial EA Processes), which applies to permits and funding approvals from the federal government
- FN participation in federal or provincial EAS of projects in the FN's Traditional Territory outside of reserves
- Satisfying requirements under federal environmental laws that continue to apply on reserves, such as the [Fisheries Act](#) and [Species at Risk Act](#)
- Negotiating Impact Benefit Agreements (IBAs) or similar understandings with project proponents.

Using the FNs EA Regime for other Purposes:

A FN's EA regime provides an organized, efficient way of collecting and reporting environmental information. A FN's EA process can generate the information needed to satisfy other government requirements or to support negotiations with proponents.

It may not be necessary to trigger a "full" EA to provide the information needed by other agencies. For example, to satisfy Section 67 of CEAA, a federal agency may only require information on effects of a FN initiative on fish, which could be provided through collection, review, and reporting of information on that topic only.

The FN's costs of using its EA regime to satisfy other requirements may be recovered from the party that needs the information. For instance, costs of complying with CEAA Section 67 may be recovered from Canada, and FN participation in EAS of others' projects may be obtained from project proponents or government review bodies (e.g., Canadian Environmental Assessment Agency, National Energy provincial environmental bodies).

Considering Costs & Benefits of EA Process

Cost to administer an EA Process The FN's costs of conducting or administering EAS will be affected by the following factors:

- Staffing and overhead requirements, which will fluctuate depending on the number of projects being proposed on reserves
- Legal fees, which may rise if the FN's process or decisions are legally challenged
- EA costs may be reduced if some staff or equipment costs are shared among other FN programs and services
- Some EA costs are incremental to costs the FN may already incur to be involved in federal EAS for projects on reserve lands
- Proponents bear the greatest cost of an EA process and may share FN costs, such as preparing the EA report and supporting studies, and conducting community involvement
- If the FN is the proponent, the FN will pay the full cost of the EA, though costs often can be included in capital planning budgets

Capacity

A FN will need a staff member to oversee the EA process for each project (i.e.: EA "Supervisor"). This staff person should have environmental science or technical expertise or have access to another staff member or consultant with such expertise. Alternatively, a FN could contract the services of a qualified professional with technical capacity and experience to act as the EA Supervisor, particularly for complex projects. A staff person or consultant should monitor projects during and after construction to make sure proponents implement mitigation measures and follow-up as described in the EA.

Considerations when Developing an EA Regime

In developing its EA regime, a FN should consider:

- The kinds of environmental issues faced by the FN (See Step 2: Identify and Analyze Environmental Issues and Conditions in the Environmental Management Plan (EMP) Preparation "Steps in Preparing an EMP " for guidance on how to identify environmental issues)
- The extent and kind of land use change or development expected
- Positive or negative lessons learned from experience with federal, provincial or local government EA processes
- What the FN would wish to achieve through the assessment of development projects and land use plans (LUP)
- The capacity of the FN to design, oversee, review, and approve EAS

Purpose of EAs

Introduction:

A Lands Governance Director (LGD) needs to know the fundamentals of an effective EA.

This section will provide the LGD with further guidance in the preparation of an EA regime that satisfies the Framework Agreement and benefits the FN, its environment and its community.

Purpose of EA:

The purpose of an EA is to predict environmental, socioeconomic, and cultural effects of proposed projects and to recommend mitigation measures to avoid or reduce potential adverse effects and increase project benefits to the environment or the community.

A FN's EA regime should be designed to achieve the primary purposes of EAs, namely, to improve the quality of proposed development and to identify and avoid adverse environmental, social, economic and cultural effects of a project before it is built.

When LUPs are subject to EAs, the purpose of the process is to identify potential adverse effects of planned land use, and to amend the pattern and kind of development to achieve a FN's expressed environmental goals, such as:

- Improving community livability
- Protecting environmentally sensitive areas
- Protecting culturally sensitive areas
- Retaining lands for traditional use

See the Cultural Heritage Resources Traditional Information and Traditional Practices courselet for more information on LUPs and traditional use studies.

Fundamentals of Effective EA Regimes

Introduction:

A FN's EA regime should have the following fundamental characteristics:

- Transparent
- Efficient
- Effective
- Independent
- Rigorous
- Cost Effective

For example, the Matsqui FN, an operational FN, located in British Columbia, has developed an that applies to development [EA Law](#) projects on Matsqui First Nation Lands under their jurisdiction. The Matsqui's EA Law was prepared to satisfy their policy contained in the [EMP](#). The policy applies to projects that require approval by the Matsqui FN and that have the potential to affect land, resources, the community, or cultural activities.

The Matsqui EMP policy goals reflect fundamentals of an effective EA process as follows:

The Matsqui First Nation will adopt an EA regime that will meet

the following goals:

- be open and engage community members and other potentially affected parties,
- be efficient and effective, focusing on important issues and project impacts, and establishing firm deadlines for steps in the EA process,
- be technically rigorous and free of interference from project proponents or other interests, and be affordable, by ensuring proponents pay for the EA and by avoiding unnecessary data collection, meetings, or reporting.

Transparent:

The EA process should be:

- Open
- Inviting review
- Engaging affected parties (community members, businesses, adjacent local governments, etc.)

EAS are intended to disclose information and increase understanding among community members, decision makers and project proponents. Decision-making processes must be clearly understood. For example, in regard to community members, the Matsqui FN, as part of their EMP policy, includes community involvement in the design of the EA and in the review of its results.

Efficient:

The conduct of the EA focuses on important issues and sets firm timelines for data collection, report preparation, technical and community review and decisions.

Effective:

The main goal of the EA regime, which is reflected in the design and conduct of EAs, is to identify and reduce project effects; to increase environmental and community benefits from projects, to improve LUPs, [laws or policies](#) and to achieve community environmental, social and economic goals.

Independent:

Results of the EA are reliable and build confidence in the community, which knows that preparation of the EA was free of interference or pressure from project proponents or other interests. The same standard will apply to making decisions about whether the project will proceed, and if so, according to what conditions.

Rigorous:

Analysis and findings in the EA are scientifically rigorous and based on facts, not conjecture or optimism, resulting in credible results and the identification of data gaps and areas of uncertainty.

Cost Effective:

The cost of conducting an EA is considered during the design stage and unnecessary data collection or meetings are avoided, resulting in EAS that are considered a good return on investment.

Additional Fundamentals:

A FN may identify additional EA fundamentals. The final list of EA fundamentals, purposes and objectives may be included in the FN's EMP and EA law.

Factors Contributing to Successful EA

A successful EA affects decisions and project designs. Studies have identified several factors contributing to the success of an EA. The EA:

- Approach fits into the decision-making context
- Process encourages effective participation by interested parties
- Process is transparent
- Results are binding on the proponent
- Process results in high-quality reports

As a FN prepares its EA regime, it should consider how to ensure that their process has all the foregoing characteristics.

The RC website posts FN's EA laws and regime information as it is made available by Operational FNs.

Participants in the EA Process

Introduction:

An effective EA regime establishes the roles for FN staff, the FN's consultants, Council, the community, the project proponents and their consultants.

In most cases, a project's proponent will be responsible for preparing the EA (data collection, analysis, report assembly, revisions) and the FN will be responsible for approving the EA design, overseeing its preparation, and guiding the review and approval of the EA.

FN Effective EA Regime:

A FN must look to the fundamentals of an effective EA regime before it considers its staffing needs. An effective FN EA regime:

- Separates the Proponent and the FN role
- Clearly identifies the roles for FN staff
- Establishes the proponent's role (or in the event that the FN is the proponent, the FN consultant role)

Separation of Proponent Role and FN Role:

If the FN is the proponent and also the regulator, a conflict may arise. The LGD should look to the FN LC and EA law regarding any conflict of interest that may arise when the FN is the regulator and the proponent. If the FN is the proponent, one of the ways a FN can shield itself is by hiring an environmental expert or consultant to prepare the EA. This approach will help protect the FN's staff from political influence when Council is the project proponent. Having the EA prepared by an independent party can maintain the unbiased nature of the resulting assessment, which can enhance the credibility of EA findings in the FN community.

Clearly Identifies the Role of FN Staff:

A FN is unlikely to prepare many EAS using in-house staff, as EAS can be complex and technical, requiring a range of skills rarely available in government. (Despite having large staffs, even provincial and federal governments retain contractors to prepare EAs.) It is expected that a FN will use its staff resources to implement the EA regime adopted by Council, and staff roles will therefore involve management and administration, not the technical work involved in preparing an EA.

The FN environmental staff typically will be responsible for:

- Screening of proposed projects
- Working with the project proponent to design the EA
- Overseeing the conduct of the EA work
- Helping to guide community reviews
- Preparing recommendations for action following receipt of the final EA

Establishes the Proponent or FN Consultant Role:

The proponent or their consultant typically will prepare EAS for projects proposed on First Nation Land. For complex projects, projects that could cause unusual adverse effects, or projects proposed by the FN's Council, a FN may wish to retain a consultant to manage the project or prepare the EA. Consultants acting as project managers should have the specialized training needed to design and oversee projects or to review draft EA results. As stated earlier, using a consultant to prepare the EA also can shield a FN's staff from political influence when Council is the project proponent.

EAs of Plans

Introduction:

A FN should consider using its EA regime to help improve its plans and other FN initiatives, making them more sustainable. Using EAS in this broader way can help identify and avoid adverse environmental, socioeconomic, and cultural effects, and increase benefits to the community. One of the primary benefits of conducting EAS is the ability to avoid or mitigate adverse environmental effects early in the planning stages. For projects such as housing or industrial development, mitigating or avoiding adverse effects may require adjusting or relocating the proposed development to avoid:

- Sensitive habitats
- Culturally important areas
- Other features that are sensitive to disturbances

AN EA of a Plan differs from an EA of a site-specific project

EAs of Plans:

Conducting EAS early in the decision process improves the opportunities for altering the siting or footprint of a proposed development to avoid or minimize adverse environmental effects. To realize

these benefits, a FN may consider conducting Strategic EAS of LUPs, which will allow the FN to focus development in areas of low environmental and cultural sensitivity.

Importance of EA plans:

The implementation of LUPs and operational (servicing) plans affects the landscape, communities and environmental features. Conducting EAS of draft LUPs and operational plans allows the plans to be amended to avoid or reduce potential adverse effects and to improve benefits. If potential adverse effects are identified at the planning stage, opportunities to amend the plans to avoid those effects are usually much greater than for adverse effects identified for a single project on a particular parcel of land.

EA of: Plan vs. Project:

The scope and content of an EA for a reserve's LUP would differ from an assessment of a site-specific project. EAS of plans tend to look more broadly at:

- Effects of plan implementation on the environment (such as use of wetland areas for housing)
- Effects of the environment on planned development (such as flood risk to development of low-lying areas)
- Implications for servicing efficiency (such as increasing residential density to make better use of sewer capacity)
- Ability to achieve environmental, community or economic goals established by a FN in other processes

A FN may need to develop one set of guidelines for EAS of plans, and another for EAS of proposed projects.

Looking at Other Jurisdictions' Approach to Developing an EA Regime

Local Governments:

FNs may consider reviewing local government EA processes for precedents. Local governments often face budget and capacity issues that are similar to those of FNs. Hence, local government EA processes may be more applicable on FN land than those of provincial and federal governments, which have enormous staff and financial resources.

Ontario Class EAS - Example

The [Ontario government](#) allows preparation of Class EAS for " routine projects that have predictable and manageable environmental effects". Class EAS are described as "a method of obtaining an approval under the Ontario [Environmental Assessment Act](#) and provides an alternative to carrying out individual EAS for each separate undertaking or project within the class. " For projects that qualify for Class EAs, the process for designing, conducting, and approving the EAS are streamlined, though public consultation and government review or approval is still required.

For more information on Ontario's Class EA process, click on the following link: [Preparing, Reviewing and using class environmental](#) assessments in Ontario.

For example, municipal water and sewer infrastructure projects may be subject to Class EAS under the [Municipal Class Environmental Assessment process](#). For FNs that have a large number of "routine" projects, development of an approach similar to Ontario's Class EAS may be appropriate.

For FNs that have a large number of "routine" projects, development of an approach similar to Ontario's Class EAS may be appropriate.

Questions to Ask:

Before preparing an EA Regime, the I-GD should consider the following questions:

1. Has the FN already been involved in either a federal or provincial EA Process? If yes:
 - What aspects of those EA processes worked effectively?
 - What aspects of those EA processes were ineffective?
 - How would you improve those EA processes?
2. What aspects of others' EA processes could be adapted in designing the FN's EA regime?
3. Can you think of a development on the FN reserves that would have benefitted from an EA before it was approved?

Summary

This courselet's information should be considered in the context of the kinds of development likely to occur on First Nation Land.

This courselet:

Explained the characteristics of effective EA regimes

Identified some of the fundamental principles of EAS for consideration by FNs

- Discussed the importance of EAS of plans
- Examined the role of FN staff in the EA process
- Discussed the importance of reviewing other government's EA processes

Principles:

FNs developing EA regimes are advised to develop fundamental principles as a foundation for their EA laws, policies, regulations and procedures. The principles should describe the desirable characteristics of EAS prepared under a FN's regime.

EA of Plans:

The courselet also discusses the potential to conduct EAS of draft LUPs and operating plans. The advantage of such early-stage assessment is that it allows amendment of plans to avoid potential adverse effects. Such flexibility may not exist later in the development process (i.e., in the assessment of specific proposed development projects).

First Nation Staffing:

Staffing for delivery of effective EAS will involve a FN's staff, supported by specialist consultants as appropriate. The FN's environmental staff responsibilities will typically involve scoping, design and

review of EAS conducted under a FN's laws. The uneven workloads associated with the conduct of EAS increases staffing challenges. The division of work between a FN's staff and its consultants will depend on the complexity of the project being assessed, whether the FN is the proponent and the capacity of the FN to assign staff to the EA.

Other Govt EAs

Effective EA regimes implemented by FNs may or may not resemble those of provincial or federal governments. Those government EA processes require substantial bureaucracies to administer, and the EAS they produce have been subject to criticisms from many quarters, including FNs.



ACRONYM LIST

CEAA	-	<i>Canadian Environmental Assessment Act</i>
EA	-	Environmental Assessment
EMP	-	Environmental Management Plan
FN	-	First Nation
<i>FRAMEWORK AGREEMENT</i>	-	<i>Framework Agreement on First Nation Land Management</i>
IBAs	-	Impact Benefit Agreements
LC	-	Land Code
LGD	-	Land Governance Director
LUP	-	Land Use Plan
RC	-	First Nations Land Management Resource Centre



GLOSSARY OF TERMS

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.

FIRST NATION LAND

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

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Under the *Framework Agreement*, the First Nations have established a First Nations Land Management Resource Centre (RC) to assist the First Nations in implementing their own land management regimes. The RC is the technical body intended to support First Nations in the developmental and operational phases implementing the *Framework Agreement*.

The RC’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

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.

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.

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.

OPERATIONAL

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

RESERVE

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

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

The basic legal framework underlying reserves is:

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

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



CANADIAN ENVIRONMENTAL ASSESSMENT ACT 2012
Section 67 Project carried out on federal land

Section 67: An authority must not carry out a project on federal lands, or exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands, unless

- (a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or
- (b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances under subsection 69(3).



FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

25. ENVIRONMENTAL ASSESSMENT

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

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.

**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

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

FRAMEWORK AGREEMENT ON
FIRST NATION LAND
MANAGEMENT

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

BETWEEN:

ENTRE :

THE FOLLOWING FIRST NATIONS:

LES PREMIÈRES NATIONS
SUIVANTES :

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

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

AND

ET

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

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

WHEREAS:

ATTENDU QUE :

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;

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;

The First Nations should have the option of

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

4.6 The First Nation will make provision to

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

PART II OPTING IN PROCEDURE

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

PARTIE II PROCÉDURE D'ADHÉSION

5. DEVELOPMENT OF A LAND CODE

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

5.2 The land code of a First Nation will

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

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

(i) licenses and leases, and

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

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

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

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

5. ÉLABORATION D'UN CODE FONCIER

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

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

a) la description des terres qui y sont assujetties;

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

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

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

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

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

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

the land code;

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

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

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

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

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

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

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

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

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

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

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

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

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

5.3 Peuvent également figurer dans le code foncier :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its

Canada et la première nation.

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

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

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

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

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

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

7. APPROBATION DE LA COMMUNAUTÉ

7.1 Le code foncier de la première nation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. VERIFICATION PROCESS

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

8.2 The representatives of the First Nation

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

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

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

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

8. PROCESSUS DE VÉRIFICATION

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

8.2 Les représentants de la première nation

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

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

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

8.4 The verifier will

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

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

8.3 La première nation communique au vérificateur les documents suivants :

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

8.4 Le vérificateur a pour mandat:

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

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

la première nation dûment approuvé par elle.

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

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

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

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

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

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

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

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

8.7 A verifier will not deal with disputes over funding.

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

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

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

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

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

9. CONDUCT OF COMMUNITY VOTE

9. TENUE DU SCRUTIN

9.1 Once the verifier confirms that the

9.1 Après que le vérificateur ait décidé que

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

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

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

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

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

10. CERTIFICATION OF LAND CODE

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

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

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

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

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

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

10. CERTIFICATION DU CODE FONCIER

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

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

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

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

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

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

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

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

11. DISPUTED VOTE

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

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

56.3 Canada and the First Nations will make best efforts to complete this review within one year. Following completion of the review, the Minister will meet with representatives of the First Nations to discuss the results of the review.

57. AMENDMENTS

57.1 Until September 1, 2003, this Agreement may be amended by agreement of the parties, provided that the amendments to Part VIII may be made with the consent of Canada and 2/3 of the original First Nation parties to this Agreement.

57.2 No amendment affecting the powers, authorities, obligations, operations or operational funding of a First Nation that has ratified this agreement is effective with respect to that First Nation without the consent of that First Nation.

c) le rôle du Conseil consultatif des terres;

d) l'identification d'autres premières nations désirant se prévaloir du présent accord;

e) les changements qui pourraient améliorer le fonctionnement de la gestion des terres de première nation;

f) les mécanismes de règlement des différends;

g) toute autre question convenue par les Parties.

56.3 Le Canada et les premières nations sont tenus de s'efforcer d'achever cet examen dans un délai d'un an. À la fin de l'examen, le ministre rencontrera les représentants des premières nations pour en analyser les résultats.

57. MODIFICATIONS

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

57.2 Aucune modification ayant une incidence sur les pouvoirs, les autorités, les obligations, les opérations ou les fonds de fonctionnement d'une première nation qui a ratifié le présent accord ne peut entrer en vigueur à l'égard de cette dernière sans son consentement.

57.3 After September 1, 2003, this Agreement, may, subject to 57.2, be amended with the consent of Canada and 2/3 of the First Nations which have ratified the Agreement, before, on or after that day.

58. RECITALS

58.1 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

(Insert name of FN) INDIVIDUAL AGREEMENT SUMMARY

(Insert name of FN) is one of a number of First Nations (FN) in Canada who is party to the *Framework Agreement on First Nation Land Management (Framework Agreement)*. The federal government is also a party to the agreement and ratified it through the *First Nation Lands Management Act* on June 17, 1999.

The *Framework Agreement* and legislation enable these FNs to take control over the management and administration of their reserve lands from Aboriginal Affairs and Northern Development Canada (AANDC). In order to do this each FN must enter into an Individual Agreement with AANDC. This Individual Agreement sets out the specifics of the transfer of management of reserve lands from Canada to the **(Insert name of FN)**.

The Individual Agreement for the **(Insert name of FN)** is summarized as follows:

Section 1 – Interpretation

This section defines the terms that are used in the Individual Agreement, including identifying the reserve lands that will be transferred.

Description of (Insert name of FN) Land

This section identifies the lands that are subject to this Individual Agreement:

(Insert Legal Land Descriptions here as recorded in the approved Legal Land Description Report)

Section 2 – Information Provided by Canada

This section confirms that Canada has provided the **(Insert name of FN)** with all of the information in its possession regarding dispositions of reserve lands, environmental issues on reserve lands and any similar information. Land interests and dispositions are set out in “Annex C”.

The information collected during the Phase I Environmental Site Assessment (ESA) that was conducted in **(insert date of Phase I ESA work)** is summarized in “Annex D”. The environmental issues were identified in this report and an action plan for the Phase II Environmental Site Assessment is also included.

(Insert the potential areas of environmental concerns as identified in the Phase I ESA report)

This section also includes any other information in Canada's possession on monies payable, including information on any arrear of rent as the date of transfer as set out in "Annex E".

Section 3 – Transfer of Land Management

This section provides that Canada will transfer the management and control of reserve lands to the **(Insert name of FN)** on the effective date of the Individual Agreement. **(Insert name of FN)** will then begin managing and controlling its reserve lands and natural resources under its Land Code.

Section 4 – Transfer of Rights

This section transfers all of Canada's rights, obligations, powers and authorities in or under all previous interests or licenses affecting reserve lands to the **(Insert name of FN)**.

Section 5 – Operational Funding

This section obligates Canada to provide the **(Insert name of FN)** with funding and resources for managing reserve lands. The amount of funding is set out in "Annex A". The amount of FN operational funding is based upon a variety of factors as outlined in the Memorandum of Understanding on Funding (October 19, 2011) that would give **(Insert name of FN) (Insert the operational funding amount)** for the first fiscal year.

Section 6 – Transfer of Revenues

This section obligates Canada to transfer to the **(Insert name of FN)** any monies that it holds in trust for the use and benefit of the **(Insert name of FN)** and any revenues it receives from reserve lands. Canada will transfer to the **(Insert name of FN)** the amount of **(Insert the amount to be transferred)** that is currently held in the **(Insert name of FN)** Revenue Account. The procedures for the transfer of funds are set out in "Annex B".

Section 7 – Notice to Other Persons

This section requires Canada to notify any non-members who hold an interest in reserve land that management of the reserve lands will be transferred to the **(Insert name of FN)** and that the **(Insert name of FN)** will collect the revenues from those interests in the future. This notice must be given within thirty days of the ratification of the Land Code.

Section 8 – Interim Environmental Assessment Process

This section provides that until the **(Insert name of FN)** establishes its own Environmental Assessment process, the *Canadian Environmental Assessment Act* will

apply. The procedure for Environmental Assessments during this period is set out in “Annex F”.

Sections 9 and 10

These are standard formalities regarding this amendment of the Individual Agreement, giving formal notice and documentation.

Section 11 – Dispute Resolution

This section provides that the dispute resolution provisions of the *Framework Agreement* apply to any disputes between Canada and the **(Insert name of FN)** regarding the Individual Agreement.

Section 12 – Date of Coming into Force

This section provides that the Individual Agreement comes into force at the same time as the **(Insert name of FN)** Land Code.

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

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

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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 “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 “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

Minister of Indian Affairs and Northern
Development

[Name of First Nation]

[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 I 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 CEAA 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.



LAND CODE SUMMARY

There are 9 Sections in this Land Code:

Part 1: Preliminary Matters

This introduces the Land Code to the reader and defines how the document should be read. There is a description of the terms that will be used in the document, an explanation of where the authority to govern comes from, what the purpose of the Land Code is and what lands the Land Code applies to (the reserve land description).

Part 2: First Nations Legislation

This section outlines what law making power the First Nation will have out of the Land Code and the procedure for how new land laws will be created and implemented (including where they will be published and when they take effect) under the Land Code.

Part 3: Community Consultation and Approvals

This section defines how and what the process is for implementing various elements of the Land Code. For example, approving a land use plan or enacting land laws requires community approval under the conditions defined in this section. Furthermore, this section touches on the procedures for a “meeting of members”, and the ratification process and approval thresholds are for passing laws or other matters such as: i.e. development of a heritage site, amendment to the Land Code, or any other matter.

Part 4: Protection of Land

This section outlines some of the key protections the Land Code offers- and the special conditions by which the First Nation could expropriate land (only by community approval through ratification vote) and the conditions for calculating compensation, but also the rights that may not be expropriated. This section also defines the necessity for a law on heritage sites, and ensures no development or amendment can be made to the land use plan to get rid of a heritage site created under this law. Finally this section states that an agreement is necessary for the First Nation to exchange land with another party (i.e. First Nation, Province, and Federal Government) and there are conditions to be met for lands to be received (such as the need for an appointed negotiator, freedom of receiving additional compensation or land in trust, and federal commitment to add any lands to the existing reserve base).

Part 5: Accountability

This section really has to do with how the Land Code is administered by First Nation including the rules for a “conflict of interest” and the duty to report and abstain from participation in land matters where there is a conflict. Also in the context of conflict of interest this section defines the non-application of these rules for common interests, dealing with disputes and penalties.

This section also applies to how financial management, audit and financial reporting will be conducted – establishing separate lands bank accounts, signing officers, bonding, signing



authorities, and the adoption of the fiscal year for operations and reporting. This section also goes into detail about the specific rules for a year to year lands budget and financial policy. The final part of this section is about financial records and the member's right to access information on year to year financial statements, audit report, the annual report on lands, and the penalties for interference or obstructing the inspection of these records by another member- and the coordination and roles responsible for creating and making these documents public (i.e. auditor and council).

Part 6: Land Administration

This section starts off by establishing the Lands Committee - it defines the composition, eligibility requirements, selection method, term of office and dealing with vacancies. This section also defines how revenue monies from lands will be handled (from fees, leases etc.), how the registration of land interests (leases, permits, licences) will be conducted and how it is captured through First Nations Land Registry System (FNLRS) and a duplicate register if directed.

Part 7: Interests in Land

This section relates more to the operation of the First Nation's lands administration and how it will address existing interests (e.g. CPs) and new land related interests (e.g. CPs or allocations). This section defines that there will need to be written documents, standards created, and that consent will be necessary to process any granting or disposing of assignments of land. This section defines the rights of CP holders and the procedure for cancelling a CP, the transfer and use of a CP, and the situation when a CP holder ceases to be a member. This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law (to be made into a Matrimonial Real Property law)

Part 8: Dispute Resolution

This section is created to address how possible disputes that could arise by any benefactor (e.g. First Nation member) of the Land Code and how the process for addressing disputes will be conducted. For example, an adjudicator would be established to resolve disputes in relation to lands unless members could come to some resolve by way of an informal resolution of disputes. The section sets out the powers for the adjudicator, adjudication procedures and decisions and the member's ability to appeal these decisions and expectations around costs.

Part 9: Other Matters

This section defines four (or more) items to address common issues such as:

1. Liability- the need for director and officers insurance for Lands Committee members,
2. Offences and enforcement- what are offences and what is the penalty,
3. Amendments to Land Code- specifically the process for amending this Land Code,
4. Commencement- defines when the actual start date will be.



LAWS, REGULATIONS AND POLICIES

Laws, regulations and policies are critical components of our society and government. They establish public priorities, help maintain order and safety, and play an important role in shaping the political and social fabric of communities at every level - from towns and cities to provinces and the nation.

LAWS

Laws are enacted by government bodies (First Nation, federal, provincial and municipal). Laws are a set of rules or norms of conduct, in other words, they describe what can or cannot be done and they must be obeyed by everyone including private citizens, groups and companies. Laws have a specific enactment procedure and are administered and enforceable through our system of courts. Laws are not easily changed or amended.

LAWS BY FIRST NATION COUNCILS

Framework Agreement on First Nation Land Management – Pursuant to the *Framework Agreement* First Nations Councils may enact laws respecting the development, conservation, protection, management, use and possession of First Nation reserve land and interests or land rights and licences in relation to those reserve lands. This includes any matter necessary or ancillary to the making of laws in relation to First Nation land.

For example, a First Nation may enact laws respecting zoning, land use, subdivision control and land development, environmental assessment and protection, the provision of local services, provision of services for the resolution of disputes in relation to land decisions. The *Framework Agreement* specifies laws that can be enacted by the Chief and Council acting alone but it also specifies laws that require community support (i.e. matrimonial real property, land use planning).

Indian Act – Even if a First Nation has a land code in effect, a First Nation may choose to enact bylaws under section 81 of the *Indian Act*. Pursuant to that section, a Council may make by-laws in a number of areas including traffic, observance of law and order, prevention of disorderly conduct and nuisances, removal and punishment of persons trespassing upon the reserve, etc.

The laws are enacted by the Chief and Council but must be approved by the Minister of Indian Affairs, even where the First Nation has a land code in effect. An intoxicant by-law can also be passed by Council pursuant to section 85.1 of the *Indian Act*; these laws do not require Ministerial approval but rather need community approval. Lastly, Councils may also pass a taxation by-law, with the consent of the Minister, pursuant to section 83 of the *Indian Act*.



REGULATIONS

Regulations – are a form of law or rule that are authorized under a law and subordinate to that law. Departments and administrators generally write regulations to implement and support the requirements of the law. Regulations deal with the details or technical matters that are not found in a law. Regulations can be easier to change and amend. Regulations are made by federal or provincial Departments of government and approved by Cabinet.

For example there are Regulations under the *Indian Act* concerning Band Council elections, timber, referendums. There are many Regulations under the *Fisheries Act* which set quotas and seasons for different species of fish and which are different in each of the provinces and territories. The *Canada Environmental Protection Act* also has many regulations concerning pollutants, emissions from various industries and similar subjects. Lastly, the First Nations Land Registry Regulations were established pursuant to the *First Nations Land Management Act*.

POLICIES

Policies – are a less stringent set of rules or strategies set in place by a government to improve standards. They are set in place to achieve certain objectives that are within the law or that need to comply with the law. Policies are easier to change and amend.

MATSQUI FIRST NATION ENVIRONMENTAL ASSESSMENT LAW

WHEREAS:

The Matsqui First Nation, also known as the Matsqui Indian Band, (“Matsqui”), has an inherent right to self-government which emanates from its people, culture, language, and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

Matsqui, as an aspect of our inherent right of self-government, has the jurisdiction to address real property issues such as environmental matters, and this inherent right has not been extinguished;

Matsqui also chose to assume control of its Indian reserve lands pursuant to the *Framework Agreement on First Nation Land Management, First Nations Land Management Act, S.C. 1999, c. 24* by entering into the *Individual Agreement on First Nation Land Management between Matsqui First Nation and Her Majesty the Queen in Right of Canada* and by adopting the Matsqui First Nation Land Code.

Section 23 of the Framework Agreement requires Matsqui to adopt this Environmental Assessment Law;

It is essential to the health and survival of Matsqui that we maintain our community and First Nation Land; and

This Law will apply in conjunction with applicable federal and provincial laws concerning environmental issues.

NOW THEREFORE Matsqui hereby enacts the following Law:

1.0 TITLE

1.1 This Law may be cited as the “Matsqui First Nation Environmental Assessment Law”.

2.0 DEFINITIONS

2.1 Unless the context otherwise requires, the definitions in the Matsqui Land Code are applicable to this Law. In this Law:

“CEAA” means the *Canadian Environmental Assessment Act, 2012* SC 2012, c. 19 as amended from time to time;

“Council” means the elected Chief and Council of Matsqui;

“Cumulative Effect” means the combined environmental, cultural or socio-economic impacts that accumulate from past, present and potential future actions, contaminants, or Projects;

“environment” means the components of the Earth, and includes:

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms;
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b); and
- (d) human activities, structures and communities, including economic and cultural activities and heritage features and resources.

“environmental assessment approval” means the certificate that is issued to the Proponent indicating that the environmental assessment has been accepted by Matsqui;

“environmental effects” means any change to the environment, including archaeological features, heritage resources, traditional use areas, economic activities, health and socio-economic conditions;

“First Nation Land” means any portion of a Matsqui First Nation Indian reserve that is subject to the Matsqui Land Code;

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

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* dated February 12, 1996 signed by the Minister of Indian and Northern Development and 13 First Nations, as amended from time to time;

“Governing Body” means the Governing Body of Matsqui established under clause 2.1 of Appendix K of the Matsqui First Nation Custom Election Regulations and Procedures;

“Lands Manager” means the Matsqui employee responsible for the administration of First Nation Land or his or her authorized representative(s), employees or contractors, or a Person authorized by the Governing Body to act as his or her delegate;

“Matsqui” means the Matsqui First Nation;

“Matsqui Land Code” means the *Matsqui First Nation Land Code* dated for reference October 17, 2007 and brought into force February 26, 2009;

“Mitigation Measures” means measures for avoiding, eliminating, reducing or controlling the adverse environmental effects of a Project, and includes restitution for any damage to the environment caused by those effects through replacement, restoration, compensation or any other means;

“Person” means an individual, corporation, body corporate, partnership, joint venture, Proponent, association, syndicate, trust or other legal entity, including a First Nation or

Indian band, or any trustee, executor, administrator or other legal representative of any such entity;

“Project” means any activity or project on First Nation Land that has the potential to affect the environment, including any activity or project that has taken place on First Nation Land which requires new authorizations or consent from Matsqui or which the Governing Body determines should be subject to an environmental assessment. Without limiting the foregoing, a Project includes a development, a subdivision or a grant or disposition of a licence or interest in First Nation Land;

“Project Description” means the description of the Project pursuant to subsection 8.1(k);

“Proponent” means a person, organization, corporation or entity that proposes to undertake a Project, or has undertaken a Project on First Nation Land prior to the passing of this Law which requires new authorization or consent from Matsqui, including, but not limited to, the government of Canada, British Columbia, a municipality or regional district, another province, or jurisdiction, a utility provider, a first nation, and a first nation member; and

“Supreme Court” means the Supreme Court of British Columbia.

3.0 PURPOSE

3.1 The purposes of this Law are:

- (a) to protect First Nation Lands from significant adverse environmental effects caused by a Project;
- (b) to identify potential environmental effects before decisions are made to proceed with a Project;
- (c) to promote cooperation and coordinated action between Matsqui, the federal and provincial governments and municipal governments with respect to environmental assessments; and
- (d) to ensure that an environmental assessment is completed in a timely manner.

4.0 REQUIREMENT FOR ENVIRONMENTAL ASSESSMENT APPROVAL

4.1 A Proponent must not:

- (a) undertake or carry on any activity that is a Project, or

- (b) construct, operate, modify, dismantle or abandon all or part of the facilities of a Project,
unless
- (c) the Proponent first obtains an environmental assessment approval for the Project, or
- (d) the Lands Manager has determined that an environmental assessment approval is not required for the Project and the Governing Body has issued a written letter to the Proponent confirming this.

4.2 Despite any other applicable law, if an environmental assessment approval has been issued for a Project, a Person must not:

- (a) undertake or carry on an activity that is authorized by the environmental assessment approval, or
- (b) construct, operate, modify, dismantle or abandon all or part of the Project facilities that are authorized by the environmental assessment approval,

except in accordance with the environmental assessment approval.

5.0 PROJECTS SUBJECT TO OR EXEMPT FROM THE ENVIRONMENTAL ASSESSMENT PROCESS

5.1 Without limiting the foregoing, the Matsqui environmental assessment process applies to the following:

- (a) any grant or disposition of an interest or licence in First Nation Land; and
- (b) any Project on First Nation Land.

5.2 Without limiting the foregoing, environmental assessments may not be required under the following circumstances, unless otherwise determined by the Governing Body:

- (a) administrative actions that will not, or do not, affect land or resources;
- (b) emergency repairs or actions needed on an urgent basis to avert or respond to emergencies; or
- (c) responses to accidents or threats to public health.

6.0 HARMONIZING THE ENVIRONMENTAL ASSESSMENT PROCESS

6.1 Matsqui recognizes that federal environmental legislation may apply under certain circumstances and components of Projects on lands adjacent to First Nation Land may be subject to provincial environmental legislation. In these instances the Lands Manager will use best efforts to work cooperatively with the other parties to seek agreement on the following issues:

- (a) the agency and individual that will be the main contact and coordinator of the environmental assessment for each jurisdiction;
- (b) the common requirements under the federal, provincial and Matsqui's environmental assessment processes;
- (c) the development of a specific work plan for each Project undergoing a multi-jurisdictional environmental assessment;
- (d) how the parties will co-ordinate their environmental assessment decisions and associate regulatory decisions with respect to a Project; and
- (e) for future Projects, how each party will notify the others when an environmental assessment process is initiated under that jurisdictions' law.

6.2 Pursuant to clause 25.6 of the Framework Agreement, Matsqui and Canada will make best efforts to ensure that Matsqui's environmental assessment process will be used where there is overlapping jurisdiction. This priority will be reflected in any environmental assessment harmonization plan developed between Matsqui, Canada and British Columbia under clause 25.7 of the Framework Agreement.

7.0 ENVIRONMENTAL ASSESSMENT PROCESS

7.1 The Matsqui environmental process is designed to meet the requirements of the Framework Agreement and FNLMA, including:

- (a) that an environmental assessment is triggered in cases where Matsqui is approving, consenting to, regulating, funding or undertaking a Project on First Nation Land;
- (b) the environmental assessment process must be consistent with the requirements of the *CEAA*; and
- (c) environmental assessments must be conducted as early as possible in the planning stages of the Project, before an irrevocable decision is made; and

- (d) Matsqui's environmental assessment obligations depend on adequate financial resources and expertise being available to Matsqui.

7.2 Where required, the Proponent must ensure that an environmental assessment is completed before other approvals are considered by Matsqui, including but not limited to: negotiating impact benefit agreements, obtaining permits, or other authorizations and completing lease, sub-lease or licence agreements.

8.0 ENVIRONMENTAL ASSESSMENT PROCEDURE

Screening – Submission of Project Description

8.1 The Proponent of a Project must provide the Lands Manager with a description of the Project, in a Form as attached as Appendix "B" or as amended by the Governing Body from time to time, which will be called a Project Description, that includes, at a minimum, the following information:

- (a) the Project's name, nature and proposed location;
- (b) the Proponent's name and contact information and the name and contact information of their primary representative for the purpose of the description of the Project;
- (c) a description of and the results of any consultations undertaken with any jurisdictions and other parties;
- (d) other relevant information, including the environmental assessment and regulatory requirements of other jurisdictions; and information concerning any environmental study that is being or has been conducted of the region where the Project is to be carried out;
- (e) a description of the Project's context and objectives;
- (f) a description of the physical works that are related to the Project including their purpose, size and capacity;
- (g) the anticipated production capacity of the Project and a description of the production processes to be used, the associate infrastructure and any permanent or temporary structures;
- (h) a description of all activities to be performed in relation to the Project, including site preparation, construction, operation or decommissioning;

- (i) a description of any solid, liquid, gaseous or hazardous waste that is likely to be generated during any phase of the Project and of plans to manage those wastes;
- (j) a description of the anticipated phases of and the schedule for, the Project's construction, completion, operation, decommissioning and abandonment;
- (k) a description of the Project's location, including;
 - 1. its geographic coordinates;
 - 2. site maps produced at an appropriate scale in order to determine the Project's overall location and the relationships among the Project components;
 - 3. the legal description of land to be used for the Project, including the reserve or parcel abstract report and any authorization relating to a water lot;
 - 4. the Project's proximity to any permanent, seasonal or temporary residences;
 - 5. the Project's proximity to provincial, federal or municipal lands;
- (l) a description of any financial support that federal authorities are, or may be, providing to the Project;
- (m) any federal or provincial legislative or regulatory requirements that may be applicable including a list of permits, licences or other authorizations that may be required in order to carry out the Project;
- (n) a description of the physical and biological setting;
- (o) a professional opinion regarding the likely presence or absence of the following species:
 - 1. fish as defined in section 2 of the *Fisheries Act*, R.S.C., 1985, c.F-14 and any amendments enacted from time to time, and fish habitat as defined in subsection 34(1) of that Act;
 - 2. aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*, S.C. 2002, c. 29 and any amendments enacted from time to time; and
 - 3. migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22 and any amendments enacted from time to time.
- (p) any information that the Proponent may have in its possession regarding any changes to the environment that may occur as a result of carrying out the Project, or the continued operation of the Project, on First Nation Land;
- (q) information, that the Proponent may have in its possession regarding the effects on Matsqui or other people of any changes to the environment that may be

caused as a result of carrying out the Project, or continued operation of the Project, including effects on health and socio-economic conditions, physical and cultural heritage, the current use of First Nation Lands and resources for traditional purposes or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and

(r) a summary of the above information.

8.2 If the Lands Manager is of the opinion, after receiving the Project Description that it is incomplete or does not contain sufficient details, the Lands Manager may within 10 business days after receiving it, require the Proponent to provide an amended Project Description that includes the information and details that the Lands Manager specifies.

8.3 The Lands Manager may forward the Project Description, or direct the Proponent to forward, to Aboriginal Affairs and Northern Development Canada, the Lands Advisory Board, Fisheries and Oceans Canada, the Canadian Wildlife Service, the District of Abbotsford, Langley Township, or other government departments or authorities. The involvement of other government departments may be based on whether those departments or other entities have decisions to make or can contribute expert or specialist advice.

8.4 When the Lands Manager is satisfied that the Project Description contains all of the required information, a notice will be posted in the Matsqui Lands Office that indicates that the Project Description is available for Matsqui members to provide comments respecting the Project within fifteen (15) business days after the posting of the notice.

Determining the Need for an Environmental Assessment

8.5 Within thirty-five (35) days after the posting of the notice, the Lands Manager may determine whether an environmental assessment is required based on, but not limited to, the following considerations:

(a) the Project Description;

(b) the possibility that the carrying out of the Project may cause adverse environmental effects;

(c) any comments received from the Matsqui members within fifteen (15) days after the posting of the notice subject to section 8.10;

(d) comments received from other government bodies; and

(e) the results of any relevant study.

8.6 The Lands Manager:

- (a) may determine that a Project requires an environmental assessment;
- (b) if the Lands Manager considers that a Project will not have a significant adverse environmental, economic, social, heritage or health effect, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the Project, the Lands Manager, may determine that an environmental assessment is not required for the Project.
- (c) The Governing Body may, at its discretion, review the Lands Manager's decision made pursuant to either subsection 8.6(a) or (b). If the Governing Body either does not review the decision of the Lands Manager made in accordance with subsection 8.6(b) or, upon its review of a decision made by the Lands Manager pursuant to either subsection 8.6(a) or (b), it concludes that an environmental assessment is not required the Proponent may proceed with the Project without an environmental assessment approval, or
- (d) subject to subsection 8.6(c), if the Lands Manager or the Governing Body considers that a Project may have a significant adverse environmental, economic, social, heritage or health effect, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the Project, the Lands Manager or the Governing Body, as the case may be, may determine that:
 - 1. an environmental assessment approval is required for the Project, and
 - 2. the Proponent may not proceed with the Project without undertaking an environmental assessment pursuant to an environmental assessment approval.

8.7 The Lands Manager or the Governing Body, or both, may attach conditions considered necessary pursuant to a decision under subsection 8.6(b).

8.8 The Lands Manager will advise the Proponent in writing of the determination as to whether or not an environmental assessment is required. A notice of the decision will be posted in the Matsqui Lands Office.

8.9 A determination under subsection 8.6 does not relieve the Proponent from compliance with the requirements pertaining to the Project under other applicable laws, policies and enactments.

8.10 Notwithstanding section 8.5, the Lands Manager may determine that a further 20 working days is required to obtain input from other governmental departments or authorities or Matsqui members.

9.0 ENVIRONMENTAL ASSESSMENT

Terms of Reference

- 9.1 If a Project requires the preparation of an environmental assessment, the Proponent shall prepare the terms of reference of the environmental assessment in consultation with the Lands Manager to ensure that the environmental assessment will include the information considered necessary by Matsqui. A form of generic terms of reference that can be used as a reference guide will be provided by the Lands Manager.
- 9.2 Generally, a typical environmental assessment report will include information on the following topics:
- (a) Project setting: Physical, ecological, social, cultural and economic setting of the First Nation Land potentially affected by a Project;
 - (b) Project description: Including design, construction, operation and decommissioning;
 - (c) Project effects and Mitigation Measures: Identification of potential environmental effects, assessment of the impacts and description of Mitigation Measures;
 - (d) Cumulative Effects assessment: Combined environmental, cultural or socio-economic impacts that accumulate from past, present and potential future actions, contaminants or Projects.
 - (e) Commitments: Clear statement of commitments by the Proponent to implement the Mitigation Measures described in the environmental assessment.
 - (f) Process: for preparation of the environmental assessment including a list of agencies or individuals to be contacted, a description of reports or other deliverables to be prepared including special studies and a schedule for the conduct of the work.
 - (g) Professional Expertise: the qualifications of the professionals that will be preparing the environmental assessment.
 - (h) Liability Insurance: identification of any liability concerns and the professional expertise that will be retained to address those concerns, as well as the obtaining of any insurance or bonding that is required.
 - (i) Conclusion: A summary and conclusion of the significance of identified adverse environmental effects.

- 9.3 The Lands Manager may require that an environmental assessment include some or all of the topics listed in Appendix "A".
- 9.4 The Lands Manager may retain, at the expense of the Proponent, professional expertise to review the terms of reference submitted by the Proponent.
- 9.5 The Lands Manager may circulate the draft terms of reference to other governments for review and comments. The Lands Manager may:
- (a) refer the draft terms of reference to the Governing Body; and
 - (b) engage the Matsqui membership in a review of the terms of reference.
- 9.6 The Lands Manager will determine whether the terms of reference include the issues necessary for the environmental assessment and notify the Proponent in writing of the decision.
- 9.7 The Proponent, at its own cost, will retain the appropriate professionals to conduct the environmental assessment in accordance with the approved terms of reference.

Analysis of Environmental Assessment Report

- 9.8 The Proponent will submit the draft environmental assessment report to the Lands Manager for review. The Lands Manager will determine the process for reviewing the draft and any costs incurred in the review, including the costs to retain an independent professional and review with the Matsqui membership, will be paid by the Proponent.
- 9.9 The Lands Manager may require the draft environmental assessment report to be made available for review by the Matsqui membership through open houses, workshops, or other means.
- 9.10 The Lands Manager will submit comments on the draft environmental assessment report to the Proponent for the preparation of a final environmental assessment report. The Proponent will amend the draft as necessary and prepare a final environmental assessment report.

Environmental Assessment Decision

- 9.11 The Proponent will submit the final environmental assessment report to the Lands Manager. The Lands Manager and the Lands Committee will review the report. The Lands Manager may also:
- (a) retain a specialist, the cost of which is to be paid by the Proponent, to review the final environmental assessment report;

- (b) circulate the final environmental assessment report to staff of other government agencies; and
- (c) make the final environmental assessment report available for review by the Matsqui membership.

9.12 The Lands Manager, on behalf of the Lands Committee, will prepare an environmental assessment completion report that:

- (a) summarizes comments from the Lands Committee, specialists, the Matsqui membership or others on the quality and findings of the environmental assessment report;
- (b) presents conclusions about the nature and significance of potential environmental effects and the effectiveness of Mitigation Measures identified; and
- (c) provides the comments of the Lands Manager and the Land Committee on:
 - 1. the implications of permitting the Project to proceed to other approval processes; and
 - 2. what conditions may be attached to future approvals or permits that would likely mitigate identified environmental impacts or enhance identified benefits.
- (d) The environmental assessment completion report will be presented to the Governing Body for a decision on Project approval, approval with conditions and issuance of an environmental assessment approval, referral back to the Lands Manager in order to obtain additional information or rejection.

Implementation of Mitigation Measures and Follow-Up Program

9.13 The Mitigation Measures identified in the environmental assessment report will be incorporated into any design plans, site plans, timber-harvesting permits, and construction tenders and will be implemented with the Project. If so instructed by the Lands Manager, a Proponent may be required to prepare an environmental protection plan that specifies how impacts will be avoided or mitigated, how First Nation Land will be restored following construction. Mitigation Measures will also form part of the conditions of any development permit issued.

9.14 Where deemed appropriate by the Lands Manager, the Proponent will prepare and conduct a monitoring program to verify the findings of the environmental assessment and to assess the effectiveness of the Mitigation Measures. Alternatively, the Proponent may fund monitoring to be conducted by Matsqui, subject to mutual agreement of the Proponent and the Lands Manager.

- 9.15 The Lands Manager will advise the Proponent of Matsqui's decision and requirements associated with the Project.

10.0 ADMINISTRATION AND ENFORCEMENT

Inspection Power

- 10.1 For any purpose related to the administration or enforcement of this Law or to verify compliance or prevent non-compliance with this Law, the Lands Manager may:
- (a) enter at any reasonable time on property that is the site of a Project, and
 - (b) inspect any works or activity connected with the Project.
- 10.2 A Person who enters on property under section 10.1, must provide proof of identity to a Person present on the property who has been authorized to be on the property by the Proponent, unless there is no authorized representative of the Proponent present on the property.
- 10.3 The owner or the Person in charge of the Project and every Person on site of the Project must give all assistance that is reasonably required to enable the Lands Manager to perform his or her duty and must provide any documents, data or information that are reasonably required for that purpose.
- 10.4 No Person shall prevent or obstruct or attempt to prevent or obstruct the entry of the Lands Manager upon the Project property.

Stop Order or Remedial Order

- 10.5 If the Lands Manager considers that a Project is not being carried out, constructed, completed, operated, modified, dismantled or abandoned in accordance with an environmental assessment approval, a decision made pursuant to subsection 8.6(b) or an environmental assessment approval has not been issued, the Lands Manager:
- (a) may, if an environmental assessment approval for the Project has not been issued or has been issued but does not remain in effect, order that construction, completion, operation, modification, dismantling or abandonment of the Project cease, or that the activity cease, either altogether or to the extent specified by the Lands Manager until the Proponent obtains an environmental assessment approval, or
 - (b) may, if an environmental assessment certificate for the Project has been issued and remains in effect,

- (i) order that construction, completion, operation, modification, dismantling or abandonment of the Project cease, or that the activity cease, either altogether or to the extent specified by the Lands Manager, until the holder of the environmental assessment approval complies with the terms of the approval, or
- (ii) order that the holder of the environmental assessment approval carry out, within the time to be specified in the order, measures specified by the Lands Manager in order to mitigate the effects of non-compliance.

10.6 All orders made by the Lands Manager pursuant to section 10.5 must be provided as a written notice to the Proponent and include the following:

- (a) a statement of the reasons for the order; and
- (b) the time and manner in which the order must be carried out.

10.7 Any Person to whom an order is given under section 10.5 must comply with the order given within the time set forth in the order.

10.8 If the Person does not comply with an order within the time specified, or if it is an emergency situation, the Lands Manager may, on his or her own initiative and at that Person's expense, carry out the measure required.

Supreme Court Order for Compliance

10.9 If Matsqui considers that any Person is not complying or has not complied with the order made under this Law, Matsqui may apply to the Supreme Court for either or both of the following:

- (a) an order directing the Person to comply with the order or restraining the Person from violating the order; and/or
- (b) an order directing the directors and officers of the Person to cause the Person to comply with or to cease violating the order.

10.10 On application by Matsqui under this section, the Supreme Court may make an order it considers appropriate.

Penalties

10.11 A Person who contravenes this Law, the terms or conditions of any authorization or environmental assessment approval issued under this Law, or an order made by the Supreme Court pursuant to this Law, is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than three months, or to both.

10.12 A fine payable under subsection 10.11 shall be remitted to Matsqui by the Supreme Court, after reasonable Supreme Court costs have been deducted.

11.0 AMENDMENTS

11.1 Amendments to this Matsqui First Nation Environmental Law shall be approved by the Governing Body.

12.0 IMMUNITY

12.1 No action for damages lies or may be instituted against present or past Council or Governing Body members or members, employees, servants or agents of Matsqui;

(a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or

(b) for any alleged neglect or default in the performance or intended performance of the person's duty or exercise of the person's authority.

12.2 Section 12.1 does not provide a defence if:

(a) members of Council or the Governing Body members or members, employees, servants or agents of Matsqui have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or

(b) the cause of action is libel or slander.

12.3 Matsqui, present or past Council or Governing Body members, or members, employees, servants or agents of Matsqui are not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Matsqui Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Matsqui Law.

13.0 COSTS

13.1 Without limiting any of the foregoing provisions wherein fees are payable, the Proponent will also be responsible for the payment of all administrative, legal and consultation fees incurred by Matsqui in relation to the administration, application and enforcement of this Matsqui First Nation Environmental Law.

14.0 COMING INTO FORCE

Date Law Comes into Force

14.1 This Law shall come into force and effect on the date it is enacted by pursuant to section 7.10 of the Matsqui Land Code.

Date of approval by a quorum of the Governing Body: _____, 2013

Voting in favour of the law are the following members of Council:

Chief Alice McKay

Councillor Louis Julian

Councillor Brenda Morgan

Voting in favour of the law are the following members of the Governing Body:

Family Representative

APPENDIX “A”
Potential Topics for Inclusion in Environmental Assessment

1. **Soils and Geology**
 - a. Stability and earth conditions
 - b. Major changes in topography or modification of significant geological features
 - c. Soil erosion, compaction, degradation, or contamination
 - d. Changes in erosion or deposition rates that affect aquatic process, form and function
 - e. Import and deposit of soil or fill

2. **Air Quality**
 - a. Substantial air emissions or deterioration of ambient air quality
 - b. The creation of objectionable odours

3. **Aquatic Ecosystems**
 - a. Physical alterations to natural stream channels or riparian zones
 - b. Changes in flow regime, drainage patterns, infiltration rates, or surface water runoff (including increases in effective impervious cover)
 - c. Alterations to the level or frequency of flooding
 - d. Discharges into surface waters that affect surface water quality (e.g. sediment load, temperature, dissolved oxygen, turbidity)
 - e. Changes in aquatic biota (e.g., invertebrate biodiversity, or plant or algae growth)
 - f. Changes in the quality or quantity of groundwater

4. **Vegetation**
 - a. Destruction or degradation of native plant habitat (including terrestrial, riparian, or aquatic vegetation communities)
 - b. Destruction or damage to any valued, sensitive, or culturally important trees or other plants (e.g. cedar, fir, arbutus, dogwood), including plants of community, landscape, or heritage importance
 - c. Reduction of the numbers or distribution of rare, threatened, or endangered plant species or plant communities

5. **Animal life**
 - a. Significant changes to the population numbers or distribution of native animal species (including birds, mammals, reptiles, fish, benthic organisms, or insects)
 - b. Any change to the numbers or distribution of rare, threatened or endangered animal species
 - c. Degradation of existing or potential fish habitat, or wildlife habitat or corridors (including the effects of light, noise, or human activity)
 - d. Interference in the life cycle of fish or birds (including nests or breeding behaviours)

6. **Land use and population**
 - a. Change to the present or planned land use in an area
 - b. Alteration of the supply of commercial or industrial space
 - c. Changes to population demographics, distribution, and density

7. **Mobility, transportation, and circulation**
 - a. Effects on transportation systems or potential increases in vehicular volumes or movements
 - b. Impacts on parking facilities, or creation of demand for new parking
 - c. Increases in traffic hazards to motor vehicles, bicyclists, or pedestrians
 - d. Alteration of access to or change in pedestrian, bicycle, and transit mobility including provision and continuity of service
 - e. Potential to increase need for, or provision of, special needs transportation

8. **Public Services and utilities**
 - a. Increased demand on fire, police, or other emergency services
 - b. Increased school enrolment, or demand for parks or other recreational facilities for all age groups
 - c. Need for new or expanded public utilities including sanitary sewers, water mains, storm drains or garbage collection
 - d. Potential to increase maintenance demands for existing facilities that are required to accommodate the proposed land use, including social services

9. **Aesthetics and built environment**
 - a. Obstructs a scenic vista or view open to the public
 - b. Potential to create an aesthetically offensive site open to public view
 - c. Destruction or modification of a significant landscape feature or viewpoint
 - d. Suitability and quality of urban design and impact on surrounding built environment
 - e. Consistency with “smart growth” principles of complete, compact, liveable, and efficient communities

10. **Employment and economy**
 - a. Potential to affect existing employment or creation of new employment (permanent or temporary, full-time or part-time)
 - b. Effect on existing commercial or industrial business
 - c. Potential effect on planned economic development Projects or activities
 - d. Cost or benefit to community (i.e. change tax base and service level)

11. **Nuisance (noise, light, glare, odour) and hazards**
 - a. Increase in existing noise levels (other than normal residential noise)
 - b. Creation of new, different or unusual noise or noise production at inappropriate times (e.g. late at night)
 - c. Production of new light or glare
 - d. Creation of shading or reduced access to sunlight

- e. Production of offensive odours and airborne particles
- f. Production of potentially dangerous transmission waves (i.e. magnetic or microwave)
- g. Creation of potential human health hazards

12. **Navigable waters**

- a. Obstruction or reduction of navigability of marine or fresh water courses
- b. Requirement for federal navigable waters approvals

13. **Cultural resources**

- a. Potential to alter or destroy an archaeological site
- b. Effects on areas of cultural importance (for spiritual, traditional use, ceremonial, resource, or other purposes)
- c. Effects on historic buildings, structures, objects, or landscapes

14. **Cumulative Effects**

- a. Other past or potential future Projects or human activities in the study area
- b. Identification of potential Cumulative Effects of the proposed Project with other past or potential future Projects or human activities in the study area
- c. Potential actions to mitigate identified Cumulative Effects
- d. Assessment of residual Cumulative Effects

APPENDIX "B"

Project Description – Environmental Assessment Process

Proponents are to complete this Project Description and submit to the Matsqui First Nation Lands Manager. Submission of this form initiates the Matsqui First Nation environmental assessment process.

1.0 GENERAL INFORMATION

1.1 Contact Information

Project Title: _____

Proponent Contact (job title): _____

Address: _____

Telephone Number: _____

Fax Number: _____

Email: _____

If Applicable:

Co-Proponent Name: _____

Contact and Title: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Email: _____

If Applicable:

Environmental Consultant: _____

Contact and Title: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Email: _____

Reserve Name and Number:

1.2 Potential Regulatory Requirements

a) Is there Federal financial support for this Project? Yes No

If yes, then from which department?

b) Is there Matsqui First Nation financial support for this Project? Yes No

c) Please list other environmental assessment regimes or potential permits, approvals, or authorizations from Canada, the Province, Municipal, or International governments to which the Project may be subject or require (e.g. *Fisheries Act*, *SARA*, *Canadian Environmental Protection Act*, Provincial water licence, municipal rezoning, etc.)?

2.0 PROJECT INFORMATION

2.1 Project Title

2.2 Project Description

a) Project rationale (need for Project, goals, purpose)

b) Briefly describe the Project (its market, permanent or temporary structures, affected land area, etc.)

c) Are there subsequent phases or expansion, or other facilities or activities associated with the Project that are not included in this Project Description? Yes No

If "yes", please describe:

d) Does this Project involve cutting of trees on Matsqui First Nation land? If so, how many, species, size, health?

e) Estimated Capital Cost: _____

2.3 Detailed Project Location

Geographical Location and/or GPS Coordinates:

Legal Land Description:

Attach a detailed map of the Project footprint and affected area, conceptual plans, and other facility designs or plans if available.

2.4 Resource and Material Requirements

a) Does this Project involve gravel, sand, or any other non-metallic minerals from the Matsqui First Nation land? If yes, which reserve? What raw materials will be processed (including gravel, metals, or others)?

b) What are the energy sources for the operation of this development (propane, natural gas, electrical, diesel, etc)? How much energy will be required for its operation?

c) How much water will be used, for what purpose, and from what source

2.5 Waste Disposal

a) What types of wastes will be generated during construction and operation of this Project?

b) How and where will wastes be disposed?

2.6 Associated Infrastructure

a) Describe infrastructure required by this Project (roads, transit, water supply, power, sewers, other).

2.7 Project activities

a) Project construction:

- Start and finish date: _____

- List activities in sequence:

- Number of workers

- Total

- Per average day

- Matsqui First Nation members

- Vehicles per day (trucks and cars, maximum and daily average):

b) Project operation:

- Project activities

- Number of workers

- Total

- Per average day

- Matsqui First Nation members

- Vehicles per day (trucks and cars, maximum and daily average):

- Where will vehicles park:

- Noise generation:

- Air, water, or other emissions:

c) Decommissioning:

- Activities:

- Materials generated and method of disposal:

3..0 ENVIRONMENTAL FEATURES

- a) Map and describe the environmental features in the area of development.
- i. Site topography (for facilities and access)
 - ii. Soils (type and depth, productivity, erodability)
 - iii. Surface water, such as lakes or streams, nearby
 - iv. Watercourse crossings or development near water
 - v. Wetlands or estuaries
 - vi. Aquifers
 - vii. Vegetation
 - viii. Wildlife habitat
 - ix. Fish habitat
 - x. Other areas of special concern or environmentally sensitive areas
 - xi. Known species as identified in the SARA in or adjacent to the proposed Project area
 - xii. Registered or unregistered archaeological sites or features
 - xiii. Areas of moderate to high archaeological potential
 - xiv. Areas used for traditional aboriginal purposes

xv. Visual aesthetic character

b) Other additional information you may want to provide (e.g. community or cultural issues, consultation):

4..0 Regulatory requirements

a) Describe permits or approvals needed, and whether applications have been submitted to:

- Matsqui First Nation

- Local or regional government

- Federal government

- Provincial government



Matsqui First Nation Environmental Management Plan

FINAL

August 8, 2012

MATSQUI FIRST NATION

PO Box 10

Matsqui, British Columbia

V4X 3R2



ACKNOWLEDGMENTS

The Matsqui First Nation Environmental Management Plan (EMP) was made possible through funding received from Aboriginal Affairs and Northern Development Canada (AANDC). Matsqui First Nation's Lands Manager, Brenda Morgan, was responsible for administering and organizing preparation of the EMP. Chief Alice McKay, Stanley Morgan, and Cynthia Collins also played key roles in the planning process. The Matsqui First Nation Lands Committee ensured that the EMP was consistent with community values and aspirations, and that environmental issues were properly identified and resolved. Matsqui First Nation community members participated by providing valuable comment on the EMP.

Westland Resource Group, a division of TERA Environmental Consultants, provided technical support in preparing the EMP. Westland's responsibilities included working with the Project Administrator and the Lands Committee, preparing presentations, and drafting and revising the EMP. Stan Ashcroft, Legal Counsel for the Matsqui First Nation, reviewed the draft EMP and made valuable improvements to the document. The draft document was reviewed by staff from Aboriginal Affairs and Northern Development Canada.

ABBREVIATIONS

Abbreviation	Definition
AANDC	Aboriginal Affairs and Northern Development Canada
BC	British Columbia
BMPs	Best Management Practice
CCME	Canadian Council of Ministers of the Environment
CEAA	<i>Canadian Environmental Assessment Act</i>
CEPA	<i>Canadian Environmental Protection Act</i>
CN	Canadian National Railway
CP	Canadian Pacific Railway
DFO	Fisheries and Oceans Canada
EA	Environmental Assessment
EMA	Environmental Management Agreement
EMP(s)	Environmental Management Plan(s)
ESA	Environmental Site Assessment
FNLAB	First Nations Land Advisory Board
FNLMA	<i>First Nations Land Management Act</i>
FVRD	Fraser Valley Regional District
INAC	Indian and Northern Affairs Canada
IR	Indian Reserve
JAMES	Joint Abbotsford Mission Environmental System
LEED	Leadership in Energy and Environmental Design
ND	Neighbourhood Development
NFCC	National Fire Code of Canada
PEP	Provincial Emergency Program
SARA	<i>Species at Risk Act</i>

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1.0 ENVIRONMENTAL MANAGEMENT PLAN INTRODUCTION AND PROCESS

1.1 Introduction

The Matsqui First Nation is an Operational First Nation under the Framework Agreement and the *First Nations Land Management Act*. As part of the function of exercising management authority over its reserves, the Matsqui First Nation has prepared this Environmental Management Plan (EMP) to protect and improve the quality and productivity of the natural and human environment of Matsqui lands.

The Matsqui First Nation has four reserves in the Fraser Valley (Figure 1). Two of Matsqui's reserves support housing and services for members and the other two are used for agriculture and forestry. Three Islands Indian Reserve (IR) #3 is mainly forested and subject to periodic timber harvesting, and agricultural leases are in place on Sahhacum IR #2. Matsqui IR #4, near Aldergrove, is used for housing. Matsqui Main IR #2 supports member housing, the band administration office, agriculture, and industrial leases for a sawmill and a firm that remanufactures shipping containers.

The environmental issues facing Matsqui lands were initially identified during Step 1 of the Environmental Management Agreement (EMA) process. Issue identification involved the Matsqui First Nation members, staff, and the Governing Body.

The preparation of this EMP began with a review and refinement of environmental issues facing the Matsqui First Nation. The community and the Lands Committee were involved in the review of issues and subsequent development of this EMP.

The environmental issues affecting Matsqui lands reflect the differing land uses and the activities conducted on surrounding property. The Fraser Valley supports many agricultural activities, but also faces rapid urbanization. Housing, transportation (roads and railways), utilities, and electricity transmission lines affect Matsqui lands and nearby parcels.

The EMP is intended to be an operation manual for use by the Matsqui First Nation Governing Body, Lands Manager, Environment Officer, other staff, and Lands Committee to manage activities that have a potential to affect the environment on Matsqui lands. The main body of the EMP describes goals, objectives, and actions associated with environmental issues. The appendices to the EMP contain detailed information to help respond to environmental issues. Excerpts from the EMP will be made available to Matsqui First Nation contractors or holders of leases of Matsqui lands as needed. The EMP is also a communication tool, explaining environmental goals and proposed actions to Matsqui First Nation community members, local municipalities, and provincial and federal governments. The purposes of the EMP are articulated in more detail in the "Objectives" section of this plan.

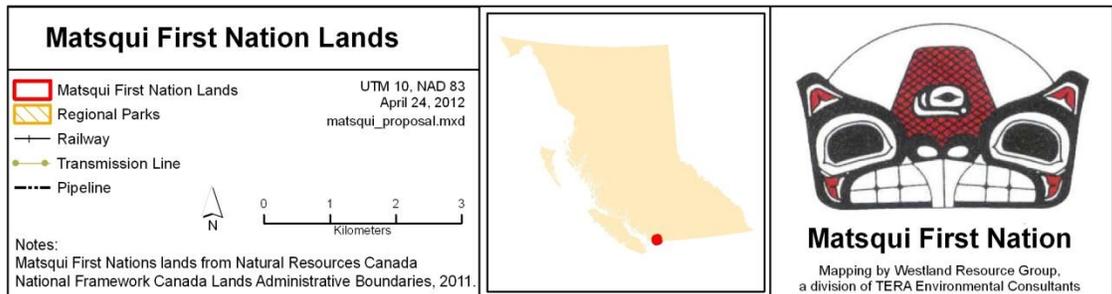
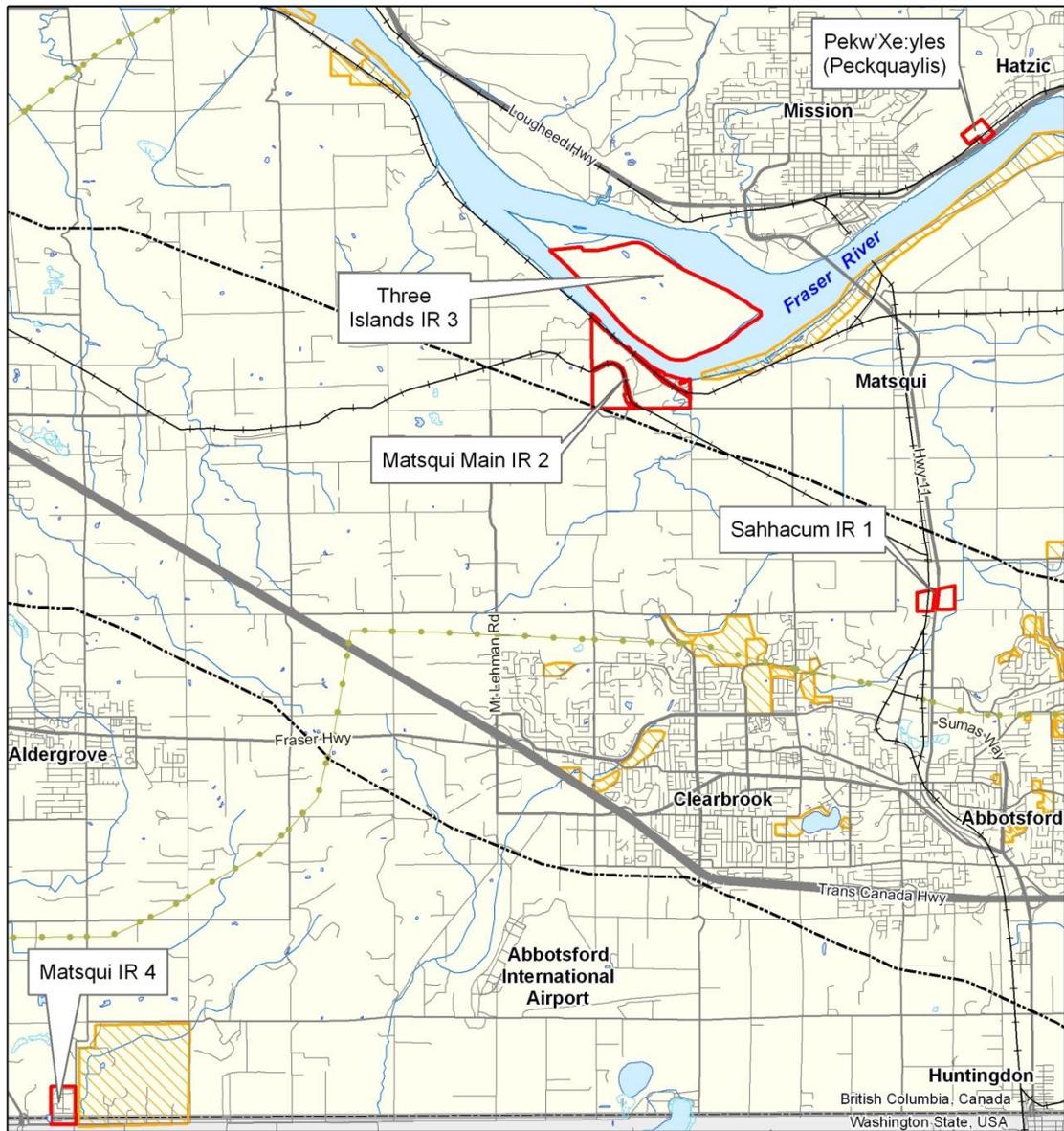


Figure 1. Location of Matsqui lands

1.2 Preparation of the Environmental Management Plan

The Matsqui EMP describes methods to develop, monitor, implement, and enforce environmental protection laws and other tools to manage their environment. As described in Figure 2, preparation of the EMP involved a combination of technical analysis, Lands Committee review, and input from the Matsqui First Nation membership.



Figure 2. Steps followed in preparing the Environmental Management Plan

1.3 Meetings and community consultation

Engagement of the Lands Committee and Matsqui First Nation membership was a high priority in preparing the EMP. In preparing the plan, information was gathered and analyzed to obtain clear direction on environmental issues, potential responses, and next steps. At each meeting with the community or the Lands Committee, a presentation was made, followed by substantial time dedicated to discussion, questions and answers, and outlines of next steps. Table 1 summarizes meetings and consultation activities conducted during EMP preparation.

Table 1. Summary of meetings and consultation activities

Date	Type	Location	Attendees	Purpose of the meeting
December 14, 2011	Lands Committee meeting	Matsqui Band Office	<ul style="list-style-type: none"> Lands Committee Westland Resource Group 	<ul style="list-style-type: none"> Examine the use of an EMP, role of Lands Committee, and schedule. Review Step 1 issues.
February 1, 2012	Lands Committee meeting	Matsqui Band Office	<ul style="list-style-type: none"> Lands Committee Westland Resource Group 	<ul style="list-style-type: none"> Discuss an updated list of EMP issues, a draft goal, and revised list of EMP objectives. Review potential responses to environmental issues. Discuss community involvement.
February 16, 2012	Lands Committee meeting	Matsqui Band Office	<ul style="list-style-type: none"> Lands Committee Westland Resource Group 	<ul style="list-style-type: none"> Finalize the EMP goal statement. Confirm the revised list of EMP issues. Recommend responses to environmental issues. Identify content and process for the community meeting.
February 16, 2012	City of Abbotsford staff meeting	Abbotsford City Hall	<ul style="list-style-type: none"> Matsqui First Nation staff Abbotsford City staff Westland Resource Group 	<ul style="list-style-type: none"> Discuss potentially relevant Abbotsford bylaws. Obtain information on bylaw effectiveness and implications of applying bylaws to Matsqui lands.
March 7, 2012	Membership meeting	Matsqui Church Hall	<ul style="list-style-type: none"> Lands Committee Community Members Westland Resource Group 	<ul style="list-style-type: none"> Discuss the purpose of EMPs, steps in EMP preparation, and EMP objectives and goals. Discuss Matsqui environmental issues, potential responses to issues, and next steps.
March 7, 2012	City of Abbotsford staff meeting	Abbotsford City Hall	<ul style="list-style-type: none"> Abbotsford City staff Westland Resource Group 	<ul style="list-style-type: none"> Discuss Abbotsford Petroleum Products Storage Tank Bylaw. Discuss emergency response potentials on Matsqui lands.
April 11, 2012	Lands Committee meeting	Matsqui Band Office	<ul style="list-style-type: none"> Lands Committee Westland Resource Group 	<ul style="list-style-type: none"> Review EMP content and format. Discuss draft policies.

Date	Type	Location	Attendees	Purpose of the meeting
April 26, 2012	Lands Committee meeting	Matsqui Band Office	<ul style="list-style-type: none"> • Lands Committee • Westland Resource Group 	<ul style="list-style-type: none"> • Review the revised EMP draft. • Confirm next steps.
June 26, 2012	Lands Committee meeting	Matsqui Band Office	<ul style="list-style-type: none"> • Lands Committee • Westland Resource Group 	<ul style="list-style-type: none"> • Discuss revisions to the EMP.
August 8, 2012	Membership meeting	Community Hall	<ul style="list-style-type: none"> • Lands Committee • Community Members • Westland Resource Group 	<ul style="list-style-type: none"> • Present and discuss the revised EMP.
August 2012	Governing Body meeting	Matsqui Band Office	<ul style="list-style-type: none"> • Governing Body members 	<ul style="list-style-type: none"> • Adopt the EMP.

2.0 ENVIRONMENTAL MANAGEMENT PLAN GOALS, OBJECTIVES, AND ISSUES

2.1 Goal of environmental management

The purpose of the EMP is to aid Matsqui First Nation in achieving the following environmental management goal:

Balance human activities and economic development with the need to protect and improve the environmental quality of Matsqui First Nation lands, air, water, and habitat.

To achieve this goal, Matsqui First Nation commits to:

- seek resources needed to implement the policies and actions identified in the EMP;
- manage community services and business practices with an emphasis on pollution prevention and minimizing impacts on the environment;
- periodically monitor environmental conditions on Matsqui lands to improve environmental quality and to refine the EMP's policies; and
- promote the environmental management goal to the membership, employees, contractors, and the public.

2.2 Objectives

The EMP is an important tool in managing Matsqui lands. The Matsqui First Nation seeks to achieve the following objectives through the EMP:

- minimize environmental impact of future human activity on Matsqui lands, repair past damage, and enhance the quality and productivity of the land, air, and waters;
- improve the ecological functioning and resource productivity of Matsqui lands and waters;
- comply with environmental management components of the Framework Agreement signed by the Matsqui First Nation and Canada,
- review other jurisdictions' environmental protection laws and processes related to preventing risks to the environment or human health, and assess the suitability of those laws for achieving the Matsqui First Nation environmental management goals;
- formulate policies to be implemented by the Matsqui Governing Body that advance us toward the goal of sustainable use of Matsqui lands;
- identify alternative environmental management approaches, including laws, regulations, policies, guidelines, and Best Management Practices (BMPs), that could be used to address the issues identified in the Step 1 process;

- ensure that the goals of environmental management and sustainability are reflected in land use plans, development and servicing plans, and other decisions affecting the environment or the community;
- work with adjacent local governments and the provincial and Canadian governments in regarding the environmental measures we deemed most suitable for Matsqui lands, including cooperation in the implementation and enforcement of Matsqui First Nation environmental regulations and standards;
- develop procedures for preventing future contamination or recontamination of Matsqui lands;
- identify Matsqui First Nation opportunities for, and limits to authority over, environmental management;
- specify Matsqui First Nation government organizational structures and administrative procedures to implement the EMP policies and directions;
- determine training, equipment, infrastructure, and information management required to implement the EMP, including potential sources of funding or other resources; and
- continue to communicate with Matsqui First Nation members, employees, tenants, and those who undertake construction or other projects on Matsqui lands of the importance of complying with the EMP policies and associated laws, regulations, and guidelines.

2.3 Matsqui First Nation environmental issues

The Matsqui First Nation has identified a variety of environmental issues associated with Matsqui lands and resources. The following priority environmental issues were raised during discussions with the Lands Committee and Matsqui First Nation membership. Individual issues are listed under main topic headings.

Environmental emergencies



- Potential spills from vehicle accidents on highways crossing reserves
- Emergency response regarding railroads (Canadian National Railway (CN), Canadian Pacific (CP), and Southern Rail) crossing reserves
- Wildfire risk on all reserves
- Flood and earthquake risk on all reserves

Fuel storage and management

- Potential spills from:
 - Fuel storage and boat fueling operations at G&R Cedar, IR #2



- Fuels and lubricants at ModPro, IR #2
- Fueling facility at band office
- Kruger Inc. forestry operations, IR #3
- The potential for natural gas leaks in distribution systems and gas appliances present on IR #2 and IR #4.

Sewage disposal



- Effects of high water table on waste disposal fields, IR #4
- Potential cross contamination of water supply by leaking sewer lines
- Potentially harmful waste being introduced into sanitary sewers

Solid waste management



- Hog fuel storage at G&R Cedar and past gate on Cemetery Road
- Garbage dump at former sand pit
- Illegal dumping of garbage on reserves
- Litter and construction debris dumped by Matsqui members
- Failure of some Matsqui First Nation members to practice traditional methods of disposing of fish waste, instead of dumping the waste in garbage bins, creating odour problems

Fish and fish habitat protection



- Bilge discharges into the river from boom boats and other fuel spill risks
- Drainage from agricultural operations affecting water quality
- Lack of respect of fish including waste of fish resources
- River bank treatment (rip rap) that harms fish habitat
- Damage to fish habitat caused by development
- Culverts that are obstacles to fish passage (*e.g.*, Coligny Creek)

Protection of valued and at-risk species

- Protect valued, threatened, or endangered species on Matsqui lands



- Avoid potential development proposals or designs that could harm valued or at-risk species

Land contamination issues



- Dumping fill of unknown quality on farmland and other parts of Matsqui lands
- Grease and metals from rail operations contaminate reserves
 - Soil and plants are contaminated near railways
 - Grease on rails and rail switches
 - Creosote railroad ties (in use and stored)

Agricultural practices



- Pesticide use, fertilizer runoff, noise, odour, and soil management
- Need for improved agricultural practices for gardens and permit-based farming on IR #2
- Nuisance fly infestations associated with manure spreading on adjacent farms

Water management



- Poor drainage management in low portions of Matsqui lands
- Stagnant water in drainage ditches creating mosquito and odour problems
- Effects on Matsqui lands of runoff from adjacent farmlands (pesticides, fertilizers, and organic material in water)

Air quality



- Odours on IR #2 from:
 - the Joint Abbotsford Mission Environmental System (JAMES) sewage treatment plant,
 - manure spreading on adjacent land, and
 - fetid drainage ditches.
- Odours on IR #4 from:
 - livestock manure processing facility in United States, and

- mink and mushroom farms in Langley.
- Particulate air pollution on IR #2 from:
 - coal being transported by train,
 - diesel engines, and
 - CN track cleaning.



Community quality

- Encourage environmentally-sound development that makes efficient use of land, energy, and other resources
- Matsqui communities are not pedestrian-oriented; they need to become mixed-use neighbourhoods that reduce dependency on motor vehicles
- Improve the appearance of structures and streetscapes

Environmental Assessment



- An Environmental Assessment (EA) should be completed for reviewable projects before decisions are made to approve a project
- The Matsqui Nation does not comply with Sections 23.2 and 23.4 of the Framework Agreement, which specify that an EA regime and laws will be adopted

2.4 Matsqui First Nation potential responses

Potential responses available for managing the environment on Matsqui lands include:

- laws and regulations,
- policies,
- guidelines and Best Management Practices (BMPs),
- education and outreach, and
- monitoring and reporting.

Definitions, benefits, and limitations of these tools are outlined in Figure 3. Laws and regulations are enforceable directions designed to achieve uniform compliance. Although they can be enforced and are authorized by the Framework Agreement, laws are inflexible, costly to draft, implement, and enforce. In preparing appropriate and effective laws, the Matsqui First Nation will review examples of laws and regulations from other Aboriginal and non-Aboriginal jurisdictions.

Policies typically describe a specific method or course of action to guide government or individuals' actions. Policies are advisory, signaling the direction to be taken by the Matsqui

First Nation and providing direction to Matsqui members, staff, and others. Each policy needs to be consistent with other policies. Although policies cannot be enforced, they have the advantages of being flexible, simple to draft, and easily amended.

Guidelines and BMPs are sets of instructions offering clear direction to achieve a desired outcome. Although they are not legally binding and may be complex, guidelines and BMPs describe the proper conduct of tasks.

Education and outreach programs communicate knowledge to improve awareness of environmental issues and potential responses. Outreach programs can create positive change in attitudes and actions, and are adaptable to different audiences and programs. Because they are not enforceable, policies, guidelines, and BMPs rely for their success on effective outreach programs.

Monitoring and reporting may be used to collect information on environmental quality on Matsqui lands. The commitment to monitoring and reporting is long-term and results may be difficult to interpret, but the data establishes a baseline and can be used to track change. All environmental issues on Matsqui lands will be subject to a policy and education and outreach initiatives implemented by Matsqui First Nation.

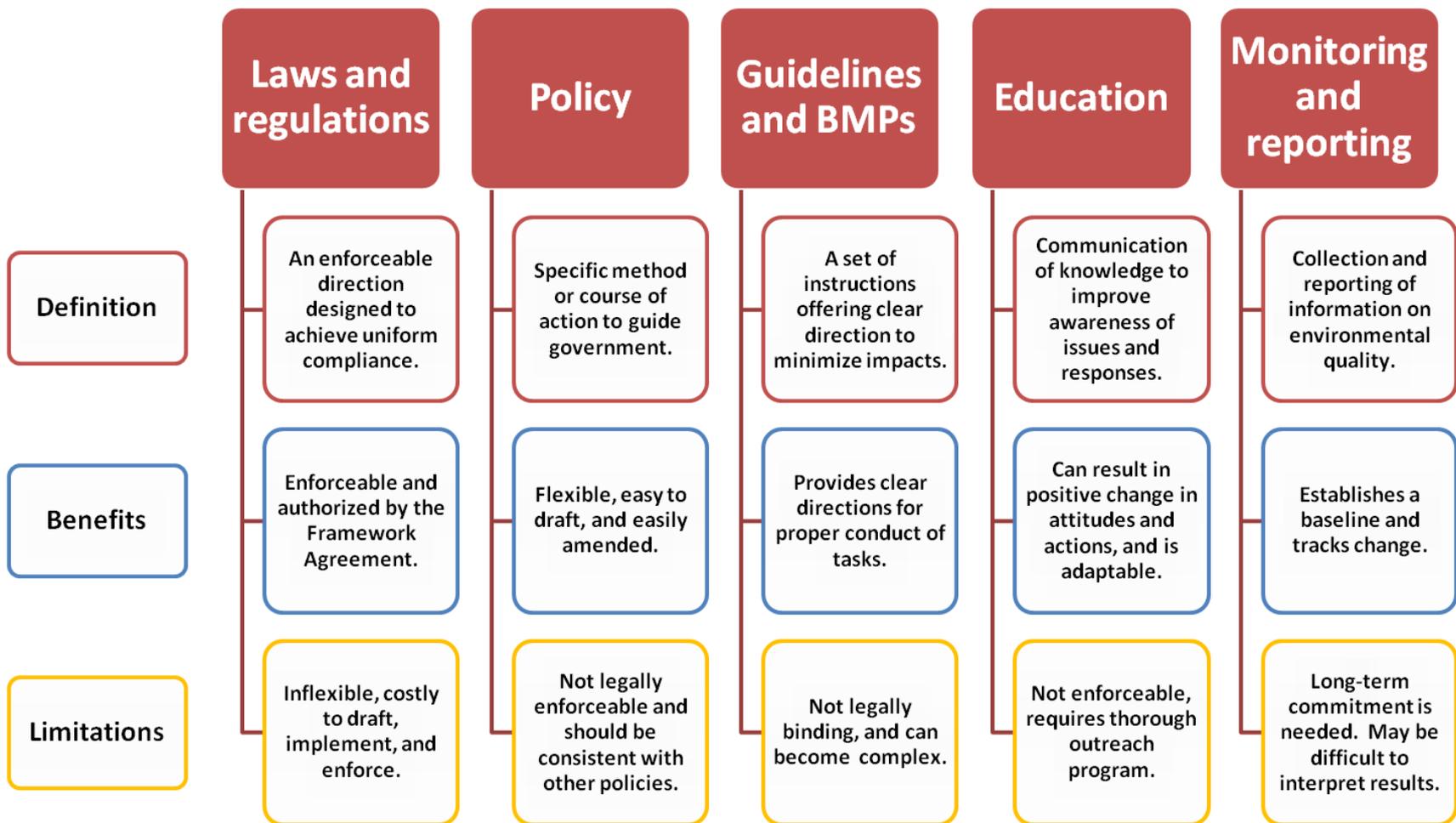


Figure 3. Potential responses to environmental issues

2.5 Education and outreach

2.5.1 Purpose

Efforts to manage identified environmental issues will include education and outreach programs to reach Matsqui First Nation members and businesses active on Matsqui lands. To ensure effective environmental governance, it is important to educate community members regarding environmental matters and provide ongoing community engagement during and after planning processes. On-going community engagement will:

- ensure that members' knowledge about Matsqui lands, resources, traditional use sites, and history is part of the environmental management process,
- let members know that their suggestions and comments are being heard and recorded,
- strengthen community spirit,
- ensure that consistent information is conveyed to increase the understanding of meaningful involvement through decision-making processes,
- assure that decisions reflect the community's values and visions, and
- build community support for laws, policies, guidelines, and BMPs (FNLAB, 2012).

2.5.2 Communication plan

Before initiating an education and outreach initiative and deciding which tools and techniques will be used, it is important to establish a plan that will include, but is not limited to, the following components:

- Overall Strategy
 - Which environmental issue will this initiative support?
- Goals and objectives
 - Choose goals and objectives that are simple and measurable.
 - Describe what the outreach initiative intends to achieve.
 - What should people do following the initiative?
 - How will staff determine if the initiative has had an impact?
- Target audience(s)
 - Types of audiences could include youth, elders, mothers, dads, or business people.
 - How does each group relate to the environmental issue to be discussed?
 - What type of communication method would recipients prefer?
 - What should recipients do after they receive the message?

- Key messages
 - What does the target audience need to focus on and understand?
- Communication methods
 - Is there a preferred method for reaching each target group?
 - Has this method been used in the past?
 - If not, what other methods should be used? Communication methods are listed Table 2. Appendix A3 provides other potentially relevant tools available to Matsqui First Nation.
- Timeline
 - When should each group be engaged?
 - Does the schedule allow each group enough time to participate and provide comments?
- Roles and responsibilities
 - Who will be responsible and involved in each communication step (planning, message development, preparing materials, delivering the program, *etc.*)?
 - Who needs to approve budgets, messaging, and other outreach components?
- Budget
 - How much is the initiative estimated to cost (*e.g.*, for printing, mailing, catering, *etc.*)?
 - What outside funding opportunities exist?
- Evaluation
 - How will meeting and event feedback be gathered to evaluate the program?
 - Can we maintain a record of who attended events and relevant comments?
 - How can staff keep track of methods that worked and what needs to change for future initiatives with different target audiences (INAC, 2007)?

Table 2. When to use and not use education and outreach techniques

Technique	Audience	When to use	When not to use
Advertising and broadcast information			
Social media (facebook, twitter, <i>etc.</i>)	Youth and broad community	<ul style="list-style-type: none"> • For announcing events • In engaging youth 	<ul style="list-style-type: none"> • For those who do not use social media
Website advertising	Broad community	<ul style="list-style-type: none"> • To reach businesses, industry, government, and many community members 	<ul style="list-style-type: none"> • If the website cannot be updated regularly • For those with limited internet access • If information is not to be shared beyond the community

Technique	Audience	When to use	When not to use
Newsletter or bulletin	Broad community	<ul style="list-style-type: none"> To announce events, provide contact information, and general inquiries 	<ul style="list-style-type: none"> If the deadline is passed If a single target group needs to be reached
Notices, flyers, or poster	Broad community	<ul style="list-style-type: none"> When an event is planned and member input is needed 	<ul style="list-style-type: none"> If they cannot be posted in public places or be handed out before the event
Brochures or pamphlets	Broad community	<ul style="list-style-type: none"> When information is more complex and needs to be distributed through mail outs or emails 	<ul style="list-style-type: none"> If the information exceeds four pages
Targeted information and discussion			
Community meetings	Broad community	<ul style="list-style-type: none"> Before, during, and after an initiative To balance “information in” and “information out” 	<ul style="list-style-type: none"> If adequate funding is unavailable If meeting topics do not interest the entire community
Elders meeting	Elders	<ul style="list-style-type: none"> When information and ideas are needed on traditional practices 	<ul style="list-style-type: none"> When short meetings are planned, not allowing time for discussion
Advisory committee meeting	Advisory committees	<ul style="list-style-type: none"> To track the progress of an initiative or event with a group of 5 – 10 people 	<ul style="list-style-type: none"> When community input or Council decisions are needed
Youth group	Youth	<ul style="list-style-type: none"> For youth-only topics For informal discussion When visual and creative materials can be used (<i>e.g.</i>, art, maps, music, videos, <i>etc.</i>) 	<ul style="list-style-type: none"> If information shared will not interest youth
Small group, family meetings, or one-on-one discussions	Friends and families	<ul style="list-style-type: none"> To facilitate personal discussion and address individual concerns To obtain detailed information 	<ul style="list-style-type: none"> If too much information must be conveyed, inhibits discussion
PowerPoint presentations tailored to specific meetings	Broad community or groups	<ul style="list-style-type: none"> If content is complex and benefits from visual reinforcement To highlight key points, make connections between topics, and create a framework for presenting content 	<ul style="list-style-type: none"> When in-depth discussion is needed In family or small-group settings If lots of text needs to be reviewed
Displays and materials tailored to specific meetings	Broad community	<ul style="list-style-type: none"> During community meetings During other community events 	<ul style="list-style-type: none"> If the topic is not suitable for visual display or contains mainly written information In large-group presentations

Technique	Audience	When to use	When not to use
Open house	Broad community	<ul style="list-style-type: none"> Presenting information (“information out”) One-on-one discussions (“information in”) Distributing written summaries or surveys 	<ul style="list-style-type: none"> If group discussions are needed for detailed input If specific groups are to be contacted
Surveys or questionnaires	Broad community	<ul style="list-style-type: none"> For anonymous feedback When quick feedback and comments are needed To measure awareness and feelings 	<ul style="list-style-type: none"> If too many questions must be asked If answers rely on in-depth knowledge of a topic and such information cannot be provided

Although communications programs increasingly rely on digital media (websites, Facebook *etc.*), paper documents continue to play an important role. In the case of the EMP, hard copies of the complete document will be available at the Administration Office. A brief summary brochure will be prepared, outlining the purpose of the EMP and listing its major policies and actions. This summary is intended for distribution to community members, government agencies, contractors, and others. The brochure also will describe how readers can access the full EMP, either online or in print.



3.0 RESPONSES TO ENVIRONMENTAL ISSUES

This section of the EMP describes how the Matsqui First Nation will respond to the environmental issues affecting Matsqui lands. The proposed policies represent actions that the Matsqui Governing Body, staff, membership, and consultants will take to achieve the Matsqui's environmental management goal and to rectify identified issues. Pursuit of the policies will encounter financial, technical, political obstacles that may require changes in direction, timing, and priorities. It may not be feasible to fully implement some policies. These challenges, however, will not prevent the Matsqui First Nation from making best efforts to implement the policies and other actions described in this EMP.

The guides, examples, and recommendations contained in Section 3 should be considered advisory. If better examples or methods are identified in the process of implementing the EMP, those superior approaches should be taken.

3.1 Environmental emergencies

3.1.1 Environmental emergency issues

Matsqui First Nation has identified issues related to environmental emergencies associated with the management of:

- potential spills from vehicle accidents on highways crossing reserves,
- emergency response regarding railroad operations (CN, CP, and Southern Rail) crossing reserves,
- wildfire risk on all reserves, and
- flood and earthquake risk on all reserves.

3.1.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- assign a staff member to be Emergency Response Coordinator for IR #1, 2, and 3, and another Coordinator for IR #4. The Coordinator will be the first point of contact in the event of an environmental emergency, and will have appropriate training to be able to take appropriate action as necessary;
- have up-to-date emergency response documents from major industrial operators on or near Matsqui lands readily available to the Coordinators;

- prepare and periodically update step-by-step guidelines for responding to environmental emergencies that could occur on Matsqui First Nation land;
- apply the guidelines in the British Columbia (BC) Fire Smart Manuals for home owners and communities when decisions are made about future construction and retrofitting of homes near forested land;
- negotiate agreements with the City of Abbotsford and Township of Langley for provision of emergency response, hazardous material response, and fire protection;
- ensure that the Coordinators report spills as required under applicable federal regulations (*Canadian Environmental Protection Act* and *Transportation of Dangerous Goods Act*);
- inform community members about Matsqui's emergency response procedures, and explain appropriate action to be taken by individuals or households if an environmental emergency occurs.

Laws and regulations

Matsqui First Nation will comply with the following federal laws:

- *Canadian Environmental Protection Act* (CEPA)
 - Release and Environmental Emergency Notification Regulation (Appendix B1)
 - Environmental Emergency Regulations (Appendix B2)
 - Part 8 of CEPA on Environmental Matters Related to Emergencies (Appendix B3)
- *Transportation of Dangerous Goods Act*
 - Part 8 of the Transportation of Dangerous Goods Regulations on Accidental release and imminent accidental release report requirements (Appendix B4)
- *Fisheries Act*

Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines in the management of environmental emergencies:

- Emergency response regarding rail operations (CN, CP, and Southern Rail), and spills from vehicle accidents on highways crossing reserves
 - Spill response (Appendix B5)
- Wildfire risk on all reserves
 - Wildfire response (Appendix B6)
 - Fire Smart Manual: Protect Your Home from Wildfire (Appendix B7)
 - Fire Smart: Protecting Your Community from Wildfire
<http://www.partnersinprotection.ab.ca/downloads/>
- Other environmental emergency risk on reserves

- Response to other environmental emergencies (Appendix B8)
- Emergency contact card (Appendix B9)
- Your Emergency Preparedness Guide
<http://www.getprepared.gc.ca/knw/plan/plan-eng.aspx>
- Family emergency supplies detailed checklist (Appendix B10)
- Earthquakes: What to do? (Appendix B11)
- Floods: What to do? (Appendix B12)
- A First Nation's Guide to Environmental Emergencies
<http://www.env.gov.bc.ca/eemp/resources/index.htm>



3.2 Fuel use and storage

3.2.1 Fuel use and storage issues

Fuel use and storage on Matsqui lands raise issues related to managing potential spills and risks associated with petroleum fuels and natural gas distribution. The identified fuel use and storage issues are:

- storage and boat fueling operations at G&R Cedar, IR #2,
- fuels and lubricants at Mod Pro, IR #2,
- fueling facility at Matsqui First Nation band office, IR #2,
- Kruger Inc. forestry operations (fueling of machinery and vehicles), IR #3, and
- the potential for natural gas leaks in distribution systems and gas appliances present on IR #2 and IR #4.

3.2.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- negotiate agreements with the City of Abbotsford and Langley Township to respond to fuel spills and cleanup services;
- ensure that fuel storage and use on reserves complies with the Environmental Code of Practice for Aboveground and Underground Storage Tank systems containing Petroleum and Allied Petroleum Products (Canadian Council of Ministers of the Environment), and the National Fire Code of Canada;
- prohibit placement of fuel storage tanks and dispensing facilities within 15 m of waterbodies;
- ensure that fuel tanks and dispensing facilities have spill containment and that spill kits are available nearby;
- ensure that staff of businesses on Matsqui lands and Matsqui First Nation personnel are trained in fuel spill response;
- require that all businesses on Matsqui lands prepare and submit a fuel and lubricant management plan for approval by Matsqui staff before they are allowed to operate;
- require commercial boats operating on Matsqui lands to be equipped with bilge filtration systems or well-maintained oil absorbent pads;
- request FortisBC to make presentations to residents and businesses on IR #2 and IR #4 regarding protection of natural gas distribution lines and safe use of natural gas appliances and equipment;

- empower FortisBC staff to enter Matsqui lands to inspect natural gas distribution lines and gas meters;
- apply the FortisBC guidelines for managing gas distribution lines and appliances before and after an emergency; and
- inform community members about the risks of fuel spills and bilge discharges, about environmentally sound use of fuel and lubricants, and about natural gas safety.

Laws and regulations

Matsqui First Nation will not develop its own fuel management law at this time, but will rely on application of Matsqui First Nation’s policies, applicable guidelines, and compliance with the following federal regulations:

- *Canadian Environmental Protection Act (CEPA)*
 - Release and Environmental Emergency Notification Regulation (Appendix B1)
 - Environmental Emergency Regulations (Appendix B2)
 - Part 8 of CEPA on Environmental Matters Related to Emergencies (Appendix B3)
 - Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (Appendix C1)
- *Transportation of Dangerous Goods Act*
 - Part 8 of the Transportation of Dangerous Goods Regulations on Accidental release and imminent accidental release report requirements (Appendix B4)

Should a fuel management law be required in the future, examples from other jurisdictions will be examined, including but not limited to Abbotsford’s Petroleum Products Storage Tank Bylaw.

Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines for identified fuel use and storage issues:

- Potential spills from fueling and facilities
 - Spill response (Appendix B5)
 - Environmental Code of Practice for Aboveground and Underground Storage Tank Systems Containing Petroleum Products from the Canadian Council of Ministers of the Environment (CCME)
 - National Fire Code of Canada (NFCC) referenced in the CCME Environmental Code of Practice
 - <http://www.nrc-cnrc.gc.ca/eng/ibp/irc/codes/2010-national-fire-code.html>
- Fuel and lubricant BMPs (Appendix C2)

- Natural gas leaks on IR #2 and IR #4
 - Gas leak response (Appendix C4)
 - Natural gas in emergency situations (Appendix C5)
 - Safe domestic use of natural gas (Appendix C6)

Monitoring

The Matsqui First Nation will comply with Part 6 Monitoring and Leak Detection of the Storage Tank Systems of the Environmental Code of Practice for Aboveground and Underground Storage Tank Systems Containing Petroleum and Allied Products (Appendix C3).

In this Code of Practice, general requirements for storage tank systems and leak detection and monitoring methods for specific fuel containment systems are described in detail and must be followed. Depending of the type of fuel containment, Matsqui First Nation will have information on the type of leak detection method to use, the appropriate monitoring technique, the necessity for periodic leak detection, and the best method to use when a leak is suspected.



3.3 Sewage treatment and disposal

3.3.1 Sewage treatment and disposal issues

Matsqui First Nation has identified sewage treatment and disposal issues associated with:

- effects of high water table on waste disposal fields on IR #4,
- potential cross contamination of water supply by leaking sewer lines, and
- potentially harmful waste being introduced in sanitary sewers.

3.3.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- require periodic monitoring of groundwater quality at the perimeter of waste disposal fields at IR #4, and institute remedial actions if unacceptable results are obtained;
- ensure that operating authorities periodically monitor the integrity of sewer and water pipes on Matsqui lands;
- adopt a law to regulate materials introduced into the sewer system, specifically prohibited or restricted waste as defined in the City of Abbotsford Consolidated Sewer Rates and Regulations Bylaw;
- provide information to community members regarding the sewer use regulation.

Laws and regulations

A law will be developed stating that no person shall directly or indirectly discharge a prohibited waste or restricted waste in Matsqui First Nation's sanitary sewers. In defining prohibited and restricted wastes, the Matsqui First Nation will consider examples from other jurisdictions, for instance Schedule E "prohibited waste" and Schedule F "restricted waste" of Abbotsford's Bylaw No. 1862-2009 (Appendix D1).

Guidelines and Best Management Practices

Matsqui First Nation will make available household guidelines providing examples of prohibited and restricted waste as referenced in the Abbotsford Consolidated Sewer Rates and Regulations Bylaw (Appendix D1).

3.4 Solid waste management

3.4.1 Solid waste management issues

Matsqui First Nation has identified solid waste management issues associated with:

- hog fuel storage at G&R Cedar and past the gate on Cemetery Road,
- garbage dumping at the former sandpit,
- illegal dumping of garbage on Matsqui lands by unknown parties,
- litter and construction debris dumped by Matsqui members including motor vehicle maintenance, oil disposal, drywall dumping, paint, and batteries, and
- failure of some Matsqui First Nation members to practice traditional methods of disposing of fish waste in the Fraser River, instead of dumping the waste in garbage bins, creating odour problems.

3.4.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- adopt a law prohibiting dumping of garbage on reserve, including provisions to regulate dumping of construction waste and storage of derelict vehicles and appliances;
- actively enforce the law against illegal dumping, including providing a contact number where Matsqui members can report illegal dumping on Matsqui lands;
- meet with industrial operators on reserve to discuss environmentally sound methods for storing hog fuel and other solid waste;
- provide information to community members to encourage proper disposal of fish waste in a traditional manner, by returning the waste to the Fraser River;
- facilitate and regularly encourage solid waste reduction and increased recycling among Matsqui members, on-reserve businesses, and band administration.

Laws and regulations

Matsqui First Nation will prepare a solid waste management law prohibiting dumping of garbage on reserves. Regulations, guidelines, and BMPs will be prepared and used as needed. In drafting Matsqui First Nation's Solid Waste Management Law, examples from other jurisdictions will be reviewed, such as Section 15 of the City of Abbotsford's Soil Removal and Deposit Bylaw and Parts III (3.4) and V of the City of Abbotsford's Consolidated Good Neighbour Bylaw; (Appendix E1).

Guidelines and Best Management Practices

Matsqui First Nation will apply portions the following guidelines to manage their solid waste issues:

- Solid waste diversion guidelines (Appendix E2)
- BFI Organic waste solutions (Appendix E3)
- Biomass storage environmental practices guide (Appendix E4)
- Farm Practices: Wood waste (Appendix E5)



3.5 Fish and fish habitat protection

3.5.1 Fish and fish habitat issues

Matsqui First Nation has identified the following fish and fish habitat protection issues:

- fuel spills and boom boat bilge discharges into the Fraser River,
- drainage from agricultural operations affecting water quality,
- lack of respect for fish, including waste of fish resources,
- river bank treatment (rip rap) that harms fish habitat,
- damage to fish habitat caused by development, and
- culverts that are obstacles to fish passage (e.g., Coligny Creek).

3.5.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- prepare guidelines and procedures for protecting fish habitat, emphasizing protection of riparian vegetation and improving quality of water runoff based on:
 - Fisheries and Oceans Canada information,
 - BC Ministry of the Environment and Agriculture information,
 - BC Stewardship guides, and
 - Abbotsford streamside protection guidelines and land development information package;
- review proposed development plans to ensure that they protect fish habitat and riparian areas;
- meet with the City of Abbotsford, Ministry of Transportation, and Fisheries and Oceans Canada, and other appropriate parties regarding ways of improving fish passage through culverts and pump stations;
- meet with Fisheries and Oceans Canada to identify more fish-friendly ways of reducing erosion of river banks;
- inform commercial boat operators of the need to reduce and manage bilge discharges in the Fraser River, and of ways to reduce risks of spillage during boat fueling;
- prohibit boats from docking on Matsqui lands unless they are equipped with bilge filtration systems or well-maintained oil absorbent pads. Boats observed discharging unfiltered bilge in waterbodies will not be allowed on reserves;

- prepare information for Matsqui First Nation members about respectful treatment of fish, annual fish harvesting guidelines, ways of protecting fish habitat, and managing bilge discharge.

Laws and regulations

Although no Matsqui First Nation law will be drafted, the following federal laws affecting fish and fish habitat still apply:

- *Fisheries Act*
<http://laws-lois.justice.gc.ca/eng/acts/F-14/>
- *Species at Risk Act (SARA)*
<http://laws-lois.justice.gc.ca/eng/acts/S-15.3/>

Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines to each issue identified:

- Bilge discharges into the river from boom boats and other fuel spill risks
 - Discharge and spill response (Appendix F1)
 - Guide to Green Boating (Appendix F2)
- Drainage from agricultural operations affecting water quality
 - Drainage Management Guide: The Canada – BC Environmental Farm Plan Program
http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm
- Lack of respect for fish including waste of fish resources
 - Lil'wat Nation Chinook Salmon Harvest Plan (Appendix F3)
 - Home Tips for Healthy Streams (Appendix F4)
 - Abbotsford guidelines: Living near streams and ravines (Appendix F5)
- River bank treatment (rip rap), culverts, and development proposals potentially harming fish passage and habitat
 - Culvert Maintenance (Appendix F6)
 - BC Stewardship Guide: Land Development Guidelines
http://www.stewardshipcentre.bc.ca/cdirs/st_series/index.php/11
 - BC Stewardship Guide: Stream Stewardship
http://www.stewardshipcentre.bc.ca/cdirs/st_series/index.php/1
 - Develop with Care guides
http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html
 - Section 2: Community Planning

- Section 3: Site Development and Management
- Section 4: Environmentally Valuable Resources
- Standards and Best Practices for Instream Works (Appendix F7)
- Abbotsford information package for developing near streams and ravines (Appendix F8)



3.6 Protection of valued and at-risk species

3.6.1 Species at risk issues

To protect plant and animal species, Matsqui First Nation will ensure that:

- valued, threatened, or endangered species on Matsqui lands are protected, and
- potential development proposals or designs do not harm valued or at-risk species.

3.6.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- apply federal laws and Matsqui First Nation policies to minimize adverse effects of development and other human activities on native vegetation, plant communities, wildlife, wildlife habitat, and species at risk;
- require valued or at-risk species surveys to be conducted before proceeding with developments that have the potential of adversely affecting species at risk or other species valued by the Matsqui First Nation, using the approach provided in the City of Abbotsford's *Wildlife Assessment Report Guidelines* and the provincial *Develop With Care* guides;
- take appropriate action if a project has the potential to affect valued or at-risk species, such actions to be consistent with applicable federal legislation and Matsqui First Nation goals and objectives;
- seek opportunities to improve the ecological function of Matsqui lands, including enhancing habitat for valued and at-risk species and plant communities;
- inform community members about the protection of valued or at-risk species on Matsqui lands.

Laws and regulations

Although no law will be drafted for Matsqui First Nation, federal laws affecting species at risk still apply, including:

- *Fisheries Act*
<http://laws-lois.justice.gc.ca/eng/acts/F-14/>
- *Species at Risk Act* (SARA)
<http://laws-lois.justice.gc.ca/eng/acts/S-15.3/>

- *Migratory Bird Convention Act*
 - Migratory Birds Regulations

http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1035/

Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines to protect species at risk during review of potential development proposals or designs:

- Develop with Care guides

http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html

 - Section 2: Community Planning
 - Section 3: Site Development and Management
 - Section 4: Environmentally Valuable Resources
- City of Abbotsford Wildlife Assessment Report Guidelines (Appendix G1)



3.7 Land contamination

3.7.1 Land contamination issues

Land contamination issues on Matsqui lands are:

- dumping fill of unknown quality on farmland and other parts of Matsqui lands,
- grease and metals from rail operations contaminating reserves including:
 - soil and plants near railway right-of-way,
 - grease on rails and rail switches, and
 - creosote ties.

3.7.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- adopt a contaminant control law making it illegal to deposit soil or other material that exceeds applicable standards contained in the BC Contaminated Sites Regulation or the Canada Wide Standards (CCME, 2009, as amended);
- adopt a regulation under the contaminant reduction law that requires a permit before depositing soil on reserve and establishes conditions for issuing a permit, including:
 - providing evidence that the soil is not contaminated, either as determined by laboratory results or as certified by a registered professional,
 - ensuring that drainage is not affected by placement of fill,
 - maintaining a minimum 15 m separation between fill and waterbodies,
 - preventing erosion or sedimentation associated with the fill, and
 - identifying exceptions, such as excluding requirements for a permit if 7 cubic metres of soil or less is deposited on a property in a 12-month period (though other regulatory provisions still apply);
- if necessary and if financial resources are available, negotiate a contract with a private firm to provide technical and monitoring support associated with implementing the contaminant control law; and
- present information to Matsqui members about the contamination reduction law and associated soil deposit regulations.

Laws and regulations

Matsqui First Nation will prepare a law that prohibits dumping fill of unknown quality on reserves, and regulates the storage, use, or other release of potentially contaminating materials. Material will be prohibited that exceeds applicable standards contained in the British Columbia Contaminated Sites Regulation or the Canada Wide Standards (CCME, 2009, as amended). A regulation will be adopted to require permitting prior to depositing soil on reserves, or the storage or use of potentially contaminating materials.

Guidelines and Best Management Practices

Matsqui First Nation will apply the following regulations and standards as part of the Matsqui First Nation's contaminant control law and associated regulation:

- British Columbia Contaminated Sites Regulation
http://www.env.gov.bc.ca/epd/remediation/leg_regs/csr.htm
- Canada Wide Standards
<http://www.ccme.ca> (various links)

Procedures followed in administering the contaminant control law and issuing soil deposit permits will be similar to those contained in Abbotsford Soil Removal and Deposit Bylaw (Appendix H1).

Monitoring

Matsqui First Nation will negotiate a contract with a private firm to provide technical and monitoring support associated with implementing the contaminant reduction law and regulation. Such support could include sampling, laboratory testing, interpretation of test results in light of applicable regulatory standards, and developing remediation measures if necessary.



3.8 Agricultural practices

3.8.1 Agricultural practice issues

Matsqui First Nation has identified the following environmental issues related to agricultural practices:

- pesticide use, fertilizer runoff, noise, odour, and soil management,
- need for improved agricultural practices for gardens and permit-based farming on IR #1 and #2, and
- nuisance fly infestations associated with manure spreading on adjacent farms.

3.8.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- assemble a set of preferred agricultural practices intended to allow for productive farming, the protection of soils and water quality, and respect for neighbours and ecosystems;
- meet with representatives of the British Columbia Ministry of Agriculture and Lands and local farmers to discuss ways of controlling fly infestations caused by manure spreading;
- provide an agricultural practices guide to prospective farmers and gardeners on Matsqui lands;
- seek opportunities to encourage farmers on property adjacent to Matsqui lands to adopt Matsqui's recommended agricultural practices; and
- inform community members about Matsqui's agricultural practice policy.



Guidelines and Best Management Practices

Matsqui First Nation's guidelines for agriculture will include elements of the following documents, which encourage environmentally sound agricultural practices:

- Reference Guide: The Canada – BC Environmental Farm Plan Program and associated publications
http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Refguide/Refguide_to_c.htm
- On the Road to Sustainable Agriculture (Appendix I1)

3.9 Water management

3.9.1 Environmental issues

The following drainage and storm water management issues are environmental concerns for Matsqui First Nation:

- poor drainage in low-lying portions of Matsqui lands,
- stagnant water in drainage ditches creating mosquito and odour problems, and
- effects on Matsqui lands of runoff from adjacent farmlands (pesticides, fertilizers, and organic material in water).

3.9.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- encourage new development to employ environmentally and economically sound drainage management approaches;
- encourage retrofitting of existing structures to reduce offsite runoff;
- meet with the City of Abbotsford to discuss ways of improving the quality of runoff from surrounding properties on Matsqui lands, and ways to improve functioning of stormwater ditches on IR #2 to avoid stagnant water during low-flow periods; and
- inform community members about Matsqui's water management policies and ways that members can better manage runoff.

Guidelines and Best Management Practices

Matsqui First Nation's stormwater management guidelines will consider relevant and suitable elements of the following documents:

- Drainage Management Guide: The Canada – BC Environmental Farm Plan Program
http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm
- Low Impact Development Design Strategies: An Integrated Design Approach
<http://www.co.pg.md.us/Government/AgencyIndex/DER/ESG/manuals.asp>
- Reference Guide: The Canada – BC Environmental Farm Plan Program
http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Refguide/Refguide_to_c.htm

3.10 Air quality

3.10.1 Air quality issues

Matsqui First Nation has determined that the air quality on Matsqui lands is affected by the following emissions:

- odours on IR #2 from
 - the JAMES sewage treatment plant,
 - manure spreading on adjacent land, and
 - fetid drainage ditches;
- odours on IR #4 from
 - livestock manure processing facility in United States, and
 - mink and mushroom farms in Langley; and
- particulate air pollution on IR #2 from
 - coal being transported by train,
 - diesel engines, and
 - CN track cleaning.

3.10.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- meet with the City of Abbotsford to discuss odour control at the JAMES sewage treatment plant and odours from drainage ditches;
- meet with representatives of CN and CP rail and provincial or regional district air quality staff to discuss ways of reducing air pollution from coal trains, diesel locomotives, and track cleaning;
- meet with local farmers and Ministry of Agriculture staff to discuss ways of reducing odour from manure spreading near IR #2 and operation of mink farms and mushroom farms near IR #4;
- contact representatives of the Northwest Clean Air Agency, Washington State in response to odours originating from manure processing facilities in the United States that affect IR #4;
- contact appropriate local government agencies, businesses, or other agencies if air quality problems become severe; and

- inform community members about Matsqui’s efforts to improve air quality, and explain what members should do if they notice air pollution.

Guidelines and Best Management Practices

As part of its efforts to improve air quality, Matsqui First Nation staff will be aware of the following guidelines for odour issues related to farm operations and agricultural drainage:

- Agriculture odours on IR #2 and IR #4
 - Farm Nuisance Guide (Appendix J1)
 - Reference Guide: The Canada – BC Environmental Farm Plan Program
http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Refguide/Refguide_toc.htm
- Odour issues from improper drainage management
 - Drainage Management Guide: The Canada – BC Environmental Farm Plan Program
http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm

Monitoring and reporting

The odour issues identified on IR #4 can be monitored and reported by Matsqui First Nation members to Metro Vancouver, which handles air quality-related complaints, including odour, smoke, dust, and other emissions. Individuals concerned about air quality should call the Metro Vancouver Air Quality Complaints and Inquiries Line at **604-436-6777** or an online air quality form can be completed at:

<http://www.metrovancouver.org/services/air/Pages/AirQualityComplaints.aspx>.

On IR #2, air quality concerns should be conveyed to the FVRD. Although the FVRD does not have authority to respond to odour complaints or regulate and enforce air quality in its jurisdiction, contacts are available for general inquiries. Individuals concerned about sewage treatment odours should contact the wastewater treatment plant in Abbotsford at **604-853-2281** or by email at eng-info@abbotsford.ca. With respect to farm odours, the following mechanisms are available:

- Using the “informal concern resolution process”, where an aggrieved party calls the local Ministry of Agriculture office in Abbotsford, at **604-556-3100**, to state their complaint, more information can be found online.
<http://www.al.gov.bc.ca/resmgmt/sf/factsheets/factsh3.htm>
- Using the “formal complaint resolution process” to file a complaint in writing or online addressed to the Case Manager at the BC Farm Industry Review Board accompanied by a \$100.00 filing fee.
http://www.firb.gov.bc.ca/complaints/complaint_how_to.htm

- Make a formal complaint to the Northwest Clean Air Agency at **360-428-1617** for odours from the manure management facility (or other sources) in the United States.

3.11 Community quality

3.11.1 Community quality issues

The quality of Matsqui First Nation communities has been identified as an issue, particularly with regard to the need to:

- encourage environmentally-sound development that makes efficient use of land, energy, and other resources,
- Matsqui communities are not pedestrian-oriented; they need to become mixed-use neighbourhoods that reduce dependency on motor vehicles, and
- Improve the appearance of structures and streetscapes.

3.11.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will:

- prepare and adopt land use plans and development law(s) and regulations to create communities that:
 - are attractive and livable,
 - encourage walking and cycling,
 - accommodate all age and income groups,
 - offer a mix of land uses,
 - make efficient use of land and energy,
 - meet principles established by Smart Growth BC, and
 - meet rating criteria established by Leadership in Energy and Environmental Design (LEED) 2009 for Neighbourhood Development's (ND);
- review proposed developments to identify their environmental impacts and ability to create attractive communities;
- ensure that buildings and streetscapes on Matsqui lands are well designed, high quality, and aesthetically appealing;
- adopt a law and associated regulation that protects the quiet enjoyment of neighbourhoods from excessive noise;
- encourage retaining or planting trees near housing and commercial development for environmental, aesthetic, and property value benefits;
- to the extent feasible, protect trees during utility installation and road improvements;

- where trees must be cut the Matsqui First Nation may require planting replacement trees and maintaining those trees until they become established;
- if replacement trees are required, the species and location of the trees will be determined in discussion with Matsqui First Nation staff;
- adopt a Tree Protection Law that applies where five (5) or more trees are to be cut at one time on IRs #1, 2, or 4, in which case the Matsqui First Nation will issue a permit if specified environmental and replanting conditions are met; and
- create outreach and education materials to inform Matsqui members about the goals and actions associated with improving community quality through land use and development planning, tree protection, and noise control.

Laws and regulations

The Matsqui First Nation will adopt a law to control excessive noise in the community after reviewing noise regulations from other jurisdictions, such as selected sections of Part IV, the Noise Regulation, in the City of Abbotsford Good Neighbour Bylaw (Appendix E1).

The Matsqui First Nation will adopt a law to regulate tree cutting, requiring issuance of a permit if five (5) or more trees are to be cut in a one-year period on IRs #1, 2, or 4. Regulations associated with the tree protection law will specify that information is to be provided on the location and setting of trees to be cut, environmental effects of tree removal, and proposals to replant and maintain suitable replacement trees. Before drafting a tree protection law and permitting process, the Matsqui First Nation will review examples from other jurisdictions (e.g., City of Richmond, City of Abbotsford, and others).

Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines for identified community quality issues:

- Development form and vehicle dependency
 - Smart Growth BC principles and guidelines
<http://smartgrowth.bc.ca/Default.aspx?tabid=133>
 - Develop with Care guides
http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html
 - Section 2: Community Planning
 - Section 3: Site Development and Management
 - Section 4: Environmentally Valuable Resources
 - Relevant portions of the LEED 2009 for ND rating system
<http://www.usgbc.org/DisplayPage.aspx?CMSPageID=148>
- Improve the appearance of structures and streetscapes

- Richmond Tree Protection Bylaw (Appendix K1)
- Richmond Tree Removal Permit Application (Appendix K2)
- Trees and Towns Guide (Appendix K3)
- Planting our future: A Tree Toolkit for our Communities

<http://www.treesfortomorrow.gov.bc.ca/resources/>



3.12 Environmental assessment

3.12.1 Environmental assessment issues

An environmental assessment (EA) is an analysis of potential physical, biological, socioeconomic, and cultural effects of a proposed development project.¹ An EA also identifies mitigation measures that could avoid or reduce potential project effects. Results of an EA should be available before decisions are made to approve a project.

The Framework Agreement (Section 23) mandates a First Nation to adopt an EA regime after a Land Code is adopted. An EA is to be conducted for developments or other land-disturbing activities proposed to occur on First Nations lands. The Matsqui First Nation has not yet prepared an EA regime that complies with Section 23.2 and 23.4 of the Framework Agreement.

The Matsqui First Nation can achieve the following benefits through use of an appropriately-designed EA process:

- reinforce a land management authority over use of the Matsqui lands;
- identify components of proposed projects or plans that could adversely affect natural or human environments;
- propose ways of avoiding or minimizing adverse effects of development on environment, society and culture;
- improve project design, construction, and operation;
- engage the community in the process of reviewing developments;
- support better development decisions;
- comply with obligations under the Framework Agreement; and
- help Matsqui First Nation's Governing Body to exercise due diligence in the review of proposed projects (adapted from FNLAB, 2012).

3.12.2 Response

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

Policy

The Matsqui First Nation will adopt an EA regime that will

- meet the following goals:

¹ An EA is not the same as an Environmental Site Assessment (ESA), which is conducted after (rather than before) development has occurred. ESAs identify contamination that has already occurred and propose site remediation, whereas an EA forecasts potential future effects of a project on a variety of topics.

- be **open** and **engage** community members and other potentially affected parties,
- be **efficient** and **effective**, focusing on important issues and project impacts, and establishing firm deadlines for steps in the EA process,
- be **technically rigorous** and **free of interference** from project proponents or other interests, and
- be **affordable**, by ensuring proponents pay for the EA and by avoiding unnecessary data collection, meetings, or reporting;
- apply to projects that require approval by the Matsqui First Nation and that have the potential to affect land, resources, the community, or cultural activities;
- for specified projects, produce an assessment report covering the following main topics:
 - **project setting**: Physical, ecological, social, cultural, and economic setting of the area potentially affected by a project,
 - **project description**: Including design, construction, operation, and decommissioning,
 - **project effects and mitigation**: Identification of potential project effects, assessment of the impacts, and description of mitigation measures,
 - **cumulative effects assessment**: Environmental, cultural or socio-economic impacts of the proposed project combined with other past or likely future projects or human actions,
 - **commitments**: Clear statement of commitments by the project proponent to implement the mitigation measures described in the environmental assessment, and
 - **conclusion**: A summary and conclusion of the significance of identified adverse environmental effects;
- be coordinated by the Matsqui Environment Officer, with support from consultants or legal counsel as required;
- avoid duplication with EAs that federal agencies may be required to conduct on Matsqui lands, by coordinating data collection and reporting requirements of Matsqui and federal studies;
- include community involvement in the design of an EA and in review of its results; and
- not recommend whether or not a project should proceed, but rather provide information intended to support those decisions.

Laws and regulations

The Matsqui First Nation will draft and adopt a law requiring EAs to be prepared for specified projects occurring on Matsqui lands. The requirement to prepare EAs may be linked to the Matsqui development law. EA laws recently adopted by other First Nations will be considered as the Matsqui law is prepared.

The Matsqui's EA law will provide the overall framework for the EA process and will specify general information requirements and procedures. More detailed and technical aspects of the EA process will be included in regulations, policies, administrative processes, and guidelines.

The Matsqui EA law will comply with the following sections of the Framework Agreement:

- The environmental assessment regime will be implemented through a Matsqui First Nation law (Section 23.4);
- An EA will be prepared for projects carried out on First Nation Land that are approved, regulated, funded, or undertaken by the First Nation (Clause 25.4 of Framework Agreement, Section 21(3) of the *First Nations Land Management Act* (FNLMA));
- The EA process must be consistent with requirements of the *Canadian Environmental Assessment Act* (CEAA) (Clause 25.3 of Framework Agreement); and
- EAs must occur as early as possible in the planning stages of the project, before an irrevocable decision is made (Clause 25.4 of Framework Agreement).

4.0 PLAN IMPLEMENTATION

4.1 Environmental governance structure

Matsqui's Governing Body bears responsibility for decisions made by the Matsqui First Nation. The staff and project organization responsible for preparing and implementing the EMP are shown in Figure 4.

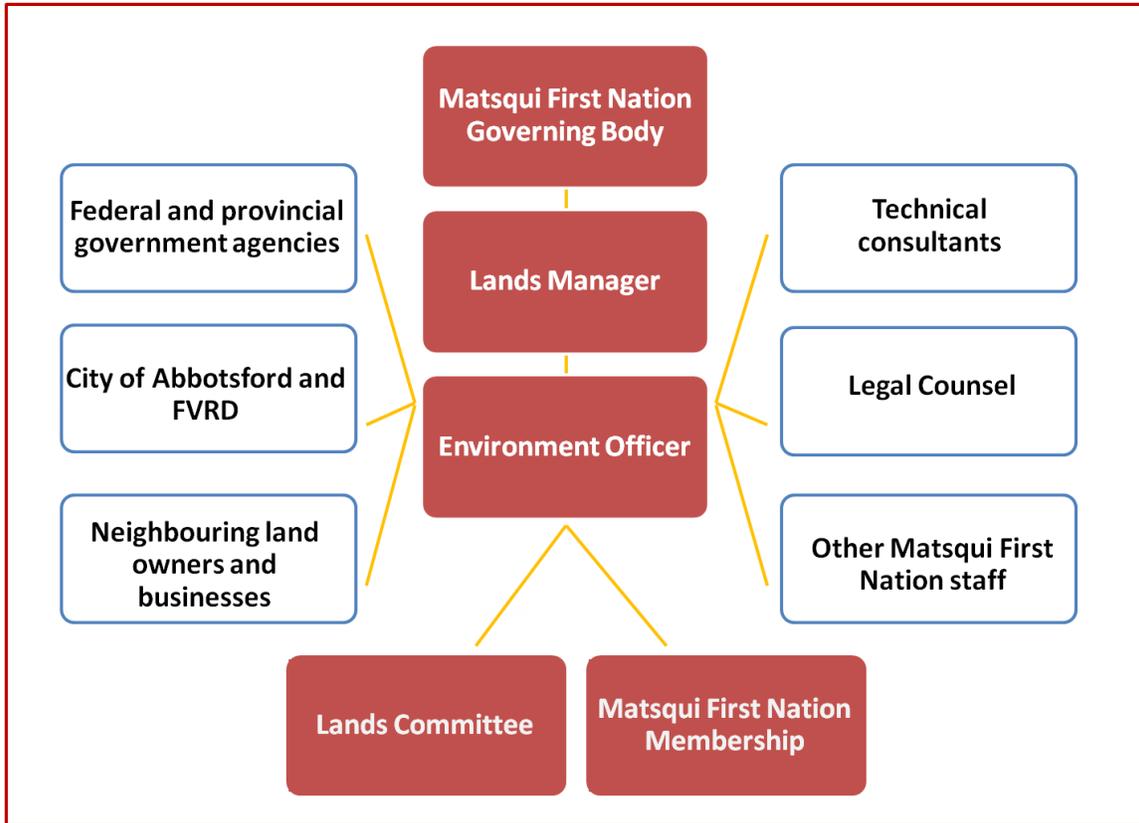


Figure 4. Environmental Management Plan Governance Structure

Matsqui First Nation participants in implementing the EMP have the following responsibilities:

Governing Body: authorize law development, coordinate the activities of Matsqui First Nation staff and other project participants, officially adopt the EMP, approve work programs and budgets, and manage financial and staff related decisions.

Lands Manager: responsible for administration of the EMP, including staffing decisions, budgeting, funding applications, and other oversight tasks; and for coordinating the EMP and other lands-related initiatives (land use plans, fisheries policy, *etc.*).

Environment Officer: responsible for implementing the EMP, preparing guidelines and outreach materials, coordinating technical consultants, managing involvement of legal counsel, involving the Lands Committee on environmental matters, and community outreach.

The Matsqui First Nation Lands Committee: helps to ensure that the EMP is consistent with community values and aspirations, and that environmental issues are properly identified and resolved.

Matsqui First Nation community members: will participate in outreach efforts intended to inform them about the EMP and will need to comply with applicable policies and laws. Community support for the EMP is essential if the document is to achieve its goal of improving environmental quality.

Technical consultants: will provide support to the Matsqui First Nation as needed and as authorized by the Environment Officer.

Legal Counsel: will draft environmental laws as specified in the EMP, and will provide support as needed in enforcing environmental laws.

Federal agencies: authorize, implement, and enforce federal laws and regulations on federal lands, and may provide funding for Matsqui First Nation environmental initiatives.

Provincial agencies: authorize, implement, and enforce provincial laws and regulations on provincial and private lands, and may collaborate in implementing relevant sections of the EMP, such as responding to environmental emergencies and managing agricultural activities.

Local government: the City of Abbotsford, Township of Langley, Fraser Valley Regional District, and Metro Vancouver will be encouraged to collaborate with Matsqui First Nation to conduct environmental and related planning activities, to deliver specified environmental services, and provide support in responding to environmental issues.

4.2 Drafting of environmental laws

In most Canadian jurisdictions, environmental protection is managed by the provincial, federal, and local governments. Under the Framework Agreement and the *First Nations Land Management Act* (FNLMA), signatory First Nations that adopt Land Codes can enact environmental protection laws. A First Nation's environmental protection laws do not replace federal environmental laws on First Nation land and are required to have a similar effect as provincial laws. Although provincial and municipal laws do not apply on First Nation lands, Matsqui First Nation recognizes that it may be advisable to enter into agreements with the provincial or local government to manage environmental issues.

It is presently unclear whether the provincial government is willing or able to deliver environmental management services on First Nations' lands, so the Matsqui First Nation will draft its own laws and regulations, and will be responsible for implementation of the EMP. The Matsqui First Nation has initiated discussions with the City of Abbotsford and the Township of Langley regarding the merits of collaborating in implementing the EMP, with goals of consistency in environmental management and augmenting the Matsqui First Nation's capacity to deliver environmental services.

When the Matsqui First Nation determines that an environmental law is required, such as for solid waste management, land contamination, community quality, and environmental assessment on Matsqui lands, a procedure will be followed as defined in Matsqui's First Nation Land Code that came into effect on October 17, 2007. Specifically, Part 2 of the Matsqui First Nation Land Code entitled "First Nation Legislation" provides detailed information on law-making powers, law-making procedures, and publication of laws (Appendix A4).

4.3 Capacity building and staff training

Environmental management on Matsqui lands will require the efforts of staff and skilled contractors, including scientists, engineers, technicians, and project managers. The Matsqui First Nation will create a staff position of Environment Officer to conduct and coordinate the various activities described in the EMP.

To ensure that environmental management proceeds effectively, it is important to inform the members of the community about the EMP and potential implications of inadequate environmental management on Matsqui lands, and how implementing the EMP will avoid those adverse outcomes. Matsqui First Nation staff will provide this information by implementing the education and outreach program described in Section 2.5 of this EMP.

The Matsqui First Nation recognizes that its staff will not possess all the technical skills required to manage existing and potential environmental issues, and that external technical assistance will be needed. The Matsqui First Nation will establish a roster of qualified consultants that can be relied on to provide environmental services as required and requested by the Matsqui Environment Officer. Over time, Matsqui First Nation staff and membership may assume more responsibility for these technical tasks as they complete relevant educational and training programs.

The Matsqui First Nation will require supplies and equipment for implementing the EMP. For example, the Environment Officer will require office space and equipment (computer, data storage, *etc.*). A suitable vehicle will be needed for transporting staff and material on Matsqui lands. Sampling equipment, spill response kits, or other environmental equipment and supplies also will be required. Funding for purchase, maintenance, and periodic replacement of these materials will be needed.

4.4 Implementation schedule

The implementation of the EMP will require the knowledge of applicable federal legislation and diligent use of Matsqui First Nation laws, policies, guidelines, BMPs, education, and outreach, monitoring and reporting. This work demands appropriate resources and trained staff. Figure 5 provides an action plan for implementing the EMP effectively. Funding for the next steps in the EMP process, such as for drafting laws and preparing outreach materials, will be required in the year following adoption of the EMP.

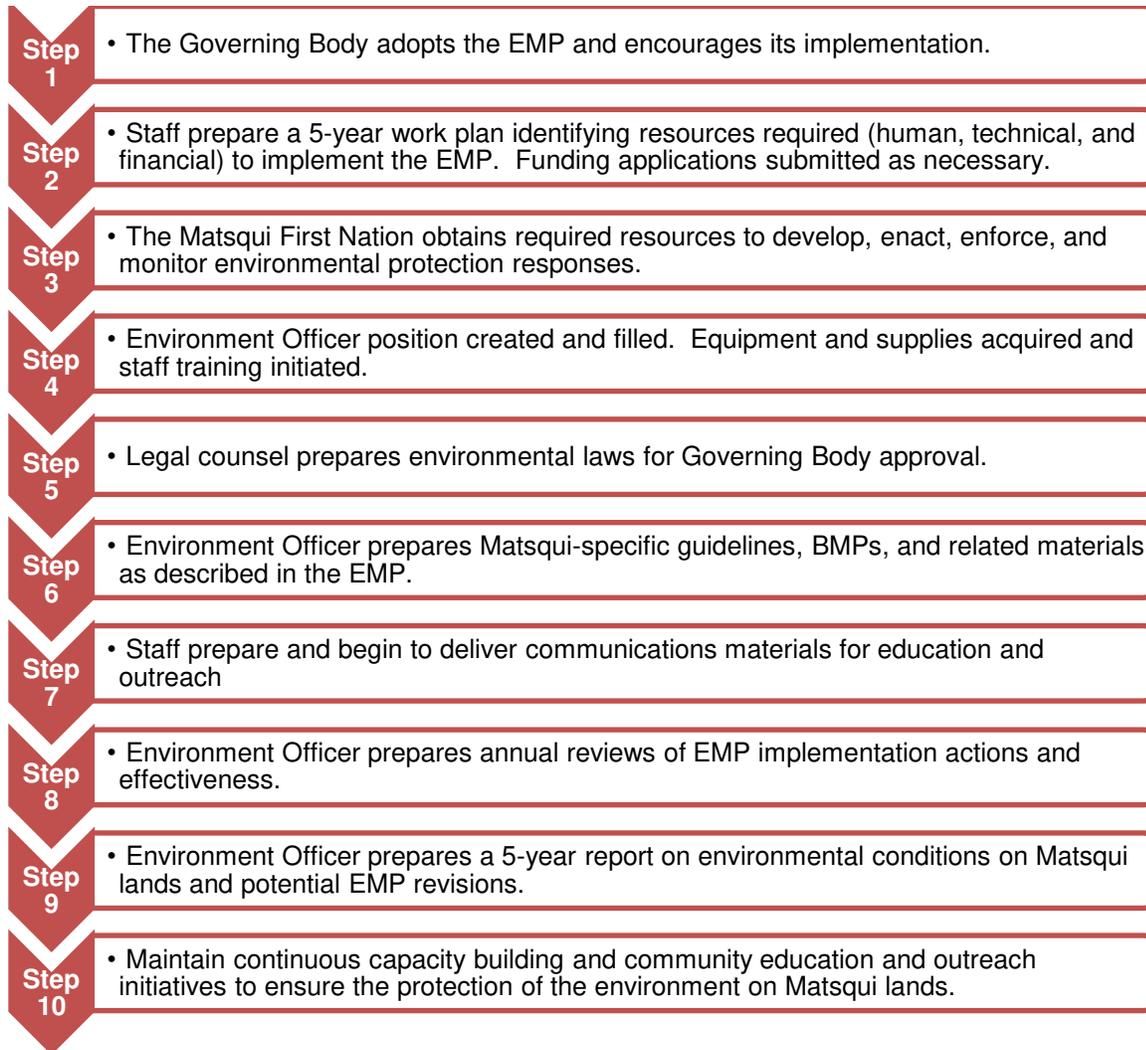


Figure 5. Major steps in implementing the Environmental Management Plan

As the EMP is implemented, priorities will need to be established and the sequence of activities determined. The responsibility for priority decisions will fall to the Governing Body. The Matsqui EMP Committee will play an important role in considering technical and other matters that affect the implementation effort, and will provide recommendations to Council on matters associated with the EMP. The timing and sequence of implementing the various steps and specific activities may change, in response to funding opportunities that arise, or in response to other community or environmental priorities.

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**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN

WASAUKSING FIRST NATION

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

**December 2, 2016
(date for reference purposes)**

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

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

WASAUKSING FIRST NATION, as represented by their Chief and Council (hereinafter called the "Wasauksing 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 December 12, 2013;

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of Wasauksing 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 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;

"Wasauksing First Nation Land" means the land to which the Land Code will apply and more specifically means the Reserve known as Parry Island First Nation as described in the Land Description Report referred to in Annex "G" and includes all the interests in and resources of the land that are within the legislative authority of Parliament,

"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 Wasauksing First Nation, or between Canada and a Tribal Council of 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;

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

"Land Code" means the Wasauksing 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 Wasauksing 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 Wasauksing First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;
 - (b) a list, attached as Annex "D", and copies of all existing information in Canada's possession, respecting any actual or potential environmental problems with the Wasauksing First Nation Land; and
 - (c) a list, attached as Annex "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 Wasauksing 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 Wasauksing 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 Wasauksing 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 Wasauksing First Nation Land under these provisions; and
 - (b) the First Nation shall commence administering Wasauksing 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 Wasauksing 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 Wasauksing 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 Wasauksing First Nation acknowledges that all obligations of Canada to fund the Wasauksing 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 Wasauksing 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 Wasauksing First Nation Land and Canada's rights in Wasauksing 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 Wasauksing 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 Wasauksing 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
Indigenous and Northern Affairs Canada
Ontario Region
25 St. Clair Ave. East, 8th Floor
Toronto, Ontario M4T 1M2

Facsimile: (416) 954-4328

Wasauksing First Nation

Chief Executive Officer
P.O. Box 250
Parry Sound, ON P2A 2X4

Facsimile: (705)746-5984

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 the members of the First Nation have voted to approve the Land Code and this Agreement in accordance with the Framework Agreement and the Act.

12.2 This Agreement shall be effective as of the date on which the last of the Parties signs this Agreement.

12.3 The Parties acknowledge that the signing of this Agreement alone does not bring the Land Code into force, and that the First Nation is not an operational First Nation under the First Nations Land Management regime until the Land Code comes into force in accordance with the provisions of the Land Code, the Framework Agreement and the Act.

IN WITNESS WHEREOF, the duly authorized representatives of the First Nation have signed this Agreement on behalf of the First Nation on _____, 20__, and the Minister of Indian Affairs and Northern Development has signed this Agreement on behalf of Her Majesty The Queen in right of Canada, on _____, 20__.

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

Wasauksing First Nation

Chief

Minister of Indian Affairs and
Northern Development

Councillor

Councillor

Councillor

Councillor

Councillor

ANNEX "A"

FUNDING PROVIDED BY CANADA

- (a) For the Fiscal Year 2016-2017, the First Nation shall be paid (i) Operational Funding specified in the table below prorated based on the number of months from the date that the Land Code comes into force to the end of that Fiscal Year, and (ii) the amount specified in the table below for transitional and environmental funding.
- (b) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after 2016-2017, and any transitional and environmental funding for Fiscal Year 2017-2018, will be calculated and provided in accordance with the Operational Funding Formula applicable at that time.

OPERATIONAL FUNDING	
First Fiscal Year	\$ 251,636 (This amount shall be prorated in accordance with paragraph (a) above) and \$ 75,000.00 (Transitional and Environmental Funding)
Second Fiscal Year	Operational Funding and any transitional and environmental funding to be determined in accordance with the Operating Funding Formula applicable at that time.
Subsequent Fiscal Year(s)	Operational Funding to be determined in accordance with the Operating Funding Formula applicable at that time.

ANNEX "B"

DETAILS FOR THE REVENUE MONEYS TRANSFER

1. As of the 13th day of October, 2016, Canada is holding \$92,208.84 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.

ANNEX "C"

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA

All interests and licenses granted by Canada in or in relation to the Wasauksing 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 Wasauksing First Nation Land Management Office located at 1508 Lane G, Geewadin Road, Wasauksing First Nation:

Reserve General Abstract Report for:

- Parry Island First Nation (06205)

Lawful Possessors Report for:

- Parry Island First Nation (06205)

Lease or Permits Report for:

- Parry Island First Nation (06205)

ANNEX "D"

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

1. Executive Summary. Environmental Site Assessment (ESA) Phase 1 prepared by Neegan Burnside Ltd. Dated June 29, 2015.

The Phase 1 Environmental Site Assessment (ESA) is available for review at the Wasauksing First Nation Land Management Office located at 1508 Lane G, Geewadin Road, Wasauksing First Nation.

ANNEX "E"

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

- Not Applicable

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) This Annex sets out the environmental assessment process that will apply to projects on First Nation Land until the enactment and coming into force of First Nation Laws on that subject.
- (3) The First Nation shall conduct an assessment process in respect of every project on First Nation Land consistent with:
 - (a) CEAA (1992), or
 - (b) CEAA 2012.
- (4) Notwithstanding clause (3), the First Nation is not required to conduct an additional environmental assessment if the First Nation decides to adopt an environmental assessment that Canada conducts in respect of that project.
- (5) If the First Nation elects to use a process consistent with CEAA (1992), the following applies:
 - (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 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 paragraph (b) above 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 CEAA (1992), is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.
- (6) If the First Nation elects to use a process that is consistent with CEAA 2012, the following applies unless it is inconsistent with any amendments made to CEAA 2012 in the future or any legislation that replaces CEAA 2012:
- (a) If the project is a “designated project” as defined in CEAA 2012, the First Nation shall conduct an environmental assessment of that project in accordance with a process that is consistent with that of CEAA 2012.
 - (b) If the project is a “project” as defined in section 66 of CEAA 2012, the First Nation shall not carry out the project on First Nation Land, or exercise any power or perform any duty or function conferred on it under the Land Code or a First Nation law that would permit the project to be carried out, in whole or in part, on First Nation Land, unless the Council of the First Nation determines that the carrying out of the project
 - (i) is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or
 - (ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.
- (7) All processes shall be conducted at the expense of the First Nation or of the proponent of the project.
- (8) The provisions in this Annex are without prejudice to any environmental assessment process that the First Nation may develop in accordance with the Act and the Framework Agreement for incorporation in First Nation laws respecting environmental assessment.

ANNEX "G"

DESCRIPTION OF WASAUKSING FIRST NATION LAND

The following Land Description, prepared by Kenton H. Campbell, OLS, CLS, of Natural Resources Canada, is available for review at the Wasauksing First Nation Land Management Office located at 1508 Lane G, Geewadin Road, Wasauksing First Nation:

- Parry Island First Nation (06205) – Canada Lands Survey Record FB 41336

WASAUKSING FIRST NATION

P.O. BOX 250
 PARRY SOUND, ON
 P2A 2X4
 (705) 746-2531
 FAX (705) 746-5984



Chronological No. <div style="text-align: center; font-size: 1.2em;">2016-0053</div>
File Reference No.

NOTE: The words "from our Band Funds", "Capital" or "Revenue", whichever is the case must appear in all Resolution requesting for Band Funds.

Council of: <div style="text-align: center;">WASAUKSING (PARRY ISLAND) FIRST NATION</div>					Cash Free Balance
Date of Duty Convened Meeting <div style="text-align: center;">Community Council</div>					Capital Account \$
day	month	year	Province		Revenue Account \$
06	09	16	Ontario		

DO HEREBY RESOLVE:

WHEREAS Wasauksing First Nation has a profound relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator, and has a deep desire to preserve our relationship with the land;

AND WHEREAS the Framework Agreement on First Nation Land Management allows First Nations to have the option of 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;

AND WHEREAS Wasauksing First Nation became a signatory to the Framework Agreement on First Nation Land Management on December 12, 2013;

AND WHEREAS for the purpose of entering into a government to government agreement within the framework of the constitution of Canada to deal with the issues of land management, the lands that will be affected by the transfer of administration must be clearly defined;

Page 1 of 2

DO HEREBY RESOLVE:

<p>_____</p> <p style="text-align: center;">Councillor</p>	<p>Chief Warren Tabobondung</p>	<p>Councillor Theresa McInnes</p>
<p></p> <p style="text-align: center;">Councillor Roberta Judge-Rice-Clements</p>	<p>_____</p> <p style="text-align: center;">Councillor Vera Pawis Tabobondung</p>	<p></p> <p style="text-align: center;">Councillor Walter Tabobondung</p>

FOR DEPARTMENTAL USE ONLY							
Expenditure	Authority (Indian Act Section)	Source of Funds		Expenditure	Authority (Indian Act Section)	Source of Funds	
		<input type="checkbox"/> Capital	<input type="checkbox"/> Revenue			<input type="checkbox"/> Capital	<input type="checkbox"/> Revenue
Recommending Officer				Recommending Officer			
Signature _____				Signature _____			
Date _____				Date _____			
Approving Officer				Approving Officer			
Signature _____				Signature _____			
Date _____				Date _____			

WASAUKSING FIRST NATION



P.O. BOX 250
 PARRY SOUND, ON
 P2A 2X4
 (705) 746-2531
 FAX (705) 746-5984

Chronological No. <div style="text-align: center; font-size: 1.2em;">2016-0053</div>
File Reference No.

NOTE: The words "from our Band Funds", "Capital" or "Revenue", whichever is the case must appear in all Resolution requesting for Band Funds.

Council of: <div style="text-align: center;">WASAUKSING (PARRY ISLAND) FIRST NATION</div>					Cash Free Balance
Date of Duty Convened Meeting <div style="text-align: center;">Community Council</div>					Capital Account \$
day	month	year	Province		Revenue Account \$
06	09	16	Ontario		

DO HEREBY RESOLVE:

THEREFORE BE IT RESOLVED, that without prejudice to any claim of Wasauksing First Nation to any other land or to any proper adjustment to the boundaries of the Wasauksing First Nation Parry Island Indian Reserve No. 16, and for the sole purpose of the transfer of administration under the Framework Agreement on First Nation Land Management (1996, as amended), Wasauksing First Nation approves the following:

Survey plan, prepared by Christopher D. Bunker, O.L.S., C.L.S., of Bunker T.A. Bunker Surveying Ltd., dated February 12, 2016, prepared under the Surveyor General Branch Project No. 2015 14 044 being "REPORT Survey of the Jurisdictional Boundary of Parry Island First Nation District of Parry Sound Province of Ontario File: SM8206-0605 Project: 201514044";

AND THEREFORE BE IT FURTHER RESOLVED, that Wasauksing First Nation approval is provided on the basis that all acts that have been, or will be taken by the Chief and Council of Wasauksing First Nation in the furtherance of the processes provided for under the First Nations Land Management Act and the Framework Agreement are without prejudice to any position that Wasauksing First Nation may take in any court, tribunal, administrative proceeding or other processes with respect to the boundary of Wasauksing First Nation Parry Island Indian Reserve No. 16, and more particularly the Boundary Clarification Claim for the return of certain lands and islands adjacent to Parry Island that should be considered as having been within the natural boundary of Parry Island in July 1852.

Page 2 of 2

DO HEREBY RESOLVE:

	 Chief Warren Tabobondung	 Councillor Theresa McInnes
	 Councillor Roberta Judge-Rice-Clements	 Councillor Vera Pawis Tabobondung
	 Councillor Walter Tabobondung	

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act Section)	Source of Funds	Expenditure	Authority (Indian Act Section)	Source of Funds
		<input type="checkbox"/> Capital <input type="checkbox"/> Revenue			<input type="checkbox"/> Capital <input type="checkbox"/> Revenue
Recommending Officer			Recommending Officer		
Signature _____			Signature _____		
Date _____			Date _____		
Approving Officer			Approving Officer		
Signature _____			Signature _____		
Date _____			Date _____		

