

Creating an Effective Environmental Assessment Regime

Course Workbook



 **FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

 **Training, Mentorship &
Professional Development**

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Creating an Effective EA Regime

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Welcome

Welcome to Creating an Effective Environmental Assessment (EA) Regime courselet.

The purpose of this courselet is to provide important information to operational First Nations (FN) and provide tools for Lands Governance Directors (LGD) when they are ready to develop an EA Regime for their FN.

This courselet describes the steps in conducting an EA that a FN may wish to consider as it develops its EA regime.

The material provided in this courselet is current to the date of the courselet. Thank you to the environmental experts to [First Nations Land Management Resource Centre \(RC\)](#) for aiding in the development of this courselet.

Overview

First Nation Environmental Assessment Regime:

First Nation Environmental Assessment Regime FNs with an enacted Land Code (LC) have considerable scope to determine how EAS will be conducted on their First Nation Land.

A FN can adopt individual approaches to conducting EAS as long as the regime:

1. Complies with the requirements in the Framework Agreement on First Nation Land Management (Framework Agreement); and
2. Is consistent with the Canadian Environmental Assessment Act 2012 (CEAA)

The content of this courselet is based on considerable experience with, and analysis of, EA processes in Canada and elsewhere. A FN may choose to apply the information contained in this courselet, or to develop an original approach to conducting EA.

Environmental Assessment Process:

As discussed in the "Preparing to Develop an Environmental Assessment Regime" courselet, the Framework Agreement requires signatory FNs to make best efforts to develop an EA process within one year after the FN's LC takes effect, or within a longer period to which the Minister of Indigenous and Northern Affairs Canada (INAC) and the FN may agree.

Clause 25.2 of the Framework Agreement requires that signatory FNs and Canada include in their [Individual Agreement](#), an Interim EA Process that would apply on FNs lands until the FN's EA regime and/or law is developed. For example, look at [Wasauksing FN's Individual Agreement](#), Section 8 and Annex F, for how they dealt with the Interim EA Process.

When creating an effective EA Process, there are several key steps in a typical EA to keep in mind and discuss with the community. This courselet introduces those steps and provides guidance in responding to issues often encountered in creating an effective EA Process.

Value of Environmental Assessments for First Nations

The critical message for LGDs is that land use activities and development projects can have significant long-term effects on a FN's social, cultural spiritual, economic and environmental values.

Activities and projects that have the potential to affect the environment need to be thoroughly and accurately evaluated before decisions are made about whether they are appropriate for the community.

An effective EA process can provide a forum for examining and discussing the benefits, costs and effects of land use activities and development projects. The EA process can encourage a collaborative effort to ensure the environmental and social values associated with a FN reserve are maintained or enhanced for current and future generations.

Steps in a Typical EA Process

Step 1: Review Project to Determine if an EA is required

When a proponent (developer, Council, another level of government) submits a proposal for a project on reserve, the FN's environmental staff should review the proposal and apply criteria contained in the EA law or associated regulations and guidelines to determine whether an EA should or must be prepared for the project.

Step 2: Design the EA- Establish the EAs content, level of detail, process, and schedule

If FN staff determine that an EA is required according to FN law, regulation, policy or procedure, the EA design should include a list of topics that need to be investigated and an explanation of the level of detail needed to identify potential effects and mitigation measures.

The design should include the scope of the EA, such as the area of land to be included in the EA investigations. The schedule of major milestones or deliverables also should be determined during the EA design phase.

Step 3: Oversee proponent's preparation of the EA and review of draft EA report by community and agencies

The EA report will be prepared by the project proponent. The role of a FN's environmental staff is to guide and oversee the preparation of the EA.

When the proponent submits a draft EA report, the FN will help to coordinate the review of the draft EA report by other government agencies and by the FN's committees and membership as set out in the EA law or policies. FN staff will deliver comments on the draft EA report to the project proponent.

Step 4: Reach a decision about EA findings and specify additional mitigation, follow -up or project permitting requirements

When the proponent submits the final EA report, the FN environment staff or a consultant hired by the FN will be responsible for determining whether the EA complies with the requirements established in the design stage and meets other requirements set out in the FN's EA law.

A FN staff person or consultant may make a recommendation to Council or an independent body regarding the results of the EA.

Step 5: Implement mitigation, permitting, and follow-up programs

The EA Report prepared by the proponent and/or the EA decision should contain a commitment by the proponent to implement specified mitigation measures or other actions in order for the project to proceed. These commitments should be contained in a document that is legally binding on the proponent. Compliance monitoring verifies whether the project proceeds as described in the EA and whether required mitigation measures are implemented. A "follow-up program" determines the accuracy of the conclusions of the EA and the effectiveness of the mitigation measures.

The FN will need a technically-trained staff person or a consultant to inspect project sites to monitor the commitments of the project proponent. In addition, the conditions of the EA approval may require that the proponent report to the FN on the implementation and effectiveness of mitigation measures. FNs may also want to conduct Environmental Inspections to determine if mitigation measures and follow-up programs are being implemented. For more information on environmental inspections, see the Environmental Inspections and Reporting Courselet.

Enforcement:

A well-designed EA regime will also contain enforcement measures to ensure the regime is followed. Measures for enforcing an EA Law should be specified in the law itself. A FN's legal counsel should be instructed to ensure that enforcement measures in the EA Law are both appropriate for the purposes of the EA regime and consistent with enforcement provisions contained in the FN's other laws. In considering enforcement measures, a FN should be aware that those provisions will apply to the FN as well as to non-FN project proponents. Later sections of this Courselet discuss enforcement issues in more detail.

Examination of the 5 Steps of an EA Process

This courselet will examine each of the 5 steps in a typical EA process and discuss issues a FN will need to consider in developing EA law or policy.

Step 1 Initial Project Review:

The purpose of the initial review is to determine whether an EA is required for a project. A FN should review projects to determine if they trigger an EA based on requirements of the Framework Agreement or the EA law or policy that your FN develops.

Initial Project Review: What Kind of Projects should trigger an EA Process?

As previously noted, all projects on First Nation Land that are approved, regulated, funded or undertaken by the FN must undergo an EA according to the requirements of the Framework Agreement. This requirement ensures that as a government, a FN does not undertake, fund or permit projects on reserves without assessing the effects of the project on the environment and how those effects can be

appropriately mitigated. With regard to EAs, a "project" must have the potential to affect the environment (land, air, water, habitat, species, community). Most environment-affecting "projects" on First Nation Land will be included in this requirement of the Framework Agreement. Projects that do not affect the environment (such as projects dealing with health services, education, training, or government administration) are not subject to an EA.

Infrastructure projects, such as roads, water and sewer projects, public works, government buildings, and community facilities such as recreation or cultural centers are generally undertaken and often funded by an operational FN and will therefore trigger the EA process. Commercial or industrial activities either will be undertaken by an operational FN or will need to be approved by an operational FN under its LC, also trigger the EA process. These projects vary in nature and scope. Although an EA will be required for many projects, a FN can consider how to "scale" an EA to suit the nature and scope of the project.

Initial Project Review: What Criteria Could Trigger an EA?

Whether or not an EA is triggered could also be based upon criteria such as:

- How much land will be affected by a project (e.g., exceeding a certain number of hectares)?
- How close is the development to a water body (e.g., within 50 m of an ocean, lake, stream, spring, wetland)?
- Are there lands or resources that are so environmentally, socially or culturally sensitive, that development on those lands should require an EA?
- Should Land Use Plans (LOP) that specify proposed uses of First Nation Lands be subject to an EA? For more information see the Environmental Assessment of Plans section of the "Preparing to Develop an EA Regime" courselet
- Should changes in land use designations (zoning, plan amendments) for commercial, industrial, or institutional uses, or housing developments (of, say, five or more residential units), be subject to an EA?
- Do Chiefs and Council want to have the ability to require or provide the power to the Lands Department to require any project on First Nation Land to undergo an EA at its discretion?
- Are there some activities on your FN lands that should not be required to undergo an EA? For instance, a FN may choose to exempt the following actions from EA:
 1. Administrative actions that do not affect land or resources
 2. Emergency repairs or actions needed on an urgent basis to avert emergencies
 3. Responses to accidents or threats to public health
 4. Routine maintenance activities (e.g., grass cutting in public areas, snow removal, etc.)

Initial Project Review: What about resource extraction and forestry projects?

Because forestry or other resource extraction projects have the potential to affect the environment, a FN is obligated to conduct an EA of such initiatives before approving permits or otherwise authorizing those activities. A FN will need to consider whether ongoing resource extraction and forestry operations require an EA (although expansion of such activities, which would affect additional land, would be reviewable). Farming of land that is already in production probably would not require an EA, but issuing permits or leases to farm new land would be subject to an EA. In cases where a FN decides that resource

extraction is not subject to an EA, how will the environmental effects of those activities be identified and mitigated?

Step 2 Design of the EA

Introduction:

After a FN determines that a project requires an EA, the next step is to design the EA. Typically, the process of designing the EA will be led by a FN's Environment or Lands department EA design is a collaborative activity, involving the project proponent, FN staff and perhaps, if CEAA or a provincial EA is triggered, federal or provincial agencies. Depending on the requirements specified by a FN in preparing its EA regime, community members may be involved in designing EAS of certain kinds of projects.

Topics Studied in an EA:

Although typically referred to as "environmental" assessments, EAS usually consider more than just biophysical effects from the project on land, air, water, wildlife, fish, flora and fauna. Typically, EAS also consider social, economic, and cultural effects, such as effects on neighborhoods, transportation, noise, light, glare, odour, infrastructure, public services, cultural or traditional use, cultural identity, employment and economy. Most EA processes also include an assessment of [cumulative effects](#) that is, the changes to the environment that are caused by the project in combination with other past, present, and future human actions.

Defining the Scope of an EA:

For each project being studied in an EA process, a FN needs to determine the scope of the EA, topic areas to be studied and the physical area to be examined for each topic.

This exercise is generally referred to as "scoping" of the EA. The staff person or consultant overseeing the EA process (the "EA Supervisor") may lead the scoping exercise during the EA design phase of the EA process.

List of Topics to be Studied:

The list of topics to be studied in an EA will likely be contained in the definition of "environmental effects" or "project effects" in a FN's EA Law or policy. The [Matsqui FN EA Law](#) says "environmental effects" means any change to the environment, including archaeological features, heritage resources, traditional use areas, economic activities, health and socio-economic conditions".

An EA law might require that an EA study all of "the environmental, socio-cultural and economic effects of a project on the land and community." Then the EA Supervisor must determine what specific aspects of these general topic areas need to be studied in a specific project's EA. For example, the environmental sub-topics might be fish, air quality and water quality. The EA Supervisor might also specify what information needs to be known about a project's potential effects on rainbow trout populations and habitat in a specific lake or stream. "Appendix A" of the Matsqui FN EA law outlines the potential topics for inclusion in an EA.

"Appendix A" of the Matsqui FN EA law outlines the potential topics for inclusion in an EA.

Scoping Checklist:

The FN could have an internal policy to complete a scoping checklist to aid the EA Supervisor at this stage of the EA process. See for example: [Categories of Potential Effects](#).

For a particular project, such as a new retail shopping center located near a fish bearing stream, scoping information might look something like the following example: [Scoping Information Chart](#).

Size of the Project and an EA:

It is important that the scope and content of an EA be consistent with the scale and potential effects of a project.

Small projects with few likely effects should be subject to similarly modest EAs.

Large projects that have greater potential effects should be subject to more extensive EAs.

Tables and lists may assist the EA Supervisor to make scoping decisions, but such tools do not replace professional judgment in deciding what needs to be studied and what does not.

EA Terms of Reference:

The EA report is the document prepared by the proponent that describes the potential effects of a project and the mitigation measures that will be implemented by the proponent to avoid or reduce project effects.

Terms of Reference should be developed, describing the content, method of study, and schedule for the EA. The project proponent and the FN must agree on the Terms of Reference. In the EA design phase, the EA supervisor determines, in collaboration with the proponent, what the report will contain. EAS usually contain the following sections:

- Ecological, social, cultural, and economic setting of the area potentially affected by a project
- Project description, including design, construction, operation, and decommissioning
- Potential effect identification, assessment, mitigation of effects, assessment of seriousness of effects after mitigation – the heart of the EA
- [Cumulative effects](#) assessment
- Clear statement of commitments by the proponent to implement the mitigation measures described in the EA
- A conclusion regarding the significance of identified adverse effects after mitigation measures are implemented

Preparation and Review of the EA Report

Introduction

Preparation of an EA involves data collection, analysis, writing, and organizing the EA.

Proponent Develops Report

The EA report is usually prepared by a consultant for the proponent. Consultants hired by the proponent (company or agency proposing a project) will prepare a draft EA report based on the EA design and Terms of Reference developed by the FN and the proponent. For FNs' development initiatives, the FN will be the proponent and will be responsible for preparing EAs. For

such FN projects, the FN should consider hiring an independent consultant to prepare the EA. Hiring specialized contractors to complete an EA can provide "independent" review of projects (avoiding conflict or confusion over roles of EA participants), provide access to technical experts, and hasten preparation of the EA. For more information see the Separation of Proponent Role and FN Role section of the "Preparing to Develop an EA Regime"

Review of Report

FN's staff will review and comment on all draft EAs. For larger projects that have potential for greater environmental effects, community members, federal government agencies, and others (provincial agencies, adjacent local governments, nearby non-Aboriginal residents) may be provided an opportunity to comment on the draft EA prepared by the proponent. A proponent's response to public and technical comments typically involves preparation of a revised Final EA report or submission of an addendum containing amendments that respond to issues raised during review.

Summary of EA Report

Information in the EA report could be summarized by the EA Supervisor in a report for Council or an independent body that makes the FN's EA decision. Such a report could contain:

- A summary of the effects of the project on identified environmental, economic, social, and cultural values
- Commitments of the proponent with respect to mitigation measures to be implemented
- Conclusions regarding the significance of adverse effects after mitigation measures are implemented
- Recommendations regarding whether to accept or reject the EA, and under what conditions

Step 3A: Community Involvement in EAs

The Basis of Community Involvement in EAS

FNs community members should be involved in the preparation of most EAs. Community involvement makes the EA process more transparent and effective. FNs are required to meet the basic administrative law obligation of procedural fairness in their governance processes and decision making. Fairness means that anyone who might be affected by a decision or the outcome of an administrative or regulatory process should have the opportunity to participate in the decision or process.

The greater the impact on an individual or group, the greater their involvement in the EA process should be. For instance, EAS for small projects (e.g. culvert replacement for on-reserve infrastructure) may not require much community input, but for larger projects (e.g., a wind farm project) it may be appropriate to involve the community at several stages of the EA process. Chiefs and Councils' fiduciary obligations to their members may influence the amount of community involvement in an EA. Community involvement in an EA should be specified in the Terms of Reference for the EA.

When Should the Community be Involved?

In an EA of a large project, it may be appropriate to involve the community in the design of the EA, engage community members as sources of information in preparing the EA, and involve them in review of the draft EA report. For EAS of small projects, it may only be necessary to invite those parties affected by the project to comment on the assessment.

How should members be involved in the EA?

The methods of involving the members should be tailored to the kind of involvement needed for a specific EA. Community meetings or open houses are often used for EAS of large projects. Input from particular groups may be obtained through direct contacts, small-group meetings, newsletter notices, or interviews. Surveys are occasionally used to determine community values applicable to a proposed project.

Step 4 The EA Decision

Introduction

Operational FNs have a due diligence duty to act prudently and to ensure there is no conflict of interest when making those decisions during the EA process. Many decisions must be made over the course of the EA. For example, decisions are made during the EA design phase regarding scoping of the project, the topics to be studied and the amount of community involvement in the process. After the EA has been completed, a FN must consider the results of the EA and assess the implications for the project being studied.

Proponent and the EA Decision

At a minimum, an EA process should require the proponent's EA report to contain the information specified in the EA design. An EA design should specify that the Proponent provide a conclusion regarding significance of adverse effects in their EA report for consideration by the decision makers.

In order to receive a "positive" EA decision so a project can proceed to other development approval processes such as permitting or lease approval, some EA processes require that the EA report conclude that the project will not have any "significant adverse effects" after mitigation measures are considered. This approach tends to force EA reports to contain "creative" interpretations of effects in order to avoid rating an adverse effect as significant. This approach can also harm the credibility of an EA process, and ultimately fail to protect the community's environmental and socio-cultural interests.

Decision Maker's Attributes

A FN must decide who will have the decision-making authority for EAs.

The FN should ensure that the decision maker has the following qualities:

- Unbiased
- Knowledgeable about the topics being studied
- Legitimate in the eyes of the community and the proponent

Who can be the Decision Maker?

There are at least four bodies that could make decisions about the results of an EA. The decision could be made by:

- A FN's staff member
- Chiefs and Council
- An outside consultant retained by the FN to oversee the EA process
- An independent committee, such as an EA Committee

When developing an EA process, a FN should be clear about who has the authority to make the final decision on an EA, and under which circumstances. Note that approval of an EA does not constitute approval of the project being assessed, so responsibility for the two decisions can be assigned to different parties.

FN Proponent and Conflict of Interest

A FN's government may be a project proponent or a partner with a project proponent, in which case it may be appropriate to remove the responsibility for approving EAS from Chief and Council to avoid the appearance of conflicts of interest.

This separation also may be appropriate because determining the adequacy of an EA's technical information requires expertise that may not be possessed by Council. Particularly for projects in which a FN government is involved as a proponent, it may be inappropriate for staff or a consultant retained by the FN to be in a position to approve an EA that could be critical of a project proposed by their employer. Such an arrangement could result in real or perceived conflicts of interest.

Conflict of Interest & Independent Committee

It may be appropriate for an independent committee, such as an EA Committee, to consider whether or not to approve the EA and allow a project to proceed to other approval processes. Such an EA Committee could provide input during other key stages of the EA preparation process. An EA Committee of people not connected to the EA process or the project would ensure the FN's EA decisions are made by persons with appropriate expertise in EA, and who are free of influence by project proponents thus eliminating or minimizing conflict.

Use of an EA Committee would avoid the awkward situation in which FN staff or consultants must determine whether an EA of a FN-driven project is acceptable to the FN.

The Committee structure could be flexible so that for smaller projects only one member of the Committee is required to make the EA decision, thereby preventing unnecessary bureaucracy in the EA process. However, it would be critical to ensure that the process for selecting the EA Committee members is credible to all concerned.

Concluding the EA Process

At the end of the project review stage, whoever is designated as the decision maker should issue a written finding that describes the conclusions about whether the EA is considered satisfactory, and what effect the EA has on whether the project should proceed.

If the project is deemed acceptable from the perspective of the topics investigated in the EA, it could proceed to other approval processes (e.g., negotiating lease terms, FN Land use or zoning decisions), to funding, or directly to construction (e.g., for utility projects).

Example of a FN EA Decision Process

The [Matsqui FN EA Law](#) identifies their Governing Body as the EA decision maker and outlines their EA Decision process as follows:

- Proponent submits final EA Report to the Lands Manager (LM)
- The LM and the Lands Committee review the EA report
 - If a specialist is required the LM will retain one, at the cost of the Proponent, to review the report
 - LM circulates report to staff and other government agencies
 - LM makes the final EA report available for review by the Matsqui membership
- The LM prepares an EA Completion Report that:
 - Summarizes comments from others on the quality and findings of the EA report
 - Presents conclusions about the nature and significance of potential environmental effects and the effectiveness of mitigation measures identified
 - Provides the comment of the LM and Lands Committee on the implication of permitting the Project to proceed to other approval processes and what conditions may be attached to future approvals or permits that would likely mitigate identified environmental impacts or enhance identified benefits
- The LM presents the Completion Report to the Governing Body for:
 - A decision on Project Approval
 - Approval with conditions and issuance of an EA approval
 - Referral back to the LM to obtain additional information
 - Rejection

Step 5 Migration Monitoring and Follow-up Program

Commitments

Commitments are "clear statements of commitment by the Proponent to implement Mitigation Measures described in the environmental assessment" (Matsqui EA Law). These commitments are necessary to avoid, reduce, or compensate for identified impacts of a proposed project.

These commitments should be contained in a document that is legally binding on the proponent. For example, the terms and conditions could be included in an EA "Certificate" or in the terms of a FN's lease or permit for the project.

Follow-up

The FN will need a technically-trained staff person or a consultant to inspect project sites to monitor the commitments. An operational FN can enforce the terms and conditions through Environmental laws and provisions in leases Protection and permits.

For more information on environmental inspections, see the Environmental Inspections and Reporting courselet.

The Matsqui FN, in their [EA Law](#), (starting at Section 9.13), outline their "Implementation of Mitigation Measures and Follow-up Program.

Enforcing the EA Regime

Introduction:

Enacting an EA Law allows a FN to include measures for enforcement. For more information on laws, regulations and policies, see the information sheet titled [Laws, Regulations and Policies](#).

EA Regime Enforcement through an EA Law:

Section 23.4 of the Framework Agreement states that a FN's EA regime will be implemented through an EA Law. Such a law should contain key enforcement provisions requiring completion of an EA before land- disturbing projects proceed on FN land. The EA Law should also contain enforcement provisions requiring proponents to conduct work in accordance with their project plans and the conditions of their EA approval. Measures to address proponents' non- compliance and powers and duties for enforcement personnel also should be included in the EA Law.

For example, section 4.1 of the [Matsqui EA Law](#) requires that a proponent must not conduct any work on a project until an EA Approval obtained, or unless the LM has determined that an EA is not required. In addition, section 4.2 of the Matsqui EA Law requires that when an EA approval has been issued, all work on the project must be conducted in accordance with that approval.

Other FN laws also support enforcement of EA Laws. For instance, laws concerning the issuance of permits and approvals may require that the FN's EA regime is followed. FN laws for issuing permits and approvals may contain conditions that the FN's EA Regime be followed before any decisions can be made about whether a permit or approval can be issued. Best management practices for environmental protection, mitigation measures, and follow-up programs can be conditions of the permit or approval, and therefore are enforceable under the permitting or approval law and conditions of the permit or approval itself.

For example, the [Tsamout FN Subdivision Development and Servicing Law](#) requires that projects undergo the EA process outlined in Schedule "B" before Council can issue a permit or approval under that Law.

Adoption of an EA Law and Community Participation

Introduction

It is very important for a FN to have community engagement through outreach in the EA process and EA Law Development. The Land Code Community Participation for Environmental Governance courselet offers an overview of the role of education and outreach in environmental governance and suggests

useful tools a LGD can use during the process of developing, adopting and implementing their EA regime.

Land Code and EA Law Requirement

Principles or detailed requirements regarding community participation in EA decision making could be set out in a FN's LC. More likely, however, the involvement of the community will be set out in the EA law and policies.

Operational FNs should review their LCs to determine if and how they are required to consult their communities during the development of their EA law. For example, the Matsqui FN Land Code outlines its community's role in approval of an EA Law in Part 4: Consultation and Approvals as follows:

- The Governing Body (GB) will present proposed laws to the members
- Approval by eligible voters (EV) is required for any law or class of law that the GB by resolution declares to be subject to this section
- Section 23 Approval by Eligible Voters
 - Section 23.2 - The GB may establish policies and procedures for approvals under Section 23.1 (e.g. EA Law)
- Section 24 Member Consultation
 - Section 24.1 - prior to approving a draft law under section 7.10 the GB will call a meeting of members to receive input in respect of (f) EA.
 - Section 24.2 - The GB will within a reasonable time after their LC takes effect develop and implement the laws referred to in section 24.1 (e.g. EA law).
- Section 25 Meeting of Members
- Section 26 Ratification Vote
 - Section 26.1 - approval by a ratification vote must be obtained for (d) enactment of a law or class of laws that the GB by resolution declares to be subject to this section (e.g. could be an EA law)
 - Section 26.4 - a matter will be approved by a ratification vote if a majority of the EVs participates in the vote and at least a majority of the participating EVs cast a vote in favour of the matter

Implementing the EA Regime through Laws, Regulations and Policies:

A FN's EA regime will likely be implemented through a combination of EA [Laws, regulations, and policies](#). The EA Law will provide the framework for the EA process and will include the information and procedural requirements that are key to the process. More technical, but important elements of the law may be included in regulations, policies, administrative processes and guidelines.

Example Tsawout FN EA and Community Assessment Process

Introduction

The Tsawout FN ([broken link](#)) is located on Vancouver Island, in British Columbia.

Tsawout FN is a member of the Saanich Nation and a party to a Douglas Treaty.

Tsawout Land Code:

Tsawout is an operational FN, whose Council, under Section 6.2 (e), of their enacted [Land Code](#) can make Law in relation to their First Nation Land for environmental assessment

Tsawout EA Law:

The Tsawout FN Chief and Council have enacted " General Requirements for Environmental Assessments on First Nations Land" as Schedule B of the Tsawout First Nation [Subdivision, Development and Servicing Law](#). The Tsawout EA Law contains many of the features described in this courselet.

The Tsawout law includes appendices containing templates to aid the proponent in preparing a project description and Terms of Reference for the EA as follows:

- Appendix A – Project Description Template
- Appendix B – Generic Terms of Reference for EAs
- Appendix C – Potential Topics for Inclusion in EAs

Tsawout EA Process:

The main steps in the Tsawout EA process are:

1. LM determines whether an EA is required after reviewing a Project Description submitted by the proponent,
2. LM and Proponent determine the scope and Terms of Reference for the EA, for approval by the LM,
3. Proponent conducts the analysis and prepares an EA Report,
4. The LM, Land Management Committee, and, potentially, external specialists and the community review the draft EA Report,
5. The LM, on behalf of the Land Management Committee, drafts an "environmental completion report" that focuses on the potential effects of implementing a project, and sends it to Council for decision.,
6. Proponent or Tsawout FN implements mitigation and follow-up programs if the project is approved by Council.

Under the Tsawout process, Council makes decisions regarding approval of proposed projects, primarily through the issuance of permits and other approvals, using information contained in the environmental completion report combined with other considerations of Council. The LM shares information with federal agencies as appropriate so that those agencies can determine if *CEAA 2012* is triggered. Information is shared at the initial review stage and when the proponent's final EA Report is completed.

Summary

This courselet has provided information on how to design an EA process that will produce information to be used in decisions about projects proposed for First Nation Lands. The courselet describes approaches

to preparing an EA regime that will satisfy the Framework Agreement and the requirements of most FNs. Each FN, of course, must determine what kind of EA process best suits its needs and capacity.

The courselet identifies:

1. The five main steps in conducting an EA
2. Caveats to be considered as a FN develops its EA regime
3. How to determine if a proposed project triggers the need for an EA
4. The process of preparing Terms of Reference for an EA
5. How the community should be involved in preparing and reviewing an EA
6. The decisions associated with preparing and finalizing an EA report
7. Enforcement options for a FN's EA regime
8. Example EA laws and regimes from operational FNs.

By applying the courselet's content, a FN should be able to develop an EA regime that will satisfy the Framework Agreement and that will efficiently and effectively generate information useful to development decisions on First Nation Lands.



ACRONYM LIST

CEAA	-	<i>Canadian Environmental Assessment Act</i>
EA	-	Environmental Assessment
EP	-	Environmental Protection
EV	-	Eligible Voter
FN	-	First Nation
<i>FRAMEWORK AGREEMENT</i>	-	<i>Framework Agreement on First Nation Land Management</i>
GB	-	Governing Body
INAC	-	Indigenous and Northern Affairs Canada
LC	-	Land Code
LGD	-	Land Governance Director
LM	-	Land Manager
LUP	-	Land Use Plan
RC	-	First Nations Land Management Resource Centre



GLOSSARY OF TERMS

ADVERSE ENVIRONMENTAL EFFECTS

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

DUE DILIGENCE

In the “Operational” Phase an operational First Nation or its delegates has a due diligence duty to act prudently in evaluating associated risks in all decisions (e.g. Environmental Assessment decision) and transactions. Simply put it is the degree of care and caution required before making a decision (e.g. in the performance of an investigation of a business or person prior to signing of a contract, or the performance of an act with a certain standard of care).

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 PROTECTION

Environmental protection is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce attendant risks to environmental and human health and safety. The adverse effects of exposure to



contaminants may result from direct or indirect contamination of soils, water, and air from hazardous materials and uncontrolled exposure to those contaminants.

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.

CATEGORIES OF POTENTIAL EFFECTS

Potential topics for inclusion in Environmental Assessments

Environmental topics

Soils and Geology

- Stability and earth conditions
- Major changes in topography or modification of significant geological features
- Soil erosion, compaction, degradation, or contamination
- Changes in erosion or deposition rates that affect aquatic process, form, and function
- Import and deposit of soil or fill

Air Quality

- Substantial air emissions or deterioration of ambient air quality
- The creation of objectionable odours

Aquatic Ecosystems

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

Vegetation

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

Animal life

- Changes to the population numbers or distribution of native animal species (including birds, mammals, reptiles, fish, benthic organisms, or insects)
- Any change to the numbers or distribution of rare, threatened or endangered animal species
- Potential effects on species of cultural importance
- Degradation of existing or potential fish habitat, or wildlife habitat or corridors (including the effects of light, noise, or human activity)
- Interference in the life cycle of fish or birds (including nests or breeding behaviours).

Social and community topics

Land use and population

- Change to the present or planned land use in an area

- Alteration of the supply of commercial or industrial space
- Changes to population demographics, distribution, and density
- Consistency with adopted land use plans

Mobility, transportation, and circulation

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

Public services and utilities

- Increased demand on fire, police, or other emergency services
- Increased school enrolment, or demand for parks or other recreational facilities for all age groups
- Need for new or expanded public utilities including sanitary sewers, water mains, storm drains, or garbage collection
- Effects on supply or quality of water
- Potential to increase maintenance demands for existing facilities that are required to accommodate the proposed land use, including social services

Aesthetics and built environment

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

Employment and economy

- Potential to affect existing employment or creation of new employment (permanent or temporary, full-time or part-time)
- Effect on existing commercial or industrial business
- Cost or benefit to community (i.e. change tax base and service level)

Nuisance (noise, light, glare, odour) and hazards

- Increase in existing noise levels (other than normal residential noise)
- Creation of new, different, or unusual noise or noise production at inappropriate times (e.g., late at night)
- Production of new light or glare
- Creation of shading or reduced access to sunlight
- Production of offensive odours and airborne particles
- Production of potentially dangerous transmission waves (i.e., magnetic or microwave)
- Creation of potential human health hazards

Navigable waters

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

Cultural heritage, aboriginal rights and title topics

Culture and cultural resources

- Potential to alter or destroy an archaeological site
- Effects on areas of cultural importance (for spiritual, traditional use, ceremonial, resource, or other purposes)
- Effects on historic buildings, structures, objects, or landscapes
- Effects on aboriginal culture
- Potential effects on resources of, or access to, traditional use areas

Aboriginal rights and title

- Potential to adversely affect aboriginal rights or title



Definitions of Cumulative Effects

The definition of cumulative effects is an ongoing source of discussion among Environmental Assessment practitioners. The following definitions are provided to help explain the concept of cumulative effects to Lands Governance Directors.

- “Cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions” (AXYS 1999, p. 1)
- "Cumulative environmental effects" are defined more narrowly in the Practitioners Guide (AXYS 1999) than under the [Canadian Environmental Assessment] Act. While the Practitioners Guide is limited to cumulative biophysical effects, assessments of cumulative environmental effects under the Act can extend to the effects of such changes on health and socio-economic conditions, physical and cultural heritage, and other matters described in the definition of "environmental effects" in section 5 of the Act".
- “Though the [Yukon Environmental and Socio-economic Assessment] Act does not provide a definition of cumulative effects, the concept is understood to be the combined environmental or socio-economic impacts that accumulate from a series of similar or related individual actions, contaminants, or projects. Although each action may seem to have a small impact, the combined effect can be significant” (Yukon Environmental and Socio-economic Assessment Board 2005, p. 1)

Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis. While impacts can be differentiated by direct, indirect, and cumulative, the concept of cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of the effects of all actions over time. Thus the cumulative impacts of an action can be viewed as the total effects on a resource, ecosystem, or human community of that action and all other activities affecting that resource no matter what entity (federal, non-federal, or private) is taking the actions (US EPA 1999, p. 2).

EXAMPLE: SCOPING INFORMATION CHART

General Topic Area:	Example Sub-Topic:	Specific Information Requirements:
Environmental effects	Water quality and fish	Predicted change in water quality parameters. Change in populations of Arctic Char, trout, Dolly Varden
Socio-cultural effects	Traffic, infrastructure and cultural use	Traffic volumes on roads through reserves. Need for additional police service
Economy effects	Revenue benefits, employment and business contracts	Increase in property tax revenue for the First Nation. Expected change in employment or wage rates. Project activities benefiting or harming First Nation businesses.

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

4.6 The First Nation will make provision to

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

PART II OPTING IN PROCEDURE

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

PARTIE II PROCÉDURE D'ADHÉSION

5. DEVELOPMENT OF A LAND CODE

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

5.2 The land code of a First Nation will

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

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

(i) licenses and leases, and

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

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

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

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

5. ÉLABORATION D'UN CODE FONCIER

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

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

a) la description des terres qui y sont assujetties;

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

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

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

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

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

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

the land code;

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

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

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

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

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

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

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

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

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

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

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

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

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

5.3 Peuvent également figurer dans le code foncier :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its

Canada et la première nation.

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

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

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

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

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

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

7. APPROBATION DE LA COMMUNAUTÉ

7.1 Le code foncier de la première nation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. VERIFICATION PROCESS

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

8.2 The representatives of the First Nation

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

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

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

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

8. PROCESSUS DE VÉRIFICATION

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

8.2 Les représentants de la première nation

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

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

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

8.4 The verifier will

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

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

8.3 La première nation communique au vérificateur les documents suivants :

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

8.4 Le vérificateur a pour mandat:

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

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

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

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

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

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

8.7 A verifier will not deal with disputes over funding.

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

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

9. CONDUCT OF COMMUNITY VOTE

9.1 Once the verifier confirms that the

la première nation dûment approuvé par elle.

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

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

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

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

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

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

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

9. TENUE DU SCRUTIN

9.1 Après que le vérificateur ait décidé que

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

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

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

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

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

10. CERTIFICATION OF LAND CODE

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

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

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

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

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

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

10. CERTIFICATION DU CODE FONCIER

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

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

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

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

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

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

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

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

11. DISPUTED VOTE

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

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

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

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

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

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

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

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

11. CONTESTATION DU VOTE

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

process to the verifier.

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

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

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

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

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

PART III

FIRST NATION LAND MANAGEMENT RIGHTS AND POWER

12. LAND MANAGEMENT POWERS

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

irrégularité dont a été entaché le déroulement du scrutin.

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

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

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

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

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

PARTIE III

DROITS ET POUVOIRS DE GESTION DES TERRES DE PREMIÈRE NATION

12. POUVOIRS DE GESTION DES TERRES

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

12.2 This power includes

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

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

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

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

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

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

12.2 Elle peut notamment :

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

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

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

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

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

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

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

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

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

13. PROTECTION OF FIRST NATION LAND

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

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

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

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

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

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

13. PROTECTION DES TERRES DE PREMIÈRE NATION

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

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

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

14. VOLUNTARY EXCHANGE OF FIRST NATION LAND

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

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

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

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

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

accord.

14. ÉCHANGE VOLONTAIRE DE TERRES DE PREMIÈRE NATION

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

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

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

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

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

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

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

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

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

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

15. IMMUNITY FROM SEIZURE, ETC.

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

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

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

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

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

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

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

15. INSAISSABILITÉ, ETC.

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

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

designated land at that time.

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

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

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

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

16. THIRD PARTY INTERESTS

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

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

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

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

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

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

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

16. INTÉRÊTS DES TIERS

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

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

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

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

17. EXPROPRIATION BY FIRST NATIONS

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

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

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

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

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

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

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

17. EXPROPRIATION PAR LES PREMIÈRES NATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IV FIRST NATION LAW MAKING

18. LAW MAKING POWERS

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

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

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

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

(c) laws on environmental assessment and protection;

(d) laws on the provision of local

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

PARTIE IV POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

18. POUVOIRS DE LÉGIFÉRER

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

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

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

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

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

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

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

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

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

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

19. ENFORCEMENT OF FIRST NATION LAWS

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

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

(b) provide for fines, imprisonment,

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

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

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

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

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

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

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

a) créer des infractions punissables par procédure sommaire;

b) prévoir des peines, notamment les

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

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

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

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

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

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

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

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

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

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

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

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

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

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

remuneration.

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

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

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

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

20. APPLICATION OF FEDERAL LAWS

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

leur mandat, leur destitution et leur rémunération.

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

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

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

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

20. APPLICATION DES LOIS FÉDÉRALES

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

federal legislation.

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

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

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

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

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

où elles sont incompatibles avec la loi de ratification.

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

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

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

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

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

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

22. EXISTING FIRST NATION BY-LAWS

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

PART V ENVIRONMENT

23. GENERAL PRINCIPLES

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

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

23.3 The principles of these regimes are set out below.

Indiens;

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

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

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

22. RÈGLEMENTS ADMINISTRATIFS ACTUELS DE LA PREMIÈRE NATION

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

PARTIE V ENVIRONNEMENT

23. PRINCIPES GÉNÉRAUX

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

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

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

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

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

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

24. ENVIRONMENTAL MANAGEMENT

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

24.2 Each First Nation agrees to

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

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

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

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

24. GESTION DE L'ENVIRONNEMENT

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

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

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

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

25. ENVIRONMENTAL ASSESSMENT

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

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

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

25. ÉVALUATION ENVIRONNEMENTALE

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

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

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

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

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

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

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

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

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

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

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

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

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

26. OTHER AGREEMENTS

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

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

27. RESOURCES

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

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

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

26. AUTRES ENTENTES

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

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

27. RESSOURCES

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

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

PART VI FUNDING

28. APPROPRIATION

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

29. DEVELOPMENTAL FUNDING

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

30. OPERATIONAL FUNDING

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

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

PARTIE VI FINANCEMENT

28. CRÉDITS

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

29. FINANCEMENT DE DÉMARRAGE

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

30. FINANCEMENT DE FONCTIONNEMENT

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

conditions.

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

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

31. LANDS ADVISORY BOARD FUNDING

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

PART VII EXPROPRIATION OF FIRST NATION LAND BY CANADA

32. RESTRICTIONS

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

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

(a) only with the consent of the

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

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

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

31. FINANCEMENT DU CONSEIL CONSULTATIF DES TERRES

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

PARTIE VII EXPROPRIATION DE TERRES DE PREMIÈRES NATIONS PAR LE CANADA

32. RESTRICTIONS

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

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

Governor in Council; and

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

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

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

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

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

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

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

réunies :

a) le gouverneur en conseil y consent;

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

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

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

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

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

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

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

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

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

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

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

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

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

33. COMPENSATION BY CANADA

période pour laquelle il est exproprié;

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

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

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

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

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

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

33. INDEMNISATION PAR LE CANADA

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

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

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

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

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

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

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

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

compensated;

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

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

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

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

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

34. STATUS OF LANDS

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

une indemnité;

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

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

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

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

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

34. STATUT DES TERRES

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

First Nation land is expropriated by Canada,

(a) the land retains its status as First Nation land;

(b) the land remains subject to the land code and to any law of the First Nation that is otherwise applicable, except to the extent the land code or law is inconsistent with the expropriation; and

(c) the First Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the expropriation.

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

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

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

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

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

a) les terres conservent leur statut de terres de première nation;

b) les terres demeurent assujetties au code foncier et aux textes législatifs adoptés par la première nation, sauf dans la mesure où le texte ou le code foncier est incompatible avec l'expropriation;

c) la première nation peut continuer à utiliser et à occuper ces terres, sauf dans la mesure où cette utilisation ou cette occupation est incompatible avec l'expropriation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

improvements.

37. APPLICATION OF EXPROPRIATION ACT

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

PART VIII LANDS ADVISORY BOARD

38. LANDS ADVISORY BOARD

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

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

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

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

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

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

37. APPLICATION DE LA LOI SUR L'EXPROPRIATION

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

PARTIE VIII CONSEIL CONSULTATIF DES TERRES

38. CONSEIL CONSULTATIF DES TERRES

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

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

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

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

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

on its behalf.

39. FUNCTIONS OF THE LANDS ADVISORY BOARD

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

(a) developing model land codes, laws and land management systems;

(b) developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations;

(c) on request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes;

(d) assisting a verifier when requested by the verifier;

(e) establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code;

(f) on request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty;

pour le compte du conseil.

39. ATTRIBUTIONS DU CONSEIL CONSULTATIF DES TERRES

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

a) il élabore des modèles de code foncier, de textes législatifs et de systèmes de gestion des terres;

b) il élabore des modèles d'ententes destinés à être utilisés entre les premières nations et les autres autorités et institutions, notamment les sociétés de service public et les organismes privés;

c) à la demande d'une première nation, il assiste celle-ci dans l'élaboration et la mise en oeuvre de son code foncier, de ses textes législatifs, de ses systèmes de gestion des terres, et de ses régimes de protection et d'évaluation environnementales;

d) il apporte son aide au vérificateur, à la demande de ce dernier;

e) il met sur pied un centre de ressources, des cours et des programmes de formation à l'intention des gestionnaires et des autres personnes qui exercent des attributions aux termes d'un code foncier;

f) à la demande d'une première nation qui éprouve des difficultés dans la gestion des terres de la première nation, il l'aide à obtenir l'expertise dont elle a besoin pour

(g) proposing regulations for First Nation land registration;

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

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

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

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

40. RECORD KEEPING

40.1 The Lands Advisory Board will maintain a record containing

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

(b) a copy of that land code;

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

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

résoudre les difficultés;

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

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

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

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

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

40. TENUE DES DOSSIERS

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

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

b) une copie de ces codes fonciers;

c) une copie des modifications apportées aux codes fonciers;

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

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

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

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

41. ANNUAL REPORT

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

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

42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

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

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

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

41. RAPPORT ANNUEL

41.1 Le Conseil consultatif des terres remet aux Parties, dans les 90 jours suivant la fin de son année de fonctionnement, un rapport annuel, dans les deux langues officielles, concernant les travaux accomplis pendant cette année.

41.2 Le ministre est tenu de présenter le rapport annuel du Conseil consultatif des terres aux deux Chambres du Parlement dans les 30 premiers jours de séance de chaque Chambre suivant sa réception par le ministre.

42. DISPARITION DU CONSEIL CONSULTATIF DES TERRES

42.1 In the event that the Lands Advisory Board is no longer in existence, the functions of the Lands Advisory Board under this Agreement will be performed by the Parties, except as follows:

(a) the functions set out in clauses 29 and 39, except clause 39.1(g), will be performed by the First Nations; and

(b) the functions set out in clauses 10 and 40 will be assumed by the First Nations Lands Register.

PART IX DISPUTE RESOLUTION

43. GENERAL PRINCIPLES

43.1 The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out-of-court processes referred to in this Part to resolve the dispute.

43.2 Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.

43.3 Subject to clause 43.4, any dispute

42.1 En cas de disparition du Conseil consultatif des terres, les attributions de celui-ci en vertu du présent accord seront exercées par les Parties, sous réserve des dispositions suivantes :

a) les attributions énumérées aux articles 29 et 39, sauf pour ce qui est de l'alinéa 39.1g), seront exercées par les premières nations;

b) les attributions prévues aux articles 10 et 40 seront assumées par le bureau du Registre des terres des premières nations.

PARTIE IX RÈGLEMENT DES DIFFÉRENDS

43. PRINCIPES GÉNÉRAUX

43.1 Les Parties s'engagent à résoudre entre elles, à l'amiable et de bonne foi, les différends qui peuvent découler du présent accord. Lorsque les Parties n'arrivent pas à s'entendre pour résoudre un différend par la négociation, elles conviennent de mettre sur pied les processus extrajudiciaires de règlement des différends décrits dans la présente partie et d'y avoir recours.

43.2 Les dispositions du présent accord n'empêchent pas les Parties de recourir à la médiation en vue de régler à l'amiable un différend. Lorsqu'une partie a soumis un différend à un médiateur, l'autre partie est tenue d'assister à une première rencontre avec le médiateur. L'une ou l'autre des Parties peut toutefois mettre fin à la médiation en tout temps après cette première rencontre.

43.3 Sous réserve de l'article 43.4, les

arising from the implementation, application or administration of this Agreement, the federal legislation, an individual agreement or an environmental management agreement may be resolved in either of two ways:

(a) Neutral evaluation - it may be referred to neutral evaluation by one party to the dispute; or

(b) Arbitration - it may be referred to arbitration by both parties to the dispute.

43.4 Any dispute respecting compensation for First Nation land expropriated by Canada or the terms and conditions for the return of the full interest or the entire land right in First Nation land will be referred to arbitration.

43.5 Any objection by a First Nation to a proposed expropriation under Part VII that has been referred to neutral evaluation will be evaluated and a report submitted by the neutral evaluator to the First Nation and Canada within 60 days of the referral to the neutral evaluator.

44. PANELS OF ARBITRATORS, ETC.

44.1 The Parties and the Lands Advisory Board will jointly establish lists of mutually acceptable persons willing to act as mediators, arbitrators, verifiers and neutral evaluators.

différents découlant de la mise en oeuvre, de l'application ou de l'administration du présent accord, de la loi de ratification, d'un accord distinct ou d'un accord en matière de gestion de l'environnement peuvent être résolus selon l'un des deux moyens suivants :

a) la conciliation — le différend peut être renvoyé à un conciliateur par l'une des parties impliquées dans le différend;

b) l'arbitrage — le différend peut être soumis à l'arbitrage par les deux parties impliquées dans le différend.

43.4 Sont soumis à l'arbitrage, les différends portant sur l'indemnité à verser par le Canada en raison de l'expropriation par celui-ci de terres de première nation, ou sur les conditions du retour de la totalité de l'intérêt ou du droit foncier entier sur les terres de première nation.

43.5 Toute opposition, par la première nation, à un projet d'expropriation en vertu de la Partie VII qui aura été porté devant un conciliateur sera évalué par ce dernier. Par la suite, un rapport sera soumis, par ce dernier, à la première nation et au Canada dans un délai de 60 jours suivant le dépôt de l'opposition devant le conciliateur.

44. LISTES D'ARBITRES, ETC.

44.1 Les Parties et le Conseil consultatif des terres sont tenus d'établir conjointement des listes de personnes mutuellement acceptables prêtes à agir en qualité de médiateur, d'arbitre, de vérificateur et de conciliateur.

44.2 Parties who become involved in a dispute may select mediators, arbitrators and neutral evaluators from the appropriate list, or may agree to the appointment of an individual who is not on the list.

44.3 The selection and assignment of verifiers and the procedure to be followed by verifiers will be arranged by the Lands Advisory Board, Canada and the First Nation.

44.4 Individuals appointed to act as mediators, arbitrators, verifiers or neutral evaluators must be unbiased and free from any conflict of interest relative to the matter in issue and have knowledge or experience to act in the appointed capacity.

45. NEUTRAL EVALUATION

45.1 Where a dispute is referred to neutral evaluation, the evaluator will where appropriate,

- (a) identify the issues in the dispute;
- (b) assess the strengths of each party's case;
- (c) structure a plan for the progress of the case;
- (d) encourage settlement of the dispute; and
- (e) provide the parties with a non-binding opinion or recommendation to resolve the dispute.

44.2 Les parties à un différend peuvent choisir, parmi ces listes, un médiateur, un arbitre et un conciliateur ou s'entendre sur la nomination d'une personne qui ne figure pas sur ces listes.

44.3 Le Conseil consultatif des terres, le Canada et la première nation choisiront les vérificateurs, définiront leurs attributions et fixeront la procédure que ces derniers doivent utiliser.

44.4 Les personnes nommées en qualité de médiateur, d'arbitre, de vérificateur ou de conciliateur doivent être impartiales et ne pas se trouver en situation de conflit d'intérêts par rapport aux questions en litige; elles doivent par ailleurs posséder la compétence ou l'expérience nécessaires pour agir en cette qualité.

45. CONCILIATION

45.1 Lorsque la situation l'exige, le conciliateur saisi d'un différend exerce les fonctions suivantes :

- a) il précise les questions sur lesquelles porte le différend;
- b) il évalue le bien-fondé des arguments des parties;
- c) il établit un plan afin de faire progresser la situation;
- d) il encourage le règlement du différend;
- e) il remet aux parties une opinion ou une recommandation non exécutoire visant à mettre fin au différend.

46. ARBITRATION

46.1 Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.

46.2 The procedure will follow the Commercial Arbitration Code, which is a schedule to the Commercial Arbitration Act.

46.3 If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.

46.4 The arbitrator will establish the procedures of the arbitration, subject to this clause.

47. RELATED ISSUES

47.1 The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.

47.2 Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if

(a) all parties to the process consent; and

(b) the person pays the costs of his or her participation, unless otherwise agreed by the other parties to the dispute.

47.3 The decision of a verifier and a

46. ARBITRAGE

46.1 Sauf entente contraire des Parties, l'arbitrage s'effectuera conformément au présent article.

46.2 La procédure qui sera suivie est celle du Code d'arbitrage commercial, figurant à l'annexe de la Loi sur l'arbitrage commercial.

46.3 Si ce Code ne contient pas de disposition procédurale appropriée, les parties au différend peuvent suivre les Règles d'arbitrage commercial établies à l'occasion par le British Columbia International Commercial Arbitration Centre.

46.4 L'arbitre est tenu de déterminer la procédure d'arbitrage à suivre, sous réserve du présent article.

47. QUESTIONS CONNEXES

47.1 Les parties à un différend assument les frais relatifs à sa résolution à parts égales.

47.2 Toute personne dont les intérêts seraient lésés par un différend porté devant l'un des mécanismes de règlement des différends peut participer au mécanisme de règlement si :

a) d'une part, toutes les parties au mécanisme y consentent;

b) d'autre part, cette personne assume les frais de sa participation, sauf entente contraire des autres parties au différend.

47.3 La décision du vérificateur et la

decision or award of an arbitrator will be final and binding on the participating parties.

47.4 No order shall be made, processed, entered or proceeding taken in any court, whether by way of injunction, mandamus, certiorari, prohibition or quo warranto to contest, review, impeach or limit the action of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement.

47.5 Despite clause 47.4, judicial review may be taken under the Federal Court Act within 30 days of a decision of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement in respect of such person exceeding his or her jurisdiction, refusing to exercise his or her jurisdiction or failing to observe a principal of natural justice.

PART X RATIFICATION AND ENACTMENTS BY THE PARTIES

48. RATIFICATION OF AGREEMENT

48.1 The Parties agree that they will seek to ratify this Agreement and implement it in the following manner:

- (a) each First Nation agrees to develop a land code and to seek community approval; and
- (b) following community approval by two First Nations, Canada agrees to recommend to Parliament the

décision ou sentence d'un arbitre sont définitives et lient les parties qui ont participé aux mécanismes de règlement.

47.4 Aucune ordonnance ne peut être rendue, exécutée ou inscrite, et aucune poursuite ne peut être initiée devant une cour par voie d'injonction, de mandamus, de certiorari, de prohibition ou de quo warranto pour contester, réviser, empêcher ou limiter une mesure prise par le vérificateur, l'arbitre ou le conciliateur nommé sous le régime du présent accord.

47.5 Malgré l'article 47.4, une demande de révision judiciaire peut, dans les 30 jours qui suivent la décision prise par toute personne agissant comme vérificateur, arbitre ou conciliateur sous le régime du présent accord, être présentée en vertu de la Loi sur les Cours fédérales au motif que cette personne a outrepassé sa compétence, refusé de l'exercer ou n'a pas respecté un principe de justice naturelle.

PARTIE X RATIFICATION PAR LES PARTIES ET MESURES LÉGISLATIVES

48. RATIFICATION DE L'ACCORD

48.1 Les Parties conviennent de ratifier le présent accord et de le mettre en oeuvre de la façon suivante :

- a) chaque première nation s'engage à élaborer un code foncier et à le soumettre à l'approbation de la communauté;
- b) une fois un code approuvé par deux premières nations, le Canada s'engage à recommander au Parlement l'adoption

enactment of legislation.

48.2 This Agreement will be considered to have been ratified by a First Nation when the First Nation approves a land code, and to have been ratified by Canada when the federal legislation comes into force.

49. ENACTMENTS BY THE PARTIES

49.1 Canada agrees that the federal legislation that it recommends to Parliament will be consistent with and will ratify this Agreement.

49.2 In the event of an inconsistency or conflict between the federal legislation and any other federal enactment, the federal legislation will prevail to the extent of the inconsistency or conflict.

49.3 In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the Indian Act, the land code will prevail to the extent of the inconsistency or conflict.

PART XI OTHER MATTERS

50. LIABILITY

50.1 The First Nation will not be liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to First Nation land that occurred before the First Nation's land code takes effect.

d'une loi de ratification.

48.2 Le présent accord sera réputé avoir été ratifié par une première nation lorsque celle-ci aura approuvé un code foncier, et il sera réputé avoir été ratifié par le Canada au moment de l'entrée en vigueur de la loi de ratification.

49. MESURES LÉGISLATIVES ADOPTÉES PAR LES PARTIES

49.1 Le Canada s'engage à ce que la loi de ratification qu'il présentera au Parlement soit conforme au présent accord et ait pour effet de le ratifier.

49.2 En cas d'incompatibilité ou de conflit entre la loi de ratification et une autre loi fédérale, la loi de ratification l'emporte dans la mesure de l'incompatibilité ou du conflit.

49.3 En cas d'incompatibilité ou de conflit entre le code foncier d'une première nation et des dispositions de ses textes législatifs ou de règlements administratifs pris par son conseil en vertu de l'article 81 de la Loi sur les Indiens, le code foncier l'emporte dans la mesure de l'incompatibilité ou du conflit.

PARTIE XI AUTRES QUESTIONS

50. RESPONSABILITÉ

50.1 La première nation n'est pas responsable des actes ou omissions du Canada ou d'une personne ou entité autorisée par le Canada à agir à l'égard des terres de première nation et qui surviendraient avant l'entrée en vigueur du

50.2 Canada will not be liable for acts or omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation's land code takes effect.

50.3 Canada will indemnify a First Nation for any loss arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect of First Nation land that occurred before the First Nation's land code takes effect.

50.4 The First Nation will indemnify Canada for any loss arising from an act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in respect of First Nation land that occurs after the land code takes effect.

50.5 No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, in good faith, during the course of and for the purposes of carrying out his or her functions under this Agreement.

51. FIRST NATION LANDS REGISTER

51.1 Canada will establish a First Nation

code foncier de la première nation.

50.2 Le Canada n'est pas responsable des actes ou omissions de la première nation ou d'une personne ou entité autorisée par celle-ci à agir à l'égard des terres de première nation et qui surviendraient après l'entrée en vigueur du code foncier de la première nation.

50.3 Le Canada s'engage à indemniser la première nation de toute perte découlant d'un acte ou d'une omission du Canada, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait avant l'entrée en vigueur du code foncier de la première nation.

50.4 La première nation s'engage à indemniser le Canada de toute perte découlant d'un acte ou d'une omission de la première nation, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait après l'entrée en vigueur du code foncier.

50.5 Aucune action ni autre procédure ne peut être intentée contre une personne agissant en qualité de membre du Conseil consultatif des terres, de médiateur, de vérificateur, de conciliateur ou d'arbitre pour avoir, de bonne foi, agi ou omis d'agir dans l'exercice de ses fonctions ou dans le but de les exercer aux termes du présent accord.

51. REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Le Canada est tenu d'établir un

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

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

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

52. STATUS OF DOCUMENTS

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

53. PROVINCIAL RELATIONS

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

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

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

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

52. STATUT DES DOCUMENTS

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

53. RAPPORT AVEC LES PROVINCES

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

54. TIME LIMITS

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

55. OTHER REGIMES

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

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

56. REVIEW PROCESS

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

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

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

54. DÉLAIS

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

55. AUTRES RÉGIMES

55.1 Aucune disposition du présent accord n'empêche une première nation, en tout temps, d'adhérer à tout autre régime en matière de prise de décision et de contrôle par la communauté, à la condition que cette première nation soit admissible à adhérer à cet autre régime et y adhère, conformément à la procédure prévue par cet autre régime.

55.2 Le paragraphe 38.1 et l'article 57 ne s'appliquent pas à une première nation à laquelle le paragraphe 55.1 s'applique.

56. MÉCANISME D'EXAMEN

56.1 Le Conseil consultatif des terres est tenu de consulter régulièrement les représentants des Parties dans le but d'évaluer l'efficacité du présent accord et de la loi de ratification.

56.2 Dans les quatre ans de l'entrée en vigueur de la loi de ratification, le ministre et le Conseil consultatif des terres ou leurs représentants procéderont conjointement à un examen du présent accord. Cet examen portera notamment sur les points suivants :

- a) le fonctionnement de la gestion des terres aux termes du présent accord;
- b) le caractère adéquat et approprié des modalités de financement;

(c) the role of the Lands Advisory Board;

(d) whether there is a demand by other First Nations to use this Agreement;

(e) changes that may improve the functioning of First Nation land management;

(f) the dispute resolution processes; and

(g) such other issues as may be agreed to by the Parties.

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

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

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

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

AND

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

(“the Parties”)

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

AND WHEREAS the First Nation has been added as a signatory to the Framework Agreement by an adhesion signed by the First Nation and Canada on _____¹;

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

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

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

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

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

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

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

1. INTERPRETATION

1.1 In this Agreement,

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

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

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

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

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

"Framework Agreement" has the same meaning as in the Act;

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

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

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

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

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

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

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

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

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

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

2. INFORMATION PROVIDED BY CANADA

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

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

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

- (b) a list, attached as Annex “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

[Name of First Nation]

Minister of Indian Affairs and Northern
Development

[Name of Chief]

Councillor

Councillor

Councillor

ANNEX “A”

FUNDING PROVIDED BY CANADA⁵

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

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

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

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

ANNEX “B”

DETAILS FOR THE REVENUE MONEYS TRANSFER⁶

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

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

ANNEX “C”

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA⁷

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

OR

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

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

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

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

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

[List interests]

7. As per clause 6.3 of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, “a list of all the interests and licenses, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the *Indian Act*.” This Annex is referred to in clauses 2 of the Individual Agreement.

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

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

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

ANNEX “D”

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

11. As per clause 6.3 of the Framework Agreement, Canada must provide to the First Nation, as soon as practicable, “all existing information, in Canada’s possession, respecting any actual or potential environmental problems with the proposed First Nation land.” Accordingly, the title, date and author of any Environmental Site Assessment Report must be set out in this Annex, such as Phase 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 CEEA 1992, is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

ANNEX “G”

LEGAL DESCRIPTION OF _____ FIRST NATION LAND¹³

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



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

Family Representative

Family Representative

Family Representative

Family Representative

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

CERTIFIED A TRUE COPY THIS 17TH DAY OF OCT, 2007.

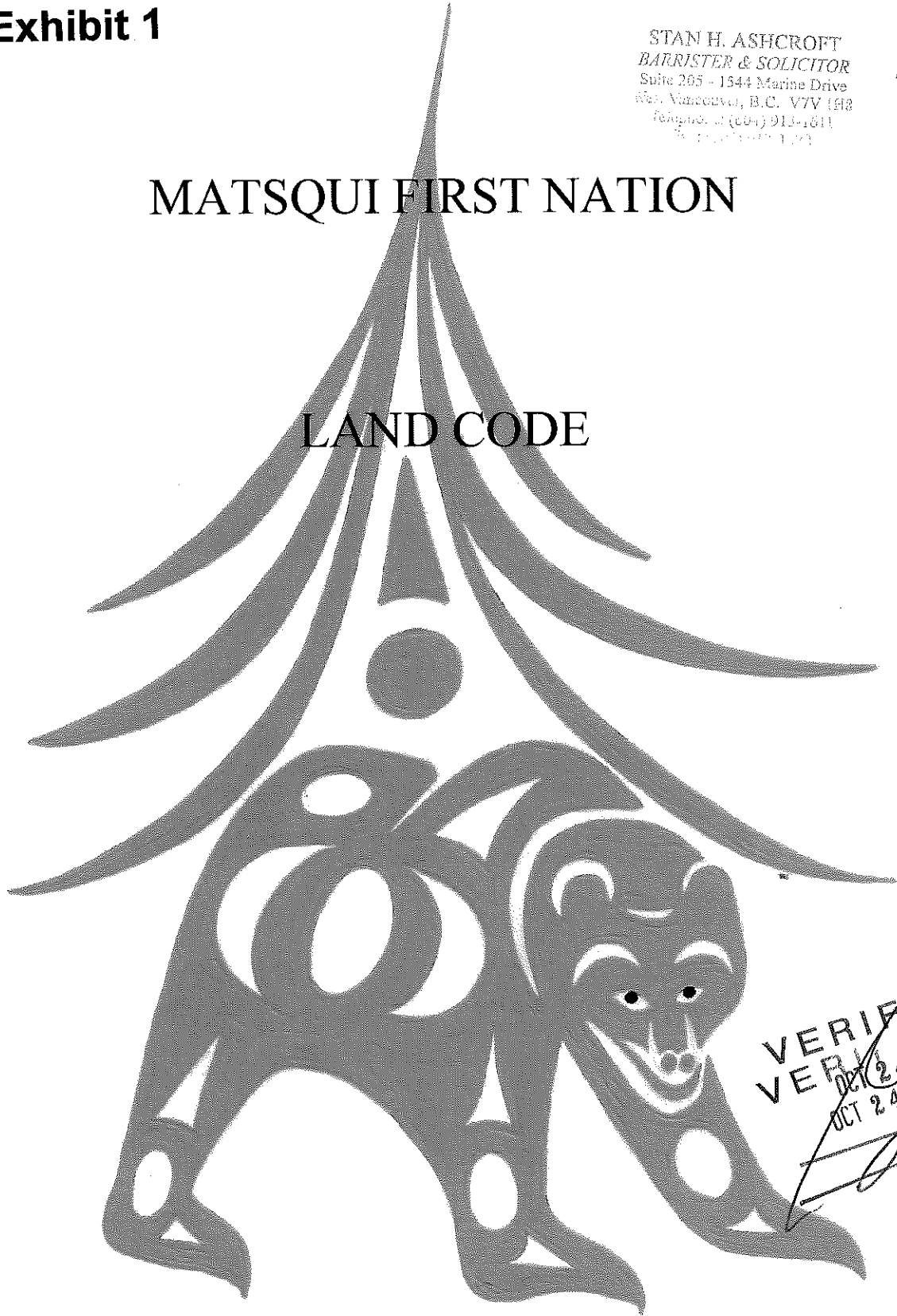
A Commissioner for taking Affidavits for British Columbia

Exhibit 1

STAN H. ASHCROFT
BARRISTER & SOLICITOR
Suite 265 - 1544 Marine Drive
Vancouver, B.C. V7V 1H2
Telephone: (604) 913-1811
Fax: (604) 913-1100

MATSQUI FIRST NATION

LAND CODE



VERIFIED
OCT 24 2007
OCT 24 2007
[Signature]

Dated for Reference October 17, 2007

RECEIVED
19/10/07
[Signature]

**MATSQUI FIRST NATION
LAND CODE**

Dated for Reference October 17, 2007

VERIFIED
OCT 24 2007

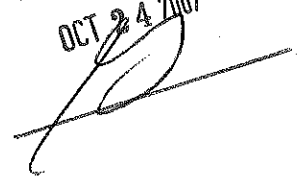

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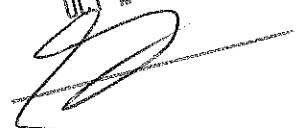
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PREAMBLE


WHEREAS the Matsqui First Nation has a profound spiritual relationship with the land;

AND WHEREAS the Matsqui First Nation wishes to enter into the Framework Agreement on First Nation Land Management with Canada, as amended and as ratified on behalf of the Government of Canada by the *First Nations Land Management Act*;

AND WHEREAS the traditional teachings of the Matsqui First Nation speak of the obligation of the people of the Matsqui First Nation to care for and respect the land and the magnificent wonders of Nature created on the land;

AND WHEREAS by enacting this Land Code, the Matsqui First Nation is re-assuming this special responsibility;

NOW THEREFORE THIS *MATSQUI FIRST NATION LAND CODE* IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE MATSQUI FIRST NATION.

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PART 1
PRELIMINARY MATTERS

1. Title

1.1 The title of this enactment is the *Matsqui First Nation Land Code*.

2. Interpretation

Definitions

2.1 In this Land Code:

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

“Band Land” means First Nation Land in which all Members have a common interest and which is not subject to any individual interest;

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

“Eligible Voter” means, for the purpose of voting in respect of land matters under this Land Code, a member who is eligible to vote under the Matsqui First Nation Custom Election Regulations and Procedures;

“First Nation” means the Matsqui First Nation;

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

“First Nation Land Register” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51.1 of the Framework Agreement;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen First Nations on February 12, 1996, as amended;

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

“Immediate Family” means, in respect of an individual, the individual’s parent, Spouse, sister, brother or child;

“Individual Agreement” means the Individual First Nation Agreement made

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between the First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Instrument” means a formal legal document;

“Land Code” means this *Matsqui First Nation Land Code*;

“Lands Committee” means the Matsqui Lands Committee established under section 14.1;

“Lands Manager” means the First Nation employee responsible for administration of First Nation Land;

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

“Matsqui Lands Office” means the office established by the Governing Body to assist in the management and administration of First Nation Lands;

“Matsqui Lands Register” means the register of Matsqui First Nation Lands which is part of the First Nations Land Register established and maintained by Canada and held in the Registry at the National Capital Region;

“Meeting of Members” means a meeting under section 25;

“Member” means a person whose name appears on the Matsqui First Nation membership list;

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

“Panel” means the Dispute Resolution Panel established under section 38.1;

“Ratification Vote” means a vote under section 26;

“Resolution” means a resolution of the Governing Body passed under this Land Code;

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

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

“Written Instrument” means an instrument in writing, in the approved form prepared by the Matsqui Lands Office, which purports to create, grant, assign or transfer an interest or licence in First Nation Lands or affect First Nation Lands.

2.2 In this Land Code:


- (a) the use of the word “will” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- (f) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (g) where the time limited for the doing of an act expires or falls on a Saturday, a Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (h) where the time limited for the doing of an act in the Matsqui administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open; and
- (i) Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.

Paramountcy

2.3 If there is an inconsistency between this Land Code and any other land enactment of the First Nation, this Land Code will prevail to the extent of the inconsistency.

2.4 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement will prevail to the extent of the inconsistency or conflict.

Culture and Traditions

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

Language

2.6 The language of the First Nation, Halq'emeylem, may be used to clarify the meaning of any provision of this Land Code if the meaning of that provision is not clear in English.

Non-abrogation

2.7 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other right or freedom that pertains now or in the future to the First Nation or to its Members.

Fair Interpretation

2.8 This Land Code will be interpreted in a fair, large and liberal manner.

Fiduciary Relationships

2.9 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the First Nation and its Members.

Lands and Interests Included

2.10 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and all rights and resources in and of that land, including:

- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land to the extent that those resources are under the jurisdiction of Canada or the First Nation; and
- (b) interests and licences granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

3. Authority to Govern

Flow of Authority

3.1 The authority of the First Nation to govern its lands and resources flows from the Creator to the people of the First Nation, and from the people to the Governing Body according to the culture, traditions, customs and laws of the First Nation.

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4. Purpose

Purpose

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

Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when this Land Code is approved by the First Nation.

5. Description of First Nation Land

First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code are the Indian reserves known as Reserve #1-Sahhacum, Reserve #2-Matsqui Main, Reserve #3-Three Islands and Reserve #4-Matsqui.

Additional Lands

- 5.2 The following lands may be made subject to this Land Code after the applicable conditions are met:
- (a) any reserve lands held jointly for the First Nation and another First Nation, where the First Nations agree upon a joint management scheme for those lands; and
 - (b) any land set apart by Canada in the future as lands reserved for the use and benefit of the First Nation within the meaning of subsection 91(24) of the *Constitution Act 1867* and subsection 2(1) of the *Indian Act*.

Land exchange

- 5.3 Section 5.2 does not apply to land acquired in accordance with section 29.

Inclusion of land or interest

- 5.4 When the relevant conditions in section 5.2 and 5.3 are met, the Governing Body will call a Meeting of Members and after receiving their input may by enacting a Law, declare the land or interest to be subject to this Land Code.

PART 2

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FIRST NATION LEGISLATION

6. Law-Making Powers

Governing Body May Make Laws

- 6.1 The Governing Body may, in accordance with this Land Code, make Laws respecting:
- (a) development, conservation, protection, management, use and possession of First Nation Land;
 - (b) interests and licences in relation to First Nation Land;
 - (c) any matter necessary to give effect to this Land Code; and
 - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

Examples of Laws

- 6.2 For greater certainty, the Governing Body may make Laws in relation to First Nation Land including:
- (a) regulation, control and prohibition of zoning, land use, subdivision control and land development;
 - (b) creation, regulation and prohibition of interests and licences in relation to First Nation Land;
 - (c) environmental assessment and environmental protection;
 - (d) provision of local services in relation to First Nation Land and the imposition of user charges;
 - (e) provision of services for the resolution, outside the courts, of disputes in relation to First Nation Land;
 - (f) enforcement of First Nation laws;
 - (g) regulation, control, authorization and prohibition of residency, access and the occupation of First Nation Land;
 - (h) authorization and regulation of subdivisions;
 - (i) conduct of surveys;
 - (j) setting aside and regulation of parks, parklands, and recreational lands;

- (k) setting aside and regulation of heritage lands and sacred sites;
- (l) rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;
- (m) creation of management and administrative bodies or agencies;
- (n) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (o) public nuisance and private nuisance;
- (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (q) instruction and maintenance of boundary and internal fences;
- (r) instruction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (s) regulation of traffic and transportation; and
- (t) fishing sites on First Nation Land.

7. Law-Making Procedure

7.1 The Governing Body will enact Laws under this Land Code in accordance with this Part.

Development of Laws

7.2 Development of a Law may be initiated by:

- (a) a Resolution, setting out the specific subject matter of the proposed Law;
or
- (b) a petition to the Governing Body signed by 30 percent of the Eligible Voters, setting out a request for development of a Law and the intended purpose and specific subject matter of the proposed Law.

Notice

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7.3 Upon initiation of a proposed law, the Governing Body will provide notice to the Members of the subject matter of the proposed law and the general nature of the provisions to be included in the proposed Law.

7.4 Notice under section 7.3 will be provided by:

- (a) publication of a notice in the First Nation newsletter mailed to Eligible Voters at their last known address; or
- (b) by written notice, delivered or mailed to Eligible Voters at their last known address; and
- (c) posting of the notice in a public area of the First Nation administration offices.

7.5 Notice under section 7.3 will:

- (a) invite written comments from Members on the subject matter and content of the proposed Law; and
- (b) specify a date at least 20 days from the date of the notice for Members to provide comments under subsection (a).

Governing Body Shall Consider

7.6 Upon expiry of the time specified under section 7.5(b), the Governing Body will take into consideration any comments received, the needs of the community and other relevant matters and shall prepare a draft Law.

Consideration in Principle

7.7 The Governing Body will table the draft Law at a regular meeting of the Governing Body.

7.8 After considering the draft Law the Governing Body will by Resolution:

- (a) accept the draft Law in principle and set a return date for further consideration by the Governing Body;
- (b) reject the draft Law; or
- (c) direct further work on the draft Law and specify a return date for further consideration by the Governing Body.

Explanation for Rejection

7.9 Upon the request of any Eligible Voter, the Governing Body will explain its reasons for rejecting a draft Law.

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Approval by Council

- 7.10 A Law is enacted if it is approved in writing by a quorum of the Governing Body on a return date set under section 7.8(a) or (c).

Coming into Force

- 7.11 A Law comes into force on the date of its enactment or such other date as may be specified by the Law.

Urgent Matters

- 7.12 The Governing Body may enact a Law without notice if the Governing Body is reasonably of the opinion that the Law is required urgently to protect First Nation Land or Members.
- 7.13 A Law enacted under section 7.12 shall be deemed to have been repealed and to have no force and effect as of 28 days after its enactment, but may be re-enacted in accordance with this Part.
- 7.14 Notwithstanding the provisions of the Matsqui First Nation Custom Election Regulations and Procedures For purposes of enacting a Law under section 7.12, the quorum for the Governing Body will consist of a seventy-five percent majority of the Governing Body.

8. Publication of Laws

Publication

- 8.1 All Laws will be published in the minutes of the Governing Body.

Posting Laws

- 8.2 Within seven days after a Law has been enacted, the Governing Body will post a copy of the Law in the First Nation administration offices.

Registry of Laws

- 8.3 The Governing Body will cause to be kept, at the First Nation administration offices, a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are no longer in force.
- 8.4 Any person may, during regular business hours at the First Nation administration offices, have reasonable access to the register of Laws.

Copies for Any Person

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- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by the Governing Body.
- 8.6 Section 8.5 does not preclude the Governing Body from making copies of a Law or Resolution available to Members without fee.

PART 3

FINANCIAL MANAGEMENT AND LAND ADMINISTRATION

9. Financial Management

Application

- 9.1 This part applies only to financial matters in relation to First Nation Land that is administered under this Land Code.

Establishment of Bank Accounts

- 9.2 The Governing Body will maintain one or more financial accounts in a financial institution and will deposit in those accounts:
- (a) transfer payments received from Canada for the management and administration of First Nation Land;
 - (b) moneys received by the First Nation from the grant or disposition of interests or licences in First Nation Land including monies arising from natural resources;
 - (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
 - (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licences in First Nation land; and
 - (e) any other revenue received by the First Nation from First Nation Land.
- 9.3 The Governing Body will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which the Governing Body, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to Members within the meaning of clause 5.2(d) of the Framework Agreement.

Financial Policy

- 9.4 The First Nation may, in accordance with this Land Code, adopt a financial policy to further manage moneys related to First Nation Land.

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Signing Officers

- 9.5 The Governing Body will authorize a minimum of three persons, at least one of whom will be a member of the Governing Body and one of whom will be the Lands Manager, to sign cheques and other bills of exchange or transfers drawn on a financial account maintained under section 9.2.
- 9.6 A cheque or other bill of exchange or transfer drawn on a financial account maintained under section 9.2 must be signed by any two persons authorized under section 9.5
- 9.7 A payee who is a signor under section 9.5 will not sign a cheque payable to them self.
- 9.8 Every signing officer will complete such security screening process as may be prescribed by Governing Body.

Fiscal Year

- 9.9 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

- 9.10 The Governing Body will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if the Governing Body deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 9.11 Prior to adopting a budget referred to in section 9.10, the Governing Body will consult with the Lands Committee.

Procedure

- 9.12 After adopting a land management budget or supplementary budget, the Governing Body will as soon as practicable:
- (a) present the budget or supplementary budget to the Members at a general Matsqui Band meeting; and
 - (b) make a copy of the budget or supplementary budget available at the First Nation administration offices for inspection by Members during regular business hours.

If No Budget

- 9.13 If the Governing Body fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary

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budget of the previous fiscal year will apply until another budget is adopted.

Expenditures

- 9.14 The Governing Body may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an adopted budget.

Determination of Revenues

- 9.15 The Governing Body may establish a process for determining:
- (a) fees and rent for interests and licences in First Nation Land; and
 - (b) fees for services provided in relation to First Nation Land and compliance with this Land Code.

10. Financial Records

Financial Records

- 10.1 The First Nation will keep financial records in accordance with generally accepted accounting principles.

Offences

- 10.2 Any person who has control of the financial records of the First Nation and who:
- (a) impedes or obstructs anyone from exercising a right to inspect those records; or
 - (b) fails to give all reasonable assistance to anyone exercising a right to inspect those financial records,
- is guilty of an offence under this Land Code.

Preparation of Financial Statement

- 10.3 Within 90 days after the end of each fiscal year the Governing Body will prepare a financial statement in comparative form containing:
- (a) a balance sheet;
 - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
 - (c) any other information necessary for a full and fair presentation of the financial position of the First Nation in relation to First Nation Land.

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Consolidated Accounts

- 10.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

11. Audit

Appointment of Auditor

- 11.1 For each fiscal year, the Governing Body will appoint a duly accredited auditor to audit the financial records under this Part.
- 11.2 An auditor appointed for other First Nation audits may be appointed under section 11.1.

Vacancy in Office

- 11.3 If a vacancy occurs during the term of an auditor, the Governing Body will forthwith appoint a new auditor for the remainder of the former auditor's term.

Remuneration

- 11.4 An appointment under section 11.1 will contain a statement approving the remuneration to be paid to the auditor.

Duty of Auditor

- 11.5 The auditor will, within 120 days after the end of the First Nation's fiscal year, prepare and submit to the Governing Body an audit report on the First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the First Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

- 11.6 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

- 11.7 The Governing Body will present the auditor's report at a Meeting of Members.

12. Annual Report

Publish Annual Report

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12.1 The Governing Body will prepare and table an annual report on First Nation Land management.

12.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;
- (b) a copy and explanation of the audit report as it applies to First Nation Lands; and
- (c) such other matters as may be directed by the Governing Body.

13. Access to Financial Information

Copies for Members

13.1 A Member may, during normal business hours at the First Nation administration offices, have reasonable access to:

- (a) the auditor's report; and
- (b) the annual report.


13.2 A Member may, during normal business hours at the First Nation administration offices, obtain a copy of the auditor's report or annual report on First Nation Land management.

14. Lands Committee

Lands Committee Established

14.1 A Lands Committee is hereby established to:

- (a) assist with the development of a First Nation Land administration system;
- (b) advise the Governing Body and First Nation staff on matters respecting First Nation Land;
- (c) recommend to the Governing Body Laws, Resolutions, policies and procedures respecting First Nation Land;
- (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to the Governing Body on the resolution of such issues;
- (e) assist in the exchange of information regarding First Nation Land matters between Members and the Governing Body;

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- (f) oversee community consultations under this Land Code; and
- (g) perform such other duties and functions as the Governing Body may direct.

Development of Land Related Rules and Procedures

14.2 Within a reasonable time after this Land Code takes effect, the Governing Body will, in consultation with the Members, establish rules and procedures to address the following matters:

- (a) environmental protection and environmental assessment;
- (b) resolution of disputes in relation to First Nation Land;
- (c) land use planning and zoning; and
- (d) section 40 respecting spousal property.

Implementation of Policies

14.3 Rules and procedures developed in accordance with section 14.2 will be given full and fair consideration by the Governing Body for implementation as Laws, policies or amendments to this Land Code.

Internal Procedures

14.4 The Governing Body may:

- (a) establish rules and procedures for the conduct of meetings and general affairs of the Lands Committee;
- (b) establish policies for the remuneration and recovery of expenses incurred by Lands Committee members; and
- (c) establish programs for the orientation and education of Lands Committee members.

14.5 The Governing Body will consult with the Lands Committee in the implementation of section 14.4.

15. Lands Committee Membership

Composition

15.1 The Lands Committee will be comprised of a minimum of five Eligible Voters.

Eligibility

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15.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be appointed to the Lands Committee, except for:

- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment; or
- (b) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

Appointment of Land Management Committee Members

15.3 The members of the Lands Committee will consist of:

- (a) at least one member of the Governing Body; and
- (b) up to an additional nine Members, some or all of whom may be Governing Body Members, all of whom will be appointed by the Governing Body.

15.4 The Governing Body will enact a Law to establish the procedure for selection of Lands Committee members, including such transitional rules as may be necessary for the members of the first Lands Committee.

15.5 A Law enacted under section 15.4 will include:

- (a) a process for providing notice to Members that appointments will be made to the Lands Committee and offering Members an opportunity to apply for such appointments; and
- (b) standards and criteria for appointment to the Lands Committee.

Term of Office and Vacancy

15.6 A member of the Lands Committee will serve in office until that member:

- (a) resigns in writing;
- (b) becomes ineligible to hold office under section 15.2 or 15.3(a);
- (c) ceases to be a Member;
- (d) is absent from three consecutive meetings of the Lands Committee for a reason other than permitted by the Lands Committee; or
- (e) dies or becomes mentally incompetent.

Filling of Vacancy

15.7 Where the office of a member of the Lands Committee becomes vacant, the

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vacancy will be filled in accordance with section 15.3.

16. Chair of the Lands Committee

Chair

16.1 The member of the Lands Committee appointed under section 15.3(a) will be the Chair of the Lands Committee.

Co-chair

16.2 The members of the Lands Committee will appoint a Co-chair who will perform the functions of the Chair if the Chair is unavailable or unable to perform the functions of office.

Alternate

16.3 If the Chair and Co-chair are unavailable or unable to perform the functions of office, the Lands Committee will appoint another member of the Lands Committee to serve as interim Chair.

Duties of the Chair

16.4 The duties of the Chair are to:

- (a) chair meetings of the Lands Committee;
- (b) ensure that financial statements relating to the activities of the Lands Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with the Governing Body;
- (c) report to the Governing Body and the Members on the activities of the Lands Committee;
- (d) monitor the presentation of the audited annual financial statements under section 11.7; and
- (e) perform such other duties as the Governing Body or the Lands Committee may reasonably prescribe.

17. Matsqui Lands Office

Administration

17.1 The Governing Body will perform all the duties and functions, and exercise all the powers, of the First Nation that are not specifically assigned to any other person or body established under this Land Code.

17.2 The Matsqui Lands Office shall carry out duties and responsibilities delegated or assigned to it pursuant to this Part or by First Nation Law.

17.3 Without limiting the generality of the duties and responsibilities of the Matsqui Lands Office, it shall:

- (a) administer First Nation Land in accordance with this Land Code and Matsqui First Nation Law;
- (b) prepare forms of Written Instruments for use in registering or recording interests or licences in First Nation Lands where deemed necessary and advisable by the Matsqui Lands Office;
- (c) prepare forms of Written Instruments for use in registering or recording instruments which affect, or purport to affect, First Nation Lands where deemed necessary and advisable by the Matsqui Lands Office;
- (d) receive Written Instruments sought to be registered or recorded in the Matsqui Lands Register;
- (d) review Written Instruments sought to be registered or recorded in the Matsqui Lands Register;
- (e) review Written Instruments for technical compliance with the Land Code, Matsqui First Nation Law and other applicable laws or policies;
- (f) arrange for the execution of Written Instruments and related documentation on behalf of the First Nation, the Minister and Her Majesty the Queen in right of Canada;
- (g) arrange for the registration or recording of Written Instruments in the Matsqui Lands Register;
- (h) maintain and protect records in relation to First Nation Lands;
- (i) prepare and present regular reports to the Governing Body; and
- (j) carry out such duties as are requested or required by the Governing Body consistent with this Land Code, First Nation Law and other applicable law.

Lands Manager

17.4 The Lands Manger shall oversee the day-to-day operations of the administration of First Nation Land and perform such duties and responsibilities consistent with

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this Land Code and First Nation Law.

- 17.5 Without limiting the generality of sections 17.3 and 17.4, the Lands Manager or his or her designate appointed in writing, shall:
- (a) execute such Written Instruments and carry out any action required to be taken by and on behalf of the Minister or Her Majesty the Queen in right of Canada in relation to an interest or licence in First Nation Lands;
 - (b) carry out any action that was required to be taken by the Minister or Her Majesty the Queen in right of Canada in relation to an interest or licence described in section prior to the date this Land Code comes into force; and
 - (c) manage the Matsqui Lands Office;
 - (d) present proposed Laws to the Members; and
 - (e) carry out any action or responsibility delegated to the Lands Manger pursuant to section 17.2.

Delegation

- 17.6 Despite section 17.1 the Governing Body may delegate administrative authority in relation to a Law enacted under section 7.1 to an individual or a body established or authorized under this Land Code.

18. Registration of Interests and Licences

Matsqui Lands Register

- 18.1 An interest or licence in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered or recorded in the Matsqui Lands Register.

Registration of Consent or Approval

- 18.2 No instrument that requires the consent of the Governing Body or approval of the Lands Committee may be registered or recorded in the Matsqui Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.

Duty to Deposit

- 18.3 An interest or licence in Matsqui Lands may only be created, granted, assigned or transferred by Written Instrument in accordance with this Land Code.

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- 18.4 No person may acquire an interest or licence in Matsqui Lands by use, occupation or any other means not authorized either pursuant to this Land Code or by Matsqui Law.
- 18.5 No Written Instrument is valid nor shall it be forwarded to the First Nation Lands Registry for registration or recording unless it has first been submitted to the Lands Manager or his or her designate at the Matsqui Lands Office. Only the Matsqui Lands Office may submit a Written Instrument or an instrument described in section 19.8 for registration or recording in the First Nation Lands Registry.
- 18.6 The Governing Body will ensure that a copy of the following is kept at the Matsqui Lands Office:
- licence
- (c) a land use plan or subdivision plan; and
- (d) this Land Code and any amendment to this Land Code.
- 18.7 The Governing Body may enact a Law providing for maintenance of the Matsqui Lands Register in such other land registry system or facility as may meet the requirements of the Matsqui Lands Register.

19. First Nation Lands Register

- 19.1 Interests or licences in, and registrable instruments with affect, or purport to affect, First Nation Lands shall be registered or recorded in the Matsqui Lands Register.
- 19.2 Notwithstanding section 19.1 only those instruments that are in compliance with this Land Code can be registered or recorded in the Matsqui Lands Register.
- 19.3 A copy of all Written Instruments will be kept at the Matsqui Lands Office that are submitted for registration or recording in the Matsqui Lands Register.
- 19.4 Subject to this section, the Act and any regulation passed pursuant to the Act, the Matsqui Lands Register shall be administered in the same manner as the Reserve Land Register established under the *Indian Act*.
- 19.5 The Matsqui Lands Register shall accommodate the registration and recording of interests or licences not accommodated specifically by the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and the Governing Body.
- 19.6 Transactions dealing with interests or licences in Matsqui Lands shall be filed with the Matsqui Lands Office and once verified as technically complying with

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this Land Code and Matsqui Law shall be forwarded to the Matsqui Lands Register for registration or recording.

- 19.7 Financial claims or other assertions of right which affect, or purport to affect, First Nation Land may, in accordance with Matsqui Law and other applicable law, be recorded in the Matsqui Lands Register subject to the approval of the form and content of same by the Matsqui Lands Office.
- 19.8 The types of instruments which may be recorded in the Matsqui Lands Register under section 19.7 include, but are not limited to, instruments relating to:
- (a) Judgments;
 - (b) Court Orders;
 - (c) Rights of First Refusal;
 - (d) Certificates of Pending Litigation;
 - (e) Caveats;
 - (f) Liens;
 - (g) Assignments of Rent;
 - (h) Options to Purchase; and
 - (i) Tax certificates.

The recording of such instruments, or other instruments, is subject to approval by the Lands Manger and the Registrar of the First Nations Land Registry.

20. Date of Grant or Transfer of Interests or Licences

- 20.1 The grant, transfer or other disposition of an interest or licence in First Nation Lands shall be effective on the date the documents are registered or recorded in the Matsqui Lands Registry.
- 20.2 An interest or licence in First Nation Lands is not enforceable unless it is registered or recorded in the Matsqui Lands Registry. This section is not meant to preclude *in personam* rights or causes of action that may be pursued by one part as against another party for a claim in relation to an interest in First Nation Lands.

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- 20.3 Subject to section 20.6, registered or recorded interests or licences that affect the same parcel of First Nation Land have priority according to the time and date of their registration and not according to the time and date of their execution.
- 20.4 A registered interest affecting First Nation Land is entitled to priority over an unregistered interest affecting the same parcel of First Nation Land.
- 20.5 A registered mortgage has a priority over a subsequently registered interest that affects the same parcel of First Nation Land, to the extent of the money actually advanced under the mortgage, to a maximum of the amount secured by the Mortgage, even if all or part of the money was advanced after the registration of the subsequently registered interest.
- 20.6 (a) The holder of a registered interest, or a person applying to register an interest, may apply to register or record a postponement agreement that gives priority over the registered interest to a specified interest that was, or is to be, subsequently registered.
- (b) On the registration or recording of a postponement agreement, priority shall be accorded to the interests referred to in the agreement in the manner provided for in the agreement.

21. Surveys

- 21.1 The Governing Body may cause surveys to be made of First Nations Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 21.2 The holder of an interest or licence in First Nation Lands may cause surveys to be made of those lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 21.3 All surveys of First Nation Lands prepared by the Surveyor General of Canada or his or her designate shall be deemed for all purposes to accurately describe and identify the boundaries of the lands covered by such survey.
- 21.4 All surveys respecting First Nation Lands only become effective upon registration or recording in the Matsqui Lands Registry.

PART 4 CONSULTATION AND MEMBER APPROVALS

22. Rights of Eligible Voters

Rights of Eligible Voters

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22.1 An Eligible Voter may vote in a Ratification Vote.

23. Approval by Eligible Voters

Approval

23.1 Approval by majority vote of Eligible Voters who attend a Meeting of the Members must be obtained for:

- (a) a land use plan;
- (b) amendment of a land use plan;
- (c) a grant or disposition of an interest or licence in First Nation Land for a term exceeding 49 years;
- (d) renewal of a grant or disposition of an interest or licence in First Nation Land for a term exceeding 49 years, or that would have the effect of extending the original grant or disposition for a term exceeding 49 years;
- (e) a grant or disposition of natural resources on First Nation Land exceeding a term of one year;
- (f) a Law enacted under section 38; and
- (g) any Law or class of Law that Governing Body, by Resolution, declares to be subject to this section.

23.2 The Governing Body may establish policies and procedures for:

- (a) approvals under section 23.1, including timelines for decision-making; and
- (b) regular review of grants or dispositions issued under sections 23.1(c) to 23.1(f).

24. Member Consultation

Meeting with Committee and Elders

24.1 Prior to approving a draft Law under section 7.10, the Governing Body will call a Meeting of Members to receive input in respect of:

- (a) a land use plan;
- (b) a subdivision plan;

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- (c) declaring land or an interest in land referred to in section 5.2 or 5.3 to be subject to this Land Code;
- (d) heritage land;
- (e) environmentally sensitive property;
- (f) environmental assessment;
- (g) spousal property under section 40; and
- (h) any other matter or class of matters that Governing Body by Resolution declares to be subject to this section.

Process to Implement Laws

- 24.2 The Governing Body will, within a reasonable time after this Land Code takes effect-develop and implement the Laws referred to in section 24.1.
- 24.3 Nothing in this Land Code precludes the Governing Body from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts.

25. Meeting of Members

Notice of Meeting

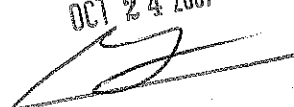
- 25.1 The Governing Body will give written notice of a Meeting of Members that:
 - (a) specifies the date, time and place of the meeting; and
 - (b) contains a brief description of the matters to be discussed at the meeting.

Manner of Notice

- 25.2 Written notice of a Meeting of Members under section 25.1 will be given by:
 - (a) posting the notice in public places on First Nation Land at least 21 days before the meeting;
 - (b) mailing the notice to Members at least 21 days before the meeting; and
 - (c) such additional methods as Governing Body may consider appropriate.

26. Ratification Votes

Approval by Ratification Vote

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- 26.1 Approval by a Ratification Vote must be obtained for:
- (a) voluntary exchange of First Nation Land under section 29;
 - (b) amendment of this Land Code;
 - (c) expropriation of a Member's interest under Part 5; and
 - (d) enactment of a Law or class of Laws that the Governing Body by Resolution declares to be subject to this section.

Individual Agreement with Canada

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

Ratification Process

- 26.3 A Ratification Vote required under this Land Code will be conducted, with any appropriate modifications necessary in the circumstances, in substantially the same manner as that provided in the Matsqui First Nation Ratification Process that was used to ratify this Land Code.

Minimum Requirements for Approval

- 26.4 A matter will be approved by a Ratification Vote if a majority of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote in favour of the matter.

No Verifier

- 26.5 A Verifier is not required in a Ratification Vote.

PART 5 PROTECTION OF LAND

27. Expropriation by First Nation

Rights and Interests That May Be Expropriated

- 27.1 An interest in First Nation Land or in any building or other structure on that land may be expropriated by the First Nation in accordance with the Framework Agreement and any Law enacted under section 27.3 of this Land Code.

Community Purposes

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27.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including but not limited to fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.

Expropriation Law

27.3 The Governing Body will enact a Law respecting the rights and procedures for expropriations, including provisions in respect of:

- (a) taking possession of an expropriated interest;
- (b) transfer of an expropriated interest;
- (c) notice of an expropriation;
- (d) service of a notice of expropriation;
- (e) entitlement to compensation;
- (f) determination of the amount of compensation; and
- (g) the method of payment of compensation.

Public Report

27.4 Before the First Nation expropriates an interest, the Governing Body will:

- (a) prepare a report on the reasons for the expropriation;
- (b) post a copy of the report in the First Nation administration offices; and
- (c) mail a copy of the report to each Eligible Voter at their last known address.

Acquisition by Mutual Agreement

27.5 The First Nation may expropriate only after a good faith effort to acquire, by mutual agreement, the interest in First Nation Land.

Approval by Ratification Vote

27.6 An expropriation of a Member's interest, where the Member and the Governing Body have not agreed to the expropriation, has no effect unless the proposed expropriation receives prior approval by a Ratification Vote.

Compensation for Rights and Interests

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27.7 The First Nation will, in accordance with its Laws and the Framework Agreement:

- (a) serve reasonable notice of the expropriation on each affected holder of the interest to be expropriated; and
- (b) pay fair and reasonable compensation to the holder of the interest licence being expropriated.

Compensation Calculation

27.8 The total value of compensation payable under section 27.8(b) will be based on:

- (a) the fair market value of the interest being expropriated;
- (b) the replacement value of any improvement to the land being expropriated;
- (c) the damages attributable to any disturbance; and
- (d) damages for reduction in the value of any remaining interest.

Market Value

27.9 The fair market value of an expropriated interest is equivalent to the amount that would have been paid for the interest or licence if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

27.10 Subject to section 27.13, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.

27.11 The 60 day period referred to in clause 33.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

27.12 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

- (a) a dispute concerning the right of the holder of an expropriated interest to compensation; and
- (b) a dispute concerning the amount of compensation.

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28. Heritage Land

Governing Body Approval

- 28.1 Development will be permitted on a site designated as heritage land under a First Nation Land use plan only if the proposed development receives approval in writing by a quorum of the Governing Body.
- 28.2 Section 28.1 applies to any lands designated as sacred lands by the Governing Body.

29. Voluntary Land Exchange and Protection

Conditions for a Land Exchange

- 29.1 The First Nation may agree with another party to exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

- 29.2 A land exchange is of no effect unless it receives approval by a Ratification Vote.

Land to be Received

- 29.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:
- (a) is of equal or greater area than the First Nation Land to be exchanged; or
 - (b) is of a value comparable to the appraised value of the First Nation Land to be exchanged. and
 - (c) is eligible to become a reserve under the *Indian Act* and First Nation Land subject to this Land Code.

Negotiators

- 29.4 A person who negotiates a land exchange on behalf of the First Nation will be designated by Resolution.

Additional Compensation

- 29.5 The First Nation may receive additional compensation, including money or other land in addition to the land referred to in section 29.3.

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29.6 Such other land may be held by or on behalf of the First Nation in fee simple or otherwise.

Federal consent

29.7 The First Nation may conclude an agreement for a land exchange provided that the agreement contains a condition subsequent that, the Governing Body must receive a written statement from Canada stating that Her Majesty in right of Canada:

- (a) has agreed to set apart as a reserve the land to be received in the land exchange, as of the date of the land exchange or such later date as the Governing Body may specify by Resolution; and
- (b) consents to the form of the land exchange as set out in the land exchange agreement.

Information to Members

29.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in section 29.2, the Governing Body will provide the following information to Members:

- (a) a description of the First Nation Land to be exchanged;
- (b) a description of the land to be received by the First Nation;
- (c) a description of any additional compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in sections 29.3(a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the statement referred to in section 29.7.

Process of Land Exchange

29.9 A land exchange agreement will provide that:

- (a) the other party to the exchange will transfer to Canada the title to the land that is to be set apart as a reserve;
- (b) the Governing Body will pass a Resolution authorizing Canada to transfer title to the First Nation Land being exchanged, in accordance with the land exchange agreement; and

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- (c) a copy of the instruments transferring title to the land will be registered in the Matsqui Lands Register.

PART 6 CONFLICT OF INTEREST

30. Conflict of Interest

Application of Rules

30.1 Section 30.2 applies to:

- (a) a member of the Governing Body who is dealing with any matter before the Governing Body that is related to First Nation Land;
- (b) an individual who is an employee of the First Nation dealing with any matter that is related to First Nation Land; and
- (c) an individual who is a member of a board, committee, Panel or other body of the First Nation dealing with any matter that is related to First Nation Land.

Duty to Report and Abstain

30.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) disclose the interest to the Governing Body, employment supervisor, board, committee or other body;
- (b) take no part in any deliberations on the matter; and
- (c) take no part in any vote on the matter.

Common Interests

30.3 Section 30.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Members

30.4 If the Governing Body is unable to vote on a proposed Law or Resolution due to a conflict of interest, the Lands Manager may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible

Voters present at the meeting may enact the Law or Resolution.

Inability to Act

- 30.5 If a board, committee or other body is unable to act due to a conflict of interest, the matter will be referred to the Governing Body and the Governing Body may decide the matter.

Disputes

- 30.6 Determination of whether a breach of this Part has occurred may be referred to the Panel.

PART 7 INTERESTS AND LICENCES IN LAND

31. Limits on Interests and Licences

All Dispositions in Writing

- 31.1 An interest in, or licence to use, First Nation Land may only be created, granted, disposed of, assigned or transferred by an Instrument issued in accordance with this Land Code.

Standards

- 31.2 The Governing Body may, after full and fair consideration of any recommendations made by the Lands Committee, establish mandatory standards, criteria and forms for creating, granting and disposing of interests and licences in First Nation Land.

Improper Transactions Void

- 31.3 A deed, lease, contract, document, agreement or instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an interest or licence in First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

Non-Members

- 31.4 A person who is not a Member may hold a lease or licence in First Nation Land.

Grants to Non-Members

- 31.5 The written consent of the Governing Body is required in any grant or disposition of a lease or licence in First Nation Land to a person who is not a Member.

32. Existing Interests

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Continuation of Existing Interests

- 32.1 An interest or licence in First Nation Land, whether held by a Member or a person other than a Member, that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.

Cancellation or Forfeiture of Interests or Licences

- 32.2 Except as otherwise provided in this Land Code, First Nation Law or by operation of law no interest or licence in First Nation Lands may be cancelled or forfeited unless:

- (a) all parties to the relevant Written Instrument have consented in writing to the cancellation or forfeiture as the case may be;
- (b) a court of competent jurisdiction has ordered the cancellation or forfeiture of the interest or licence and the time period for filing an appeal of the order has passed without an appeal having been taken; or
- (c) an arbitrator or other person appointed to adjudicate a dispute pursuant to the Written Instrument in issue has ordered or declared the interest or licence to be cancelled or forfeited and no appeal has been taken from the decision within the allotted time.

- 32.3 Notwithstanding section 30.2 no interest or licence in First Nation Lands may be cancelled or forfeited if it will adversely affect:

- (a) An interest or licence in those First Nation Lands held by a third party; or
- (b) a claim against, or interest or licence in, those First Nation Lands held by the First Nation.

- 32.4 If an interest or licence in First Nation Lands is cancelled or forfeited under section 30.2 the Matsqui Lands Register will be amended or rectified accordingly.

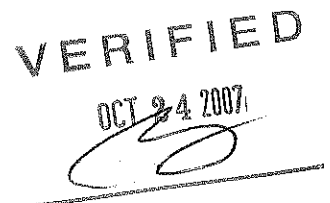
licence

33. New Interests and Licences

Authority to Make Dispositions

- 33.1 Subject to this Land Code, the Governing Body may grant:

- (a) interests and licences in First Nation Land; and



- (b) permits and licences to take resources from First Nation Land.

Conditional Grant

- 33.2 The grant of an interest, licence or permit under section 33.1 may be made subject to conditions.

Types of Interests and Licences

- 32.3 The types of interests or licences in First Nation Lands are:

- (a) leaseholds;
- (b) easements;
- (c) permits; and
- (d) mortgages.

34. No Lawful Possession

Prohibition of Permanent Interests

- 34.1 No member shall be allocated First Nation Land in perpetuity nor be granted an interest in First Nation Land equivalent to that set forth in subsection 20(1), (2) and (3) of the *Indian Act*.

35. Leases and Allocation to Members

Leases and allocations to Members

- 35.1 The Governing Body may enact Laws providing for the leasing of available First Nation Land to Members for residential, commercial or other purposes.
- 35.2 No residential lot will be allocated to any person including a Member
- 35.3 A residential house may only be allocated by the Governing Body to a Member.

36. Transfer and Assignment of Interests

Transfer of Interests

- 36.1 The Governing Body may enact Laws providing that a Member holding a leasehold interest in First Nation Land may transfer, devise or otherwise dispose of that leasehold interest to another Member.
- 36.2 Except for transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under section

37:

- (a) there will be no transfer or assignment of an interest in First Nation Land without the written consent of the Governing Body; and
- (b) the grant of an interest is deemed to include section 36.2(a) as a condition of any subsequent transfer or assignment.

37. Limits on Mortgages and Seizures

Protections

37.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply on First Nation Land.

Mortgage of Member's Interest

37.2 The interest of a Member in First Nation Land other than a leasehold interest may be subject to a mortgage or charge only to the First Nation.

Mortgages of Leasehold Interests with Consent

37.3 A leasehold interest may be subject to a charge or mortgage only with the written consent of the Governing Body.

Default in Mortgage of Leasehold

- 37.4 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the charge or mortgage received the written consent of the Governing Body;
 - (c) the charge or mortgage was registered in the Matsqui Lands Register; and
 - (d) a reasonable opportunity to redeem the charge or mortgage was given to the First Nation.

Power of Redemption

37.5 If the First Nation exercises its power of redemption with respect to a leasehold interest, the First Nation becomes the lessee of the land and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

38. Residency and Access Rights

Civil Remedies

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38.1 Subject to a Law enacted under section 6.2(n) all civil remedies for trespass are preserved.

No Obligation on the First Nation

38.2 A right of residence or access does not imply any financial obligation on the part of the First Nation.

No Liability on the First Nation

38.3 No liability is imposed upon the First Nation in respect of any person exercising a right of access in accordance with this Land Code for injuries or damages suffered on account of the condition or state of First Nation Land.

39. Transfer on Death

39.1 A Member who claims to be entitled to possession of a house First Nation Land by devise or descent in accordance with the provisions of the *Indian Act* relating to the estate of an Indian is not entitled to lawful possession of that house unless the Member has filed with the Governing Body, an instrument in a form prescribed by the Governing Body, duly executed by the personal representative of the estate of the deceased member transferring possession of the house.

Right of Surviving Spouse

39.2 In the event that:

- (a) a Member holding a leasehold interest or a house allocated to that Member in First Nation Land and residing on that leased First Nation Land dies intestate and is survived by a Spouse or dependant who does not hold an interest in that land or the house; or
- (b) a Member holding a leasehold interest in First Nation Land or living in a house allocated to that Member is declared incompetent due to mental incapacity,

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on the leased land or in the house until disposition of the Member's interest.

39.3 A Spouse or dependant referred to in section 39.2, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's leasehold interest or the house, and Governing Body will, subject to this Land Code, evaluate the application on its merits and recommend accordingly.

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39.4 In the event that:

- (a) no other provision has been made by a Member referred to in section 39.1 for the disposition of the allocation; or
- (b) the Member's Spouse or dependant does not within a reasonable time make application under section 39.3; or
- (c) a member of the Member's Immediate Family disputes the continued residence on or use of the house by the Member's Spouse or dependant,

the Governing Body will take reasonable steps to advise other members of the Member's Immediate Family that the house held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Dispute Resolution Panel if requested, recommend who is to receive the house .

Meeting of Members

- 39.5 If a Member referred to in section 39.1 has no Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the interest, the Governing Body will recommend who is to receive the interest and may call a Meeting of Members to provide advice on the disposition of the interest.
- 39.6 Subject to this Land Code, the Governing Body will make best efforts to implement a recommendation made under section 37.3, 37.4 or 37.5.
- 39.7 A Member who claims to be entitled to possession of First Nation Land by devise or descent in accordance with the provisions of the *Indian Act* relating to the estate of an Indian is not entitled to lawful possession of that First Nation Land or a Certificate of Possession unless:
- (a) The Member has filed with the Governing Body and the Governing Body has approved, a Written Instrument, duly executed by the personal representative of the estate of the deceased Member transferring the possession to the Member; and
 - (b) The Written Instrument referred to in subsection 39.7(a) is registered in the Matsqui Lands Register.
- 39.8 The purchaser of a right to possession of First Nation Land under the provisions of subsection 50(2) of the *Indian Act*, shall be deemed not be in lawful possession of the First Nation Land unless:

- (a) The purchaser has filed with the Governing Body and the Governing Body has approved, a Written Instrument, duly executed by the person authorized under the *Indian Act* to execute a transfer of lawful possession of the First nation Land obtained under subsection 50(2) of the *Indian Act*; and
- (b) The Written Instrument referred to in subsection 39.8(a) is registered in the Matsqui Lands Register.

40. Spousal Property Law

Development of Rules and Procedures

- 40.1 Within twelve months after the date this Land Code comes into effect the Governing Body will enact a spousal property Law applicable on the breakdown of a marriage to:
- (a) the use, occupancy and possession of First Nation Land; and
 - (b) the division of interests in that land.

General Principles

- 40.2 The Law developed under section 40.1 will take into account the following general principles:
- (a) a child of the Spouses should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of that child;
 - (b) the Spouses should resolve spousal property matters by contract or agreement;
 - (c) each Spouse should have an equal right to possession of the matrimonial home;
 - (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common; and
 - (e) the rules and procedures will not discriminate on the basis of sex.

Interim Law

- 40.3 The Governing Body may enact an interim spousal property Law at any time within the twelve month period prescribed in section 40.1.
- 40.4 An interim Law enacted under section 40.3 will be deemed to be repealed twelve

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months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 40.1.

PART 8 DISPUTE RESOLUTION

41. Dispute Resolution Panel

Panel Established

41.1 A Dispute Resolution Panel is hereby established to hear and resolve disputes in relation to First Nation Land.

Representation

41.2 The Governing Body will, for the purpose of identifying members of a Dispute Resolution Panel, establish an eligibility list containing the names of Eligible Voters who are representative of the community, including non-resident Members.

No Remuneration

41.3 Unless the Governing Body by Resolution provides otherwise, members of a Dispute Resolution Panel will receive no remuneration.

42. Dispute Resolution Procedure

Disputes

42.1 A dispute related to First Nation Land may be referred by the parties to the dispute to a Dispute Resolution Panel for resolution or opinion.

Prior Disputes

42.2 For greater certainty, disputes that originated before this Land Code comes into effect may be referred to the Dispute Resolution Panel.

Optional Process

42.3 Referral of a dispute to the Dispute Resolution Panel is optional and all other civil remedies continue to be available to a party to the dispute.

Informal Resolution of Disputes

42.4 The First Nation intends that wherever possible, a dispute in relation to First Nation Land will be resolved through informal discussion by the parties to the

dispute and nothing in this Part will be construed to limit the ability of any person to settle a dispute without recourse to this Part.

Application Procedures

42.5 Referral of a dispute to the Dispute Resolution Panel will be made in accordance with procedures established by the Governing Body in consultation with the eligible members of a Dispute Resolution Panel and the Lands Committee.

Limitation Period

- 42.6 The limitation period for referring a dispute to a Dispute Resolution Panel is:
- (a) thirty days after the day the decision, act or omission that is the subject of the dispute occurred; or
 - (b) in the case of a dispute under section 39, 12 months after the date of the final recommendation of the Governing Body under that section.

42.7 A Dispute Resolution Panel will be made up of three panelists selected by lot.

42.8 The Chair of the Governing Body will make the selection referred to in section 42.7.

42.9 The panelists selected under section 42.7 will select a chair from among themselves.

43. Impartiality

Duty to Act Impartially

42.1 The Dispute Resolution Panel will act impartially and without bias or favour to any party in a dispute.

Offence

43.2 It is an offence under this Land Code for a person to act, or attempt to act, in a way intended to improperly influence a decision of the Dispute Resolution Panel.

Rejection of Application

43.3 In addition to any other penalty provided for an offence under section 43.2, the Panel may refuse an application to hear a dispute if the Panel reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence a decision of the Panel.

44. Powers of Dispute Resolution Panel

Powers of Dispute Resolution Panel

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- 44.1 The Dispute Resolution Panel may, after hearing a dispute:
- (a) confirm or reverse the decision in dispute, in whole or in part;
 - (b) substitute its own decision for the decision in dispute;
 - (c) direct that an action be taken or ceased; or
 - (d) refer the matter or dispute for reconsideration.

Rules of Panel

- 44.2 The Dispute Resolution Panel may, consistent with this Land Code, establish rules for procedure at its hearings and for the general conduct of its proceedings.

Professional Services

- 44.3 The Dispute Resolution Panel may retain the services of professionals to assist it in fulfilling its functions, in which case it will make best efforts to use professional services available in the community.

Decisions

- 44.4 The Dispute Resolution Panel will give written reasons for a decision.
- 44.5 Written decisions of the Dispute Resolution Panel will be signed by the chair of the Dispute Resolution Panel.
- 44.6 Subject to section 44.7, a decision of the Dispute Resolution Panel is binding.

Appeal of Decision

- 44.7 Subject to any exception established by a Law a decision of the Dispute Resolution Panel may be reviewed by the Federal Court of Canada.

Costs

- 44.8 Unless otherwise ordered by a Dispute Resolution Panel or an appellate court, the parties to a dispute will bear their own costs.

Alternate Forums

- 44.9 Nothing in this part precludes the Governing Body from establishing additional processes for resolving disputes under this Part, which processes may include facilitated discussion, mediation or arbitration.

**PART 9
OTHER MATTERS**

45. Liability

Liability Insurance

- 45.1 The Lands Manager will arrange for, maintain and pay insurance coverage for:
- (a) liability of the First Nation in relation to First Nation Land; and
 - (b) personal liability of the First Nation's officers and employees for acts done in good faith while engaged in carrying out duties related to First Nation Land.

46. Enforcement

Application of the Criminal Code

- 46.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the Criminal Code apply to offences under this Land Code and offences under a Law.

Justices of the Peace

- 46.2 The Governing Body may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

Provincial Courts

- 46.3 If no justice of the peace is appointed, this Land Code and Laws will be enforced in the Provincial Court of British Columbia or British Columbia Supreme Court as the case may require.

47. Amendments to Land Code

Ratification Vote

- 47.1 An amendment of this Land Code must receive prior approval by Ratification Vote.

48. Commencement

Ratification

- 48.1 This Land Code will be ratified if:
- (a) the Members approve this Land Code and the Individual Agreement in

accordance with the Framework Agreement; and

- (b) this Land Code has been certified by the Verifier in accordance with the Framework Agreement.

Effective Date


- 48.2 Subject to section 48.1, this Land Code shall come into force when the Council has passed a resolution specifying the commencement date.

49. Appendices

Appendices May Be Amended

- 49.1 The Appendices to this Land Code do not form part of this Land Code and for greater certainty section 47 of this Land Code does not apply to an amendment to an Appendix to this Land Code

Note
The change to
section 48.2 was
verified on Jun 10, 2008



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APPENDICES

APPENDIX A: Matsqui First Nation Custom Election & Regulations and Procedures
(select sections)

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APPENDIX "A"

MATSQUI FIRST NATION

CUSTOM ELECTION

REGULATIONS

&

PROCEDURES

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MATSQUI FIRST NATION CUSTOM ELECTION REGULATIONS & PROCEDURES

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1.0 **DEFINITIONS**

For the purpose of the Matsqui First Nation Custom Election Regulations & Procedures:

- Constable/Sergeant of arms* means a person employed by the Matsqui First Nation to maintain order and peace during an election poll or referendum
- Corrupt Practice* means vicious and fraudulent intention to evade the prohibitions of the law and the custom of the Matsqui First Nation or an act of an official to procure some benefit for himself/herself or another person contrary to the duty and rights of others
- Council* means the elected Chief and Councillors of the Matsqui First Nation
- Eligible Electors* means all those individuals on the Matsqui First Nation List who have reached the age of 18 years and live within the Stolo Traditional Territory (see Appendix 4)
- Family Representatives* means the selected family leaders for the Matsqui First Nation
- Governing Body* means the Chief, Councillors and Family Representatives
- Gross Misconduct* means theft or falsification of records, willful destruction of Matsqui First Nation property, or endangering the safety of Matsqui Members through incompetence or negligence
- Main Families* means the following six family groups: Martin Julian, McKay, Bird, Collins, Morgan and Jim Julian
- Matsqui Family Resolution* means the document required when selecting board of Councillors
- Signatories* means the Elected Officials ie: Chief & Councillors

Words importing the singular include the plural and vice versa;
And words importing a male person include a female person

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2.0 GOVERNING BODY

- 2.1 The Matsqui First Nation Governing Body shall consist of one (1) elected Chief, Two (2) Councillors and six (6) appointed Family Representatives. One person may hold more than one position on this Governing Body ie: be on Council and be a Family Representative at the same time.
- 2.2 The three (3) elected Council will hold signatory status for all Matsqui First Nation Business.

3.0 TERM OF OFFICE

- 3.1 The term of Office for the Matsqui First Nation Governing Body will be 3 years

4.0 QUORUM

- 4.1 The quorum for the Matsqui First Nation Governing Body will consist of a simple Majority (ie: 50%+1)

5.0 ELIGIBLE ELECTOR

- 5.1 For the purpose of voting in any referendum and for the purpose of the Matsqui First Nation Custom Election Regulations and Procedures a person must:
- (a) be a Matsqui First Nation member; and
 - (b) be at least 18 years of age
 - (c) living within Stolo Traditional Territory (see appendix 4)

6.0 ELIGIBILITY CRITERIA FOR CHIEF OR COUNCILLOR

- 6.1 To hold the position of Chief or Councillor for the Matsqui First Nation a person must:
- (a) be a Matsqui First Nation Member: and
 - (b) be at least 21 years of age; and
 - (c) permanently reside on a Matsqui Reserve

7.0 SELECTION OF FAMILY REPRESENTATIVES

- 7.1 All existing Family Representatives at the time this document is ratified will continue their roles.

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7.2 Upon circumstances where the representatives is no longer able to continue this role, it will be the family's responsibility to submit a Family Resolution (see appendix 1) indicating who their new representative will be.

8.0 SELECTION OF CHIEF AND COUNCILLORS

- 8.1 The existing Chief and Councillors at the time this document is ratified will continue their roles.
- 8.2 The Matsqui First Nation members will determine at a duly convened General Band meeting whether an Election is to be held. This meeting will take place a minimum of 3 months prior to the end of the current Chief and Councillors term. An Election can be called for one, or all of the Chief and Councillor's positions. A decision to hold a position must be supported by a simple majority of those eligible electors in attendance. This vote will be determined by "show of hands".
- 8.3 In the event it is determined that an election shall be held, the membership must abide by the provisions set out in the Matsqui First Nation Custom Election Regulations and Procedures.
- 8.4 In the event that it is determined that an Election is not required, the Governing Body shall sign a Resolution indicating that the existing Chief and Councillor's term is extended for three (3) years pursuant to the decision made by the eligible electors at a General band meeting held on (date). This Resolution will also serve to indicate the Chief and Councillors' acceptance of the extended term.

9.0 ELECTORAL OFFICER

- 9.1 The Governing Body shall appoint by Resolution an Electoral Officer to carry out the Election Procedure. The Electoral Officer must be appointed at least 30 days prior to the election date
- 9.2 The Electoral Officer chosen shall:
- (a) not a Matsqui First Nation Member; and
 - (b) not have a vested interest in the outcome of the Matsqui First Nation Election; and
 - (c) be a trained Electoral Officer
- 9.3 The Electoral Officer may appoint a Deputy Electoral Officer if required.

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- 9.4 The Deputy Electoral Officer is authorized to carry out the duties of the Electoral Officer when directed to do so by the Electoral officer.
- 9.5 The Electoral Officer and Deputy Electoral Officer will be paid an honorarium.

10.0 APPEAL BOARD

- 10.1 For the purpose of resolving election appeals the Matsqui First Nation Governing Body shall appoint three (3) persons to serve on the Appeal Board for a term of 90 days. These appointments must be made 30 days prior to the Election day.
- 10.2 The Appeal Board shall:
- (a) consist of three (3) people; and
 - (b) not be Matsqui First Nation Members; and
 - (c) be a member of a Stolo Nation living within Stolo Traditional Territory; and
 - (d) not have a vested interest in the outcome of the Matsqui First Nation Election; and
 - (e) submit written acceptance to the Matsqui Board of Councillors.

11.0 VACANCIES

- 11.1 A Chief or Councillors' position automatically becomes vacant when that person who holds office:
- (a) is convicted of and indictable offense as defined within the Criminal Code of Canada (see Appendix 5); or
 - (b) resigns; or
 - (c) becomes mentally ill or mentally incapacitated to the point where they cannot perform the required duties, in which case must be reviewed by two doctors according to the Mental Health Act; or
 - (d) loses eligibility status as per section 6 of these Regulations; or
- 11.2 Where a Chief or Councillors' position is vacated then the remaining Governing Body must call a bi-election within 30 days, providing there is more than 3 months remaining in term.

12.0 NOMINATION MEETING

- 12.1 If it is deemed, as per section 8, that an election is to be held, there shall be

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Nomination meeting held on the first Wednesday of June for the applicable position(s).

- 12.2 The Electoral Officer will ensure that notices of the Nomination meeting are posted 10 days prior to the meeting in two (2) conspicuous places on the occupied Matsqui Reserves. The notice must identify the following:
- (a) date of nomination meeting; and
 - (b) time, place and duration of the Nomination meeting; and
 - (c) Matsqui First Nation Eligible Electors list
- 12.3 After declaring the nomination meeting open the Electoral Officer will only accept Nominations for one (1) hour.
- During the nomination meeting the Electoral Officer shall:
- (a) verify the electors list with the membership in attendance;
 - (b) inform eligible electors that there will be no adjustments to the voters' list in the 48 hours prior to the opening of polls;
 - (c) read over the rules in the event of a tie;
 - (d) announce the members of the appeal board;
 - (e) ensure Candidates meet the Eligibility Criteria (see 6.0)
- 12.4 Candidates may only be nominated by an eligible elector of the Matsqui First Nation
- 12.5 Candidates may decline their nomination during the meeting.
- 12.6 Any Candidate wishing to withdraw after the nomination meeting must submit a signed letter to the Electoral Officer a minimum of 48 hours prior to the opening of the polls.

13.0 **ELECTORS LIST**

- 13.1 The Electoral Officer shall obtain an eligible electors list from the Matsqui First Nation Administrator, which will be based on the Matsqui First Nation mailing list. The list shall be in alphabetical order and contain the name of the eligible electors who are under the age of 21 and therefore ineligible for a Chief/Councillor position.

14.0 **ELECTION BY ACCLAMATION**

- 14.1 When the number of candidates for the applicable position(s) does not exceed

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The number required, the Electoral Officer shall declare that person elected by acclamation.

15.0 NOTICE OF ELECTION POLL

- 15.1 The Electoral officer shall declare an election poll be held if the number of candidates for the position of one (1) Chief and two (2) Councillors exceeds the number required.
- 15.2 The Electoral officer shall ensure at least two (2) notices are posted on the occupied Matsqui Reserves, notices must be posted the day following the nomination meeting, which will be at least 10 days prior to the election poll.
- 15.3 The notice shall include the following: the date, time and place of where the poll will be held
- 15.4 The poll will take place on the third Wednesday of June every third year (as deemed per section 8) effective from June 1998
- 15.5 The poll must be conducted prior to the completion of the Council's term.

16.0 PREPARING THE POLL STATION

- 16.1 All polls will be conducted by secret ballot.
- 16.2 The Electoral officer is responsible for preparing the ballots. The Electoral officer shall ensure that there are sufficient ballots available in case of spoilage. The ballots shall be prepared as shown in Appendix 2.
- 16.3 Election statement shall be prepared by the Electoral officer prior to the election. The statement shall be prepared in the format of the sample shown in Appendix 3.
- 16.4 The Electoral officer must provide a ballot box. The ballot box must be capable of being locked and sealed. Pencils and instructions for marking the ballots must be provided in each voting booth.
- 16.5 The Electoral officer shall place polling booths in areas which are easily accessible and where the electors can mark their ballots secrecy without interference.

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17.0 **VOTING INTEGRITY**

- 17.1 No person shall be allowed to interfere or attempt to interfere with an elector marking his or her ballot.
- 17.2 No person shall be permitted to obtain or attempt to obtain in the polling place any information as to how a person voted.
- 17.3 The Electoral officer may appoint a constable or sergeant of arms to maintain order at the polling place

18.0 **OPENING THE POLL**

- 18.1 Prior to opening the poll the Electoral officer shall ensure that the ballot box is examined by a witness to ensure that the box is empty.
- 18.2 The box will then be locked and sealed for the duration of the poll and signed by the witness.
- 18.3 The polling stations will be set up on the Matsqui Reserve preferably at the Matsqui Band Office at 10:00 am.

19.0 **PROCEDURES FOR VOTING**

19.1 Identifying an Elector

The Electoral officer will verify a persons eligibility according to the eligible electors list. The Electoral officer may request photo identification in some instances. Upon verification the Electoral officer shall issue a ballot to the eligible elector. The Electoral officer shall strike the name of the eligible elector from the eligible electors list upon casting their vote.

19.2 Issue of a Ballot

The Electoral officer shall issue the ballot to the eligible elector in a manner that will enable secrecy. Upon issuance of the ballot to the eligible elector the Electoral officer will give instructions for marking the ballot. The Electoral officer shall prepare the ballots in a manner that will protect confidentiality.

19.3 Spoiled Ballots

An eligible elector that wishes to exchange their ballot may do so, the Electoral officer must write the word "spoiled" on the ballot and retain it.

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19.4 Forfeited Ballot

An eligible elector who received a ballot and refuses to vote, or who leaves the polling place without giving the Electoral officer his/her ballot forfeits their right to vote. When this occurs the Electoral officer must mark the word "forfeited" on the eligible electors list beside that persons name. If the ballot is returned the Electoral officer must mark the word "forfeited" and place it in the ballot box.

19.5 Returns of Ballot

After marking their ballot the eligible elector shall return the folded ballot to the Electoral officer. The Electoral officer shall then verify that it is the same ballot issued to the elector and then shall deposit the folded ballot into the ballot box.

20.0 SPECIAL VOTING PROVISIONS

20.1 Disabled Eligible Elector

If it is determined that an eligible elector who resides on the Matsqui Reserve is unable to attend the polling station the Electoral officer, upon request, may retrieve a vote from this elector. This provision can only be facilitated when a Deputy Electoral officer has been appointed.

20.2 Elector Assistance

The Electoral officer may assist an eligible elector who requires his/her assistance in marking the ballot as indicated by the eligible elector.

21.0 CLOSING THE POLLS

21.1 At precisely 8:00pm the polling place shall be promptly closed. Any eligible elector that is inside of the polling station at closing time and who has not voted, may do so.

22.0 COUNTING BALLOTS

22.1 At the close of the polling station, the Electoral officer shall commence the ballot counting procedure. The Electoral officer shall appoint two (2) witnesses to be present during the ballot count and keep separate tallies of the ballot counting.

22.2 The Electoral officer shall open the ballot box and examine each ballot and reject those ballots that;

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A handwritten signature in black ink, appearing to be 'B', is written over a horizontal line.

- (a) have not been provided by the Electoral officer 1 or
- (b) have been marked with "spoiled" or "forfeited" or
- (c) select more than the maximum number of candidates that are required; or
- (d) identifies the elector; or
- (e) is not marked with and "X"

22.3 The Electoral officer shall count the ballots, confirm the results are consistent with the witnesses' tallies, and document the results on the Election statement (Appendix 3). Appointed witnesses or candidates present shall sign the Election Statement with the Electoral officer.

22.4 The Candidate with the most votes shall be declared elected.

23.0 **STATEMENT OF RESULTS**

23.1 The Electoral officer shall immediately declare the results of the poll and announce the newly elected Chief / and or Councillor(s) for Matsqui First Nation. If after the ballot count there is a tie, the Electoral officer shall announce the need for a Special Poll. (See 25.0 "Special Poll")

23.2 The Electoral officer shall prepare three (3) copies of the Election statements, and submit one to the Department of Indian & Northern Affairs, one to Sto:lo Nation and one to the Matsqui First Nation Administration Office.

24.0 **COMMENCEMENT OF TERM**

24.1 The Council will take office at the beginning of July.

25.0 **SPECIAL POLL**

This special poll shall take place one week from the date of the original poll. The Electoral officer will announce the date, place and time. The duration of this Special Poll will be from 12:00 noon until 8:00pm. The Electoral officer shall carry out this Special Poll in accordance to sections 16 through to section 27 of the Matsqui Election Regulations. The Eligible electors list will not change, The ballot shall contain only the names of those candidates that were tied with the highest number of votes.

26.0 **DISPOSAL OF ELECTION MATERIAL**

26.1 The Electoral officer shall retain all of the ballots and relative documents in a secure location for 60 days. After the expiry of 60 days the Electoral officer may dispose of all election documents.

26.2 In the event of an appeal the ballots shall be kept in a secured place until a

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Decision has been rendered by the Appeal Board.

27.0 APPEAL PROCEDURE

- 27.1 Within 30 days after an election an eligible elector may appeal the results if it is believed that:
- (a) there was corrupt practice in connection with an election, or
 - (b) There was a violation of the Election Procedures of the Matsqui First Nation that might have effected the outcome of the election, or
 - (c) A candidate in the election was ineligible to be a candidate.
- 27.2 All appeals shall be in writing and forwarded to the Appeal Board. The appeal documents must contain all the particulars and information supporting the appeal. It is the exclusive responsibility of the appellant to provide the relevant evidence.
- 27.3 The Appeal Board shall, within seven (7) days of the receipt of an Appeal, forward a copy, together with all supporting documents to:
- (a) The Electoral officer; and
 - (b) Each candidate in the election; and
 - (c) The Matsqui Family Representatives.
- 27.4 Candidates, may within fourteen (14) days of receipt of an appeal, forward a copy to the Appeal Board a written response, together with any supporting documents
- 27.5 The Appeal Board shall take such steps as are necessary to secure all pertinent facts relating to the Appeal, including Affidavits.
- 27.6 Upon investigation, the Appeal Board shall, render a decision on the validity of the appeal. The Appeal Board shall report the Decision to the Electoral officer, candidates and the Matsqui Family Representatives. The decision of the Appeal Board is final.
- 27.7 The Appeal Board will be paid an honorarium
- 27.8 The Appeal Board has the authority to develop their rules in resolving the appeal

28.0 AMENDING PROVISION

- 28.1 Amendment proposal shall be in writing and delivered to the Matsqui First Nation Administrator and must be accompanied by a petition showing support

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From at least 30% of the eligible electorate.

28.2 The Matsqui First Nation Administrator shall commence amending procedures within ten (10) days of receiving the written proposal.

28.3 The Matsqui First Nation Election Regulations may be amended after

- (a) notice is given to the Matsqui members that an amendment has been proposed, and
- (b) a consultation meeting is held with the Matsqui First Nation members specifically to discuss the amendment proposal has occurred within 30 days after the notice, was received, and
- (c) support from at least 60% of the eligible electors of the Matsqui First Nation in attendance, has been achieved in a referendum held specifically for that purpose. A referendum shall be held within 60 days of the consultation meeting.

28.4 No amendments will take place 60 days prior to a Matsqui First Nation election.

29.0 **EXTRAORDINARY MEETING**

29.1 In the event that an Issue arises that is not addressed by these election regulations, the Matsqui Family Representatives may, within 10 days notice, call an extraordinary meeting of the Band membership. A minimum 60% support of the eligible electorate in attendance is required to resolve any problems created by this specific issue.

30.0 **LIABILITY**

30.1 The Matsqui First Nation or its members shall not be liable for any claims, losses or damages resulting from the deletion or addition of an individual's name to the Matsqui Electors List.

31.0 **SEVERABILITY**

31.1 If any part of these rules is declared to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the validity or enforceability of any other part of these election regulations.

32.0 **COMING INTO FORCE**

32.1 These rules shall come into force on the ____ day of ____ 1997, upon ratification by a simple majority of those Matsqui members in attendance who have reached the age of 18 and are residents on the Matsqui Reserves.

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APPENDIX 1
MATSQUI FAMILY RESOLUTION

We, the _____ Family, hereby give consent for the following family member to be our Family Representative. **Representative must live On Reserve.**

Name of family representative:

Address: _____

Phone number: Home _____

Work _____

There are _____ eligible family electors.

A simple majority of our on and off reserve family electors have signed on this _____ day of _____ 20 ____.

Print list of family members below.
Signature

Signature

- 1) _____

- 2) _____

- 3) _____

- 4) _____

- 5) _____

- _____
- _____
- _____
- _____
- _____

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6) _____

7) _____

APPENDIX 2

SAMPLE BALLOT

BALLOT FOR CHIEF and COUNCILLORS

Election Poll held for the Matsqui First Nation
Poll held on Date: _____

Mark Ballot by placing an "X" in the box opposite the name of
Candidate for whom you choose to vote. There is only one (1) Chief
And two (2) Councillors to be elected. (as per Section 8*)

Please mark only one (1) box.

Candidate's name

Candidate's name

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[Signature]

APPENDIX 3

**MATSQUI ELECTION STATEMENT
POSITION – CHIEF OF THE MATSQUI FIRST NATION
DATE:**

Number of Eligible Elector: _____

Number of Electors who voted: _____

Number of Ballots prepared: _____

Number of spoiled ballots: _____

Number of rejected ballots: _____

Number of ballots left over: _____

Number of ballots cast in favor of:

Name of Candidate: _____

Name of Candidate: _____

Term of Office is effective July 1, _____ to June 30 _____

Verified correct by:

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Electoral officer

Witness / Candidate

Witness / Candidate

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APPENDIX 5 INDICTABLE OFFENSES

Definition:

Indictable Offence- Generally, a more serious criminal charge as distinguished from a summary offense. However, in Canada, the distinction between offenses and summary offenses is somewhat blurred. In some instances, according to the provision of the Criminal Code, the Crown may determine whether an offense will be tried "summarily" or by "indictment" An indictable offense is nonetheless indictable because, if the prosecution chose, it could proceed in respect of it summarily. Originally, indictable offenses were tried only by the higher courts. This is still the case with reference to offenses such as murder and treason under s.469 of the Criminal Code, R.S.C. 1985, C-46. However other indictable offenses can only be tried by magistrate or provincial court judge, while others still may, at the option of the accused, be tried by a magistrate or county court judge, either alone or with a jury.

Examples:

Examples of strictly Indictable Offenses as noted in the Criminal Code of Canada 1996-1997 are as follows:

Use of a Firearm During the Commission of an Offense	s.85
Possession of a Weapon Dangerous to the Public Peace	s.87
Incest	s.155
Parent or Guardian Procuring Sexual Activity	s.170
Householder Permitting Sexual Activity	s.170
Common Nuisance	s.170
Obtaining Juvenile Prostitute	s.180
Criminal Negligence Causing Death	s.212(4)
Criminal Negligence Causing Bodily Harm	s.221
Murder	s.235
Manslaughter	s.236
Infanticide	s.237
Counselling / Aiding Suicide	s.241
Causing Bodily Harm with Intent	s.244
Dangerous Operation Causing Bodily Harm	s.249(3)
Dangerous Operation Causing Death	s.249(4)
Impaired Operation Causing Bodily Harm	s.255(2)
Impaired Operation Causing Death	s.255(3)
Uttering Threats – Re: Serious Bodily Harm / Death	s.264.1(2)
Assault with a Weapon or Causing Bodily Harm	s.267

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Aggravated Assault	s.268
Unlawfully Causing Bodily Harm	s.269
Sexual Assault with a Weapon	s.272
Aggravated Sexual Assault	s.273

APPENDIX 5 continued.....

Kidnapping	s.279(1)
Forcible Confinement	s.279(2)
Hostage Taking	s.279(3)
Abduction of a Person under sixteen	s..280
Abduction of a Person Under Fourteen	s.281
Theft over \$1000	s.334(a)
Robbery	s.344
Extortion	s.346
B&E	s.348
Unlawfully in a Dwelling House	s.349
Possession of Break-In Instruments	s.351(1)
Disguise with Intent	s.351(2)
Possession of Instruments for Breaking Into Coin Operated Devices Etc.	s.352
P.S.P. Over \$1000	s.355(a)
False Pretence over \$1000	s.362(2)(a)
Forgery	s.367
Uttering a Forged Document	s.368
False Messages	s.372(1)
Fraud Over \$1000	s.380(1)(a)
Personation with Intent	s.403
Mischief- Causing Danger to Life	s.430(2)
Arson- Disregard for Human Life	s.433
Arson-Damage to Property	s.434
Arson-own Property	s.434(1)
Arson for a Fraudulent Purpose	s.435
Arson by Negligence	s.436
Possession of Incendiary Device	s.436.1
Possession of Counterfeit Money	s.450
Uttering Counterfeit Money	s.452
Trafficking a Narcotic	s.4(1)NCA
Possession for Purpose of Trafficking	s.4(2)NCA
Importing / Exporting a Narcotic	s.5(1)NCA
Cultivation	s.6(2)NCA

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APPENDIX 5 continued.....

Examples:

Examples of Dual Offenses ie: summary and indictable as noted in the Criminal code of Canada 1996-1997 are as follows:

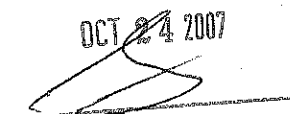
Pointing a Firearm – Negligent Handling / Storage etc.	s.86
Carrying a Concealed Weapon	s.89
Possession of a Prohibited Weapon	s.90
Possession of an Unregistered Restricted Weapon	s.91
Making an Automatic Firearm	s.95.1
Offenses Relating to Public or Peace Officer (Obstruct)	s.129
Public Mischief	s.140
Sexual Interference	s.151
Invitation to Sexual Touching	s.152
Sexual Exploitation	s.153
Anal Intercourse	s.159
Bestiality	s.160
Dangerous Operation (Not causing Bodily harm or death)	s.249
Failure to Stop at Scene of Accident	s.252
Impaired Operation	s.253(a)
Operation While Over 80 mgs	s.253(b)
Refusing Breath Demand	s.254(5)
Refuse Blood Sample	s.254(5)
Operation While Disqualified	s.259(4)
Uttering Threats – Re: Property or Animals	s.264.1(3)
Assault (assault by Trespass s 41(2))	s.266
Assaulting a Peace Officer	s.270
Sexual Assault	s.271
Abduction by a Parent or Guardian, etc.	
-In contravention of Custody Orders	s.282
- No Custody Order	s.283
Theft Under \$1000	s.334(b)
Credit Card Offenses (Theft, Forgery, etc)	s.342
P.S.P. Under \$1000	s.355(b)
False Pretence Under \$1000	s.362(2)(b)

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Fraud Under \$1000	s.380(1)(b)
Mischief (no danger to life, property, data)	s.430
False Alarm of Fire	s.437
Possession of A Narcotic	s.3NCA
Failure to Disclose Previous Prescriptions (Narcotics)	s.3.1INCA
Failure to Disclose Previous Prescriptions (Controlled Drugs)	s.38.1FDA
Trafficking in a Controlled Drug / PPT	s.39.FDA
Possession of a Restricted Drug	s.47. FDA
Trafficking in a Restricted Drug / PPT	s.48.FDA

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**TSAWOUT FIRST NATION
LAND CODE**

CONSOLIDATED VERSION

**Including amendments approved by
Ratification Vote on June 25, 2013**

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PREAMBLE

WHEREAS the Members of the STÁUTW First Nation have a profound and sacred relationship with the islands, points, land, boulders, four winds, trees, birds, animals, fishes, fire and water of its territorial homeland, encompassing all spiritual places, medicine and fruit gathering places, fishing stations, hunting and trapping areas, winter and summer homesites, burial sites, meditation places and all territories in between;

AND WHEREAS the STÁUTW First Nation is a member of the Saanich Nation and a party to a Douglas Treaty;

AND WHEREAS the traditional teachings of the Saanich Peoples speak of the obligation of the people of STÁUTW First Nation to care for and respect each other, future generations, the land and the other living things of the land, and by enacting this Land Code, the First Nation is continuing this special responsibility;

AND WHEREAS the authority of the STÁUTW First Nation to govern its lands and resources flows from XALS, the Creator to the people of the First Nation, and from the people to the Chief and Council according to the culture, traditions, customs and laws of the First Nation;

AND WHEREAS the STÁUTW First Nation wishes to enhance opportunities for its members to participate in governance matters and to benefit equitably from its lands and resources;

AND WHEREAS the Members of the STÁUTW First Nation wish to include and give effect to their customary laws, interests and traditions in discharging their governing jurisdiction and authority;

AND WHEREAS the STÁUTW First Nation wishes to reassume management of its lands and resources, rather than having them managed on its behalf under the *Indian Act*, thereby enabling the First Nation to become more accountable and economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, cultural and social development;

AND WHEREAS the STÁUTW First Nation wishes to reassume management of its lands and resources by entering into the Framework Agreement on First Nation Land Management concluded between Her Majesty in right of Canada and fourteen first nations on February 12, 1996, as amended;

NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE STÁUTW FIRST NATION.

PART 1 PRELIMINARY MATTERS

1. Title

1.1 The title of this enactment is the *Tsawout First Nation Land Code*.

2. Interpretation

Definitions

2.1 The following definitions apply in this Land Code:

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

“Chair” means the Chair of the Land Management Committee selected under section 24.1.

“Common-law Spouse” means a person who has been living with another person of either gender in a marriage-like relationship for a continuous period of at least two years; [amended, June 25, 2013]

“Community Land” means any First Nation Land that is not subject to a Permanent Interest; [amended, June 25, 2013]

“Council” means the Chief and Council of the First Nation;

“Douglas Treaty” means the Douglas Treaty for South Saanich of February 1852;

“Easement” means a non-exclusive interest in First Nation Land granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, giving one person (the grantee) the right to use the land of another (the grantor) for a right of way or to provide utility or other services to the land of the grantor, and is limited to only such interest as is necessary to give effect to the Easement granted; [new, June 25, 2013]

“Eligible Voter” means, for the purpose of voting in respect of matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“Extended Family” means, in respect of an individual, the individual’s Immediate Family, grandparent, parent, uncle, aunt, sister, or brother;

“First Nation” means the Tsawout First Nation as named in the Act;

“First Nation Land” means a First Nation reserve or any portion thereof that is subject to this Land Code;

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development in accordance with clause 51.1 of the Framework Agreement;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen first nations on February 12, 1996, as amended;

“Immediate Family” means, in respect of an individual, the individual’s child, Spouse or grandchild;

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

“Individual Agreement” means the Individual First Nation Agreement made between the Tsawout First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Instrument” means a formal legal document;

“Interest” means an interest in First Nation Land and includes a Permanent Interest, Leasehold, Mortgage, Permit and Easement but for greater certainty does not include title to that land; [new, June 25, 2013]

“Land Code” means this *Tsawout First Nation Land Code*;

“Land Management Committee” means the Land Management Committee established under section 22.1;

“Lands Manager” means the Tsawout First Nation employee responsible for the administration of First Nation Land;

“Law” means a Law or regulation enacted under this Land Code but does not include a Resolution; *[amended, June 25, 2013]*

“Leasehold” means an interest in First Nation Land granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act*, including a Sub-Lease, giving a person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including any renewal or extension period; [new, June 25, 2013]

“License” means a permission granted under this Land Code to use, develop or extract specified Natural Resources from a specified parcel or parcels of First Nation Land but which does not grant an interest in, or possession to, First Nation Land; [new, June 25, 2013]

“Meeting of Members” means a meeting of First Nation Members under Part 3;

“Member” means an individual whose name appears or is entitled to appear on the Tsawout First Nation membership list;

“Mortgage” means a charge on an Interest in First Nation Land in favour of another as security for a debt; [new, June 25, 2013]

“Natural Resources” means any materials or substances on, under or in First Nation Land in their natural state which, when removed, have economic or other value; [new, June 25, 2013]

“Panel” means the Dispute Resolution Panel established under section 37.1;

“Person” includes a body corporate;

“Permanent Interest” means a Certificate of Possession issued under section 20(2) of the *Indian Act* or equivalent tenure issued under this Land Code;

“Permit” means an interest in First Nation Land other than a Permanent Interest, Leasehold or an Easement, granted under this Land Code or, prior to the date of this Land Code, the *Indian Act*, giving a person the right to use a specified parcel or parcels of First Nation Land for a specified purpose. A Permit does not convey any right of exclusive possession in the land, does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted, and does not include a regulatory authorization granted under a Law that does not convey an interest in the land; [new, June 25, 2013]

“Ratification Vote” means a vote under section 13;

“Registered Interest” means an Interest in First Nation Land registered under section 25;

“Resolution” means a resolution of Council made pursuant to the consent of a majority of the councillors of the First Nation present at a meeting of the Council duly convened; [amended, June 25, 2013]

“Spouse” means a person who is married to another person, including through an Aboriginal customary marriage, or who is a Common Law Spouse; [amended, June 25, 2013]

“Sub-Lease” means a Leasehold in which the person transferring the interest is the holder of the Leasehold; [new, June 25, 2013]

“STÁUTW” means the Tsawout First Nation;

“Tsawout Lands Register” means the register maintained by the First Nation under section 25.1; and

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

Paramountcy

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

Culture and Traditions

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

Interpretation

- 2.6 This Land Code will be interpreted in a fair, large and liberal manner.
- 2.7 In this Land Code:
- (a) the use of the word “will” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
 - (b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
 - (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
 - (d) a reference to a statute includes every amendment to it, every regulation made under it and any Law enacted in substitution for it or in replacement of it;

- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- (f) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

Language

- 2.8 The language of the Saanich Nation may be used to clarify the meaning of any provision of this Land Code, if the meaning of that provision is not clear in English.

Non-abrogation

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

Fiduciary Relationship

- 2.11 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the First Nation and its Members.

Lands and Interests Included

- 2.12 A reference to "land" or "Land" in this Land Code is, unless the context otherwise requires, a reference to First Nation Land and includes all rights and resources in and of First Nation land, including:
- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable Natural Resources in and of that land, to the extent that these are under the jurisdiction of Canada or the First Nation; and
 - (b) all the interests and licenses granted to the First Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

3. Authority to Govern

Source of Authority

- 3.1 The authority of the First Nation to govern its land and resources flows from its inherent right of self-government and its rights, including aboriginal title and those rights defined in the Douglas Treaty.

4. Purpose

Purpose

- 4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to First Nation Land and through which Tsawout First Nation will exercise authority over those lands.

Ratification of Framework Agreement

- 4.2 The Framework Agreement is ratified by the First Nation when the First Nation approves this Land Code.

5. Description of First Nation Land

First Nation Land

- 5.1 The First Nation Land that is subject to this Land Code is:

- (a) East Saanich Indian Reserve No. 2, being the whole of those Reserve Lands within the Province of British Columbia, Canada in the South Saanich District, more particularly described as:

All that portion of land bounded by the exterior rectilinear boundaries as shown on Plan 58751 recorded in the Canada Lands Surveys Records (CLSR), and the ordinary high water mark (OHWM) of Cordova Channel and Saanichton Bay as shown on Plan 89661 CLSR.

Excepting thereout and therefrom;

All that portion required for road as shown on Plan RD1599 having a width of 4.572 metres (15 feet).

Total lands, excluding mines and minerals, containing 238 hectares, (588 acres) more or less.

The above described Reserve Lands are subject to:

An easement in favour of Vancouver Island Power Co., registered in the Indian Lands Registry (ILR) as Nos. 1030-2, 53730, 53731 and 53732;

An easement in favour of Public Works Canada, registered in the ILR as Nos. 1031-2 and 248898;

An easement agreement with the Capital Regional District, registered in the ILR as No. 124326 and modified by Document No. 298951, assigned to the Tsawout First Nation by Document No. 298955.

The rights and reservations contained in provincial Order in Council 1938-1036, registered in the ILR as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

- (b) Fulford Harbour Indian Reserve No. 5, being the whole of those Reserve Lands within the Province of British Columbia, Canada in the Cowichan District, more particularly described as:

All that portion of land bounded by the exterior rectilinear boundaries as shown on Plan 74885 recorded in the Canada Lands Surveys Records (CLSR), and the ordinary high water mark of Fulford Harbour as shown on Plan 88602 CLSR.

Total lands, excluding mines and minerals, containing 21 hectares, (51 acres) more or less.

The above described Reserve Lands are subject to:

The rights and reservations contained in provincial Order in Council 1938-1036, registered in the Indian Lands Registry (ILR) as No 8042, transferring the land from the Province of British Columbia to Canada, as amended by provincial Order in Council 1969-1555, registered in the Indian Lands Registry as No. 4111-118.

Additional Lands

5.2 The following lands may be made subject to this Land Code if they are, or become, reserve lands and the relevant conditions are met:

- (a) lands owned jointly or in common by the First Nation and another First Nation, if the First Nations agree upon a joint management scheme for those lands, including:
- i. Indian Reserve 06835, Saturna Island No. 7, Cowichan District, E. half of section 12, and west half of section 13 on easterly point of Saturna Island, south entrance to Strait of Georgia;
 - ii. Indian Reserve 06836, Pender Island No. 8, Cowichan District on Hay Point west side of South Pender Island;
 - iii. Indian Reserve 06837, Bare Island No. 9, Cowichan District, the whole of Mandarte Island, at the head of Haro Strait; and
 - iv. Indian Reserve 06838, Goldstream No. 13, Goldstream and Highland Districts, at south end of Finlayson Arm and mouth of the Goldstream River; and

- (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use.
- 5.3 Section 5.2 does not apply to land acquired by voluntary land exchange in accordance with section 15.1.
- 5.4 If the relevant conditions in section 5.2 are met, Council will call a Meeting of Members and, after receiving input at that meeting, may enact a Law declaring the land or interest to be subject to this Land Code.

PART 2 FIRST NATION LEGISLATION

6. Law-Making Powers

Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) the development, conservation, protection, management, use and possession of First Nation Land;
 - (b) Interests and Licenses in relation to First Nation Land;
 - (c) any matter necessary to give effect to this Land Code; and
 - (d) any matter necessary or ancillary to a Law respecting First Nation Land.

Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to First Nation Land including:
- (a) zoning and land use planning;
 - (b) economic development of Community Land;
 - (c) regulation, control, authorization and prohibition of the occupation and development of land;
 - (d) creation, regulation and prohibition of Interests and Licenses;
 - (e) environmental assessment and protection;
 - (f) provision of local services and the imposition of user charges;

- (g) provision of services for the resolution, outside the courts, of disputes;
- (h) administrative appeals from a decision to grant or refuse to grant an interest in First Nation Land;
- (i) authorization and regulation of subdivisions and the conduct of surveys;
- (j) setting aside, protection and regulation of parks, parklands and recreational lands;
- (k) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, spiritual sites and wildlife refuges;
- (l) rules and procedures for the receipt, management, expenditure, and borrowing of moneys, and the establishment of administrative structures to manage such moneys;
- (m) creation of management and administrative bodies or agencies;
- (n) removal and punishment of persons trespassing upon First Nation Land or frequenting First Nation Land for prohibited purposes;
- (o) public nuisance and private nuisance;
- (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
- (q) construction and maintenance of boundary and internal fences;
- (r) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (s) setting aside of lands for community purposes or works;
- (t) regulation of traffic and transportation; and
- (u) procedures that apply to the transfer, by testamentary disposition or succession, of an interest in First Nation Land.

Administration

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

Delegation

- 6.4 Notwithstanding section 6.3 Council may by enacting a Law, delegate administrative authority in relation to a Law enacted under section 6.1 to an individual or body established or authorized under this Land Code.

7. Law-Making Procedure

Introduction of Laws

- 7.1 A proposed Law may be introduced at a meeting of Council by:
- (a) a representative of the Land Management Committee or other body composed of Members that may be authorized by Council to do so;
 - (b) a member of Council; or
 - (c) the Lands Manager.

Tabling and Posting of Proposed Laws

- 7.2 A proposed Law will be:
- (a) deposited with the Chair of the Land Management Committee at least 30 days before the proposed Law is voted upon;
 - (b) posted in the First Nation administration offices and other public places on First Nation Land at least 28 days before the proposed Law is voted upon; and
 - (c) tabled at a meeting of Council at least 21 days before the proposed Law is voted upon.

7.3 [repealed, June 25, 2013]

7.4 [repealed, June 25, 2013]

7.5 [repealed, June 25, 2013]

7.6 [repealed, June 25, 2013]

Urgent Matters

- 7.7 Council may enact a Law without the preliminary steps required under section 7.2 if Council is reasonably of the opinion that the Law is needed urgently to protect First Nation Land or Members.

7.8 A Law enacted under section 7.7 will be deemed to be repealed and will have no force and effect twenty-eight days after it is enacted, but may be re-enacted in accordance with section 7.2.

Approval of Law by Council

7.9 A Law is enacted if it is approved by Council.

Certification of Laws

7.10 The original copy of a Law or Resolution relating to First Nation Land will be signed by the members of Council present at the meeting at which the Law is enacted.

Law Coming Into Force

7.11 A Law comes into force on:

- (a) the date it is enacted; or
- (b) such other date as may be set by the Law.

7.12 A Law may be repealed or amended by following the procedure set out in this Section, unless the Law to be amended specifies a different procedure, in which case the procedure set out in the Law applies. [new; June 25, 2013]

8. Publication of Laws

Publication

8.1 All Laws will be published in the minutes of Council.

Posting Laws

8.2 Within seven days after a Law has been enacted, Council will post a copy of the Law in the First Nation administration offices.

Register of Laws

8.3 Council will cause to be kept at the First Nation administration offices a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are otherwise no longer in force.

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

Copies for Any Person

- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.

PART 3

COMMUNITY CONSULTATION AND APPROVALS

9. Rights of Eligible Voters

Rights of Eligible Voters

- 9.1 An Eligible Voter has the right to vote at a Meeting of Members and in a Ratification Vote.

10. Community Input

Prior Meeting of Members

- 10.1 Council will call a Meeting of Members to receive input prior to voting upon a Law in respect of:
- (a) a land use plan;
 - (b) a subdivision plan;
 - (c) declaring land or an interest in land referred to in section 5.2 to be subject to this Land Code;
 - (d) a heritage site, cultural site, traditional site, spiritual site or wildlife refuge;
 - (e) an environmentally sensitive property;
 - (f) environmental assessment;
 - (g) the transfer or assignment of Interests in First Nation Land;
 - (h) spousal property under section 35;
 - (i) any other matter or class of matters that Council by Resolution declares to be subject to this section.

Process to Implement Laws

- 10.2 Council will, in consultation with the Land Management Committee and within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Laws referred to in section 10.1.
- 10.3 Nothing in this Land Code precludes Council or the Land Management Committee from consulting with other advisors or representatives of other jurisdictions, including other first nations, municipal corporations and regional districts, to develop and implement the Laws referred to in section 10.1

11. Approval at a Meeting of Members

Approval at Meeting

- 11.1 Approval at a Meeting of Members must be obtained for:
- (a) a land use plan;
 - (b) amendment of a land use plan;
 - (c) a spousal property law under section 35 or a substantive amendment to such a law; and
 - (d) a Law or class of Law that Council, by Resolution, declares to be subject to this section. [amended, June 25, 2013]

12. Procedure at a Meeting of Members

Voting

- 12.1 Decisions at a Meeting of Members will be made by a majority vote of the Eligible Voters present at the meeting.

Quorum

- 12.2 The quorum for a Meeting of Members is ten percent of the Eligible Voters.

Notice of Meeting

- 12.3 Council will give written notice of a Meeting of Members that:
- (a) specifies the date, time and place of the meeting; and
 - (b) contains a brief description of the matters to be discussed and decided at the meeting.

Manner of Notice

- 12.4 Written notice of a Meeting of Members under section 12.3 will be given by:
- (a) posting the notice in public places on First Nation Land at least 21 days before the meeting;
 - (b) mailing the notice to Eligible Voters at their last known address at least 21 days before the meeting;
 - (c) publishing the notice in a community newsletter or local newspaper at least ten days before the meeting; or
 - (d) such other methods as Council may consider appropriate.

Who May Attend

- 12.5 A Member has a right to attend a Meeting of Members.
- 12.6 A person other than a Member may attend a Meeting of Members with permission of Council.

Other Meetings

- 12.7 Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members, provided that any vote taken at a Meeting of Members will not be accumulated with any vote taken at a subsequent Meeting of Members.

Procedural Laws

- 12.8 Council may make Laws respecting procedures for Meetings of Members.
- 12.9 A Law enacted under section 12.8 may provide that, in the event that a Meeting of Members does not achieve quorum or otherwise fails to decide a matter, or as an alternative to a Meeting of Members, the matter that requires a Meeting of Members may be decided by the Eligible Voters by means of a Ratification Vote. [*amended, June 25, 2013*]
- 12.10 [*repealed, June 25, 2013*]

13. Ratification Votes

Approval by Ratification Vote

- 13.1 Approval by a Ratification Vote must be obtained for:
- (a) a voluntary exchange of First Nation Land under section 15.1;

- (b) amendment of the Individual Agreement that reduces the amount of funding provided by Canada;
- (c) amendment of this Land Code;
- (d) creation of a Permanent Interest in Community Land;
- (e) expropriation of a Member's Interest under section 14.9; and
- (f) enactment of a Law or class of Laws that Council, by Resolution, declares to be subject to this section.

Individual Agreement with Canada

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

Ratification Process

- 13.3 A Ratification Vote required under this Land Code will be conducted, with any necessary modifications appropriate in the circumstances, in substantially the same manner as that provided in the *Tsawout First Nation Community Ratification Process* that was used to ratify this Land Code.

Minimum Requirements for Approval

- 13.4 A matter will be considered approved by a Ratification Vote if at least 10 percent of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote by secret ballot in favour of the matter. [*amended, June 25, 2013*]

No Verifier

- 13.5 A Verifier is not required in a Ratification Vote under this Part.

PART 4 PROTECTION OF LAND

14. Expropriation by First Nation

Rights and Interests That May Be Expropriated

- 14.1 An Interest or License in First Nation Land or in any building or other structure on such land may be expropriated by the First Nation in accordance with the Framework Agreement and a Law enacted in accordance with section 14.5.

Community Purposes

- 14.2 An expropriation may be made only for a necessary community purpose or works of the First Nation, including fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.
- 14.3 Notwithstanding section 14.2, an Interest granted by a Member in First Nation Land may be expropriated if:
- (a) the Interest to be expropriated is determined to be fraudulent or to have been granted for an illegal purpose; or
 - (b) the Interest is determined to be not in the best interests of the First Nation.
- 14.4 No expropriation may be made under section 14.3 unless:
- (a) the holder of the Interest is given a reasonable opportunity to address and rectify the concerns of the Member or the First Nation and fails within a reasonable time to do so;
 - (b) the Member consents to the expropriation;
 - (c) the expropriated Interest reverts to the Member; and
 - (d) the expropriation is carried out in accordance with this Part.

Expropriation Law

- 14.5 Council will enact a Law respecting rights and procedures for expropriations, including provisions in respect of:
- (a) taking possession of the expropriated Interest or License;
 - (b) transfer of the expropriated Interest or License;
 - (c) notice of expropriation;
 - (d) service of the notice of expropriation;
 - (e) entitlement to compensation;
 - (f) determination of the amount of compensation; and
 - (g) the method of payment of compensation.

Public Report

- 14.6 Before the First Nation expropriates an Interest or License, Council will:
- (a) prepare a report on the reasons for the expropriation;
 - (b) post a copy of the report in the First Nation administration offices; and
 - (c) mail a copy of the report to each Eligible Voter at their last known address.

Rights That May Not Be Expropriated

- 14.7 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the First Nation.

Acquisition By Mutual Agreement

- 14.8 The First Nation may expropriate an Interest or License only after a good faith effort to acquire, by mutual agreement, the Interest or License.

Approval by Ratification Vote

- 14.9 Expropriation of a Member's Interest is of no force and effect unless the proposed expropriation has received prior approval by a Ratification Vote.

Compensation for Rights and Interests

- 14.10 The First Nation will, in accordance with its Laws and the Framework Agreement:
- (a) serve reasonable notice of expropriation on each affected holder of an Interest or License to be expropriated; and
 - (b) pay fair and reasonable compensation to the holder of the Interest or License to be expropriated.

Compensation Calculations

- 14.11 The total value of compensation payable under section 14.10(b) will be based on:
- (a) the fair market value of the Interest or License being expropriated;
 - (b) the replacement value of any improvement to the land being expropriated;
 - (c) the damages attributable to any disturbance; and
 - (d) damages for reduction in the value of any remaining Interest.

Fair Market Value

14.12 The fair market value of an expropriated Interest or License will be deemed to be equivalent to the amount that would have been paid for the Interest or License if it had been sold on First Nation Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

14.13 Subject to section 14.15, the resolution of a dispute concerning the right of the First Nation to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement.

14.14 The sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

14.15 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

- (a) a dispute concerning the right of the holder of an expropriated Interest or License to compensation; and
- (b) a dispute concerning the amount of compensation.

15. Voluntary Land Exchange and Protection

Conditions for a Land Exchange

15.1 The First Nation may by agreement with another party exchange First Nation Land for land from that other party in accordance with this Land Code and the Framework Agreement.

No Effect

15.2 A land exchange is of no effect unless it receives approval by a Ratification Vote.

Land To Be Received

15.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the First Nation:

- (a) is of equal or greater area than the First Nation Land to be exchanged;
- (b) is of a value comparable to the appraised value of the First Nation Land to be exchanged; and

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

Negotiators

- 15.4 A person who negotiates a land exchange agreement on behalf of the First Nation must be designated by Resolution.

Additional Compensation

- 15.5 The First Nation may receive additional compensation, including money or other land, in addition to the land referred to in section 15.3.

- 15.6 Such other land may be held by the First Nation in fee simple or otherwise.

Federal Consent

- 15.7 Before the First Nation concludes a land exchange agreement, it must receive a written statement from Canada stating that Her Majesty in right of Canada:

- (a) consents to set apart as a reserve the land to be received in the land exchange, as of the date of the land exchange or such later date as Council may specify by Resolution; and
- (b) consents to the manner and form of the land exchange as set out in the land exchange agreement.

Notice

- 15.8 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in section 15.2, Council or the Land Management Committee will provide the following information to Members:

- (a) a description of the First Nation Land to be exchanged;
- (b) a description of the land to be received by the First Nation;
- (c) a description of any additional compensation to be received;
- (d) a report of a certified land appraiser stating that the conditions in sections 15.3 (a) and (b) have been met;
- (e) a copy of the land exchange agreement; and
- (f) a copy of the statement referred to in section 15.7.

Process of Land Exchange

15.9 A land exchange agreement will provide that:

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

**PART 5
CONFLICT OF INTEREST**

16. Conflict of Interest

Application of Rules

16.1 Section 16.2 applies to:

- (a) a member of Council who is dealing with any matter before Council that is related to First Nation Land;
- (b) an employee of the First Nation who is dealing with any matter that is related to First Nation Land; and
- (c) a member of a board, committee, Panel or other body of the First Nation that is dealing with any matter that is related to First Nation Land.

Duty to Report and Abstain

16.2 If there is any financial or proprietary interest in a matter being dealt with that might involve an individual, an individual's Immediate Family or a business in which an individual holds an interest, that individual will:

- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
- (b) take no part in any deliberations on the matter; and
- (c) take no part in a vote on the matter.

Common Interests

16.3 Section 16.2 does not apply to an interest that is held by a Member in common with every other Member.

Meeting of Eligible Voters

16.4 If Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, Council may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Law or Resolution.

Inability to Act

16.5 If a board, committee or other body is unable to act due to a conflict of interest, the matter will be referred to Council and Council may decide the matter.

Disputes

16.6 Determination of whether a breach of this Part has occurred may be referred to the Panel.

**PART 6
LAND ADMINISTRATION**

17. Financial Management

Application

17.1 This part applies only to financial matters in relation to First Nation Land that is administered under this Land Code.

Establishment of Bank Accounts

17.2 Council will maintain one or more financial accounts in a financial institution and will deposit in those accounts:

- (a) transfer payments received from Canada for the management and administration of First Nation Land;
- (b) moneys received by the First Nation from the grant or disposition of interests or licenses in First Nation Land;
- (c) all fees, fines, charges and levies collected under a Law or Resolution in relation to First Nation Land;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of Interests and Licenses in First Nation land;

- (e) monies held in trust for a Member in respect of a current lease managed by the First Nation, provided that nothing prevents Council and such Member from agreeing in writing that the Member will assume management of the lease and release the First Nation from further obligation under this section; and
- (f) any other land revenue received by the First Nation.

17.3 Council will continue or implement a system of financial planning and financial administration for the management of First Nation moneys through which Council, First Nation employees and other persons who manage moneys in relation to First Nation Lands are accountable to the Members in accordance with clause 5.2(d) of the Framework Agreement.

Signing Officers

17.4 Council will authorize the signing officers of the First Nation to sign cheques and other bills of exchange or transfer drawn on a financial account maintained under section 17.2.

Fiscal Year

17.5 The fiscal year of the First Nation will begin on April 1 of each year and end on March 31 of the following year.

Adoption of Budget

17.6 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.

17.7 Prior to adopting a budget referred to in section 17.6, Council will consult with the Land Management Committee.

Procedure

17.8 After adopting a land management budget or supplementary budget, Council will as soon as practicable:

- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and
- (b) post a copy of the budget or supplementary budget at the First Nation administration offices for inspection by Members during ordinary business hours.

If No Budget

- 17.9 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

Expenditures

- 17.10 Council may not expend moneys related to First Nation Land or commit, by contract or otherwise, to expend moneys related to First Nation Land unless the expenditure is authorized under a Law or an approved budget.

Financial Policy

- 17.11 Council may, in accordance with this Land Code, adopt financial policies and rules to further manage moneys related to First Nation Land.

18. Financial Records

Financial Records

- 18.1 Council will keep financial records in accordance with generally accepted accounting principles.

Offences

- 18.2 Any person who has control of the financial records of the First Nation and who:
- (a) impedes or obstructs anyone from exercising a right to inspect those records; or
 - (b) fails to give all reasonable assistance to anyone exercising a right to inspect those financial records,
- is guilty of an offence under this Land Code.

Preparation of Financial Statement

- 18.3 Within ninety days after the end of each fiscal year Council will prepare a financial statement in comparative form containing:
- (a) a balance sheet;
 - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
 - (c) any other information necessary for a full and fair presentation of the financial position of the First Nation in relation to First Nation Land.

Consolidated Accounts

18.4 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the First Nation.

19. Audit

Appointment of Auditor

19.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.

19.2 The auditor appointed under section 19.1 will be the auditor appointed for the consolidated audit of the other accounts, audits and reports of the First Nation.

Duty of Auditor

19.3 The auditor will, within 120 days after the end of the First Nation fiscal year, prepare and submit to Council an audit report on the First Nation's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of the First Nation in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

19.4 The auditor may at all reasonable times inspect any financial records of the First Nation and the financial records of any person or body who is authorized to administer money related to First Nation Land.

Presentation of Auditor's Report

19.5 Council will present the auditor's report at a Meeting of Members.

19.6 Where practicable Council will distribute the auditor's report to Members in advance of the Meeting of Members.

20. Annual Report

Publish Annual Report

20.1 Council will, within thirty days after receiving an audit report under section 19.3, prepare and table with the Land Management Committee an annual report on First Nation Land management.

20.2 The annual report will include:

- (a) an annual review of First Nation Land management activities;

- (b) a copy and explanation of the audit report as it applies to First Nation Land;
- (c) a report on any proceedings and decisions under the Dispute Resolution provisions of Part 8; and
- (d) such other matters as may be directed by Council or reasonably requested by the Land Management Committee.

21. Access to Financial Information

Copies for Members

- 21.1 Any person may, during normal business hours at the First Nation administration offices, have reasonable access to:
- (a) the auditor's report; and
 - (b) the annual report.
- 21.2 A Member may, during normal business hours at the First Nation administration office, upon payment of a reasonable fee set by Resolution, obtain a copy of the auditor's report, annual report on First Nation Land management, budget or supplementary budget.

22. Land Management Committee

Land Management Committee Established

- 22.1 A Land Management Committee is hereby established to:
- (a) assist with the development of the First Nation Land administration system;
 - (b) advise Council and First Nation staff on matters respecting First Nation Land;
 - (c) recommend to Council Laws, Resolutions, policies and procedures respecting First Nation Land;
 - (d) hold regular and special meetings of Members to discuss First Nation Land issues and make recommendations to Council on the resolution of such issues;
 - (e) assist in the exchange of information regarding First Nation Land matters between Members and Council;
 - (f) oversee community consultations and approvals under this Land Code;
 - (g) conduct the resolution of disputes under section 43.1; and
 - (h) perform such other duties and functions as Council may direct.

Delegation

- 22.1.1 The Land Management Committee will delegate the duties of the Land Management Committee, other than the duties under section 17.7, section 20, section 22.5 and any other duties that Council may direct, to a sub-committee of the Land Management Committee composed of five members of the Land Management Committee including the Chair. [new, June 25, 2013]
- 22.1.2 Council will appoint one member of the Council to sit as a non-voting member of the sub-committee established under section 22.2.1, and to act as a liaison between the Land Management Committee and Council. [new, June 25, 2013]
- 22.1.3 A quorum of the sub-committee is three members who are members of the Land Management Committee [new, June 25, 2013]
- 22.1.4 The term of members of the sub-committee is two years unless otherwise specified in rules or procedures established under section 22.5. [new, June 25, 2013]
- 22.1.5 The sub-committee established under section 22.1.1 will report on its activities to the Land Management Committee of the whole on a quarterly basis, or such other period as may be specified in rules or procedures established under section 22.5, but for greater certainty, duties carried out and decisions made by the sub-committee are not subject to reconsideration by the Land Management Committee of the whole. [new, June 25, 2013]

Development of Land Related Rules and Procedures

- 22.2 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the community and the Land Management Committee, establish rules and procedures that address the following matters:
- (a) the process and criteria for granting Interests and Licenses in First Nation Land; [amended, June 25, 2013]
 - (b) environmental protection and environmental assessment in relation to First Nation Land;
 - (c) resolution of disputes in relation to First Nation Land;
 - (d) First Nation Land use planning and zoning;
 - (e) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code; and
 - (f) section 35 respecting spousal property and the policy upon which that section is based.

Determination of Fees and Rent

- 22.3 The Land Management Committee will recommend to Council a process for determining:
- (a) fees and rent for Interests and Licenses in First Nation Land;
 - (b) fees for services provided in relation to First Nation Land and compliance with this Land Code; and
 - (c) processes and criteria for managing the First Nation's obligations in relation to revenue from lands.

Implementation of Policies

- 22.4 Rules, procedures and processes developed in accordance with section 22.2 and 22.3 will be considered by Council for implementation as Laws, Resolutions, policies or amendments to this Land Code.

Internal Procedures

- 22.5 The Land Management Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 22.6 Subject to Council requirements in respect of financial obligations, the Land Management Committee may:
- (a) establish policies for the remuneration and recovery of expenses incurred by Land Management Committee members; and
 - (b) establish programs for the orientation and education of Land Management Committee members.

23. Land Management Committee Membership

Composition

- 23.1 The Land Management Committee will be made up of Eligible Voters appointed by Council in a manner so as to provide for a broad representation of the First Nation community. [amended, June 25, 2013]
- 23.1.1 A quorum of the Land Management Committee is at least two thirds of the number of members currently appointed to serve office on the Land Management Committee. [new, June 25, 2013]

Eligibility

- 23.2 Any Eligible Voter, whether or not resident on First Nation Land, is eligible to be appointed to the Land Management Committee under paragraph 23.1, except for:
- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment or felony conviction within five years prior to the date of the appointment;
 - (b) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct; and
 - (c) an Eligible Voter who is a salaried staff member of the First Nation or member of Council unless that Eligible Voter resigns as a staff member or member of Council upon being appointed to the Land Management Committee. [*amended, June 25, 2013*]

Interim Land Management Committee

- 23.3 The interim Land Management Committee as it exists on the date of the Ratification Vote and as set out in Schedule A to this Land Code will hold office and carry out the duties of the Land Management Committee until the first Land Management Committee appointed under section 23.1 takes office. [*amended, June 25, 2013*]

23.4 [*repealed, June 25, 2013*]

Term

- 23.5 A person that is appointed as a member of the Land Management Committee shall hold office for a term of four years, unless specified otherwise in a Law enacted under section 23.7. [*amended, June 25, 2013*]

No Limit on Terms in Office

- 23.6 Nothing precludes an incumbent member of the Land Management Committee from being appointed for a further term. [*amended, June 25, 2013*]

Appointment Law

- 23.7 Council will enact a Law to establish the procedure for Land Management Committee appointments. [*amended, June 25, 2013*]

- 23.8 A Law enacted under section 23.7 shall include:

- (a) If applicable, such additional transitional rules as may be necessary for the first Land Management Committee;
- (b) a process to increase or decrease the number of members of the Land Management Committee to provide for broad representation of the First Nation

community provided that in no case shall the number of members of the Committee be more than sixteen; and

- (c) a process to consult with elders, heads of families, and Members concerning the appointment of the Land Management Committee. [amended, June 25, 2013]

Vacancy on Land Management Committee

23.9 The office of a member of the Land Management Committee becomes vacant if the member, while holding office:

- (a) is or becomes ineligible to hold office under section 23.2;
- (b) ceases to be a Member;
- (c) is elected to Council or accepts employment as an employee of the First Nation;
- (d) is absent for three meetings of the Land Management Committee for a reason other than illness or incapacity without being authorized to be absent by the Chair of the Land Management Committee;
- (e) fails to disclose a conflict of interest as required under Part 5 of the Land Code;
- (f) dies or becomes mentally incompetent; or
- (g) resigns in writing. [amended, June 25, 2013]

Vacancy in Term

23.10 Where the office of a member of the Land Management Committee becomes vacant more than 90 days before the date when another appointment of Land Management Committee members would ordinarily be held, Council will forthwith appoint a replacement. [amended, June 25, 2013]

23.11 [repealed, June 25, 2013]

Balance of Term of Office

23.12 The term of a member of the Land Management Committee appointed under section 23.10 will be the balance of the term in respect of which the vacancy occurred. [amended, June 25, 2013]

Attributes of Committee Members

23.13 Having accepted an appointment to the Land Management Committee, a member of the Land Management Committee will accept the duties and obligations of membership and

agree to observe and carry out those duties and obligations according to the terms and conditions of this Land Code. [amended, June 25, 2013]

23.14 Members of the Land Management Committee will endeavor to demonstrate the following attributes:

- (a) impartiality, honesty and integrity;
- (b) responsibility and accountability; and
- (c) confidentiality.

24. Chair of the Land Management Committee

Chair

24.1 The members of the Land Management Committee will select a Chair from among their members.

Alternate Chair

24.2 If the Chair is unavailable or unable to perform the functions of office, the Land Management Committee will appoint another member of the Land Management Committee to serve as Acting Chair.

Duties of the Chair

24.3 The duties of the Chair are to:

- (a) chair meetings of the Land Management Committee;
- (b) ensure that financial statements relating to all activities of the Land Management Committee, including any applicable revenues and expenditures concerning First Nation Lands, are prepared and tabled with Council;
- (c) report to Council and the Members on the activities of the Land Management Committee;
- (d) monitor the presentation of the audited annual financial statements under section 19.5; and
- (e) perform such other duties as Council or the Land Management Committee may reasonably prescribe.

25. Registration of Interests

Tsawout Lands Register

- 25.1 Council will maintain a Tsawout Lands Register in, at a minimum, the same form and with the same content as the First Nation Lands Register.
- 25.2 An Interest in First Nation Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Tsawout Lands Register. [*amended, June 25, 2013*]
- 25.3 No instrument that requires the consent of Council or approval by the Members may be registered in the Tsawout Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.
- 25.4 Every person who receives an Interest in First Nation Land from a Member will deposit an original copy of the instrument in the Tsawout Lands Register. [*amended, June 25, 2013*]
- 25.4.1 Neither the First Nation, the Council, the Lands Manager, or any First Nation employee shall be liable for ensuring that an instrument that affects or purports to affect First Nation Land:
- (a) is validly made;
 - (b) complies with the Land Code or any Law;
 - (c) should be registered or recorded; or
 - (d) will be accepted for registration or recording in the First Nation Lands Register. [*new, June 25, 2013*]

First Nation Lands Register

- 25.5 Council will ensure that a duplicate copy of the following instruments is deposited in the First Nation Lands Register:
- (a) a grant of an Interest in First Nation Land;
 - (b) a transfer or assignment of an Interest in First Nation Land;
 - (c) a land use plan or subdivision plan; and
 - (d) this Land Code and any amendment to this Land Code. [*amended, June 25, 2013*]

- 25.6 Notwithstanding section 25.1, nothing precludes Council from enacting a Law providing for maintenance of the Tsawout Lands Register in such other land register system or facility as may meet the requirements of the Tsawout Lands Register.

PART 7 INTERESTS AND LICENSES IN LAND

26. Limits on Interests and Licenses

All Dispositions in Writing

- 26.1 An Interest in, or License in relation to, First Nation Land may only be created, granted, disposed of, assigned or transferred by an instrument issued in accordance with this Land Code. [*amended, June 25, 2013*]

Standards

- 26.2 Council may, after full and fair consideration of any recommendations made by the Land Management Committee, establish mandatory standards, criteria and forms for Interests and Licenses in First Nation Land.

Improper Transactions Void

- 26.3 A deed, lease, contract, document, agreement or other instrument of any kind by which the First Nation, a Member or any other person purports to create, grant, dispose of, assign or transfer an Interest or License in relation to First Nation Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

Non-Members

- 26.4 Subject to section 26.5, a person who is not a Member may hold an Interest or License in First Nation Land. [*amended, June 25, 2013*]
- 26.5 A person who is not a Member may not hold a Permanent Interest in First Nation Land.

Grants to Non-Members

- 26.6 Subject to section 26.7, the written consent of Council must be obtained for any grant or disposition of an Interest or License in First Nation Land to a person who is not a Member. [*amended, June 25, 2013*]
- 26.7 Unless a document creating or disposing of an Interest expressly states otherwise, the following transactions do not require the written consent of Council:
- (a) Sub-Leases; and
 - (b) assignments of Sub-Leases. [*new, June 25, 2013*]

27. Existing Interests

Continuation of Existing Interests

- 27.1 An Interest or License in First Nation Land that is in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that Interest or License.
- 27.2 For greater certainty, section 27.1 applies to a Permanent Interest in First Nation Land.
- 27.3 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction, cancel or correct any Interest or License issued or allotted in error, by mistake or by fraud.

28. New Interests and Licenses

Authority to Make Dispositions

- 28.1 Council may under this Land Code grant:
- (a) Interests in Community Land; and
 - (b) Licenses to take Natural Resources from Community Land. [*amended, June 25, 2013*]

Conditional Grant

- 28.2 The grant of an Interest or License under section 28.1 may be made subject to conditions. [*amended, June 25, 2013*]

Role of the Land Management Committee

- 28.3 The Land Management Committee will advise Council on the granting of Interests and Licenses and may be authorized to act as a delegate of Council under section 6.4 in the granting of such Interests and Licenses. [*amended, June 25, 2013*]
- 28.4 Council in consultation with the Land Management Committee will develop and enact a Law establishing a process that:
- (a) Sets out the principles and factors that Council must consider when deciding whether to grant or dispose of an Interest or License in Community Land;
 - (b) Requires the Land Management Committee to make a written recommendation concerning all of the following:
 - i. a proposed grant or disposition of an Interest in Community Land for a term of twenty-five years or more;

- ii. a proposed renewal of a grant or disposition of an Interest in Community Land for a term of twenty-five years or more, or that would have the effect of extending the original grant or disposition for a term exceeding twenty-five years;
 - iii. a proposed License to take Natural Resources from Community Land;
 - iv. a proposed Mortgage of a Leasehold in Community Land for a term exceeding twenty-five years; and
 - v. any other proposed grant or disposition that Council, by Resolution, declares to be subject to this section.
- (c) Sets out the authority of Council to grant or dispose of an Interest or License contrary to a recommendation of the Land Management Committee; and
- (d) dispute resolution. [amended, June 25, 2013]

28.5 For greater certainty, an Interest under paragraph 28.4(b)(i) includes a Permanent Interest. [new, June 25, 2013]

29. Permanent Interests

Application

- 29.1 This section applies to Certificates of Possession allocated under the *Indian Act* and to equivalent tenures that create a Permanent Interest under this Land Code.
- 29.2 Subject to section 26, a Permanent Interest in respect of a parcel of land is an interest that entitles the Member holding that interest to:
- (a) permanent possession of the land;
 - (b) develop and benefit from the Natural Resources of the land;
 - (c) grant subsidiary Interests in the land, including Leaseholds, Permits and Easements;
 - (d) transfer, devise or otherwise dispose of the land to another Member;
 - (e) subject to all Laws, and any applicable laws, grant Licenses to take Natural Resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances; and
 - (f) any other rights, consistent with this Land Code, that are attached to certificates of possession under the *Indian Act*. [amended, June 25, 2013]

- 29.3 Prior to a grant of a Permanent Interest in First Nation Land, the Land Management Committee will review the proposed interest and advise Council and the proposed grantee of the proposed interest as to measures that may be necessary or desirable to:
- (a) protect the interests of the First Nation in respect of the proposed Permanent Interest; or
 - (b) protect the interests of the proposed grantee of the Permanent Interest.

30. Allocation of Land

Allocation of Residential Lots

- 30.1 Council may, by lease, rental arrangement or other disposition in accordance with this Land Code, allocate lots of available Community Land to Members for residential purposes.
- 30.2 A person who is not a member may not be allocated a residential lot.
- 30.3 Council may enact Laws providing for Interests in First Nation Land that entitle a Member holding such an interest to:
- (a) benefit from the Natural Resources in and of that land;
 - (b) grant subsidiary Interests and Licenses in that land, including Leaseholds, Permits and Easements; and
 - (c) transfer, devise or otherwise dispose of that land to another Member.
[amended, June 25, 2013]
- 30.4 Council may issue a certificate of the Interest to a Member for a lot allocated to that Member.

31. Transfer and Assignment of Interests

Transfer of Interests

- 31.1 A Member may transfer or assign in writing an Interest held by that Member in First Nation Land to another Member or the First Nation.

Consent of Council

- 31.2 Except for transfers or assignments under section 31.1 or section 26.7 and transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted under section 35:

- (a) there will be no transfer or assignment of an Interest or License in First Nation Land without the written consent of Council; and
- (b) the grant of an Interest or License is deemed to include section 31.2(a) as a condition of any subsequent transfer or assignment. [*amended, June 25, 2013*]

31.3 For greater certainty, section 31.2 does not apply to a Permanent Interest.

Ceasing to be a Member

31.4 A person who ceases to be a Member shall within six months of ceasing to be a Member transfer any Permanent Interest that he or she holds to the First Nation or to another Member. [*new, June 25, 2013*]

31.5 Where a Member does not transfer his or her Permanent Interest in accordance with section 31.4 the Permanent Interest shall, six months and one day after the person ceases to be a Member, be cancelled and the Interest shall revert to the First Nation. [*new, June 25, 2013*]

31.6 Where a Permanent Interest reverts to the First Nation under section 31.5, the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any Interest he or she held prior to the date that the Permanent Interest reverts to the First Nation. [*new, June 25, 2013*]

32. Limits on Mortgages, Seizures and Tax

Protections

32.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to First Nation Land.

Mortgage of Member's Interest

32.2 The Permanent Interest of a Member in First Nation Land under section 29 may be subject to a mortgage or charge only to the First Nation.

Mortgages of Leasehold Interests with Consent

32.3 A leasehold interest may be subject to charge or mortgage only with the written consent of Council.

Time Limit

32.4 The term of a charge or mortgage of a Leasehold will not exceed the lesser of:

- (a) the term of the lease;
- (b) 25 years; or

- (c) such other period as may receive approval in accordance with the process established pursuant to a Law enacted under section 28.4. [amended, June 25, 2013]

Default in Mortgage

32.5 In the event of default in the terms of a charge or mortgage of a Leasehold, the Leasehold is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the charge or mortgage received the written consent of Council;
- (b) the charge or mortgage received approval by the Members where required;
- (c) the charge or mortgage was registered in the Tsawout Lands Register; and
- (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.

32.6 For greater certainty, section 32.5 applies to a charge or mortgage between Members.

Power of Redemption

32.7 If Council exercises its power of redemption with respect to a Leasehold, the First Nation becomes the lessee of the land and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

33. Residency and Access Rights

Civil Remedies

33.1 Subject to a Law enacted under section 6.2(n) all civil remedies for trespass are preserved.

No Obligation on the First Nation

33.2 A right of residence or access does not imply any financial obligation on the part of the First Nation.

No Liability on the First Nation

33.3 No liability is imposed upon the First Nation in respect of any person exercising a right of access in accordance with this Land Code for injuries or damages suffered on account of the condition or state of First Nation Land.

34. Transfers on Death or Mental Incompetence

Right of Widow or Widower

34.1 In the event that:

- (a) a Member holding an Interest in First Nation Land dies intestate and is survived by a Spouse or dependant who does not hold a Registered Interest in that land; or
- (b) a Member holding an Interest in First Nation Land is declared incompetent due to mental incapacity,

the Member's Spouse or dependant may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's Interest is disposed of under this section.

34.2 A Spouse or dependant referred to in section 34.1, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's Interest, and Council will, subject to this Land Code, decide the application on its merits.

Recommendation of Family Members

34.3 In the event that:

- (a) no other provision has been made by a Member referred to in section 34.1 for the disposition of the Interest in the First Nation Land;
- (b) the Member's Spouse or dependant does not within a reasonable time make application under section 34.2; or
- (c) a member of the Member's Immediate Family disputes the continued residence on or use of the land by the Member's Spouse or dependant,

Council will take reasonable steps to advise other members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute and the Member's Immediate Family may, with the assistance of the Panel if requested, recommend who among them is to receive the Interest in the land.

34.4 If a Member referred to in section 34.1 has no Immediate Family, or if the Immediate Family does not within a reasonable period of time after the date of such Member's death or declaration of incompetence recommend who is to receive the Interest, Council will decide who is to receive the Interest and may consult the Member's Extended Family or call a Meeting of Members to provide advice on the disposition of the Interest.

34.5 Subject to this Land Code, Council will make best efforts to implement a recommendation made under section 34.3 or 34.4.

34.6 For greater certainty, nothing in sections 34.1 to 34.5, both inclusive, is intended to affect the ability of a Member's spouse or dependant to dispose of assets or improvements other than the Member's Interest in First Nation Land.

35. Spousal Property Law

Development of Rules and Procedures

35.1 Within twelve months after the date this Land Code comes into effect Council will enact a spousal property Law prescribing rules and procedures applicable on the breakdown of a marriage to:

- (a) the use, occupancy and possession of First Nation Land; and
- (b) the division of Interests in that land.

Enactment of Rules and Procedures

35.2 The rules and procedures contained in the spousal property Law will be developed by the Land Management Committee in consultation with the community.

General Principles

35.3 The rules and procedures developed by the Land Management Committee under section 35.2 will take into account the following general principles:

- (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home;
- (b) the Spouses should resolve spousal property matters by contract or agreement;
- (c) each Spouse should have an equal right to possession of the matrimonial home;
- (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
- (e) the rules and procedures will not discriminate on the basis of sex; and
- (f) only Members are entitled to hold a spousal interest in First Nation Land or a charge against a spousal interest in First Nation Land.

Interim Law

35.4 Council may enact an interim spousal property Law at any time within the twelve month period prescribed in section 35.1.

- 35.5 A Law enacted under section 35.4 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 35.1.

PART 8 DISPUTE RESOLUTION

36. Intent

- 36.1 The intent of this Part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy First Nation Land:
- (a) do so harmoniously with due respect for the rights of others and of the First Nation; and
 - (b) have access to First Nation procedures to resolve disputes.

Informal Discussions

- 36.2 The First Nation intends that wherever possible, a dispute in relation to First Nation Land will be resolved through informal discussion by the parties to the dispute and nothing in this Part will be construed to limit the ability of any person to settle a dispute without recourse to this Part.

Staged Processes

- 36.3 The First Nation further intends that a dispute in relation to First Nation Land that is not resolved by informal discussion will, except as otherwise provided, progress in sequence through the following stages provided for in this Part:
- (a) facilitated discussions;
 - (b) mediation;
 - (c) hearing by the Dispute Resolution Panel; and
 - (d) arbitration.

Who May File A Dispute

- 36.4 The following persons may file a Notice of Dispute under this Part:
- (a) a Member who claims an Interest in First Nation Land based on a Registered Interest;

- (b) a person who has a dispute with another person or with the First Nation in relation to the possession, use or occupation of First Nation Land;
- (c) the First Nation when asserting an Interest in First Nation Land; and
- (d) the First Nation when disputing the possession, use or occupation of First Nation Land.

36.5 For greater certainty, disputes that originated before this Land Code comes into effect may be decided under this Part.

Dispute Resolution Not Available

36.6 Dispute resolution is not available under this Part for disputes in relation to:

- (a) decisions relating to housing allocation;
- (b) decisions of Council to grant or refuse to grant an Interest or License in First Nation Land; or
- (c) any dispute to which a spousal property law enacted under section 35 applies. [amended, June 25, 2013]

Duty of Fairness

36.7 All persons involved in a dispute under this Part must be:

- (a) treated fairly;
- (b) given a full opportunity to present their case; and
- (c) given reasons for a decision made under this Part.

Rules and Procedures

36.8 Council may prescribe such rules, policies, procedures, forms and reasonable fees not inconsistent with this Land Code, as may be necessary to give effect to this Part including implementation of recommendations of the Panel made under section 41.6;

Civil Remedies Preserved

36.9 Nothing in this Part will be construed to prevent a party to a dispute from applying to have the dispute resolved in a court of competent jurisdiction.

36.10 A party to a dispute may not commence proceedings under section 36.9 unless:

- (a) proceedings under this Part have been completed; or

- (b) the parties to the dispute have consented.

Challenge to Validity of Law

- 36.11 Nothing in this Part will be construed to prevent a party to a dispute from challenging the validity of a Law in a court of competent jurisdiction.

Appeal of Decision

- 36.12 Subject to any exception established by Law a decision of the Panel may be appealed to the Federal Court of Canada.

37. Dispute Resolution Panel

Panel to be Established

- 37.1 Council will within 60 days of the coming into effect of this Land Code establish a Dispute Resolution Panel.

Panel Members

- 37.2 The Panel will be composed of seven Members, no less than four of whom must be Eligible Voters and no more than three of whom must be non-Members.
- 37.3 Council and the Land Management Committee may, for the purpose of identifying members of a Panel, establish an eligibility list from which members of a Panel may be appointed to hear a dispute.

Chair of the Dispute Resolution Panel

- 37.4 The Panel will select one of its members to act as Chair of the Panel.

Term of Office

- 37.5 For the first Panel established under this Part, Council will, upon the recommendation of the Land Management Committee, appoint three members for a term of two years and four members for a term of four years.
- 37.6 Thereafter, appointments to the Panel will be for a term of four years provided that if an appointment is made to replace a Panel member who is unable or unwilling to complete a term, the appointment will be made for the remainder of the term of the Panel member being replaced.
- 37.7 Council will, upon the recommendation of the Land Management Committee, appoint or re-appoint members of the Panel at least thirty days prior to the expiry of the term of the member of the Panel whose term is the subject of the appointment or re-appointment.

Advisors, Mediators and Arbitrators

37.8 Council, upon the recommendation of the Land Management Committee may appoint or contract with expert advisors, mediators, arbitrators, professionals or other Persons to assist in resolving disputes under this Part.

38. Procedure to File a Dispute

38.1 A person who wishes to resolve a dispute with another person or the First Nation in relation to the possession, use or occupation of First Nation Land may file a written Notice of Dispute with the Lands Manager setting out:

- (a) the nature of the dispute;
- (b) the facts and supporting arguments upon which the Person filing the Notice of Dispute relies; and
- (c) the relief that is sought.

Limitation Period

38.2 A Notice of Dispute must be filed within thirty days of the Person filing the Notice of Dispute becoming aware of the decision, act or omission being disputed.

38.3 Section 38.2 does not apply to disputes under section 36.5.

39. Facilitated Discussions

First Stage Procedure

39.1 Within 30 days of receiving a Notice of Dispute under section 38.1 the Lands Manager will prepare and deliver a report on the dispute and a copy of the Notice of Dispute to the Chair of the Panel.

39.2 As soon as practicable after receiving a report and Notice of Dispute under section 39.1 the Chair of the Panel or, at the request of the Chair of the Panel, another person not affected by the dispute and designated by the Chair of the Panel for that purpose, will make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

Timing

39.3 In setting the date and time of the meeting referred to in section 39.2 the Chair of the Panel or other person appointed for the purposes of section 39.2 may consider any need to:

- (a) obtain further information;

- (b) give notice of the dispute to others who have or may have an interest in the dispute; or
- (c) obtain professional advice in relation to the dispute.

39.4 Where the Chair of the Panel or other person appointed under section 39.2 concludes that the dispute cannot be resolved through facilitated discussions, he may in his sole discretion direct that the dispute proceed to mediation or hearing by the Panel.

40. Mediation

Appointment

- 40.1 A mediator will be selected jointly by the parties to the dispute and the Panel.
- 40.2 If the parties to the dispute and the Panel are unable to agree on a mediator, the Panel will hear the dispute.

Authorities

- 40.3 A mediator has no jurisdiction to decide the dispute without the agreement of the parties to the dispute.
- 40.4 At the conclusion of mediation, the mediator will submit a written report on the mediation proceedings to the parties to the dispute and the Panel.

41. Hearing by Dispute Resolution Panel

Hearing of Disputes

- 41.1 If a dispute is not resolved by mediation, the Panel will hear the dispute at a place and time to be determined by the Panel.

Hearing Procedures

- 41.2 Unless otherwise provided in this Part, the Dispute Resolution Panel will establish procedures consistent with this Land Code for hearing disputes by the Dispute Resolution Panel.

Hearing by Three Members

- 41.3 A dispute will be heard by three members of the Panel who have no interest or conflict of interest in the dispute, selected as follows:
- (a) one Panelist appointed by each of the primary parties to the dispute from among the Eligible Voters listed on the eligibility list; and

- (b) one Panelist selected by the Panelists appointed under section 41.3(a) from among the non-Members listed on the eligibility list, who will act as the chair of the Panel.

41.4 Where the Parties to a dispute are unable to agree on an appointment under section 41.3(a) or the appointees are unable to agree on a chair under section 41.3(b), the appointment or chair, as the case may be, will be decided by an Arbitration Panel under this Part.

Decision-making Authority

41.5 The Panel may, after hearing a dispute:

- (a) confirm in whole or in part the decision that is the subject of the dispute;
- (b) reverse in whole or in part the decision that is the subject of the dispute;
- (c) substitute its own decision for the decision in dispute;
- (d) direct that an action be taken or ceased;
- (e) refer the subject of the dispute for reconsideration by the decision maker;
- (f) make an order to give effect to its decision, including any necessary order for the survey of an Interest in First Nation Land, the registration of an Interest in First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order; or
- (g) refer the matter to arbitration under section 42.1.

Recommendations by Panel

41.6 In addition to making a determination under section 41.5, the Panel may:

- (a) recommend to Council the suspension of any Law or decision made by Council for such period as may be necessary for Council to reconsider, amend or repeal such law or decision, provided that any amendment or repeal of a Law is made in a manner consistent with this Land Code; or
- (b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

Interim Decisions

41.7 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers necessary to preserve the rights of the parties to the dispute or to preserve or protect an Interest in First Nation Land.

Decisions in Writing

41.8 Decisions of the Panel will be in writing.

Decisions Final and Binding

41.9 Subject to section 36.12, a decision of the Panel is final and binding.

Improper Influence

41.10 Any attempt by a person who has filed a Notice of Dispute to improperly influence a decision of the Panel will, in addition to any other remedies which may be available, result in the termination of proceedings under this Part and the matter being disputed will remain in effect as originally decided.

42. Arbitration Panel

Referral to Arbitration Panel

42.1 The Panel may refer a matter to an Arbitration Panel where:

- (a) the Dispute Resolution Panel is unable to decide the dispute; or
- (b) the parties to the dispute request that non-Members resolve the dispute.

Conditions

42.2 The Panel may not refer a matter to an Arbitration Panel unless all parties to the dispute agree:

- (a) to share equally in the costs of the Arbitration Panel; and
- (b) to be bound by the decision of the Arbitration Panel.

Arbitration Panel

42.3 An Arbitration Panel will consist of three panel members selected as follows:

- (a) one panel member selected by each party to the dispute, or where there are more than two parties to a dispute, by the two principal parties to the dispute;
- (b) one panel member agreed to by all parties to the dispute, who will sit as the Chair of the Panel.

Other Evidence

42.4 An Arbitration Panel may hear and consider evidence from an expert advisor, professional or other Person.

Decision-making Authority

42.5 The Arbitration Panel may, after hearing a dispute:

- (a) make any decision that the Panel may make under section 41.5; and
- (b) make any recommendation that the Panel may make under section 41.6.

Reasons for Decisions

42.6 The Arbitration Panel will give written reasons for their decision within thirty days after the date of the decision.

Binding Decisions

42.7 Subject to section 36.12, a decision of the Arbitration Panel is final and binding.

43. Disputes by the First Nation

Lands Management Committee

43.1 Where the First Nation disputes the possession, use or occupation of First Nation Land, the Land Management Committee will conduct the dispute resolution proceedings under this Part.

Land Management Committee to report

43.2 Upon conclusion of proceedings under this Part, the Land Management Committee will report upon the proceedings and decisions to a Meeting of Members in the annual report.

Civil Proceedings Only

43.3 For greater certainty, the authority of the Land Management Committee under section 43.1 relates only to proceedings under this Part and not to the prosecution of an offence under a Law.

No time limit

43.4 Section 38.2 does not apply to the First Nation in a dispute under section 43.1.

Costs

43.5 Unless otherwise ordered or provided in this Land Code the Parties to a dispute will bear their own costs.

PART 9 OTHER MATTERS

44. Liability

Liability Insurance

- 44.1 Council will arrange for, maintain and pay insurance coverage for:
- (a) liability of the First Nation in relation to First Nation Land; and
 - (b) the First Nation's officers and employees engaged in carrying out any matter related to First Nation Land to indemnify them against personal liability for acts done in good faith arising from those activities.

Extent of Coverage

- 44.2 Council will determine the extent of insurance coverage under section 45.1.
- 44.3 Every employee of the First Nation whose responsibilities include administration of First Nation Land or collecting or accounting for revenue from First Nation Land must be bondable.

45. Offences

Application of the Criminal Code

- 45.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code and under a Law.

Justices of the Peace

- 45.2 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.

Courts

- 45.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or the British Columbia Supreme Court, as the case may be.

46. Amendment

Approval by Members

- 46.1 Amendment of this Land Code must receive approval by Ratification Vote.

47. Commencement

Coming into Effect

47.1 This Land Code will come into effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada by a Ratification Vote; and
- (b) this Land Code has been certified by the verifier in accordance with the Framework Agreement.

Effective Date

47.2 This Land Code will come into effect on the later of:

- (a) the first day of the month following certification of this Land Code by the verifier;
or
- (b) the date the Individual Agreement is executed by Canada.

SCHEDULE A

INTERIM LAND MANAGEMENT COMMITTEE

(Section 23.3)

CHAIR

Helen JACK

FAMILY REPRESENTATIVES

VOTING REPRESENTATIVES

ALTERNATES

Lou CLAXTON
Vernon HARRY
Richard HORNE
Helen JACK
Irvine JIMMY
Herb PELKEY
Jeannie SAM
Willie THOMAS
Harvey UNDERWOOD
Tony UNDERWOOD
Ralph UNDERWOOD
Joey PELKEY, Sr.

Belinda CLAXTON (Co-chair)
Ernie HARRY
Karen HARRY
Samantha ETZEL
Kevin WILSON
Frank PELKEY
Stan SAM
Cecelia THOMAS
Floyd UNDERWOOD
Gus UNDERWOOD
Bruce UNDERWOOD
Joey PELKEY, Jr.

EX-OFFICIO

Chief Allan CLAXTON



**STÁUTW (TSAWOUT) FIRST NATION
SUBDIVISION, DEVELOPMENT AND SERVICING LAW
No. 02-2012**

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WHEREAS:

- A. The members of the STÁUTW First Nation have in common inherent rights, customs, and traditions and the inherent right to self-government which are recognized in the Douglas Treaty and affirmed by Section 35 of the *Constitution Act*, 1982;
- B. The STÁUTW First Nation also chose to assume control of its Indian reserve lands and resources pursuant to the *First Nation Land Management Act*, S.C. 1999, c. 24 by entering into the Individual Agreement on First Nation Land Management between Tsawout First Nation and Her Majesty the Queen in Right of Canada, and by adopting the Tsawout First Nation Land Code, which came into force and effect on May 29, 2007; and
- C. Under the *Tsawout First Nation Land Code*, the Council is authorized to make laws respecting the development, conservation, protection, management, use and possession of First Nation Land, including without limitation, laws relating to development, provision of local services, imposition of user charges, and authorization of subdivisions.

NOW THEREFORE this Tsawout First Nation Subdivision, Development and Servicing Law is hereby enacted as a Law of the Tsawout First Nation.

PART 1. NAME

- 1.1 This Law may be cited as the *Tsawout First Nation Subdivision, Development and Servicing Law, No. 02-2012*.

PART 2. PURPOSE

- 2.1 The purpose of this Law is to promote environmentally sustainable, healthy, safe, convenient and well-planned use of First Nation Land.

PART 3. WHERE THIS LAW APPLIES

- 3.1 The provisions of this Law apply to the whole area of First Nation Land as defined in the *Tsawout First Nation Land Code*.

PART 4. DEFINITIONS

- 4.1 For the purposes of this Law, and unless they are otherwise defined in this Law, terms have the same definitions as in the *Tsawout First Nation Land Code*.

4.2 For the purposes of this Law, the following definitions apply:

"Lands Manager" means the Tsawout First Nation employee responsible for the administration of First Nation Land, or a person authorized by Council to act as his or her delegate;

"Law" means this *Subdivision, Development and Servicing Law, 02-2012*, and includes its Schedules;

"MMCD" means Master Municipal Construction Documents as prepared by the Master Municipal Construction Documents Association;

"Person" means any natural person, corporation, and, except where stated otherwise, any person who is a Member of the First Nation;

"Registered Professional" has the same definition as in the *British Columbia Building Code*;

"Tree" means a living, erect, self supporting woody plant that is 5 metres or more in height or 10 centimeters in diameter or greater at 1.4 metres above the ground at the base of the tree and any *Arbutus (Arbutus menziesii)* of any size.

PART 5. GENERAL PROVISIONS

5.1 Headings in this Law are for reference purposes only, and do not form part of this Law.

5.2 In the event that all or any part of any Part, section or paragraph of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.

5.3 In this Law, references to a Part (e.g. Part 1), section (e.g. section 1.1), paragraph (e.g. paragraph 3.4(a)) is a reference to the specified Part, section, or paragraph of this Law, except where otherwise stated.

PART 6. SUBDIVISION, DEVELOPMENT AND SERVICING

Prohibited Activities without Authorization

6.1 None of the following are permitted within First Nation Land except in strict conformity with the requirements of this Law and any other applicable Laws:

- (a) subdivision;
- (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares;
- (c) development;

- (d) installation of roads, intersections, sewer, water and other infrastructure or connection to any existing roads or infrastructure for the purpose of new development;
 - (e) construction, alteration, enlargement, addition, demolition or removal of industrial, commercial or residential structures, including the installation, demolition or removal of swimming pools, fences and decks;
 - (f) deposit or removal of more than 10 cubic metres of soil, gravel or other materials; and
 - (g) cutting, removal or alteration of any Tree.
- 6.2 Without limiting the generality of section 6.1, the following are prohibited:
- (a) subdivision or partitioning of one or more parcels of First Nation Land without subdivision approval by Council in accordance with this Law;
 - (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares without approval by Council;
 - (c) construction or use of a street access or exit driveway that is within 7.5 metres of the point of intersection of the road allowance lines of two streets or a street and a lane when such road allowance intersects at an angle of 135° or less; and
 - (d) carrying out any of the activities set out in paragraphs 6.1 (c), (d), (e) or (g) without a Development Permit.
- 6.3 Despite sections 6.1 and 6.2, and unless they are to be constructed, carried out, or installed within 30 metres of a water body, or they involve the likely release of a polluting substance into a water body, the following do not require any approvals under this Law in and of themselves:
- (a) construction, alteration, enlargement, addition, demolition or removal of any structure the footprint of which is and remains less than 20 square metres;
 - (b) construction or finishing of trails, driveways, or internal roads for single family residential sites on which the internal road or driveway is completely within a single parcel of land;
 - (c) landscaping and minor yard work which does not require an excavation deeper than 1.5 metres or the removal or deposit of more than 10 cubic metres of soil, gravel or other material; and
 - (d) installation of trailers and temporary structures provided such trailers and temporary structures have no hook-ups or connections to services.

PART 7. APPLICATIONS AND APPROVALS

- 7.1 Every applicant applying for an approval to carry out a project, development, activity or procedure set out in section 6.1 or 6.2 shall pay the prescribed fees and submit an application to the Lands Manager in the prescribed form that meets the applicable requirements set out in the following:
- (a) Schedule A - General Engineering Requirements for Land Development on First Nation Land;
 - (b) Schedule B - General Requirements for Environmental Assessments on First Nation Land;

- (c) Schedule C - General Requirements for Heritage Assessments on First Nation Land;
- (d) Schedule D – General Requirements for Timber Harvesting on First Nation Land;
- (e) the British Columbia Building Code (including a completed Schedule B forming part of Subsection 2.2.7, Division C of the British Columbia Building Code); and
- (f) In any directions from Registered Professionals.

- 7.2 Applications shall be reviewed and processed in stages, generally in the following order:
- (a) Rezoning (if required under any applicable Tsawout zoning and land use law);
 - (b) Subdivision;
 - (c) Approval in Principle of Conceptual Plan;
 - (d) Development Permit Approval;
 - (e) Substantial Completion; and
 - (f) Completion.

- 7.3 Applicants shall pay the prescribed fee, post any required bonds, and submit the prescribed application form for each relevant stage set out in this Part.

Concurrent Re-zoning Applications

- 7.4 An applicant may apply for approvals under this Law concurrently with a re-zoning application under any applicable Tsawout zoning or land use law. In the case of concurrent applications:
- (a) all fees payable under both Laws are due at the time of application; and
 - (b) the applicant is required to provide completed applications under both Laws.

Single Family Exemptions

- 7.5 Despite paragraph 7.1(c), a heritage assessment is not required for construction, alteration, enlargement, addition, demolition or removal of single family homes for Tsawout Members unless the proposed activity requires an excavation deeper than 1.5 metres and/or the deposit or removal of more than 10 cubic metres of soil, gravel or other materials.

Review by Land Management Committee and other Departments

- 7.6 As soon as practicable after receiving the prescribed fees and a complete application under this Part, the Lands Manager shall:
- (a) refer the application to a meeting of the Land Management Committee along with all relevant information and documentation;
 - (b) circulate the application and all relevant information and documentation to internal Tsawout departments for comment;
 - (c) for applications for subdivisions, multi-family structures, or significant increases in density, refer the application to all adjacent Permanent Interest holders on First Nation Land; and

(d) if appropriate, refer aspects of the application to the District of Central Saanich.

- 7.7 The Land Management Committee or Lands Manager shall review the application and shall provide recommendations to Council about:
- (a) whether the application should be approved or not; and
 - (b) any suggested modifications, terms or conditions that should be set by Council.

Principles and Factors in Reviewing Applications

- 7.8 For each application, the Land Management Committee shall consider the following general principles and factors:
- (a) the promotion of health, safety, convenience and welfare of Tsawout members and of residents and occupants and other persons who have a lawful interest in First Nation Land;
 - (b) well-planned and orderly development of First Nation Land and the preservation of amenities and special features of First Nation Land;
 - (c) compliance with any applicable Tsawout land use plan, Tsawout zoning and land use law, other Tsawout Law, and applicable federal, provincial and municipal laws and standards;
 - (d) environmental protection and enhancement;
 - (e) adherence to Tsawout housing policies;
 - (f) provision of community benefits including land and/or funds to Tsawout for the development of community amenities;
 - (g) protection and enhancement of cultural and heritage resources and sites;
 - (h) compatibility with Tsawout and Saanich culture;
 - (i) viewscales, aesthetics and visual qualities;
 - (j) ensuring adequate parking, access and emergency access;
 - (k) the character of the proposed activity or project in relation to the character of the zone, neighbourhood, and the buildings already erected;
 - (l) the conservation of property values;
 - (m) potential impacts on adjacent uses, owners and occupants;
 - (n) the development of the zone, neighbourhood and Reserve in a manner that contributes to the economic, environmental, cultural and community health of Tsawout and its Members and the occupants of Tsawout Land;
 - (o) any information provided and any approvals already granted by Council, including any terms or conditions, in relation to the same project or the same parcels of land; and
 - (p) any other factors which may have an impact on the community or First Nation Land.

Examples of Recommendations

- 7.9 In making recommendations to Council, the Land Management Committee may make any relevant recommendations including:
- (a) any recommendation relating to the general factors set out in section 7.8;

- (b) whether there should be bonds, deposits or irrevocable letters of credit posted by the applicant and, if so, in what percentage or amount;
- (c) dedication of up to 5% of the area included in the application for parks, greenspace or community use or a cash donation or other contribution in lieu;
- (d) preferred lot reconfigurations to ensure viable subdivisions;
- (e) construction of intersections, access and emergency access routes;
- (f) construction of parking spaces;
- (g) construction of sidewalks;
- (h) purchase and installation of street lights;
- (i) completion of servicing agreements with the District of Central Saanich;
- (j) provision of updated plans, reports or studies, including as-built drawings after the completion of the project;
- (k) requirements for staging or sequencing of the project including requirements for interim reports;
- (l) set-backs or buffers including set-backs or buffers from property lines and environmental features;
- (m) noise and dust prevention or mitigation measures; and
- (n) any other relevant terms or conditions.

7.10 The Lands Manager shall ensure that recommendations from the Land Management Committee are written up within 7 days after the Land Management Committee meeting.

Lands Manager May Request Further Information

7.11 After reviewing the recommendations from the Land Management Committee and any comments received pursuant to section 7.6, the Lands Manager may request further information, plans, reports, or other relevant material from the applicant which the applicant shall provide.

Timelines

7.12 The Lands Manager shall as soon as practicable after having received the comments under section 7.6 and 7.7, or within 7 days of having received the additional information requested under section 7.11, forward the application to Council along with:

- (a) all relevant documents, maps, plans, reports and other information;
- (b) recommendations from the Land Management Committee;
- (c) any comments received from adjacent land-owners, interest-holders or Members;
- (d) any comments or recommendations from the Lands Manager and other Tsawout managers or departments; and
- (e) any comments from the District of Central Saanich.

Council Decisions

- 7.13 As soon as practicable after receiving the application and information set out in section 7.12, Council shall decide whether or not to approve the application and, without limiting the generality of Council's authority, Council may:
- (a) reject the application; or
 - (b) approve the application with any reasonable terms or conditions, including, but not limited to terms or conditions relating to the items set out in sections 7.8 and 7.9.

Notice of Completion

- 7.14 The Lands Manager shall not issue a Notice of Completion until:
- (a) the Tsawout lands department has received final as-constructed drawings and plans in digital form and to MMCD standards;
 - (b) each Registered Professional of record for the project has completed Schedule C-B forming part of subsection 2.2.7, Division C of the British Columbia Building Code;
 - (c) water and sanitary sewer connection permits have been issued;
 - (d) the proponent and Registered Professional has certified that any conditions of the Development Permit have been complied with; and
 - (e) the applicant has fulfilled all other reasonable requirements of the First Nation.

PART 8. OFFENCES, PENALTIES AND ENFORCEMENT

Penalties

- 8.1 A person who contravenes this Law, the terms or conditions of an authorization issued under this Law, or an order made by a Court pursuant to this Law, is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than three months, or to both.
- 8.2 A fine payable under paragraph 8.1 shall be remitted to the Tsawout First Nation by the Court, after reasonable Court costs have been deducted.

Enforcement and Stop Work Orders

- 8.3 The Lands Manager and any Tsawout contractor or employee acting under his or her authority may, at all reasonable times, enter upon any property for the purpose of administering and enforcing this Law. No person shall prevent or obstruct, or attempt to prevent or obstruct, the entry of any authorized official upon any property as authorized under this Law.
- 8.4 In addition to any other applicable fine, penalty or remedy, Council or the Lands Manager may at any time:

- (a) issue a Stop Work Order to order any Person who has not received full and proper authorization under this Law to cease carrying out any activity, use or construction listed under section 6.1 or 6.2 or any related activity, use or construction;
- (b) order any structures, works or installations carried out in violation of this Law to be removed within 30 days, failing which Council may order them to be removed or may have them removed at the expense of the Permanent Interest holder or the Person who constructed or installed the structures, works or installations without proper authorization;
- (c) seize and detain any timber, any product manufactured from timber, or any other natural resource when they have reasonable grounds to believe it was not obtained in accordance with the terms of this Law or its Schedules or the terms of any authorization under this Law or its Schedules.

8.5 A Stop Work Order imposed under section 8.4:

- (a) may be registered in Court and enforced as a court order; and
- (b) continues in force until the condition that led to it is remedied or until the activity that is the subject of the Stop Work Order receives a permit or authorization under this Law.

8.6 If materials are seized under section 8.4:

- (a) they may be removed to a place that is appropriate for their protection and, if in the care of a carrier at the time of seizure, the carrier may be directed to move the materials to the place so designated;
- (b) the costs of transportation and other charges incurred in the event of a seizure will be included in the costs of seizure and are chargeable to a party found in breach of this Law; and
- (c) seizure shall not prejudice or affect any lien to which a carrier may be entitled in respect of the materials to the time of such seizure.

PART 9. AMENDING PROCEDURES

Substantive Amendments

9.1 Substantive amendments to this Law may only be made in accordance with section 7 under Part 2 of the Land Code and, if the amendment relates to a matter listed in paragraph 10.1 (a) through (i) of the Land Code, subsection 10.1 under Part 3 of the Land Code.

Minor Amendments

9.2 Despite section 9.1 of this Law, Council may adopt minor amendments to this Law by unanimous decision at a duly convened meeting, and expressed by band council resolution.

9.3 For the purposes of section 9.2, minor amendments include:

- (a) amendments to correct typographical errors;

- (b) amendments required to reference any relevant new or amended First Nation laws;
- (c) amendments ordered by any court of competent jurisdiction; and
- (d) amendments which serve to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.

PART 10. REPEAL AND OTHER BYLAWS

- 10.1 The *Tsawout First Nation Land Development Procedures Law*, No. 01-2010 is hereby repealed in its entirety.
- 10.2 The *Tsawout First Nation Waterworks Bylaw No. 2006-2* and the *Tsawout First Nation Sanitary Sewer System Bylaw No. SEW 2005-01* continue in force and effect except to the extent of any inconsistency with this Law, in which case this Law prevails.

PART 11. COMING INTO FORCE

Date Law Comes into Force

- 11.1 This Law shall come into force and effect on the date it is enacted by Resolution after complying with the requirements of section 7 of Part 2 of the *Tsawout First Nation Land Code*.

THIS LAW IS HEREBY ENACTED by Council at a duly convened meeting held on the ____ day of _____, 2012 at _____, British Columbia.

A quorum consists of **five (5)** Council members.

_____	_____
Chief Harvey Underwood	Councillor Allan Claxton
_____	_____
Councillor Louie Claxton	Councillor Eugena (Samantha) Etzel
_____	_____
Councillor Toby Joseph	Councillor Stanley Sam
_____	_____
Councillor Antoine Underwood	Councillor George Underwood

**STÁUTW (Tsawout) First Nation
General Engineering Requirements for Land
Development on First Nation Land**

SCHEDULE "A"

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012
PARAGRAPH 7.1(A)**

To be Approved by Tsawout First Nation Council
[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION
GENERAL ENGINEERING REQUIREMENTS FOR LAND DEVELOPMENT
ON FIRST NATION LAND**

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**STÁUTW (Tsawout) FIRST NATION
GENERAL ENGINEERING REQUIREMENTS FOR LAND DEVELOPMENT
ON FIRST NATION LAND**

Tsawout First Nation requires that a Conceptual Design be deemed satisfactory by Tsawout Council and receive an **Approval in Principle** before any development may proceed. A Final Design must be deemed satisfactory by Tsawout Council before the **Tsawout Development Permit** is issued.

Information items to be provided at the **Conceptual Design/ Approval in Principle Design** stage are indicated by [**Conceptual**], and those to be provided at the **Final Design/ Development Permit** stage are indicated by [**Final**].

The applicant is advised that the requirements below are general in nature and are meant to be a guide for submission only. It is possible that some listed requirements may be waived and other new requirements may become applicable as more information on the development is submitted. If the applicant or their consultant or agent regards any of the listed items to be not applicable, they may request a waiver and provide sufficient justification to support their request.

The applicant is further advised that a **Tsawout Development Permit** must be obtained before any improvement or construction work on Tsawout First Nation Lands may begin, irrespective of whether or not a lease is applicable or has been executed. Any work constructed before obtaining the **Tsawout Development Permit** is potentially illegal and is done at the applicant's or developer's own risk. If the applicant cannot produce satisfactory evidence to prove that any construction pre-Development Permit meets all Tsawout laws and standards, such work has to be removed and replaced, all at the applicant's own cost.

The below requirements are based on Aboriginal Affairs and Northern Development Canada's (AANDC) requirements with some modifications. Tsawout plans to eventually transition to MMCD-based guidelines and it is recommended that applicants follow MMCD requirements where such requirements exceed those of the *INAC Standards*.

GENERAL

1. Professional Seal and Signature [Conceptual and Final]

All submission reports, designs, drawings, calculations, specifications and technical documents shall bear the seal and signature of a Registered Professional (Professional Engineer or Registered Architect) qualified for the work. Where applicable, each registered professional of record must submit a BC Building Code Schedule B "Assurance of Professional Design and Commitment for Field Review."

- Provided for Conceptual*
- Provided for Final*

2. INAC Standards [Conceptual and Final]

State on the design drawings that all work is designed to meet or exceed the higher of *INAC Standards* as defined in the *INAC Codes Standards and Guidelines* and MMCD standards for design drawings. A copy of the *INAC Codes-Standards and Guidelines* is contained in the *INAC General Information Package for Leasing*, or may be obtained from INAC upon request. If work is proposed to be designed to standards other than the *INAC Standards* or MMCD, provide certifications of equivalence from a Registered Professional and obtain pre-approval from Tsawout by providing justifications and a copy of the relevant section of the standard used.

- Provided for Conceptual*
- Provided for Final*

3. General Plans [Conceptual and Final]

Provide:

1. a Location Plan showing the geographical area of the proposed development and surrounding roads, highways and topographic features;
 - Provided for Conceptual*
 - Provided for Final*
2. a Layout Plan showing the Lease Area and legal description of the lands to be developed and the boundaries of the Tsawout First Nation Reserve and an outline of the footprint proposed development, and
 - Provided for Conceptual*
 - Provided for Final*
3. a detailed Site Plan showing all existing and proposed works, buildings, streets, lanes, highways, intersections, driveways, parking and loading areas, sidewalks, street lighting, utilities and utility easements, streams and other topographic features of the site.
 - Provided for Conceptual*
 - Provided for Final*

4. Geotechnical Assessment [Conceptual]

Provide a geotechnical assessment to verify the viability of the development on site. Include the existing and proposed grades and their relations to the elevations on adjoining properties, and details of any necessary excavations.

- Provided for Conceptual*

5. Off-Site Work [Conceptual and Final]

If work relating to the development is required to be constructed outside of the Lease Area or will encroach onto private or other CP properties, obtain rights-of-way or other legal permissions to accommodate the work. Show such rights-of-way or other permissions on design drawings.

- Provided for Conceptual*
- Provided for Final*

BUILDING

6. Building Plans [Conceptual and Final]

Provide conceptual plan and elevations of proposed buildings *[Conceptual]* and detailed design drawings of architectural, structural, mechanical, plumbing, fire protection and electrical works *[Final]*.

- Provided for Conceptual*
- Provided for Final*

7. Schedule [Conceptual]

Provide a proposed schedule of construction and an estimated start and completion date.

- Provided for Conceptual*

8. Professional Certifications [Final]

Provide copy of relevant signed and sealed BC Building Code Schedules A, B-1 and B-2, or equivalent letters of assurance, on architectural, structural, mechanical, plumbing, fire suppression systems, electrical and geotechnical works for the proposed buildings.

- Provided for Final*

WATER SERVICE

9. Conceptual Water Design [Conceptual]

Indicate domestic and fire flow requirements, and the proposed water source to meet these demands. Indicate the minimum fire flow available to the development and the minimum pressure available under Maximum Day Plus Fire Flow conditions.

- Provided for Conceptual*

10. Conceptual Water Design Drawings [Conceptual]

Provide conceptual design drawings to show the existing and the proposed water works to service the development.

- Provided for Conceptual*

11. Water Supply from Own Well [Conceptual]

Water supply from the development's own well is only permitted for agricultural/landscaping uses. Domestic and fire flow needs must be met through water supply from an existing water distribution system (see 13).

- Provided for Conceptual*

12. Water Supply from Surface Water [Conceptual]

Water supply from a surface water body is only permitted for agricultural/landscaping uses. Domestic and fire flow needs must be met through water supply from an existing water distribution system (see 13).

- Provided for Conceptual*

13. Water Supply from Existing System [Conceptual]

Verify by network analysis calculations or other means that the existing water distribution system has the capacity to deliver the required domestic and fire flow to the development.

- Provided for Conceptual*

14. Hydrant Locations [Conceptual]

Indicate sufficient hydrants on the conceptual design drawings such that no current or future proposed building is more than 75 m from a hydrant.

- Provided for Conceptual*

15. Watermain Looping [Conceptual]

Loop watermains whenever possible to provide redundancy and improve fire flow.

- Provided for Conceptual*

16. Water Service Agreement – where connecting to a water system other than the Tsawout First Nation water service [Conceptual and Final]

Provide letter of intent or draft servicing agreement [*Conceptual*] and signed servicing agreement [*Final*] with the owner of the existing water system for providing water service to the development.

- Provided for Conceptual*
- Provided for Final*

17. Water Service Permit – where connecting to Tsawout First Nation’s water service [Final]

Provide completed application for a Water Service Permit as required under the *Tsawout First Nation Waterworks Bylaw No. 2006-2*, as amended from time to time [*Final*] for providing water service to the development. Permit is to be issued once the requirements of the Bylaw have been met.

- Provided for Final*

18. Decommissioning Plan for Abandoning Existing Well [Conceptual]

Provide a decommissioning plan if any existing well is to be abandoned.

- Provided for Conceptual*

19. Detailed Water Design Drawings [Final]

Provide detailed design drawings for all proposed water works and treatment facilities to service the development. In particular, show details of connection point to an off-site distribution system, horizontal and vertical profiles of watermains, offsets of watermain from reference objects, horizontal and vertical separation with a sewer, material specifications, trench details, water meters, and details of appurtenances such as valves, air valves, chambers, hydrants, thrust blocks and bearing areas.

- Provided for Final*

20. Disinfection of New Watermain [Final]

Indicate on design drawing method and procedure for disinfecting a new watermain. Indicate on design drawing method of disposal of chlorinated water after completing watermain disinfection such that aquatic life will not be adversely impacted.

- Provided for Final*

21. Service Connection Details, Standards and Identification [Final]

Show on design drawings water service connection details and specify service connections to meet the Canadian Plumbing Code. Specify on design drawings blue marker stakes for identification of any future water service connections.

- Provided for Final*

SANITARY SERVICE

22. Conceptual Sanitary Design Drawings [Conceptual]

Provide conceptual design drawings to show the existing and the proposed sanitary facilities to service the development. Developments must be serviced by an existing sanitary sewer system.

- Provided for Conceptual*

23. Sanitary Service from Existing System [Conceptual]

Verify, through network analysis calculations or other means, that the existing sewer system has the spare capacity to service the development.

- Provided for Conceptual*

24. Sanitary Service Agreement - where connecting to a sanitary sewer system other than Tsawout First Nation sanitary sewer system [Conceptual and Final]

Provide a letter of intent or draft servicing agreement [*Conceptual*] and signed servicing agreement [*Final*] with the owner of the existing sewer system for providing sanitary service to the development.

- Provided for Conceptual*

- Provided for Final*

25. Sanitary Sewer Connection Permit - where connecting to the Tsawout First Nation sanitary sewer system [Final]

Provide a completed Application for Sewer Connection as required under the *Tsawout First Nation Sanitary Sewer System Bylaw No. 2005-01*, as amended from time to time [*Final*] for providing sanitary sewer service to the development. Permit is to be issued once the requirements of the Bylaw have been met.

- Provided for Final*

26. Oil Separator [Conceptual]

Provide oil separator (at a standard which meets or exceeds the requirements applicable in the District of Central Saanich) for discharge to either the sanitary or the storm system from restaurants, gas stations, machine shops, and anywhere oil can be discharged or spilled.

- Provided for Conceptual*

27. Decommissioning Plan for Abandoning Existing Septic Facilities [Conceptual]

Provide a decommissioning plan if any existing septic facilities are to be abandoned. Plan to meet or exceed standards applicable in the District of Central Saanich.

- Provided for Conceptual*

28. Detailed Sanitary Design Drawings [Final]

Provide detailed design calculations and drawings for all proposed sanitary works to service the development. In particular, show horizontal and vertical profiles of the sewers and forcemains, offsets of sewer and forcemain from reference objects, material specifications, sewer slopes, invert elevations, manhole rim elevations, sewer trench details, forcemain thrust block bearing areas, and details of manholes, cleanouts, oil separators, air valves and chambers.

- Provided for Final*

29. Effluent Permit Limits [Final]

Verify that the Effluent Quality Parameters discharged to a disposal or reclaimed water use facility do not exceed the *Waste Management Act Municipal Sewage Regulation* limits for the particular facility.

- Provided for Final*

30. Service Connection Details, Standards and Identification [Final]

Show on design drawings sewer service connection details. Provide inspection chamber. Specify service connection to meet the Canadian Plumbing Code. Specify on design drawings red marker stakes for identification of any future sewer service connections.

- Provided for Final*

DRAINAGE

31. Stormwater Management Plan [Conceptual]

Provide a stormwater management plan showing how the post-development Minor (1:2 Year) and Major (1:50 Year) flows are to be managed. Show grading of lot and in-conduit, in-ditch, and overland flow paths. Registered Professional must confirm that the Stormwater Management Plan meets or exceeds the requirements applicable in the District of Central Saanich.

- Provided for Conceptual*

32. Stormwater Disposal by Drywell [Conceptual]

If stormwater runoff is proposed to be disposed of by drywells, verify by calculations that the drywells have the capacity to dispose of a Minor (1:2 year) storm flow.

- Provided for Conceptual*

33. Stormwater Disposal to Surface Water Body [Conceptual]

If any stormwater runoff is proposed to be discharged into an adjacent surface water body, provide details of sediment control devices and confirm permission with Department of Fisheries and Oceans and Environment Canada.

Provided for Conceptual

34. Stormwater Disposal to Roadside Ditch [Conceptual]

If any stormwater runoff is proposed to be discharged into an adjacent roadside ditch, confirm permission with the owner of the roadside ditch (either the First Nation, municipal, regional or provincial jurisdiction).

Provided for Conceptual

35. 200 Year Flood Level [Conceptual]

State on the conceptual design drawing that the building habitable floor slab elevation is not less than 0.6 m above the 1:200 year flood level.

Provided for Conceptual

36. Tidal Surge Elevation [Conceptual]

State on the conceptual design drawing that the building habitable floor slab elevation is above a safe tidal surge elevation.

Provided for Conceptual

37. Detailed Drainage Design Drawings [Final]

Provide detailed design drawings for all proposed drainage works servicing the development. In particular, show horizontal and vertical profiles of storm sewers and ditches, offsets of storm sewer from reference objects, material specifications, sewer slopes, invert elevations, manhole rim elevations, trench details, and details of manholes, cleanouts, oil and debris separators, drywells, silt traps and detention ponds.

Provided for Final

TOTAL ESTIMATED COST OF WORKS AND SERVICES

38. Total Estimated Cost of Works and Services [Conceptual]

Provide total estimated cost of works and services excluding off-site works and services which are the subject of a servicing agreement with the District of Central Saanich: \$_____

Provided for Conceptual

ROADS, ACCESS AND PARKING

39. Parking [Conceptual]

Provide the estimated number of parking spaces required for the development and the plans to accommodate them. Minimum number of parking spaces and dimensions must be consistent with the requirements applicable in the District of Central Saanich.

Provided for Conceptual

40. Traffic Volume [Conceptual]

Provide the estimated volume of traffic in trips per day that will be generated by the development, and an analysis of the impact of the traffic to be generated on the use of nearby and adjacent land.

- Provided for Conceptual*

41. Conceptual Road Design Drawings [Conceptual]

Provide conceptual design drawings to show the existing and the proposed access and road facilities to service the development, including entry and exit routes and access by fire and emergency vehicles.

- Provided for Conceptual*

42. Cul-de-Sac Length [Conceptual]

Limit length of any cul-de-sac to 150 m maximum in consideration of emergency access and deployment of fire fighting equipment.

- Provided for Conceptual*

43. Utilities in Adjacent or Public Roads [Conceptual]

If utilities servicing the development are to be laid crossing or within the fronting road allowance, confirm permission with the owner of the fronting road (adjacent CP-holder, Tsawout, the District of Central Saanich, or the provincial government)

- Provided for Conceptual*

44. Bridge Across Creek [Conceptual]

Confirm permission from Department of Fisheries and Oceans for access bridge across river or creek.

- Provided for Conceptual*

45. Access Permit [Conceptual and Final]

Provide letter of intent [**Conceptual**] and access permit, easement or right-of-way [**Final**] from the owner of the fronting road (adjacent CP-holder, Tsawout, the District of Central Saanich, or the provincial government) for allowing access to the development.

- Provided for Conceptual*
- Provided for Final*

46. Detailed Parking Design [Final]

Provide detailed design calculations and drawings for all proposed parking areas and spaces.

- Provided for Final*

47. Detailed Road Design Drawings [Final]

Provide detailed design calculations and drawings for all proposed roads and access to service the development.

- Provided for Final*

48. Road Details [Final]

Show design speed, horizontal and vertical road profile, vertical curve data, cross sections, intersection details and pavement structure on design drawings.

- Provided for Final*

49. Signage [Conceptual and Final]

Show the proposed [*Conceptual*] and actual [*Final*] location, size, height, colour, lighting and orientation of all signs.

- Provided for Conceptual*
- Provided for Final*

GREENSPACE AND AMENITIES

50. Greenspace and Public Amenities [Conceptual and Final]

Show the proposed [*Conceptual*] and actual [*Final*] location and treatment of parks, green space, common areas, open spaces, trails, landscaping, fences, recreation features and any other public amenities.

- Provided for Conceptual*
- Provided for Final*

51. Community Services [Conceptual]

Identify the local community services and public facilities that would be affected by the development, including the projected increase in users of existing community services and public facilities, potential increased costs to Tsawout, and strategies to mitigate any negative impacts to community services and public facilities.

- Provided for Conceptual*

FUEL HANDLING

52. Fuel Storage and Dispensing [Final]

For gas station development, provide details of fuel storage tanks, connection piping, dispenser pumps, spill containment, alarm system and an emergency response plan.

- Provided for Final*

FIRE PROTECTION

53. Fire Protection Service Agreement [Conceptual and Final]

Provide letter of intent [*Conceptual*] and service agreement [*Final*] with either Tsawout or the District of Central Saanich for providing fire protection service to the development.

- Provided for Conceptual*
- Provided for Final*

54. Tsawout's Fire Fighting Capability [Conceptual]

If fire protection service is to be obtained from Tsawout, verify the existing capability of Tsawout's equipment and resources to respond to and provide fire fighting service to the development.

- Provided for Conceptual*

UTILITIES

55. Utility Service Agreements [Conceptual and Final]

Provide letter of intent [**Conceptual**] and service agreement [**Final**] with utility companies for electricity, telephone, gas and solid waste disposal services.

- Provided for Conceptual*
- Provided for Final*

COMPLETION DOCUMENTATION

56. Health Canada Permits for Individual Homes [Final]

Provide written commitment from the Professional Engineer or Registered Architect to provide Health Canada permits for in-ground sewage disposal for individual homes [**Final**]. Actual permits are to be provided as part of the completion documentation.

- Provided for Final*

57. Restaurant Permit [Final]

Provide written commitment from the Proponent to provide a copy of Ministry of Health Permit to Operate A Food Service Establishment if kitchen or restaurant service is proposed [**Final**]. Actual permit is to be provided as part of the completion documentation.

- Provided for Final*

58. Registration of Rights of Way, Permits and Easements [Final]

Provide written commitment from the Professional Engineer or Registered Architect to provide copies of all registered rights of way plans, permits and easements [**Final**]. Actual plans and proof of registration must be provided as part of the completion documentation.

- Provided for Final*

59. Registration of Fuel Storage Tanks [Final]

Provide written commitment from the Professional Engineer or Registered Architect to provide a copy of the registration of all underground storage tanks and exterior aboveground storage tanks larger than 4000 litres [**Final**]. Actual registration documents are to be provided as part of the completion documentation.

- Provided for Final*

60. Construction Supervision [Final]

Provide written commitment from the Professional Engineer to provide all necessary construction supervision, inspection, site testing and record keeping during construction of the site work *[Final]*.

Provided for Final

61. O&M Manuals [Final]

Provide written commitment from the Professional Engineer or Registered Architect to provide Operation & Maintenance Manuals for the electrical and mechanical systems upon completion *[Final]*. Actual Operation & Maintenance Manuals are to be provided as part of the completion documentation.

Provided for Final

62. As-Built Drawings [Final]

Provide written commitment from the Professional Engineer or Registered Architect to provide accurate as-built drawings upon completion *[Final]*. Actual as-built drawings are to be provided as part of the completion documentation for all buildings, structures, roads, and works.

Provided for Final

63. Completion Report [Final]

Provide written commitment from the Professional Engineer or Registered Architect to provide a completion report detailing work progress, inspection records, testing results, and problems encountered on site *[Final]*. Actual completion report is to be provided as part of the completion documentation.

Provided for Final

64. Completion Certification [Final]

Provide written commitment from the Co-ordinating Registered Professional who signed the BC Building Code Schedule A for the building to provide the BC Building Code Schedules C-A and C-B *[Final]*.

Provided for Final

Provide written commitment from the Professional Engineer submitting the supporting services plans to provide an Engineer's Certificate certifying that all work is constructed in accordance with approved drawings and specifications *[Final]*.

Provided for Final

Actual Schedules C-A and C-B and Engineer's Certificate are to be provided as part of the completion documentation.

Provided for Final

**STÁUTW (Tsawout) First Nation
General Requirements for Environmental
Assessments on First Nation Land**

SCHEDULE “B”

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012 PARAGRAPH
7.1(B)**

To be approved by Tsawout First Nation Council

[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION
GENERAL REQUIREMENTS FOR ENVIRONMENTAL ASSESSMENTS ON
FIRST NATION LAND**

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THE STÁUTW (TSAWOUT) GENERAL REQUIREMENTS FOR ENVIRONMENTAL ASSESSMENT ON FIRST NATION LANDS

1. INTRODUCTION

An environmental assessment is:

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

(International Association of Impact Assessment)

An environmental assessment examines effects of proposed Projects on soil, air quality, water quality and supply, vegetation, fisheries, wildlife, traffic, noise, community health, economic development, archaeology and a variety of other social, economic, and environmental topics. An environmental assessment also examines the Cumulative Effects of a proposed Project combined with other past and foreseeable future human activities. Environmental assessments also identify ways of avoiding or reducing adverse Environmental Effects.

An environmental assessment is a planning tool, a means of reviewing the effects of development, a process of community engagement, and an instrument for complying with regulatory requirements.

The STÁUTW (Tsawout) First Nation seeks the following benefits through the conduct of environmental assessment of activities on, or uses of, its lands:

- ❖ Gather information sufficient to enable the Tsawout First Nation to exercise its decision-making authority over use of its lands
- ❖ Identify components of proposed Projects or plans that could adversely affect natural or human environments, the community, or the economy
- ❖ Propose ways of avoiding or minimizing adverse effects on environment, society and culture
- ❖ Improve Project design, construction, and operation
- ❖ Engage the community in the process of reviewing proposed developments
- ❖ Support better development decisions

2. DEFINITIONS

- 2.1 Unless otherwise defined in Schedule 1 of these Requirements, definitions in these Requirements have the same meaning as in the *Subdivision, Development, and Servicing Law* and the *Tsawout First Nation Land Code*.

3. APPLICATION OF THESE REQUIREMENTS

- 3.1 These Requirements apply to:
- (a) all Projects to which the *Tsawout Subdivision, Development and Servicing Law, 2012-02* applies;
 - (b) any grant or disposition of a lease, license or permit in First Nation Land which must be approved by Council under section 26.6 of the Land Code;
 - (c) any grant by Council of an interest, licence or permit in Band Land under section 28.1 of the Land Code;
 - (d) land developments on First Nation Land that are approved, regulated, funded or undertaken by the Tsawout First Nation; and
 - (e) preparation of Tsawout First Nation land use plans or regulations that specify proposed uses of land, or changes in land use designations (amendments to subdivision, land use, or zoning plans or regulations) for commercial, industrial, or institutional uses.
- 3.2 As a matter of general application, the scope of an environmental assessment shall be commensurate with the size and complexity of a Project and its potential Environmental Effects.
- 3.3 Nothing in these Requirements limits the Lands Manager's ability to:
- (a) require an environmental assessment as part of a Subdivision Approval, Development Permit or leasing, permitting or licensing process if the Lands Manager determines, in his or her sole discretion, that an environmental assessment is warranted in the particular circumstances; or
 - (b) waive the requirement for an environmental assessment of a Project if the Lands Manager determines that an Environmental Assessment is not warranted in the particular circumstances because the proposed Project clearly does not have the potential to cause adverse Environmental Effects; subject to the powers of Council under section 3.4.
- 3.4 A decision by the Lands Manager to waive the requirement for an environmental assessment is subject to review by Council.
- 3.5 A decision by the Lands Manager to proceed with an environmental assessment is not subject to review by Council.

4. PROJECTS AND APPROVALS THAT ARE EXEMPT FROM THE REQUIREMENT FOR AN ENVIRONMENTAL ASSESSMENT

- 4.1 Environmental assessments are not required under the following circumstances, unless otherwise determined by Council:
- (a) administrative actions that do not affect land or resources;
 - (b) emergency repairs or action needed on an urgent basis to avert or respond to emergencies; or

(c) responses to accidents or threats to public health.

4.2 Consistent with the approach taken by the *Canadian Environmental Assessment Act Exclusion List Regulation*, 2007, an environmental assessment will not be required for a Project proposed to occur on First Nation Land that meets all of the following criteria:

- (a) the affected land is more than 30 meters from a water body, environmentally sensitive area (as shown in the Tsawout *Comprehensive Community Plan* 2011), fish habitat, migratory bird habitat, or land considered important for cultural reasons, including traditional use areas;
- (b) the Project complies with prevailing Tsawout First Nation land use plans, zoning designations, and subdivision regulations;
- (c) for Projects involving construction or expansion of a structure, the Project is on a lot serviced by sewer and water;
- (d) the Project would result in the cutting of not more than 7 Trees of 50 cm diameter or less at 1.4 meters height or not more than 4 Trees of 50 cm diameter or greater at 1.4 meters height and would not result in the clearing of more than 10% of the trees from the individual Lot;
- (e) the Project would not emit or release substances that have the potential to pollute air or water;
- (f) the Project would not result in increases of more than 30 vehicle trips per day to and from First Nation Lands;
- (g) the Project would not add more than 20 residents to First Nation Lands; and
- (h) for commercial or industrial development, the Project would not employ more than 10 people.

4.3 Notwithstanding section 4.2, Council may request an environmental assessment where community members have raised a reasonable concern or where Council believes on reasonable grounds that the Project may have harmful Environmental Effects

5. HARMONIZING ENVIRONMENTAL ASSESSMENTS CONDUCTED BY MULTIPLE PARTIES

5.1 The Tsawout First Nation recognizes that federal departments have statutory requirements to conduct environmental assessments on First Nation Land under the *Canadian Environmental Assessment Act* (CEAA) under certain circumstances, and components of Projects occurring on lands adjacent to the reserve may be subject to assessment under the *British Columbia Environmental Assessment Act* (BCEAA). In an effort to avoid duplication, when the Tsawout First Nation determines that an environmental assessment is required for a Project occurring on its lands, or when other governments inform the Tsawout First Nation that their respective legislation requires conduct of an environmental assessment on Tsawout First Nation land or adjacent to Tsawout First Nation land, then the Lands Manager will make best efforts to schedule a meeting of the parties to seek agreement on the following issues:

- (a) the agency and individual that will be the main contact and coordinator of the environmental assessment for each involved jurisdiction;
 - (b) the common information requirements under the federal, provincial and Tsawout First Nation's environmental assessment processes;
 - (c) the manner by which the parties will develop a specific work plan for each Project undergoing a multi-jurisdictional environmental assessment;
 - (d) how the parties will co-ordinate their environmental assessment decisions and associated regulatory decisions with respect to a Project; and
 - (e) for future Projects, how each party will notify the others when an environmental assessment process is initiated under that jurisdictions' law.
- 5.2 Tsawout First Nation recognizes that under clause 25.6 of the Framework Agreement, the Tsawout First Nation and Canada will make best efforts to ensure the Tsawout First Nation's environmental assessment process will be used where there is overlapping jurisdiction. This priority will be reflected in any environmental assessment harmonization plan developed between the Tsawout First Nation, Canada, and British Columbia under clause 25.7 of the Framework Agreement.

6. THE TSAWOUT FIRST NATION ENVIRONMENTAL ASSESSMENT PROCESS

- 6.1 For most Projects, the procedures outlined in Part 7 will be followed. Council or the Lands Manager may alter or amend steps as appropriate. The Tsawout First Nation environmental assessment process is designed to meet the requirements of the Framework Agreement, including:
- (a) that an environmental assessment is triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a Project on First Nation Land (Clause 25.4 of Framework Agreement, Section 21(3) of FNLMA),
 - (b) the environmental assessment process must be consistent with requirements of the *Canadian Environmental Assessment Act* (Clause 25.3 of Framework Agreement), and
 - (c) environmental assessments must be conducted as early as possible in the planning stages of the Project, before an irrevocable decision is made (Clause 25.4 of Framework Agreement).
- 6.2 For Projects determined to require an environmental assessment, the Proponent must ensure that an environmental assessment is completed before other approvals are considered by the Tsawout First Nation. Such approvals include negotiating impact benefit agreements, or issuing permits under Tsawout First Nation laws. It is recommended that the Proponent complete all required environmental assessments prior to completing any lease or sub-lease agreements.

7. ENVIRONMENTAL ASSESSMENT STEPS

Step 1: Lands Manager determines whether environmental assessment is required

- (a) For all Projects identified in Part 3, a detailed Project Description will be prepared by the Proponent and submitted to the Lands Manager. Appendix “A” contains a Project Description template to guide the Proponent’s submission.
- (b) Upon receipt of the Project Description, the Lands Manager may forward, or may direct the Proponent to forward, the Project Description to Aboriginal Affairs and Northern Development Canada, the Lands Advisory Board, Fisheries and Oceans Canada, the Canadian Wildlife Service, the District of Central Saanich, the Capital Regional District, or other government departments or authorities. The involvement of other government departments is based on whether those departments have decisions to make or can contribute expert or specialist advice.
- (c) Using the information contained in the Project Description, the Lands Manager will determine whether an environmental assessment is required. This decision must be made within 20 working days of receipt of a Project Description deemed complete by the Lands Manager and the Proponent will be provided notice of the decision within that time. The Lands Manager may determine that a further 20 working days is required to obtain input from other government departments or authorities who have been forwarded the Project Description and will provide notice to the Proponent within the first 20 day timeframe if further time is required. Under section 3.5, a decision that an environmental assessment is required is not reviewable by Council.
- (d) Under section 3.4, Council may review a determination by the Lands Manager that an environmental assessment is not required for a Project. The Lands Manager will inform Council as soon as practicable of a determination not to require an environmental assessment and provide them with a report setting out the reasons for the determination. Within 15 working days of receiving the Land Manager’s determination, Council will either: 1) confirm the determination of the Lands Manager; or, 2) require an environmental assessment notwithstanding the Lands Manager’s determination. Council may extend this time by 5 working days by providing notice to the Proponent. If further time is required by Council, they will seek agreement with the Proponent on an appropriate timeline for finalizing Council’s decision.
- (e) A determination that no environmental assessment is required under these Requirements does not exempt the Proponent from complying with federal environmental assessment requirements or the need to obtain permits under applicable Tsawout First Nation, federal, or provincial laws and regulations.
- (f) If the Lands Manager determines that a Project requires preparation of a Tsawout First Nation environmental assessment, the Lands Manager will report this determination to the Proponent and Council.

- (g) The Lands Manager will post a notice of his or her determination with respect to requiring an environmental assessment in the Tsawout administration office and/or on the Tsawout First Nation website within five working days after the determination is provided to the Proponent.

Step 2: Determine the scope and Terms of Reference for the environmental assessment

- (a) If a Project requires preparation of an environmental assessment, the Lands Manager will oversee the development of, and approve, Terms of Reference for the environmental assessment.
- (b) Although the Proponent bears responsibility for preparing the Terms of Reference, the Proponent is strongly advised to conduct this step in consultation with the Lands Manager or a Tsawout Environmental Specialist to ensure that the environmental assessment will include information considered necessary by the Tsawout First Nation. This consultation is critical to avoid delays in the environmental assessment process.
- (c) As shown in Generic Terms of Reference in Appendix “B”, an environmental assessment report typically includes the following major headings:
 1. **Project setting:** Physical, ecological, social, cultural, and economic setting of the area potentially affected by a Project.
 2. **Project description:** Including design, construction, operation, and decommissioning.
 3. **Project Effects and Mitigation:** Identification of potential Environmental Effects, assessment of the impacts and description of Mitigation measures.
 4. **Cumulative Effects assessment:** Combined environmental, cultural or socio-economic impacts that accumulate from a series of actions, contaminants, or Projects.
 5. **Commitments:** Clear statement of commitments by the Proponent to implement the Mitigation measures described in the environmental assessment.
 6. **Conclusion:** A summary and conclusion of the significance of identified adverse Environmental Effects.
- (d) Appendix “C” of this document contains a list of potential topics to be studied in an environmental assessment. The Lands Manager may require that an environmental assessment includes some or all of the topics listed in Appendix “C”, or additional topics at the Lands Manager’s sole discretion.
- (e) During preparation of the Terms of Reference, the Proponent will identify any liability concerns and potential requirements for professional expertise and input to mediate those concerns.
- (f) The Terms of Reference for an environmental assessment should describe the process to be applied in preparing the assessment, including a list of agencies or individuals to be contacted, description of reports or other deliverables to be prepared, including special studies, and a timeline for the conduct of the work, including meetings and submission of deliverables. The

- Terms of Reference will specify, where appropriate, the professional qualifications of personnel that will prepare the environmental assessment.
- (g) The Lands Manager may retain the assistance of specialists in relevant fields to assist in reviewing Terms of Reference submitted by the Proponent. The Proponent is required to cover any costs incurred by the Tsawout First Nation in retaining such specialist assistance.
 - (h) Where the Project has the potential to have a significant effect on Band Land or resources, or on the interests of the Tsawout community as a whole, the Lands Manager may: (a) refer the draft Terms of Reference to the Land Management Committee, and, (b) engage the Tsawout community in a review of the Terms of Reference for the environmental assessment. The Lands Manager may circulate the draft Terms of Reference to other governments for review and comment, as deemed necessary and appropriate by the Lands Manager.
 - (i) Following review, the Lands Manager will determine whether the Terms of Reference include the issues necessary for inclusion in the subsequent environmental assessment, and whether the process for preparing the environmental assessment is considered adequate. The Lands Manager will inform the Proponent of this determination.

Step 3: Conduct the analysis and prepare the environmental assessment report

- (a) After the Terms of Reference have been approved by the Lands Manager, the Proponent will assume responsibility for conducting the environmental assessment. Typically, the Proponent retains professionals with the requisite expertise to study specified issues, identify potential Environmental Effects, propose measures to mitigate those effects, and prepare resulting reports.
- (b) The Proponent will prepare and submit a stand-alone draft environmental assessment report to the Lands Manager. The report will be accompanied by a table indicating that the topics and actions specified in the Terms of Reference have been completed and will identify the preparers of the report and describe their professional qualifications.
- (c) The Tsawout First Nation desires clear environmental assessments that provide information on specified topics and reach clear conclusions about Environmental Effects and Mitigation. Excessive data collection, superfluous text, or unnecessarily complex analysis is discouraged. Honest and unbiased assessment of impacts is an absolute requirement. Failure to meet this requirement will result in the Proponent being required to revise and re-submit the report.

Step 4: Review the draft environmental assessment report

- (a) The Lands Manager will determine the process for reviewing the draft environmental assessment and will specify the parties to be involved. The Proponent will be expected to cover the Tsawout First Nation's costs incurred in reviewing the draft environmental assessment report.
- (b) An important function of an environmental assessment is to communicate findings to the community. For large Projects with the potential to affect the

entire community, open houses or workshops may be conducted. For smaller Projects, it may be adequate to notify the membership that a report is available for members' review and comment.

- (c) The Lands Manager will forward the draft environmental assessment report to the Land Management Committee, and may direct the Proponent to circulate the draft environmental assessment report to federal or provincial agencies or to local governments for their review and comment.
- (d) The Lands Manager may seek independent review of the draft environmental assessment report by expert specialists. The Project Proponent is required to cover the Tsawout First Nation's costs in retaining such specialists.
- (e) The Lands Manager will submit comments on the draft environmental assessment report to the Proponent.

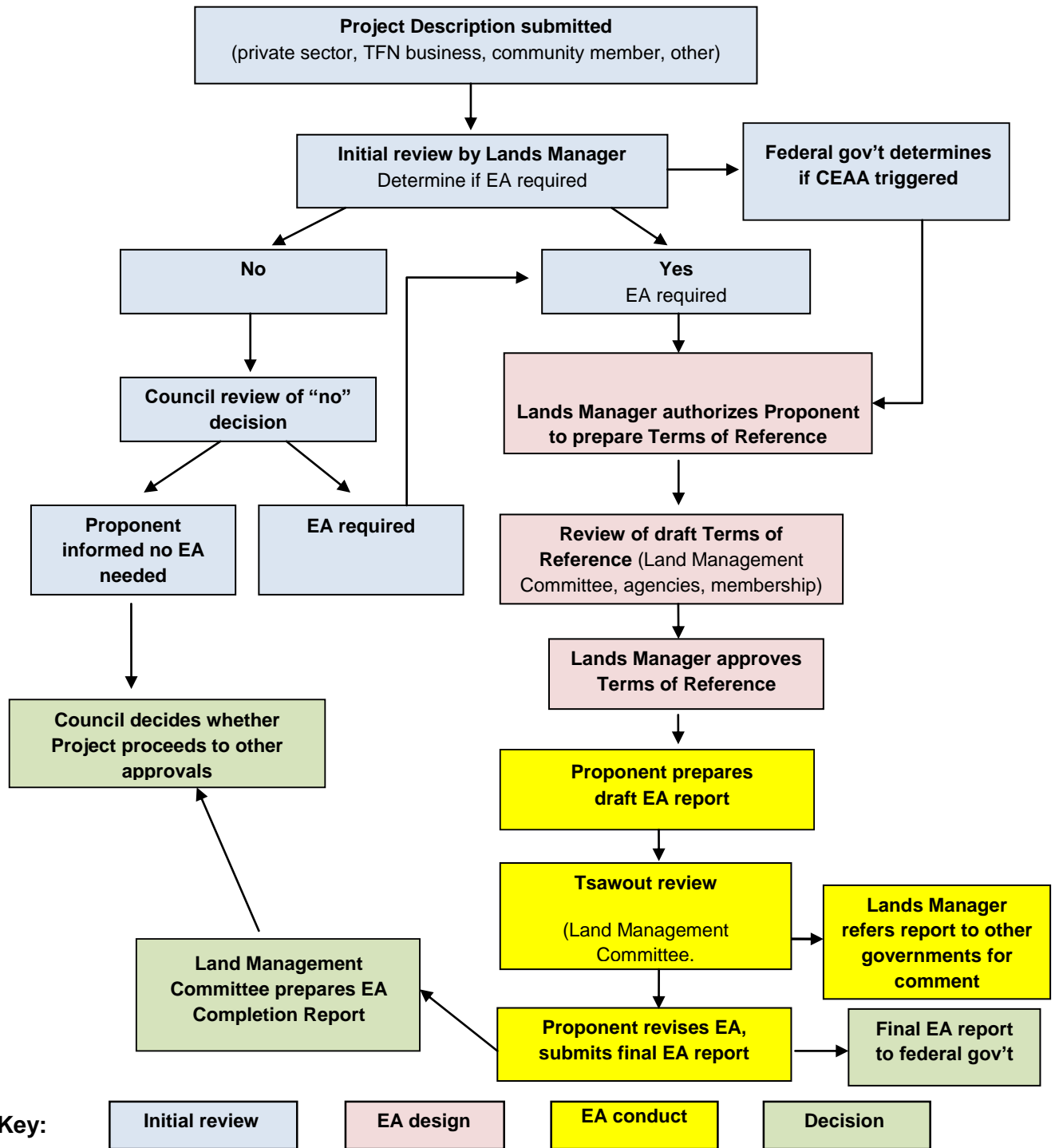
Step 5: Make the environmental assessment decision

- (a) Responding to the comments on the draft environmental assessment report provided by the Lands Manager, the Proponent will amend the draft report and submit to the Lands Manager a revised final version of the document.
- (b) The Lands Manager will convene the Land Management Committee to review the final environmental assessment report. The Lands Manager also may:
 - i. obtain comment from specialist experts at the cost of the Proponent,
 - ii. circulate the report to staff of other government agencies, and
 - iii. make the report available to the community for comment.
- (c) The Lands Manager, on behalf of the Land Management Committee, will prepare an environmental assessment completion report that:
 - i. Summarizes comments from the Land Management Committee, specialists, the community, or others on the quality and findings of the environmental assessment report;
 - ii. Presents conclusions about the nature and significance of potential Environmental Effects and the effectiveness of Mitigation measures identified; and
 - iii. Provides the comments of the Lands Manager and the Land Management Committee on: 1) the implications of allowing the Project to proceed to other approval processes; and, 2) what conditions may be attached to future approvals or permits that would likely mitigate identified environmental impacts or enhance identified benefits.
- (d) Neither the environmental assessment report nor the environmental assessment completion report will conclude whether a Project should proceed, but rather will focus on the potential effects of implementing a Project. Decisions about Project approval or rejection reside with Council, primarily through permits and other approvals issued under the *Tsawout Subdivision, Development and Servicing Law*. Permits may also be required under other applicable legislation (e.g., *Fisheries Act*) the issuance of which is not controlled by the Tsawout First Nation.

Step 6: Implement Mitigation and follow-up program, as appropriate

- (a) The Mitigation measures identified in the report will be incorporated into any design plans, site plans, timber-harvesting Development Permits, construction tender, and implemented with the Project. If so instructed by the Lands Manager, a Proponent may be required to prepare an Environmental Protection Plan that specifies how impacts will be avoided or mitigated, how land will be restored following construction, etc. Mitigation measures will also form part of the conditions of a development permit.
- (b) Where appropriate and required by the Lands Manager, the Proponent will prepare and conduct a monitoring program to verify the findings of the environmental assessment and to assess the effectiveness of the Mitigation measures. Alternatively, the Proponent may fund monitoring to be conducted by the Tsawout First Nation, subject to mutual agreement of the Proponent and the Lands Manager.

FIGURE 1: Process for conducting an environmental assessment



APPENDIX “A”: Project Description Template

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

1.0 GENERAL INFORMATION

1.1 Contact Information

Project Title	
Proponent Contact (job title)	
Address	
Telephone Number	
Fax Number	
Email	

If Applicable:

Co-Proponent Name	
Contact and title	
Address	
Telephone Number	
Fax Number	
Email	

If Applicable:

Environmental Consultant	
Contact and title	
Address	
Telephone Number	
Fax Number	
Email	

Reserve Name and Number:

- E. Saanich I.R. No. 2
- Fulford Harbour I.R. No. 5

1.2 Potential Regulatory Requirements

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

If yes, then from which department?

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

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

2.0 PROJECT INFORMATION

2.1 Project Title

2.2 Project Description

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

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

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

If “yes,” please describe:

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

e) Estimated capital cost: _____

2.3 Detailed Project Location

Geographical Location and/or GPS Coordinates:

Legal Land Description:

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

2.4 Resource and Material Requirements

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

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

- Tsawout First Nation members

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

- Where will vehicles park:

b) Project operation:

- Project activities:

- Number of workers

- Total

- Per average day

- Tsawout First Nation members

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

- Where will vehicles park:

- Noise generation:

- Air, water, or other emissions:

c) Decommissioning:

- Activities:

- Materials generated and method of disposal:

3.0 ENVIRONMENTAL FEATURES

a) Map and describe the environmental features in the area of the development.

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

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

4.0 Regulatory requirements

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

- Tsawout First Nation:

- Local or regional government:

- Federal government:

- Provincial government:

APPENDIX “B”: Generic Terms of Reference for Environmental Assessments

This guide is intended to aid the Project Proponent in preparing Terms of Reference for an environmental assessment. The level of detail to be included should be commensurate with the size, complexity, and potential impacts of a proposed Project.

Summary	Briefly describe the Project and the findings of the environmental assessment.
1. Introduction	<p>Provide contextual background information on the Project and the Proponent and Project justification.</p> <p>1.1 Proponent Information 1.2 Project Overview (including title and location) 1.3 Regulatory Framework (e.g. funding source, required permits or approvals)</p>
2. Project description	<p>Provide a detailed Project description, covering site preparation, construction, operation, and decommissioning.</p> <p><i>Note: For Projects involving cutting of timber, the description must include the RPF’s breakdown of volume and species (based upon a timber cruise) to be cut from the subject area and the proposed harvesting system.</i></p> <p>2.1 Project background and rationale (why is the Project necessary or desirable?) 2.2 Location of Project area likely to be affected (include maps) 2.3 Project facilities and associated infrastructure 2.4 Construction activities 2.5 Operational activities (including materials consumed, energy requirements and sources, emissions, traffic, numbers of employees, numbers of customers, etc.) 2.6 Decommissioning plans 2.7 Alternative means of carrying out the Project and alternatives to the Project, including the alternative of not proceeding with the Project 2.8 Relationship of the Project to First Nation Lands and community</p>

<p>3. Project Setting</p>	<p>Provide a detailed description of the existing environment in the Project area including landscape, water bodies, archaeology, natural resources, wildlife habitat, land use (traditional and contemporary uses, natural resource harvesting, residential and commercial uses, etc.). Indicate the areas affected by the Project. Outline known historical and contemporary uses by the Tsawout First Nation.</p> <p>3.1 Geophysical setting 3.2 Atmospheric setting 3.3 Aquatic setting (marine and fresh water, ground water, drainage, water quality) 3.4 Terrestrial setting (vegetation, wildlife, fisheries, species of cultural importance, species at risk) 3.5 Land use setting (past, present, and planned uses; land capability and suitability, archaeological potential) 3.6 Socio-economic setting (traditional and contemporary economy, community features and activities, visual aesthetic character) 3.7 First Nations traditional use</p>
<p>4. Agency input</p>	<p>Describe input obtained from other government departments (e.g. Department of Fisheries and Oceans, Environment Canada, Parks Canada, Health Canada, Forests, Lands and Natural Resource Operations, Heritage Conservation Branch, etc.), and provincial and local governments, as appropriate. Summarize relevant reports or studies, regulatory requirements or policies, environmental quality standards, etc. Describe relevance of local and regional land use plans to use of land, provision of services, etc. on Tsawout First Nation lands.</p>
<p>5. Engagement of interested parties</p>	<p>Describe how the following potential interested parties were engaged in the preparation of the environmental assessment:</p> <ul style="list-style-type: none"> • The Tsawout community; • Residents or certificate of possession holders adjacent to, or otherwise affected by, the proposed Project; • Lease holders; • Users of resources potentially affected by the Project;

	<ul style="list-style-type: none"> • Owners or users of adjacent non-reserve properties that might be affected; and • Tsawout staff. <p>Identify issues and concerns raised by the foregoing groups and explain how the concerns were addressed in the environmental assessment.</p>
<p>6. Project effects</p>	<p>For each of the headings in Section 3, identify specific potential Project effects. Ensure that potential Project effects identified by interested parties are included in the environmental assessment. Describe the methods used to assess Project impacts, including data sources, field investigations, sampling, and analysis.¹</p> <p>For each potential Project effect, describe:</p> <ul style="list-style-type: none"> • The nature of the impact (narrative description); • Spatial extent (footprint, local, regional); • Temporal extent (short term, medium term, long term); • Reversibility (full, partial, irreversible); • Ecological implications (description); • Magnitude (low, moderate, high); and • Significance (significant or less than significant). <p>Identify Mitigation measures that could avoid, reduce, or compensate for identified impacts, and identify the effect of the Mitigation measures on the impact. Describe residual impacts after Mitigation.</p> <p>Where a Project causes interactions with species at risk, specific Mitigation measures must be identified. Mitigation strategies for species at risk are hierarchical with avoidance being preferred (e.g. timing, design/location change), followed by minimization through Project modification or implementation under special conditions, and lastly, compensatory Mitigation (e.g. replacement of lost habitat).</p>

¹ It is the Proponent's responsibility to obtain permission for access to, or egress from, the Reserve for all phases of the Project including access to Certificate of Possession or Permanent Interest Holders' lands.

	<p>Identify Cumulative Effects of the proposed Project in combination with past and foreseeable future Projects or human activities. Excessively large study areas for Cumulative Effects assessment (e.g., the Capital Regional District, entire Saanich Peninsula) should be avoided unless necessary to characterize a specific impact.</p> <p>6.1 Impact Assessment Methodology 6.2 Construction Phase – Effects Assessment 6.3 Operations and Maintenance Phase – Effects Assessment 6.4 Decommissioning – Effects Assessment 6.5 Accidents and Malfunctions 6.6 Effects of the Environment on the Project 6.7 Cumulative Effects</p>
7. Commitment to Mitigation	<p>Summarize the Mitigation measures developed in Section 6, and provide a clear and unequivocal commitment by the Proponent to fully implement the specified Mitigation measures. The Mitigation measures may also be used as conditions of a lease, permit, or funding agreement.</p> <p>7.1 Summary of Mitigation measures 7.2 Proponent’s commitment to implement Mitigation measures</p>
8. Conclusion	<p>Provide a narrative summary of the Environmental Effects associated with the proposed Project. Identify significance and proposed Mitigation strategies. Discuss planned monitoring activities.</p> <p>Provide a brief text or table summary of Project effects and significance, and a conclusion about the potential environmental, socioeconomic, and cultural effects of the proposed Project.</p> <p>8.1 Summary and table 8.2 Conclusion</p>
9. References	<p>Provide full references of reports reviewed, websites accessed, and personal communications.</p>
10. Appendices	<p>Append relevant studies conducted, laboratory results, summaries of community comments, etc.</p>

APPENDIX “C”: Potential topics for inclusion in environmental assessments

1. Soils and Geology
 - a. Stability and earth conditions
 - b. Major changes in topography or modification of significant geological features
 - c. Soil erosion, compaction, degradation, or contamination
 - d. Changes in erosion or deposition rates that affect aquatic process, form, and function
 - e. Import and deposit of soil or fill
2. Air Quality
 - a. Substantial air emissions or deterioration of ambient air quality
 - b. The creation of objectionable odours
3. Aquatic Ecosystems
 - a. Physical alterations to natural stream channels or riparian zones
 - b. Changes in flow regime, drainage patterns, infiltration rates, or surface water runoff (including increases in effective impervious cover)
 - c. Alterations to the level or frequency of flooding
 - d. Discharges into surface waters that affect surface water quality (e.g., sediment load, temperature, dissolved oxygen, turbidity)
 - e. Changes in aquatic biota (e.g., invertebrate biodiversity, or plant or algae growth)
 - f. Changes in the quality or quantity of groundwater
4. Vegetation
 - a. Destruction or degradation of native plant habitat (including terrestrial, riparian, or aquatic vegetation communities)
 - b. Destruction or damage to any valued, sensitive, or culturally important trees or other plants (e.g. cedar, fir, arbutus, dogwood), including plants of community, landscape, or heritage importance
 - c. Reduction of the numbers or distribution of rare, threatened, or endangered plant species or plant communities
5. Animal life
 - a. Significant changes to the population numbers or distribution of native animal species (including birds, mammals, reptiles, fish, benthic organisms, or insects)
 - b. Any change to the numbers or distribution of rare, threatened or endangered animal species
 - c. Degradation of existing or potential fish habitat, or wildlife habitat or corridors (including the effects of light, noise, or human activity)
 - d. Interference in the life cycle of fish or birds (including nests or breeding behaviours)

6. Land use and population
 - a. Change to the present or planned land use in an area
 - b. Alteration of the supply of commercial or industrial space
 - c. Changes to population demographics, distribution, and density
7. Mobility, transportation, and circulation
 - a. Effects on transportation systems or potential increases in vehicular volumes or movements
 - b. Impacts on parking facilities, or creation of demand for new parking
 - c. Increases in traffic hazards to motor vehicles, bicyclists, or pedestrians
 - d. Alteration of access to or change in pedestrian, bicycle, and transit mobility including provision and continuity of service
 - e. Potential to increase need for, or provision of, special needs transportation
8. Public services and utilities
 - a. Increased demand on fire, police, or other emergency services
 - b. Increased school enrolment, or demand for parks or other recreational facilities for all age groups
 - c. Need for new or expanded public utilities including sanitary sewers, water mains, storm drains, or garbage collection
 - d. Potential to increase maintenance demands for existing facilities that are required to accommodate the proposed land use, including social services
9. Aesthetics and built environment
 - a. Obstructs a scenic vista or view open to the public
 - b. Potential to create an aesthetically offensive site open to public view
 - c. Destruction or modification of a significant landscape feature or viewpoint
 - d. Suitability and quality of urban design and impact on surrounding built environment
 - e. Consistency with “smart growth” principles of complete, compact, liveable, and efficient communities
10. Employment and economy
 - a. Potential to affect existing employment or creation of new employment (permanent or temporary, full-time or part-time)
 - b. Effect on existing commercial or industrial business
 - c. Potential effect on planned economic development Projects or activities
 - d. Cost or benefit to community (i.e. change tax base and service level)
11. Nuisance (noise, light, glare, odour) and hazards
 - a. Increase in existing noise levels (other than normal residential noise)
 - b. Creation of new, different, or unusual noise or noise production at inappropriate times (e.g., late at night)
 - c. Production of new light or glare
 - d. Creation of shading or reduced access to sunlight
 - e. Production of offensive odours and airborne particles

- f. Production of potentially dangerous transmission waves (i.e., magnetic or microwave)
- g. Creation of potential human health hazards

12. Navigable waters

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

13. Cultural resources (Proponent should reference data collected to comply with the General Requirements for Heritage Assessments)

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

14. Cumulative Effects

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

SCHEDULE 1: Definitions

CEAA	The Canadian Environmental Assessment Act
Cumulative Effect	The combined environmental, cultural or socio-economic impacts that accumulate from a series of actions, contaminants, or Projects. Although each action may seem to have a small impact, the combined effect can be significant.
Environmental Effect	Any change a Project may cause in the physical environment, biota, or human communities, including archaeological features, heritage resources, traditional use areas, or economic activities or potential, health and socio-economic conditions, and includes Cumulative Effects.
Mitigation	The avoidance, elimination, reduction, or control of the adverse Environmental Effects of a Project, including restitution for damage to the environment caused by such effects through replacement, restoration, compensation or other means.
Project	“Project” is an initiative that has the potential to affect Tsawout First Nation environment (land, air, water, biota, or cultural features) and to affect Tsawout First Nation society, culture, or economic well-being. A Project includes a development, a subdivision, or a grant or disposition of a lease, licence or permit in First Nation Land that must be approved by Council under the Land Code or a Law under the Land Code.
Proponent	With respect to a Project, the person, business, other body, government (including the First Nation government) or government agency that proposes a Project. Proponents can be developers, proposed lessees, licence or permit holders, a First Nation member, or Council.
Scoping	The part of the EA process that determines the topics to be examined, the level of detail, spatial extent or “boundaries” of the EA investigation, and groups or agencies to be involved.
SARA	<i>The Species at Risk Act</i> . Federal legislation to protect rare, threatened, or endangered species. A Proponent through an EA must ensure that the potential for Environmental Effects on a species at risk and its habitat, as defined by SARA, have been adequately assessed.
Pre-Construction Phase	Involves the design, feasibility study, geotechnical investigations, etc., associated with the Project, and precedes land-disturbing activities.
RPF	Registered Professional Forester
Construction Phase	Involves site preparation, grading, excavation, material delivery and storage, utility installation, construction, and finishing of a Project.
Post-Construction Phase	Site restoration, remediation, monitoring, and similar activities occurring after completion of Project construction.

**STÁUTW (Tsawout) First Nation
General Requirements for Heritage
Assessments on First Nation Land**

SCHEDULE “C”

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012 PARAGRAPH
7.1(c)**

To be approved by Tsawout First Nation Council

[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION
GENERAL REQUIREMENTS FOR HERITAGE ASSESSMENT
ON FIRST NATION LAND**

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STÁUTW (TSAWOUT) FIRST NATION GENERAL REQUIREMENTS FOR HERITAGE ASSESSMENTS ON FIRST NATION LAND

1. APPLICATION OF THESE REQUIREMENTS

- 1.1 These Requirements apply to:
- (a) all projects on First Nation Land which require a Development Permit under the *Tsawout Subdivision, Development and Servicing Law*;
 - (b) any grant or disposition of a lease, license or permit in First Nation Land which must be approved by Council under section 26.6 of the Land Code;
 - (c) any grant by Council of an interest, licence or permit in Band Land under section 28.1 of the Land Code;
 - (d) archaeological studies, cultural heritage studies, and/or STÁUTW Heritage Resource Management-Related investigations carried out on First Nation Land; and
 - (e) other ground-altering activities not exempted from these Requirements by the *Tsawout Subdivision, Development and Servicing Law*.
- 1.2 For the purposes of these Requirements, First Nation Land means a First Nation reserve or any portion thereof that is subject to the *Tsawout First Nation Land Code*, which came into force and effect on May 29, 2007.

2. PURPOSE

- 2.1 The purpose of this Policy is to maintain the integrity of STÁUTW history and heritage through the respectful treatment, protection, preservation, and management of STÁUTW heritage objects and sites on First Nation Land.

3. ASSESSMENT REQUIREMENTS

- 3.1 All potential ground-altering activities, including development-related disturbances and impacts to STÁUTW Heritage Sites and Objects must be considered, assessed, and mitigated through the application of these Requirements. All Heritage Resource assessments and investigations must be conducted by a professional archaeologist who has been approved by Council to carry out assessments and investigations on Tsawout First Nation land.
- 3.2 Proponents of all projects to which these Requirements apply are required to follow, in substantially all respects, the processes, guidelines and procedures required by the BC Archaeology Branch, as outlined in the *British Columbia Archaeological Resource Management Handbook*, as amended or replaced from time to time.
- 3.3 The BC Archaeology Branch takes the position that it has no jurisdiction over archaeological resources on First Nation Land, and as such, all reports and

forms must be provided to the Tsawout Lands Department, with a copy to the Douglas Treaty Office, at the following addresses:

Attention: Lands Manager
Tsawout First Nation
7728 Tetayut Road
Saanichton B.C. V8M 2C3
Phone: 250-652-9101
Fax: 250-652-9114
Email: _____

Copy to: Douglas Treaty Office
Tsawout First Nation
7728 Tetayut Road
Saanichton B.C. V8M 2C3
Phone: 250-652-9101
Fax: 250-652-9114
Email: _____

- 3.4 The exception is site inventory forms, which shall be provided to the BC Archaeology Branch, with a copy to Tsawout First Nation Lands Department and Douglas Treaty Office.
- 3.5 An Archaeological Overview Assessment (as that term is defined and understood by the BC Archaeology Branch) is required for each of the following:
 - (a) Projects requiring a Development Permit under the *Tsawout Subdivision, Development and Servicing Law*, unless exempted from this requirement under the *Law*;
 - (b) any grant, or disposition of a lease, license or permit in First Nation Land which must be approved by Council under section 26.6 of the Land Code;
 - (c) any grant by Council of an interest, licence or permit in Band Land under section 28.1 of the Land Code;
- 3.6 Other ground-altering activities not exempted from these Requirements by the *Subdivision, Development and Servicing Law*.
- 3.7 An exemption to the requirement for an Archaeological Overview Assessment may be granted on application where:
 - (a) the site of the proposed application has been previously developed; and
 - (b) the Land Management Committee is satisfied that the type and character of the proposed development is such that its potential to disturb or otherwise negatively affect STÁUTW Heritage Sites or Objects is minimal.

4. RESEARCH

- 4.1 Archaeological studies and/or STÁUTW Heritage Resource Management-Related investigations must be conducted by qualified researchers with an appropriate level of experience and training who have been approved by Council to conduct such research on Tsawout First Nation land. All such research on First Nation Land must be carried out in accordance with the processes, guidelines and procedures required by the BC Archaeology Branch, as outlined in the *British Columbia Archaeological Resource Management Handbook*. Reports and forms must be provided to the Tsawout Lands Department. As noted above, site inventory forms should be provided to the BC Archaeology Branch.

5. ACCESS TO LAND

- 5.1 Nothing in these Requirements authorizes entry onto land held individually under a Certificate of Possession or Permanent Interest without permission of the CP/Permanent Interest Holder.

6. INCORPORATION OF RESULTS INTO DEVELOPMENT PERMIT / COUNCIL APPROVAL CONDITIONS

- 6.1 Council will take into account the results of assessments and investigations conducted pursuant to these Requirements, including any mitigation measures identified, in deciding whether the project should proceed (i.e., whether or not a development permit should be issued under the *Tsawout Subdivision, Development and Servicing Law*, or whether Council should consent to the grant/disposition, as the case may be). The development permit/ consent may be granted with conditions as Council deems necessary to implement the mitigation measures.
- 6.2 Where required or appropriate, Council may required a follow-up program to be designed and implemented to verify that the assessment was accurate and the mitigation measures were effective.

7. COMPLIANCE

- 7.1 Failure to comply with these Requirements when conducting archaeological work or a STÁUTW Heritage resource investigation may result in the researcher being disqualified from conducting research or investigations on Tsawout First Nation lands in the future.
- 7.2 Failure to complete the required assessments, including reporting requirements, may result in denial or delays in processing of the proponent's development permit application, or any other application, for Council's consent.

**STÁUTW (Tsawout) First Nation
General Requirements for Timber Harvesting
on First Nation Land**

SCHEDULE “D”

TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012

PARAGRAPH 7.1(D)

To be approved by Tsawout First Nation Council

[Date, 2012]



**STÁUTW (TSAWOUT) FIRST NATION
GENERAL REQUIREMENTS FOR TIMBER HARVESTING ON FIRST NATION LAND**

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**STAUTW (Tsawout) FIRST NATION GENERAL REQUIREMENTS FOR TIMBER
HARVESTING ON FIRST NATION LANDS**

SCHEDULE "D"

**TSAWOUT FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW, 02-2012
PARAGRAPH 7.1(D)**

PREAMBLE

We the Council of STÁUTW (Tsawout) First Nation make these Requirements in recognition that the long-term health of Tsawout First Nation Land must be maintained and protected for the benefit of current and future generations and that the use and maintenance of forest resources plays an important role in the economic, social, cultural, physical and spiritual well-being of Tsawout First Nation citizens.

1. APPLICATION OF THESE REQUIREMENTS

1.1 These requirements apply to:

- (a) all timber harvesting activities on First Nation Land which require a Development Permit under the *Tsawout Subdivision, Development and Servicing Law, 02-2012*;
- (b) any grant or disposition of a lease, licence or permit in or on First Nation Land which must be approved by Council under section 26.6 of the Land Code; and
- (c) any grant or approval by Council of an interest, lease, licence or permit relating to or including timber harvesting activities in or on Band Land under section 28.1 of the Land Code.

1.2 For the purposes of these Requirements, First Nation Land means a First Nation reserve or any portion thereof that is subject to the *Tsawout First Nation Land Code*.

2. PURPOSE

2.1 The purpose of this Policy is to maintain the integrity of the Tsawout First Nation local environment, land values, visual integrity, traditional uses and cultural heritage through the respectful treatment, protection, preservation, and management of Tsawout First Nation timber and forest resources.

3. INTERPRETATION

3.1 Unless otherwise defined in Schedule A to these Requirements, the words in these Requirements have the same definitions as those in the *Tsawout First*

Nation Land Code and the Tsawout First Nation Subdivision, Development and Servicing Law.

- 3.2 In these Requirements, “Registered Professional” means a person who is certified as a professional arboricultural consultant, is a landscape architect registered with the British Columbia Society of Landscape Architects, or is a Registered Professional Forester.

4. PRELIMINARY PROPOSED HARVEST PLAN

- 4.1 In addition to these Requirements, applicants for a Development Permit for Timber Harvesting on Tsawout First Nation Land must also meet all relevant requirements set out in the *Tsawout First Nation Subdivision, Development and Servicing Law*.
- 4.2 Applicants must submit to the Tsawout Lands Department a preliminary proposed harvest plan which includes the following information:
- (a) the area of land proposed for harvesting;
 - (b) the species and volume of timber proposed to be harvested;
 - (c) the location of scaling;
 - (d) who will be the parties to the Development Permit for timber harvesting;
 - (e) who will be the designated purchaser of the timber;
 - (f) whether the timber will be exported from First Nation Land or not;
 - (g) who will obtain a timber mark;
 - (h) where the timber is in whole or in part on Band Land, the proposed benefits to be provided to Tsawout First Nation; and
 - (i) where the timber is in whole or in part on Certificate of Possession or Permanent Interest land, a written authorization in the prescribed form from the holder of that interest permitting the harvesting to occur and supporting the proposal.

5. RESPONSE TO PRELIMINARY PROPOSAL

- 5.1 The Lands Manager will review the preliminary proposed harvest plan and will inform the applicant in writing within 10 working days of receipt whether the preliminary harvest plan was approved, rejected, or requires modification prior to approval. If approved, the applicant may proceed with preparing an application.
- 5.2 By approving the preliminary harvest plan, the Lands Manager makes no representation to the applicant that the application will ultimately be approved by Council.

6. APPLICATION REQUIREMENTS

- 6.1 The applicant will be responsible for the costs of the review of the application by the Lands Manager. The applicant may request a meeting to discuss those costs in advance of the review.
- 6.2 The applicant must prepare and submit the following:
- (a) an environmental assessment and species at risk assessment conducted in accordance with the Tsawout First Nation General Requirements for Environmental Assessments;
 - (b) an Archeological Overview Assessment conducted in accordance with the Tsawout First Nation General Requirements for Heritage Assessments;
 - (c) a comprehensive logging plan which includes the description of the areas, volumes and species to be logged, the methods and equipment to be used, the season of the logging, a complete 1:5,000 scale logging plan map; a 1:20,000 scale overview map, and any potential problems or environmental concerns and their appropriate mediations;
 - (d) an encumbrance check carried out on the First Nations Land Registry and a GPS survey with accuracy to within 1 metre;
 - (e) other relevant information, including any input provided by the Department of Fisheries and Oceans, Parks Canada, Environment Canada, the BC Ministry of Forests, Lands and Natural Resources or their successors and any other bodies where there is a potential for impact on their areas of concern, expertise or existing encumbrances;
 - (f) a silviculture prescription or site plan in the provincial format prepared by a registered professional forester where it is intended that the lands be returned to a forested state; and
 - (g) a copy of the environmental assessment of the proposal and Council's decision respecting any significant environmental, economic or cultural concerns and the mitigation measures to be used.

7. EXEMPTIONS FROM CERTAIN REQUIREMENTS

- 7.1 Where the proposed harvesting is to take place on Band Land, the Lands Manager may exempt the applicant from certain of the measures set out in section 6 where the proposed harvesting activity:
- (a) is for timber for non-commercial use such as firewood for personal, longhouse, or Elder use; and
 - (b) would result in the cutting of not more than 4 Trees of 50 centimetres diameter or less at 1.4 metres height or not more than 2 Trees of 50 centimeters diameter or greater at 1.4 meters height; and
 - (c) would not result in clearing more than 5% of the Trees from the individual lot;
 - (d) does not include Arbutus; and
 - (e) has been reviewed by a Registered Professional for any concerns or issues and any concerns have been provided in writing to the Lands Manager.

- 7.2 Where the proposed harvesting is to take place on Permanent Interest lands, the Lands Manager may exempt the applicant from certain of the measures set out in section 6 where the proposed harvesting activity:
- (a) is for timber for non-commercial use; and
 - (b) would result in the cutting of not more than 7 Trees of 50 cm diameter or less at 1.4 metres height or not more than 4 Trees of 50 cm diameter or greater at 1.4 meters height; and
 - (c) would not result in clearing more than 10% of the Trees from the individual lot;
 - (d) does not include Arbutus; and
 - (e) has been reviewed by a Registered Professional for any concerns or issues and any concerns have been provided in writing to the Lands Manager.
- 7.3 Where a Development Permit is issued under 7.1 and 7.2, the Lands Manager may provide in the permit that a minimum of 2 tree seedlings of the same or similar species will be planted for each Tree to be cut, such seedlings to be of species native to Vancouver Island and maintained for a period of not less than two years, or, in lieu of such planting, providing payment to the Tsawout First Nation of fifty dollars per Tree to be cut, such payment to be made before a permit is issued.
- 7.4 The Lands Manager may issue a Development Permit forthwith for the removal of a tree where the tree is dead, dying, severely damaged, unstable or severely leaning and in danger of falling.
- 7.5 The Lands Manager will provide notice to the Lands Management Committee of any determinations made under this Part and the Lands Management Committee may request an opportunity to reconsider the application and render their own determination in place of the Land Manager's.
- 7.6 For Development Permits issued under this Part, the Lands Manager will inform the applicant within 3 working days of submission of all of the required information whether a Development Permit will be granted and will notify the applicant within that time of any terms and conditions the Land Manager deems necessary to fulfill the purpose of these Requirements. If the Land Management Committee requires a re-determination, that time will be extended by 7 days.

8. PERMITTING

- 8.1 The Lands Manager will review the application and will make a recommendation to the Lands Management Committee as to whether it should be approved. If the Land Management Committee supports approval, they will instruct the Lands Manager to prepare and forward to Council a draft Development Permit which will incorporate at least the following:
- (a) the parties to the Development Permit;

- (b) the volume and species of timber to be harvested and sold;
- (c) the location of the timber to be harvested detailed on 1:5,000 scale map(s);
- (d) the date the permit will expire;
- (e) the party responsible for the harvesting;
- (f) stumpage for species and grades of timber;
- (g) the location of scaling;
- (h) the contingency plan for any fuel or waste spillage;
- (i) the details of any performance bonds or security deposits required;
- (j) utilization standards and harvesting practices;
- (k) actions to be taken for environment and non-timber values protection;
- (l) environmental assessment and SARA reports;
- (m) evidence of appropriate insurance coverage and WCB clearance letter; and
- (n) scaling and timber mark requirements.

8.2 The Lands Management Committee may review the draft Development Permit prior to submission to Council where the Permit is in relation to Band Land.

9. ACCESS TO LAND

9.1 Nothing in these Requirements authorizes entry onto land held individually under a Certificate of Possession or Permanent Interest without permission of the Certificate of Possession/Permanent Interest Holder.

10. STUMPAGE AND SCALING

10.1 All scaling will be done by a licensed scaler at the applicant or permittee's cost at the place of cutting or on First Nation Land or at a designated scaling site. Stumpage to be paid to the First Nation, as set out in the Development Permit, will be based on species and grade determined in consultation with a registered professional forester.

11. INCORPORATION OF RESULTS INTO DEVELOPMENT PERMIT / COUNCIL APPROVAL CONDITIONS

11.1 Council will take into account the results of assessments, investigations and reports conducted pursuant to these Requirements and pursuant to the *Subdivision, Development and Servicing Law*, including any mitigation measures or contingency plans identified, in deciding whether the harvesting should proceed (i.e., whether or not a Development Permit should be issued under the *Tsawout Subdivision, Development and Servicing Law*, or whether Council should consent to the grant/disposition, as the case may be). The development permit/ consent may be granted with such conditions as Council deems necessary to implement appropriate mitigation measures and to ensure that sufficient and fair benefits are enjoyed by the First Nation.

- 11.2 Where required or appropriate, Council may require a follow-up program to be designed and implemented to verify that the assessment was accurate and the mitigation measures were effective. For example, the land is reforested in accordance with a silvaculture or site plan and the trees have reached a free-to-grow status.

12. COMPLIANCE

- 12.1 Failure to comply with these Requirements, the *Subdivision, Development and Servicing Law 02-2012* as amended from time to time, and/or the terms of any issued Development Permit for Timber Harvesting may result in fine, seizure of timber or equipment, civil action or criminal proceedings under section XXVII of the *Criminal Code of Canada*.

**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:

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

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	Capital Account \$										
<table border="1" style="width: 100%; border-collapse: collapse; font-size: 0.8em;"> <tr> <td style="width: 15%;">Date of Duty Convened Meeting</td> <td style="width: 10%;">day</td> <td style="width: 10%;">month</td> <td style="width: 10%;">year</td> <td style="width: 50%;">Province</td> </tr> <tr> <td style="text-align: center;">Community Council</td> <td style="text-align: center;">06</td> <td style="text-align: center;">09</td> <td style="text-align: center;">16</td> <td style="text-align: center;">Ontario</td> </tr> </table>	Date of Duty Convened Meeting	day	month	year	Province	Community Council	06	09	16	Ontario	Revenue Account \$
Date of Duty Convened Meeting	day	month	year	Province							
Community Council	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		Councillor	Councillor
Councillor Roberta Judge-Rice-Clements	Councillor Vera Pawis Tabobondung	Councillor	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	Date		Signature	Date	
Approving Officer			Approving Officer		
Signature	Date		Signature	Date	

