

# Environmental Management Plan Preparation

Course Workbook



 **FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**

 **Training, Mentorship &  
Professional Development**

Last updated: 2017

## Environmental Management Plan Preparation Course

[https://labrc.com/public/courselet/EMP\\_Preparation\\_Courselet\\_Final/player.html](https://labrc.com/public/courselet/EMP_Preparation_Courselet_Final/player.html)

Welcome:

Welcome to the Environmental Management Plan (EMP) Preparation under the Framework Agreement on First Nation Land Management short online course. The material provided in this course is current to date of course. Thank you to the environmental experts to the Lands Advisory Board (LAB), for aiding in the development of this course.

Thank you to Sema:th and Matsqui FN for allowing us to use their EMP as an example.

The concept Of an EMP was introduced in the Introduction to Environmental Governance courselet.

This courselet:

- provides more detail about the planning process so that a First Nation (FN) can proceed to develop a work program for preparing an EMP
- Explains the rationale behind an EMP
- Discusses how a plan might be prepared and implemented by an FN.

The material provided in this courselet is current to date of courselet. Thank you to the environmental experts to the Lands Advisory Board (LAB), for aiding in the development Of this courselet. Thank you to Sema:th and Matsqui FN for allowing us to use their EMP as an example.

### **Module 1: What is an EMP?**

#### **What is Environmental Management Plan Prep?**

The Environmental Management Plan (EMP) is a living document that must evolve in response to changing environmental, operational and legislative conditions.

An EMP:

- Identifies important environmental issues on First Nation reserves
- Describes the First Nation's responses to those issues
- Proposes actions to achieve specified environmental goals

#### **What is the purpose of the EMP?**

The purpose of an EMP is to:

1. Document the condition of the environment and important environmental Issues
2. Develop and communicate a vision for a quality environment and associated goals and objectives
3. Specify the environmental laws, policies, and procedures necessary to resolve the environmental issues and to achieve the vision, goals, and objectives
4. Identify environmental governance actions, responsibilities, and timing needed to implement the EMP

In a sense, the EMP elements describe the means by which the environmental goals and objectives will be met.



## What are the Benefits?

The benefits of preparing an EMP include:

- Organizing environmental information from a variety of sources
- Engaging the community in discussions of environmental issues and responses
- Establishing a clear vision of a desired environmental condition, with associated plan goals and objectives
- Forming a rigorous process that will reduce the First Nation's environmental liability risk
- Creating well-defined direction for the development of environmental [laws regulations and policies](#)
- Communicating environmental priorities and work programs to staff, membership, and outside agencies
- Improving coordination, efficiency and cost effectiveness of environmental actions

## Does a First Nation need an EMP?

Most First Nations will benefit from having an EMP, but in some circumstances a First Nation may determine that they do not require such a plan.

A First Nation may NOT need an EMP if:

- The First Nation has an Environmental Management Framework or similar document
- There are no major environmental issues
- Limited future development is anticipated
- The community is well informed about environmental issues on First Nation Lands
- The First Nation already knows what laws and policies are needed
- A budgeting, staffing, and work program planning process is in place for environmental matters

## What are the Risks of not having an EMP?

A First Nation that proceeds with environmental actions in the absence of an EMP runs the risk of having gaps and overlaps in environmental initiatives. Delivery of services could be inefficient and might waste scarce financial and staff resources. Environmental issues may not be clearly understood, and risk and liability would remain unmitigated.



## Elements of an Environmental Management Plan

**Environmental Assessment (EA):** Subject to adequate funding and assistance (S.27 of the *Framework Agreement*), a First Nation will develop and apply an Environmental Assessment regime. Until Canada provides adequate

resources, most Individuals stipulate that the *Canadian Environmental Assessment Act* (CEAA) still applies to developments requiring Council approval or funding. EAS identify the environmental, social, economic, and cultural effects of proposed developments and recommend mitigation measures. EAS provide an opportunity to improve developments by avoiding or reducing identified impacts and engaging the community about the environmental implications of projects. A First Nation should tailor the EA process to its conditions and capabilities.

**Environmental Plan Elements:** A First Nation may determine that additional topics should be considered in the EMP. Alternatively, a First Nation may conclude the plan does not need to include one or more of the suggested topics. The level of detail provided may vary among the topics. A First Nation may find that substantial detail is needed in one topic or plan element, whereas another may be brief and general.

**Land Use Planning:** Land use planning is:

- Necessary for effective land management
- Linked to other kinds of plans that a First Nation may adopt. For instance, a plan to manage natural resources should be consistent with the land use categories and policies contained in a Land Use Plan (LUP). Economic development plans and service or utility plans also should be consistent with the vision and goals of the LUP and Community plan.

There are strong links between the environment and the use of the land. Environmental considerations in land use planning can help to avoid conflicting uses and protect the environment from the adverse impacts of human activity. Modern LUPs seek to achieve the kinds of development preferred by a First Nation. Such plans typically include the goals of sustainable development (balancing environmental, social, and economic values). LGD/ Lands Managers should be engaged in the preparation of LUPs and other development regulations. It is very important to ensure that the First Nation's LUP is consistent with the environmental vision goals in the EMP. For instance, environmentally sensitive areas should be recognized in the LUP and protected from development. Measures to protect soil and water quality also should be considered in development permit requirements.

**Environmental Protection:** Environmental Protection (EP) typically refers to avoiding contamination of land, water, or air by chemicals or other pollutants. The Phase I Environmental Site Assessment (ESA) for land included in the Individual Agreements are important tools in understanding the presence and severity of contamination on reserves. There are complex regulations and standards developed by provinces and Canada to establish safe concentrations of contaminants in various environmental media. Therefore, it is recommended that First Nations contact provincial and federal contaminated site agencies to identify recent changes to regulations, guidelines, and standards to ensure your First Nation uses up-to-date regulations. The technical complexity of setting and enforcing contaminant standards suggests that most First Nations may find it appropriate to adopt (or adapt) applicable provincial and federal standards to achieve EP goals on their reserve lands.

**Education, Outreach and Training:** Education of community members and Council is critical to an effective environmental program. Understanding the environmental condition of a First Nation's lands, environmental laws, and appropriate care of the land will help to build a constituency to support development and implementation of a First Nation's EMP, leading to improved environmental quality of reserves. An organized outreach program can provide this important information to community members. On-going training of environmental staff is necessary to ensure a high level of competence among First Nation personnel, and to ensure that they remain current with changing laws and knowledge about environmental management. Education of community members about environmental laws helps to build support for the laws and improve compliance.

### **Reserve Operations**

A First Nation may deliver services on reserve that could affect the environment, such as snow removal, ditch cleaning, insect control, management of invasive plants, and building design and maintenance. It is important that operational programs be consistent with established environmental objectives and procedures. A First Nation

should identify and adopt best practices for operational activities and ensure that operations staff understand and apply those practices. Effective communications among a First Nation's departments are critical in ensuring that reserve operations are environmentally sound.

### **Inspection, Monitoring and Reporting**

Inspection is necessary to verify that environmental laws and procedures are being applied, including whether commitments contained in land lease environmental clauses, environmental permits or Environmental Assessments are being met. Long-term monitoring of environmental conditions is necessary to understanding changing circumstances on reserve. The results of monitoring programs should be reported regularly to inform Council and the community about environmental conditions (such as brief annual reports and more complete 5-year reviews of the environmental program). Monitoring results are sometimes presented as "State of the Environment" reports, describing environmental conditions and trends.

### **Enforcement and Adjudication**

The *Framework Agreement* provides for the enforcement of First Nation land laws, including environmental laws. *Framework Agreement* provisions on law enforcement can be found in [section 19.1 to 19.9](#). After a First Nation adopts environmental (and other) laws, it will be necessary to have a method of monitoring, enforcing, prosecuting, and adjudicating violations. The regimes for enforcing and adjudicating environmental laws should be integrated with the process applied to other laws adopted by a First Nation.

A First Nation may use its own staff to enforce its laws, bylaws, regulations, or agreements with land users. Enforcement may be necessary in cases of violation of First Nation-issued transactions (such as permits, leases, or licenses) or First Nation bylaws. A First Nation may need to establish agreements for external bodies to enforce other laws (e.g., Environment Canada to enforce water quality laws.)

### **Participants in an EMP**

**Chief and Council:** Chief and Council play a main role in decisions about environmental issues on reserves and responses proposed in the EMP. Council will have to consider and approve environmental laws, and will likely need to endorse agreements for services delivered by government agencies or other bodies.

**Community Members:** The community members (especially the elders) play a significant role in contributing to identifying the types of environmental issues and where they are located (e.g. where illegal garbage is being dumped). The community members live and roam the land and therefore they are your FN's most valuable asset in contributing in identifying issues and where those areas are.

**Lands Committee:** Lands Committees may also have a role in terms of recommending laws to Council for enactment after community consultation. Some lands committees may also be responsible for conducting required community consultation sessions. Other lands committees may also have been delegated other law enactment responsibilities of council as specified by the Land Code.

**Lands Governance Director/Lands Manager:** Much of the responsibility for designing, conducting, and implementing an EMP will fall to a FN's and Governance Director (LGD)/Lands Manager, with the support of an Environmental Manager (if such a position has been filled). The EMP's content, presentation, communication with the community, and approval by Council will involve the LGD/Lands Manager. The LGD/Lands Manager also will be instrumental in preparing the work program for the EMP, hiring environmental experts, involving legal counsel (mainly for drafting environmental laws), and overseeing budgets and deliverables involved.

Other FN Departments: EMP preparation should involve FN departments that could be affected by the results of the plan, or that could contribute to the EMP's content. These departments could include:

- Housing
- Public works and utilities
- Education and training
- Culture and heritage

The LGD/Lands Manager should meet with heads of the departments and seek their input into the plan's identification of issues, development of policies, and identification of necessary laws. The collaboration and support of all FN departments will be necessary to successful implementation of the EMP.

Environmental Manager: The environmental manager will co-ordinate the First Nation specific EMP. They will need to understand political, social, legal, and economic issues, as well as aspects of environmental science and technology. The environmental technician will report directly to the environmental manager or if the First Nation does not have one to the LGD/Lands Manager. The technician may do environmental sampling, data analysis, interpretation, reporting, and research.

Other Governments: Federal, provincial, and local governments can contribute to the EMP in several ways:

- Sharing reports or other information about environmental issues on or near
- Helping to identify responses to environmental issues, such as developing consistent policies or participating in existing or planned environmental programs
- Collaborating on implementation of the EMP, including involvement of the FN in other governments' programs (e.g., watershed management, emergency response, habitat restoration)
- Developing servicing agreements related to environmental issues (e.g., water supply and quality, solid and liquid waste management, enforcement)

Lease Holders/ On Reserve Businesses: Businesses, lease holders, and institutions on reserve will need to be engaged in discussions of environmental issues, responses, laws, and regulations. Much valuable information can be gained from these groups, and their support will be critical to the success of environmental management actions.

Other First Nation's/Organizations: A First Nation may want to contact other First Nations or First Nation organizations who may be able to:

- Share approaches they have used to environmental planning
- Share their environmental management regime
- Recommend experts to use

LAB/RC: The Lands Advisory Board Resource Centre (LABRC) is there to provide technical support to a First Nation. The LABRC website provides resource documents and laws that other FNs have shared with the LABRC.

Aboriginal Affairs and Northern Development: The First Nations operational funding is outlined in Section 5 of the First Nation's [Individual Agreement](#).

Other Federal Agencies: There are other federal agencies such as Fisheries and Oceans Canada and Health Canada who are responsible for enforcing some federal laws that still apply on First Nation Land. They may also continue to provide/deliver services on reserve consistent with their mandates.

**Provincial Agencies:** A First Nation should contact provincial environmental staff to identify relevant studies and reports, and to discuss the potential use of provincial environmental laws on reserves. Laws, regulations, and standards pertaining to EP (contaminants) are particularly relevant.

**Municipal and Regional Governments:** Many First Nations know the value of having a good working relationship with their local municipalities. A First Nation when developing their environmental laws, regulations, policies etc., may want to meet with their neighbors to find out what bylaws they may have that addresses some of their environmental issues. A First Nation may want to collaborate with a municipality on management of shared services (e.g. water and sewer). Some First Nations have established protocol agreements with their municipality in case of an environmental emergency.

## **Module 2: Preparation**

When Does a First Nation Prepare an EMP?

**Developmental Phase:** Ideally, work on the EMP would begin when a First Nation is in the developmental phase, so that Council and the community can consider the kinds of environmental issues they face and actions to be taken in response.

**Operational Phase:** In reality, preparation of an EMP typically begins after a Land Code (LC) has been adopted and is in the operational phase. An EMP is usually done at this phase because a First Nations operational funding, provided by Canada, can be used towards the development of an EMP. In this case, it will be important to move quickly to develop the EMP so that appropriate procedures can be put in place to avoid potential environmental harm and associated liability.

**Time to Complete EMP:** If funding and resources are available, a First Nation should begin work on an EMP soon after adopting its Land Code. Depending on the nature of a First Nation's environmental issues, the amount of information needed to support an EMP, and the level of community involvement desired, it could take as little as 6 months to prepare an EMP or as much as two years. Implementing an EMP will continue indefinitely.

### **5 Steps in Preparing an EMP**

**Introduction:** The EMP is intended to: describe an effective response to identified environmental issues on reserves; is a guide for a First Nation in meeting their legal obligations; limits First Nation liability; and most importantly re-establishes a First Nations' role as stewards of their First Nation Land. The steps required to prepare an EMP will be specific to each First Nation. For the purpose of this course, we are suggesting 5 steps in preparing an EMP. Before your First Nation embarks on the preparing an EMP the FN should first decide if one is needed (based on issues, goals, priorities).

**Step 1:** Prepare to prepare the EMP

- Assess internal staff capacity to prepare an EMP
- If necessary, seek and retain consulting support
- Prepare budgets, schedules, and associated project materials
- Develop a draft outline of topics to be included in the EMP

**Step 2:** Identify and analyze environmental issues and conditions

- Review existing reports, including ESAs and habitat studies
- Contact federal, provincial, and municipal environmental staff
- Meet with knowledgeable community members, particularly elders
- Conduct field work and mapping as needed
- Develop a list of important environmental concerns requiring action

**Step 3:** Prepare the draft EMP:

- Organize and clearly present the purpose of the EMP, its use and limitations
- Draft an environmental vision, goals, and objectives for the community
- Clearly present the important issues and suggest responses, identifying how policies, education and outreach, laws, or other measures would be used
- Include a brief section on implementation, sequence of actions, responsible parties, timing, and funding

**Step 4:** Review and finalize the EMP

- Present the draft EMP to community members, explaining its purpose, content, and implications for life on the reserves
- As appropriate, seek comment from federal, provincial, and local government environmental staff
- Conduct a thorough review by the Lands or Environment Committee
- Revise the EMP in response to comments obtained

**Step 5:** Adopt and implement the EMP:

- Hold another round of community meetings to explain how previous comments were addressed
- Obtain official adoption by Chiefs and Council
- Announce and celebrate the EMP with the community
- Prepare an implementation plan
- Proceed draft laws, conduct outreach and education, and implement other recommended EMP measures

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#### **Final Thoughts**

LABRC has developed "[A Guide to Preparing Environmental Management Plans for Operation First Nations](#)" document to assist FNs in preparing EMPs.

## **Module 3: Implementation and Communication**

### **Implementing the EMP**

Once the EMP has been approved by Council it will now need to be implemented. Implementation of the EMP will facilitate and regulate responsible land use and sustainable development to ensure a First Nations long term viability and sustainability of its First Nation Lands. A First Nation should also develop an EMP implementation budget.

### **EMP Implementation Roles and Responsibilities**

The main roles and responsibility for implementing the EMP will be the LGD/Lands Manager or the Environmental Manager. Chief and Council and contractors also have a role in implementing the EMP. The [EMP Implementation Roles and Responsibilities Sample](#) document outlines how one First Nation identified their roles and responsibilities.

### **Sample: Sema:th EMP Implementation**

The Sema:th EMP and Environmental Operating Procedures (EOP) together form a comprehensive environmental strategy that provides Best Management Practices, guidelines, and strategies to assist their First Nation in protecting their First Nation Lands, environment, resources and people. The Sema:th EMP is intended to be visionary, goal-oriented, and long-term focused, based on the aspiration of both present and further community members. The Sema:th EMP Section 5 Implementation outlines their implementation requirements as follows:

- General Considerations
- Obligations for Implementation
- Reviewing and Updating the EMP
- Building the Lands and Resources Department
- Implementation Schedule
- Training and Education

Appendix A outlines their EOP. Appendix B outlines their Implementation Schedule.

## Developing an Implementation Budget

As the EMP is completed, First Nations staff should estimate the level of effort and budget required to prepare and implement the plan. As appropriate for each First Nation, these budgets should include:

- Staff salaries and benefits
- Office expenses (rent, heat and light, equipment, supplies),
- Legal and technical consulting support
- Equipment purchase or lease, and operation and maintenance (including vehicles),
- Field equipment (shovels, water sample bottles, coolers, etc.)
- Training needs (course tuition, expenses, and materials)
- Outreach and education expenses (newsletter or brochure production and distribution, meeting hall rental, refreshments, etc.)
- Enforcement and monitoring costs (internal or costs of "purchasing" external service)

## Communicating the EMP

First Nations should have staff members that are familiar with community outreach and communications. If SO, the LGD/Lands Manager could work together with the outreach staff on the outreach and communications components of the EMP. Specialized contractors also may be needed, depending on the complexity of the environmental issues being communicated.

## Environmental Management Information System (EMIS)

All planning and management activities require information. You will need to determine:

- What data and information is needed
- If it already exists
- How to get a hold of it
- How to collect it if it does not exist
- How to store this information
- How to interpret the data
- How to determine who needs the information
- How to disseminate it as required

Using an approach prepared by regional or national First Nations organizations (such as the LABRC), the First Nation should develop an environmental management information system (EMIS).

## What is an EMIS?

An EMIS consists of formalized steps to capture environmental information, and efficient procedures to retrieve it. An EMIS includes the collection of information about environmental issues, and stores the information in archives, databases and maps.

## How to Build and EMIS

Building an EMIS can take several years. Depending on your budget a system can be built with a low cost set-up incrementally to a high cost sophisticated and complex system without compromising the values of the outputs.

Also, you will require the appropriate personal to run the system and provide clear policy guidelines for the purpose of the EMIS and the use of the results its produced. The main step to building an EMIS is to gather the kind of information you require for good output. You will have to continuously update and maintain the system because it can become obsolete quite quickly.

For a free eBook [A Manager's Guide to EMIS](#) The [Se:math EMP](#) deals with their environmental information through [Document Control](#).

Much data and information will be obtained and used during delivery of environmental services. Having a well-designed system for obtaining, cataloguing, filing, and retrieving information will make the environmental function more efficient and effective. It is likely that the EMIS will involve a combination of digital and hard copy files.



## ACRONYM LIST

CEAA	-	<i>Canadian Environmental Assessment Act</i>
EA	-	Environmental Assessment
EMIS	-	Environmental Management Information System
EMP	-	Environmental Management Plan
EOP	-	Environmental Operating Procedures
EP	-	Environmental Protection
ESA	-	Environmental Site Assessment
FN	-	First Nation
<i>FNLMA</i>	-	<i>First Nation Land Management Act</i>
<i>FRAMEWORK AGREEMENT</i>	-	<i>Framework Agreement on First Nation Land Management</i>
INAC	-	Indigenous & Northern Affairs Canada
LUP	-	Land Use Plan
LAB	-	Lands Advisory Board
LABRC	-	Lands Advisory Board Resource Centre
LC	-	Land Code
LGD	-	Land Governance Director



## **GLOSSARY OF TERMS**

### **BEST PRACTICES**

Simply put best practices are commercial or professional procedures, method or technique that are accepted or prescribed as being correct, most effective and has consistently shown results superior to those achieved with other means, and that is used as a benchmark. Best practices are used to maintain quality as an alternative to mandatory legislated standards and can be based on self-assessment or benchmarking.

### **BY-LAWS**

Section 81 of the *Indian Act* sets out a number of purposes for which a First Nation may enact by-laws including, inter alia, the regulation of traffic, law and order, prevention of disorderly conduct and nuisances, construction of infrastructure and housing, residency of band members, zoning, trespass, control of animals, fish and game, and so on.

### **CONTAMINANT**

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

### **CONTAMINATION**

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

### **DEVELOPMENTAL**

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

### **ENVIRONMENTAL ASSESSMENT**

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



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

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

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

### **ENVIRONMENTAL MANAGEMENT INFORMATION SYSTEM (EMIS)**

An environmental management information system or EMIS consists of formalized steps to capture environmental information, and efficient procedures to retrieve it. An EMIS includes the collection of information about environmental issues, and stores the information in archives, databases and maps

### **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 LANDS**

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

### **FIRST NATIONS LAND MANAGEMENT ACT**

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



*Framework Agreement* and to apply to the First Nations that are signatories to the *Framework Agreement*. The Act was enacted and given royal assent on June 7, 1999.

### **FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT**

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

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

### **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.

### **LANDS ADVISORY BOARD**



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

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

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

Some of the LAB's functions include:

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

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

## **LANDS ADVISORY BOARD RESOURCE CENTRE**

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

The LABRC's functions are:

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



## LIABILITY

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

## OPERATIONAL

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

## PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)

Phase I ESAs determine only the potential for contamination to exist on a property, and are based on a site inspection, review of maps, reports, historical files, and interviews with landowners and government officials. No sampling is conducted as part of a Phase I ESA.

A Phase I ESA might identify “Areas of Potential Environmental Concern” or “APECs”.

## 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.

# A Guide to Preparing Environmental Management Plans For Operational First Nations

**VERSION 2.0/ MARCH 2016**



Prepared for the First Nations Land Management Resource Centre Inc.

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# A Guide to Preparing Environmental Management Plans for Operational First Nations

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The value of this Guide is the result of the actions of the people who devoted their time and effort to its preparation.

The Guide will need to be updated from time to time, to reflect changes in legislation and lessons learned from the First Nations that continue to develop and implement Environmental Management Plans.

It has been a pleasure working with the First Nations, LABRC, and INAC staff in preparing the Environmental Management Plan Guide.

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Victoria, British Columbia

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## GLOSSARY AND ACRONYM DEFINITIONS

<b>BMP</b>	Best Management Practice
<b>CCME</b>	Canadian Council of Ministers of the Environment
<b>CEAA</b>	Canadian Environmental Assessment Act
<b>CEPA</b>	Canadian Environmental Protection Act
<b>Courselets</b>	Online information provided by LABRC to aid First Nations staff in implementing their Land Codes and managing their lands, including environmental matters.
<b>DFO</b>	Fisheries and Oceans Canada
<b>EA</b>	Environmental Assessment, a study intended to identify potential future impacts of proposed development and mitigation measures to avoid, reduce, or compensate for project effects.
<b>EMP</b>	Environmental Management Plan, intended to identify important environmental issues and propose methods to respond to those issues.
<b>ESA</b>	Environmental Site Assessment, designed to identify potential or actual environmental contamination of soil, water, or air, as guided by Canadian Standards Association Guides Z768 and Z769. Phase I, II, and III ESAs represent increasing levels of information about presence, extent, and remediation of contamination.
<b>FNLMA</b>	First Nations Land Management Act, the federal act that supports the <i>Framework Agreement</i> on First Nations Land Management
<b>INAC</b>	Indigenous and North Affairs Canada
<b>LAB</b>	Lands Advisory Board, the elected body authorized by the <i>Framework Agreement</i> that assists First Nations in developing and implementing Land Codes and other provisions of the <i>Framework Agreement</i> .
<b>LABRC</b>	Lands Advisory Board Resource Centre, the staff hired by LAB to deliver technical services to First Nations and to the LAB.
<b>RFP</b>	Request for Proposals, a document circulated to consultants or other firms to solicit the submission of work programs, budgets, staff credentials, and related materials. The resulting proposals are used by a client to select a firm for a specified project.
<b>SARA</b>	Species at Risk Act

## INTRODUCTION AND PURPOSE

This guide is intended to assist Operational First Nations in preparing Environmental Management Plans (EMPs)<sup>1</sup>. There is no legal requirement to prepare an EMP, but most First Nations recognize the value of planning as an important initial step in the environmental governance that is enabled by the *Framework Agreement*. Questions often arise as First Nations embark on environmental planning, and this guide will provide answers and direction as communities conduct this important task.

Over the past several years, the Lands Advisory Board Resource Centre (LABRC) has prepared other information on Land Code implementation, including material on environmental management. In particular, the online courselets [<http://labrc.com/resources/courselets/>] cover a variety of environmental topics. Before preparing an EMP, it would be useful to review the courselet material thoroughly.



One of the LABRC courselets says that an EMP:

“Defines a First Nation’s approach to important environmental issues and organizes actions to achieve specified environmental goals”.

An EMP, therefore, can be seen as a tool for identifying environmental issues on a First Nation’s land, and proposing responses to resolve those issues.

There is no single best way to prepare an EMP. Each First Nation’s situation is unique, influenced by different priorities, challenges associated with environmental issues, capacity, and community expectations. EMPs should reflect this distinctiveness, both in the content of the plans and in the ways they are prepared.

<sup>1</sup> This guide refers to Environmental Management Plans, though some First Nations may call the documents Environmental Plans, Environmental Management Frameworks, or other similar terms. Environmental Management Plans should not be confused with Land Use Plans, Environmental Site Assessments, or Environmental Assessments. All of these tools are necessary to adequately manage First Nations lands.

## A. MEETING A FIRST NATION'S ENVIRONMENTAL REQUIREMENTS UNDER THE *FRAMEWORK AGREEMENT*

The *Framework Agreement* contains several sections that influence the content of an EMP.

Framework Agreement Sections	Description
<b>Granting law-making powers</b> [Sec. 8.1]	<ul style="list-style-type: none"> <li>» 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 licenses in relation to that land.</li> </ul>
<b>Environmental Regimes &amp; Laws</b> [Sec. 3.1]	<ul style="list-style-type: none"> <li>» 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.</li> <li>» The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation. The environmental assessment and protection regimes will be implemented through First Nation laws.</li> <li>» 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.</li> </ul>
<b>Limits to environmental authority</b> [Sec. 23.1]	<ul style="list-style-type: none"> <li>» 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.</li> <li>» Before an Operational First Nation considers drafting laws and regulations dealing with fish and wildlife, it should recognize that several federal acts remain in effect on reserves, namely the Migratory Birds Convention Act, Species at Risk Act, and Fisheries Act. Other federal laws that continue to apply on Operational First Nation land include, among others, the Indian Oil and Gas Act, Emergencies Act, Nuclear Safety and Control Act, and Nuclear Energy Act.</li> </ul>

<p><b>Funding and environmental responsibility</b> [Sec 27.1 &amp; 30.1]</p>	<ul style="list-style-type: none"> <li>» The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.</li> <li>» 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 an Operational Funding Agreement. The agreement will determine specific funding issues, for example period of time, and terms and conditions.</li> </ul>
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Using the authority contained in the *Framework Agreement*, an EMP can outline the kinds of laws a First Nation wishes to pass. The First Nation should prepare “regimes” pertaining to environmental protection (dealing with contaminants) and environmental assessment. Such regimes may include policies, procedures, and permit requirements, and must be implemented via First Nations’ laws. Regimes (and laws) dealing with other environmental management or land governance matters also may be prepared.

Operational First Nations continue to have the ability to adopt bylaws under the Indian Act. Such bylaws are generally considered to be relatively ineffective in addressing environmental issues.

## B. ENVIRONMENTAL MANAGEMENT RESPONSIBILITIES

With the adoption of a Land Code, a First Nation accepts responsibility for governing and managing its lands. This responsibility can be seen as having the following three components.

1. Protecting community members and reserve ecosystems from environmental harm by controlling human actions and making sure that development and other human actions do not create environmental problems or increase risks. Such protections may mean prohibiting development in areas subject to natural hazards (e.g., floods or landslides), preventing contaminated soil or other material from being dumped on reserves, and assuring that community members have clean water to drink and clean air to breathe.
2. Complying with environmental requirements of the *Framework Agreement*. Section B of this Guide presents the environmental sections of the *Framework Agreement*, with which First Nations must comply. At a minimum, a First Nation must have environmental protection and environmental assessment regimes, policies, laws, and other measures to address identified environmental issues. A First Nation’s obligations to undertake these actions are subject to the availability of adequate resources and expertise.
3. Complying with federal environmental laws. The *Framework Agreement* does not exempt First Nations from complying with other federal environmental laws. For example, First Nations must still abide by provisions of the Fisheries Act, Species at Risk Act, and Migratory Birds Convention Act. The Section 27.1 requirement for adequate resources and expertise does not apply to this need to comply with other federal laws.

Legal and potentially financial liability accompany an Operational First Nation's responsibilities for managing environmental issues that are created after a land code takes effect. For instance, an operational First Nation may be liable for environmental incidents that could have been reasonably foreseen or avoided. Legal action or fines could result from failure to comply with federal laws or from allowing contamination from a reserve to affect public health or environmental quality. Such liability can be reduced if a First Nation shows due diligence in identifying environmental issues and taking action to respond to those issues. Careful preparation and active implementation of an EMP can be an important element in proving due diligence in environmental management.

Environmental issues that existed before a land code takes effect remain the responsibility and liability of Canada.

### C. DETERMINING WHETHER AN EMP IS NECESSARY

The *Framework Agreement* does not refer to EMPs. The usefulness of such plans has become evident as First Nations wrestle with questions about how to meet their legal obligations, limit liability, and reestablish their roles as stewards of their land. Even though First Nations are not required to prepare EMPs, experience of many First Nations indicates that such plans are valuable aids to setting directions and guiding future efforts to achieve environmental management and land governance goals.

A First Nation may choose to forego the preparation of an EMP if the following conditions exist:

- An Environmental Management Framework or similar document has been completed and adopted by Council,
- No major environmental issues exist that affect First Nations land, air, water, or community members,
- Limited future land development is anticipated,
- The community is well informed about environmental issues on First Nation lands
- Staff and Council understand what environmental laws and policies are needed, or such laws and policies are already in place,
- The First Nation implements effective budgeting, staffing, and work program planning and approval processes for environmental management.

To decide whether the foregoing conditions prevail, the First Nation's environmental staff should assemble and review available environmental reports to ensure that important issues have been identified and a response strategy has been developed. The assistance of specialists may be necessary. Existing or future development that could affect the environment should be identified and considered.

The results of this review of available information and environmental conditions should be discussed with advisory committees (such as a Lands Committee or Environment Committee) and Council. A clear Council decision should be sought on whether or not to proceed with an EMP.

## **C.1. Benefits of an EMP**

As decisions are considered regarding the preparation of an EMP, the benefits of having such a plan should be part of the discussions.

EMPs provide many benefits to First Nations, including:

- Identifying and listing important environmental issues that should be addressed,
- Engaging the community in addressing environmental issues,
- Articulating a clear vision of a desired future environmental condition, with associated goals and objectives of environmental management on First Nations land,
- Allowing traditional knowledge to be documented and integrated with a First Nation's environmental management program, either through new investigations or use of Traditional Use Studies that may have been conducted on the community's lands,
- Recommending specific policies and actions to respond to the identified environmental issues,
- Determining the kinds of laws that will be needed,
- Providing a schedule and strategy for future actions, which will aid in preparing work programs, budgets, funding applications, and staffing plans,
- Expressing a First Nation's rights and governance authority over its lands, and communicating that authority to other governments, businesses, and institutions,
- Forming a rigorous process that will reduce the First Nation's environmental liability risk,
- Identifying ways to avoid the effects of contamination on reserves and subsequent costly remediation, and
- Creating a document that communicates the First Nation's environmental priorities and directions to staff, community members, other governments, businesses, and institutions.

To achieve these benefits, a First Nation must design and implement an appropriate process for preparing its EMP.

EMPs can also avoid common environmental management problems. For example, without the clear direction provided by an EMP, a First Nation may experience:

- "Crisis management," in which Council and staff fail to anticipate problems, and instead respond to a series of environmental emergencies,
- Ineffective program administration, as there is little structure to environmental management, guidance to staff, or a defined work program for resolving environmental issues,
- Work programs that are not cost-effective, as the First Nation lacks criteria for determine how best to schedule work and spend its environmental funds, and
- Friction between the First Nations community, Council, staff, and adjacent jurisdictions, as the dialog and information sharing that accompanies preparation of an EMP is absent

Finally, without preparing an EMP, a First Nation may experience an increase in liability for environmental problems because it failed to show “due diligence” represented by a well-planned process of environmental management.

## **C.2. Relationship of EMP and other plans and studies**

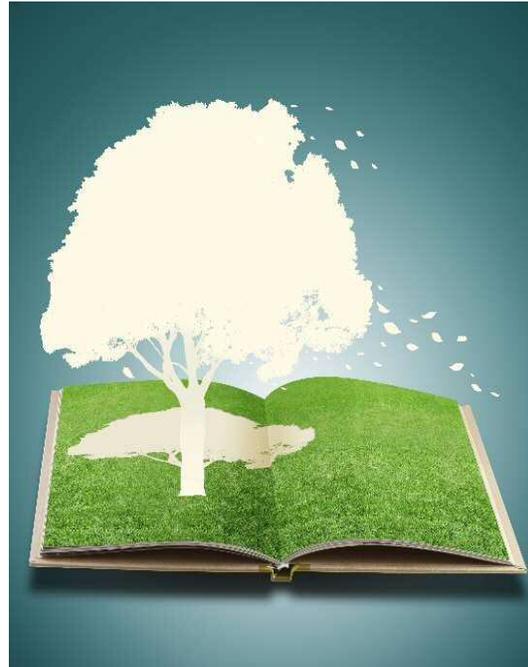
EMPs do not exist in a vacuum, but are one of a series of plans and studies conducted by First Nations as part of land management. Figure 1 shows the relationship among some of the more common kinds of plans and studies conducted by First Nations that have potential links to environmental issues.

Phase I ESAs are typically completed before a Land Code vote, though Phase II ESAs are more useful in understanding the actual presence or absence of contamination and associated environmental risk and First Nations liability. ESA findings are helpful in preparing EMP descriptions of environmental conditions on reserves and areas potentially requiring remediation.

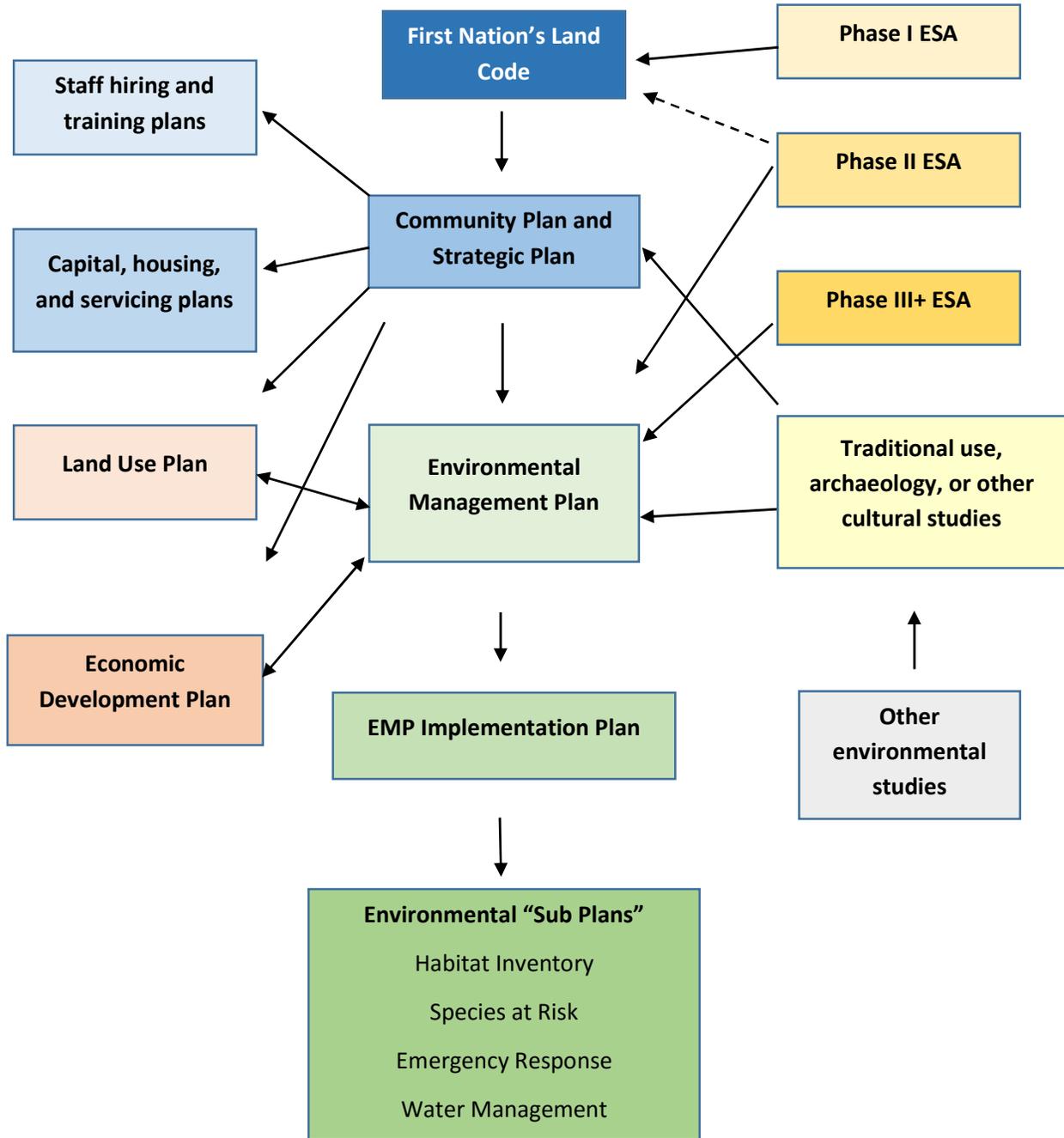
Most First Nations prepare a strategic plan to guide Chief and Council actions following a successful Land Code vote. Staff hiring and training plans, capital plans, land use plans, and economic development plans are some of the documents prepared by Land Code First Nations that are related to environmental management. As shown in Figure 1, the relationship between an EMP and, say, a Land Use Plan or Economic Development Plan is reciprocal. That is, the environmental implications of development need to be considered in an EMP, and environmental values and policies contained in an EMP should influence land use and economic development decisions.

Studies and assessment of cultural features and activities could influence an EMP. For instance, coastal or bank erosion affecting middens or cemeteries could be deemed an important environmental issue. Similarly, areas used for harvesting traditional medicines or food could be considered environmentally sensitive and included in an EMP.

After adoption of an EMP, a First Nation should prepare a detailed, multi-year implementation plan. The implementation plan should assign responsibilities for environmental programs, estimate budgets, and establish schedules. Additional detailed plans dealing with specific environmental matters may be needed to advance the goals and policies of the EMP.



**Figure 1: Relationship of EMPs to other Operational First Nation plans and studies**



## D. DECIDING WHO SHOULD PREPARE THE EMP

After a First Nation has determined that it wants to prepare an EMP, several preliminary steps should be taken. An initial question to answer is, should a First Nation prepare an EMP using its own staff or should it hire a consultant? Several ancillary questions are:

- Do First Nations staff have sufficient training and experience in environmental planning to prepare an EMP?
- Even if staff are qualified to prepare an EMP, do they have time available to do so? Preparing an EMP is time consuming, and could require a full time commitment of six months or more. Such a commitment may conflict with other job requirements of qualified staff.
- Does the First Nation have the capacity to produce maps, print and bind the report, and prepare materials for community review?
- Does the First Nation have the same kind of liability insurance that an environmental planning professional might have, in the case of errors or omissions?

As an aid to making decisions about the use of First Nations staff, and perhaps to guide hiring, Appendix B contains examples of job descriptions for a First Nations Environmental Manager and Environmental Technician. First Nations would need to review such descriptions to determine if they are applicable to local circumstances before using them in a hiring process.

As it decides how to prepare an EMP, a First Nation may consider collaborating with nearby First Nations. By pooling their staff and financial resources, two or more First Nations may find that they have the capacity to prepare their EMPs using their own personnel. If such collaboration seems feasible, the First Nations should develop a detailed agreement about how the work would be conducted, work effort to be allocated to each community, deliverables, reporting relationships, and confidentiality. To promote efficiency and effectiveness in preparing the EMP, a single project manager should be assigned, regardless of the number of First Nations pooling their resources.



Some First Nations have been successfully prepared EMPs by First Nations staff. If a First Nation decides to pursue this route, the information in this Guide should be helpful in organizing and conducting the initiative.

In most cases, First Nations that have recently adopted Land Codes lack the staff capacity to conduct environmental planning work. These First Nations typically seek the assistance of the LABRC and often retain consultants to help prepare EMPs. Using consultants to prepare an EMP requires care and attention, and the following section presents information to aid First Nations in the process of retaining and managing consultants involved in preparing EMPs.

## E. USING CONSULTANTS TO PREPARE AN EMP

This section provides suggestions for selecting the right consultant to prepare an EMP, and ensuring that the process and products are satisfactory for all parties. LABRC staff are available to assist First Nations in developing an approach to hiring environmental consultants.

The EMP will serve as a guide to the First Nation, so consultants must involve First Nations staff in preparing plans. Through this involvement, the First Nation will be able to understand the subtleties of the EMP and be more effective in implementing the plan and answering community questions about it. As with other land management-related plans, it will be of little help if the consultant goes away, prepares the EMP, and then just delivers it to the First Nation. Such an approach creates dependency on the consultant to interpret and implement the plan, which may be profitable for the consultant, but inadvisable for the First Nation.

Similar to the approach described in Section D of this Guide, two or more First Nations may choose to combine their efforts and hire a single consultant to prepare their EMPs. Such collaboration may reduce consultants' overhead costs for travel and accommodation. However, because separate EMPs (and community meetings and field work) would be required for each participating First Nation, collaboration may not materially reduce project costs for participating First Nations.

The remainder of this section explains the process for selecting and working with consultants to prepare an EMP.

### **E.1. Who should be invited to bid?**

A First Nation may have a relationship with a suitably qualified consultant, or a Request for Proposals (RFP) may be prepared to solicit bids from environmental planning firms to participate in the project.

In most cases, it would be advisable for a First Nation to invite a limited number of firms to prepare proposals. If an RFP is broadcast widely (such as through government bid websites, newspaper advertising, or online sources), a very large number of proposals could be received, creating a burden for staff who must review the proposals. By selecting a smaller number of qualified firms that will be directly requested to submit proposals, the First Nation's selection process will be simpler. In addition, preparing proposals is a time-consuming, expensive process for consultants, and it is discourteous to ask firms to spend time unnecessarily. Some consultants—particularly successful firms that are already busy—may not respond to a “cattle call,” where the odds of winning the work are small. Firms are more likely to respond to a direct invitation to a few selected companies, and to devote more effort to preparing proposals under such circumstances.

A First Nation may identify candidate firms by asking other First Nation communities or municipalities for references of capable environmental planning firms. Professional



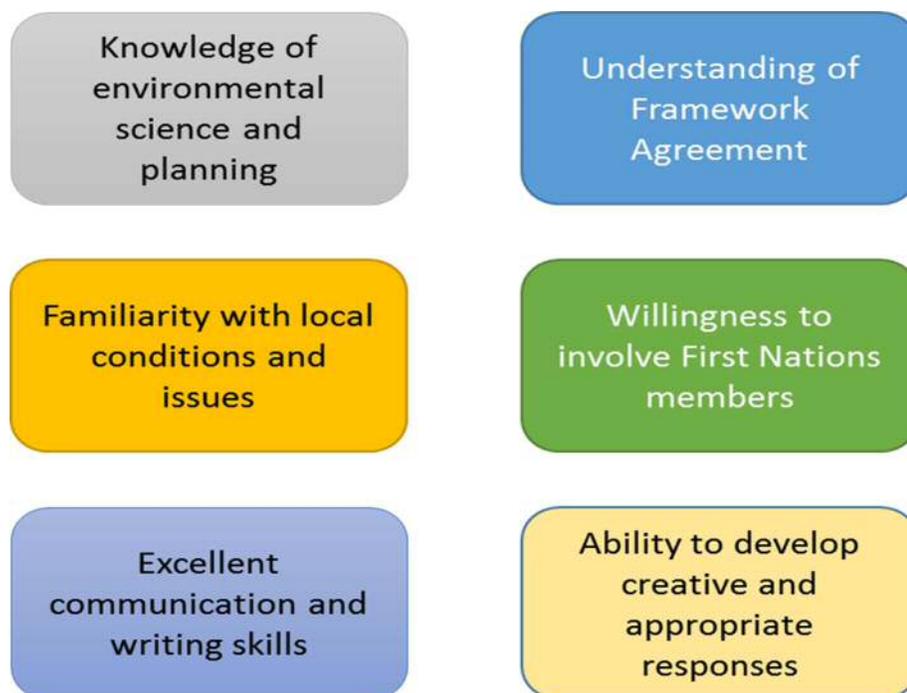
organizations, such as provincial branches of the Canadian Institute of Planners, may be able to provide a list of consultants. Online web searches can help to identify firms that have a presence on the Internet or that have published environmental planning documents. Appendix C of this Guide presents weblinks to some of the professional organizations in Canada that could aid in selecting environmental consultants.

Though there are no fixed rules for how many bids should be requested, a rule of thumb is no fewer than three and no more than six. The number of available firms may be influenced by the location of the First Nation's reserves; rural areas typically have fewer nearby firms than areas closer to urban centres.

## **E.2. Basic qualifications of EMP consultants**

A First Nation should obtain services of a consultant experienced in environmental planning and familiar with the *Framework Agreement*. Preparing an EMP is a specialized combination of skills that few consultants possess, even those who purport to be environmental planners. A firm that is unfamiliar with the *Framework Agreement* may struggle to deliver an EMP that meets the needs of an operational First Nation. Consultants should understand the authority of operational First Nations to adopt and enforce laws, as well as the inapplicability of the Indian Act to land management, development, and environmental protection. The *Framework Agreement* changes the roles of the federal government, shifts liability for some matters to First Nations, increases the First Nation's need to exercise due diligence for development projects, and creates the vague obligation to harmonize laws. Consultants should comprehend these matters.

**Figure 1. Key consultant competencies**



Appendix D of this Guide lists the kinds of expertise and professional registrations that could be relevant to consultants or First Nations staff who are involved in environmental management. Note that new or different professional accreditations arise frequently, so the list should not be considered exhaustive.

Consultants preparing EMPs should recognize the capacity challenges faced by First Nations, including limited staff time, training, experience, or funding. An EMP drafted to meet the needs of a First Nation will differ substantially from one prepared for other governments. The bureaucracies of provincial and federal governments employ thousands of civil servants to administer laws and programs. First Nations cannot, and should not, seek to emulate such governance models. Despite the size of their programs, the efficiency and effectiveness of senior governments in protecting environmental quality is often questioned, as are the wisdom and timeliness of decisions affecting the environment. Consultants should recognize these limitations of senior government approaches to environmental management and land governance, and prepare plans, policies, and laws that reflect the needs and capacity of First Nations and that achieve the goals of protecting and improving environmental quality of First Nations land.

Consultants that have experience and knowledge of environmental planning on reserves should be ready to learn about local conditions and to prepare recommendations that are specific to the community. Sometimes, having extensive experience can limit the ability to see and respond to local conditions, particularly if the consultant takes a “template” approach, in which methods used elsewhere are assumed to be appropriate in a new circumstance. A First Nations should ensure that the firms invited to bid on the EMP are ready to learn about local conditions and to be flexible and creative in developing responses to identified issues.

Some First Nations have been approached to begin work on EMPs before their land codes are formally in place. Preparing an EMP in the absence of an adopted land code creates several challenges, including:

- Presupposing or attempting to predict land governance, legislative, and management processes before they are approved by the community,
- Assigning resources to preparing an EMP before budgets for implementing the land code have been created,
- Lands and environmental staff or consultants have yet to be hired to help direct the implementation of a land code and to participate in preparing the EMP,
- Lands offices that can direct the implementation of a land code have yet to be organized, and
- This approach bypasses the Request for Proposals process (discussed in the following section of this Guide), thereby favoring a firm that may not be equipped to provide the appropriate knowledge or expertise to prepare a useable final product.

For these reasons, it is advisable for First Nations to await adoption of their land codes before initiating the preparation of EMPs.

If a First Nation wishes to retain a consultant known to them, the First Nation should not assume that the familiar firm is necessarily qualified to prepare an EMP. If the First Nation proceeds

with a “direct award” to a consultant, it is a good idea to request a written work program, budget, list of deliverables, and schedule for the EMP, and to sign a contract for conduct of the work. Such a work program could be a simplified version of the information expected in a response to a Request for Proposals.

### **E.3. Preparing consultant Requests for Proposals**

The accepted method of selecting a firm to work on a challenging project is to issue a Request for Proposals (RFP). A First Nation’s RFP for preparing an EMP should contain the following information:

- A clear and detailed description of the community, why the EMP is needed, and the scope of services being sought,
- A list of available the First Nation’s reports, studies, maps, and plans that could be useful to preparers of an EMP,
- A description of the deliverables expected (e.g., materials for community presentations, hard copy and digital versions of the draft and final EMP, mapping, lists of references, etc.),
- Expected start and finish dates, and any specific deliverable deadlines in between,
- The preferred credentials of bidders (such as registration in the Canadian Institute of Planners, experience with First Nations, understanding of the *Framework Agreement*, knowledge of environmental planning principles, and familiarity with local conditions),
- Explanation of the criteria that the First Nation will apply in selecting the successful consultant,
- Statement of the available budget for the work,
- A list of specific information the consultant should include in the proposal (typically the company background, experience conducting similar projects, experience working with Developmental or Operational First Nations, approach to be taken to preparing the EMP, list of specific tasks, credentials of staff to be involved in the project, schedule, budget, and list of references),
- Who to contact in the First Nation if the consultant has questions about the RFP, and
- A clear description of when the proposal is due (time and date), where it is to be delivered, and how it is to be provided. A First Nation may desire electronic proposals only, hard copy only, or a combination. Explain that the First Nation will not consider late proposals or proposals that lack required content.

An example of a potential RFP is presented in Appendix E of this guide.

Several First Nations staff should review the draft RFP to ensure that it correctly describes the nature of the work desired, is clear, and is free of errors.

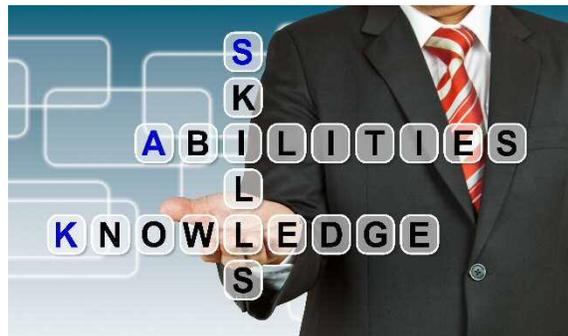
The final RFP should be sent to the selected candidate firms with a request that the firms confirm receipt of the RFP. Mail, courier, or email can be used to distribute the RFPs. It is often advisable to accompany the RFP with a brief letter from the Chief, a Councillor, or Lands Governance Director, addressed to the candidate firm and inviting submission of a proposal.

Within five days of receiving the RFP, bidders should be required to inform the First Nation about whether or not they will submit a proposal. (If a First Nation learns that too many firms will not be bidding, it may be appropriate to invite additional firms to bid.)

In responding to questions from bidders, a First Nation should exercise care to not provide “inside information” or inaccurate answers that could skew the selection process. Governments often require questions to be submitted in writing, and responses to be circulated to all bidders. This formal approach may not be needed by a First Nation in responding to questions, but responses to consultant contacts during the bid process need to be precisely worded. All consultant questions should be routed to a single knowledgeable First Nations staff member, so that the answers provided are consistent.

#### **E.4. Selecting consultants and managing the subsequent work**

Well before the proposal deadline is reached, the First Nation should begin planning the consultant selection process. Key participants in selecting a consultant need to be available in the interval after proposals are received to avoid delays and to ensure that consensus is reached on the preferred firm.



The following steps should be followed in selecting the winning proposal.

- When proposals are delivered, they should be date-stamped. If proposals arrive by email, the digital files should be preserved to record the date and time of delivery.
- Copies of the proposals need to be provided (hard copy or digital) to those who will participate in the review. The time when the reviews are to be completed should be conveyed to the reviewers.
- It may be helpful to distribute a table containing selection criteria to guide the reviewers, and to help the reviews to compare their perceptions of the quality of the proposals by using a common set of criteria. The following criteria might be applied to evaluating EMP proposals:
  - Credentials of the study team (education and experience),

- Familiarity with EMPs or similar environmental planning documents,
  - Familiarity with the *Framework Agreement*,
  - Experience working with First Nations (particularly the specific First Nation preparing the EMP, as well as other operational First Nations),
  - Understanding of local environmental issues,
  - Logic and completeness of the list of tasks to be completed,
  - Completeness of the list of deliverables (as contained in the RFP, plus other options proposed by the consultant),
  - Level of involvement and proposed communication with First Nations staff,
  - Nature of the community engagement proposed,
  - Level of effort (number of days or hours) of qualified staff devoted to the project,
  - Budget (amount, value-for-money, explanation of the basis of the estimates),
  - Clarity of the proposal, which indicates the likely readability of the EMP, and
  - Evidence of the quality of the consultant's work (references, examples, testimonials, etc.).
- To allow each reviewer's ratings to be compared, a simple score (1 to 5, high-medium-low) should be assigned to each criterion. The scoring table also should provide room for reviewers to write comments and observations.
  - Ideally, the reviewers should meet to discuss the proposals. When the reviewers select a preferred consultant (or a short list of finalists), one person should be assigned to contact the references provided. Questions for the referees should pertain to the quality of work, communication skills, and other matters relevant to preparing an EMP.
  - The First Nation should contact the winning firm and work out administrative details of the work (billing methods, meeting dates, reporting relationships, etc.). If a First Nation is experienced and comfortable preparing contracts, the First Nation should draft an agreement containing specific requirements and conditions associated with the EMP project should be drafted for consideration by both parties. If a First Nation does not wish to prepare the contract, the consultant should be requested to draft a contract for review by the First Nation. The contract should specify the deliverables, start and finish dates, total cost, and billing and payment procedures. The approved proposal prepared by the consultant may be appended to the contract. The contract should contain a clause that specifies the conditions under which the project can be terminated.
  - When the First Nation is certain about the consultant to be hired, letters should be sent to the unsuccessful bidders. The First Nation should be prepared to

provide a “debriefing” to the other firms, explaining the strengths and weakness of the proposals, and why they did not win the work.

- Preparing an EMP should be a collaborative process between the First Nation and the consultant. Nonetheless, standard project management practices should apply. The First Nation’s project manager should obtain answers to the following questions as the EMP is prepared.
- Is the work proceeding as described in the proposal?
- Does the consultant communicate regularly and effectively with First Nations staff and others?
- Are changes to the work program required to respond to new circumstances? Is the consultant willing to exercise necessary flexibility?
- Does the consultant obtain approval for changes before undertaking new work?
- Are the invoices clear, and are they consistent with the effort expended?
- Are the staff assigned to the project the same ones named in the proposal?
- Do the deliverables meet expectations?

## F. DETERMINING REASONABLE COSTS OF PREPARING EMPs

A common question is, “how much does it cost to prepare an EMP?” As could be expected, the answer is, “it depends.” The following conditions affect the amount of effort and associated cost of preparing an EMP.

- How much environmental work has been conducted on First Nations land before starting an EMP? If Phase I, II, and III Environmental Site Assessments (ESAs) have been completed, a First Nation should have a good idea of the extent of contamination on its reserves, and potential remediation options. Without such information, it may be difficult to know the presence or extent of contaminants, and whether such contamination constitutes an environmental issue to be included in the EMP.
- Other studies that could support an EMP are environmental inventories, habitat studies, land use plans, economic development plans, surveys of community opinions and values, and emergency response plans. If these, or similar, documents are up-to-date and relevant to a First Nation with a new



Land Code, a consultant can use that information to support initial stages of the EMP.

- How complex are environmental and land use conditions on a First Nation's land? Some reserves feature a variety of industrial, residential, commercial, resource extraction, agricultural, and other uses. Other reserves support only a few uses. Complex land use typically calls for an EMP that addresses many topics, and may require assembly of much information from many sources. Where future land uses occur, preparing an EMP may be simpler and less costly.
- How severe are the environmental issues facing a First Nation? If a First Nation has a history of challenging environmental problems, the preparers of an EMP may need to spend time identifying the extent of the issues and the range of potential responses. With fewer environmental challenges, less effort will be required in developing an EMP.
- What level of detail is sought in the EMP? An EMP should be considered a plan for future action, and so can remain a reasonably simple document that establishes goals, directions and policies. Some First Nations have used the EMPs to provide detailed operating specifications for various activities on their reserves. The more detail that is contained in an EMP, the more it will cost to prepare it (unless the detail is a template from other sources).
- Where is the First Nation's land located? Remote communities face higher costs for many things, including retaining consultants to work on an EMP. Communities near urban centres may have little trouble finding consultants with suitable qualifications, and travel costs should be minimal. For communities far from cities, however, travel and accommodation costs can form a substantial portion of EMP budgets.
- What level of funding has been provided to prepare the EMP? Although it is a bit backwards, the cost of preparing an EMP may be determined by the amount of funding INAC provides for such work. For example, several years ago the British Columbia region of INAC earmarked specific fund limits for preparing EMPs. Not surprisingly, the amounts provided by INAC formed a significant portion of the costs incurred by First Nations to prepare EMPs under that program.

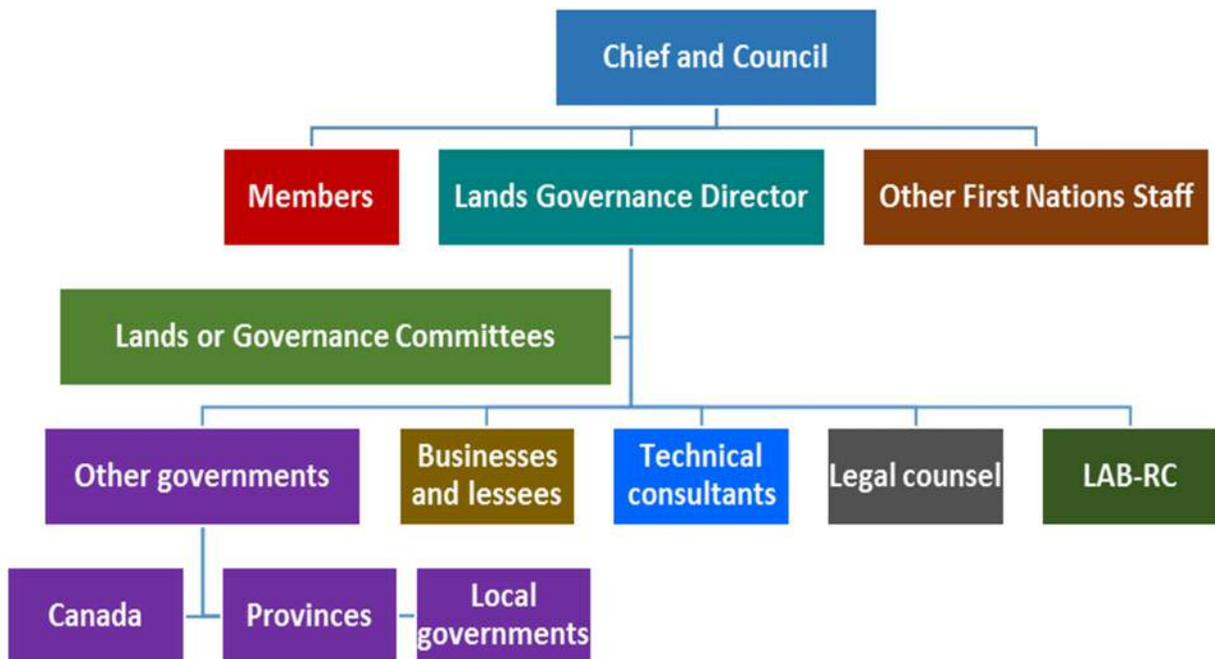
With all of those caveats, how much should a First Nation budget to prepare an EMP? Every First Nation should plan on community involvement, technical studies, and legal review of its EMP. Including those tasks, a "simple" EMP, with relatively few issues and associated policies, could probably be prepared for less than \$100,000. For "average" EMPs, with specific policies and action items for reserves with a mix of land uses, a budget of \$100,000 to \$150,000 would be appropriate. Larger budgets should be anticipated for EMPs that are more complex. If ESAs or other environmental investigations are required to support an EMP, the costs could easily exceed \$250,000.

## G. ORGANIZING THE EMP PARTICIPANTS

The success of a plan as broad as an EMP requires involvement of many people and organizations. Figure 1 shows the variety of bodies that should be engaged in the EMP. The roles and responsibilities of the various parties will vary with the nature of issues to be addressed in the EMP, the organization of the First Nation, and the relationships among the potential participants.

More information on EMP organization can be found in the LABRC courselet at [http://www.labrc.com/public/courselet/EMP\\_Preparation\\_Courselet\\_Final/player.html](http://www.labrc.com/public/courselet/EMP_Preparation_Courselet_Final/player.html)

**Figure 2. Participants in preparing and implementing an EMP**



As an aid in establishing how these parties will participate in preparing and implementing an EMP, Table 1 lists the main responsibilities of key participants. The identified roles are just suggestions; a First Nation may decide on different participant responsibilities.

**Table 1. Potential roles for EMP participants**

Body or organization	Role in Environmental Management Plan
Chief and Council	<ul style="list-style-type: none"> <li>» Main First Nation decision maker and accountable authority that approves and adopts the EMP, laws, regulations, and policies</li> <li>» Approve work programs and budgets</li> <li>» Endorse government-to-government agreements</li> </ul>
Lands Governance Director	<ul style="list-style-type: none"> <li>» Liaison with Chief and Council</li> <li>» Prepares work programs and staffing plans before Environment Manager is hired; supervises Environment Manager</li> <li>» Coordinates interdepartmental relationships</li> <li>» Guides selection, hiring, and management of consultants</li> </ul>
Environment Manager (If a First Nation has no Environmental Manager, the Lands Governance Director assumes these roles.)	<ul style="list-style-type: none"> <li>» Oversees preparation and implementation of Environmental Management Plan</li> <li>» Prepares detailed implementation procedures</li> <li>» Prepares annual work plans and budgets</li> <li>» Implements elements of Environmental Management Plan</li> <li>» Coordinates community outreach and education, or supports staff and consultants in that role</li> <li>» Communicates with other government agencies</li> <li>» May deliver some environmental services (e.g. monitoring, restoration or environmental assessments)</li> </ul>
Lands or Governance Committee (If a First Nation has no Lands Committee or equivalent committee, the Lands Governance Director assumes these roles.)	<ul style="list-style-type: none"> <li>» Identifies environmental issues and responses</li> <li>» Participates in preparation and periodic review of the draft Environmental Management Plan</li> <li>» May assist in facilitating community consultation on the Environmental Management Plan</li> <li>» Makes recommendations to Chief and Council on the final draft of the Environmental Management Plan</li> <li>» Plays a key role in the ongoing implementation of the Environmental Management Plan</li> </ul>
Other First Nations departments	<ul style="list-style-type: none"> <li>» Support elements of Environmental Management Plan that are relevant to their mandates</li> <li>» Share information, and collaborate with staff of the Lands and Environment Departments</li> </ul>

Community members	<ul style="list-style-type: none"> <li>» Contribute knowledge about lands and resources</li> <li>» Articulate environmental values of the community</li> <li>» Help identify environmental issues and suitable responses</li> <li>» Discuss and validate responses to environmental issues</li> <li>» Discuss and comment on draft Environmental Management Plan</li> <li>» Approve laws for enactment as per Land Code procedure</li> <li>» Understand, support, and comply with environmental laws, regulations, and policies</li> </ul>
Elders	<ul style="list-style-type: none"> <li>» Can share in-depth understanding of traditional ways and resources</li> <li>» Familiar with the history of changes in environmental conditions on reserves</li> <li>» Understand cultural practices and values associated with environment and resource use</li> <li>» Enhance the value and legitimacy of the EMP for other community members</li> </ul>
Consultants and legal counsel	<ul style="list-style-type: none"> <li>» Provide technical support to First Nations staff in preparing and implementing the Environmental Management Plan</li> <li>» Design and conduct specialized studies (ESAs, risk assessments, emergency response plans, economic analysis, urban design, land use plans, etc.)</li> <li>» Draft First Nations' laws permitted by the <i>Framework Agreement</i> and authorized by the EMP</li> </ul>
Lease holders or other on-reserve businesses	<ul style="list-style-type: none"> <li>» Review and comment on draft Environmental Management Plan and laws</li> <li>» Understand and comply with environmental laws, regulations, and policies</li> </ul>
Other First Nations and First Nation organizations	<ul style="list-style-type: none"> <li>» Share approaches to environmental planning and management</li> <li>» Provide mutual support for preparing and implementing EMPs</li> <li>» Collaborate on multi-First Nation initiatives related to environment and the <i>Framework Agreement</i></li> </ul>
Land Advisory Board-Resource Centre	<ul style="list-style-type: none"> <li>» Provide technical support and information and guidance materials on environmental planning and management</li> <li>» Provide examples of environmental plans and laws adopted by other First Nations</li> </ul>
Provincial agencies	<ul style="list-style-type: none"> <li>» Advise on the use and effectiveness of provincial environmental programs, policies, laws, and regulations.</li> <li>» May be contracted to provide specific services to a First Nation</li> <li>» Monitor and enforce environmental and other laws on provincial lands outside of reserves</li> <li>» Collaborate with First Nations on management of water and other "shared" resources</li> <li>» Source of regulations and standards that a First Nation may adapt</li> </ul>

<p>Indigenous and Northern Affairs Canada</p>	<ul style="list-style-type: none"> <li>» Source of funds for developing and implementing a Land Code, EMP, and laws</li> <li>» Applies Indian Act sections not affected by the <i>Framework Agreement</i></li> <li>» Provides information on past environmental issues on the reserve lands</li> <li>» Fulfills responsibility to manage past environmental issues on reserve lands</li> <li>» Provides courses and other training and capacity opportunities</li> </ul>
<p>Other federal agencies (DFO, Health Canada, etc.)</p>	<ul style="list-style-type: none"> <li>» Responsible for enforcing federal laws on reserves (e.g., Fisheries Act, Migratory Birds Protection Act, Canadian Environmental Protection Act, Pest Control Products Act)</li> <li>» May continue to deliver services on reserve, consistent with agency mandates and authority</li> <li>» Conduct environmental assessments under Canadian Environmental Assessment Act during transition period, and in specific circumstances thereafter</li> <li>» Source of regulations and standards that a First Nation may adopt</li> </ul>
<p>Municipal and regional governments</p>	<ul style="list-style-type: none"> <li>» Share local experience responding to environmental issues</li> <li>» Negotiate agreements with First Nations for provision of services or environmental support (e.g., solid waste management, sewer and water, building inspection, land use planning)</li> <li>» Build mutual understanding and support for improving environmental quality</li> <li>» May collaborate with a First Nation in preparing and implementing an EMP, Official Community Plan.</li> <li>» May consult with a First Nation as local government prepares community plans, regional plans, or servicing plans, or makes major land use decisions.</li> <li>» May collaborate with First Nation on management of shared services (e.g., solid waste, water, and sewer) and resources</li> </ul>



## H. PREPARING THE EMP

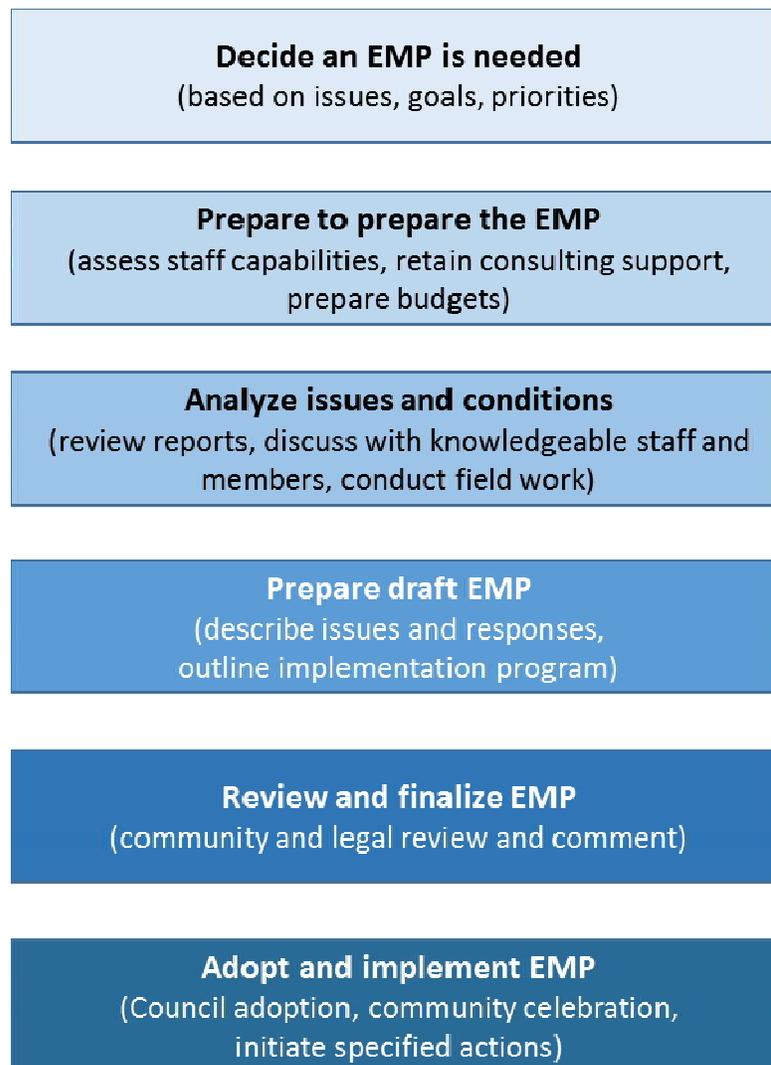
LABRC Courselets (which can be accessed using the link below) provide information about how to prepare an EMP:

[<http://www.labrc.com/public/courselet/>]

This report elaborates on the courselet's directions for preparing an EMP.

Figure 3 outlines the main steps involved in planning for, and preparing, and EMP. Note that a First Nation may decide that some of the steps can be skipped or amended to suit local conditions. More detail is provided on EMP preparation in the text following the figure.

**Figure 3. Main steps in preparing an EMP**



## **H.1. Identifying conditions and issues**

Answering the following questions about environmental conditions and associated issues on reserves will help prepare a First Nation to develop its EMP.

- What environmental conditions on reserve have been documented by past studies?
- What environmental information did Indigenous and Northern Affairs Canada (INAC) collect before the First Nation adopted a Land Code? Has that information been provided to the First Nation?
- Did INAC effectively respond to past environmental issues on reserve lands? What is INAC's plan to remedy or monitor those issues?
- What environmental issues are present on First Nations land? Are these issues important in the community?
- How are the identified environmental issues being managed? What environmental issues are not being resolved?
- What environmental issues are likely to arise as a First Nation implements its Land Code? What environmental issues may be raised by future development on First Nations land?
- What provincial and federal environmental regulations presently apply on the reserve? Do regulatory gaps exist? Are existing regulations effective in managing environmental issues? What would be the implications of adopting or adapting provincial regulations on reserve?
- How familiar are the First Nation staff members with environmental issues and responses?
- What Band Council Resolutions and policies have Chief and Council adopted with regard to the environment?
- How do the operations or mandates of First Nations departments (e.g., housing, public works) affect the environment?
- What does the community's Land Code or Individual Agreement say about the environment?
- With answers to these questions in hand, the First Nation and its consultant can refine the work program for preparing the EMP.

## **H.2. Engaging the community effectively during EMP preparation**

It is crucial that the community be involved throughout preparation and implementation of an EMP. During preparation of the EMP, community members and businesses can bring valuable information and insights to the planning program. When the EMP has been adopted, those groups must understand and support environmental management and land governance. It has been said that without involvement there is no commitment, so a broad range of groups must be involved in preparing the EMP.

Through their Land Code processes, Operational First Nations will have experience organizing community meetings, explaining complex information, and eliciting input from members. A First Nation should use techniques that proved effective in their community for reaching the

membership to explain why an EMP is needed, obtain input on environmental issues requiring action, and build support for adopting and implementing the EMP.

A First Nation should consider community meetings, workshops, open houses, and surveys to engage members in the EMP effectively. Group-specific meetings (e.g., youth, elders, businesses) may be useful, too.

### **H.3. Intellectual property and Aboriginal Traditional Knowledge**

The Assembly of First Nations website provides the following definitions:

“Aboriginal Traditional Knowledge (ATK) is knowledge owned by Indigenous peoples which differs from nation to nation and is a key component to their culture. ATK has traditionally been protected by the community on a collective basis and is subject to the context in which it is being used.”

“Intellectual Property is the legal ownership of a unique creation”, usually by an individual.

When, for instance, elders provide information about environmental conditions or cultural practices, they are sharing ATK. This information may be considered intellectual property, even though the information is held by a group rather than an individual. Because an EMP will be a public document, a First Nation should ensure that confidential ATK is not compromised by preparation or release of the EMP.

A First Nation will need to decide whether obtaining ATK for use in environmental management planning requires payment of a financial benefit to the elders sharing their knowledge. It is often traditional protocol to request cultural information from elders by way of tobacco and, if they agree to participate, provide compensation via honoraria or some other method. Is payment for ATK also appropriate if the information is used to benefit the First Nation itself, as in an EMP? The approach to ATK compensation should be based on precedents in the First Nation, the nature of the information being shared, and the circumstances of elders involved.

First Nations should consider the following points when determining how to manage issues associated with ATK:

- Cultural features or activity areas that are considered sensitive or vulnerable to disturbance should not be shown on published maps. An EMP can create policies and management strategies that do not put the integrity of such sites at risk.
- An EMP does not require preparation of a Traditional Use Study (TUS) or similar examination of cultural features, and neither should an EMP be considered equivalent to a TUS. However, if such cultural research has been prepared for other projects and is available for examination, it should be reviewed during preparation of the EMP.
- An EMP’s implementation section may call for future cultural studies that would fill gaps, increase understanding of cultural features, and guide management actions. TUS, archaeological, or other cultural studies can be challenging and costly to prepare. Such studies are often conducted in support of EAs of major projects affecting First Nations land. The EA section of an EMP may specify that cultural effects of proposed projects should be included in the scope and design of assessments.

Each First Nation preparing an EMP should determine how it wishes to handle the issue of ATK, elder involvement, and management and protection of culturally important areas and activities.

#### **H.4. Identifying topics to be included**

Aside from the two topics required by the *Framework Agreement* (environmental assessment and environmental contamination), a First Nation should determine what environmental issues need to be addressed in the EMP. Important environmental issues may be identified by community members, by staff, or as the result of technical studies, such as ESAs or EAs.

Examples of EMP content can be seen in the Tables of Contents for two adopted EMPs presented in Appendix A.

“Environment” is a broad concept, and associated issues generally include human and natural environments. For the purpose of preparing an EMP, some examples of environmental issues are:



- Risk of fuel spills from storage tanks or from trains or highways crossing a reserve,
- Contaminated runoff from industrial or agricultural operations,
- Invasive species (plants or animals),
- Electromagnetic fields from transmission lines,
- Poor solid waste management, resulting in human health risks or reduced community aesthetics,
- Air quality effects of woodstoves, industrial emissions, and transportation, including dust from roads and construction,
- Effects of groundwater contamination on drinking water quality,
- Reduced fish or wildlife habitat quality caused by human activity,
- Effects of flooding or increased risk of flooding on communities and businesses,
- Increased risk of “interface fires” where housing encroaches on forests,
- Health and other effects of inadequate liquid waste management,
- Poor water quality (surface or groundwater) caused by on-reserve or off-reserve human actions,
- Soil erosion effects on land productivity, or slope stability risks to public safety,
- Dumping of contaminated soil on reserves,
- Pests issues (e.g., rats in landfills, flies from agricultural operations) or
- Land development that does not adequately consider or protect the environment.

This list is only a limited sample of the hundreds of potential environmental issues that may affect reserves.

Environmental issues should be described in specific terms, and identify causes, not just symptoms. Such descriptions will be helpful in developing responses to correct the root causes of environmental problems. For example, instead of describing an issue as “Poor water quality,” it is better to say “Discharge of oil-contaminated runoff into Jones Creek during heavy rainfall.”

The number of issues to be included in the EMP should be kept within reasonable limits. Many issues may be identified by the parties involved in the EMP, but not all of them are necessarily environmental or suitable for inclusion in the document. It may be possible to combine related issues into a single item, or to deal with issues in other ways (such as a simple change in Band procedures or cleanup of a small area of dumped rubbish).

As a guideline, a First Nation should strive to keep the number of issues in an EMP between, say, five and twenty. Of course, a First Nation can identify as many issues as it wishes in an EMP, though as the number of environmental issues grows, the effort required to manage them and the associated costs also expand. As a common maxim says, “Long lists don’t get done”. For examples of the numbers of environmental issues contained in EMPs, please review the example Tables of Contents in Appendix A.

### **H.5. Off-reserve environmental issues**

It is not uncommon for off-reserve conditions or human actions to have environmental effects on reserve land, air, or water. Examples of such cross-boundary issues include air emissions from industry or rail traffic, groundwater or surface water contamination from agriculture or commercial activity, and flooding resulting from poor “upstream” drainage management practices.

A First Nation’s authority to manage its lands and environment under the *Framework Agreement* applies only to reserve lands. Hence, policies or regulations that are implemented by a First Nation cannot be applied off-reserve. An EMP, nonetheless, can address such issues in several ways, including:

- Documenting that an environmental issue exists and that its likely cause is off-reserve activities,
- Identifying the agencies involved in regulating the off-reserve activity (i.e., provincial environmental or health departments), and
- Calling for dialog between the First Nation, the off-reserve regulator, and, potentially, the person or company causing the environmental issue to attempt to develop a suitable response.

If the off-reserve environmental issue pre-dates a First Nation’s Land Code or if federally-regulated resources are affected (e.g., fish, species at risk), the EMP can specify that Canada should fulfil its responsibility to participate in resolving such issues or to compel other authorities to take action. Provinces or local governments may be responsible for regulating off-reserve land uses, so those bodies may need to participate in controlling harmful activities.

A First Nation should invite regulators of off-reserve lands or waters to be involved in preparing the EMP. Through building these relationships, a First Nation will be in a better position to resolve environmental issues caused by off-reserve activities.

If off-reserve developments are anticipated to affect the environmental conditions on reserve, then an EMP should identify those potential effects and recommend suitable responses. Communication between the First Nation and regulators or proponents of the off-reserve development is a necessary part of managing such issues. For instance, a First Nation noted that bridge construction upstream of its reserve affected erosion rates where the river crosses the reserve. Through early engagement with the bridge planners and designers, the erosion problems may have been avoided.

## **H.6. Developing appropriate responses to identified environmental issues**

It is not enough to identify problems in an EMP. Solutions, too, need to be proposed. After preparing a list of issues, a First Nation and its technical advisors should consider the best response to each issue.

Laws are necessary when enforcement and legal power are needed to respond to an issue. The *Framework Agreement* specifies that environmental assessment and environmental protection regimes will be implemented through First Nations laws. These regimes should include such measures as outreach, policies, and procedures. Except for environmental protection and environmental assessment, most issues identified in EMPs can be managed without laws.



The following methods can be applied in responding to many environmental issues:

- Policies to be adopted by a First Nation, which might identify how Band services will be delivered or how members are expected to behave with regard to the environment,
- Applying accepted government or industry guidelines or standards (for, say air or water quality or fuel storage),
- Adopting best management practices or standard operating procedures, typically applied to such activities as operation of sewer and water systems, construction methods, solid waste management, and agricultural operations,
- Applying traditional knowledge or practices in ways that avoid or reduce identified environmental problems,
- Using education and outreach to explain the EMP policies, actions, and expected changes in behaviour to correct environmental problems, and
- Drafting laws for issues requiring the ability to enforce compliance.
- The responses selected by a First Nation will depend on the nature of the environmental issues, environmental or human health risks, willingness of community members to accept proposed responses, and capacity of the First Nation to take selected actions.

A First Nation should collaborate with other First Nations, jurisdictions, and government agencies as it develops responses to environmental issues. Staff of nearby municipalities may have experience managing issues of water quality, solid waste management, or land development that could be adapted for use on a First Nation's land. Provincial or federal agencies, too, may be able to suggest ways of dealing with identified environmental issues. Two or more First Nations may be able to collaborate in developing and implementing responses to similar environmental issues.

Involving other agencies during the development of the EMP may also build relationships that will prove valuable as the plan is implemented.

To manage strictly technical environmental topics (such as fuel storage tanks or wastewater systems), INAC suggests applying standard operating procedures (SOPs). Such SOPs identify whether an issue requires adherence to a regulation (provincial or federal) involving a "must do" checklist of actions. For topics that are non-technical or that are not directly subject to regulation (such as farming or tree removal), best management practices (BMPs) can be used to describe accepted approaches to a specific issue.

### **H.7. ISO-based Environmental Management Systems**

The International Standards Organization (ISO) was formed in 1946 to establish uniform standards for industrial products. ISO has evolved into a Geneva-based "independent, non-governmental international organization with a membership of 162 national standards bodies. Through its members, it brings together experts to share knowledge and develop voluntary, consensus-based, market relevant International Standards that support innovation and provide solutions to global challenges."

The Canadian Standards Association (CSA), formed in 1919, is an ISO member organization and performs similar functions. The ESAs conducted on First Nations' land typically comply with approaches to identifying contaminants published by CSA. In 2014, CSA had more than 1,600 employees and annual earnings exceeding \$183 million.

Though primarily focused on establishing standards for manufactured goods, ISO and CSA also have developed standard procedures for activities undertaken by businesses and organizations. The standards marketed by CSA that apply to activities include:

- Environmental Management Systems (ISO 14001)
- Greenhouse Gas Management and Carbon Accounting (ISO 14064)
- Energy Management Systems (ISO 50001)
- Organizing Sustainable Events (Z2010).

To use these systems, an organization must purchase materials from CSA. People interested in learning about CSA-based EMS can take courses offered by the organization, potentially leading to certification.

An Environmental Management System (EMS) should not be mistaken for an EMP. For example, EMSs used by corporations may reduce energy use, generation of waste, or material used in shipping products. Hence, an EMS could be useful as a recommended response to certain environmental issues identified in an EMP. For instance, an EMP might identify

excessive use of energy and paper in First Nations administration as an environmental problem, and suggest the use of an EMS to develop solutions. The First Nation could then purchase the guides and services from CSA, or enroll a staff member in EMS training. Consultants also offer CSA-linked services.

### **H.8. Ensuring the EMP contains appropriate levels of detail**



Some EMPs contain extensive detail in the form of “standard operating procedures” or similar instructions for day-to-day activities on a reserve. Such plans also often include a “component environmental management plan” for each identified issue.

Other First Nations use the EMP as an opportunity to establish goals and objectives for environmental quality, organize and clarify the environmental issues they face, and specify future actions to be taken.

Details may be contained in appendices that can be separated from the plan itself. These EMPs are a brief

document meant to communicate the First Nation’s environmental management program to members, businesses, and other governments.

Though there is no “right” or “wrong” approach to EMP content, some guidelines may be helpful. As a plan, an EMP should be considered a “road map” to future actions. The document should be clear and readable, avoiding excessive technical jargon, “legalese”, or extraneous detail. Formats should be chosen that facilitate understanding and use of the EMP.

### **H.9. What the EMP should say about implementation**

An EMP should be an implementation-focused document. This means that the EMP’s content and presentation should facilitate implementation by answering such questions as, “what needs to be done,” “when will these actions occur” and “who is responsible for the actions”?

The responses to the environmental issues identified in the EMP should be capable of being implemented by the First Nation or another responsible party. If organizations other than the First Nation are identified as responsible for actions, those bodies need to be contacted during preparation of the EMP to discuss and confirm their roles in implementation.

The EMP should propose a schedule or sequence of actions that respond to identified issues. Some actions need to be taken first, either because the issues are more pressing or because the actions provide groundwork for later steps. All of the issues contained in an EMP should be important, so referring to some issues as “high priority” may be misleading. “Sequence” is a better term to apply to creating an implementation schedule.

For some issues, further study may be required to understand the extent or nature of the problem or to determine the best management response. In such cases, EMP implementation may specify investigations to be conducted before a response to the issue itself can be prepared. For example, if only a Phase I ESA was conducted before a Land Code was adopted, a First Nation may not know the extent of potential contamination on a reserve. In

response, the EMP may recommend that a Phase II or III ESA be completed to support future decisions about remediation or other actions.

## **H.10. Enforcement and adjudication of laws**

The *Framework Agreement* anticipates the need to enforce environmental protection laws, and establishes a baseline for standards and punishments, saying:

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.

Clause 19.1 of the *Framework Agreement* also discusses the punishments that Land Code First Nations may use to achieve compliance with their laws.

First Nations regularly ask about reasonable and effective ways of enforcing their environmental laws (not just environmental protection laws), and adjudicating violations. First Nations across Canada have adopted a variety of approaches to law enforcement and adjudication. This guide provides only general guidance on the topic.

Unless a First Nation has already formulated methods of enforcing its laws, the EMP need not specify such actions. Rather, the EMP can declare that a First Nation will develop an enforcement and adjudication regime after considering findings of LABRC studies or some other appropriate process.

A First Nation's legal counsel may recommend using enforcement and adjudication processes that can be delivered by the First Nation or that represent current practice and are accepted in local, provincial, or federal courts. A First Nation should note that going to court is expensive, slow, and harmful to relationships among the litigating parties. Particularly for environmental laws, a First Nation's enforcement approach should emphasize the following measures:

- education and provision of information,
- persuasion,
- verbal and written warnings,
- administrative measures (such as stop work orders and seizure of goods),
- mediation,
- traditional cultural measures, such as Elders' committee hearings, or
- other means of attaining compliance.

Going to court should be a last resort. A First Nation may use the EMP to specify the general direction and approach to be taken in enforcing environmental laws.

## **I. ADOPTING AND IMPLEMENTING THE EMP**

Plans are only useful if they are implemented. To make sure that the effort expended in preparing an EMP is not wasted, a First Nation needs to commit to an active—and long term—implementation program. Implementation begins with adoption of the EMP, and

continues until all of a First Nation's environmental goals and objectives are met, which could be a very long time.

### **I.1. Adopting the EMP**

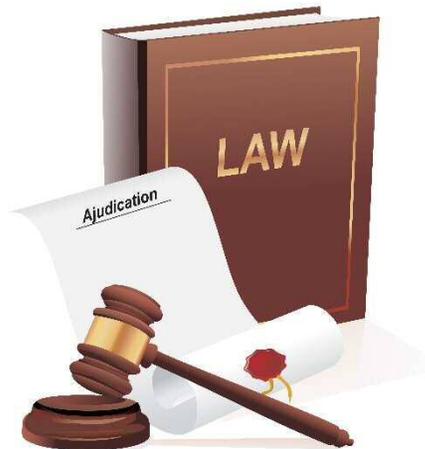
A First Nations should take the draft and final EMP to the membership for review and discussion. When the EMP has been revised to respond to community concerns and is considered complete by a First Nation's advisory committee, it is probably ready to be adopted. Land Codes may contain sections specifying how documents such as an EMP should be adopted.

If the Land Code does not specify how to adopt an EMP, several alternatives are available. Chief and Council could adopt the EMP through a Band Council Resolution or by simply voting to adopt the plan. Another course of action is to ask the membership to vote on the EMP, either at a community meeting or via a more formal ballot.

Regardless of the adoption method used, a First Nation should ensure that the EMP is formally recognized as a document endorsed by the community and Council. Such recognition will increase the plan's legitimacy as a guide to future actions and expenditures, and will reinforce a First Nation's authority to govern its lands and resources.

### **I.2. Drafting environmental laws**

At a minimum, a First Nation will need to consider drafting laws dealing with environmental assessment and environmental protection (contamination). An EMP is likely to identify other issues for which laws are part of an effective response. The process of drafting laws should involve the First Nation and its technical consultant to specify what the laws should try to achieve. Legal counsel should be asked to draft laws that respond to the identified environmental issues, will be enforceable, are understandable by First Nations' membership, and will be useful in court.



The lawyer should be asked to review environmental laws adopted by other First Nations and those adopted by local governments and provinces. The approaches taken by such organizations or specific sections of their laws may be adapted for a First Nation's purposes. Care must be taken, however, to not just adopt a law from another jurisdiction because of precedent. Such laws may be ineffective, excessively bureaucratic, or expensive to enforce. It may be difficult or costly to monitor compliance or test effectiveness of others' laws as they apply to First Nations land.

Special care must be taken in drafting laws dealing with environmental assessment. The *Framework Agreement* specifies that a First Nation's EA law must be "consistent" with Canada's and the EA regime must be "harmonized" with those of the Provincial and Federal governments. Senior governments' environmental assessment processes are slow, expensive, and do not guarantee protection of the environment. These laws should not be mimicked by a

First Nation. Rather, an approach to environmental assessment should be developed that is consistent with the capacity of a First Nation to deliver, and that focuses on identifying impacts and mitigation measures honestly and efficiently.

The process of law drafting should include a review of similar laws in adjacent jurisdictions. It is usually wise to avoid creating laws on reserve that create substantially different legal requirements (either more permissive or more restrictive) than prevail in surrounding communities. Nonetheless, it is more important to have laws that meet the needs and circumstances of a First Nation than to be legally consistent with neighbours' laws.

### **I.3. Getting word out...Communicating the EMP**

After adopting its EMP, a First Nation should make sure that others know about the plan. This communication is important for several reasons:

- The EMP can help make other governments, regulators, and others aware that the First Nation is actively exercising its authority to govern its lands,
- First Nation members need to understand, celebrate, and support the content of the EMP,
- Members and businesses must fully understand the plan and its content before they can be expected to comply with the new policies, laws, and regulations,
- By building community understanding of, and support for, the EMP, Chief and Council can more confidently implement the plan, and
- Businesses and developers that are active on reserves or that propose development on reserves should understand the environmental priorities, goals, and procedures established by the First Nation.



Communication methods should be selected that suit the target audience. For instance, to reach the entire community, a meeting or open house might be best. For specific groups, such as elders or youth, smaller group sessions often work well. To reach other governments or businesses, written communication may be appropriate.

A First Nation may consider preparing a brochure or similar brief summary of the EMP. Such a concise document provides an announcement of the plan and its main themes. For some audiences, such summary information may be sufficient. The summary should provide the reader with instructions for obtaining more detail if desired.

The communication program should be designed as soon as the EMP is adopted, with implementation to proceed quickly thereafter. The First Nation may conduct the outreach and materials preparation independently, or it may choose to involve the consultant involved in the EMP to support preparation of the summary and delivery of the EMP “message” to the various audiences.

Some First Nations have found that educating school children about environmental management not only builds support among youth, but also influences parents. Explaining the EMP purpose and content either in school classrooms or in First Nations youth groups can bring wide benefits.

#### **I.4. Implementation--Phasing and organizing**

Implementing the EMP will be a long-term, multi-year endeavor. The EMP itself should contain a strategy for implementation. After a First Nation adopts its EMP, it may need to refine the schedule for implementation, considering:

- Which actions need to be taken first,
- The parties (staff, consultants, lawyers, other governments) involved in such actions, and
- Availability of resources needed to take the needed actions.

The estimated cost of implementation will need to be consistent with funds available in each budget year. Federal and provincial governments occasionally announce funds for specific purposes. If these funding opportunities are consistent with EMP actions, a First Nation needs to be ready to submit an application to the relevant agency, often on short notice.

A few hints to implementing a plan can help ensure that the goals of the EMP are achieved.

- a. Assign responsibility. The Lands Governance Director, Environmental Technician, or some other First Nation staff member needs to be assigned responsibility for implementing the plan. Without clear responsibility, the EMP is likely to sit on a shelf.
- b. Recognize and overcome resistance. Opposition by individuals or groups can derail the plan. Do not underestimate this risk. Be aware of the sources and causes of opposition to the EMP, and find ways to respond. For instance, the EMP may call for changes to the operations of some First Nations departments, which may lead to staff resistance. The staff member(s) having primary responsibility for implementing the EMP should explain the EMP to other departments and explain that the plan has support from Council and membership. If compliance still is lacking, direct instructions from Chief and Council to the uncooperative staff may be needed. First Nations staff or Council also would need to address opposition to the EMP from community members or businesses.

- c. Build alliances. Some groups or individuals may support the entire EMP, whereas others may care only about portions of the plan. Operators of domestic water utilities, for instance, may be most interested in sections of the EMP that deal with contamination issues, whereas the Economic Development Officer may care most about the environmental assessment process. It is important to cultivate relationships with single-issue groups as well as those with broader interests. A strong “constituency” for EMP implementation will pay many benefits.
- d. Look for ways to achieve EMP goals through others’ initiatives. Operational First Nations take action on a number of topics, including economic development, land use planning, housing, services, and training. If the goals of those initiatives are consistent with those of the EMP, seek ways of collaborating with other departments and staff on programs, outreach, regulation, or other activities. Mutual support can strengthen all initiatives.
- e. Be prepared to adjust course. As plans are implemented, conditions will change and different ways of achieving specified goals may be identified. Not only will environmental conditions change, but organizational flux also will occur. Staff turnover, political change, shifting (or shrinking) budgets, and other events will affect implementation of the EMP. Be ready for these changes and do not be afraid to adjust the implementation program. The EMP is, after all, just a plan.
- f. As the EMP is implemented, lessons will be learned about responding to the issues specified in the plan. It is reasonable to act on that new understanding, so flexibility should be built into the implementation program.



## J. MONITORING PERFORMANCE AND IMPROVING THE EMP

At regular intervals (typically every five years), the EMP should be subject to monitoring and evaluation. Based on this performance review, the plan may be amended.

Both the plan and environment should be monitored. In monitoring the plan, several questions should be answered:

- How much effort has gone into the plan (staff time, consultant effort, budget allocations, purchases)?
- What has the plan achieved (meetings held, products completed, community support attained, laws adopted, field work conducted)?
- Are the issues identified in the EMP still current (have some previous issues been resolved and new issues arisen that are not included in the plan)?
- Are the actions proposed in the EMP still relevant (laws, outreach, best management practices, etc.)?

- Have the EMP's goals and objectives been achieved?
- The condition of the environment also needs to be included in the monitoring program by obtaining answers to the following questions:
- Have the environmental issues identified in the EMP been improved by plan actions?
- Have new environmental issues arisen since the EMP was prepared?
- How has the overall environmental quality of the First Nations lands changed since adoption of the EMP?
- How might a revised EMP address new or ongoing environmental issues?

With the results of the monitoring effort in hand, the First Nation can decide what amendments to the EMP are needed. In some cases, only minor changes may be required. In other circumstances, the vision, goals, issues, and responses may need thorough revisions. Such revisions should consider ways of improving the efficiency and effectiveness of planned actions.



Although a comprehensive review should occur every five years, improvements to the plan and its implementation should occur whenever required. For example, if a new environmental issue comes to light, a First Nation need not wait until the five-year review to respond. Depending on the severity of the new issue (e.g., threats to environmental or human health), a First Nation can develop and implement a specific response.

An EMP can be a wonderful tool for First Nations in improving the quality of their lands and communities. Preparing the plan can engage the community, encourage people to think about important issues, and empower First Nations members to take individual responsibility for their environment. Understanding and applying the suggestions presented in this guide can help First Nations to avoid known obstacles to preparing EMPs, making the planning experience more rewarding and productive.



## APPENDIX A: EXAMPLES OF EMP CONTENTS

As an aid to First Nations in designing their EMPs, this Appendix presents the Tables of Contents for EMPs prepared by the Matsqui First Nation and the Sc̓i̓ąnew First Nation. The contents show two approaches to the plans, the Matsqui's being more policy-based (environmental issue-response-action) and the Sc̓i̓ąnew relying more on standard operating procedures. The examples identify the environmental issues determined by each First Nation to be important to their communities. Each First Nation that prepares an EMP will need to identify their own individual set of important environmental issues and responses to those issues.

### Matsqui First Nation Environmental Management Plan

- 1.0 ENVIRONMENTAL MANAGEMENT PLAN INTRODUCTION AND PROCESS
  - 1.1 Introduction
  - 1.2 Preparation of the Environmental Management Plan
  - 1.3 Meetings and community consultation
  
- 2.0 ENVIRONMENTAL MANAGEMENT PLAN GOALS, OBJECTIVES, AND ISSUES
  - 2.1 Goal of environmental management
  - 2.2 Objectives
  - 2.3 MFN environmental issues
  - 2.4 MFN potential responses
  - 2.5 Education and outreach
    - 2.5.1 Purpose
    - 2.5.2 Communication plan
  
- 3.0 RESPONSES TO ENVIRONMENTAL ISSUES
  - 3.1 Environmental emergencies
    - 3.1.1 Environmental emergency issues
    - 3.1.2 Responses
  - 3.2 Fuel use and storage
    - 3.2.1 Fuel use and storage issues
    - 3.2.2 Responses
  - 3.3 Sewage treatment and disposal
    - 3.3.1 Sewage treatment and disposal issues
      - 3.3.2 Responses
  - 3.4 Solid waste management
    - 3.4.1 Solid waste management issues
    - 3.4.2 Responses
  - 3.5 Fish and fish habitat protection
    - 3.5.1 Fish and fish habitat issues
    - 3.5.2 Responses
  - 3.6 Protection of valued and at-risk species
    - 3.6.1 Species at risk issues
    - 3.6.2 Responses
  - 3.7 Land contamination

- 3.7.1 Land contamination issues
    - 3.7.2 Responses
  - 3.8 Agricultural practices
    - 3.8.1 Agricultural practice issues
    - 3.8.2 Responses
  - 3.9 Water management
    - 3.9.1 Environmental issues
    - 3.9.2 Responses
  - 3.10 Air quality
    - 3.10.1 Air quality issues
    - 3.10.2 Responses
  - 3.11 Community quality
    - 3.11.1 Community quality issues
    - 3.11.2 Responses
  - 3.12 Environmental assessment
    - 3.12.1 Environmental assessment issues
    - 3.12.2 Response
- 4.0 PLAN IMPLEMENTATION
  - 4.1 Environmental governance structure
  - 4.2 Drafting of environmental laws
  - 4.3 Capacity building and staff training
  - 4.4 Implementation schedule
- 5.0 REFERENCES

## INDEX OF APPENDICES

# Sc̓iánew First Nation Environmental Management Plan

## FOREWORD

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Sc̓iánew First Nation (SFN) Environmental Mission Statement

## PART I: SFN Environmental Management Plan

- 1.0 Introduction to the SFN Environmental Management Plan (EMP)
  - 1.1 EMP Development
  - 1.2 SFN Lands: Land Use Plan
  - 1.3 Community Consultation
- 2.0 Environmental Policy
  - 2.1 Review of Environmental Policy and Component EMPs
- 3.0 Legal and Other Requirements
- 4.0 Component Environmental Management Plans
- 5.0 Documentation and Document Control
- 6.0 Document Maintenance and Responsibility
- 7.0 Monitoring, Reporting and Management Review
- 8.0 Operational Control
- 9.0 Emergency Response
- 10.0 Monitoring & Measuring and Evaluation of Compliance

## PART II: Component Environmental Management Plans

- 1.0 Solid and Liquid Waste Management (Garbage and Sewage)
- 2.0 Habitat Protection
- 3.0 Hazardous Materials Handling, Storage and Disposal
- 4.0 Cultural Resource Protection
- 5.0 Fuel Handling and Storage
- 6.0 Ground and Surface Water Protection
- 7.0 Environmental Impact Assessments (EIAs)
- 8.0 Environmental Emergency Response

## EMP ADDITIONAL DOCUMENTS (Refer to Separate Binders)

Binder 1 - Field Standard Operating Procedures (SOPS – 1.01 to 8.05)

Binder II - Appendices for Component Environmental Plans (1.0 to 8.0)



## APPENDIX B: SAMPLE JOB DESCRIPTIONS

### **Environmental Manager**

The First Nations environmental manager co-ordinates the components of the First Nation Environmental Management Plan (EMP).

Environmental managers must be able to identify and resolve a variety of environmental problems. Environmental managers will co-ordinate the efforts of operational staff, while working with Chief and Council, federal, provincial, and municipal bodies, developers, and others on a regular basis. They will need to understand political, social, legal, and economic issues, as well as aspects of environmental science and technology. Environmental managers will be expected to act as environmental leaders in their communities.

#### **Duties:**

- Oversee the implementation of the First Nation's EMP, including drafting laws deemed necessary by the EMP, Environmental Assessment, land use controls, sustainability initiatives, and environmental aspects of day-to-day reserve operations.
- Co-ordinate all aspects of environmental management on-reserve, including resource extraction, pollution reduction, waste management, development controls, environmental health, risk assessment, and remediation of contaminated sites.
- Serve as the administrator for environmental programs for the First Nation, including preparation of budgets, staffing plans, and capital plant.
- Oversee the issuance of permits, which may be prepared by the Environmental Technician.
- Review development applications and prepare summaries for Chief and Council.
- Co-ordinate compliance with, and monitoring of, environmental legislation.
- Oversee pollution control, pollution prevention, recycling programs, or other EMP components.
- Evaluate best management practices and emerging technologies and provide technical and general information to other First Nations staff, Council, and community members.
- Oversee auditing and reporting of environmental performance, providing results to internal and external bodies, as required.
- Manage enforcement, mediation, prosecution, and adjudication actions.
- Identify, assess, and reduce First Nations environmental risks and financial costs associated with environmental matters.
- Incorporate relevant aspects of environmental laws and policies (the First Nation's and others') and best management practices into First Nations operations.
- Develop environmental awareness initiatives for community members and political leaders.



## **Environmental Technician**

Reporting directly to the Environmental Manager, the technician undertakes operational activities required to fulfill the requirements of the Environmental Management Plan (EMP). Activities may include environmental sampling, data analysis, interpretation, reporting, and research. The Environmental Technician conducts site inspections, processes applications for environmental permits, and assesses compliance with laws, regulations, and policies applicable on reserve.

### **Duties:**

- Conduct water, land, and air monitoring programs, reporting results to the Environmental Manager.
- Assist with the delivery of pollution control initiatives.
- Prepare samples for laboratory analysis, whether completed on or off reserve. Aid in interpreting and responding to findings of such analyses.
- Respond to enquiries about permits and regulations, and process applications for permits required by a First Nation's laws.
- Enter environmental data into databases and spreadsheets and carry out data analysis and interpretation.
- Prepare field reports, annual reports and draft staff reports on environmental issues.
- Ensure compliance with environmental elements of land use plans, zoning bylaws, and other regulations through onsite inspections, collection of data and evidence, issuance of citations for violations, and participation in prosecutions as necessary.
- Participate in the conduct of response to environmental emergencies.
- Assist staff with the enforcement of bylaws, legislation, and contaminant source investigations.
- Work with community members and businesses to protect the reserve from environmental contaminants.
- Promote community involvement in environmental management and carry out environmental educational initiatives.
- Assist with the planning of annual budgets and cost estimation for environmental initiatives.
- Provide input for the design and delivery of projects in the environmental program.
- Perform other duties as required

### **Qualifications:**

Environmental technicians should have a firm understanding of environmental legislation and protocols for environmental monitoring, data collection, analysis, and reporting. Credentials that include certifications in relevant fields are desirable. Technicians should be comfortable working with community members, and be able to build effective working relationships with businesses. Environmental technicians should be able to explain specific issues clearly, and prepare reports in an effective manner.

## APPENDIX C: REGISTRIES OF ENVIRONMENTAL PROFESSIONALS IN CANADA

First Nations seeking professional assistance in preparing and implementing EMPs may wish to contact professional associations to identify firms or individuals that are registered with those organizations. In some cases, online databases can be searched to identify people and companies with specific credentials and experience.

Note that the following list should not be considered complete; the databases and search services offered by the professional organizations change frequently. If a province is not listed here, registry and search options were not available at the time this report was prepared.

### **Professional planners:**

Canada-wide: For a fee, Requests for Proposals can be posted on the Canadian Institute of Planners website. Details are at <https://www.cip-icu.ca/Hire-a-Planner/Request-for-Proposals#>.

Ontario: <https://ams.ontarioplanners.ca/consultant/directory/>

Manitoba: <http://www.mppi.mb.ca/consultants-directory.asp>

British Columbia: <https://www.pibc.bc.ca/content/planning-consultants> (site “under construction” in 2015)

### **Engineers and geoscientists:**

British Columbia: <https://www.apeg.bc.ca/Member-Directories>

Manitoba: <http://www.apegm.mb.ca/Directory.html>

New Brunswick: <http://www.apegnb.com/en/home/aboutus/findamember.aspx>

### **Agrologists:**

British Columbia: <https://www.bcia.com/about-bcia/find-an-agrologist>

Saskatchewan: <http://www.sia.sk.ca/html/about/Consultant---Contractor-Database/index.cfm>

Manitoba: [http://mia.mb.ca/mia\\_registry.aspx](http://mia.mb.ca/mia_registry.aspx)

Ontario: <http://oia.on.ca/find-member/>

Alberta: <http://aia.in1touch.org/client/roster/clientRosterView.html?clientRosterId=243>

### **Biologists:**

British Columbia and Yukon: <https://professionalbiology.com/about/find-a-consultant>

Alberta: <https://www.aspb.ab.ca/member-roster>

Quebec: <http://www.abq.qc.ca/>

Canada-wide: <http://www.cseb-scbe.org/index.html> (may need to contact the organization directly for register of members)

## APPENDIX D: CONSULTANT OR STAFF CREDENTIALS FOR SPECIFIC ENVIRONMENTAL ACTIVITIES

Topic	Fields of knowledge or training	Professional credentials
<b>Environmental planning</b>	Planning, various environmental sciences, data collection and report preparation	Registered Professional Planner (RPP); Member, Canadian Institute of Planners (MCIP)
<b>Species at risk, habitat</b>	Biology, ecology	Registered Professional Biologist (R.P.Bio.), Professional Biologist (P.Biol.), or related, Environmental Professional (EP) in relevant field; Certified Wildlife Biologist; Associate Wildlife Biologist
<b>Contamination and remediation</b>	Chemistry, risk management, engineering and geoscience, soil science	Member of Contaminated Sites Approved Professionals (CASAP) Society; Professional Engineer (P.Eng.);
<b>Water quality or management</b>	Hydrology, civil engineering, public health, biology	Member, Canadian Water Quality Association; member, Canadian Association on Water Quality (CAWQ, ACQE); P.Eng. (civil), R.P.Bio., Certified Erosion Sediment Storm Water Inspector (CESSWI)
<b>Wastewater</b>	Sewer system and wastewater management	Holder, wastewater management certificate (provincial); P.Eng. (civil)
<b>Soils, agriculture</b>	Soil science, agronomy	Professional Agrologist (P. Ag.), Certified Agricultural Consultant (CAC); Certified Agricultural Advisor (CAA); Certified Crop Advisor (CCA); Certified Professional in Erosion and Sediment Control (CPESC)
<b>Trees in communities</b>	Arboriculture	International Society of Arboriculture Certified Arborist (ISA Certified); Tree Risk Assessor Qualification (TRAQ); R.P.Bio., P.Ag.
<b>Forestry</b>	Forestry, geoscience, biology	Registered Professional Forester (RPF), ingénieur forestier (ing.f.); P.Eng., R.P.Bio.

<b>Fish, fish habitat</b>	Biology, ichthyology	Certified Fisheries Professional (CFP); Associate Fisheries Professional (AFP); R.P.Bio.; EP in fisheries
<b>Land use, community design</b>	Planning, urban design, architecture, landscape architecture	RPP, MCIP, licensed under a provincial architectural licensing authority; Member of provincial landscape architecture organization; LEED Accredited Professional (AP);
<b>Community involvement</b>	Planning, sociology, communications	International Association for Public Participation (IAP2); RPP; MCIP; Certificate in Communications (various institutions)
<b>Mapping</b>	Cartography, computer mapping, geography	Canadian Institute of Geomatics (CIG) Certification; ESRI Certification; Geographic Information System Certification (GISC); Information Mapping Certification; GPS and GIS Certification; Degree in relevant field



## APPENDIX E: EXAMPLE OF CONTENTS FOR A REQUEST FOR PROPOSALS TO PREPARE AN EMP

- Introduction and context
  - » Description of First Nations community (name, population, area in hectares, location, summary of land uses on reserves)
  - » Governance structure relevant to the study (roles of staff, Chiefs and Council, lands or environment committees, etc. in preparing, adopting, and implementing the EMP. Identify who will manage the EMP project.)
  - » Why an EMP is needed (to identify environmental issues, develop responses, comply with *Framework Agreement*, guide future environmental management activities, etc.)
  - » Scope of services sought (describe what the consultant is to do, either design and prepare an entire EMP or provide specific services, such as collect and analyze environmental information or prepare maps and assemble the report)
- List of relevant reports, maps, etc. (list environmental reports that the First Nation can make available to the successful bidder)
- Deliverables (what products and activities should the consultant provide?)
  - » Draft documents describing environmental conditions and issues
  - » Maps showing location of environmental features and issues
  - » Presentation materials for community
  - » Number of copies of draft and final reports
  - » Numbers of meetings, community presentations, etc. to be held
- Schedule (start-finish dates, interim deadlines for products)
- Criteria to be used to select a consultant
  - » Quality of proposal
  - » Credentials of consultants
- Company background, size, resources, other relevant projects
- Team member education, training, experience, professional registrations
  - » Value for money
  - » Familiarity with EMPs, *Framework Agreement*, local conditions
  - » Other criteria
- Budget or budget range
- Information to be included in proposal
  - » Description of approach to the EMP
  - » List of tasks to be completed
  - » Description of deliverables

- » Detailed table showing staff hours, fees, and expenses
- » List of references (with phone numbers)
- Proposal due date (be very specific, listing date and time)
  - » State that late or incomplete proposals will not be reviewed
- Proposal format (how the proposal should be delivered)
  - » Hard copy (with First Nations delivery address and number of copies) OR
  - » Digital (describe format, e.g., MS Word, PDF, etc.)
- Questions and clarifications (provide the name and staff position of the First Nations person to be contacted for RFP questions and clarification, including email address and phone number)





Prepared for:

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Prepared By:

**DAVID HARPER**

**Environmental Management Plan (EMP) Implementation  
Roles and Responsibilities Sample  
Credit: Sema:th EMP**

Body or organization	Sample: Role in EMP
Chief and Council	<p>Establish and define the overall organizational structure, including roles, responsibilities, and authorities to effectively implement and maintain the EMP.</p> <p>Provide the equipment, training, human resources, and funding necessary to implement and maintain the EMP.</p> <p>Participate annually in the EMP Review Meeting.</p>
Lands and Resources Department	The Lands Governance Director or Lands & Resources Manager is ultimately responsible for the following tasks but is allowed to delegate procedural aspects to other department staff and/or other First Nation (FN) departments, contractors, agencies, etc., as appropriate.
Lands and Resources Department	<p><b>Maintain the Approved EMP</b></p> <ul style="list-style-type: none"> <li>• Conduct or assign responsibilities for EMP/Environmental Operating Procedures (EOP) reviews and inspections and related documentation.</li> <li>• Maintain current EOPs within the EMP.</li> <li>• Establish and implement EMP document control procedures.</li> <li>• Ensure that legal requirements relevant to the EMP are reviewed annually.</li> <li>• Maintain a central, electronic and hard copy version of the EMP.</li> <li>• Prepare the Annual EMP Review Report.</li> <li>• Coordinate and participate in the Annual EMP Review meeting.</li> <li>• Prepare an annual budget for Chief and Council to review and approve for the implementation and maintenance of the EMP.</li> <li>• Ensure that adequate training of FN staff is provided related to the implementation and requirements of the EMP.</li> </ul>
Lands and Resources Department	<p><b>Communicate the EMP</b></p> <ul style="list-style-type: none"> <li>• Ensure that staff and contractors are aware of the EMP and EOP requirements and objectives.</li> <li>• Communicate the EMP goals, objectives, and EOPs both internally and externally, and as appropriate.</li> <li>• Liaise with, advise, and report back to Chief and Council on the status of project activities and any environmental issues.</li> <li>• Advise Chief and Council of any non-compliance and any emerging environmental issues and assist in addressing them.</li> <li>• Liaise with regulatory agencies as required.</li> <li>• Maintain a registry of complaints.</li> </ul>
Lands and Resources Department	<p><b>Review Compliance with the EMP</b></p> <ul style="list-style-type: none"> <li>• Schedule and coordinate internal EMP and EOP reviews.</li> <li>• Implement or assign corrective action as required in response to inspection or monitoring results, audit findings, Chief and Council reviews or incidence reports.</li> <li>• Monitor contractor's compliance.</li> <li>• Periodically review monitoring reports to ensure required data is being collected.</li> </ul>

**Environmental Management Plan (EMP) Implementation  
Roles and Responsibilities Sample  
Credit: Sema:th EMP**

Body or organization	Sample: Role in EMP
Lands and Resources Department	<p><b>Maintain EMP Related Documents (including but not limited to):</b></p> <ul style="list-style-type: none"> <li>• Environmental permits, approvals and government agency correspondence related to the EMP.</li> <li>• Agreements with fuel, chemical and waste contractors and suppliers for activities related to the EMP.</li> <li>• Facility site plans, records, checklists, audit reports and related documentation.</li> </ul>
Lands and Resources Department	<p><b>Environmental Incidences</b></p> <ul style="list-style-type: none"> <li>• Promptly investigate all reportable environmental incidences to ensure that appropriate reporting, response and other legal requirements have been met.</li> <li>• Able to stop work to ensure compliance with regulatory and/or EMP requirements.</li> <li>• Ensure environmental incidents are reported to the appropriate/applicable agencies and Chief and Council.</li> <li>• Retain the services of a qualified Environmental Professional to assess and mitigate risk associated with impacts to the environment.</li> </ul>
Contractors	<p>Adhere to the requirements set out in the EMP and other applicable legislation.</p> <p>Communicate environmental responsibilities and requirements of this EMP to their staff and sub-contractors, and record that communication.</p> <p>Ensure all members of their staff and sub-contractors are trained to prevent or mitigate environmental impacts.</p> <p>Ensure all labour, equipment, and materials are available to execute the project activities and respond to environmental incidents.</p> <p>Correct deficiencies and any non-compliance items raised by the FN.</p> <p>Retain the services of a Qualified Environmental Professional to assess and mitigate risk associated with impacts to the environment.</p>

NOTE: As each FN is distinct in regards to their environmental issues, organizational structure and approach to governance the above information should be considered an illustration, and each FN should identify their own unique roles and responsibilities in EMP implementation.



## **Environmental Manager** **Sample Job Description**

The First Nation's environmental manager will co-ordinate the components of the First Nation specific Environmental Management Plan (EMP).

Environmental managers must be able to identify and resolve a variety of environmental problems. Environmental managers will co-ordinate the efforts of operational staff, while working with Chief and Council, federal, provincial, and municipal bodies, developers, and others on a regular basis. They will need to understand political, social, legal, and economic issues, as well as aspects of environmental science and technology. Environmental managers will be expected to act as environmental leaders in their communities.

### **Duties:**

- Oversee the implementation of the First Nation's EMP, including drafting laws deemed necessary by the EMP, Environmental Assessment, land use controls, sustainability initiatives, and environmental aspects of day-to-day reserve operations.
- Co-ordinate all aspects of environmental management on-reserve including resource extraction, pollution reduction, waste management, development controls, environmental health, risk assessment and remediation of contaminated sites.
- Serve as the administrator for environmental programs for the First Nation, including preparation of budgets, staffing plans, and capital plant.
- Oversee the issuance of permits, which may be prepared by the Environmental Technician.
- Review development applications and prepare summaries for Chief and Council.
- Co-ordinate compliance and monitoring of environmental legislation.
- Oversee pollution control, pollution prevention, recycling programs, or other EMP components.
- Evaluate best management practices and emerging technologies and provide technical and general information to other First Nations staff, Council and community members.
- Oversee auditing and reporting of environmental performance, providing results to internal and external bodies, as required.
- Manage enforcement, mediation, prosecution, and adjudication actions.
- Identify, assess, and reduce First Nations environmental risks and financial costs associated with environmental matters.



- Incorporate relevant aspects of environmental laws and policies (the First Nation's and others' and best management practices into First Nations operations.
- Develop environmental awareness initiatives for community members and political leaders.
- Assess and implement improvements to the First Nation's EMP.
- Co-ordinate First Nations Environmental Assessment (EA) processes and First Nations participation in external EA processes. Roles may include determining whether an EA is required for a proposed project, defining project Terms of Reference, oversight during EA preparation, report to Chief and Council, organizing community involvement, reviewing EA reports, and coordinating monitoring of EA mitigation strategies and commitments.
- Provide environmental input to the development and amendment of land use plans and regulatory bylaws.
- Co-ordinate ongoing training for environmental staff in relevant fields of environmental management.
- Deliver environmental status reports and recommendations to Chief and Council.
- Develop and co-ordinate environmental purchasing decisions.
- Identify environmental sound business opportunities.
- Co-ordinate contracts with consultants, lawyers, and other external support for services related to environmental management.
- Write environmental reports, monitoring studies, and state of the environment reports.
- Make presentations to municipalities, community, and environmental groups.

### **Qualifications:**

A sound knowledge of scientific and management principles is needed. An effective environmental manager must understand problems and recognise areas for environmental improvement, and then be able to communicate solutions to community members, political leaders, staffs of other government agencies, and the broader public. Familiarity with approaches to environmental issues, and the ability to work with a variety of individuals is important.



## **Environmental Technician** **Sample Job Description**

### **Environmental Technician**

Reporting directly to the Environmental Manager, the technician undertakes operational activities required to fulfill the requirements of the Environmental Management Plan (EMP). Activities may include environmental sampling, data analysis, interpretation, reporting, and research. The Environmental Technician conducts site inspections, processes applications for environmental permits, and assesses compliance with laws, regulations, and policies applicable on reserve.

#### **Duties:**

- Conduct water, land, and air monitoring programs, reporting results to the Environmental Manager.
- Assist with the delivery of pollution control initiatives.
- Prepare samples for laboratory analysis, whether completed on or off reserve. Aid in interpreting and responding to findings of such analyses.
- Enter environmental data into databases and spreadsheets and carry out data analysis and interpretation.
- Prepare field reports, annual reports and draft staff reports on environmental issues.
- Ensure compliance with environmental elements of land use plans, zoning bylaws, and other regulations through onsite inspections, collection of data and evidence, issuance of citations for violations, and participation in prosecutions as necessary.
- Participate in the conduct of response to environmental emergencies.
- Assist staff with the enforcement of bylaws, legislation, and contaminant source investigations.
- Work with community members and businesses to protect the reserve from environmental contaminants.
- Promote community involvement in environmental management and carry out environmental educational initiatives.
- Assist with the planning of annual budgets and cost estimation for environmental initiatives.



- Provide input for the design and delivery of projects in the environmental program.
- Perform other duties as required

**Qualifications:**

Environmental technicians should have a firm understanding of environmental legislation and protocols for environmental monitoring, data collection, analysis, and reporting. Technicians should be comfortable working with community members, and be able to build effective working relationships with businesses. Environmental technicians should be able to explain specific issues clearly, and prepare reports in an effective manner.

# FIRST NATIONS LAND MANAGEMENT ACT

## (BILL C-49)

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

### EXECUTIVE SUMMARY

#### INTRODUCTION

The First Nations Land Management Act (the “Act”) was required under the *Framework Agreement* for two purposes:

- **to ratify**
- **and bring into effect the *Framework Agreement***

The *Act* is to be consistent with the *Framework Agreement* and to apply in the same manner to the First Nations who are signatories to the *Framework Agreement* (set out in the schedule to the *Act*). The *Act* was previously introduced in Parliament on December 10, 1996, but the federal election that year prevented it from being enacted. The Bill leading to the enactment of the *Act*, was re-introduced as Bill C-49 in June of 1998. It was finally enacted and given royal assent on June 17, 1999.

#### RATIFICATION

The *Framework Agreement* is the document that sets out the terms and conditions under which a First Nation can establish its own land governance regime and remove its reserve lands from the Minister’s control under the *Indian Act*. The *Framework Agreement* was ratified by Canada by enacting the *FNLMA* and as of June 2013, 40 First Nations have ratified the *Framework Agreement* and enacted their own Land Codes.

#### IMPLEMENTATION OF THE FRAMEWORK AGREEMENT

***Ratification Process:*** A large portion of the *Act* relates to the “opting-in process” for First Nations. It repeats many of the clauses of the *Framework Agreement* on what a land code must contain, how a land code is approved by the community, the role of the independent Verifier and so on.

***First Nation Lands:*** The *Act* states that title to First Nation Lands will not be affected by the *Act* and that these lands will continue to be reserves and to be constitutionally protected. First Nation lands are also protected against surrender for sale. If land is ever voluntarily exchanged by a First nation for other land, the new reserve land received by the First Nation would be protected in the same way.

**Land Code:** Land Codes enacted in accordance with the Framework Agreement have the force of law and are validly recognized by Canadian courts.

**First Nation Powers:** The powers of a First Nation to manage its reserve lands and resources, receive and use land revenues, and its legal capacity for land purposes are included in the *Act*. These powers are to be exercised for the use and benefit of the First Nation.

**Transfer of Revenue:** The *Act* provides that revenue moneys of the First Nation previously collected and held by Canada will be transferred to the First Nation when its land code comes into effect.

**First Nation Laws:** The law-making powers of a First Nation under its land code are set out in the *Act*. The laws may cover any matter related to First Nation land and resources, including the granting of interests in land, land use, environment, and possession of matrimonial home. Provisions relating to the enforcement of First Nation laws, prosecutions and evidence are also included.

**Register for First Nation Land:** The *Act* authorizes Canada to set up a separate register to record interests granted by First Nations under their Land Codes.

**First Nation Expropriation:** The *Act* recognizes the right of a First Nation to expropriate interests in its own First Nation land for community works or other First Nation community purposes. The basic principles of this are included in the *Act*, e.g. fair compensation. The First Nation in its Land Code and laws would set out the details of how any community expropriation would work.

**No Provincial Expropriation:** First Nation land is immune from any expropriation by a provincial municipal government or by provincial agencies.

**Limited Federal Expropriation:** The protections against the expropriation of First Nation land by the federal government, which were negotiated in the *Framework Agreement*, are repeated in the *Act*. These include provisions on limited expropriation in cases where it is justifiable and necessary for a federal public purpose that serves the national interest. The *Act* also requires Canada to provide alternate land to the First Nation, which would become First Nation land, in order to protect the land base of the First Nation. The Legislation contains provisions on compensation and the resolution of disputes over expropriation.

**Liability Protection:** Canada will remain liable for actions taken before the Land Code takes effect. The First Nation will assume responsibility for its land governance actions after that date.

**Application to other First Nations:** The *Act* only applies to the 84 First Nation signatories set out in the schedule. If other First Nations become signatories to the *Framework Agreement*, the Governor in Council may add them to this Schedule.

## **EFFECT ON OTHER FEDERAL LEGISLATION**

***Indian Act:*** The *Act* ensures that the land management provisions of the *Indian Act* do not apply to any of the 84 signatory First Nations that adopt a Land Code, their members or their First Nation lands. This will also apply to other eventual First Nation signatories.

***Expropriation Act:*** The *Act* makes it clear that the new rules for protection of First Nation land from expropriation over-ride other legislation like the *Expropriation Act*.

***Indian Oil and Gas Act:*** The *Indian Oil and Gas Act* will continue to apply to any First Nation oil and gas interests and revenues.

***Environment:*** The First Nation will now to enact its own laws on this topic.



## **Enforcement under the *Framework Agreement***

The *Framework Agreement* provides for the enforcement of First Nation land laws, including environmental laws. Framework Agreement provisions on law enforcement are:

**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, 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 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.

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

(signed in 1996)

Includes modifications resulting from

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

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

(signé en 1996)

Comprend les changements apportés par  
les modifications suivantes

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

## Framework Agreement on First Nation Land Management

### FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

BETWEEN:

THE FOLLOWING FIRST NATIONS:

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

AND

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

WHEREAS:

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

The First Nations should have the option of

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

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

ENTRE :

LES PREMIÈRES NATIONS  
SUIVANTES :

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

ET

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

ATTENDU QUE :

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

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

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

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

The Parties understand that this Agreement must be ratified;

NOW THEREFORE,

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

## PART I PRELIMINARY MATTERS

### 1. INTERPRETATION 1.

1.1 In this Agreement,

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

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

"federal law" means a law enacted by

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

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

Les parties reconnaissent que le présent accord doit être ratifié;

PAR CONSÉQUENT,

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

## PARTIE I QUESTIONS PRÉLIMINAIRES

### INTERPRÉTATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

« membre » À l'égard d'une première

foncier")

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

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

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

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

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

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

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

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

"Minister" means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of this Agreement; ("ministre")

nation : (« member »)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. FIRST NATION LAND

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

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

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

## 3. INDIAN OIL AND GAS

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

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

## 2. TERRES D'UNE PREMIÈRE NATION

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

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

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

## 3. PÉTROLE ET GAZ DES INDIENS

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

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

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

#### 4. RESERVES

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

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

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

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

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

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

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

#### 4. RÉSERVES

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

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

4.3 Lorsqu'une première nation souhaite gérer une réserve, l'ensemble de la réserve sera inclus comme terres de première nation de façon à éviter la double administration de la réserve sous t<sup>2</sup>ugt<sup>x</sup>g des articles 4.4, 4.5 et 4.5A.

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

a) l'environnement y est si dégradé que

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

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

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

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

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

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

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

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

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

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

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

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

4.6 The First Nation will make provision to

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

## PART II OPTING IN PROCEDURE

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

## PARTIE II PROCÉDURE D'ADHÉSION

## 5. DEVELOPMENT OF A LAND CODE

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

5.2 The land code of a First Nation will

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

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

(i) licenses and leases, and

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

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

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

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

## 5. ÉLABORATION D'UN CODE FONCIER

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

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

a) la description des terres qui y sont assujetties;

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

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

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

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

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

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

the land code;

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

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

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

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

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

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

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

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

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

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

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

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

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

5.3 Peuvent également figurer dans le code foncier :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its

Canada et la première nation.

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

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

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

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

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

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

## 7. APPROBATION DE LA COMMUNAUTÉ

7.1 Le code foncier de la première nation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 8. VERIFICATION PROCESS

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

8.2 The representatives of the First Nation

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

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

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

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

## 8. PROCESSUS DE VÉRIFICATION

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

8.2 Les représentants de la première nation

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

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

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

8.4 The verifier will

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

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

8.3 La première nation communique au vérificateur les documents suivants :

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

8.4 Le vérificateur a pour mandat:

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

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

la première nation dûment approuvé par elle.

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

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

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

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

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

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

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

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

8.7 A verifier will not deal with disputes over funding.

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

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

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

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

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

## 9. CONDUCT OF COMMUNITY VOTE

## 9. TENUE DU SCRUTIN

9.1 Once the verifier confirms that the

9.1 Après que le vérificateur ait décidé que

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

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

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

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

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

## 10. CERTIFICATION OF LAND CODE

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

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

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

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

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

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

## 10. CERTIFICATION DU CODE FONCIER

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

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

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

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

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

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

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

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

## 11. DISPUTED VOTE

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

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

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

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

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

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

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

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

## 11. CONTESTATION DU VOTE

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

process to the verifier.

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

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

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

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

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

### PART III

#### FIRST NATION LAND MANAGEMENT RIGHTS AND POWER

##### 12. LAND MANAGEMENT POWERS

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

irrégularité dont a été entaché le déroulement du scrutin.

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

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

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

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

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

### PARTIE III

#### DROITS ET POUVOIRS DE GESTION DES TERRES DE PREMIÈRE NATION

##### 12. POUVOIRS DE GESTION DES TERRES

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

12.2 This power includes

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

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

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

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

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

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

12.2 Elle peut notamment :

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

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

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

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

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

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

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

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

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

### 13. PROTECTION OF FIRST NATION LAND

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

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

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

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

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

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

### 13. PROTECTION DES TERRES DE PREMIÈRE NATION

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

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

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

#### 14. VOLUNTARY EXCHANGE OF FIRST NATION LAND

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

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

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

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

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

accord.

#### 14. ÉCHANGE VOLONTAIRE DE TERRES DE PREMIÈRE NATION

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

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

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

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

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

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

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

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

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

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

#### 15. IMMUNITY FROM SEIZURE, ETC.

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

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

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

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

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

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

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

#### 15. INSAISSABILITÉ, ETC.

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

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

designated land at that time.

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

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

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

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

## 16. THIRD PARTY INTERESTS 16.

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

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

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

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

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

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

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

## INTÉRÊTS DES TIERS

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

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

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

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

#### 17. EXPROPRIATION BY FIRST NATIONS

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

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

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

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

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

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

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

#### 17. EXPROPRIATION PAR LES PREMIÈRES NATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### PART IV FIRST NATION LAW MAKING

##### 18. LAW MAKING POWERS

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

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

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

b) le 30<sup>e</sup> jour suivant la signification de la dernière copie de cet avis.

#### PARTIE IV POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

##### 18. POUVOIRS DE LÉGIFÉRER

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

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

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

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

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

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

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

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

## 19. ENFORCEMENT OF FIRST NATION LAWS

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

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

(b) provide for fines, imprisonment,

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

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

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

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

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

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

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

a) créer des infractions punissables par procédure sommaire;

b) prévoir des peines, notamment les

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

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

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

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

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

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

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

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

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

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

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

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

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

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

remuneration.

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

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

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

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

## 20. APPLICATION OF FEDERAL LAWS

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

leur mandat, leur destitution et leur rémunération.

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

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

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

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

## 20. APPLICATION DES LOIS FÉDÉRALES

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

federal legislation.

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

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

## 21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

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

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

où elles sont incompatibles avec la loi de ratification.

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

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

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

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

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

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

## 22. EXISTING FIRST NATION BY-LAWS

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

## PART V ENVIRONMENT

### 23. GENERAL PRINCIPLES 23.

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

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

23.3 The principles of these regimes are set out below.

Indiens;

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

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

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

## 22. RÈGLEMENTS ADMINISTRATIFS ACTUELS DE LA PREMIÈRE NATION

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

## PARTIE V ENVIRONNEMENT

### PRINCIPES GÉNÉRAUX

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

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

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

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

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

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

#### 24. ENVIRONMENTAL MANAGEMENT

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

24.2 Each First Nation agrees to

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

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

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

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

#### 24. GESTION DE L'ENVIRONNEMENT

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

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

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

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

## 25. ENVIRONMENTAL ASSESSMENT

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

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

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

## 25. ÉVALUATION ENVIRONNEMENTALE

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

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

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

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

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

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

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

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

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

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

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

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

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

## 26. OTHER AGREEMENTS 26.

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

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

## 27. RESOURCES

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

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

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

## AUTRES ENTENTES

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

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

## 27. RESSOURCES

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

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

## PART VI FUNDING

### 28. APPROPRIATION 28.

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

### 29. DEVELOPMENTAL FUNDING

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

### 30. OPERATIONAL FUNDING

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

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

## PARTIE VI FINANCEMENT

### CRÉDITS

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

### 29. FINANCEMENT DE DÉMARRAGE

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

### 30. FINANCEMENT DE FONCTIONNEMENT

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

conditions. les

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

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

#### 31. LANDS ADVISORY BOARD FUNDING

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

### PART VII EXPROPRIATION OF FIRST NATION LAND BY CANADA

#### 32. RESTRICTIONS 32.

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

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

(a) only with the consent of the

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

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

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

#### 31. FINANCEMENT DU CONSEIL CONSULTATIF DES TERRES

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

### PARTIE VII EXPROPRIATION DE TERRES DE PREMIÈRES NATIONS PAR LE CANADA

#### RESTRICTIONS

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

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

Governor in Council; and

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

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

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

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

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

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

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

réunies :

a) le gouverneur en conseil y consent;

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

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

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

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

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

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

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

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

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

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

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

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

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

### 33. COMPENSATION BY CANADA

période pour laquelle il est exproprié;

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

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

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

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

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

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

### 33. INDEMNISATION PAR LE CANADA

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

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

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

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

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

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

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

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

compensated;

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

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

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

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

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

#### 34. STATUS OF LANDS

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

une indemnité;

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

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

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

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

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

#### 34. STATUT DES TERRES

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

First Nation land is expropriated by Canada,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

improvements.

### 37. APPLICATION OF EXPROPRIATION ACT

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

### PART VIII LANDS ADVISORY BOARD

#### 38. LANDS ADVISORY BOARD

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

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

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

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

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

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

### 37. APPLICATION DE LA LOI SUR L'EXPROPRIATION

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

### PARTIE VIII CONSEIL CONSULTATIF DES TERRES

#### 38. CONSEIL CONSULTATIF DES TERRES

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

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

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

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

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

on its behalf.

### 39. FUNCTIONS OF THE LANDS ADVISORY BOARD

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

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

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

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

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

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

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

pour le compte du conseil.

### 39. ATTRIBUTIONS DU CONSEIL CONSULTATIF DES TERRES

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

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

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

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

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

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

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

(g) proposing regulations for First Nation land registration;

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

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

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

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

#### 40. RECORD KEEPING

40.1 The Lands Advisory Board will maintain a record containing

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

(b) a copy of that land code;

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

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

résoudre les difficultés;

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

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

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

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

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

#### 40. TENUE DES DOSSIERS

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

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

b) une copie de ces codes fonciers;

c) une copie des modifications apportées aux codes fonciers;

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

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

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

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

#### 41. ANNUAL REPORT 41.

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

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

#### 42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

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

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

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

#### RAPPORT ANNUEL

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

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

#### 42. DISPARITION DU CONSEIL CONSULTATIF DES TERRES

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

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

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

## PART IX DISPUTE RESOLUTION

### 43. GENERAL PRINCIPLES 43.

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

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

43.3 Subject to clause 43.4, any dispute

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

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

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

## PARTIE IX RÈGLEMENT DES DIFFÉRENDS

### PRINCIPES GÉNÉRAUX

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

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

43.3 Sous réserve de l'article 43.4, les

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

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

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

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

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

#### 44. PANELS OF ARBITRATORS, ETC.

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

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.

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

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

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

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

## 47. RELATED ISSUES

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

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

(a) all parties to the process consent; and

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

47.3 The decision of a verifier and a

## ARBITRAGE

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

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

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

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

## 47. QUESTIONS CONNEXES

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

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

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

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

47.3 La décision du vérificateur et la

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

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

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

## PART X RATIFICATION AND ENACTMENTS BY THE PARTIES

### 48. RATIFICATION OF AGREEMENT 48.

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

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

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

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

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

## PARTIE X RATIFICATION PAR LES PARTIES ET MESURES LÉGISLATIVES

### RATIFICATION DE L'ACCORD

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

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

enactment of legislation.

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

#### 49. ENACTMENTS BY THE PARTIES

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

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

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

### PART XI OTHER MATTERS

#### 50. LIABILITY

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

d'une loi de ratification.

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

#### 49. MESURES LÉGISLATIVES ADOPTÉES PAR LES PARTIES

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

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

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

### PARTIE XI AUTRES QUESTIONS

#### 50. RESPONSABILITÉ

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

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

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

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

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

## 51. FIRST NATION LANDS REGISTER 51.

51.1 Canada will establish a First Nation

code foncier de la première nation.

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

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

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

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

## REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Le Canada est tenu d'établir un

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

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

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

## 52. STATUS OF DOCUMENTS

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

## 53. PROVINCIAL RELATIONS

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

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

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

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

## 52. STATUT DES DOCUMENTS

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

## 53. RAPPORT AVEC LES PROVINCES

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

## 54. TIME LIMITS

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

## 55. OTHER REGIMES 55.

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

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

## 56. REVIEW PROCESS

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

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

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

## 54. DÉLAIS

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

## AUTRES RÉGIMES

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

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

## 56. MÉCANISME D'EXAMEN

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

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

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

(c) the role of the Lands Advisory Board;

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

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

(f) the dispute resolution processes; and

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

c) le rôle du Conseil consultatif des terres;

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

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

f) les mécanismes de règlement des différends;

g) toute autre question convenue par les Parties.

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

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

## 57. AMENDMENTS

## 57. MODIFICATIONS

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

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

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

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

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

#### 58. RECITALS 58.

58.1 The recitals form part of this Agreement.

#### 59. COMING INTO FORCE

59.1 This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.

59.2 Despite clause 59.1, such provisions of this Agreement as are necessary to allow a First Nation to ratify this Agreement before Canada ratifies this Agreement will have effect as of the day Canada and that First Nation both sign this Agreement.

57.3 Sous réserve du paragraphe 57.2, après le 1er septembre 2003, le présent accord peut être modifié avec le consentement du Canada et des deux tiers des premières nations qui l'ont ratifié que ce soit à cette date, ou avant ou après cette date.

#### PRÉAMBULE

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

#### 59. ENTRÉE EN VIGUEUR

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

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

# FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

## EXECUTIVE SUMMARY

### INTRODUCTION

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

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

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

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

### TAKING CONTROL OF LAND GOVERNANCE

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

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

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

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

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

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

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

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

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

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

## **TITLE TO FIRST NATIONS**

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

## **LEGAL STATUS AND POWERS OF FIRST NATIONS**

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

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

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

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

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

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

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

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

The FNLRS is:

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

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

## **PROTECTION OF FIRST NATION LAND**

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

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

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

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

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

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

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

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

## **CONTINUING FEDERAL RESPONSIBILITY**

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

## **DISPUTE RESOLUTION**

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

## **LANDS ADVISORY BOARD AND RESOURCE CENTRE**

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

## FIRST NATIONS INVOLVED

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

### BC

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

### MB

1. Chemawawin
2. Opaskwayak
3. Swan Lake

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

### SK

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

### ON

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

(a) Now implementing treaty

(b) Now implementing full self-government

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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**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 \_\_\_\_\_;<sup>1</sup>

**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

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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;<sup>2</sup>

“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”;<sup>3</sup>

“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

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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;<sup>4</sup>

“*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

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

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

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

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

### **3. TRANSFER OF LAND ADMINISTRATION**

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

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

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

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

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

#### **4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION**

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

#### **5. OPERATIONAL FUNDING**

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

#### **6. TRANSFER OF REVENUES**

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

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

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

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

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

**8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS**

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

**9. AMENDMENTS**

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

**10. NOTICES BETWEEN THE PARTIES**

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

Canada:

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

[insert address of regional office]

[insert fax number for regional office]

\_\_\_\_\_ First Nation

[Insert title of recipient]

[insert address of First Nation]

[insert fax number for First Nation]

**11. DISPUTE RESOLUTION**

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

**12. DATE OF COMING INTO FORCE**

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

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

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

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

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

[Name of First Nation]

\_\_\_\_\_  
Minister of Indian Affairs and Northern  
Development

\_\_\_\_\_  
[Name of Chief]

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

**ANNEX “A”**

**FUNDING PROVIDED BY CANADA<sup>5</sup>**

- (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 19<sup>th</sup> 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 <sup>st</sup> Fiscal Year
2013-2014 Fiscal Year	\$75,000.00 - One Time Transitional and Environmental Funding per 2 <sup>nd</sup>

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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 TRANSFER<sup>6</sup>**

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.

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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 CANADA<sup>7</sup>**

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.<sup>8</sup>

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).<sup>9</sup> 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.<sup>10</sup>

[List interests]

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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 LANDS<sup>11</sup>**

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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 LICENSES<sup>12</sup>**

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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 LAND<sup>13</sup>**

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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.



## **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.



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# Matsqui First Nation Environmental Management Plan

**FINAL**

**August 8, 2012**

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**MATSQUI FIRST NATION**  
PO Box 10  
Matsqui, British Columbia  
V4X 3R2





## ACKNOWLEDGMENTS

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

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



## ABBREVIATIONS

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



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# 1.0 ENVIRONMENTAL MANAGEMENT PLAN INTRODUCTION AND PROCESS

---

## 1.1 Introduction

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

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

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

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

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

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

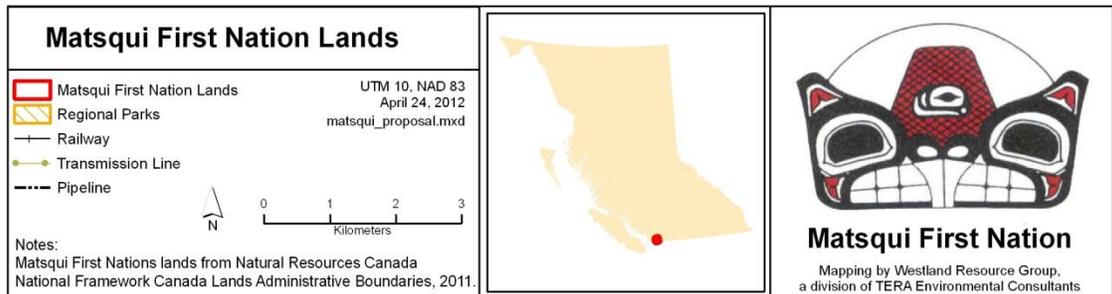
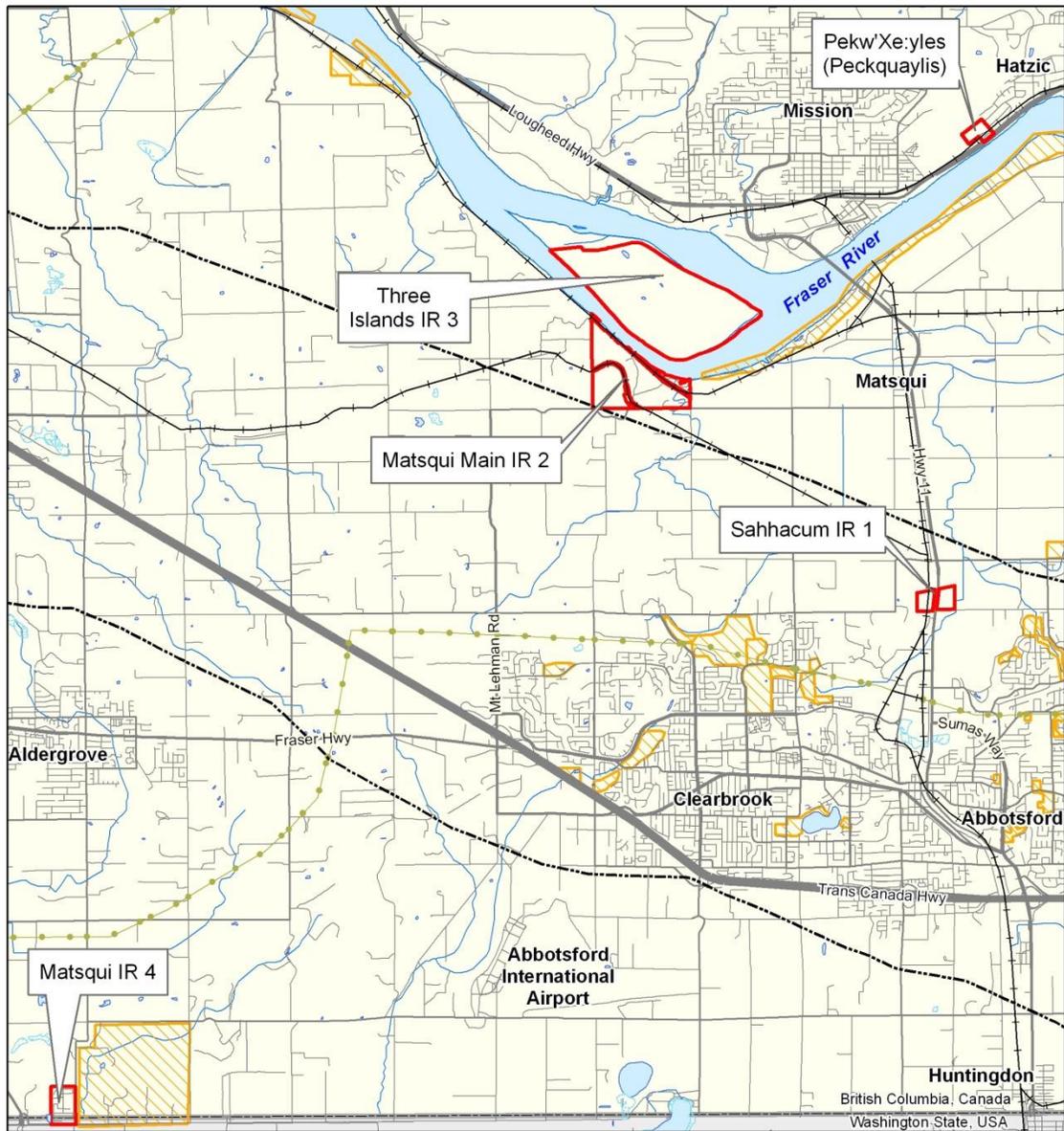
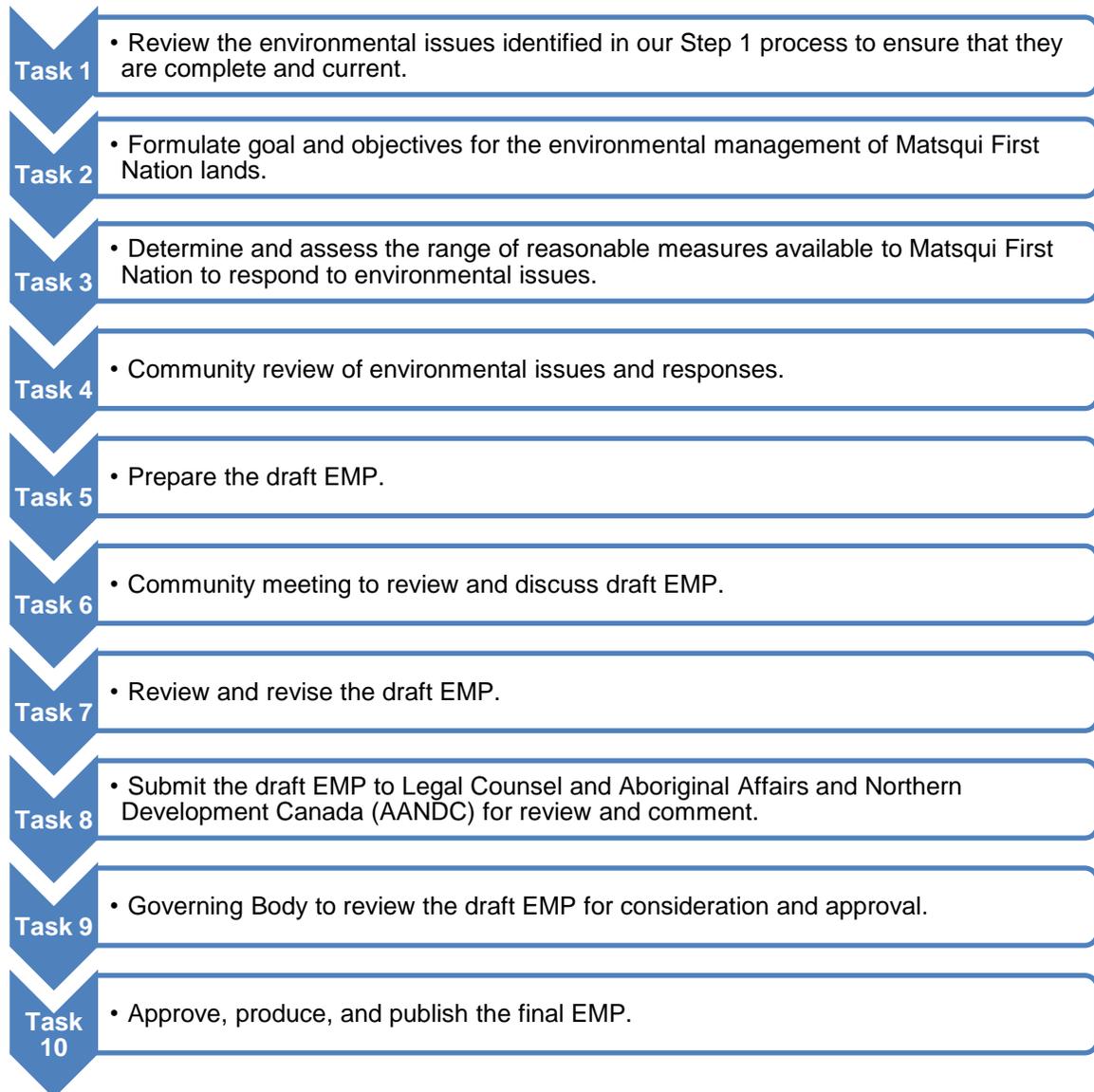


Figure 1. Location of Matsqui lands

## 1.2 Preparation of the Environmental Management Plan

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



**Figure 2. Steps followed in preparing the Environmental Management Plan**

### 1.3 Meetings and community consultation

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

**Table 1. Summary of meetings and consultation activities**

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

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

## 2.0 ENVIRONMENTAL MANAGEMENT PLAN GOALS, OBJECTIVES, AND ISSUES

---

### 2.1 Goal of environmental management

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

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

To achieve this goal, Matsqui First Nation commits to:

- seek resources needed to implement the policies and actions identified in the EMP;
- manage community services and business practices with an emphasis on pollution prevention and minimizing impacts on the environment;
- periodically monitor environmental conditions on Matsqui lands to improve environmental quality and to refine the EMP's policies; and
- promote the environmental management goal to the membership, employees, contractors, and the public.

### 2.2 Objectives

The EMP is an important tool in managing Matsqui lands. The Matsqui First Nation seeks to achieve the following objectives through the EMP:

- minimize environmental impact of future human activity on Matsqui lands, repair past damage, and enhance the quality and productivity of the land, air, and waters;
- improve the ecological functioning and resource productivity of Matsqui lands and waters;
- comply with environmental management components of the Framework Agreement signed by the Matsqui First Nation and Canada,
- review other jurisdictions' environmental protection laws and processes related to preventing risks to the environment or human health, and assess the suitability of those laws for achieving the Matsqui First Nation environmental management goals;
- formulate policies to be implemented by the Matsqui Governing Body that advance us toward the goal of sustainable use of Matsqui lands;
- identify alternative environmental management approaches, including laws, regulations, policies, guidelines, and Best Management Practices (BMPs), that could be used to address the issues identified in the Step 1 process;

- ensure that the goals of environmental management and sustainability are reflected in land use plans, development and servicing plans, and other decisions affecting the environment or the community;
- work with adjacent local governments and the provincial and Canadian governments in regarding the environmental measures we deemed most suitable for Matsqui lands, including cooperation in the implementation and enforcement of Matsqui First Nation environmental regulations and standards;
- develop procedures for preventing future contamination or recontamination of Matsqui lands;
- identify Matsqui First Nation opportunities for, and limits to authority over, environmental management;
- specify Matsqui First Nation government organizational structures and administrative procedures to implement the EMP policies and directions;
- determine training, equipment, infrastructure, and information management required to implement the EMP, including potential sources of funding or other resources; and
- continue to communicate with Matsqui First Nation members, employees, tenants, and those who undertake construction or other projects on Matsqui lands of the importance of complying with the EMP policies and associated laws, regulations, and guidelines.

## 2.3 Matsqui First Nation environmental issues

The Matsqui First Nation has identified a variety of environmental issues associated with Matsqui lands and resources. The following priority environmental issues were raised during discussions with the Lands Committee and Matsqui First Nation membership. Individual issues are listed under main topic headings.

### Environmental emergencies



- Potential spills from vehicle accidents on highways crossing reserves
- Emergency response regarding railroads (Canadian National Railway (CN), Canadian Pacific (CP), and Southern Rail) crossing reserves
- Wildfire risk on all reserves
- Flood and earthquake risk on all reserves

### Fuel storage and management

- Potential spills from:
  - Fuel storage and boat fueling operations at G&R Cedar, IR #2



- Fuels and lubricants at ModPro, IR #2
- Fueling facility at band office
- Kruger Inc. forestry operations, IR #3
- The potential for natural gas leaks in distribution systems and gas appliances present on IR #2 and IR #4.

### **Sewage disposal**



- Effects of high water table on waste disposal fields, IR #4
- Potential cross contamination of water supply by leaking sewer lines
- Potentially harmful waste being introduced into sanitary sewers

### **Solid waste management**



- Hog fuel storage at G&R Cedar and past gate on Cemetery Road
- Garbage dump at former sand pit
- Illegal dumping of garbage on reserves
- Litter and construction debris dumped by Matsqui members
- Failure of some Matsqui First Nation members to practice traditional methods of disposing of fish waste, instead of dumping the waste in garbage bins, creating odour problems

### **Fish and fish habitat protection**



- Bilge discharges into the river from boom boats and other fuel spill risks
- Drainage from agricultural operations affecting water quality
- Lack of respect of fish including waste of fish resources
- River bank treatment (rip rap) that harms fish habitat
- Damage to fish habitat caused by development
- Culverts that are obstacles to fish passage (*e.g.*, Coligny Creek)

### **Protection of valued and at-risk species**

- Protect valued, threatened, or endangered species on Matsqui lands



- Avoid potential development proposals or designs that could harm valued or at-risk species

#### Land contamination issues



- Dumping fill of unknown quality on farmland and other parts of Matsqui lands
- Grease and metals from rail operations contaminate reserves
  - Soil and plants are contaminated near railways
  - Grease on rails and rail switches
  - Creosote railroad ties (in use and stored)

#### Agricultural practices



- Pesticide use, fertilizer runoff, noise, odour, and soil management
- Need for improved agricultural practices for gardens and permit-based farming on IR #2
- Nuisance fly infestations associated with manure spreading on adjacent farms

#### Water management



- Poor drainage management in low portions of Matsqui lands
- Stagnant water in drainage ditches creating mosquito and odour problems
- Effects on Matsqui lands of runoff from adjacent farmlands (pesticides, fertilizers, and organic material in water)

#### Air quality



- Odours on IR #2 from:
  - the Joint Abbotsford Mission Environmental System (JAMES) sewage treatment plant,
  - manure spreading on adjacent land, and
  - fetid drainage ditches.
- Odours on IR #4 from:
  - livestock manure processing facility in United States, and

- mink and mushroom farms in Langley.
- Particulate air pollution on IR #2 from:
  - coal being transported by train,
  - diesel engines, and
  - CN track cleaning.



#### **Community quality**

- Encourage environmentally-sound development that makes efficient use of land, energy, and other resources
- Matsqui communities are not pedestrian-oriented; they need to become mixed-use neighbourhoods that reduce dependency on motor vehicles
- Improve the appearance of structures and streetscapes

#### **Environmental Assessment**



- An Environmental Assessment (EA) should be completed for reviewable projects before decisions are made to approve a project
- The Matsqui Nation does not comply with Sections 23.2 and 23.4 of the Framework Agreement, which specify that an EA regime and laws will be adopted

## **2.4 Matsqui First Nation potential responses**

Potential responses available for managing the environment on Matsqui lands include:

- laws and regulations,
- policies,
- guidelines and Best Management Practices (BMPs),
- education and outreach, and
- monitoring and reporting.

Definitions, benefits, and limitations of these tools are outlined in Figure 3. Laws and regulations are enforceable directions designed to achieve uniform compliance. Although they can be enforced and are authorized by the Framework Agreement, laws are inflexible, costly to draft, implement, and enforce. In preparing appropriate and effective laws, the Matsqui First Nation will review examples of laws and regulations from other Aboriginal and non-Aboriginal jurisdictions.

Policies typically describe a specific method or course of action to guide government or individuals' actions. Policies are advisory, signaling the direction to be taken by the Matsqui

First Nation and providing direction to Matsqui members, staff, and others. Each policy needs to be consistent with other policies. Although policies cannot be enforced, they have the advantages of being flexible, simple to draft, and easily amended.

Guidelines and BMPs are sets of instructions offering clear direction to achieve a desired outcome. Although they are not legally binding and may be complex, guidelines and BMPs describe the proper conduct of tasks.

Education and outreach programs communicate knowledge to improve awareness of environmental issues and potential responses. Outreach programs can create positive change in attitudes and actions, and are adaptable to different audiences and programs. Because they are not enforceable, policies, guidelines, and BMPs rely for their success on effective outreach programs.

Monitoring and reporting may be used to collect information on environmental quality on Matsqui lands. The commitment to monitoring and reporting is long-term and results may be difficult to interpret, but the data establishes a baseline and can be used to track change. All environmental issues on Matsqui lands will be subject to a policy and education and outreach initiatives implemented by Matsqui First Nation.

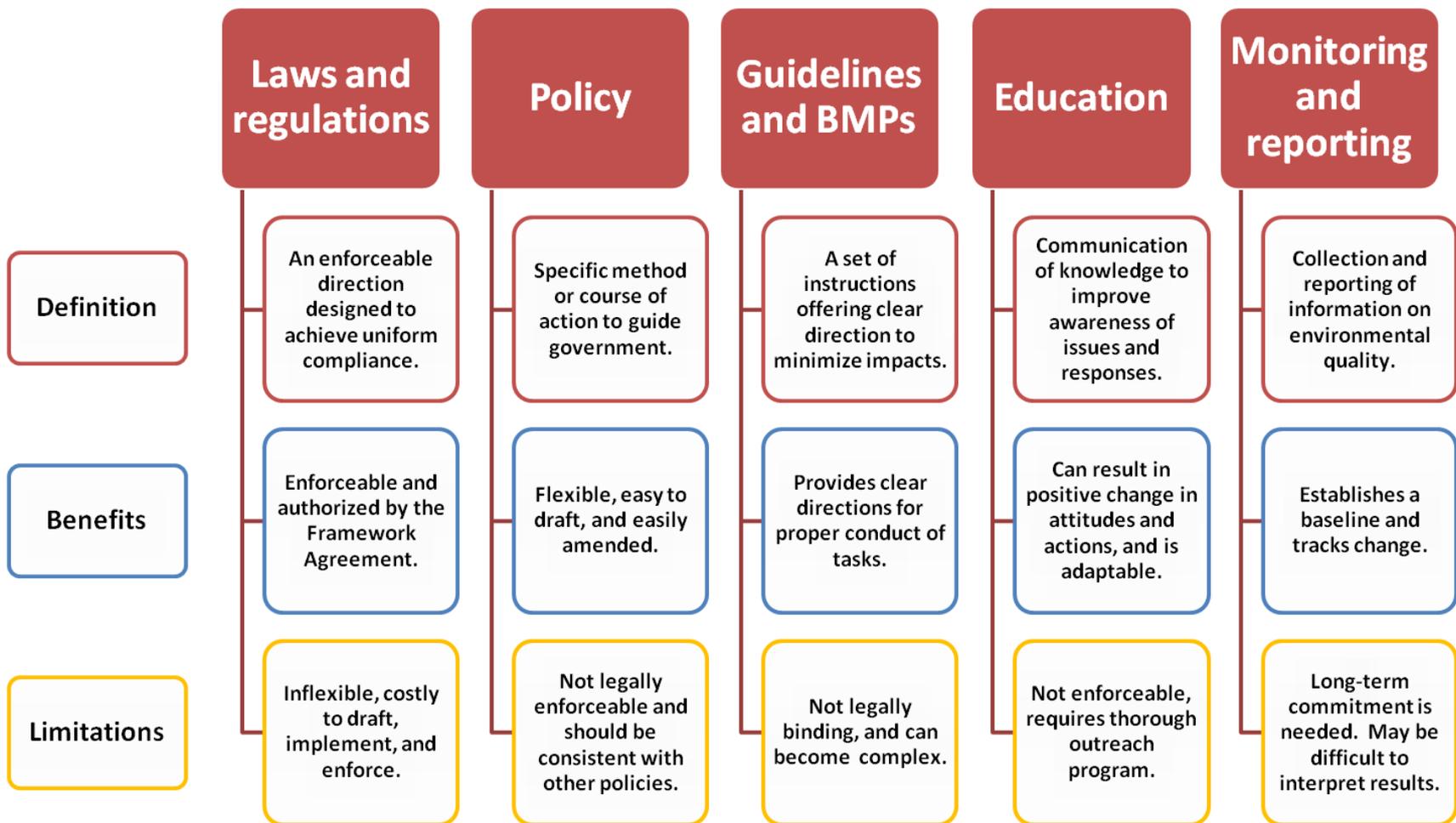


Figure 3. Potential responses to environmental issues

## 2.5 Education and outreach

### 2.5.1 Purpose

Efforts to manage identified environmental issues will include education and outreach programs to reach Matsqui First Nation members and businesses active on Matsqui lands. To ensure effective environmental governance, it is important to educate community members regarding environmental matters and provide ongoing community engagement during and after planning processes. On-going community engagement will:

- ensure that members' knowledge about Matsqui lands, resources, traditional use sites, and history is part of the environmental management process,
- let members know that their suggestions and comments are being heard and recorded,
- strengthen community spirit,
- ensure that consistent information is conveyed to increase the understanding of meaningful involvement through decision-making processes,
- assure that decisions reflect the community's values and visions, and
- build community support for laws, policies, guidelines, and BMPs (FNLAB, 2012).

### 2.5.2 Communication plan

Before initiating an education and outreach initiative and deciding which tools and techniques will be used, it is important to establish a plan that will include, but is not limited to, the following components:

- Overall Strategy
  - Which environmental issue will this initiative support?
- Goals and objectives
  - Choose goals and objectives that are simple and measurable.
  - Describe what the outreach initiative intends to achieve.
  - What should people do following the initiative?
  - How will staff determine if the initiative has had an impact?
- Target audience(s)
  - Types of audiences could include youth, elders, mothers, dads, or business people.
  - How does each group relate to the environmental issue to be discussed?
  - What type of communication method would recipients prefer?
  - What should recipients do after they receive the message?

- Key messages
  - What does the target audience need to focus on and understand?
- Communication methods
  - Is there a preferred method for reaching each target group?
  - Has this method been used in the past?
  - If not, what other methods should be used? Communication methods are listed Table 2. Appendix A3 provides other potentially relevant tools available to Matsqui First Nation.
- Timeline
  - When should each group be engaged?
  - Does the schedule allow each group enough time to participate and provide comments?
- Roles and responsibilities
  - Who will be responsible and involved in each communication step (planning, message development, preparing materials, delivering the program, *etc.*)?
  - Who needs to approve budgets, messaging, and other outreach components?
- Budget
  - How much is the initiative estimated to cost (*e.g.*, for printing, mailing, catering, *etc.*)?
  - What outside funding opportunities exist?
- Evaluation
  - How will meeting and event feedback be gathered to evaluate the program?
  - Can we maintain a record of who attended events and relevant comments?
  - How can staff keep track of methods that worked and what needs to change for future initiatives with different target audiences (INAC, 2007)?

**Table 2. When to use and not use education and outreach techniques**

Technique	Audience	When to use	When not to use
<b>Advertising and broadcast information</b>			
Social media (facebook, twitter, <i>etc.</i> )	Youth and broad community	<ul style="list-style-type: none"> <li>• For announcing events</li> <li>• In engaging youth</li> </ul>	<ul style="list-style-type: none"> <li>• For those who do not use social media</li> </ul>
Website advertising	Broad community	<ul style="list-style-type: none"> <li>• To reach businesses, industry, government, and many community members</li> </ul>	<ul style="list-style-type: none"> <li>• If the website cannot be updated regularly</li> <li>• For those with limited internet access</li> <li>• If information is not to be shared beyond the community</li> </ul>

Technique	Audience	When to use	When not to use
Newsletter or bulletin	Broad community	<ul style="list-style-type: none"> <li>To announce events, provide contact information, and general inquiries</li> </ul>	<ul style="list-style-type: none"> <li>If the deadline is passed</li> <li>If a single target group needs to be reached</li> </ul>
Notices, flyers, or poster	Broad community	<ul style="list-style-type: none"> <li>When an event is planned and member input is needed</li> </ul>	<ul style="list-style-type: none"> <li>If they cannot be posted in public places or be handed out before the event</li> </ul>
Brochures or pamphlets	Broad community	<ul style="list-style-type: none"> <li>When information is more complex and needs to be distributed through mail outs or emails</li> </ul>	<ul style="list-style-type: none"> <li>If the information exceeds four pages</li> </ul>
<b>Targeted information and discussion</b>			
Community meetings	Broad community	<ul style="list-style-type: none"> <li>Before, during, and after an initiative</li> <li>To balance “information in” and “information out”</li> </ul>	<ul style="list-style-type: none"> <li>If adequate funding is unavailable</li> <li>If meeting topics do not interest the entire community</li> </ul>
Elders meeting	Elders	<ul style="list-style-type: none"> <li>When information and ideas are needed on traditional practices</li> </ul>	<ul style="list-style-type: none"> <li>When short meetings are planned, not allowing time for discussion</li> </ul>
Advisory committee meeting	Advisory committees	<ul style="list-style-type: none"> <li>To track the progress of an initiative or event with a group of 5 – 10 people</li> </ul>	<ul style="list-style-type: none"> <li>When community input or Council decisions are needed</li> </ul>
Youth group	Youth	<ul style="list-style-type: none"> <li>For youth-only topics</li> <li>For informal discussion</li> <li>When visual and creative materials can be used (e.g., art, maps, music, videos, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>If information shared will not interest youth</li> </ul>
Small group, family meetings, or one-on-one discussions	Friends and families	<ul style="list-style-type: none"> <li>To facilitate personal discussion and address individual concerns</li> <li>To obtain detailed information</li> </ul>	<ul style="list-style-type: none"> <li>If too much information must be conveyed, inhibits discussion</li> </ul>
PowerPoint presentations tailored to specific meetings	Broad community or groups	<ul style="list-style-type: none"> <li>If content is complex and benefits from visual reinforcement</li> <li>To highlight key points, make connections between topics, and create a framework for presenting content</li> </ul>	<ul style="list-style-type: none"> <li>When in-depth discussion is needed</li> <li>In family or small-group settings</li> <li>If lots of text needs to be reviewed</li> </ul>
Displays and materials tailored to specific meetings	Broad community	<ul style="list-style-type: none"> <li>During community meetings</li> <li>During other community events</li> </ul>	<ul style="list-style-type: none"> <li>If the topic is not suitable for visual display or contains mainly written information</li> <li>In large-group presentations</li> </ul>

Technique	Audience	When to use	When not to use
Open house	Broad community	<ul style="list-style-type: none"> <li>Presenting information (“information out”)</li> <li>One-on-one discussions (“information in”)</li> <li>Distributing written summaries or surveys</li> </ul>	<ul style="list-style-type: none"> <li>If group discussions are needed for detailed input</li> <li>If specific groups are to be contacted</li> </ul>
Surveys or questionnaires	Broad community	<ul style="list-style-type: none"> <li>For anonymous feedback</li> <li>When quick feedback and comments are needed</li> <li>To measure awareness and feelings</li> </ul>	<ul style="list-style-type: none"> <li>If too many questions must be asked</li> <li>If answers rely on in-depth knowledge of a topic and such information cannot be provided</li> </ul>

Although communications programs increasingly rely on digital media (websites, Facebook *etc.*), paper documents continue to play an important role. In the case of the EMP, hard copies of the complete document will be available at the Administration Office. A brief summary brochure will be prepared, outlining the purpose of the EMP and listing its major policies and actions. This summary is intended for distribution to community members, government agencies, contractors, and others. The brochure also will describe how readers can access the full EMP, either online or in print.



## 3.0 RESPONSES TO ENVIRONMENTAL ISSUES

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This section of the EMP describes how the Matsqui First Nation will respond to the environmental issues affecting Matsqui lands. The proposed policies represent actions that the Matsqui Governing Body, staff, membership, and consultants will take to achieve the Matsqui's environmental management goal and to rectify identified issues. Pursuit of the policies will encounter financial, technical, political obstacles that may require changes in direction, timing, and priorities. It may not be feasible to fully implement some policies. These challenges, however, will not prevent the Matsqui First Nation from making best efforts to implement the policies and other actions described in this EMP.

The guides, examples, and recommendations contained in Section 3 should be considered advisory. If better examples or methods are identified in the process of implementing the EMP, those superior approaches should be taken.

### 3.1 Environmental emergencies

#### 3.1.1 Environmental emergency issues

Matsqui First Nation has identified issues related to environmental emergencies associated with the management of:

- potential spills from vehicle accidents on highways crossing reserves,
- emergency response regarding railroad operations (CN, CP, and Southern Rail) crossing reserves,
- wildfire risk on all reserves, and
- flood and earthquake risk on all reserves.

#### 3.1.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will:

- assign a staff member to be Emergency Response Coordinator for IR #1, 2, and 3, and another Coordinator for IR #4. The Coordinator will be the first point of contact in the event of an environmental emergency, and will have appropriate training to be able to take appropriate action as necessary;
- have up-to-date emergency response documents from major industrial operators on or near Matsqui lands readily available to the Coordinators;

- prepare and periodically update step-by-step guidelines for responding to environmental emergencies that could occur on Matsqui First Nation land;
- apply the guidelines in the British Columbia (BC) Fire Smart Manuals for home owners and communities when decisions are made about future construction and retrofitting of homes near forested land;
- negotiate agreements with the City of Abbotsford and Township of Langley for provision of emergency response, hazardous material response, and fire protection;
- ensure that the Coordinators report spills as required under applicable federal regulations (*Canadian Environmental Protection Act* and *Transportation of Dangerous Goods Act*);
- inform community members about Matsqui’s emergency response procedures, and explain appropriate action to be taken by individuals or households if an environmental emergency occurs.

## Laws and regulations

Matsqui First Nation will comply with the following federal laws:

- *Canadian Environmental Protection Act* (CEPA)
  - Release and Environmental Emergency Notification Regulation (Appendix B1)
  - Environmental Emergency Regulations (Appendix B2)
  - Part 8 of CEPA on Environmental Matters Related to Emergencies (Appendix B3)
- *Transportation of Dangerous Goods Act*
  - Part 8 of the Transportation of Dangerous Goods Regulations on Accidental release and imminent accidental release report requirements (Appendix B4)
- *Fisheries Act*

## Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines in the management of environmental emergencies:

- Emergency response regarding rail operations (CN, CP, and Southern Rail), and spills from vehicle accidents on highways crossing reserves
  - Spill response (Appendix B5)
- Wildfire risk on all reserves
  - Wildfire response (Appendix B6)
  - Fire Smart Manual: Protect Your Home from Wildfire (Appendix B7)
  - Fire Smart: Protecting Your Community from Wildfire  
<http://www.partnersinprotection.ab.ca/downloads/>
- Other environmental emergency risk on reserves

- Response to other environmental emergencies (Appendix B8)
- Emergency contact card (Appendix B9)
- Your Emergency Preparedness Guide  
<http://www.getprepared.gc.ca/knw/plan/plan-eng.aspx>
- Family emergency supplies detailed checklist (Appendix B10)
- Earthquakes: What to do? (Appendix B11)
- Floods: What to do? (Appendix B12)
- A First Nation's Guide to Environmental Emergencies  
<http://www.env.gov.bc.ca/eemp/resources/index.htm>



## 3.2 Fuel use and storage

### 3.2.1 Fuel use and storage issues

Fuel use and storage on Matsqui lands raise issues related to managing potential spills and risks associated with petroleum fuels and natural gas distribution. The identified fuel use and storage issues are:

- storage and boat fueling operations at G&R Cedar, IR #2,
- fuels and lubricants at Mod Pro, IR #2,
- fueling facility at Matsqui First Nation band office, IR #2,
- Kruger Inc. forestry operations (fueling of machinery and vehicles), IR #3, and
- the potential for natural gas leaks in distribution systems and gas appliances present on IR #2 and IR #4.

### 3.2.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

### Policy

The Matsqui First Nation will:

- negotiate agreements with the City of Abbotsford and Langley Township to respond to fuel spills and cleanup services;
- ensure that fuel storage and use on reserves complies with the Environmental Code of Practice for Aboveground and Underground Storage Tank systems containing Petroleum and Allied Petroleum Products (Canadian Council of Ministers of the Environment), and the National Fire Code of Canada;
- prohibit placement of fuel storage tanks and dispensing facilities within 15 m of waterbodies;
- ensure that fuel tanks and dispensing facilities have spill containment and that spill kits are available nearby;
- ensure that staff of businesses on Matsqui lands and Matsqui First Nation personnel are trained in fuel spill response;
- require that all businesses on Matsqui lands prepare and submit a fuel and lubricant management plan for approval by Matsqui staff before they are allowed to operate;
- require commercial boats operating on Matsqui lands to be equipped with bilge filtration systems or well-maintained oil absorbent pads;
- request FortisBC to make presentations to residents and businesses on IR #2 and IR #4 regarding protection of natural gas distribution lines and safe use of natural gas appliances and equipment;

- empower FortisBC staff to enter Matsqui lands to inspect natural gas distribution lines and gas meters;
- apply the FortisBC guidelines for managing gas distribution lines and appliances before and after an emergency; and
- inform community members about the risks of fuel spills and bilge discharges, about environmentally sound use of fuel and lubricants, and about natural gas safety.

## Laws and regulations

Matsqui First Nation will not develop its own fuel management law at this time, but will rely on application of Matsqui First Nation’s policies, applicable guidelines, and compliance with the following federal regulations:

- *Canadian Environmental Protection Act (CEPA)*
  - Release and Environmental Emergency Notification Regulation (Appendix B1)
  - Environmental Emergency Regulations (Appendix B2)
  - Part 8 of CEPA on Environmental Matters Related to Emergencies (Appendix B3)
  - Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (Appendix C1)
- *Transportation of Dangerous Goods Act*
  - Part 8 of the Transportation of Dangerous Goods Regulations on Accidental release and imminent accidental release report requirements (Appendix B4)

Should a fuel management law be required in the future, examples from other jurisdictions will be examined, including but not limited to Abbotsford’s Petroleum Products Storage Tank Bylaw.

## Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines for identified fuel use and storage issues:

- Potential spills from fueling and facilities
  - Spill response (Appendix B5)
  - Environmental Code of Practice for Aboveground and Underground Storage Tank Systems Containing Petroleum Products from the Canadian Council of Ministers of the Environment (CCME)
    - National Fire Code of Canada (NFCC) referenced in the CCME Environmental Code of Practice
      - <http://www.nrc-cnrc.gc.ca/eng/ibp/irc/codes/2010-national-fire-code.html>
- Fuel and lubricant BMPs (Appendix C2)

- Natural gas leaks on IR #2 and IR #4
  - Gas leak response (Appendix C4)
  - Natural gas in emergency situations (Appendix C5)
  - Safe domestic use of natural gas (Appendix C6)

## Monitoring

The Matsqui First Nation will comply with Part 6 Monitoring and Leak Detection of the Storage Tank Systems of the Environmental Code of Practice for Aboveground and Underground Storage Tank Systems Containing Petroleum and Allied Products (Appendix C3).

In this Code of Practice, general requirements for storage tank systems and leak detection and monitoring methods for specific fuel containment systems are described in detail and must be followed. Depending of the type of fuel containment, Matsqui First Nation will have information on the type of leak detection method to use, the appropriate monitoring technique, the necessity for periodic leak detection, and the best method to use when a leak is suspected.



### **3.3 Sewage treatment and disposal**

#### **3.3.1 Sewage treatment and disposal issues**

Matsqui First Nation has identified sewage treatment and disposal issues associated with:

- effects of high water table on waste disposal fields on IR #4,
- potential cross contamination of water supply by leaking sewer lines, and
- potentially harmful waste being introduced in sanitary sewers.

#### **3.3.2 Responses**

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### **Policy**

The Matsqui First Nation will:

- require periodic monitoring of groundwater quality at the perimeter of waste disposal fields at IR #4, and institute remedial actions if unacceptable results are obtained;
- ensure that operating authorities periodically monitor the integrity of sewer and water pipes on Matsqui lands;
- adopt a law to regulate materials introduced into the sewer system, specifically prohibited or restricted waste as defined in the City of Abbotsford Consolidated Sewer Rates and Regulations Bylaw;
- provide information to community members regarding the sewer use regulation.

#### **Laws and regulations**

A law will be developed stating that no person shall directly or indirectly discharge a prohibited waste or restricted waste in Matsqui First Nation's sanitary sewers. In defining prohibited and restricted wastes, the Matsqui First Nation will consider examples from other jurisdictions, for instance Schedule E "prohibited waste" and Schedule F "restricted waste" of Abbotsford's Bylaw No. 1862-2009 (Appendix D1).

#### **Guidelines and Best Management Practices**

Matsqui First Nation will make available household guidelines providing examples of prohibited and restricted waste as referenced in the Abbotsford Consolidated Sewer Rates and Regulations Bylaw (Appendix D1).

## **3.4 Solid waste management**

### **3.4.1 Solid waste management issues**

Matsqui First Nation has identified solid waste management issues associated with:

- hog fuel storage at G&R Cedar and past the gate on Cemetery Road,
- garbage dumping at the former sandpit,
- illegal dumping of garbage on Matsqui lands by unknown parties,
- litter and construction debris dumped by Matsqui members including motor vehicle maintenance, oil disposal, drywall dumping, paint, and batteries, and
- failure of some Matsqui First Nation members to practice traditional methods of disposing of fish waste in the Fraser River, instead of dumping the waste in garbage bins, creating odour problems.

### **3.4.2 Responses**

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### **Policy**

The Matsqui First Nation will:

- adopt a law prohibiting dumping of garbage on reserve, including provisions to regulate dumping of construction waste and storage of derelict vehicles and appliances;
- actively enforce the law against illegal dumping, including providing a contact number where Matsqui members can report illegal dumping on Matsqui lands;
- meet with industrial operators on reserve to discuss environmentally sound methods for storing hog fuel and other solid waste;
- provide information to community members to encourage proper disposal of fish waste in a traditional manner, by returning the waste to the Fraser River;
- facilitate and regularly encourage solid waste reduction and increased recycling among Matsqui members, on-reserve businesses, and band administration.

#### **Laws and regulations**

Matsqui First Nation will prepare a solid waste management law prohibiting dumping of garbage on reserves. Regulations, guidelines, and BMPs will be prepared and used as needed. In drafting Matsqui First Nation's Solid Waste Management Law, examples from other jurisdictions will be reviewed, such as Section 15 of the City of Abbotsford's Soil Removal and Deposit Bylaw and Parts III (3.4) and V of the City of Abbotsford's Consolidated Good Neighbour Bylaw; (Appendix E1).

## Guidelines and Best Management Practices

Matsqui First Nation will apply portions the following guidelines to manage their solid waste issues:

- Solid waste diversion guidelines (Appendix E2)
- BFI Organic waste solutions (Appendix E3)
- Biomass storage environmental practices guide (Appendix E4)
- Farm Practices: Wood waste (Appendix E5)



## 3.5 Fish and fish habitat protection

### 3.5.1 Fish and fish habitat issues

Matsqui First Nation has identified the following fish and fish habitat protection issues:

- fuel spills and boom boat bilge discharges into the Fraser River,
- drainage from agricultural operations affecting water quality,
- lack of respect for fish, including waste of fish resources,
- river bank treatment (rip rap) that harms fish habitat,
- damage to fish habitat caused by development, and
- culverts that are obstacles to fish passage (e.g., Coligny Creek).

### 3.5.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

### Policy

The Matsqui First Nation will:

- prepare guidelines and procedures for protecting fish habitat, emphasizing protection of riparian vegetation and improving quality of water runoff based on:
  - Fisheries and Oceans Canada information,
  - BC Ministry of the Environment and Agriculture information,
  - BC Stewardship guides, and
  - Abbotsford streamside protection guidelines and land development information package;
- review proposed development plans to ensure that they protect fish habitat and riparian areas;
- meet with the City of Abbotsford, Ministry of Transportation, and Fisheries and Oceans Canada, and other appropriate parties regarding ways of improving fish passage through culverts and pump stations;
- meet with Fisheries and Oceans Canada to identify more fish-friendly ways of reducing erosion of river banks;
- inform commercial boat operators of the need to reduce and manage bilge discharges in the Fraser River, and of ways to reduce risks of spillage during boat fueling;
- prohibit boats from docking on Matsqui lands unless they are equipped with bilge filtration systems or well-maintained oil absorbent pads. Boats observed discharging unfiltered bilge in waterbodies will not be allowed on reserves;

- prepare information for Matsqui First Nation members about respectful treatment of fish, annual fish harvesting guidelines, ways of protecting fish habitat, and managing bilge discharge.

## Laws and regulations

Although no Matsqui First Nation law will be drafted, the following federal laws affecting fish and fish habitat still apply:

- *Fisheries Act*  
<http://laws-lois.justice.gc.ca/eng/acts/F-14/>
- *Species at Risk Act (SARA)*  
<http://laws-lois.justice.gc.ca/eng/acts/S-15.3/>

## Guidelines and Best Management Practices

Matsqui First Nation will apply the following guidelines to each issue identified:

- Bilge discharges into the river from boom boats and other fuel spill risks
  - Discharge and spill response (Appendix F1)
  - Guide to Green Boating (Appendix F2)
- Drainage from agricultural operations affecting water quality
  - Drainage Management Guide: The Canada – BC Environmental Farm Plan Program  
[http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP\\_Drainage\\_Mgmt\\_Guide/Drainage\\_Mgmt\\_Guide\\_toc.htm](http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm)
- Lack of respect for fish including waste of fish resources
  - Lil'wat Nation Chinook Salmon Harvest Plan (Appendix F3)
  - Home Tips for Healthy Streams (Appendix F4)
  - Abbotsford guidelines: Living near streams and ravines (Appendix F5)
- River bank treatment (rip rap), culverts, and development proposals potentially harming fish passage and habitat
  - Culvert Maintenance (Appendix F6)
  - BC Stewardship Guide: Land Development Guidelines  
[http://www.stewardshipcentre.bc.ca/cdirs/st\\_series/index.php/11](http://www.stewardshipcentre.bc.ca/cdirs/st_series/index.php/11)
  - BC Stewardship Guide: Stream Stewardship  
[http://www.stewardshipcentre.bc.ca/cdirs/st\\_series/index.php/1](http://www.stewardshipcentre.bc.ca/cdirs/st_series/index.php/1)
  - Develop with Care guides  
[http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop\\_with\\_care\\_intro.html](http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html)
    - Section 2: Community Planning

- Section 3: Site Development and Management
- Section 4: Environmentally Valuable Resources
- Standards and Best Practices for Instream Works (Appendix F7)
- Abbotsford information package for developing near streams and ravines (Appendix F8)



## 3.6 Protection of valued and at-risk species

### 3.6.1 Species at risk issues

To protect plant and animal species, Matsqui First Nation will ensure that:

- valued, threatened, or endangered species on Matsqui lands are protected, and
- potential development proposals or designs do not harm valued or at-risk species.

### 3.6.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will:

- apply federal laws and Matsqui First Nation policies to minimize adverse effects of development and other human activities on native vegetation, plant communities, wildlife, wildlife habitat, and species at risk;
- require valued or at-risk species surveys to be conducted before proceeding with developments that have the potential of adversely affecting species at risk or other species valued by the Matsqui First Nation, using the approach provided in the City of Abbotsford's *Wildlife Assessment Report Guidelines* and the provincial *Develop With Care* guides;
- take appropriate action if a project has the potential to affect valued or at-risk species, such actions to be consistent with applicable federal legislation and Matsqui First Nation goals and objectives;
- seek opportunities to improve the ecological function of Matsqui lands, including enhancing habitat for valued and at-risk species and plant communities;
- inform community members about the protection of valued or at-risk species on Matsqui lands.

#### Laws and regulations

Although no law will be drafted for Matsqui First Nation, federal laws affecting species at risk still apply, including:

- *Fisheries Act*  
<http://laws-lois.justice.gc.ca/eng/acts/F-14/>
- *Species at Risk Act* (SARA)  
<http://laws-lois.justice.gc.ca/eng/acts/S-15.3/>

- *Migratory Bird Convention Act*
  - Migratory Birds Regulations

[http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C\\_c.\\_1035/](http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1035/)

### **Guidelines and Best Management Practices**

Matsqui First Nation will apply the following guidelines to protect species at risk during review of potential development proposals or designs:

- Develop with Care guides

[http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop\\_with\\_care\\_intro.html](http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html)

  - Section 2: Community Planning
  - Section 3: Site Development and Management
  - Section 4: Environmentally Valuable Resources
- City of Abbotsford Wildlife Assessment Report Guidelines (Appendix G1)



## 3.7 Land contamination

### 3.7.1 Land contamination issues

Land contamination issues on Matsqui lands are:

- dumping fill of unknown quality on farmland and other parts of Matsqui lands,
- grease and metals from rail operations contaminating reserves including:
  - soil and plants near railway right-of-way,
  - grease on rails and rail switches, and
  - creosote ties.

### 3.7.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will:

- adopt a contaminant control law making it illegal to deposit soil or other material that exceeds applicable standards contained in the BC Contaminated Sites Regulation or the Canada Wide Standards (CCME, 2009, as amended);
- adopt a regulation under the contaminant reduction law that requires a permit before depositing soil on reserve and establishes conditions for issuing a permit, including:
  - providing evidence that the soil is not contaminated, either as determined by laboratory results or as certified by a registered professional,
  - ensuring that drainage is not affected by placement of fill,
  - maintaining a minimum 15 m separation between fill and waterbodies,
  - preventing erosion or sedimentation associated with the fill, and
  - identifying exceptions, such as excluding requirements for a permit if 7 cubic metres of soil or less is deposited on a property in a 12-month period (though other regulatory provisions still apply);
- if necessary and if financial resources are available, negotiate a contract with a private firm to provide technical and monitoring support associated with implementing the contaminant control law; and
- present information to Matsqui members about the contamination reduction law and associated soil deposit regulations.

## Laws and regulations

Matsqui First Nation will prepare a law that prohibits dumping fill of unknown quality on reserves, and regulates the storage, use, or other release of potentially contaminating materials. Material will be prohibited that exceeds applicable standards contained in the British Columbia Contaminated Sites Regulation or the Canada Wide Standards (CCME, 2009, as amended). A regulation will be adopted to require permitting prior to depositing soil on reserves, or the storage or use of potentially contaminating materials.

## Guidelines and Best Management Practices

Matsqui First Nation will apply the following regulations and standards as part of the Matsqui First Nation's contaminant control law and associated regulation:

- British Columbia Contaminated Sites Regulation  
[http://www.env.gov.bc.ca/epd/remediation/leg\\_regs/csr.htm](http://www.env.gov.bc.ca/epd/remediation/leg_regs/csr.htm)
- Canada Wide Standards  
<http://www.ccme.ca> (various links)

Procedures followed in administering the contaminant control law and issuing soil deposit permits will be similar to those contained in Abbotsford Soil Removal and Deposit Bylaw (Appendix H1).

## Monitoring

Matsqui First Nation will negotiate a contract with a private firm to provide technical and monitoring support associated with implementing the contaminant reduction law and regulation. Such support could include sampling, laboratory testing, interpretation of test results in light of applicable regulatory standards, and developing remediation measures if necessary.



## 3.8 Agricultural practices

### 3.8.1 Agricultural practice issues

Matsqui First Nation has identified the following environmental issues related to agricultural practices:

- pesticide use, fertilizer runoff, noise, odour, and soil management,
- need for improved agricultural practices for gardens and permit-based farming on IR #1 and #2, and
- nuisance fly infestations associated with manure spreading on adjacent farms.

### 3.8.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will:

- assemble a set of preferred agricultural practices intended to allow for productive farming, the protection of soils and water quality, and respect for neighbours and ecosystems;
- meet with representatives of the British Columbia Ministry of Agriculture and Lands and local farmers to discuss ways of controlling fly infestations caused by manure spreading;
- provide an agricultural practices guide to prospective farmers and gardeners on Matsqui lands;
- seek opportunities to encourage farmers on property adjacent to Matsqui lands to adopt Matsqui's recommended agricultural practices; and
- inform community members about Matsqui's agricultural practice policy.



## **Guidelines and Best Management Practices**

Matsqui First Nation's guidelines for agriculture will include elements of the following documents, which encourage environmentally sound agricultural practices:

- Reference Guide: The Canada – BC Environmental Farm Plan Program and associated publications  
[http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP\\_Refguide/Refguide\\_to\\_c.htm](http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Refguide/Refguide_to_c.htm)
- On the Road to Sustainable Agriculture (Appendix I1)

## 3.9 Water management

### 3.9.1 Environmental issues

The following drainage and storm water management issues are environmental concerns for Matsqui First Nation:

- poor drainage in low-lying portions of Matsqui lands,
- stagnant water in drainage ditches creating mosquito and odour problems, and
- effects on Matsqui lands of runoff from adjacent farmlands (pesticides, fertilizers, and organic material in water).

### 3.9.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will:

- encourage new development to employ environmentally and economically sound drainage management approaches;
- encourage retrofitting of existing structures to reduce offsite runoff;
- meet with the City of Abbotsford to discuss ways of improving the quality of runoff from surrounding properties on Matsqui lands, and ways to improve functioning of stormwater ditches on IR #2 to avoid stagnant water during low-flow periods; and
- inform community members about Matsqui's water management policies and ways that members can better manage runoff.

#### Guidelines and Best Management Practices

Matsqui First Nation's stormwater management guidelines will consider relevant and suitable elements of the following documents:

- Drainage Management Guide: The Canada – BC Environmental Farm Plan Program  
[http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP\\_Drainage\\_Mgmt\\_Guide/Drainage\\_Mgmt\\_Guide\\_toc.htm](http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm)
- Low Impact Development Design Strategies: An Integrated Design Approach  
<http://www.co.pg.md.us/Government/AgencyIndex/DER/ESG/manuals.asp>
- Reference Guide: The Canada – BC Environmental Farm Plan Program  
[http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP\\_Refguide/Refguide\\_to\\_c.htm](http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Refguide/Refguide_to_c.htm)

## 3.10 Air quality

### 3.10.1 Air quality issues

Matsqui First Nation has determined that the air quality on Matsqui lands is affected by the following emissions:

- odours on IR #2 from
  - the JAMES sewage treatment plant,
  - manure spreading on adjacent land, and
  - fetid drainage ditches;
- odours on IR #4 from
  - livestock manure processing facility in United States, and
  - mink and mushroom farms in Langley; and
- particulate air pollution on IR #2 from
  - coal being transported by train,
  - diesel engines, and
  - CN track cleaning.

### 3.10.2 Responses

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will:

- meet with the City of Abbotsford to discuss odour control at the JAMES sewage treatment plant and odours from drainage ditches;
- meet with representatives of CN and CP rail and provincial or regional district air quality staff to discuss ways of reducing air pollution from coal trains, diesel locomotives, and track cleaning;
- meet with local farmers and Ministry of Agriculture staff to discuss ways of reducing odour from manure spreading near IR #2 and operation of mink farms and mushroom farms near IR #4;
- contact representatives of the Northwest Clean Air Agency, Washington State in response to odours originating from manure processing facilities in the United States that affect IR #4;
- contact appropriate local government agencies, businesses, or other agencies if air quality problems become severe; and

- inform community members about Matsqui’s efforts to improve air quality, and explain what members should do if they notice air pollution.

## Guidelines and Best Management Practices

As part of its efforts to improve air quality, Matsqui First Nation staff will be aware of the following guidelines for odour issues related to farm operations and agricultural drainage:

- Agriculture odours on IR #2 and IR #4
  - Farm Nuisance Guide (Appendix J1)
  - Reference Guide: The Canada – BC Environmental Farm Plan Program  
[http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP\\_Refguide/Refguide\\_toc.htm](http://www.agf.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Refguide/Refguide_toc.htm)
- Odour issues from improper drainage management
  - Drainage Management Guide: The Canada – BC Environmental Farm Plan Program  
[http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP\\_Drainage\\_Mgmt\\_Guide/Drainage\\_Mgmt\\_Guide\\_toc.htm](http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm)

## Monitoring and reporting

The odour issues identified on IR #4 can be monitored and reported by Matsqui First Nation members to Metro Vancouver, which handles air quality-related complaints, including odour, smoke, dust, and other emissions. Individuals concerned about air quality should call the Metro Vancouver Air Quality Complaints and Inquiries Line at **604-436-6777** or an online air quality form can be completed at:

<http://www.metrovancouver.org/services/air/Pages/AirQualityComplaints.aspx>.

On IR #2, air quality concerns should be conveyed to the FVRD. Although the FVRD does not have authority to respond to odour complaints or regulate and enforce air quality in its jurisdiction, contacts are available for general inquiries. Individuals concerned about sewage treatment odours should contact the wastewater treatment plant in Abbotsford at **604-853-2281** or by email at [eng-info@abbotsford.ca](mailto:eng-info@abbotsford.ca). With respect to farm odours, the following mechanisms are available:

- Using the “informal concern resolution process”, where an aggrieved party calls the local Ministry of Agriculture office in Abbotsford, at **604-556-3100**, to state their complaint, more information can be found online.  
<http://www.al.gov.bc.ca/resmgmt/sf/factsheets/factsh3.htm>
- Using the “formal complaint resolution process” to file a complaint in writing or online addressed to the Case Manager at the BC Farm Industry Review Board accompanied by a \$100.00 filing fee.  
[http://www.firb.gov.bc.ca/complaints/complaint\\_how\\_to.htm](http://www.firb.gov.bc.ca/complaints/complaint_how_to.htm)

- Make a formal complaint to the Northwest Clean Air Agency at **360-428-1617** for odours from the manure management facility (or other sources) in the United States.

## **3.11 Community quality**

### **3.11.1 Community quality issues**

The quality of Matsqui First Nation communities has been identified as an issue, particularly with regard to the need to:

- encourage environmentally-sound development that makes efficient use of land, energy, and other resources,
- Matsqui communities are not pedestrian-oriented; they need to become mixed-use neighbourhoods that reduce dependency on motor vehicles, and
- Improve the appearance of structures and streetscapes.

### **3.11.2 Responses**

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### **Policy**

The Matsqui First Nation will:

- prepare and adopt land use plans and development law(s) and regulations to create communities that:
  - are attractive and livable,
  - encourage walking and cycling,
  - accommodate all age and income groups,
  - offer a mix of land uses,
  - make efficient use of land and energy,
  - meet principles established by Smart Growth BC, and
  - meet rating criteria established by Leadership in Energy and Environmental Design (LEED) 2009 for Neighbourhood Development's (ND);
- review proposed developments to identify their environmental impacts and ability to create attractive communities;
- ensure that buildings and streetscapes on Matsqui lands are well designed, high quality, and aesthetically appealing;
- adopt a law and associated regulation that protects the quiet enjoyment of neighbourhoods from excessive noise;
- encourage retaining or planting trees near housing and commercial development for environmental, aesthetic, and property value benefits;
- to the extent feasible, protect trees during utility installation and road improvements;

- where trees must be cut the Matsqui First Nation may require planting replacement trees and maintaining those trees until they become established;
- if replacement trees are required, the species and location of the trees will be determined in discussion with Matsqui First Nation staff;
- adopt a Tree Protection Law that applies where five (5) or more trees are to be cut at one time on IRs #1, 2, or 4, in which case the Matsqui First Nation will issue a permit if specified environmental and replanting conditions are met; and
- create outreach and education materials to inform Matsqui members about the goals and actions associated with improving community quality through land use and development planning, tree protection, and noise control.

## **Laws and regulations**

The Matsqui First Nation will adopt a law to control excessive noise in the community after reviewing noise regulations from other jurisdictions, such as selected sections of Part IV, the Noise Regulation, in the City of Abbotsford Good Neighbour Bylaw (Appendix E1).

The Matsqui First Nation will adopt a law to regulate tree cutting, requiring issuance of a permit if five (5) or more trees are to be cut in a one-year period on IRs #1, 2, or 4. Regulations associated with the tree protection law will specify that information is to be provided on the location and setting of trees to be cut, environmental effects of tree removal, and proposals to replant and maintain suitable replacement trees. Before drafting a tree protection law and permitting process, the Matsqui First Nation will review examples from other jurisdictions (e.g., City of Richmond, City of Abbotsford, and others).

## **Guidelines and Best Management Practices**

Matsqui First Nation will apply the following guidelines for identified community quality issues:

- Development form and vehicle dependency
  - Smart Growth BC principles and guidelines  
<http://smartgrowth.bc.ca/Default.aspx?tabid=133>
  - Develop with Care guides  
[http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop\\_with\\_care\\_intro.html](http://www.env.gov.bc.ca/wld/documents/bmp/devwithcare2006/develop_with_care_intro.html)
    - Section 2: Community Planning
    - Section 3: Site Development and Management
    - Section 4: Environmentally Valuable Resources
  - Relevant portions of the LEED 2009 for ND rating system  
<http://www.usgbc.org/DisplayPage.aspx?CMSPageID=148>
- Improve the appearance of structures and streetscapes

- Richmond Tree Protection Bylaw (Appendix K1)
- Richmond Tree Removal Permit Application (Appendix K2)
- Trees and Towns Guide (Appendix K3)
- Planting our future: A Tree Toolkit for our Communities

<http://www.treesfortomorrow.gov.bc.ca/resources/>



## 3.12 Environmental assessment

### 3.12.1 Environmental assessment issues

An environmental assessment (EA) is an analysis of potential physical, biological, socioeconomic, and cultural effects of a proposed development project.<sup>1</sup> An EA also identifies mitigation measures that could avoid or reduce potential project effects. Results of an EA should be available before decisions are made to approve a project.

The Framework Agreement (Section 23) mandates a First Nation to adopt an EA regime after a Land Code is adopted. An EA is to be conducted for developments or other land-disturbing activities proposed to occur on First Nations lands. The Matsqui First Nation has not yet prepared an EA regime that complies with Section 23.2 and 23.4 of the Framework Agreement.

The Matsqui First Nation can achieve the following benefits through use of an appropriately-designed EA process:

- reinforce a land management authority over use of the Matsqui lands;
- identify components of proposed projects or plans that could adversely affect natural or human environments;
- propose ways of avoiding or minimizing adverse effects of development on environment, society and culture;
- improve project design, construction, and operation;
- engage the community in the process of reviewing developments;
- support better development decisions;
- comply with obligations under the Framework Agreement; and
- help Matsqui First Nation's Governing Body to exercise due diligence in the review of proposed projects (adapted from FNLAB, 2012).

### 3.12.2 Response

The Matsqui First Nation will take the following actions, subject to having adequate financial and other resources.

#### Policy

The Matsqui First Nation will adopt an EA regime that will

- meet the following goals:

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<sup>1</sup> An EA is not the same as an Environmental Site Assessment (ESA), which is conducted after (rather than before) development has occurred. ESAs identify contamination that has already occurred and propose site remediation, whereas an EA forecasts potential future effects of a project on a variety of topics.

- be **open** and **engage** community members and other potentially affected parties,
- be **efficient** and **effective**, focusing on important issues and project impacts, and establishing firm deadlines for steps in the EA process,
- be **technically rigorous** and **free of interference** from project proponents or other interests, and
- be **affordable**, by ensuring proponents pay for the EA and by avoiding unnecessary data collection, meetings, or reporting;
- apply to projects that require approval by the Matsqui First Nation and that have the potential to affect land, resources, the community, or cultural activities;
- for specified projects, produce an assessment report covering the following main topics:
  - **project setting**: Physical, ecological, social, cultural, and economic setting of the area potentially affected by a project,
  - **project description**: Including design, construction, operation, and decommissioning,
  - **project effects and mitigation**: Identification of potential project effects, assessment of the impacts, and description of mitigation measures,
  - **cumulative effects assessment**: Environmental, cultural or socio-economic impacts of the proposed project combined with other past or likely future projects or human actions,
  - **commitments**: Clear statement of commitments by the project proponent to implement the mitigation measures described in the environmental assessment, and
  - **conclusion**: A summary and conclusion of the significance of identified adverse environmental effects;
- be coordinated by the Matsqui Environment Officer, with support from consultants or legal counsel as required;
- avoid duplication with EAs that federal agencies may be required to conduct on Matsqui lands, by coordinating data collection and reporting requirements of Matsqui and federal studies;
- include community involvement in the design of an EA and in review of its results; and
- not recommend whether or not a project should proceed, but rather provide information intended to support those decisions.

## Laws and regulations

The Matsqui First Nation will draft and adopt a law requiring EAs to be prepared for specified projects occurring on Matsqui lands. The requirement to prepare EAs may be linked to the Matsqui development law. EA laws recently adopted by other First Nations will be considered as the Matsqui law is prepared.

The Matsqui's EA law will provide the overall framework for the EA process and will specify general information requirements and procedures. More detailed and technical aspects of the EA process will be included in regulations, policies, administrative processes, and guidelines.

The Matsqui EA law will comply with the following sections of the Framework Agreement:

- The environmental assessment regime will be implemented through a Matsqui First Nation law (Section 23.4);
- An EA will be prepared for projects carried out on First Nation Land that are approved, regulated, funded, or undertaken by the First Nation (Clause 25.4 of Framework Agreement, Section 21(3) of the *First Nations Land Management Act* (FNLMA));
- The EA process must be consistent with requirements of the *Canadian Environmental Assessment Act* (CEAA) (Clause 25.3 of Framework Agreement); and
- EAs must occur as early as possible in the planning stages of the project, before an irrevocable decision is made (Clause 25.4 of Framework Agreement).

## 4.0 PLAN IMPLEMENTATION

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### 4.1 Environmental governance structure

Matsqui's Governing Body bears responsibility for decisions made by the Matsqui First Nation. The staff and project organization responsible for preparing and implementing the EMP are shown in Figure 4.

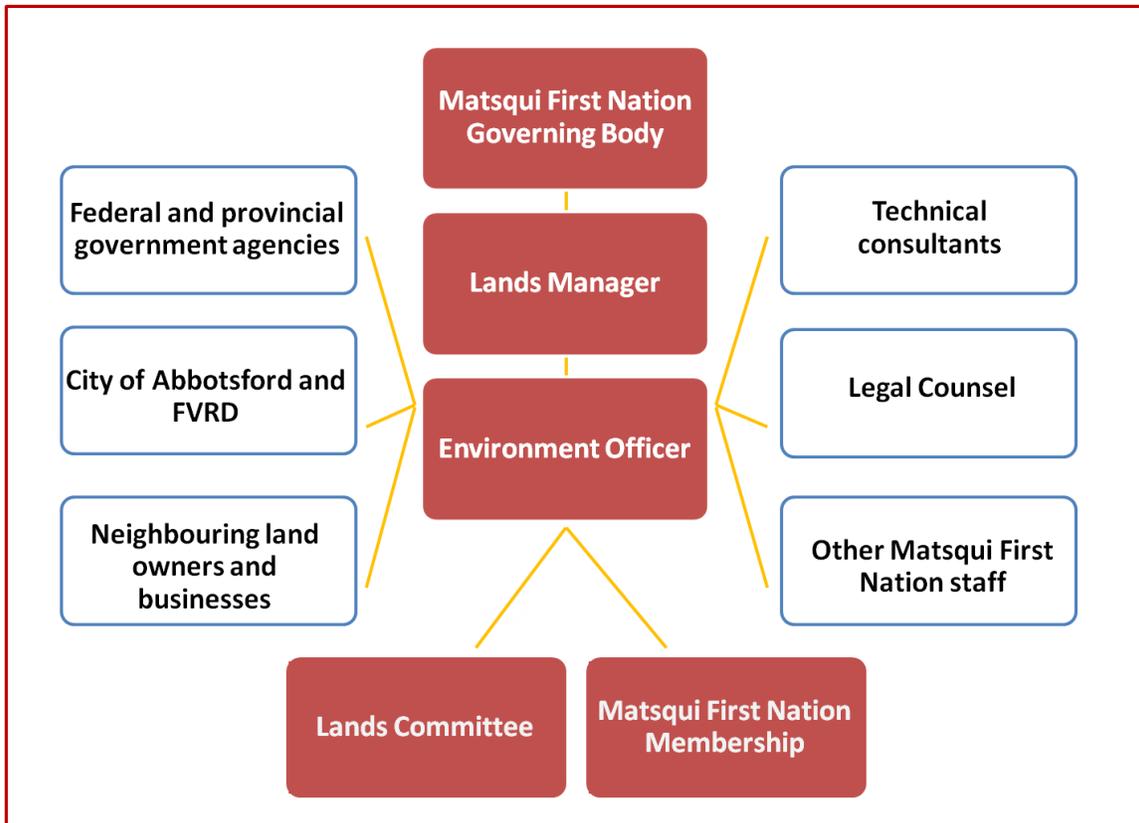


Figure 4. Environmental Management Plan Governance Structure

Matsqui First Nation participants in implementing the EMP have the following responsibilities:

**Governing Body:** authorize law development, coordinate the activities of Matsqui First Nation staff and other project participants, officially adopt the EMP, approve work programs and budgets, and manage financial and staff related decisions.

**Lands Manager:** responsible for administration of the EMP, including staffing decisions, budgeting, funding applications, and other oversight tasks; and for coordinating the EMP and other lands-related initiatives (land use plans, fisheries policy, *etc.*).

**Environment Officer:** responsible for implementing the EMP, preparing guidelines and outreach materials, coordinating technical consultants, managing involvement of legal counsel, involving the Lands Committee on environmental matters, and community outreach.

**The Matsqui First Nation Lands Committee:** helps to ensure that the EMP is consistent with community values and aspirations, and that environmental issues are properly identified and resolved.

**Matsqui First Nation community members:** will participate in outreach efforts intended to inform them about the EMP and will need to comply with applicable policies and laws. Community support for the EMP is essential if the document is to achieve its goal of improving environmental quality.

**Technical consultants:** will provide support to the Matsqui First Nation as needed and as authorized by the Environment Officer.

**Legal Counsel:** will draft environmental laws as specified in the EMP, and will provide support as needed in enforcing environmental laws.

**Federal agencies:** authorize, implement, and enforce federal laws and regulations on federal lands, and may provide funding for Matsqui First Nation environmental initiatives.

**Provincial agencies:** authorize, implement, and enforce provincial laws and regulations on provincial and private lands, and may collaborate in implementing relevant sections of the EMP, such as responding to environmental emergencies and managing agricultural activities.

**Local government:** the City of Abbotsford, Township of Langley, Fraser Valley Regional District, and Metro Vancouver will be encouraged to collaborate with Matsqui First Nation to conduct environmental and related planning activities, to deliver specified environmental services, and provide support in responding to environmental issues.

## 4.2 Drafting of environmental laws

In most Canadian jurisdictions, environmental protection is managed by the provincial, federal, and local governments. Under the Framework Agreement and the *First Nations Land Management Act* (FNLMA), signatory First Nations that adopt Land Codes can enact environmental protection laws. A First Nation's environmental protection laws do not replace federal environmental laws on First Nation land and are required to have a similar effect as provincial laws. Although provincial and municipal laws do not apply on First Nation lands, Matsqui First Nation recognizes that it may be advisable to enter into agreements with the provincial or local government to manage environmental issues.

It is presently unclear whether the provincial government is willing or able to deliver environmental management services on First Nations' lands, so the Matsqui First Nation will draft its own laws and regulations, and will be responsible for implementation of the EMP. The Matsqui First Nation has initiated discussions with the City of Abbotsford and the Township of Langley regarding the merits of collaborating in implementing the EMP, with goals of consistency in environmental management and augmenting the Matsqui First Nation's capacity to deliver environmental services.

When the Matsqui First Nation determines that an environmental law is required, such as for solid waste management, land contamination, community quality, and environmental assessment on Matsqui lands, a procedure will be followed as defined in Matsqui's First Nation Land Code that came into effect on October 17, 2007. Specifically, Part 2 of the Matsqui First Nation Land Code entitled "First Nation Legislation" provides detailed information on law-making powers, law-making procedures, and publication of laws (Appendix A4).

### **4.3 Capacity building and staff training**

Environmental management on Matsqui lands will require the efforts of staff and skilled contractors, including scientists, engineers, technicians, and project managers. The Matsqui First Nation will create a staff position of Environment Officer to conduct and coordinate the various activities described in the EMP.

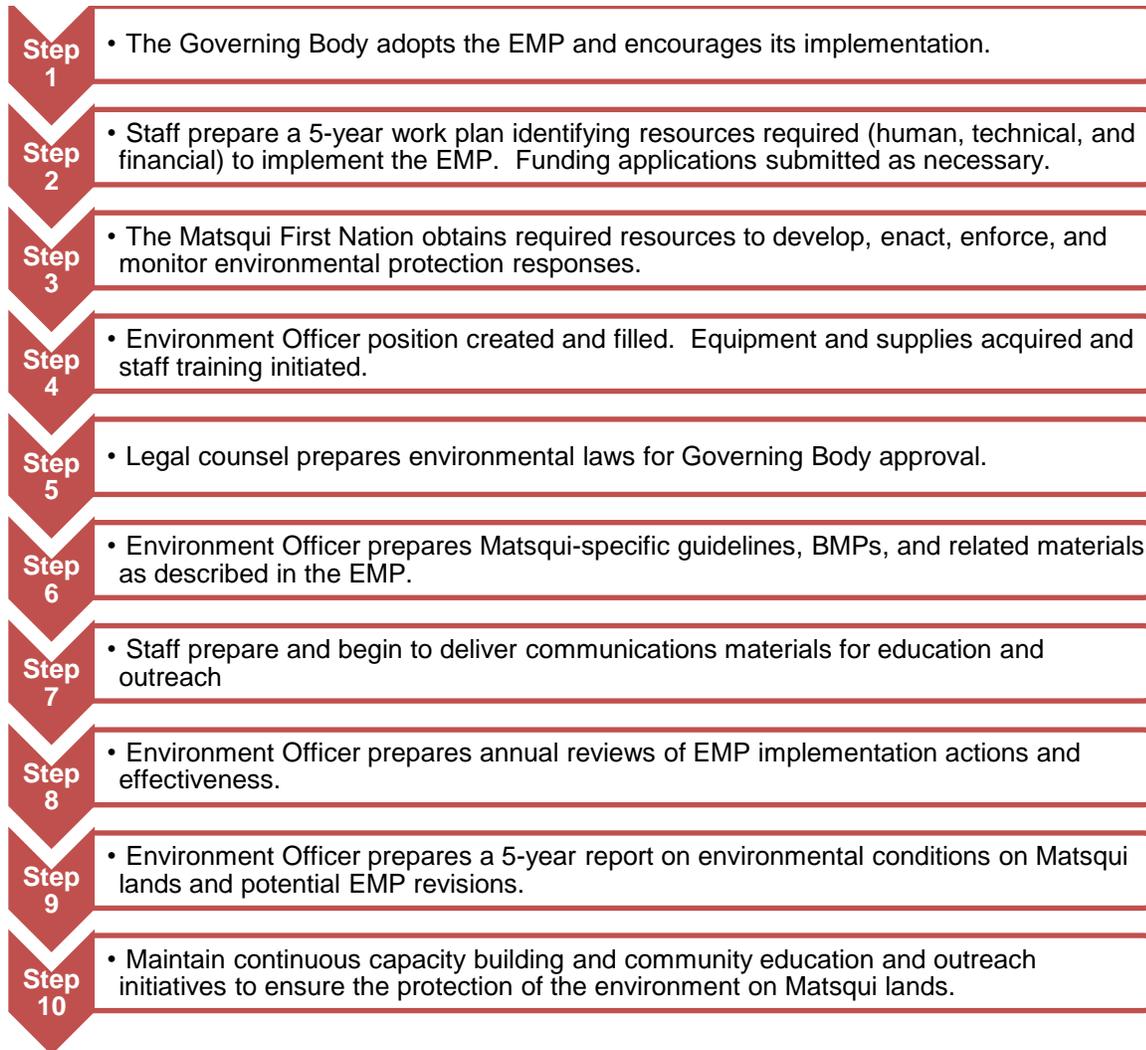
To ensure that environmental management proceeds effectively, it is important to inform the members of the community about the EMP and potential implications of inadequate environmental management on Matsqui lands, and how implementing the EMP will avoid those adverse outcomes. Matsqui First Nation staff will provide this information by implementing the education and outreach program described in Section 2.5 of this EMP.

The Matsqui First Nation recognizes that its staff will not possess all the technical skills required to manage existing and potential environmental issues, and that external technical assistance will be needed. The Matsqui First Nation will establish a roster of qualified consultants that can be relied on to provide environmental services as required and requested by the Matsqui Environment Officer. Over time, Matsqui First Nation staff and membership may assume more responsibility for these technical tasks as they complete relevant educational and training programs.

The Matsqui First Nation will require supplies and equipment for implementing the EMP. For example, the Environment Officer will require office space and equipment (computer, data storage, *etc.*). A suitable vehicle will be needed for transporting staff and material on Matsqui lands. Sampling equipment, spill response kits, or other environmental equipment and supplies also will be required. Funding for purchase, maintenance, and periodic replacement of these materials will be needed.

## 4.4 Implementation schedule

The implementation of the EMP will require the knowledge of applicable federal legislation and diligent use of Matsqui First Nation laws, policies, guidelines, BMPs, education, and outreach, monitoring and reporting. This work demands appropriate resources and trained staff. Figure 5 provides an action plan for implementing the EMP effectively. Funding for the next steps in the EMP process, such as for drafting laws and preparing outreach materials, will be required in the year following adoption of the EMP.



**Figure 5. Major steps in implementing the Environmental Management Plan**

As the EMP is implemented, priorities will need to be established and the sequence of activities determined. The responsibility for priority decisions will fall to the Governing Body. The Matsqui EMP Committee will play an important role in considering technical and other matters that affect the implementation effort, and will provide recommendations to Council on matters associated with the EMP. The timing and sequence of implementing the various steps and specific activities may change, in response to funding opportunities that arise, or in response to other community or environmental priorities.

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## MEMORANDUM OF UNDERSTANDING ON FUNDING

This Memorandum of Understanding dated for reference the 19 day of October, 2011:

**BETWEEN:** Operational First Nation signatories to the *Framework Agreement on First Nation Land Management* (“*Framework Agreement*”), as represented by the Chair of the Lands Advisory Board (“LAB”) and the Chair of the First Nations Land Management Resource Centre Inc. (“Resource Centre”)

**AND:** Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development (“Canada”)

### WHEREAS:

The *Framework Agreement*, Part VI Funding, clause 30 OPERATIONAL FUNDING, sub-clause 30.2 states that:

- “A method for allocating such operational funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board”;

The *Framework Agreement*, Part V ENVIRONMENT, clause 27 RESOURCES, sub-clause 27.1 states that:

- “The Parties understand that the obligation of a First Nation to establish an environmental assessment and environmental protection regime depends on adequate financial resources and expertise being available to the First Nation”;

This Memorandum of Understanding (“MOU”) is the result of the LAB negotiations with Canada and sets out a new operational funding formula (“NOFF”) consistent with sub-clauses 27.1 and 30.2 of the *Framework Agreement*; and

This MOU has been presented by the LAB to the *Framework Agreement* Operational First Nations at the 2011 LAB Annual General Meeting held in Ottawa on October 19 and 20, 2011 and has been approved by resolution.

### NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

#### DEFINITIONS

In this MOU,

“Funding Agreement” means an agreement between Canada and an Operational First Nation, or between Canada and a Tribal Council of which the Operational 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;

“Individual Agreement” means the individual agreement referred to in subsection 6(3) of the *First Nations Land Management Act*, S.C. 1999, c. 24 and clause 6 of the *Framework Agreement*;

“Operational First Nations” means First Nations who have ratified the *Framework Agreement* pursuant to clause 48.2 of the *Framework Agreement*, and who have a land code that has come into force.

## **PURPOSE**

1. This MOU addresses the requirements under the *Framework Agreement*, Part VI Funding, clause 30 OPERATIONAL FUNDING, sub-clause 30.2.
2. This MOU also addresses the requirements under the *Framework Agreement*, Part V ENVIRONMENT, clause 27 RESOURCES, sub-clause 27.1 for financial resources to establish and maintain an environmental protection regime, which were not included in the previous operational funding formula but were specifically contemplated by the *Framework Agreement*.
3. The NOFF will be effective April 1, 2012.

## **TERM**

1. The NOFF will begin on April 1<sup>st</sup> of fiscal year 2012-2013 and will continue through fiscal years 2013-2014, 2014-2015 and 2015-2016.
2. Prior to March 31, 2016, the Parties may agree to extend the term of this MOU and the NOFF.

## **LAND AND ENVIRONMENTAL FUNDING**

1. The NOFF provides funding to assist with land and environmental governance and management, which include the following activities:
  - i. establishing and maintaining the legislative, regulatory, and policy framework, including an environmental protection regime;

- ii. enforcement which includes enforcing First Nation laws (both environmental laws and other laws) and the prosecution of individuals contravening First Nation laws; and
  - iii. undertaking periodic evaluations of the land governance regime, similar to the reviews undertaken by other governments performing similar functions, to ensure First Nation members have access to information they need to assess the performance of the First Nation in administering its land governance responsibilities.
2. Annex A sets out three tiers of funding levels and identifies under which tier each of the current Operational First Nations will be funded.
  - i. Operational First Nations listed in Tier I will be provided funding of \$204,536 each year for 4 years starting April 1, 2012;
  - ii. Operational First Nations listed in Tier II will be provided funding of \$251,636 each year for 4 years starting April 1, 2012; and
  - iii. Operational First Nations listed in Tier III will be provided funding of \$317,386 each year for 4 years starting April 1, 2012.
3. The annual funding provided to each of the current Operational First Nations, as well as to those First Nations approving their Land Code and Individual Agreement and the *Framework Agreement* by March 31, 2012 shall remain fixed at the levels described in section 2 above, and set out in Annex A, for the four year term of this MOU.
4. First Nations which approve their Land Code and Individual Agreement and the *Framework Agreement* and become operational after March 31, 2012 will be identified under a Tier I, Tier II or Tier III funding level in their Individual Agreement with Canada.

## **TWO YEAR TRANSITION AND ENVIRONMENTAL FUNDING**

1. A second component of the NOFF is a contribution towards transitional activities including, but not limited to, the following matters:
  - i. development and passage of a core body of land laws (including environmental protection);
  - ii. training and development, including environmental training and development; and

- iii. communicating the impact of the regime to members, non-members on-reserve and other interested parties.
2. All Operational First Nations as of March 31, 2012, and new Operational First Nations after that date, will be eligible for the two year transition and environmental funding.
3. Canada will contribute transition and environmental funding in the following manner, and as listed in Annex B:
  - i. current Operational First Nations will receive a payment of \$75,000 in fiscal year 2012-2013 and a second payment of \$75,000 in fiscal year 2013-2014;
  - ii. First Nations that approve their Land Code and Individual Agreement and the *Framework Agreement* and become operational in the future will receive a payment of \$75,000 in the year their land code comes into effect and a second payment of \$75,000 the year thereafter. If a First Nation becomes operational after March 31, 2015 the second payment will be in accordance with the terms of the operational funding formula applicable at that time.

### **TWO YEAR ADJUSTMENT PERIOD**

1. A third component of the NOFF is two year adjustment funding, which will be provided to four First Nations<sup>1</sup> that will experience a decrease in operational funding, as a result of the implementation of the NOFF. The amounts of the adjustment funding are set out in Annex C.

### **FIRST NATION DISCRETION**

1. A fourth component of the NOFF is that Operational First Nations will have the sole discretion to determine how to use the funding provided to meet their land and environmental governance and management responsibilities, subject to the terms and conditions of the *Framework Agreement*, the Individual Agreement and the First Nation's Funding Agreement.

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<sup>1</sup> Chippewas of Georgina Island, Opaskwayak Cree Nation, Tsleil-Waututh Nation (Burrard), and Tzeachten

## **PAYMENTS TO FIRST NATIONS**

1. Funding provided under the NOFF will be paid through Funding Agreements, and payments will be subject to the terms and conditions of the Funding Agreements.

## **NEW OPERATIONAL FIRST NATIONS**

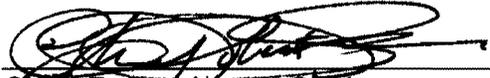
1. The amount of Canada's funding contribution (excluding the Two Year Transitional and Environmental Funding) to new Operational First Nations for the first fiscal year that their Land Code comes into effect shall be prorated based on the number of months from the date the Land Code comes into effect to the end of the first fiscal year.

## **GENERAL PROVISIONS**

1. Funding provided by Canada to Operational First Nations is subject to the appropriation of funds by the Parliament of Canada for the fiscal year in which the funding is to be provided.
2. All obligations of Canada to fund Operational First Nations, as required under Parts V and VI of the *Framework Agreement*, have been addressed by the NOFF.
3. Any amendments to this MOU shall be in writing and executed by both parties to this MOU.

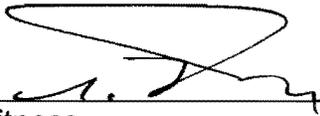
Signed in Ottawa, on 19 day of October, 2011

FOR THE OPERATIONAL FIRST NATION SIGNATORIES:

  
Chief Robert Louie, Chair  
Lands Advisory Board

  
Witness

  
Chief Austin Bear, Chair  
First Nations Land Management  
Resource Centre Inc.

  
Witness

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA:

  
The Honourable John Duncan,  
Minister of Indian Affairs and Northern  
Development

  
Witness

**ANNEX A - NEW OPERATIONAL FUNDING FORMULA (2012/2013 to 2015/2016)**

	<b>First Nation</b>	<b>Amount</b>
<b>Tier I</b>	Anishnaabeg of Naongashiing (Big Island)	\$204,536
	Atikameksheng Anishnawbek (Whitefish Lake)	\$204,536
	Beecher Bay	\$204,536
	Chemawawin Cree Nation	\$204,536
	Henvey Inlet	\$204,536
	Kinistin Saulteaux Nation	\$204,536
	Kitselas	\$204,536
	Leq'a:mel	\$204,536
	Lheidli T'enneh	\$204,536
	Matsqui	\$204,536
	McLeod Lake	\$204,536
	Mississauga	\$204,536
	Mississauga's of Scugog Island	\$204,536
	Muskeg Lake	\$204,536
	Seabird Island	\$204,536
	Shxwha:y Village	\$204,536
	Skawahlook	\$204,536
	Sliammon	\$204,536
	Snaw'Naw'As (Nanoose)	\$204,536
	Songhees	\$204,536
	Squiala	\$204,536
	Sumas	\$204,536
	Swan Lake	\$204,536
	T'Sou-ke	\$204,536
Ts'kw'aylaxw	\$204,536	
We Wai Kai (Cape Mudge)	\$204,536	
<b>Tier II</b>	Muskoday	\$251,636
	Whitecap Dakota	\$251,636
<b>Tier III</b>	Chippewas of Georgina Island	\$317,386
	Nipissing	\$317,386
	Opaskwayak Cree Nation	\$317,386
	Tsawout	\$317,386
	Tsleil-Waututh Nation (Burrard)	\$317,386
	Tzeachten	\$317,386

**ANNEX B – TWO YEAR TRANSITION AND ENVIRONMENTAL FUNDING**

	<b>First Nation</b>	<b>2012/2013</b>	<b>2013/2014</b>	<b>Total</b>
<b>Tier I</b>	Anishnaabeg of Naongashiing (Big Island)	\$75,000	\$75,000	\$150,000
	Atikameksheng Anishnawbek (Whitefish Lake)	\$75,000	\$75,000	\$150,000
	Beecher Bay	\$75,000	\$75,000	\$150,000
	Chemawawin Cree Nation	\$75,000	\$75,000	\$150,000
	Henvey Inlet	\$75,000	\$75,000	\$150,000
	Kinistin Saulteaux Nation	\$75,000	\$75,000	\$150,000
	Kitselas	\$75,000	\$75,000	\$150,000
	Leq'a:mel	\$75,000	\$75,000	\$150,000
	Lheidli T'enneh	\$75,000	\$75,000	\$150,000
	Matsqui	\$75,000	\$75,000	\$150,000
	McLeod Lake	\$75,000	\$75,000	\$150,000
	Mississauga	\$75,000	\$75,000	\$150,000
	Mississauga's of Scugog Island	\$75,000	\$75,000	\$150,000
	Muskeg Lake	\$75,000	\$75,000	\$150,000
	Seabird Island	\$75,000	\$75,000	\$150,000
	Shxwha:y Village	\$75,000	\$75,000	\$150,000
	Skawahlook	\$75,000	\$75,000	\$150,000
	Sliammon	\$75,000	\$75,000	\$150,000
	Snaw'Naw'As (Nanoose)	\$75,000	\$75,000	\$150,000
	Songhees	\$75,000	\$75,000	\$150,000
	Squiala	\$75,000	\$75,000	\$150,000
	Sumas	\$75,000	\$75,000	\$150,000
	Swan Lake	\$75,000	\$75,000	\$150,000
	T'Sou-ke	\$75,000	\$75,000	\$150,000
	Ts'kw'aylaxw	\$75,000	\$75,000	\$150,000
We Wai Kai (Cape Mudge)	\$75,000	\$75,000	\$150,000	
<b>Tier II</b>	Muskoday	\$75,000	\$75,000	\$150,000
	Whitecap Dakota	\$75,000	\$75,000	\$150,000
<b>Tier III</b>	Chippewas of Georgina Island	\$75,000	\$75,000	\$150,000
	Nipissing	\$75,000	\$75,000	\$150,000
	Opaskwayak Cree Nation	\$75,000	\$75,000	\$150,000
	Tsawout	\$75,000	\$75,000	\$150,000
	Tsleil-Waututh Nation (Burrard)	\$75,000	\$75,000	\$150,000
	Tzeachten	\$75,000	\$75,000	\$150,000

### ANNEX C – TWO YEAR ADJUSTMENT PERIOD FUNDING

This table identifies the annual allocations for those First Nations affected by the adjustment period:

<b>First Nation</b>	<b>2012/2013</b>	<b>2013/2014</b>	<b>2014/2015</b>	<b>2015/2016</b>
Chippewas of Georgina Island	\$341,160	\$341,160	\$317,386	\$317,386
Opaskwayak Cree Nation	\$370,924	\$370,924	\$317,386	\$317,386
Tsleil-Waututh Nation (Burrard)	\$379,030	\$379,030	\$317,386	\$317,386
Tzeachten	\$375,587	\$375,587	\$317,386	\$317,386

## Participants in Environmental Management Plan (EMP) Worksheet

Body or organization	Sample: Role in EMP	First Nation Identifies Its Own Unique Role * in EMP
Chief and Council	Main First Nation decision maker and accountable authority that approves and adopts the Environmental Management Plan, laws, regulations, and policies  Approve work programs and budgets  Endorse government-to-government agreements	
Lands Governance Director	Liaison with Chief and Council  Prepares work programs and staffing plans before Environment Manager is hired  Supervises Environment Manager  Coordinates interdepartmental relationships	
Environment Manager	Oversees preparation and implementation of Environmental Management Plan  Prepares detailed implementation procedures  Prepares annual workplan and budgets  Implements elements of Environmental Management Plan  Coordinates community outreach and education, or supports staff and consultants in that role  Liaison with other government agencies  May deliver some environmental services (e.g. monitoring, restoration or environmental assessments)	

## Participants in Environmental Management Plan (EMP) Worksheet

Body or organization	Sample: Role in EMP	First Nation Identifies Its Own Unique Role * in EMP
Lands Committee	<p>Makes recommendations to Chief &amp; Council on the final draft of the Environmental Management Plan</p> <p>Identify issues and responses</p> <p>Participates in preparation and periodic review of the draft Environmental Management Plan</p> <p>May assist in facilitating community consultation on the Environmental Management Plan</p> <p>Play a key role in the on-going implementation of the Environmental Management Plan</p>	
Other First Nations departments	<p>Support elements of Environmental Management Plan that are relevant to their mandates</p> <p>Share information, and collaborate with staff of the Lands and Environment Departments</p>	
Community members	<p>Contribute knowledge about lands and resources</p> <p>Articulate environmental values of the community</p> <p>Help identify environmental issues and suitable responses</p> <p>Discuss and validate environmental issues report</p> <p>Discuss and comment on draft Environmental Management Plan</p> <p>Understand, support, and comply with environmental laws, regulations, and policies</p> <p>Approve laws for enactment as per Land Code procedure</p>	

## Participants in Environmental Management Plan (EMP) Worksheet

Body or organization	Sample: Role in EMP	First Nation Identifies Its Own Unique Role * in EMP
Consultants and contractors	Provide technical support to First Nations staff in preparing and implementing the Environmental Management Plan  Design and conduct specialized studies (ESAs, risk assessments, demographic forecasts, economic analysis, urban design, land use plans, etc.)  Draft a First Nation's laws permitted under the Framework Agreement and Land Code (legal team)	
Lease holders or other on-reserve businesses	Review and comment on draft Environmental Management Plan and laws  Understand and comply with environmental laws, regulations, and policies	
Other First Nations and First Nation organizations	Share approaches to environmental planning and management  Provide mutual support for preparing and implementing Environmental Management Plans  Collaborate on multi-First Nation initiatives related to environment and the Framework Agreement	
Land Advisory Board-Resource Centre	Provide technical support and information on environmental planning and management  Provide examples of environmental plans and laws adopted by other First Nations	

## Participants in Environmental Management Plan (EMP) Worksheet

Body or organization	Sample: Role in EMP	First Nation Identifies Its Own Unique Role * in EMP
Provincial agencies	<p>Can advise on the use and effectiveness of provincial environmental programs, policies, laws, and regulations.</p> <p>May be contracted to provide specific services to a First Nation</p> <p>Enforce environmental and other laws on provincial lands outside of reserves</p> <p>Collaborate with First Nations on management of water and other “shared” resources</p> <p>Source of regulations and standards that a First Nation may adopt</p>	
Aboriginal Affairs and Northern Development Canada	<p>Source of funds for developing and implementing a Land Code, Environmental Management Plan, and laws Applies Indian Act sections not affected by the Framework Agreement</p> <p>Provides Environmental Learning Regime courses and other training and capacity opportunities</p>	
Other federal agencies (DFO, Health Canada, etc.)	<p>Responsible for enforcing some federal laws on reserves (e.g., Fisheries Act, Migratory Birds Protection Act, Canadian Environmental Protection Act)</p> <p>May continue to deliver services on reserve, consistent with agency mandates and authority</p> <p>Conduct environmental assessments under Canadian Environmental Assessment Act during transition period, and in specific circumstances thereafter</p> <p>Source of regulations and standards that a First Nation may adopt</p>	

## Participants in Environmental Management Plan (EMP) Worksheet

Body or organization	Sample: Role in EMP	First Nation Identifies Its Own Unique Role * in EMP
Municipal and regional governments	<p>Prepare and implement land use plans, building bylaws, etc. in their jurisdictions, which may be adjacent to reserves</p> <p>May collaborate with a First Nation in preparing and implementing an Environmental Management Plan, Official Community Plan.</p> <p>May consult with a First Nation as local government prepares community plans, regional plans, or servicing plans, or makes major land use decisions. .</p> <p>May collaborate with First Nation on management of shared services (e.g., water and sewer) and resources</p> <p>May provide some services (e.g., building inspection, help with land use plans) on a contract basis</p>	

NOTE \*: As each FN is distinct in regards to their environmental issues, organizational structure and approach to governance the above information should be considered an illustration, and each FN should identify their own unique roles and involvement of participants in environmental planning.



## **PHASE I ENVIRONMENTAL SITE ASSESSMENT**

### **WHAT IS A PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)?**

A **Phase I ESA** identifies the potential presence of contaminants in soil, sediment, groundwater or surface water through site inspection and review of reports and historical information. Sampling and analysis of soil or water typically is not conducted in a Phase I ESA. The key aspects of a Phase I ESA are records review, site visits, interviews, information evaluation, reporting and identifying “areas of potential environmental concern” (APECs), which may be studied further in a Phase II and III ESA.

Indigenous and Northern Affairs Canada (INAC) usually funds Phase II and III ESAs after a Land Code has been enacted. The limitation of Phase I ESA is that it only identifies **potential** contamination. It is important that a Phase I ESA identifies all APECs, because this list will establish the extent of potential contamination that has occurred while reserves were managed by INAC. Phase II and III ESAs (which involve sampling) are needed to determine whether contamination actually exists, its extent, and implications for remediation. The parties to the Phase I ESA are the First Nation (FN) and Canada (INAC). Lands Advisory Board provides assistance when requested.

### **WHY IS PHASE I ESA REQUIRED IN THE DEVELOPMENTAL PROCESS?**

Canada provides a FN, at its request, with “all existing information, in Canada’s possession, respecting any potential or actual environmental problems with the proposed FN land”. Such existing information may be inadequate to fully describe the condition of reserve lands, so Canada’s policy is to fund the preparation of Phase I ESAs.

### **WHY IS PHASE I ESA IMPORTANT TO THE INDIVIDUAL AGREEMENT?**

Because the Phase I ESA helps to describe the environmental condition of reserves and identifies areas for further investigation, results of the Phase I ESA will be summarized in the Individual Agreement.

Because Phase I ESAs do not determine the actual presence or extent of contamination on reserve land, a FN should ensure that its Individual Agreement and work plan contain a commitment by Canada to assist the FN in identifying contaminated sites on reserve and a timeline to remediate them. Therefore, before



approving an Individual Agreement, a FN should meet with INAC to confirm responsibility for further studies and remediation of identified contamination. It is imperative that the nature and scope of further environmental work be included in the work plan before a FN signs its Individual Agreement.

### **WHAT WORK IS TO BE CARRIED OUT DURING A PHASE I ESA?**

INAC has a Statement of Work (SOW) template that outlines the scope of the work to be carried out during a Phase I ESA, including records review, interviews (e.g. with elders), site visits, evaluation of information and reporting, project management, project scheduling, insurance and safety, standards requirements, special requirements, submission of proposals, proposal evaluation criteria and budget. A FN may wish to identify additional ESA tasks to be conducted.

### **WHO OVERSEES THE PHASE I ESA WORK?**

A Joint Management Committee (JMC) is usually established to oversee and manage the Phase I ESA work. The JMC's responsibilities are outlined in the Statement of Work (SOW). The SOW also outlines the responsibilities of the qualified Environmental Assessor that will be carrying out the Phase I ESA.

The JMC committee is comprised of FN and INAC representatives. A FN may wish to retain their own technical advisor to participate in JMC deliberations.



## 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)

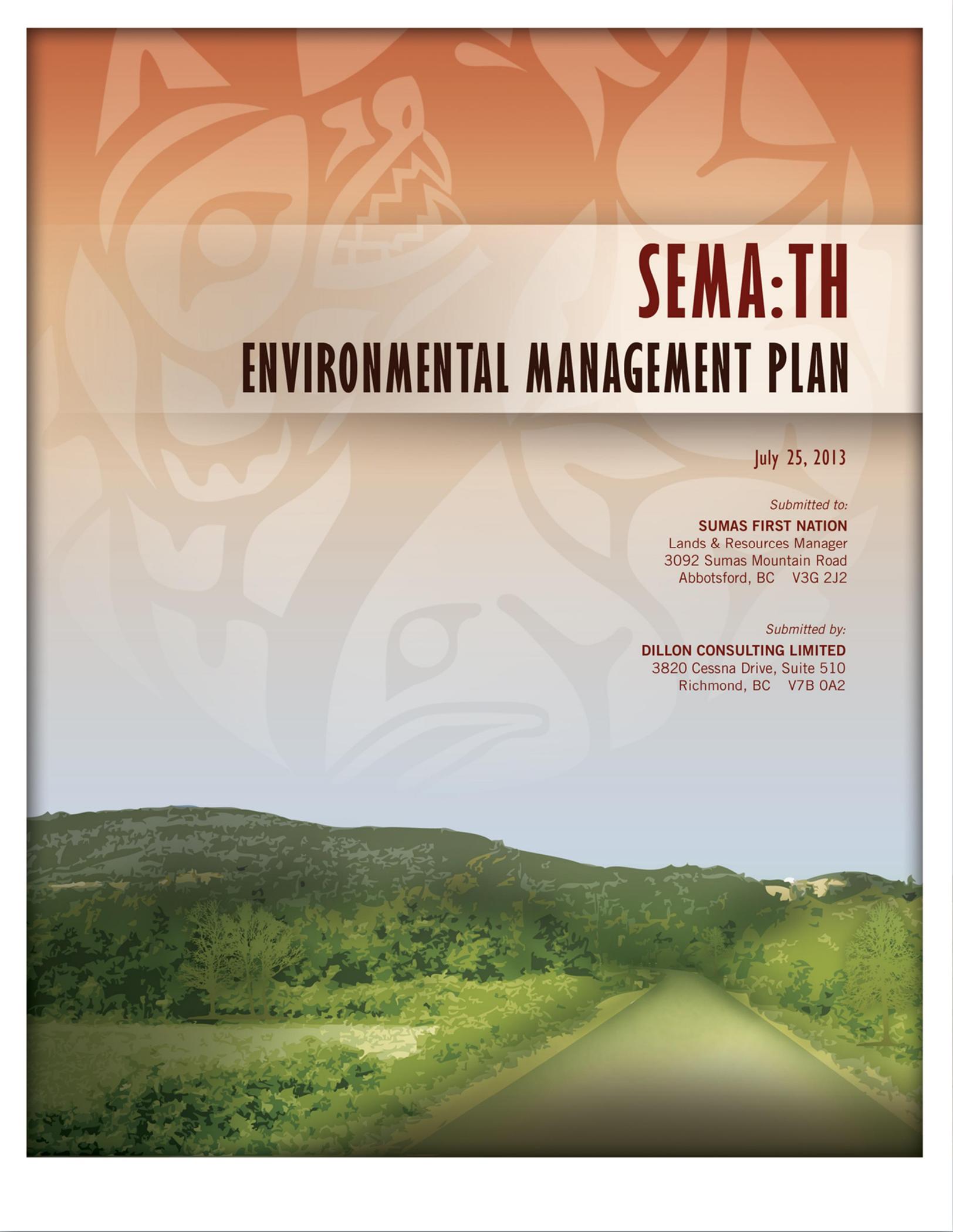
#### *Part 8: Dispute Resolution*

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.



# SEMA:TH

## ENVIRONMENTAL MANAGEMENT PLAN

July 25, 2013

*Submitted to:*

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# SEMA:TH

## ENVIRONMENTAL MANAGEMENT PLAN

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## APPENDICES

- Appendix A: Environmental Operating Procedures
- Appendix B: Implementation Schedule



## GLOSSARY

Above-ground storage tank (AST)	An above-ground storage tank (AST) is any chemical or fuel (gas, diesel, or heating oil) storage tank located above ground. ASTs are commonly used to supply fuel to heat homes, store vehicle fuel or power generators.
Ammonia	Ammonia is a colourless pollutant with a pungent odour that also acts as a precursor to the photochemical reactions that produce secondary fine particulate matter. Ammonia itself is also associated with negative effects on human health and the environment. Major sources of ammonia include livestock waste and fertilizer production.
Ancestral Human Remains	Ancestral Human Remains: the skeletal or otherwise physical remains of a deceased person or persons in all likelihood of Stó:lō ancestry.
Aquifer	A geological formation of permeable rock, gravel, or sand containing or conducting groundwater.
Artifacts	Artifacts: objects that can be readily removed from the site of which they are a part; moveable objects (e.g., chipped stone flakes, knives, spears and arrowheads; tin cans; glass bottles and jars; basketry; personal gear; groundstone hand-mauls; bone pins; antler wedges; glass beads; looms; instruments; etc.).
Base flow	Portion of (stream) flow that comes from groundwater or other delayed sources.
BC Building Code 2012	Provides strong guidance for the construction of buildings; including extensions, substantial alterations, and upgrading of buildings to remove an unacceptable hazard and is a requirement under Aboriginal Affairs and Northern Development Canada (AANDC) Terms of Reference. The BC Building Code applies to the core concepts of the National Building Code, along with elements specific to BC's unique development needs.
BC Fire Code 2012	Provides First Nations with a standard for acceptable level of fire safety within the community. It is not required by law that Nations follow the guidelines within the BC Fire Code; however, the Code provides standards which should be strongly considered.
BC Ministry of Environment Develop with Care 2012	Environmental Guidelines for Urban and Rural Land Development in British Columbia documents: Best Management Practices for Amphibians and Reptiles in Urban and Rural Developments in British Columbia (2004); Guidelines for Raptor Conservation during Urban and Rural Land Development in British Columbia; Develop with Care: Species Factsheets – includes information related to land development and mitigation protocols for rare and endangered species; and South Coast Region Information Package – includes information on regional features, regionally significant species, and invasive alien species.
BC Plumbing Code 2012	A useful tool for the installation or designing of plumbing systems. It also applies to the extension, alteration, renewal and repair of existing plumbing systems. While the Code is not mandatory for Nations to adopt, it could be a useful tool and guide for plumbing practices unique to BC's development needs.

\*Terminology as found in the Stó:lō Heritage Policy Manual.



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British Columbia Emergency Response Management System (BCERMS)	<p><i>The Emergency Program Act</i> requires that all Provincial ministries and agencies utilize the BCERMS. First Nations, who have not ratified treaties with the Federal and Provincial government are governed by federal statute, are not legally required to follow the BCERMS model but are strongly encouraged to incorporate this model into their emergency plans. The majority of municipalities and First Nations utilize BCERMS to ensure consistent emergency principles and coordinated response efforts. To facilitate the same level of services to First Nation communities PEP, Aboriginal Affairs and Northern Development Canada (AANDC), and First Nations Emergency Services (FNESS) utilize the BCERMS model to standardize delivery of emergency management and response efforts.</p>
British Columbia Extended Producer Responsibility (EPR) Programs	<p>BC's policies and programs are designed to have producers of designated products take responsibility of the full life-cycle management of their items, including costs, collection, recycling and final disposal. EPR programs shift responsibility to the producer and away from local waste authorities. It also provides incentives for producers to incorporate environmental considerations and waste reduction measures into the design of their products. EPR materials should be managed responsibly. A list of current EPR products available on the Recycling Council of British Columbia (RCBC) website: <a href="http://rcbc.bc.ca/education/product-stewardship/programs#Top">http://rcbc.bc.ca/education/product-stewardship/programs#Top</a></p>
<i>British Columbia Heritage Conservation Act</i>	<p>British Columbia's archaeological sites are protected under the <i>Heritage Conservation Act</i> (HCA). This Act is the latest in a number of pieces of legislation focused on the protection of archaeological sites.</p>
<i>Canadian Environmental Protection Act</i>	<p>The <i>Canadian Environmental Protection Act</i> is administered by Environment Canada. Part 4 deals with pollution prevention; Part 5 deals with controlling toxic substances; and Part 8 deals with environmental matters related to emergencies.</p>
Canadian Environmental Quality Guidelines	<p>The federal government works with the provinces and territories to ensure Canadians receive clean, safe, and secure drinking water. Municipalities receive their powers from the provinces and have ability to pass by-laws that can have an impact on water resources.</p>
City of Abbotsford's Soil Removal and Deposit Bylaw No. 1228, 2003	<p>The bylaw that regulates the movement of soil within the City limits.</p>
Criteria Air Contaminants	<p>While many different contaminants may be emitted to air, there is a set of contaminants considered the "Criteria Air Contaminants" that are of particular interest in analyzing air quality. These contaminants are: Oxides of nitrogen (NOX); Sulphur dioxide (SO<sub>2</sub>); Carbon monoxide (CO); Volatile Organic Compounds (VOCs); and Particulate Matter (PM).</p>
Critical habitat	<p>Habitat that is necessary for the survival or recovery of a listed wildlife species.</p>
Demolition and Land Clearing (DLC) waste (also referred to as Construction and Demolition (C&D) waste)	<p>Demolition and Land Clearing (DLC) waste includes: building / demolition materials; bricks; concrete; gypsum / drywall; and wood.</p>

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Deposit	Means the act of moving soil and other material and placing it upon a parcel or contiguous parcels of land on which such soil and other material did not exist or stand.
DFO Freshwater Intake End-of-Pipe Fish Screen Guideline (1995)	Contains a set of guidelines to assist proponents in the design and installation of fish screens where freshwater is extracted from fish-bearing waters.
Endangered species	A wildlife species that is facing imminent extirpation or extinction.
<i>Environmental Management Act</i>	The <i>Environmental Management Act</i> replaces the old <i>Waste Management Act</i> and the <i>Environment Management Act</i> and brings provisions from both of those acts into one statute. The Act seeks to protect human health and the quality of water, land and air in British Columbia. The Act also enables the use of administrative penalties, informational orders and economic instruments to assist in achieving compliance.
<i>Emergency Program Act</i>	The <i>Emergency Program Act</i> requires that all Provincial ministries and agencies utilize the British Columbia Emergency Response Management System (BCERMS).
Emergency Program Management Regulation	The Emergency Program Management Regulation identifies the emergency management responsibilities of the Provincial Emergency Program (PEP) and other ministries.
Extended Producer Responsibility (EPR) Materials	Extended Producer Responsibility (EPR) Materials include: expired smoke alarms; cell phones; antifreeze, lubricating oil, oil filters and oil containers; rechargeable batteries and cell phones; electronic products and small appliances; light bulbs; medications; paint, flammable liquids, domestic pesticide and gasoline; thermostats; and tires.
Extirpated species	A wildlife species that no longer exists in the wild in Canada, but exists elsewhere in the world.
Features	Features: objects that form a permanent part of the site of which they are a part; objects that cannot physically be removed from the site of which they are a part - at least not without significant effort or without destroying the object (e.g., sqémél depressions; shell heaps; cache pits; earthworks; culturally modified trees; house frames / foundations; rock walls; pit-fall traps; trails; roasting pits; hearths; stone quarries; burial mounds / pits; monuments; roads / trails; etc.).
Fill	Refers to soil that has been removed from one area and deposited in another area, typically as a means to fill depressions and holes to make an area suitable for development.
Fine Particulate Matter	In addition to being one of the criteria air contaminants, it must be understood that fine particulate matter (PM2.5) can be both directly emitted from a source (primary) or created through a series of photochemical reactions in the atmosphere (secondary).
<i>Fire Services Act</i>	The <i>Fire Services Act</i> is administered by the B.C. Office of the Fire Commissioner, which is part of the Ministry of Public Safety and Solicitor General. Section 25 of the Act outlines emergency powers of the B.C. Fire Commissioner.
<i>First Nations Lands Management Act</i>	Provides First Nations the authority to create laws to control Nation lands, resources and the environment. This is a federal law and allows First Nations to create their own approach for making land allotments to individual Nation members, matrimonial real property interest or rights and "in cases of breakdown of marriage, respecting the use,



	occupation and possession of First Nation land and the division of interests in First Nation land”.
<i>Fisheries Act, 1985</i>	The <i>Fisheries Act, 1985</i> makes it illegal to harm fish habitats or fishing grounds. Environment Canada is responsible for the administration and enforcement of the <i>Fisheries Act</i> as it pertains to spills and environmental emergencies.
Fisheries and Oceans Canada (DFO) Land Development Guidelines for the Protection of Aquatic Habitat (1993)	Contains guidelines to protect fish populations and their habitat from the damaging effects of land development activities. These guidelines apply primarily to salmon, trout and char, but are applicable to all fish species.
Fraser Valley Regional District Integrated Solid Waste Management Plan (Draft, April 18, 2011)	Contains information on waste policies and goals and how waste materials will be managed in the region.
Fraser Valley Regional District Soil Deposit and Removal Bylaw No. 0061, 1996	Sections 723 and 799 of the Local Government Act, R.S.B.C. 1996, c. 323, authorize the Regional Board of the Fraser Valley Regional District to regulate the removal and deposit of soil in the Regional District.
Garbage or ‘residual waste’	Garbage or ‘residual waste’ means materials that cannot be recycled, composted or diverted through other programs, such as: diapers; sanitary products; Styrofoam; cigarette butts; and lint.
Ground-level Ozone (ozone)	Ground-level Ozone (ozone) is an air contaminant associated with many negative health and environmental effects. Ozone is not emitted directly, but is the product of a series of photochemical reactions occurring in the atmosphere involving two precursor pollutants, NOX and VOCs.
Groundwater	Water that is found below ground in the soil or in pores and crevices in rock.
Guidelines for Canadian Drinking Water Quality	Set out the basic parameters all water systems should strive for in order to deliver the cleanest, safest, and most reliable drinking water to consumers. These guidelines apply to water destined for human consumption and are developed for select physical, chemical, microbiological, and radiological parameters. The most important guidelines deal with microbiological quality and help ensure the risk of exposure to disease-causing organisms in drinking water is minimized.
Habitat	(a) In respect of aquatic species: spawning grounds and nursery, rearing, food supply, migration and any other area on which aquatic species depend directly or indirectly in order to carry out their life processes, or areas where aquatic formerly occurred and have the potential to be reintroduced. (b) In respect of other wildlife species: the area or type of site where an individual or wildlife species naturally occurs or depends on directly or indirectly in order to carry out its life processes or formerly occurred and has the potential to be reintroduced.
Heating oil	A type of fuel generally used to power a furnace for a home or other building.
Household Hazardous Waste (HHW)	Household Hazardous Waste (HHW) includes: batteries; electronic waste; fluorescent tubes and compact fluorescent lights; household paints; pesticides and flammable liquids,



	medications; and waste oil, filters and containers.
Hydraulic oil	Oil used in the hydraulic systems of equipment such as excavators or backhoes.
ICI (Industrial, Commercial and Institutional) sector	Waste materials are often classified by source. Waste generated through industrial, commercial and institutional activities is referred to as “ICI sector” waste.
Iron and manganese	Iron and manganese are metallic elements present in many types of rock. Iron has the symbol “Fe” and manganese has the given symbol “Mn.” Both are commonly found in water and are essential elements required in small amounts by all living organisms. Concentrations of iron and manganese in groundwater are often higher than those measured in surface waters.
Land Use Plan	A Land Use Plan is the principle land use planning document for a community. Its purpose is to produce a desirable and workable future land use system. The Land Use Plan is a general document that provides a set of overarching policies and maps which establish goals and provide guidance for the physical development of the community. Within the context of the Sema:th Land Use Plan, policies will have regard to relevant social, economic, and environmental matters.
Migratory bird	A migratory bird referred to in the Convention of the MBCA (1994), and includes the sperm, eggs, embryos, tissue cultures and parts of the bird.
Multi-barrier approach	An integrated system of procedures, processes and tools that collectively prevent or reduce the contamination of drinking water from source to tap in order to reduce risks to public health.
Municipal policies and bylaws	Can contain information on material bans; i.e., materials which are prohibited or banned from disposal at municipal landfills. Because waste generated on the reserve is collected and transported off-site for disposal, banned materials cannot be included in the garbage. Inclusion of these banned materials in the waste stream can result in fines and charges, which would be levied on the collection contractor and likely passed on to Sema:th Nation.
Municipal solid waste	Commonly known as trash or garbage generally refers to waste consisting of everyday items that are discarded by the public. It does not include industrial waste, agricultural waste, medical waste, radioactive waste or sewage sludge.
Nest	The nest of a migratory bird and includes parts of the nest that holds eggs or offspring.
Nitrate	Nitrate is a chemical compound of one part nitrogen and three parts oxygen that is designated the symbol “NO3.” It is the most common form of nitrogen found in water.
Organic or ‘compostable’ waste	Organic or ‘compostable’ waste includes: ‘green waste’ – yard trimmings, grass, clippings, branches, etc.; food waste scraps; tissue paper; and food-soiled paper packaging.
Peak flow	The maximum instantaneous discharge of a stream at a specific location. Corresponds to the highest stage of a flood.
Point and non-point sources of contamination	Contaminants can originate from a “point source” or “non-point source” – meaning they can come from a single source (or point) or, that they don’t have one specific source and come instead from the cumulative effect of any number of factors or activities.



Provincial Emergency Coordination Centre	The Provincial Emergency Coordination Centre (PECC) coordinates provincial resources and prioritizes and establishes provincial objectives in response to requirements at other levels. This level also serves as the coordination and communications link with the federal disaster support system. The Provincial Central Coordination level is activated when the key Ministry(ies) or the Director of the PEP considers it necessary to coordinate and direct overall provincial response to an emergency or disaster.
Provincial Standards and Best Practices for Instream Works (1994)	Assists in the planning and implementation stages for a proposed development by providing a series of performance guidelines and regulatory compliance standards.
Recyclables or 'blue box / bag' materials	These materials include: paper and envelopes; newspapers, magazines, flyers; cardboard; boxboard (e.g., cereal boxes); milk cartons and juice boxes; and containers such as plastic, metal and glass.
Regional Timing Windows of Least Risk	The BC MOE and DFO have developed a set of regional timing windows for activities that have the potential to impact fish and wildlife populations and their habitats. To reduce the risk of impacts, instream works and vegetation clearing are ideally limited to non-critical periods of the year, unless stringent, species-specific mitigation measures are initiated.
Removal	Means the act of removing soil from the parcel or contiguous parcels of land on which it exists and shall include the removal of soil which has been placed into a stockpile or other storage on any land.
Residential sector	Waste materials are often classified by source. Waste generated by single family and multi-family residential households is referred to as "residential sector" waste.
Soil	Soil is defined as: clay, silt, sand, gravel, cobbles, boulders, or peat.
Species at risk	An extirpated, endangered, or threatened species or a species of special concern.
Species of special concern	A wildlife species that may become threatened or an endangered species because of a combination of biological characteristics and identified threats.
Stó:lō Heritage	Stó:lō Heritage: all aspects of Stó:lō culture and lifeways - both tangible and intangible - of the past, present and future, including but not limited to: language, physical / spiritual landscapes; place names; ceremonial sites; burials and burial sites; spirited places; songs; dances; art; craft; design; religious / spiritual / ceremonial practices; places and materials; subsistence and material gathering practices and sites; oral histories including all sqwelqwel and sxwōxwiyám; traditional / historical knowledge; family names; archaeological sites, features and objects; historic sites, documents and objects. Stó:lō Heritage can be classified by 'type', such as Sxwōxwiyám, Xá:Xa, Ceremonial Regalia, etc., as presented in Section 4.0. Also referred to as 'Stó:lō Heritage Resources' in relation to resource management.
Stó:lō Heritage Policy, 2003	Stó:lō Heritage Policy, 2003 – As described in the Policy, the Stó:lō maintain ownership of and jurisdiction over all Stó:lō heritage sites and objects. On behalf of the broader Halkomelem-speaking community, Stó:lō Nation maintains jurisdiction over Stó:lō heritage sites and objects not otherwise linked directly to a family or individual. Stó:lō Nation



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	recognizes and accepts the shared heritage interests of other traditionally Halkomelem speaking communities and organizations not directly associated with the Nation. Stó:lō Nation endeavours to establish heritage related Protocol Agreements, as needed, with such Halkomelem communities and organizations. Stó:lō Nation may also develop heritage related Protocol Agreements with non-Aboriginal governments and resource management agencies.
Stó:lō Intellectual Property	Stó:lō Intellectual Property: knowledge, the nature of use of which has been transmitted from generation to generation, which is regarded as Stó:lō and as belonging to Stó:lō individuals, families, communities or the Nation as a whole. Stó:lō Intellectual Property, though rooted in the past, is contemporary knowledge that changes with time. Stó:lō Intellectual Property includes: place names; oral history; family names; songs; dances; designs/ images / arts; language; knowledge.
Surface water	Surface water refers to water flowing across or accumulating on the ground surface as a result of precipitation processes and most often due to the influence of rainfall and snowmelt. As water inundates and accumulates on the surface, it begins to flow towards creeks, streams, lakes, ditches, or installed storm sewer systems or reservoirs. Regionally, surface water originates in mountainous areas and then flows through creeks, streams, and as overland flow to larger creeks and streams in lowland areas.
Threatened species	A wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.
Total, Faecal and E. coli bacteria	Coliform bacteria are described and grouped, based on their common origin or characteristics, as either Total or Faecal Coliform. The Total group includes Faecal Coliform bacteria such as Escherichia coli (E .coli), as well as other types of Coliform bacteria that are naturally found in the soil. Faecal Coliform bacteria exist in the intestines of warm blooded animals and humans, and are found in bodily waste, animal droppings, and naturally in soil.
Underground storage tank (UST)	An underground storage tank (UST) is a storage tank located underground to contain chemicals, fuel, or septic materials.
Waste stream	Waste can also be classified by stream or material. Typical terminology used by the municipal waste stream is provided in Appendix I.
Watershed	The area of land where all of the water that is under it or drains off of it goes into the same place (US EPA).
Watershed management	Conservation Authorities define watershed management as “managing water resources within specific watersheds by knowing how much water is in the system, where it comes from, who is using it, how it is being contaminated and where it ends up. Watershed management takes into consideration all the outside activities that can influence the quality and quantity of our surface and groundwater.”
Well or borehole	Groundwater is accessed through wells or boreholes which are dug or drilled into aquifers.

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#### Zero Waste Challenge

The term “zero waste” is a concept that promotes a future where landfills are no longer needed. The term is intended to encourage people to think more holistically about their waste and to view it as a resource instead of garbage destined for burial. Zero Waste is a mindset meant to propel change in the existing solid waste management system and to promote the adoption of more aggressive waste reduction policies aimed towards stopping waste before it is created and maximizing reuse and recycling programs.

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# 1.0 INTRODUCTION

S'ólh Téméxw te ikw'élò. Xólhmet te mekw'stám it kwelát – “This is our land. We have to look after everything that belongs to us”. In our Stó:lō culture, a link exists between the past, present, and future. In our Halq'emeylem language we have the word tomiyeqw – the relationship expressed in this word connects people seven generations past with those seven generations in the future. The connection between the past and the future rests with those of us living today. It is in this spirit that we, the Sema:th People today, undertook the development of our Environmental Management Plan (EMP).

We created the Sema:th EMP to ensure a healthy environment, protection of resources, appropriate development, and a celebration of our living culture. Our ancestors lived in harmony with the land and had sophisticated methods of environmental management. We wish to honour them through this EMP, by acknowledging our role as the current caretakers of the land. In doing so, we recognize the important role we play in ensuring a healthy and prosperous future for the generations still to come.

## 1.1 Framework

In December 2010, the *Sema:th Land Code* was accepted. The *Sema:th Land Code* is an important and exciting step in Sema:th autonomy. The Land Code was drafted pursuant to the Framework Agreement on First Nation Land Management and the *First Nation Land Management Act (FNLMA)*. Since November 2011, the Land Code has been operational, making Sema:th responsible for our acts or omissions in managing our lands. Under Land Code, Sema:th First Nation Council has the power to make laws in respect of the development, conservation, protection, management and administration of Sema:th Lands (Sema:th Laws). This Environmental Management Plan (EMP) will assist Sema:th Nation in managing our Lands in an environmentally and culturally sustainable manner.

## 1.2 Scope

The EMP is developed as an operational manual to be used by Sema:th to manage activities and related environmental features that have the potential to impact the environment and health of people on Sema:th Lands. As illustrated in Figure 1, Sema:th Lands are located on the south side of the Fraser Valley, east of the City of Abbotsford. Sema:th Lands refer to the land comprised of Sumas Indian Reserve #6 and is approximately 628 acres (~254 ha).



The authority of the EMP lies only within Sema:th Lands. However, Sema:th wishes to work collaboratively and respectfully with local municipal, regional, provincial, and federal bodies to ensure that the environment is protected for everyone.

## 1.3 Purpose

Through the implementation of a series of Environmental Operating Procedures (EOPs), the EMP aims to:

- Prevent and/or minimize environmental impacts (to the fullest extent possible) on Sema:th Lands;
- Provide a proactive rather than re-active environmental management regime;
- Incorporate environmental considerations into the decision making process;
- Improve environmental protection and performance that goes beyond compliance with applicable laws, regulations, Best Management Practices, and standards;
- Protect Sema:th Lands and the environment for future generations;
- Incorporate Sema:th Traditional Knowledge into current environmental management practices;
- Improve operational structure and efficiency with regard to environment management;
- Facilitate continual environmental management improvement;
- Bring together the information, documentation and research that has been conducted on Sema:th Lands to ensure that sound environmental stewardship occurs;
- Promote the principles of sustainable development on Sema:th Lands;
- Increase the overall awareness of workers and neighbouring municipalities regarding environmental issues and practices on Sema:th Lands; and
- Increase environmental awareness and pride among Sema:th people.



## 2.0 Administration

The EMP is a living document that must evolve in response to changing environmental, operational and legislative conditions. The following section outlines administrative tasks associated with the EMP.

### 2.1 Document Control

Document control is a means of keeping track of documents, procedures, and processes. The purpose is to ensure that everyone has easy access to and uses the correct and most up-to-date versions. Environmental legislation, best management practices (BMPs), and procedures can change over time which will require amendments and updates to the EMP. Therefore it is important that documents related to the EMP are controlled to ensure that only the current versions of the documents are referred to and used.

To help ensure that the EMP and related documents remain current and that only the most up-to-date versions are used, the following document control measures will be implemented:

- Include a date and version number on all documents;
- Review all documents on a pre-determined schedule;
- Revise documents as required;
- Obtain appropriate approvals and sign-offs on all revised documents prior to issuing or re-issuing;
- Remove and destroy/recycle all outdated documents;
- Maintain an electronic master copy at the Lands & Resources Department Office; and
- Store all EMP records in hard copy and/or on an electronic data records system for 5 years.

### 2.2 Annual EMP Review

The Sumas Lands & Resources Manager is responsible for ensuring that the EMP and related documents are reviewed, updated, and maintained as appropriate. To meet this commitment, the Lands & Resources Manager will lead an annual review of the EMP and related documents and record the results and findings in an Annual EMP Review Report which will be presented to Chief and Council (see Annual EMP Review Meeting below).



The review will include, but will not be limited to:

- An assessment of all EOPs for adequacy, accuracy and relevance and will include any recommended amendments ;
- An examination of recent changes to applicable legislation and regulations as they relate to specific EOPS;
- An assessment of the EOP goals, objectives and targets and the degree to which they are being met;
- The success of the EMP implementation plan including recommendations for improvement; and
- The effectiveness of the document control and recommended changes.

## 2.3 Annual EMP Chief and Council Review

Sema:th Chief and Council and the Lands & Resources Manager will meet annually for an EMP Review Meeting. The meeting will serve to review and discuss:

- The results and findings of the EMP Review Report including:
  - Performance summary for activities covered under each EOP;
  - Update on how current and adequate the EOP Goals and Objectives are and how the commitments are being met;
  - Effectiveness and suitability of the EMP and the related EOPs in relation to changing conditions and information;
  - Changes to legislation and regulations that may impact the EMP and specific EOPs;
- The environmental incident report summary and any environmental non-conformances;
- Remediation and preventative actions;
- Any concerns resulting from interested parties;

The annual meeting will also allow the EMP review team to approve, confirm, and/or set new goals, objectives and targets as needed, as well as to review, modify and approve budgets as necessary to continue implementing the EMP.



## 2.4 Semi-Annual Reviews

An EMP and/or EOP review can also occur outside of the annual review in response to significant regulatory changes, new land use processes, changes in industrial operations, and/or organizational adjustments. As required, the Lands & Resources Manager will carry out semi-annual assessments on the effectiveness, performance, and achievements of each EOP and make amendments as necessary.

## 2.5 Amendments

Amendments to the EMP and/or EOPs will be completed as follows:

- As necessary, each amendment will be presented to Sema:th Chief and Council for review, adoption and approval for implementation; and
- The amended policy will be printed, signed, and circulated to relevant personnel (e.g., Managers) and posted.

## 2.6 Roles and Responsibilities

Role	Responsibilities
Chief and Council	<ul style="list-style-type: none"> <li>▪ Establish and define the overall organizational structure, including roles, responsibilities, and authorities to effectively implement and maintain the EMP.</li> <li>▪ Provide the equipment, training, human resources, and funding necessary to implement and maintain the EMP.</li> <li>▪ Participate annually in the EMP Review Meeting.</li> </ul>
Lands & Resources Department  The Lands & Resources Manager is ultimately responsible for the following tasks but is allowed to delegate procedural aspects to other department staff and/or other Sema:th departments, contractors, agencies, etc., as appropriate.	<ul style="list-style-type: none"> <li>▪ Maintain the Approved EMP               <ul style="list-style-type: none"> <li>○ Conduct or assign responsibilities for EMP/EOP reviews and inspections and related documentation.</li> <li>○ Maintain current EOPs within the EMP.</li> <li>○ Establish and implement EMP document control procedures.</li> <li>○ Ensure that legal requirements relevant to the EMP are reviewed annually.</li> <li>○ Maintain a central, electronic and hard copy version of the EMP.</li> <li>○ Prepare the Annual EMP Review Report.</li> <li>○ Coordinate and participate in the Annual EMP Review meeting.</li> <li>○ Prepare an annual budget for Chief and Council to review and approve for the implementation and maintenance of the EMP.</li> </ul> </li> </ul>



Role	Responsibilities
Lands & Resources Department	<ul style="list-style-type: none"> <li>○ Ensure that adequate training of Sema:th staff is provided related to the implementation and requirements of the EMP.</li> <li>▪ Communicate the EMP               <ul style="list-style-type: none"> <li>○ Ensure that staff and contractors are aware of the EMP and EOP requirements and objectives.</li> <li>○ Communicate the EMP goals, objectives, and EOPs both internally and externally, and as appropriate.</li> <li>○ Liaise with, advise, and report back to Chief and Council on the status of project activities and any environmental issues.</li> <li>○ Advise Chief and Council of any non-compliance and any emerging environmental issues and assist in addressing them.</li> <li>○ Liaise with regulatory agencies as required.</li> <li>○ Maintain a registry of complaints.</li> </ul> </li> <li>▪ Review Compliance with the EMP               <ul style="list-style-type: none"> <li>○ Schedule and coordinate internal EMP and EOP reviews.</li> <li>○ Implement or assign corrective action as required in response to inspection or monitoring results, audit findings, Chief and Council reviews or incidence reports.</li> <li>○ Monitor contractor's compliance.</li> <li>○ Periodically review monitoring reports to ensure required data is being collected.</li> </ul> </li> <li>▪ Maintain EMP Related Documents (including but not limited to):               <ul style="list-style-type: none"> <li>○ Environmental permits, approvals and government agency correspondence related to the EMP.</li> <li>○ Agreements with fuel, chemical and waste contractors and suppliers for activities related to the EMP.</li> <li>○ Facility site plans, records, checklists, audit reports and related documentation.</li> </ul> </li> <li>▪ Environmental Incidences               <ul style="list-style-type: none"> <li>○ Promptly investigate all reportable environmental incidences to ensure that appropriate reporting, response and other legal requirements have been met.</li> </ul> </li> </ul>



Role	Responsibilities
Lands & Resources Department	<ul style="list-style-type: none"><li>○ Able to stop work to ensure compliance with regulatory and/or EMP requirements.</li><li>○ Ensure environmental incidents are reported to the appropriate/applicable agencies and Chief and Council.</li><li>○ Retain the services of a qualified Environmental Professional to assess and mitigate risk associated with impacts to the environment.</li></ul>
Contractors	<ul style="list-style-type: none"><li>▪ Adhere to the requirements set out in the EMP and other applicable legislation.</li><li>▪ Communicate environmental responsibilities and requirements of this EMP to their staff and sub-contractors, and record that communication.</li><li>▪ Ensure all members of their staff and sub-contractors are trained to prevent or mitigate environmental impacts.</li><li>▪ Ensure all labour, equipment, and materials are available to execute the project activities and respond to environmental incidents.</li><li>▪ Correct deficiencies and any non-compliance items raised by Sema:th First Nation.</li><li>▪ Retain the services of a Qualified Environmental Professional to assess and mitigate risk associated with impacts to the environment.</li></ul>



## 3.0 Methodology

A multi-staged approach was taken for the development of the EMP to ensure the goals and objectives met the needs and requirements of Sema:th Lands and its community members. The development of the EMP included a collaborative approach to gather invaluable knowledge and input from Sema:th members, which helped guide the identification of the top environmental management priorities on Sema:th Lands.

The following initial tasks were completed to provide important background information necessary for the development of the EMP and the associated EOPs:

- Review of existing literature related to environmental features and activities associated with Sema:th Lands;
- Community engagement; and
- Compilation of existing legislative guidelines, policies, regulations, best management practices (BMPs), and applicable standards.

### 3.1 Literature Review

To develop an understanding of the existing baseline conditions and to assist in identifying key environmental management priorities on Sema:th Lands, a desktop overview and literature review was completed. Documents included, but were not limited to:

- Sumas First Nation Phase 1 Environmental Site Assessment, 2009;
- Sumas First Nation – I.R. No. 6 Phase 2 Environmental Site Assessment, 2012;
- Draft Sumas First Nation – I.R. No. 6 Phase 3 Environmental Site Assessment, 2013;
- Stó:lō Environmental Conservation and Land Use Policy – Draft, August, 2002;
- Stó:lō Heritage Policy Manual – May, 2003;
- Upper Stó:lō Fraser Valley Plant Gathering book;
- Fire Protection Agreement – December, 1996;
- Sumas First Nation Draft Highest and Best Use Study – December, 2012; and
- Sanitary Sewer Agreement – December, 1991.



To date, a number of site investigations have been completed or are on-going on Sema:th Lands to identify present and potential environmental management issues, particularly related to site contamination. The most significant of the studies completed to date have included Phase 1 (completed in 2009), Phase 2 (completed in 2012), and Phase 3 (in progress) environmental site assessments (ESA) and an environmental emergency response plan, completed in 2011. Specific documents are discussed further below.

### 3.1.1 Phase I Environmental Site Assessment

A Phase I Environmental Site Assessment (ESA) was completed by Teranis Consulting Ltd. (Teranis; Sumas First Nation Phase 1 Environmental Site Assessment, 2009) to establish the environmental conditions and identify areas of primary environmental concern on Sema:th Lands prior to the implementation of the Land Code. Teranis identified a total of forty four (44) Areas of Potential Environmental Concern (APECs) on or adjacent to Sumas land. APECs were associated with fill sites, fuel storage tanks (above and underground), vehicle maintenance areas and/or commercial/industrial operations, such as the Brick Plant, Metal Box site, former SES Soil Remediation Facility, former Rotary Kiln site, former Miners Camp and former Saw Mill.

### 3.1.2 Phase 2 Environmental Site Assessment

The Phase 2 ESA was completed by Teranis in 2012, to confirm the presence or absence of contaminants within the areas of potential environmental concern identified during the Phase 1 ESA (Sumas First Nation – I.R. No. 6 Phase 2 Environmental Site Assessment, 2012). Summary of the results indicated that metals and hydrocarbons were found to be elevated in soil and groundwater, and a total of 22 Areas of Environmental Concern (AECs) were retained for further investigation from the original 44 APECs. The principle areas of concern include the following:

- Landfill (stability, asbestos, contaminated soil & leachate plume);
- Widespread low level metals and PHC impacts at the Brick Plant;
- High levels of PHCs in soil & groundwater at the former Rotary Kiln, Bunker UST and former fueling facility on Lot 76;
- Metals and PHCs on Lot 55 and Metal Box Container site; and
- Fill quality west of Kilgard Road and south of the Admin Office.



Phase II recommendations included:

- Conduct a Supplemental Phase 2 ESA to verify and delineate contamination (metals, PAHs - naphthalene and phenanthrene and petroleum hydrocarbons) identified by the Phase 2 ESA;
- Advance additional groundwater monitoring wells to establish background groundwater quality;
- Confirm the presence of asbestos in soil at the landfill site and determine the source of this material;
- Assess slope stability at the former SES landfill site;
- Identify the location of groundwater abstraction wells on Sumas lands and their current status and usage;
- Conduct additional air quality monitoring to assess potential impact from local source(s), and to confirm AQ during spring, summer and fall, when impacts are typically more pronounced; and
- The former Brick Plant appears to be in a considerable state of disrepair. Building walls appear to be structurally unsound and may collapse and pose a risk to people working on the site. It is recommended that the Nation retain a suitably qualified structural engineer to assess building condition, safety issues, potential for continued long term use and anticipated maintenance and decommissioning costs.

### 3.1.3 Phase 3 Environmental Site Assessment

At the time of writing this document, a Phase 3 ESA is currently on-going and is being completed by Teranis. The purpose of the Phase 3 is to focus on delineating soil and groundwater impacts and completing recommendations for the areas of environmental concern, as outlined in the Phase 2 report. Based on the results of the Phase 3 ESA, further recommendations for management will likely focus on soil and groundwater impacts; quarterly monitoring of groundwater and surface water in select areas; completion of a human health and ecological risk assessment; and remediation efforts through removal of soil and/or groundwater contaminant sources.

### 3.1.4 Sumas First Nation Emergency Plan

The Sema:th emergency response plan was updated in September 2011 (Sumas First Nation Emergency Plan, 2011). The plan provides an overview of, but not limited to the following:

- Emergency contacts and community context;
- Emergency plan overview;
- Sema:th management organizational structure;
- Hazard, risk and vulnerability assessment;



- Evacuation procedures and response action plans; and
- Recovery roles and procedures.

## 3.2 Community Engagement

Community input into the EMP is a critical component of the development of the EMP. To fully engage the Sema:th community a series of activities and discussions related to environmental management were completed. Through coordination with the Lands Advisory Committee (LAC), Chief and Council, and Lands staff, community engagement initiatives have included:

- Community newsletters;
- Development and distribution of a community questionnaire;
- Community open house;
- Meetings, workshops, and presentations with the Sema:th Management Team;
- Youth visit; and
- Graffiti boards.

The objectives of the community engagement and consultation process were to:

- Gain the best possible understanding of the existing conditions on Sema:th Lands;
- Gain an understanding of Sema:th members principal concerns regarding environmental issues on their lands;
- Identify the top environmental management priorities on Sema:th Lands; and
- Collaborate and develop a series of goals, objectives, and targets for each environmental management category.

Through this consultation, the top ten environmental management priorities on Sema:th Lands were identified (discussed in Section 3.3 and Section 4.0).

### 3.2.1 Community Newsletters

Two newsletters were developed and distributed to the community to inform Sema:th members about the EMP and the process involved in its development. The first newsletter, distributed by the LAC on February 27, 2013, outlined the purpose and objectives of the EMP and introduced the upcoming community questionnaire and open-house. The second newsletter was distributed by the LAC on April 5, 2013 and summarized the results of the questionnaire and open house.



### 3.2.2 Community Questionnaire and Open House

A community questionnaire was developed and distributed to Sema:th members by the LAC on March 11, 2013. Questionnaires could also be completed at the Open House, held on March 14, 2013. The community survey questionnaire consisted of 12 questions to gauge members knowledge and awareness surrounding environmental issues and management on Sema:th Lands. Members were also asked to identify the resources they value most and discuss the biggest environmental threats to Sema:th Lands. The questionnaire was open to members' ages 14 years and older. A total of 96 questionnaires were completed by Sema:th members. The results of the survey were analysed and the findings are summarized in a memorandum, along with the questionnaire, which are provided in Appendix A.

### 3.2.3 EMP Meetings

Throughout the development of the EMP, the following meetings were held with Lands Staff, the LAC, and Chief and Council to incorporate the best interests of Sema:th members throughout the project design, planning, and implementation:

- Project Initiation Meeting – February 21, 2013;
- Questionnaire Results Presentation and Confirmation of EOP Categories – March 25, 2013; and
- EOP Goals and Objectives Workshop – April 2, 2013.

The objectives of the meetings were to:

- Provide project updates;
- Solicit input and seek guidance on the development of the EMP;
- Identify and confirm the list of top environmental management priorities to be highlighted in the EMP through the development of the 10 EOPs ;
- Develop specific goals for each EOP and a list of objectives and targets to meet the goals – the list of goals, objectives and targets provide the framework for each EOP; and
- Provide an open forum for discussion with Sema:th members through their Leadership to gather information from the community. This invaluable information ensures the EMP captures the communities goals and priorities for environmental management on Sema:th Lands.

Taking into account the input from the community, guidance of the Leadership (Chief and Council and LAC), review of background documents, and knowledge gained through community consultation, a list of the top 10 environmental management priorities for the EMP were identified as follows (in no particular order):



- Air Quality;
- Groundwater Protection;
- Habitat Protection;
- Fuel Handling and Disposal;
- Soil and Fill Management;
- Solid Waste Handling and Disposal;
- Land Development;
- Surface Water Management;
- Cultural Resources Protection; and
- Environmental Emergency Response.

Descriptions of the 10 environmental management priorities are discussed further in Section 4. Each environmental priority has been developed into a separate EOP which are found in Appendix A. The EOPs are designed to provide guidance for Sema:th on environmental management issues.



## 4.0 Environmental Management Priorities

Through consultation and review of background documents, 10 environmental management priorities were identified for Sema:th Lands. The following section provides an overview of each priority and a high-level description of existing conditions that helped guide the development of the EOPs.

### 4.1 Air Quality

Air quality is a measure of the state of the air around us and the air that we breathe. Good air quality refers to air that is unpolluted, clear, and clean. Poor air quality refers to polluted air that has the potential to be harmful to human health or the environment. Poor air quality may be the result of emissions to the atmosphere from human activities (e.g., car emissions, industrial activities; Province of British Columbia, 2013a).

Sema:th First Nation is located in the Fraser Valley. The Fraser Valley is located in a confined airshed, which means that the area is more likely to experience a buildup of contaminants in the air (Fraser Valley Regional District, 2008). The confined airshed in the Fraser Valley is likely created by the weather, wind, and geography of the valley (Province of BC, 2013b). In particular, the topography of the area (mountains and valleys), wind direction, temperature, air pressure, and the types of pollutants all contribute to the amount of pollutants that build up in the air and in turn affect the local and regional air quality. The buildup of pollutants in the air has the potential to negatively impact human health, visibility, and the environment.

Locally, the main sources of poor air quality within the Sema:th Lands are related to industrial operations and agricultural activities. Community input identified air quality as a major concern particularly related to emissions from Royal Flex Lox Pipe Plant (off Sema:th Lands) and Big Steel Box. Air monitoring was carried out as a component of the Phase II ESA to assess the potential impacts from the asphalt batching plant or potential sources other industrial activities. The particulate material concentrations measured during the testing measured quite low and did not exceed provincial or Metro Vancouver Air Quality Objectives. The data did suggest however, that there are short-term elevated concentrations of PM10 that may be due to localized sources (e.g., vehicle emissions, road dust, industrial emissions, and local combustion sources). It should also be noted that PM10 concentrations measured on Sema:th were consistently more elevated than those recorded in Abbotsford.



Managing the air quality associated with these operations (e.g., air emissions such as dust, air pollution associated with vehicle emissions) can help to improve the air we breathe and allow for a healthier environment. While there are limitations for improving air quality in the Fraser Valley, and particularly on Sema:th Lands due to the location and surround industry, we can still control the quality of our emissions and act as stewards of the environment to promote air quality.

## 4.2 Groundwater Protection

Water occurring beneath the ground surface amongst spaces between rocks and soil is referred to as groundwater. The water within these spaces is typically found within 100 m of the ground surface (Environment Canada, 2011). Water underground can collect in a formation of permeable rock or loose material (e.g., sand, gravel, silt) and can be extracted for human consumption. This collection of water underground is called an aquifer and is the source of drinking water for Sema:th First Nation.

As described in the Teranis Phase I ESA (2009), the depth of groundwater on Sema:th Lands is likely to be variable depending on subsurface stratigraphy and bedrock elevation. Based on water levels within identified streams and creeks, groundwater is likely within 5 m of ground surface across much of Sema:th Lands. Local groundwater flow is inferred to generally flow south. Information presented on the Ministry of Environment web based BC Water Resources Atlas for the community drinking well indicated that groundwater is approximately 4 metres below ground surface. The Water Resources Atlas also indicates that there are 15 groundwater wells on Sema:th Lands. However, Teranis notes that provincial well inventories are typically incomplete and additional wells may be present.

Based on inferred groundwater flow direction and local creeks, land use located to the north, northeast, northwest should be considered and is located up-gradient and have the greatest potential to impact groundwater quality on Sema:th Lands. This also includes land currently occupied by Royal Flex Lox Pipe Plant.

Impacts to groundwater can occur as a result of contamination, which can cause groundwater to be unsuitable for use. Groundwater contamination is associated with hazardous materials seeping through the ground to groundwater sources or aquifers. Cleaning up contaminated groundwater can be very expensive and difficult. Contamination sources may include but are not limited to leaking gasoline storage tanks, pesticide or fertilizer, and accidental spills that can negatively impact the quality of groundwater.

Sema:th's drinking water is supplied by groundwater wells and a water treatment system is located on the north side of Lakeview Drive (Teranis, 2009). However, it is thought that some community members may



obtain their drinking water from private abstraction wells. Given the shallow elevation of the groundwater and the drinking water wells, there is concern of potential contamination and infiltration from surface level pollutants.

Sema:th currently has a groundwater sampling program in place to test and analyze domestic water use for Total Coliform, E. Coli, and Enzyme Substrate Coliform on a weekly basis. Results have been found to be in compliance with Health Canada drinking water guidelines (Sumas Lands & Resources Officer, Personal Communications, 2013). Regular sampling was also recommended in the Draft Phase III ESA (quarterly sampling) at several monitoring wells: former SES site (landfill and fill area), the brick plant waste dump, and Bunker C. There are concerns regarding elevated petroleum hydrocarbons, dissolved metals, PAHs, and other indicators of landfill leachate and ground gas parameters (e.g., methane and carbon dioxide). Recommended continuous and regular monitoring of groundwater quality is consistent with the feedback received from the community consultation process.

### 4.3 Habitat Protection

Habitat can be defined as the natural home or environment of a plant, animal, or other organism. All plants and wildlife depend on a healthy habitat. Aquatic habitat is the habitat within water, specifically the organisms such as plants and animals that occur in water, and can include creeks, streams, and wetlands. Terrestrial habitat includes land surfaces such as habitat within forests or a field. A variety of aquatic and terrestrial habitats occur across Sema:th Lands.

The loss of habitat is one of the main reasons that species are at risk today. A range of factors can lead to habitat loss. These factors include increased development, resource management activities, pollution and the spread of invasive plants and animals (Government of Ontario, 2013).

Habitat protection includes the use of practices and strategies to conserve and protect species and their habitats. Practices and strategies may include identifying species or communities that are sensitive within a given area, using guidance documents or best management practices when conducting activities in or near aquatic or terrestrial habitat, and obtaining appropriate permits when undertaking works in or near aquatic or terrestrial habitat. Protection of aquatic and terrestrial habitat is important for the long-term viability of our lands.

The existing surface water and creeks on Sema:th Lands provide habitat for a number of resident fish species as well as migratory Pacific salmon (both currently and historically), while the existing terrestrial habitat may be utilized by a variety of wildlife species and migratory birds. There are a number of species



afforded protection under federal legislation, including species at risk and migratory birds that have been identified on Sumas Mountain, immediately adjacent to Sema:th Lands. The community is concerned that aggressive development on the surrounding landscape will reduce the amount of available and quality of habitat remaining on their traditional territory. While habitat fragmentation limits migratory corridors for wildlife, the preservation and enhancement of the existing habitat on Sema:th Lands will ensure impacts from development are minimized.

## 4.4 Fuel Handling and Storage

Fuel, such as oil or diesel, is often stored in tanks in above-ground or underground storage tanks, which if not properly installed or maintained can result in fuel spills. Spills of fuel can contaminate drinking water, groundwater, and soil as well as cause odour and health problems. In addition, fuel released into the environment also has the potential to contaminate sewers, drainage ditches, and surface water.

As described in the ESAs, a significant component of impacts to soil and groundwater on Sema:th Lands are associated with poor fuel handling and storage (in addition to fill sites and industrial activities) (Teranis, 2012). The Phase II ESA noted that indications of hydrocarbon impacts (strong odours and visible product in soil) were identified in numerous locations including but not limited to the former Rotary Kiln, Brick Plant, a former service station, Sumas Works Yards, Big Steel Box, and various lots. Therefore, proper fuel handling and storage procedures including response and mitigation measures are key to preventing the unnecessary release of fuel into the environment. The results of the community questionnaire suggested a lack of education and awareness related to proper fuel handling, spill response, proper storage and disposal.

## 4.5 Soil and Fill Management

Soil is unconsolidated organic or mineral material located at the surface of the earth that serves as a medium for the growth of plants on land (Agriculture and Agri-Food Canada, 2011). Fill refers to soil that has been removed from one area and deposited in another area, typically as a means to fill depressions and holes to make an area suitable for development. It is important to properly manage soil and fill brought to the Nation and/or removed from the Nation to ensure deposited material is not contaminated, thereby reducing the potential for human or environmental health risks.

The ESAs noted numerous areas of soil contamination on Sema:th Lands. In particular, Sumas Environmental Services (SES) operated a soil treatment facility on Sema:th Lands which involved the biological treatment of petroleum hydrocarbon contaminated soil. Treated soil was reportedly deposited in a landfill located on Sema:th Lands, west of the SES treatment facility. The Phase II ESA concluded that



the findings suggest that soil deposited in the Landfill site was not treated sufficiently to reduce hydrocarbon concentrations below 'regulatory criteria'. In addition, the ESA highlighted several fill areas where there was elevated presence of metals and PAHs suggesting the use of untreated/contaminated fill.

The Draft Phase III ESA also provided recommendations to complete a human health and ecological risk assessment for chromium, nickel, and dissolved metals concentrations in soil in several areas on Sema:th Lands to determine if their concentrations pose a potential threat. The environmental issues surrounding soil and fill management were also identified during the community consultation process. Sema:th members felt that contaminated soils was one of the top environmental threats and identified soil and fill management as a priority on their lands.

## 4.6 Solid Waste Handling and Disposal

Solid waste is waste that is produced by residential, commercial, institutional, demolition, land clearing, or construction sources (Province of BC, 2013c). Waste management is the collection, transport, processing or disposal, managing and monitoring of waste materials. The term usually relates to materials produced by human activity, and the process is generally undertaken to reduce their effect on health, the environment or aesthetics (Wikipedia, 2013).

The ESAs noted and the community consultation confirmed issues surrounding several "household" type waste dumps on Sema:th Lands, which included observations of burned garbage and improperly disposed garbage along roadsides and along creek banks. The questionnaire results suggest that the majority of members feel that waste and other materials are not being disposed of properly, suggesting a lack of education and awareness in the community. The EOP will provide information related to the proper handling and disposal of waste material.

## 4.7 Land Development

Land development refers to the alteration of land through activities such as grading, excavation, soil removal, construction, alteration, or clearing of habitats (Queen's Printer for Ontario, 2013). This alteration or conversion of land is associated with modern communities that are constructed or reconstructed for people to live, work, worship, shop, play, and with other supporting land uses (Dewberry & Couture, 2008).

Throughout the land development process, it is important to maintain environmental and cultural values supported by the land and surrounding environment. Maintenance of environmental and cultural values during land development can be achieved through the use of environmental protection and stewardship



practices (Province of British Columbia, 2013d).

The City of Abbotsford has currently zoned Sema:th Lands as agricultural, general industrial, and rural residential land use. It should be noted that Sema:th will be developing their own Land Use Plan and Zoning By-law which will likely change these designations. General land use within Sema:th Lands include residential, parkland, agricultural, and industrial (currently brick and clay products manufacturing, vehicle servicing facility, and steel container storage restoration). Through the implementation of this EMP, we hope to facilitate and regulate responsible and sustainable development to ensure the long-term viability sustainability of Sema:th Lands.

## 4.8 Surface Water Management

Surface water refers to water that has accumulated on the ground surface (Thompson Rivers University, 2006). Water typically accumulates on the ground surface through precipitation such as rain, snow, or hail. As water accumulates on the surface, it begins to flow towards creeks, streams, lakes, ditches, or installed storm sewer systems or reservoirs. Regionally, surface water originates in mountainous areas and then flows through creeks, streams, and as overland flow to larger creeks and streams in lowland areas.

Surface water can be negatively impacted through contamination from human and natural sources (Thompson Rivers University, 2006). Human-caused contamination can occur through the release of hazardous materials to surface water from residential, industrial, and commercial operations. For example, water within a creek which runs through an agricultural area can be negatively impacted if pesticides and fertilizers are released into the creek. Pesticides and fertilizers may cause detrimental impacts to the aquatic life of the creek, reducing the creek's productivity, and reducing the quality of the surface water. Natural sources of surface water contamination include bacteria, viruses, or toxins within the water which are naturally occurring. If the water is consumed by wildlife, pets, or humans, they may become ill.

There are a number of watercourses that flow through or adjacent to Sema:th Lands including Sumas River, Marshall Creek, Kilgard Creek, and a number of other unnamed creeks and streams. A primary concern of the community surrounds the transportation of sediment and other pollutants into surface waters on Sema:th Lands through stormwater runoff, erosion, and other point/non-point sources. Proper management of surface water is important to the long-term viability of our aquatic and terrestrial environments.



## 4.9 Cultural Resources Protection

As described by Jordan-Bychkov and Domosh, culture can be defined as learned collective human behaviour. These learned traits form a way of life held in common by a group of people. Learned similarities in speech, behaviour, ideology, livelihood, technology, value system, and society bind people together.

Sema:th boasts a rich, complex, and dynamic culture full of our own distinct values, beliefs, traditions, and heritage. The future of Sema:th is important. The future of our people is based on our history, land culture, people and resources. Sema:th People wish to incorporate Traditional Knowledge into environmental management processes and protect our cultural resources so that development, activities on our land, and the use of our resources benefit the people today and ensure prosperity for future generations. We wish to continue to grow our culture, while learning from the past, to create a vibrant future.

## 4.10 Environmental Emergency Response

In the event of an environmental emergency, we must be prepared to respond to any event that has the potential to negatively impact human health and/or the environment. Examples of environmental emergencies include landslides, earthquakes, fires, floods, spills and the release of hazardous substances in to the natural environment. An emergency response includes a team of government, industry, communities, and local organizations to respond to an environmental emergency as soon as possible to reduce impacts (Government of Canada, 2012). Environmental emergency response is key to preventing, preparing for, and mitigating situations that have the potential to negatively affect the environment and human health (Province of British Columbia, 2013e).

Through the questionnaire and consultation process, community members expressed a consensus of concern related to the lack of formal procedure surrounding environmental emergency response. The majority of the community were either unsure or did not know what to do or who to call in the event of an environmental emergency. Additionally, the community expressed a feeling of concern related to the following potential environmental emergencies on Sema:th Lands:

- Spills (i.e., fuel and oil spills);
- Landslides caused by blasting on the mountain;
- Earthquakes;
- Fires – specifically related to explosions or industrial fires at Flex Lox; and



- Gas leaks or pipeline bursts.

Education and awareness training to the community would be required to ensure individuals are aware of specific responsibilities and procedures as they pertain to emergency response.



## 5.0 Implementation

The following implementation strategies will assist in putting the EMP and related EOPs into full effect.

### 5.1 General Considerations

The EMP and associated EOPs are a comprehensive environmental strategy that provides Best Management Practices (BMPs), guidelines, and strategies to assist Sema:th in protecting our land, environment, resources, and People. The EMP is intended to be visionary, goal-oriented, and long-term focused, based on the aspiration of both present and future community Members.

### 5.2 Obligations for Implementation

When Chief and Council approve the EMP, or any amendment to the EMP, the Nation and all entities or parties working on Sema:th Lands must follow the EMP and utilize the EOPs, BMPS, guidelines, and strategies to guide future land development activities in a manner that promotes environmental stewardship while minimizing negative effects. Chief and Council will have the mandate to make all community members and other parties wishing to operate on Sema:th Lands, aware of the EMP and related EOPs.

### 5.3 Reviewing and Updating the EMP

Provisions for reviewing and updating the EMP are found in the following sections of this report:

- Section 2.2
- Section 2.3
- Section 2.4
- Section 2.5

### 5.4 Building the Sema:th Lands and Resources Department

The Sema:th Lands and Resources Department is currently staffed in the following two positions – the Lands and Resources Manager and the Lands Clerk. Through the implementation of the EMP, significant responsibilities are going to be allocated to the Lands and Resources Department. Additional staffing resources will be required to ensure that the Department is fully functional and is able to manage the additional workload and responsibilities. Potential positions could include:



- Enforcement Officer;
- Environmental Technician(s); and
- Environmental Officer.

## 5.5 Schedule

The Implementation Schedule (Appendix B) is designed to assist Sema:th First Nation with establishing clear timelines for activities recommended in the EMP. The timeline summarizes the recommended activities of the EMP and has organized these into a series of timeframes including: foundation activities (< 1 year); short term activities (1 – 3 years); medium term activities (4 – 5 years); and long-term activities (6 years +). The table also identifies specific timeframes within specific fiscal years for the implementation of these activities.

## 5.6 Training and Education

As Sema:th begins to implement the EMP there are going to be employment opportunities for Sema:th Members in the areas of environmental management. To maximize these opportunities and to ensure that Sema:th Members have priority hiring opportunities on jobs related to environmental management (e.g., construction monitoring), Sema:th will build community capacity through the following:

- Identify suitable candidates to take part in environmental training programs both for short-term and long-term employment (e.g., Environmental Officer);
- Allocate specific funding to train Members; and
- Maintain a database of personnel who have completed environmental training programs related to the EMP.

The following provides a list of schools and environmental training programs relevant to the implementation of the EMP and applicable EOPs.

### Vancouver Island University

- Erosion and Sediment Control (3-day);
- Environmental Field Techniques for Construction Projects (3-day);
- Environmental Monitoring for Construction Projects (3-day);
- Water Quality Sampling and Design (3-day);
- Freshwater Sampling Methods and Design (2 days each); and



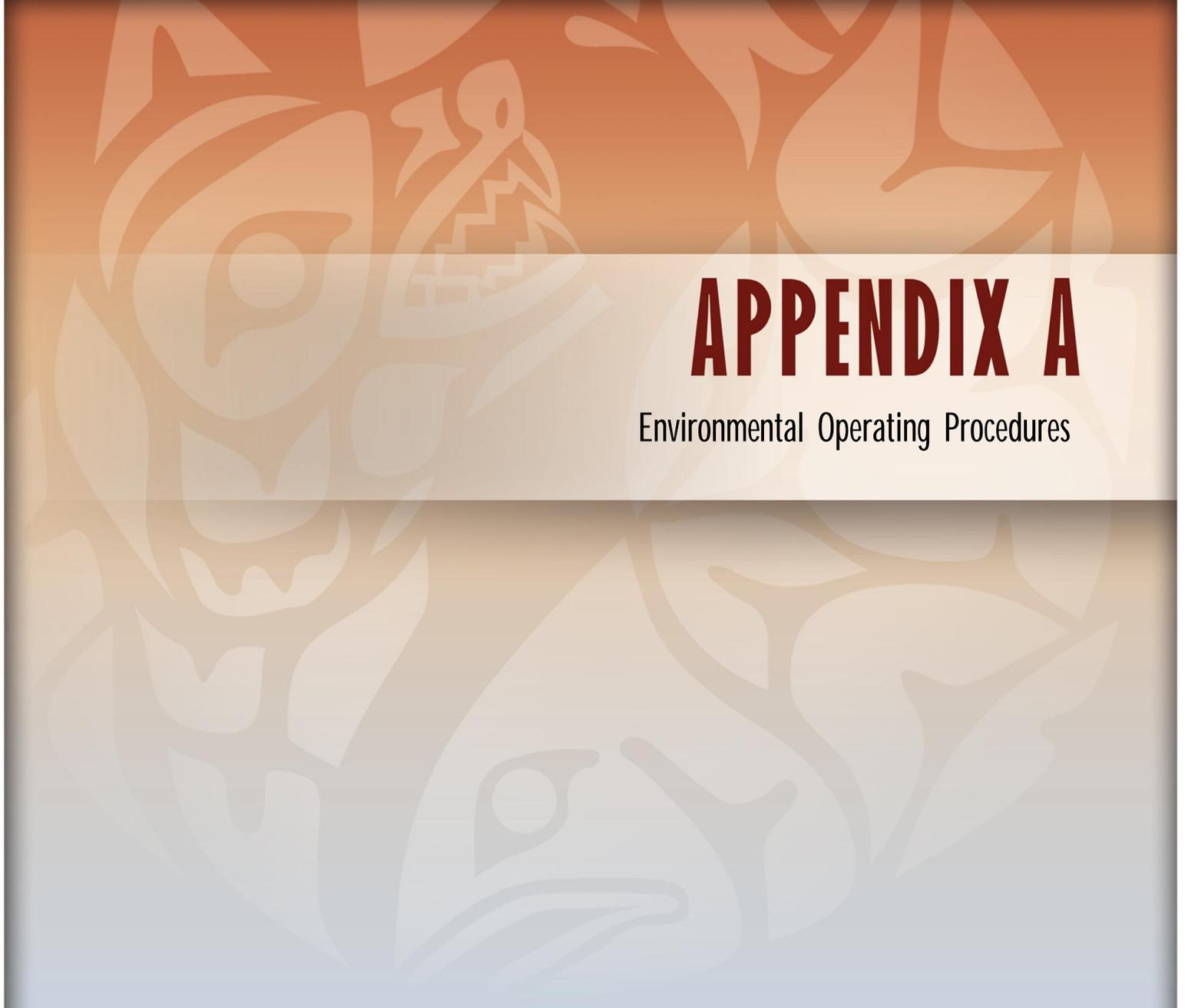
- Environmental Technician Certificate Program (25-day).

Kwantlen Polytechnic University

- Environmental Protection: Diploma of Technology (2 - 3 years)

British Columbia Institute of Technology (BCIT)

- Fish and Wildlife Recreation Diploma Program (1 year)



# APPENDIX A

## Environmental Operating Procedures





## EOP 1

# Air Quality Management

Air quality is a measure of the state of the air around us and the air that we breathe. Poor air quality refers to polluted air that has the potential to be harmful to human health or the environment. Poor air quality may be the result of emissions to the atmosphere from human activities (e.g., car emissions, industrial activities; Province of British Columbia, 2013a).

## Goal:

- We recognize that air is a shared resource and essential to life, and we will do our part to promote improved air quality for everyone.

## Objectives:

- Establish better relationships with Metro Vancouver and the Fraser Valley Regional District.
- Become more involved in the regional air quality decision-making process as follows:
  - Establish baseline conditions based on the work done by regional agencies to date.
  - Draw upon the existing regional air quality monitoring network to characterize/ monitor air quality moving forward.
- Create policies for household burning.
- Create and enforce a process to manage air emissions from new development.
- Educate members and generate awareness on air quality issues and management strategies for our community and neighbours.

Environmental Operating Procedure No. 1	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Nation Members	Revision Date: July 25, 2013



## Terminology

Criteria Air Contaminants: While many different contaminants may be emitted to air, there is a set of contaminants considered the “Criteria Air Contaminants” that are of particular interest in analyzing air quality. These contaminants are:

- Oxides of nitrogen ( $\text{NO}_x$ )
- Sulphur dioxide ( $\text{SO}_2$ )
- Carbon monoxide (CO)
- Volatile Organic Compounds (VOCs)
- Particulate Matter (PM)
  - Total Particulate Matter (TPM)
  - PM with a diameter less than or equal to 10 microns ( $\text{PM}_{10}$ )
  - PM with a diameter less than or equal to 2.5 microns ( $\text{PM}_{2.5}$ )

Ground-level Ozone (ozone): is an air contaminant associated with many negative health and environmental effects. Ozone is not emitted directly, but is the product of a series of photochemical reactions occurring in the atmosphere involving two precursor pollutants,  $\text{NO}_x$  and VOCs.

Fine Particulate Matter: In addition to being one of the criteria air contaminants, it must be understood that fine particulate matter ( $\text{PM}_{2.5}$ ) can be both directly emitted from a source (primary) or created through a series of photochemical reactions in the atmosphere (secondary).

Ammonia: is a colourless pollutant with a pungent odour that also acts as a precursor to the photochemical reactions that produce secondary fine particulate matter. Ammonia itself is also associated with negative effects on human health and the environment. Major sources of ammonia include livestock waste and fertilizer production.



## Legislation, Standards, and Policies

- *Canadian Environmental Protection Act, 1999 (CEPA 1999)*
- Indian Reserve Waste Disposal Regulations, C.R.C., c 980
- *British Columbia Environmental Management Act (Part 6 – Clean Air Provisions)*
- British Columbia Waste Discharge Regulation (B.C. Reg. 320/04)
- British Columbia Agricultural Waste Control Regulation (B.C. Reg. 131/92)
- British Columbia Open Burning Smoke Control Regulation (B.C. Reg 145/93)
- British Columbia Solid Fuel Burning Domestic Appliance Regulation (B.C. Reg 302/94)

## Potential Impacts

Sema:th Nation is located in the Fraser Valley. The Fraser Valley is located in a confined airshed, which means that the area is more likely to experience a buildup of contaminants in the air (Fraser Valley Regional District, 2008). The confined airshed in the Fraser Valley is likely created by the weather, wind, and geography of the valley (Province of BC, 2013b). The airshed in the Fraser Valley is bordered by seacoast and mountains. This creates the potential for air to remain “trapped” within the Fraser Valley, creating a higher potential for pollutants to accumulate. Additionally, the Fraser Valley is subject to the movement of air emissions from the north western United States into the region. This trans-boundary pollution may contribute to air quality locally. The buildup of pollutants in the air has the potential to negatively impact human health, visibility, and the environment.

Maintaining good air quality is essential to the ongoing health of Sema:th and our Lands. Declining air quality may have potential impacts on the people (e.g., increased respiratory illness) and on the environment (e.g., damage to vegetation).

Managing air quality associated with operations on Sema:th Lands can help improve the air we breathe and allow for a healthier environment. While air quality on Sema:th Lands is dictated by regional air quality, we can work towards improving our behaviour and community and act as stewards of the environment to promote good air quality.



## Best Management Practices

All development must comply with applicable Sema:th, federal, and provincial regulations, permits, authorizations, conditions, and agreements with respect to air quality management/protection.

The Fraser Valley Regional District (FVRD) has developed an Air Quality Management Plan (AQMP), originally adopted in 1998 (with draft revisions proposed). The FVRD AQMP identifies key drivers of air quality within the region as being ground-level ozone, fine particulate and precursors to both of these (e.g., ammonia, volatile organic compounds, oxides of nitrogen). The AQMP has linked the long term management of air quality within FVRD to reductions in these key drivers. As the population in the area continues to grow over time, there is the potential for an increase in pollutant emissions associated with the increased activity. Therefore, the AQMP outlines recommendations to help the FVRD with maintaining or improving air quality without limiting growth.

## Strategy 1: Manage future developments

To allow for the management of air emissions associated with future development (e.g., industrial, commercial, or residential) of Sema:th Lands, all development should be subject to a review and assessment (if applicable) of air emissions. Through the air quality assessment process (see Appendix I, EOP Process: Air Quality and Managing Future Developments), identify potential impacts, assess proposed mitigation (e.g. design specifications), and determine net effects.

## Strategy 2: Ongoing monitoring

The Lands & Resources Department shall review annual monitoring reports for approved developments and assess for compliance with associated mitigation measures. Sema:th will work collaboratively with the Proponent and regulators to address any air quality monitoring issues.

## Strategy 3: Manage vehicle emissions through anti-idling policy

Vehicle emissions are a major contributor to air emissions within the regional air shed. One practice to manage emissions from vehicles is to develop and implement an anti-idling policy. Such a policy would engage members of the community and emphasize the importance of improving our personal daily habits. The Lands & Resources Department and/or the Lands Advisory Committee will work with the community to develop the detailed policy, and build capacity within the community with regards to the purpose and need for the policy.



## Strategy 4: Participate actively in regional air quality committees

Sema:th Lands have nearby industrial activities that may affect our air quality but are out of our jurisdiction. By participating in regional committees, we will be more likely to affect change in the best interest of our air quality. Participation in these committees will also allow for Sema:th to draw upon the existing efforts of regional planning committees/agencies in defining baseline conditions and also in developing and implementing real-time air quality monitoring.

## Strategy 5: Leverage relationships with other agencies

The FVRD has declared working proactively with First Nations as a goal of their Air Quality Management Plan. Sema:th will work towards establishing better relationships with the FVRD and the Greater Vancouver Regional District and Metro Vancouver. To improve these relationships, the Lands & Resources Department and the Lands Advisory Committee will consider engaging the districts in a two-way dialogue surrounding the interests and concerns of Sema:th.

## Strategy 6: Prohibit illegal burning of waste on Sema:th Lands

Burning of waste is prohibited under the Indian Reserve Waste Disposal Regulations, Section 10, except under the authority of a permit authorized by the Minister of Aboriginal Affairs and Northern Development. The burning of waste, e.g., household waste, can cause the emission of pollutants that may cause negative effects to human health or the environment. Therefore, burning of waste shall not occur on Sema:th Lands.

## Strategy 7: Minimize open burning

Open burning within the community should be minimized. Efforts will be made to educate the community about the significance of open burning as a source of fine particulates. Sema:th will develop a policy and permitting process to help regulate and minimize open burning.

## Strategy 8: Education and awareness

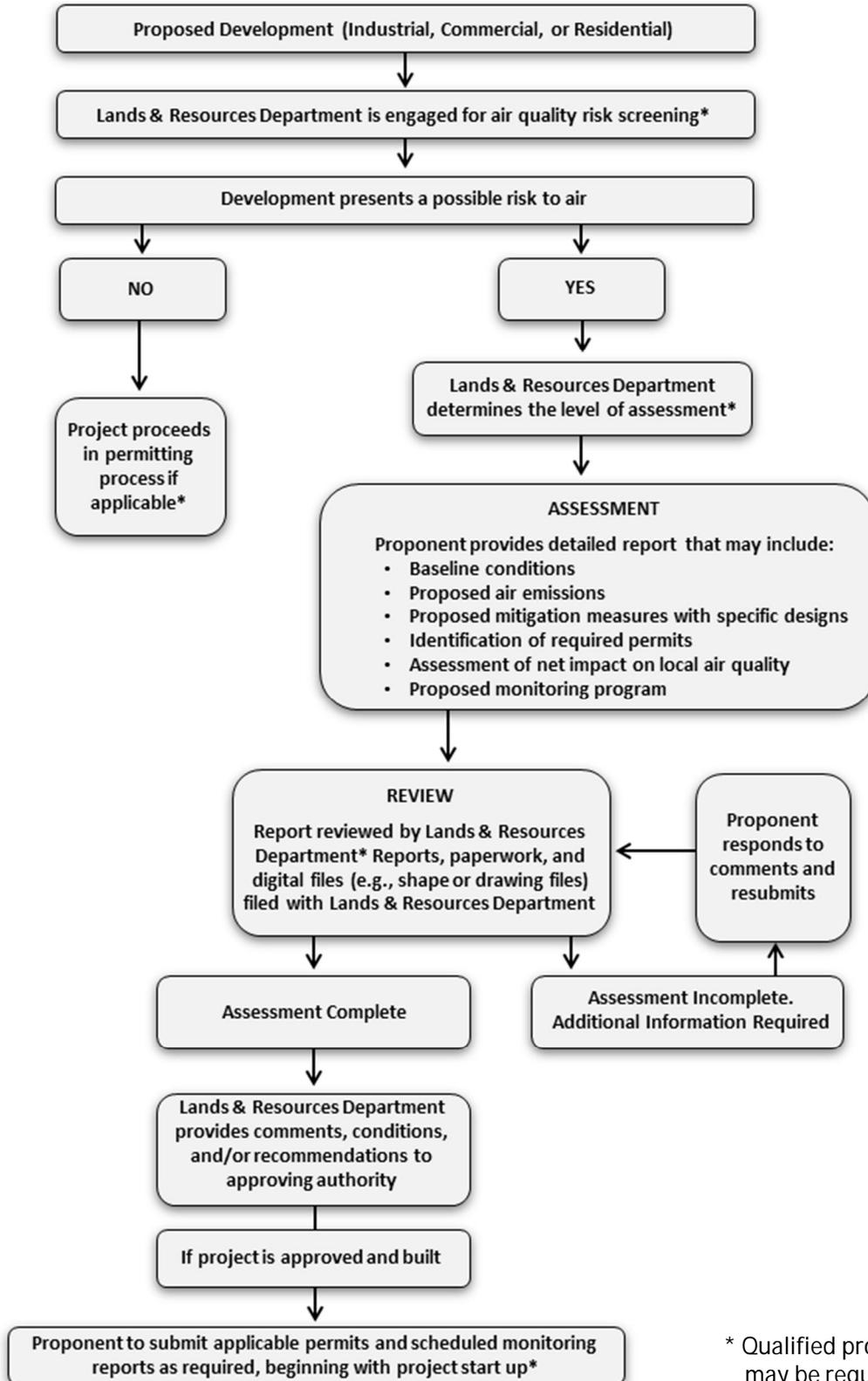
Develop community air quality awareness through education and programs including, but not limited to:

- Anti-idling campaigns;
- Car-pooling advocacy;
- Reducing household energy use; and
- Avoiding power tools (e.g., gas-powered lawn mowers) when possible.



## Appendix I

### EOP Process: Managing Air Quality for Proposed Development



\* Qualified professional services may be required.



## EOP 2

# Cultural Resources

The future of our people is based on our history, land, culture, and resources. We host a rich, complex, and dynamic culture full of our own distinct values, beliefs, and traditions. We will incorporate Traditional Ecological Knowledge into environmental management processes and protect our cultural resources so that activities on our land and the use of our resources benefit Sema:th People today and ensure prosperity for future generations.

### Goal:

- We will continue to grow our culture, while learning from the past, to create a vibrant future.

### Objectives:

- Preserve and protect our culture.
- Act as cultural leaders and educate our youth, membership and the public on Sema:th culture and knowledge.
- Pass on our traditions, skills, and knowledge for future generations.
- Enforce the Stó:lō Heritage Policy.

Environmental Operating Procedure No. 2	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

**Stó:lō Heritage:** all aspects of Stó:lō culture and lifeways - both tangible and intangible - of the past, present and future, including but not limited to: language, physical / spiritual landscapes; place names; ceremonial sites; burials and burial sites; spirited places; songs; dances; art; craft; design; religious / spiritual / ceremonial practices; places and materials; subsistence and material gathering practices and sites; oral histories including all sqwelqwel and sxwōxwiyám; traditional / historical knowledge; family names; archaeological sites, features and objects; historic sites, documents and objects. Stó:lō Heritage can be classified by 'type', such as Sxwōxwiyám, Xá:Xa, Ceremonial Regalia, etc., as presented in Section 4.0. Also referred to as 'Stó:lō Heritage Resources' in relation to resource management.

**Stó:lō Intellectual Property:** knowledge, the nature of use of which has been transmitted from generation to generation, which is regarded as Stó:lō and as belonging to Stó:lō individuals, families, communities or the Nation as a whole. Stó:lō Intellectual Property, though rooted in the past, is contemporary knowledge that changes with time. Stó:lō Intellectual Property includes: place names; oral history; family names; songs; dances; designs/ images / arts; language; knowledge.

**Features:** objects that form a permanent part of the site of which they are a part; objects that cannot physically be removed from the site of which they are a part - at least not without significant effort or without destroying the object (e.g., sqémél depressions; shell heaps; cache pits; earthworks; culturally modified trees; house frames / foundations; rock walls; pit-fall traps; trails; roasting pits; hearths; stone quarries; burial mounds / pits; monuments; roads / trails; etc.).

**Artifacts:** objects that can be readily removed from the site of which they are a part; moveable objects (e.g., chipped stone flakes, knives, spears and arrowheads; tin cans; glass bottles and jars; basketry; personal gear; groundstone hand-mauls; bone pins; antler wedges; glass beads; looms; instruments; etc.).

**Ancestral Human Remains:** the skeletal or otherwise physical remains of a deceased person or persons in all likelihood of Stó:lō ancestry.

\*Terminology as found in the Stó:lō Heritage Policy Manual.



## Legislation, Standards, and Policies

- Stó:lō Heritage Policy, 2003 – As described in the Policy, the Stó:lō maintain ownership of and jurisdiction over all Stó:lō heritage sites and objects. On behalf of the broader Halkomelem-speaking community, Stó:lō Nation maintains jurisdiction over Stó:lō heritage sites and objects not otherwise linked directly to a family or individual. Stó:lō Nation recognizes and accepts the shared heritage interests of other traditionally Halkomelem speaking communities and organizations not directly associated with the Nation. Stó:lō Nation endeavours to establish heritage related Protocol Agreements, as needed, with such Halkomelem communities and organizations. Stó:lō Nation may also develop heritage related Protocol Agreements with non-Aboriginal governments and resource management agencies.
- *British Columbia Heritage Conservation Act* – British Columbia's archaeological sites are protected under the *Heritage Conservation Act* (HCA). This Act is the latest in a number of pieces of legislation focused on the protection of archaeological sites.
- BC Ministry of Forest Lands and Natural Resources Operations' (MFLNRO) Archaeology Branch Policy "Found Human Remains"

## Best Management Practices

Development and activities must comply with applicable Sema:th, federal, and provincial regulations, permits, authorizations, conditions, and agreements with respect to cultural resources protection.

Application of the Stó:lō Heritage Policy will direct actions as lands are developed and cultivate future use. It is recognized that the purpose of the Stó:lō Heritage Policy is to:

- Protect, preserve and manage Stó:lō heritage – in all its forms – in a manner consistent with Stó:lō values, beliefs and traditions;
- Cooperate with other organizations in the protection, preservation and management of Stó:lō heritage;
- Protect and preserve Stó:lō religious freedom in all its expressions;
- Maintain the integrity of the Stó:lō spiritual world;
- Maintain healthy relations between the contemporary Stó:lō community and Stó:lō ancestors – past, present and future;
- Maintain the integrity of Stó:lō history and heritage through the respectful treatment of Stó:lō knowledge, heritage objects and sites;
- Advance knowledge and understanding of Stó:lō heritage;
- Maintain continuity in Stó:lō heritage and the practice of cultural traditions in forms both old and new; and
- Advance Stó:lō cultural revival.



## Strategy 1: Identify important cultural areas through land use planning

As part of the land use planning process, identify areas for cultural protection based on Traditional Ecological Knowledge, available data (e.g., existing TK Reports), and best practices (e.g., Stó:lō Heritage Policy). As the community grows it will be important to preserve, protect and enhance these significant sites.

## Strategy 2: Develop a cultural baseline overview

Work collaboratively with the Stó:lō Research and Resource Management Centre (SRRMC), to develop a cultural baseline overview of Sema:th Lands. The baseline should include but is not limited to the identification and location of:

- Culturally significant areas (e.g., fishing locations); and
- Culturally significant points (e.g., culturally-modified trees).

Information gathered through the baseline overview will allow Sema:th to inform community members and developers of potential project impacts. It will provide additional information for Council to make better land use decisions regarding future development. Where adverse impacts are identified, this information can be used to assist in developing avoidance, enhancement, or mitigation strategies. Information gathered through this study can also be used to enhance cultural sites and provide opportunities for cultural innovation on Sema:th Lands.

## Strategy 3: Promote cultural resources protection and enhancement

Stó:lō Nation requires that impacts to Stó:lō heritage resources be considered, assessed, and mitigated from all development-related disturbances and impacts. Heritage Resource (HR) studies should be undertaken as either Overview Assessments (HROA) or Impact Assessments (HRIA).

All heritage related studies must be conducted by researchers with an appropriate level of experience and training, under the conditions of a Stó:lō Heritage Investigation Permit (see Section 7.0 of the Policy).

Through the land development process, mechanisms are put in place to promote, endorse, and enforce the Stó:lō Heritage Policy (see Appendix I – EOP Process Cultural Resources Protection for Proposed Development). As part of this, Sema:th will include HROAs and HRIAs as appropriate and in consideration within the Sema:th land development permitting process.

A set of management strategies (related to construction activities) have been adapted from the Stó:lō Heritage Policy and the MFLNRO's Archaeology Branch Policy regarding "Found Human Remains" and have been included as Appendix II, Emergency Impact Guidelines.



## Strategy 4: Create cultural design guidelines

Growth and development, such as new buildings, can impact cultural heritage and Sema:th's sense of history and of place. To help ensure that culture is preserved and protected, Sema:th will consider creating cultural design guidelines, for developers to follow (where appropriate), that outline cultural considerations for buildings and landscaping. These could include, but are not limited to:

- Built form;
- Signage;
- Massing (i.e., size of building);
- Density;
- Height;
- Exterior treatment;
- Landscaping;
- Parking; and
- Visual impact.

## Strategy 4: Leverage relationships with other agencies

While Sema:th and the Stó:lō Nation have the main responsibility for protecting our cultural resources, there are also a number of local, provincial and national organizations that can support First Nation communities in the preservation of our heritage, through grants, funding and in-kind support (i.e., labour, research, etc.). To ensure we maximize the resources available, we will continuously develop and strengthen our relationships with other agencies also responsible for the protection and enhancement of cultural values and resources. We will take an active role in bringing about a forum of co-management and leadership with regard to all cultural resources.

## Strategy 5: Education and awareness

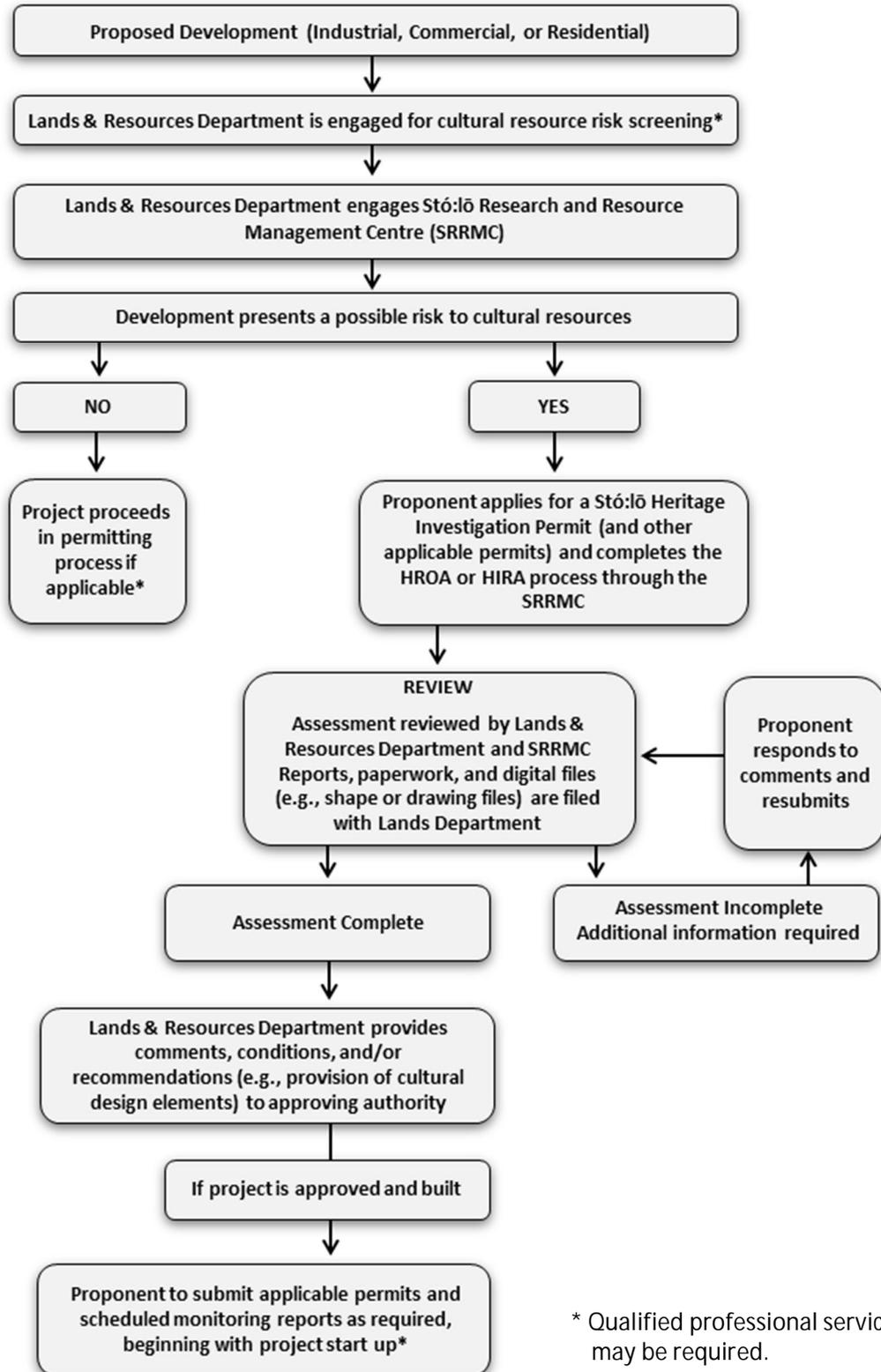
Develop cultural awareness through education and training, with an emphasis on Traditional Knowledge and Land Use. This may include but is not limited to:

- Developing and building a Sema:th Cultural Resource Centre;
- Signage of key community features (e.g., creeks, community buildings);
- Workshops for Elders to share their knowledge;
- Working with local environmental groups to include indigenous species into environmental reclamation projects;
- Promoting the preservation and enhancement of culturally significant areas;
- Consulting with Elders when developing Sema:th policies or plans; and
- Hosting cultural celebrations.



## Appendix I

# EOP Process: Cultural Resource Protection for Proposed Development



\* Qualified professional services may be required.



## Appendix II Emergency Impact Guidelines

In the event that archaeological, cultural, or heritage resources are encountered during site operations, the contractor shall immediately stop construction, notify Sema:th and comply with the policies and procedures identified in the Stó:lō Heritage Policy.

In the event that any item of particular archaeological, heritage, historical, cultural or scientific interest is found on the site, as between the contractor or the party who discovered the item(s) and Sema:th, such item(s) shall be and remain the property of Sema:th and/or the Stó:lō Nation.

Sema:th and their contractor will coordinate and work with the Stó:lō Research and Resource Management Centre (SRRMC) on behalf of the Stó:lō Nation.

Below are a set of management strategies (related to construction activities) that have been adapted from the Stó:lō Heritage Policy and the BC Ministry of Forest Lands and Natural Resources Operations' (MFLNRP) Archaeology Branch Policy regarding "Found Human Remains".

Management options will be reviewed and agreed upon between Sema:th and the SRRMC. Management options will take into account the Stó:lō Heritage Policy particularly related to:

- Section 5.3.5 – Material Culture Sites / Objects
- Section 5.3.6 – Stó:lō Ancestral Human Remains
- Section 5.3.6.1 – Incidental Discovery of Stó:lō Ancestral Human Remains
- Section 8.0 – Collection of Stó:lō Heritage Artifacts
- Section 8.1 – Incidental Finding and Collection

### Cultural Sites Chance Find Management Strategy

The following emergency impact management guidelines apply to cultural, heritage and archaeological sites. Emergency management procedures for suspected human burial sites are presented separately below. The contractor shall be familiar with the Stó:lō Heritage Policy and MFLNRO's Archaeology Branch Policy regarding "Found Human Remains", recognizing that the appropriate course of action may differ depending on whether or not the remains are found in an undisputed archaeological context (i.e., with artifacts).



## Initial Response by the Contractor

- Step 1: The contractor shall immediately stop construction in the immediate vicinity of the cultural or archaeological site.
- Step 2: The contractor shall contact Sema:th for further guidance. SSRMC will be contacted by Sema:th.
- Step 3: Sema:th and/or SSRMC will advise the contractor on further action.

Please refer to Table 1 in the Stó:lō Heritage Policy.

## Initial Action

Depending on the nature of the situation, one of the following responses is likely:

- Based on a telephone description of the incident, it may be decided that there are no further concerns, allowing construction to continue as planned; or
- A field visit by a SRRMC archaeologist may be required. In this case, Sema:th will notify the SRRMC. It is anticipated that suitable protocols for such situations will be established in consultation with all interested parties and as per the Stó:lō Heritage Policy.

## Management Options

For all management options, the SRRMC will be consulted for input into developing appropriate procedure(s) and protocols at the earliest time possible. Potential options related to land development activities could include but are not limited to:

Option 1: Avoidance through partial or complete project redesign or relocation. This ensures minimal impact to the archaeological site or heritage/cultural site and is the preferred option from a cultural resource management perspective. It can also be the least expensive option from a construction perspective.

Option 2: Salvage or emergency excavation, if necessary. This "data recovery" option is site destructive and it can delay construction. Consequently, salvage or emergency excavation is generally not a preferred option.

Option 3: Application of site protection measures, including both temporary strategies and long-term solutions. Temporary strategies could include erecting fencing or barricades to protect the archaeological or heritage site, while longer-term solutions could include capping the archaeology site with fill. Appropriate protection measures shall be identified on a site-specific basis.

## Chance Find Impact Management for Human Remains

### Initial Response by the Contractor

If definite or possible human remains are encountered:

- Step 1: The contractor shall immediately stop construction in the vicinity of the remains.
- Step 2: The contractor shall immediately contact Sema:th for further guidance.



Step 3: Sema:th will advise the contractor on further action.

### Initial Action

- Sema:th will contact the SRRMC and the RCMP;
- Sema:th or the RCMP will contact the Office of the Coroner;
- Sema:th representatives and a professional archaeologist or physical anthropologist from the SRRMC will visit the site as soon as possible; and
- If it is determined that the remains are Stó:lō and/or Aboriginal ancestry, the Stó:lō Heritage Policy will be followed.

### Management Options

The Stó:lō Heritage Policy outlines the appropriate protocol for handling Stó:lō Ancestral and/or Aboriginal human remains and shall be followed. A human remains protocol shall be established prior to recommencement of any proposed construction. Two possible strategies are presented below, but others may, or could, be considered.

Option 1: Avoidance through partial or complete project redesign or relocation. This would ensure that the remains are protected from further disturbance.

Option 2: Salvage or emergency excavation to respectfully remove the remains for reburial as per the Stó:lō Heritage Policy.

The contractor shall be aware that removal of human remains and subsequent reburial might involve certain ceremonies or procedures that could delay construction. If the contractor has any concerns about possible archaeological, historic, or burial locations, Sema:th shall be contacted for direction.



## EOP 3

# Environmental Emergency Response

Environmental emergency response refers to the immediate response to an emergency that has the potential to negatively impact human health and/or the environment. Examples of environmental emergencies include earthquakes, oil spills and the release of hazardous substances in to aquatic or terrestrial habitat. An emergency response includes a team of government, industry, communities, and local organizations to respond to an environmental emergency as soon as possible to reduce impacts (Government of Canada, 2012). Environmental emergency response is key to preventing, preparing for, and mitigating situations that have the potential to negatively affect the environment and human health (Province of British Columbia, 2013e).

## Goal:

- To be prepared to ensure the safety of community members and our lands in the event of an environmental emergency.

## Objectives:

- Ensure community members are prepared for a 3-day window in the event of an emergency.
- Develop stronger linkages with other jurisdictions and to share resources.
- Educate the community to raise awareness about environmental emergency response.

Environmental Operating Procedure No. 3	EOP Revision: 01
Responsibility: Emergency Management Committee (Chief & Council, Band Manager, Emergency Program Coordinator)	Revision Date: July 25, 2013



## Legislation, Standards, and Policies

- *Emergency Program Act* – requires that all Provincial ministries and agencies utilize the British Columbia Emergency Response Management System (BCERMS).
- *Indian Act* – Sema:th has not ratified treaty with the Federal and Provincial governments. The community is located on Federal Reserve land and is currently governed by certain Federal Acts including aspects of the *Indian Act*. As such, the federal and provincial government have entered into a Memorandum of Understanding (MOU) for the Provincial Emergency Program (PEP) to provide emergency management services.
- *Environmental Management Act* – replaces the old *Waste Management Act* and the *Environment Management Act* and brings provisions from both of those acts into one statute. The Act seeks to protect human health and the quality of water, land and air in British Columbia. The Act also enables the use of administrative penalties, informational orders and economic instruments to assist in achieving compliance.
- *Fisheries Act, 1985* – makes it illegal to harm fish habitats or fishing grounds. Environment Canada is responsible for the administration and enforcement of the *Fisheries Act* as it pertains to spills and environmental emergencies.
- *Canadian Environmental Protection Act* is administered by Environment Canada. Part 4 deals with pollution prevention; Part 5 deals with controlling toxic substances; and Part 8 deals with environmental matters related to emergencies.
- *Emergency Program Management Regulation* identifies the emergency management responsibilities of the Provincial Emergency Program (PEP) and other ministries.
- *Fire Services Act* is administered by the B.C. Office of the Fire Commissioner, which is part of the Ministry of Public Safety and Solicitor General. Section 25 of the Act outlines emergency powers of the B.C. Fire Commissioner.

\*Note not all applicable Acts or Regulations are identified.



## Potential Impacts

An environmental emergency is an occurrence or natural disaster that affects or threatens the environment and ultimately human health. Land can be impacted by hazardous substance spills (most commonly oil and fuel spills), earthquakes, floods, or landslides. Water can be impacted from spills upstream or through ground penetration to the aquifer.

The most likely environmental emergency on Sema:th Lands includes:

- Fuel spill (oil or gas);
- Earthquake;
- Landslide;
- Flooding;
- Drinking water contamination;
- Severe weather (snowfall or wind storms); and
- Power blackouts.

## Best Management Practices

All emergency environmental response procedures must comply with applicable Sema:th, federal, and provincial legislation, regulations, and agreements. The following provides additional information on provincial structures that facilitate a coordinated (provincial) approach to environmental emergency response.

*Sumas First Nation Emergency Plan (2011)* This plan was developed to set out the procedures, roles and responsibilities for Sema:th Nation in the event of an environmental emergency.

British Columbia Emergency Response Management System (BCERMS) The *Emergency Program Act* requires that all Provincial ministries and agencies utilize the BCERMS. First Nations, who have not ratified treaties with the Federal and Provincial government are governed by federal statute, are not legally required to follow the BCERMS model but are strongly encouraged to incorporate this model into their emergency plans. The majority of municipalities and First Nations utilize BCERMS to ensure consistent emergency principles and coordinated response efforts. To facilitate the same level of services to First Nation communities PEP, Aboriginal Affairs and Northern Development Canada (AANDC), and First Nations Emergency Services (FNESS) utilize the BCERMS model to standardize delivery of emergency management and response efforts.



Provincial Emergency Coordination Centre The Provincial Emergency Coordination Centre (PECC) coordinates provincial resources and prioritizes and establishes provincial objectives in response to requirements at other levels. This level also serves as the coordination and communications link with the federal disaster support system. The Provincial Central Coordination level is activated when the key Ministry(ies) or the Director of the PEP considers it necessary to coordinate and direct overall provincial response to an emergency or disaster.

## Strategy Approach

This EOP only provides strategies for utilizing the existing Sumas First Nation Emergency Plan, 2011. If specific information on environmental emergency response is required, the reader is to refer to and use the existing Sumas First Nation Emergency Plan.

## Strategy 1: Maintain the Sumas First Nation Emergency Plan (2011)

In 2011, Sema:th created an Emergency Plan that provided a framework, information, and guidance on the following:

1. Emergency Contact List
2. Community Context
3. Emergency Plan Overview
4. Emergency Management Organization
5. Emergency Response & Recovery Structure
6. HRVA, Evacuation and Community Maps
7. Response Action Plans
8. Emergency Social Services
9. Recovery and Procedures (incl. Responsibilities)

To ensure that this document is maintained with the most current and relevant information/procedures and ensures consistency with the BCERMS processes, Sema:th will establish an annual review period.

## Strategy 2: Promote the roles & responsibilities established in the Sumas First Nation Emergency Plan

Competency and ability to respond to environmental emergency incidents requires a complete understanding of each person's roles and responsibilities. It is critical that key personnel responsible for the Emergency Plan are trained in their duties and are informed and aware of their responsibilities as it relates to the Plan. This will include, but is not limited to:

- Educating all personnel identified in the plan to ensure that they are effective in their role;
- Training in the use of emergency response equipment, personal protection devices, and other emergency response resources to ensure ultimate response capabilities;



- Familiarizing staff with local agencies such as fire, police, ambulance, PECC; and
- Practicing emergency drills on a regular basis.

### Strategy 3: Promote education and awareness

Develop environmental emergency response awareness in the community through a variety of tactics including, but not limited to:

- Providing copies of the Sumas First Nation Emergency Plan to community members;
- Displaying copies of the Sumas First Nation Emergency Plan at key community locations (e.g., Health Centre);
- Providing plain language summaries of key aspects of the Sumas Emergency Response Plan to community members;
- Posting emergency contact list at key community locations (e.g., Health Centre);
- Conducting community workshops on environmental emergency response;
- Circulating informational pamphlets on environmental emergency response and what to do in the case of an emergency (e.g., evacuation procedures);
- Conducting environmental emergency response drills; and
- Ensuring that every household has information on what should be in an emergency kit.

### Strategy 4: Work with industries operating on or near Sema:th Lands

Work cooperatively with industries operating on or near Sema:th Lands where their activities pose a potential environmental risk (e.g., fuel spill). Retain copies of their environmental emergency plans/procedures and establish techniques and formal protocols on how to collaborate in the event of an environmental emergency.

### Strategy 5: Harmonize with other jurisdictions and neighbouring First Nations

The Fraser Valley Regional District's (FVRD) Community Emergency Programs (CEP) are part of the district's coordinated efforts to ensure all of its communities and rural areas are prepared for and are able to deal with emergency events. The City of Abbotsford also has an established Emergency Program.

Sema:th will look for opportunities to collaborate with the FVRD and the City of Abbotsford and neighbouring First Nations to harmonize emergency response plans and to share emergency response resources.



## EOP 4

# Fuel Handling & Storage

A significant component of impacts to soil and groundwater on Sema:th Lands are associated with poor fuel handling and management of fuel storage tanks (in addition to fill sites and industrial activities) (Teranis, 2012). Indication of hydrocarbon impacts (strong odours and visible product in soil) was also identified at numerous locations. Proper fuel handling and storage procedures including response and mitigation measures are key to preventing the unnecessary release of fuel into the environment from commercial and residential sources.

### Goal:

- We will prevent, minimize, and mitigate environmental impacts from fuel spills or leaks on Sema:th Lands.

### Objectives:

- Ensure compliance with existing legislation and regulations.
- Educate members and generate awareness of proper fuel handling and storage.
- Generate awareness of what do in the case of a spill and who to call.
- Complete regular checks on fuel tanks.
- Ensure the fill station is properly equipped for spill management.

Environmental Operating Procedure No. 4	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

Above-ground storage tank (AST): any chemical or fuel (gas, diesel, or heating oil) storage tank located above ground. ASTs are commonly used to supply fuel to heat homes, store vehicle fuel or power generators.

Underground storage tank (UST): a storage tank located underground to contain chemicals, fuel, or septic materials.

Hydraulic oil: oil used in the hydraulic systems of equipment such as excavators or backhoes.

Heating oil: a type of fuel generally used to power a furnace for a home or other building.

Groundwater: water that is found below ground in the soil or in pores and crevices in rock.

Surface water: water that is on the surface, such as ponds, lakes, streams, rivers, creeks and oceans.

## Legislation, Standards, and Policies

- *Canadian Environmental Protection Act, 1999 (CEPA 1999)*
- *National Fire Code of Canada (2010)*
- *Environment Canada Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (2008)*
- *British Columbia Environmental Management Act*
- *British Columbia Contaminated Sites Regulation (B.C. Reg. 97/2011)*

In 2008, Environment Canada's new storage tank regulations came into force to regulate aboveground and underground storage tanks and containers under federal jurisdiction. The regulations apply to specified tanks and tank systems on federal or First Nation lands. The regulations also apply to all the piping and other equipment associated with the tanks. The regulations, entitled *Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (2008)* apply to all tanks that meet the following criteria:

- Have a capacity of more than 230 litres;
- Are vented to the atmosphere (in other words operate at atmospheric pressure); and
- Are designed to be installed in a fixed location.



According to the Environment Canada, *Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (2008)*, the following tank systems DO NOT fall under the regulations:

- Containers smaller than 230 litres;
- Indoor storage tanks;
- Pressurized tanks like those storing propane;
- Mobile tanks such as those on the back of pickup or other trucks;
- Outdoor, aboveground tanks that have a total combined capacity of 2500 litres or less and are connected to a heating appliance or an emergency generator; and
- Tanks regulated by the National Energy Board.

Regulated under the *National Fire Code of Canada*, the Canadian Standards Association (CSA) Standard B139, "*Installation Code for Oil-Burning Equipment*" code provides the basis of environmental control in design and operation of residential scale heating oil tanks and fuel systems.

## Potential Impacts

Spills due to poor fuel storage and handling can result in harm to the environment and serious risks to human health including the risk of death or injury due to fire and explosion. Spillage of fuels, such as gasoline, diesel and heating oil, has the potential to contaminate sewers, drainage ditches, and surface water. Contaminated soils and groundwater can lead to issues with soil vapour and risks to human health and contamination of drinking water or groundwater used for livestock or crop irrigation.

## Best Management Practices

Managing fuel tanks, fuel handling and fuel storage practices consistent with the Environment Canada Storage Tanks Regulations and the CSA Standard B139 provide Sema:th with a management process focussed on prevention of risks associated with existing systems.

Specification of designs to be compliant with Environment Canada Storage Tanks Regulations or CSA Standard B139 requirements in future fuel management systems will provide a mechanism by which appropriate environmental management provisions can be incorporated as a core component of the management design.

BMPs related to fuel handling and storage are included as Appendix I.



### Strategy 1: Create an inventory of fuel storage tank systems

Under the Environment Canada Storage Tanks Regulations all regulated tanks should already be registered with Environment Canada. Utilize the findings of the ESAs and the Environment Canada tank registry to create an inventory that identifies and records the location and status of all fuel tank systems. At a minimum the inventory should seek to build on the existing information for regulated tanks and provide appropriate information for non-regulated tanks (e.g., residential heating oil ASTs).

The Lands & Resources Department will create and maintain the inventory and update it with information to record inspections and tank tests as required under the Regulations.

### Strategy 2: Ensure existing and future fuel storage tank systems comply with federal codes

New tanks must be designed to be compliant with all federal regulations. All proposals for development or upgrade of fuel tank storage systems regulated under Environment Canada Storage Tanks Regulations must include certifications from a professional engineer, registered in BC, with direct experience of fuel storage tank design, to confirm that the systems are designed and will be operated compliant with the regulations.

Design and installation or upgrade of tank systems not regulated under the Environment Canada Storage Tanks Regulations should be completed by a certified Oil Burner Mechanic (OBM) and should be supported by certification of the OBM so that the system meets the requirements of CSA Standard B139.

Owners of all new and/or upgraded tank systems must provide supporting documentation to the Lands & Resources Department to show that they are compliant with Environment Canada Storage Tanks Regulations and CSA Standard B139. The Lands & Resources Department will update the inventory to include all new and/or upgraded tank systems.

### Strategy 3: Undertake a regular inspection program

Through the fuel tank inspection process (see Appendix II, EOP Process: Fuel Tank Inspection), maintain a regular inspection program.



## Strategy 4: Provide effective procedures for fuel spills and leaks

Through the spill response plan (Appendix III: General Response Plan), ensure that fuel spills and leaks are addressed in a manner that minimizes impacts to human health and safety and the environment.

Ensure that appropriate spill response kits are available at key locations in the community where fuel is stored and/or handled.

## Strategy 5: Promote education and awareness

Develop fuel handling and storage awareness through education and training. This may include, but is not limited to:

- Organizing an annual small fuel container clean-up;
- Promoting awareness of where to dispose of waste fuel;
- Circulating copies of Appendix II, EOP Process: Fuel Tank Inspection and Appendix III: General Response Plan to owners of fuel tanks;
- Ensuring spill response kits are located in key areas in the community; and
- Training for Sema:th members on proper fuel handling and storage, and spill response.



## Appendix I

# Best Management Practices for Fuel Handling and Storage

There are a variety of BMPs related to fuel handling and storage. Below is a sample of BMPs that can be included into proper fuel handling and storage procedures.

### Fuel Tank Systems and Fuel Containers

- Containers shall be filled and capped so that under normal conditions there will be no leakage;
- Containers shall be appropriate for the product being contained;
- Product/WHMIS labels are required on containers identifying contents and hazards;
- Current Material Safety Data Sheets (MSDS) must be maintained in a location available to all people involved in fuel handling, storage and disposal;
- Tanks shall be well maintained and in good condition (free of rust, dents, and leaks);
- Storage locations must be vented and have appropriate fire extinguishers that are annually inspected with proper tags;
- Operators must conduct regular inspections of fuel tanks to ensure proper requirements are met;
- Post no smoking signs at all dispensing and fuel transfer sites;
- Fuel tanks should be located away from groundwater wells or surface waters;
- Store containers at least 3 m away from any building or in a building properly designed for storage;
- Store drums and containers in an upright position;
- Dispense fuel from upright drums and containers using an approved pump;
- All small containers <230 L (50 gallons), (jerry cans, pails, canisters, and drums) that are stored at or near homes should be kept away from roadways and pedestrians and out of direct sunlight. They should be protected from potential impact;
- Do not fill containers beyond their safe filling level (~90% full);
- Use the proper dispensing pump designed for the product being handled;
- Hoses and nozzles must be maintained in good repair and do not leak;
- Operators must stay with the nozzle at all times while dispensing fuel;
- Recover spills as appropriate; and
- Contact the Provincial Emergency Program (PEP) in the event of a fuel spill (1-800-663-3456).



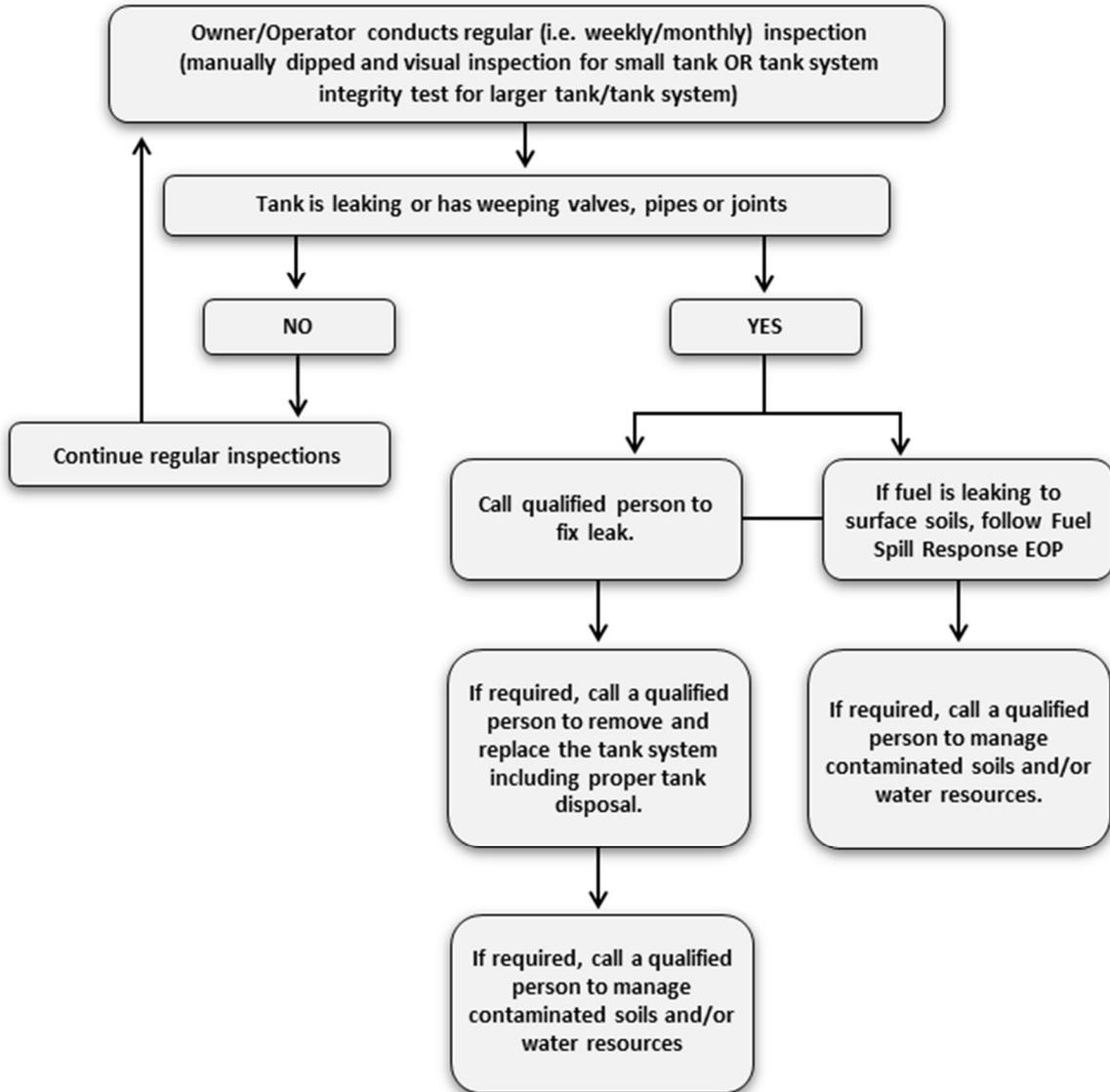
## Fuel Transport

- All vehicles transporting fuel must have an appropriate spill kit and the driver must be trained and knowledgeable in its use;
- Vehicles transporting fuels must meet requirements of the *Transport of Dangerous Goods Act* and BC Ministry of Transportation;
- If a combined fuel load is greater than 2,000 L (440 gallons) a shipping document must be filled out for the cargo, the driver must have proof of "Transport of Dangerous Goods (TDG)" certified training and the load must a TDG placard appropriate for the fuels being transported; and
- All loads must be secured to prevent tipping or fuel loss. Fuel drums being transported by truck must be stacked end on end and transported by vehicles with sides or side boards.



## Appendix II

### EOP Process: Fuel Tank Inspection





## Appendix III

# General Response Plan

In the event of a fuel spill the following procedures will be implemented:

1. Ensure safety.
  2. Stop/contain the flow (when possible).
  3. Secure the area.
  4. Contain the spill.
  5. Notify/report (PEP: 1-800-663-3456).
  6. Contact the Lands & Resources Department.
  7. Clean up.
- 1) Ensure Safety
1. Ensure personal/public, electrical and environmental safety.
  2. Wear appropriate Personal Protective Equipment (PPE).
  3. Never rush in, always determine the product spilled before taking action.
  4. Warn people in the immediate vicinity.
  5. Ensure no ignition sources are present if spill is a flammable material.
- 2) Stop the Flow (If safe to do so, and when possible)
1. Act quickly to reduce the risk of environmental impacts.
  2. Close valves, shut off pumps or plug holes/leaks, set containers upright.
  3. Stop the flow of the spill at its source.
- 3) Secure the Area
1. Limit access to the spill area.
  2. Prevent unauthorized entry onto the site.
- 4) Contain the Spill
1. Block off and protect drains and culverts.
  2. Prevent spilled material from entering drainage structures (i.e., ditches, culverts, drains).
  3. Divert flow from water or other sensitive areas with non-reactive materials such as boom, gravel, sand bags, digging a trench, etc.
  4. Use spill sorbent material to contain spill.
  5. If necessary, use a constructed dam or any other method to prevent any discharge off-site.
  6. Make every effort to minimize contamination.
  7. Contain as close to the source as possible.



#### 5) Notify / Report PEP

For spills in amounts requiring external notification, immediately report details of the spill to the Provincial Emergency Program (PEP) at 1-800-663-3456 (24-hour).

Spill reports to PEP must include:

- Name and phone of the person(s) responsible for the spill;
- Location, time and date of spill;
- Material spilled and quantity;
- Cause and effect of the spill;
- Action taken to contain the spill;
- Duration of occurrence;
- Weather conditions;
- Planned follow-up;
- Government agencies on the scene; and
- Persons or agencies advised.

#### 6) Contact the Lands & Resources Department

Once the spill is contained, contact and report the spill details to the Lands & Resources Department and inform them of the issue at hand.

#### 7) Clean Up

- Technical assistance is available from a QEP on clean-up procedures and residue sampling;
- All equipment and/or material used in clean-up (e.g., used sorbent, oil containment materials, etc.) must be disposed of in accordance with MFLNRO requirements;
- Accidental spills may produce hazardous wastes (e.g., material with > 3% oil) and contaminated soil. All waste disposals must comply with the *Environmental Management Act* and Regulations; and
- Contaminated soil must be treated and dealt with.



## Appendix IV Environmental Incident Reporting

Environmental Incident Report (EIR) should be prepared as soon as possible following an incident. The contractor will be responsible for completing the EIR. The target for reporting is within one (1) working day following the time of the incident.

An Environmental Incident is characterized as causing, or has the potential for causing one or more of the following:

- Adverse effect on fish, wildlife or other environmental resources;
- Adverse publicity with respect to environment; and
- Legal action with respect to violation of statutes or environmental damage.

Examples of Environmental Incidents include, but are not limited to:

- Spills of oil, fuel, PCBs, or chemicals;
- Discharge of deleterious substances into fish-bearing water;
- High or low flows that affect fish or fish habitat, wildlife or recreation; and
- Violation of environmental regulations, permits or approvals.

### What Incidents are Reportable?

Any environmental incidents will be immediately reported to Sema:th and the appropriate government agencies. Please note that all spills to water must be reported immediately!

If in doubt as to whether or not to report a spill, err on the side of caution and report the spill.

### How Do You Report a Spill?

Make sure you have the following information ready to report to the appropriate government agencies:

- Name and phone number of person reporting the spill;
- Name and phone number of person involved with the spill;
- Location and time of the spill;
- Type and quantity of material spilled;
- Cause and effect of spill;
- Details of action taken or proposed to contain the spill and minimize its effect; and
- Names of other persons or agencies that advised regarding the spill.



## When Should a Spill Be Reported Externally?

Spills of the following substances must be report externally to PEP if the estimated amount discharged meets or exceeds the quantities list below. All spills that meet the below criteria must be reported within one (1) day of the incident. The Lands & Resources Department should always be notified immediately if a spill of any magnitude occurs on site.

Substance	Spill Quantity	Agency to Contact
Class 2.1 – flammable gas (e.g., propane)	≥10 kg or 10 min.	PEP
Class 2.2 – non-flammable gas (e.g., SF6, CO2)	≥10 kg or 10 min.	PEP
Class 3 – flammable liquids	≥100 litres	PEP
Class 8 – corrosive liquid acids and caustics (e.g., battery acid)	5 kg or litres	PEP
Class 9 – environmentally hazardous (e.g., PCBs, used ethylene glycol)	1 kg or litre	PEP
Oil and waste oil	≥100 litres	PEP
Other substances (e.g., new antifreeze, power-wash water)	200 kg or litres	PEP
Pesticides and herbicides	1 kg or litre	PEP
Any quantity of a deleterious substance released into a waterbody	All	DFO



## EOP 5

# Groundwater Protection

Water occurring beneath the ground surface amongst spaces between rocks and soil is referred to as groundwater. The water within these spaces is typically found within 100 m of the ground surface (Environment Canada, 2011). Although groundwater exists everywhere under the ground, some parts of the saturated zone contain more water than others. An aquifer is an underground formation of permeable rock or loose material which can produce useful quantities of water when tapped by a well and are often used as a source of drinking water.

## Goals:

- We will protect our groundwater to make sure it is clean and potable for future generations.

## Objectives:

- Evaluate the quality and quantity of groundwater that is available on Sema:th Lands, particularly that which is used as a source of drinking water.
- Monitor groundwater to track long-term trends in its quality and quantity and to assess the effectiveness of our groundwater management programs and to ensure a safe drinking water supply.
- Identify activities that could potentially impact groundwater, prioritizing drinking water sources.
- Identify locations where groundwater could be impacted, prioritizing drinking water sources.
- Educate the community to generate awareness about environmental stewardship and Sema:th Traditional Ecological Knowledge.

Environmental Operating Procedure No. 5	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisor Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

**Aquifer:** a geological formation of permeable rock, gravel, or sand containing or conducting groundwater.

**Point and non-point sources of contamination:** Contaminants can originate from a “point source” or “non-point source” – meaning they can come from a single source (or point) or, that they don’t have one specific source and come instead from the cumulative effect of any number of factors or activities.

**Multi-barrier approach:** an integrated system of procedures, processes and tools that collectively prevent or reduce the contamination of drinking water from source to tap in order to reduce risks to public health.

**Well or borehole:** Groundwater is accessed through wells or boreholes which are dug or drilled into aquifers.

**Watershed:** A watershed is the area of land where all of the water that is under it or drains off of it goes into the same place (US EPA).

**Watershed management:** Conservation Authorities define watershed management as “managing water resources within specific watersheds by knowing how much water is in the system, where it comes from, who is using it, how it is being contaminated and where it ends up. Watershed management takes into consideration all the outside activities that can influence the quality and quantity of our surface and groundwater.”

## Legislation, Standards, and Policies

- *Water Protection Act*
- *Environmental Protection Act*
- Environment Canada's Federal Water Policy (1987)
- Canadian Environmental Quality Guidelines – The federal government works with the provinces and territories to ensure Canadians receive clean, safe, and secure drinking water. Municipalities receive their powers from the provinces and have ability to pass bylaws that can have an impact on water resources.
- The Guidelines for Canadian Drinking Water Quality – Set out the basic parameters all water systems should strive for in order to deliver the cleanest, safest, and most reliable drinking water to consumers. These guidelines apply to water destined for human consumption and are developed for select physical, chemical, microbiological, and radiological parameters. The most important guidelines deal with microbiological quality and help ensure the risk of exposure to disease-causing organisms in drinking water is minimized.



## Potential Impacts

Impacts to groundwater can occur as a result of contamination, which can cause groundwater to be unsuitable for use. Groundwater contamination is associated with hazardous materials seeping through the ground to groundwater sources or aquifers. Contamination sources may include landfills, leaking gasoline storage tank or septic tanks, pesticide or fertilizer, and accidental spills that can negatively impact the quality of groundwater. Cleaning up contaminated groundwater can be very expensive and difficult. Groundwater on Sema:th Lands is an important resource to health and livelihood and should be protected to ensure a high quality of water for the community.

Contaminants can get into groundwater via surface run-off or percolation through the soil. Soil cover cleans and filters some contaminants but needs space and time to do so. To protect well water, it is necessary to keep possible sources of contamination away from wells and surface water. Point and non-point sources of contamination include, but are not limited to:

- Garbage (EOP 9);
- Storage tanks (fuel, chemicals) (EOP 4).
- Septic systems;
- Pesticides and herbicides;
- Vehicles;
- Fertilizer (land spreading); and
- Animal faeces (grazing cows, sheep, horses, birds); and
- Chemical spills.

## Best Management Practices

All development must comply with applicable Sema:th, federal, and provincial regulations, permits, authorizations, conditions, and agreements with respect to environmental protection. Given that Sema:th utilizes groundwater as a primary drinking water source, this EOP primarily addresses groundwater management as it relates to drinking water.

Even though constitutional responsibility for First Nation lands rests with the federal government, the responsibility for drinking water programs is divided between the First Nation's Council, Health Canada, Department of Aboriginal Affairs and Northern Development Canada (AANDC), Environment Canada, provincial governments, municipalities (where agreements are in place), and community members.



Various federal government departments have added responsibilities that are not mandated through regulations but are, nevertheless, important to ensuring the safety of drinking water supplies. For instance, Health Canada develops the Guidelines for Canadian Drinking Water Quality in collaboration with representatives from provincial and territorial drinking water authorities and Environment Canada. These guidelines focus on public health outcomes. The provinces and territories establish their own drinking water quality requirements using these guidelines or other more stringent ones.

Canadian Council of Ministers of the Environment's (CCME) Guidance Document From Source to Tap outlines the multi-barrier approach to safe drinking water which includes: source water protection; drinking water treatment; drinking water distribution systems; management; and monitoring.

Additional environmental standards, guidelines and BMPs that could be applied are as follows:

Groundwater is accessed through the construction of a well or borehole. If the supply is used for drinking water it is essential that:

- The well is constructed to meet relevant quality standards (e.g., BC Ground Water Protection Regulation);
- A qualified contractor must drill the well and install the well pump;
- Protection measures are put in place to protect the well integrity and water quality;
- The well and pump are regularly inspected and maintained;
- A drinking water sampling and monitoring program is established and maintained to ensure the well water is potable; and
- The well is deactivated or closed when no longer in use.

The BC Ground Water Protection Regulation – deals with aspects of well construction that significantly enhance ground water protection; recommendations include:

- Well is constructed with surface seal (to prevent contaminants from the surface or shallow sub-surface entering the well).
- Well is constructed with secure well cap to prevent direct and unintended entry into the well of any water or undesirable substances at the surface of the ground, including floodwater, ponded water, and contaminants.
- Well is constructed with well casing stick-up to help flood-proof the well.



- Well head is graded to surface water away from the wellhead.
- A Well Identification (ID) Plate is installed.
- Controlled or stopped artesian flow mechanism is installed (to prevent wasting water).
- Pump is installed using qualified installer.
- Measures are implemented to protect the well.

## Strategy 1: Develop a baseline assessment

Make use of existing reports and studies (e.g., ESAs), to conduct an inventory of all properties on the Sema:th Lands to identify potential sources of groundwater contamination, including but not limited to:

- Fuel storage tanks (EOP 4);
- Waste oil containers;
- Old vehicle batteries;
- Abandoned vehicles ;
- Waste storage areas (EOP 9);
- Waste burial areas (EOP 9);
- Septic systems / tanks;
- Chemical storage areas (e.g., pesticides, fertilizers, chlorine); and
- An assessment of herbicides and pesticides used.

All potential sources of contamination will be listed and mapped, and classified based on their associated risk to groundwater quality (high, medium, and low).

## Strategy 2: Manage future developments

To allow for the management of potential emissions to groundwater associated with future development (e.g., industrial, commercial, or residential) of Sema:th Lands, all development should be subject to a review and assessment (if applicable) of potential emissions and risks to groundwater. Through the groundwater assessment process (Appendix I, EOP Process: Groundwater Management for Proposed Development), identify potential impacts, assess proposed mitigation (e.g., design specifications), and determine net effects.

## Strategy 3: Develop watershed management plan

Develop and implement a watershed management plan to ensure groundwater is protected. This will require working with qualified professionals<sup>1</sup> (engineers, geoscientists and hydro geologists) to understand site specific information on the groundwater source(s) on Sema:th Lands, and

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<sup>1</sup> Section 70 of the *BC Water Act* defines qualified professional.



its watershed area. This plan can be supplemented and updated using Reports and Assessments submitted through the groundwater assessment process for new developments (Appendix I, EOP Process: Groundwater Management for Proposed Development).

Measures will be developed to eliminate, limit or reduce the risk associated with potential sources of contamination, as identified and ranked in Strategy I.

## Strategy 4: Implement groundwater protection measures

Measures identified in Strategy 3 will be implemented to protect groundwater quality. Implementation will occur on a phased basis, commencing with those sources of contamination classified as highest risk.

Protection measures will include both the inspection and maintenance of the drinking water well and pumping system and the management of risks associated with sources of contamination.

Protection measures for the drinking water well may include:

- Implementation of a regular inspection and maintenance schedule to ensure:
  - The wellhead or the surface seal is in good condition.
  - The vermin-proof cap is in good condition.
  - The well is operated in a manner that prevents the intrusion of salt water or contaminated water into the well, or into the aquifer from which the water is withdrawn (e.g., don't over-pump). The safe well yield can be determined from a pumping test conducted as part of Strategy 5.
  - The well stick-up is protected from physical damage.
  - The well is free from any junk, garbage or other items. Note it is illegal to put any junk in an active or abandoned well, e.g., pesticides or fertilizers, carcasses, human or animal waste, refuse, or materials from construction or demolition.

Methods to limit sources of pollution may include:

- Keep potential contaminants a safe distance away from well (e.g., a minimum 30 m / 100 ft from wellhead, but should be determined by the site-specific watershed management plan developed through Strategy 3).
- Responsible management of waste materials (EOP 9).
- Maintain Spill Kits at strategic locations (identified through baseline study, Strategy 1).
- Require bunding of all tanks (fuel, chemical).



- Conduct an annual assessment of fuel tanks to determine degradation of the tank structure or pipes (EOP 4).
- Inspect and maintain septic systems. Good maintenance measures will include having septic tanks pumped every 2 to 3 years and ensure it is not failing.

## Strategy 5: Develop and implement drinking water management program

A drinking water management program which includes a sampling and monitoring schedule will be developed and implemented. Procedures will be established to protect human health, investigate non-compliances and prepare remedial action plans to deal with any exceedances in drinking water quality parameters that would affect human health. As a first step, regularly a process will be developed to ensure drinking water quality monitoring results are monitored and communicated to all drinking water users. Procedures for responding to exceedances in drinking water parameters will be developed.

To ensure an ongoing safe supply of drinking water, the management program will outline measures to protect both the quantity and quality of groundwater used as a drinking water source.

A well pumping test could be conducted, using qualified contractors<sup>2</sup>, to determine well performance, well yield, the zone of influence of the well and aquifer characteristics (i.e., the aquifer's ability to store and transmit water, aquifer extent, presence of boundary conditions and possible hydraulic connection to surface water).

The sampling and monitoring schedule will detail the drinking water sampling frequency, location and parameters that will be monitored. Quality parameters to be aware of include the following and further information is provided in Appendix II, Sample of Groundwater Parameters:

- Total and Faecal Coliform Bacteria;
- Nitrate;
- Arsenic;
- Sodium; and
- Iron and Manganese.

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<sup>2</sup> Section 70 of the *BC Water Act* persons qualified to conduct a pumping test



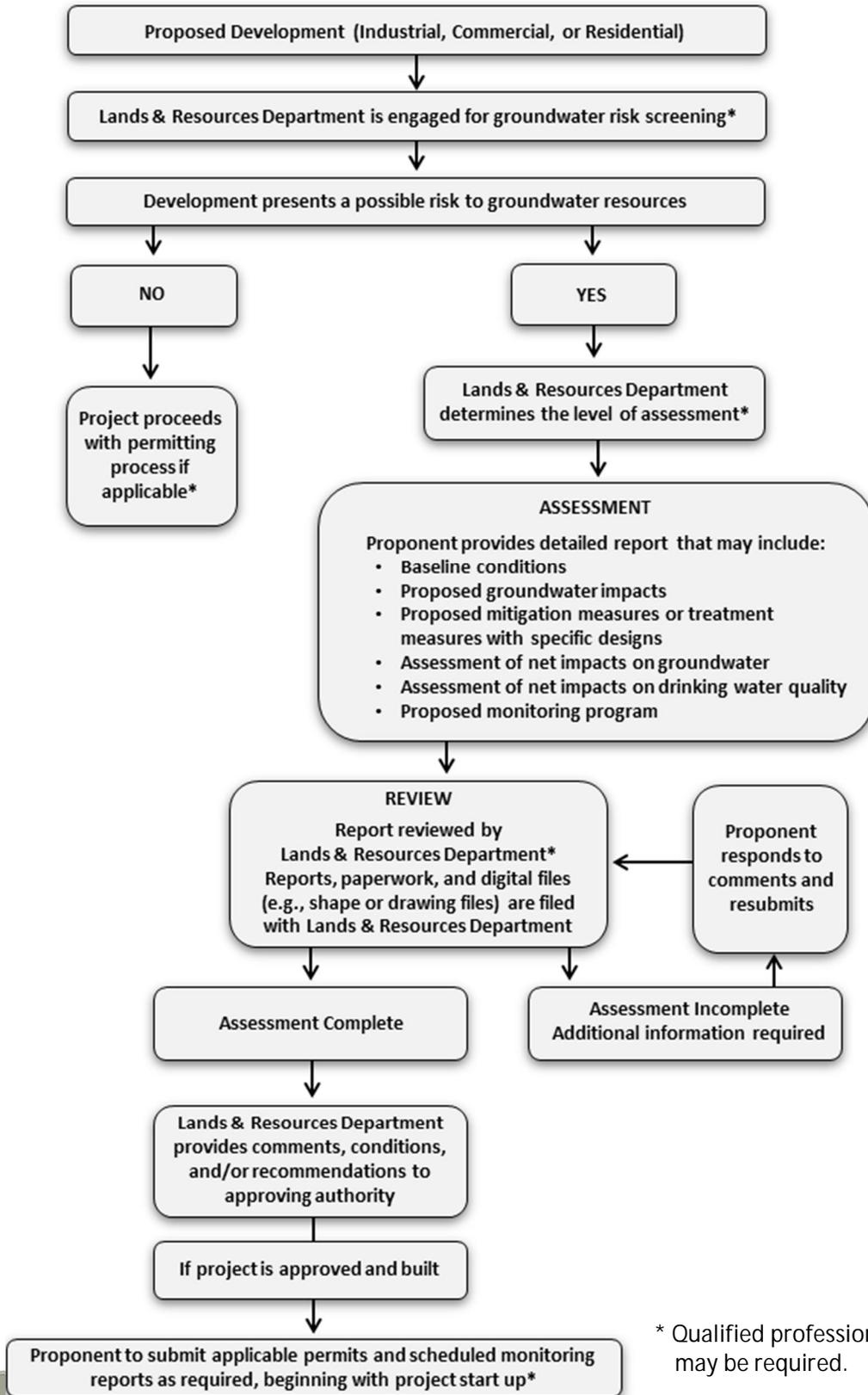
## Strategy 6: Adopt policies to enforce groundwater protection measures on commercial and industrial properties

Several commercial and industrial facilities exist on Sema:th Lands. Sema:th will consider the adoption of policies, supported where necessary by Bylaws, to ensure that measures to limit groundwater pollution (as identified in Strategy 1 and developed through Strategy 3) and the ongoing sampling and monitoring of drinking water (Strategy 5) are implemented on all commercial and industrial properties.



## Appendix I

# EOP Process: Groundwater Management for Proposed Development



\* Qualified professional services may be required.



## Appendix II

### Sample of Drinking Water Parameters

Parameter	Details	Potential Sources
Total, Faecal and E. coli bacteria	<p>Coliform bacteria are described and grouped, based on their common origin or characteristics, as either Total or Faecal Coliform. The Total group includes Faecal Coliform bacteria such as Escherichia coli (E .coli), as well as other types of Coliform bacteria that are naturally found in the soil. Faecal Coliform bacteria exist in the intestines of warm blooded animals and humans, and are found in bodily waste, animal droppings, and naturally in soil.</p> <p>Most of the Faecal Coliform in faecal material (feces) is comprised of E. coli, and the serotype E. coli O157:H7 is known to cause serious human illness.</p>	<ul style="list-style-type: none"> <li>▪ Agricultural runoff</li> <li>▪ Effluent from septic systems or sewage discharges</li> <li>▪ Infiltration of domestic or wild animal faecal matter</li> </ul>
Nitrate	<p>Nitrate is a chemical compound of one part nitrogen and three parts oxygen that is designated the symbol "NO3." It is the most common form of nitrogen found in water. Other forms of nitrogen include nitrite (one part nitrogen and two parts oxygen – NO2) and ammonia (one part nitrogen and three parts hydrogen – NH3).</p> <p>Though nitrate is considered relatively non-toxic, a high nitrate concentration in drinking water is an environmental health concern because it can harm infants by reducing the ability of blood to transport oxygen. In babies, especially those under six months old, methaemoglobinaemia, commonly called "blue-baby syndrome," can result from oxygen deprivation caused by drinking water high in nitrate. Death can occur in extreme cases.</p>	<ul style="list-style-type: none"> <li>▪ Leaching of chemical fertilizers</li> <li>▪ Leaching of animal manure</li> <li>▪ Groundwater pollution from septic and sewage discharges.</li> </ul>
Iron and Manganese	<p>Iron and manganese are metallic elements present in many types of rock. Iron has the symbol "Fe" and manganese has the given symbol "Mn." Both are commonly found in water and are essential elements required in small amounts by all living organisms.</p>	<ul style="list-style-type: none"> <li>▪ The most common sources of iron and manganese in groundwater are naturally occurring, for example from weathering of iron and</li> </ul>



Parameter	Details	Potential Sources
	<p>Concentrations of iron and manganese in groundwater are often higher than those measured in surface waters.</p> <p>At concentrations found in most natural waters, and at concentrations below the aesthetic objective, iron and manganese are not considered a health risk. Water with a high concentration of iron or manganese may cause the staining of plumbing fixtures or laundry. Manganese solids may form deposits within pipes and break off as black particles that give water an unpleasant appearance and taste. Similarly, iron can collect and block pipes or fixtures and produce colour, taste and rust flakes in water. Both substances can increase the growth of unwanted bacteria that form a slimy coating in water pipes.</p>	<p>manganese bearing minerals and rocks.</p> <ul style="list-style-type: none"><li>▪ Industrial effluent, acid-mine drainage, sewage and landfill leachate may also contribute iron and manganese to local groundwater.</li></ul>

Source of information (Fact Sheets – Ground Water Quality):

[http://www.env.gov.bc.ca/wsd/plan\\_protect\\_sustain/groundwater/brochures\\_forms.html](http://www.env.gov.bc.ca/wsd/plan_protect_sustain/groundwater/brochures_forms.html)



## EOP 6

# Habitat Protection

The preservation and protection of habitat is of significant importance to maintain the ecological integrity of our lands, for future generations. By protecting habitat, the fish, wildlife, and plants that use this land are also protected.

## Goal:

- To protect, preserve, and manage fish, wildlife, and vegetation and the habitat that sustains them in a manner consistent with our values, beliefs, and traditions.

## Objectives:

- Ensure compliance with applicable legislation and regulations.
- Ensure protection of environmentally sensitive species and their habitats.
- Protect and enhance the biodiversity of indigenous flora and fauna.
- Identify and enforce appropriate riparian setbacks to ensure safe development.
- Educate the community to generate awareness about environmental stewardship and Sema:th Traditional Ecological Knowledge.

Environmental Operating Procedure No. 6	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

**Critical Habitat:** habitat that is necessary for the survival or recovery of a listed wildlife species.

**Endangered Species:** a wildlife species that is facing imminent extirpation or extinction.

**Extirpated Species:** a wildlife species that no longer exists in the wild in Canada, but exists elsewhere in the world.

**Habitat (a)** in respect of aquatic species: spawning grounds and nursery, rearing, food supply, migration and any other area on which aquatic species depend directly or indirectly in order to carry out their life processes, or areas where aquatic formerly occurred and have the potential to be reintroduced; and **(b)** in respect of other wildlife species: the area or type of site where an individual or wildlife species naturally occurs or depends on directly or indirectly in order to carry out its life processes or formerly occurred and has the potential to be reintroduced.

**Migratory Bird:** a migratory bird referred to in the Convention of the MBCA (1994), and includes the sperm, eggs, embryos, tissue cultures and parts of the bird.

**Nest:** the nest of a migratory bird and includes parts of the nest that holds eggs or offspring.

**Species at Risk:** an extirpated, endangered, or threatened species or a species of special concern.

**Species of Special Concern:** a wildlife species that may become threatened or an endangered species because of a combination of biological characteristics and identified threats.

**Threatened Species:** a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.



## Legislation, Standards, and Policies

- *Canadian Environmental Assessment Act*, 2012 (CEAA, 2012)
- *Fisheries Act*, R.S.C., 1985, c F-14
- *Species at Risk Act*, S.C., 2002, c. 29 (SARA, 2002)
- *Migratory Birds Convention Act*, S.C., 1994, c. 2 (MBCA, 1994)
- *British Columbia Wildlife Act*, RSBC 1996

## Potential Impacts

All parts of an ecosystem, including physical, chemical, and biological components are interconnected – development and other activities can disrupt this relationship, resulting in temporary or permanent impacts to the environment. This may include impacts to:

- Fish and fish habitat (quality and quantity);
- Riparian vegetation – including alteration or removal of vegetation adjacent to streams, lakes, wetlands and other waterbodies;
- Wildlife and wildlife habitat; and
- Species at Risk – as designated under Schedule 1 of the SARA.

## Best Management Practices

All development must comply with applicable Sema:th, federal, and provincial regulations, permits, authorizations, conditions, and agreements with respect to environmental protection. Additional environmental standards, guidelines and BMPs that could be applied are as follows:

Fisheries and Oceans Canada (DFO) Land Development Guidelines for the Protection of Aquatic Habitat (1993): contains guidelines to protect fish populations and their habitat from the damaging effects of land development activities. These guidelines apply primarily to salmon, trout and char, but are applicable to all fish species.

Provincial Standards and Best Practices for Instream Works (1994): assists in the planning and implementation stages for a proposed development by providing a series of performance guidelines and regulatory compliance standards.

DFO Freshwater Intake End-of-Pipe Fish Screen Guideline (1995): contains a set of guidelines to assist proponents in the design and installation of fish screens where freshwater is extracted from fish-bearing waters.

The BC Ministry of Environment Develop with Care 2012: Environmental Guidelines for Urban and Rural Land Development in British Columbia documents:



- Best Management Practices for Amphibians and Reptiles in Urban and Rural Developments in British Columbia (2004);
- Guidelines for Raptor Conservation during Urban and Rural Land Development in British Columbia;
- Develop with Care: Species Factsheets – includes information related to land development and mitigation protocols for rare and endangered species; and
- South Coast Region Information Package – includes information on regional features, regionally significant species, and invasive alien species.

Regional Timing Windows of Least Risk: The BC MOE and DFO have developed a set of regional timing windows for activities that have the potential to impact fish and wildlife populations and their habitats. To reduce the risk of impacts, instream works and vegetation clearing are ideally limited to non-critical periods of the year, unless stringent, species-specific mitigation measures are initiated. Timing windows are as follows:

- a) If works involve fish bearing streams, in-channel or bank work should be completed during the reduced-risk timing windows noted below:
  - August 1 – October 31 (rainbow trout, cutthroat trout, and steelhead)
  - July 15 – September 15 (Pacific salmon)
- b) If works involve vegetation clearing, vegetation should only be removed from an area within the clearing timing window for the protection of nesting birds to ensure that activities will not result in the disturbance of bird nests, eggs, or young. Specific timing windows are noted below:
  - August 15 – January 30 (raptors – eagles, hawks, falcons, owls)
  - August 15 – January 30 (Heron)
  - August 1 – March 31 (other birds)
- c) If works involve species at risk, there are no standard windows of least risk. For information on timing window requirements, a Qualified Environmental Professional (QEP), and/or provincial and federal regulators should be consulted prior to works being initiated.



## Strategy 1: Identify important habitat areas through land use planning

As part of the land use planning process, identify areas for habitat protection based on Traditional Ecological Knowledge, available ecological data (e.g., federal species at risk), and best practices (e.g., riparian setbacks).

## Strategy 2: Develop an environmental baseline overview

Work collaboratively with proponents [(through the development process] see Appendix I, EOP Process: Habitat Protection for Proposed Development] and other agencies (e.g., species at risk funding programs) to develop an ongoing environmental baseline overview of Sema:th Lands. The baseline should include, but is not limited to, the identification of:

- Existing aquatic resources, including the presence of fish and fish habitat;
- Existing terrestrial resources, including the identification of critical habitat for wildlife;
- Known occurrences and locations of species and critical habitat listed under Schedule 1 of the *Species at Risk Act*; and
- Traditional Ecological Knowledge.

The Lands & Resources Department will maintain a database of all relevant files (e.g., shape, drawing), maps, studies, and analytical results. The identification of environmental baseline conditions will assist in managing risks associated with the potential loss or impacts to habitat during various activities on Sema:th Lands, and act as an inventory for long-term monitoring.

## Strategy 3: Promote habitat protection and enhancement

Through the habitat assessment process (see Appendix I, EOP Process: Habitat Protection for Proposed Development), identify potential impacts, assess proposed mitigation (e.g., habitat compensation and/or enhancement), and determine net effects.

## Strategy 4: Ongoing monitoring

The Lands & Resources Department will review annual monitoring reports for approved developments and assess for compliance with associated mitigation measures (e.g., habitat compensation plans). Sema:th will work collaboratively with the Proponent to address any monitoring issues. When possible, Sema:th Environmental Monitors should be used for construction/environmental monitoring programs.



## Strategy 5: Education and awareness

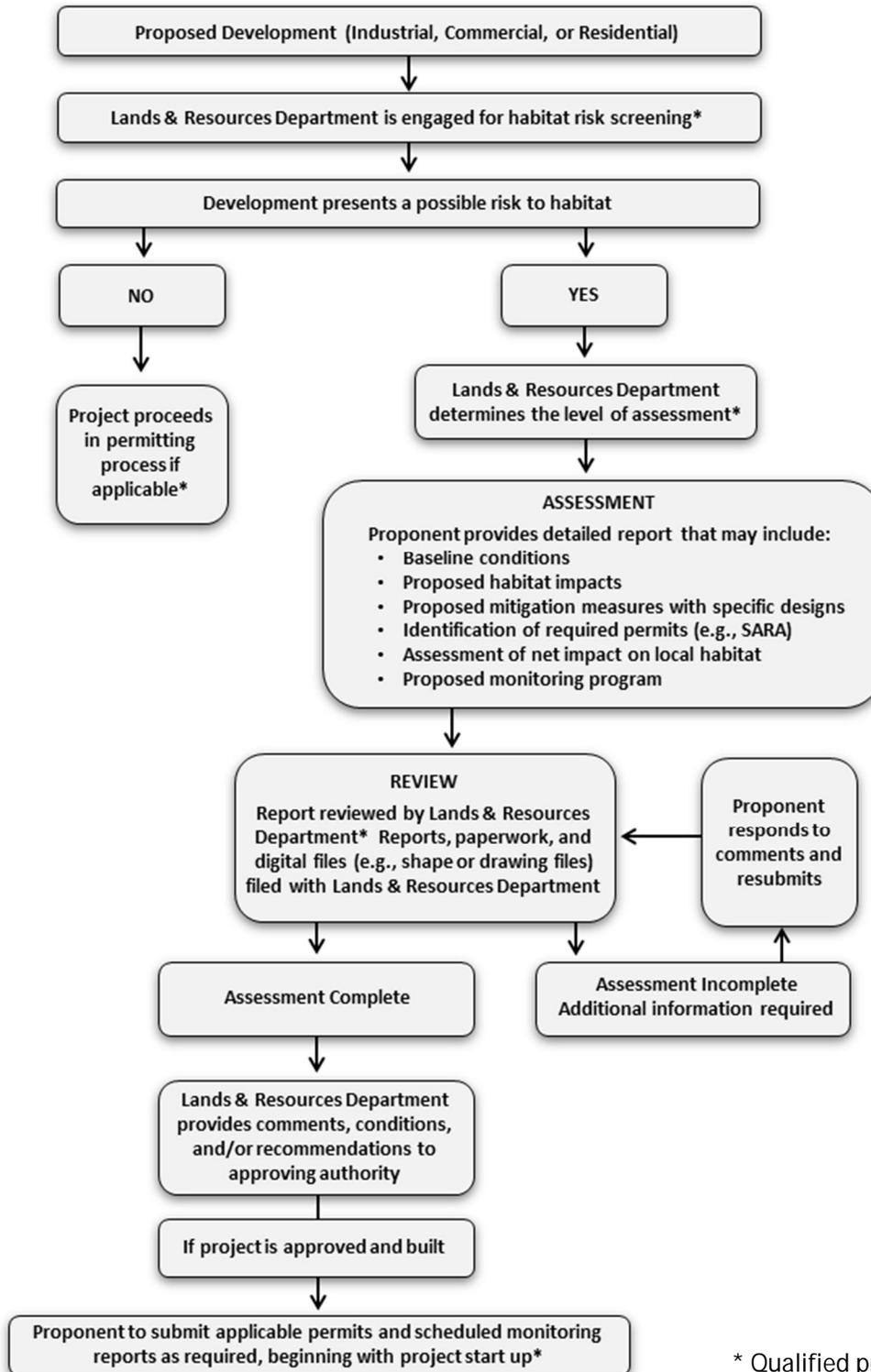
Develop habitat awareness through education and training, with emphasis on natural resources and Traditional Ecological Knowledge. This may include, but is not limited to:

- Collaborating with agencies to develop habitat enhancement programs;
- Promoting awareness of Traditional Ecological Knowledge (e.g., Elders workshops, signage, use of Stó:lō Traditional Plant Book);
- Providing community awareness on sensitive habitats or ecosystems within or adjacent to Sema:th Lands;
- Raising awareness to empower community members to identify and report environmental incidences (i.e., “Community Environmental Watch”); and
- Training for Sema:th members to work as environmental/construction monitors, field assistants, etc.



## APPENDIX I

### EOP PROCESS: HABITAT PROTECTION FOR PROPOSED DEVELOPMENT



\* Qualified professional services may be required.



## EOP 7

# Land Development

Land development refers to the alteration of land through activities such as grading, excavation, soil removal, construction, alteration or clearing of habitats (Queen's Printer for Ontario, 2013). This alteration or conversion of land is associated with modern communities that are constructed or reconstructed for people to live, work, worship, shop, play, and with other supporting land uses (Dewberry & Couture, 2008)

Throughout the land development process, it is important to maintain environmental and cultural values supported by the land and surrounding environment. Maintenance of environmental and cultural values during land development can be achieved through the use of environmental protection and stewardship practices (Province of British Columbia, 2013d).

### Goal:

- We will develop our lands in a way that is compatible with Sema:th laws and ways.

### Objectives:

- Develop a Land Use Plan that creates a desirable and workable future land use system.
- Create land use policies and laws that have a high regard to relevant social, economic, and environmental matters.
- Ensure development procedures are in place.
- Protect the environmental and cultural heritage of Sema:th Lands and People.
- Develop a sustainable, community-controlled economy.
- Create a land use decision making process that is transparent and fair.

Environmental Operating Procedure No. 7	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Legislation, Standards, and Policies

- *First Nations Lands Management Act* – provides First Nations the authority to create laws to control Nation lands, resources and the environment. This is a federal law and allows First Nations to create their own approach for making land allotments to individual Nation members, matrimonial real property interest or rights and “in cases of breakdown of marriage, respecting the use, occupation and possession of First Nation land and the division of interests in First Nation land”.

## Best Management Practices

A strong Land Development process will help create a coordinated approach to growth and development; providing a logical process whereby Council can make decisions about the direction of Sema:th’s expansion; and providing others with an understanding of community needs.

A Land Use Plan is the principle land use planning document for a community. Its purpose is to produce a desirable and workable future land use system. The Land Use Plan is a general document that provides a set of overarching policies and maps which establish goals and provide guidance for the physical development of the community. Within the context of the Sema:th Land Use Plan, policies will have regard to relevant social, economic, and environmental matters.

The following steps outline an approach to the land use planning process:

- Identify long-term community vision;
- Recognize goals, objectives and strategies in the plan that can be measured against the vision;
- Undertake assessments to understand the environmental management and protection that is required;
- Create policies and land use designations considering the results of the community input and background review;
- Ensure compatible land use are proposed and controlled within the Land Use Plan;
- Create action plans;
- Include monitoring guidelines and strategies in order to evaluate the effectiveness of the Land Use Plan in the future; and
- Integrate the plan into the community<sup>3</sup>.

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<sup>3</sup> Ecotrust Canada, 2009



BC Building Code 2012 – provides strong guidance for the construction of buildings; including extensions, substantial alterations, and upgrading of buildings to remove an unacceptable hazard and is a requirement under Aboriginal Affairs and Northern Development Canada (AANDC) Terms of Reference. The BC Building Code applies to the core concepts of the National Building Code, along with elements specific to BC's unique development needs.

BC Fire Code 2012 – provides First Nations with a standard for acceptable level of fire safety within the community. It is not required by law that Nations follow the guidelines within the BC Fire Code; however, the Code provides standards which should be strongly considered.

BC Plumbing Code 2012 – a useful tool for the installation or designing of plumbing systems. It also applies to the extension, alteration, renewal and repair of existing plumbing systems. While the Code is not mandatory for Nations to adopt, it could be a useful tool and guide for plumbing practices unique to BC's development needs.

## Strategy 1: Develop and implement the Sema:th Land Use Plan

Work with the community, legal counsel, and professional Planners to develop and implement the Sema:th Land Use Plan.

## Strategy 2: Create and implement laws, policies and processes

To control land development under the Land Use Plan, a number of laws and policies will be proposed and implemented. These laws and policies will provide specific rules regarding the use of land and will pertain to the character, location, and use of buildings and structures. Sema:th will work to create and implement the following laws and policies:

- Zoning and land use laws;
- Provisions of the EMP;
- Subdivision, development, and servicing law;
- Development permits;
- Development standards and building code law;
- Environmental law considering riparian areas, floodplain, creek setbacks, and environmental management;
- Infrastructure and service agreements;
- Signage law;



- Fill law;
- Cultural development guidelines; and
- Other required development bylaws.

A flowchart to illustrate the land development process is provided in Appendix I, EOP Process: Land Development (to be drafted).

The following land development tools, processes and guidelines will also be included/considered:

- Land development process and development tools (i.e., guidelines and checklists) for developers to assist them with meeting the legal, environmental, and cultural requirements of Sema:th;
- Staff in the Sema:th Lands & Resources Department will be trained to oversee the land development and approval process; and
- Mechanisms will be in place to ensure that only certified professionals will be retained for site development and construction work.

### Strategy 3: Monitoring and compliance

Monitor aspect of the land development process to assess whether the land development tools have been successful in achieving the goals and visions of Sema:th. Should certain aspects of the process prove to be unsuccessful, amendments to the laws and policies will be made to direct the future development of Sema:th Lands.

Components of the monitoring and compliance process should include:

- A scheduled review of the Land Use Plan and other laws to assess their effectiveness in implementing the vision of Sema:th; and
- Amendments to the Land Use Plan and other laws, where appropriate, to include new information, new innovations and approaches to sustainable development.



## EOP 8

# Soil Management

The use of contaminated soil and unregulated land filling has left a legacy of problems which can impact the health of our people and our environment. It is important to properly manage soil and fill brought to Sema:th Lands to ensure deposited material is not contaminated, thereby reducing the potential for human health or environmental risks.

### Goal:

- All soil brought onto and/or used on Sema:th Lands meets environmentally acceptable standards (applicable laws and regulations), and is suitable for the current or future land use.

### Objectives:

- Meet applicable standards, laws, and regulations.
- Draft, implement, and enforce a Sema:th Soil Deposit and Removal Law.
- Create a Soil Deposit and Removal Permitting Process to track the movement of soil into and out of Sema:th Lands.
- Develop harmonized soil and fill management plans with other jurisdictions.

Environmental Operating Procedure No. 8	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

Soil is defined as:

- Clay;
- Silt;
- Sand;
- Gravel;
- Cobbles;
- Boulders; or
- Peat.

Fill: refers to soil that has been removed from one area and deposited in another area, typically as a means to fill depressions and holes to make an area suitable for development.

Deposit: means the act of moving soil and other material and placing it upon a parcel or contiguous parcels of land on which such soil and other material did not exist or stand.

Removal: means the act of removing soil from the parcel or contiguous parcels of land on which it exists and shall include the removal of soil which has been placed into a stockpile or other storage on any land.

## Legislation, Standards, and Policies

- *Canadian Environmental Protection Act*
- *British Columbia Environmental Management Act* (Section 55) – The British Columbia Contaminated Sites Regulations fall within this Act.
- City of Abbotsford's Soil Removal and Deposit Bylaw No. 1228, 2003 – The City of Abbotsford's Soil Removal and Deposit Bylaw No. 1228 - 2003 regulates the movement of soil within the City limits.
- Fraser Valley Regional District Soil Deposit and Removal Bylaw No. 0061, 1996 – Sections 723 and 799 of the *Local Government Act*, R.S.B.C. 1996, c. 323, authorize the Regional Board of the Fraser Valley Regional District to regulate the removal and deposit of soil in the Regional District.



## Potential Impacts

Soil can become contaminated in many ways but the most common are the result of hydrocarbon spills and through industrial and agricultural activities. It is important to ensure that contaminated soils are managed in the most environmentally safe manner with due care for human health. It is equally important to ensure that contaminated soils are not brought into a community and used in future development sites.

## Best Management Practices

The movement of soil/fill on, off, and within Sema:th must comply with applicable Sema:th, federal, and provincial regulations, permits, authorizations, conditions, and agreements with respect to environmental protection. Additional BMPs, environmental standards, and guidelines that could be applied are described below.

During any excavation work, the contractor must notify Sema:th if the following is observed:

- Unusual odour that may indicate the presence of contaminants (i.e., gas or oil);
- Stained soils which are darker and may have a “wet” appearance typically indicate the presence of a spill area. Contaminated soils may also have a distinct oily feel. Typically, staining (contamination) is accompanied by an odour; and/or
- If staining, odour, buried debris, or hydrocarbon sheen is observed associated with infiltrating groundwater, the contractor will immediately stop work and advise Sema:th of the suspected contamination.

## Strategy 1: Develop a soil removal and deposit law

Develop, implement, and enforce a Soil Removal and Deposit Law to effectively regulate (control and monitor) the movement of soil on and off Sema:th Lands. The law will apply to Sema:th members, contractors, businesses, and anyone depositing or removing soil on Sema:th Lands.

## Strategy 2: Develop and implement a soil management permitting process

Develop and implement a soil permitting process to minimize impacts to human health and the environment, and to regulate and manage the movement of soil or fill onto and within Sema:th Lands. The permit will consider the quantity and quality of the soil and fill and the existing or potential future use of the receiving site.



### Strategy 3: Utilize soil management processes

Follow Appendix I, EOP Process: Incoming Soil and Within Sema:th Lands to control the quantity and quality of soil entering or moved within Sema:th Lands. Follow Appendix II, EOP Process: Outgoing Soil to control the quantity and quality of soil leaving Sema:th Lands.

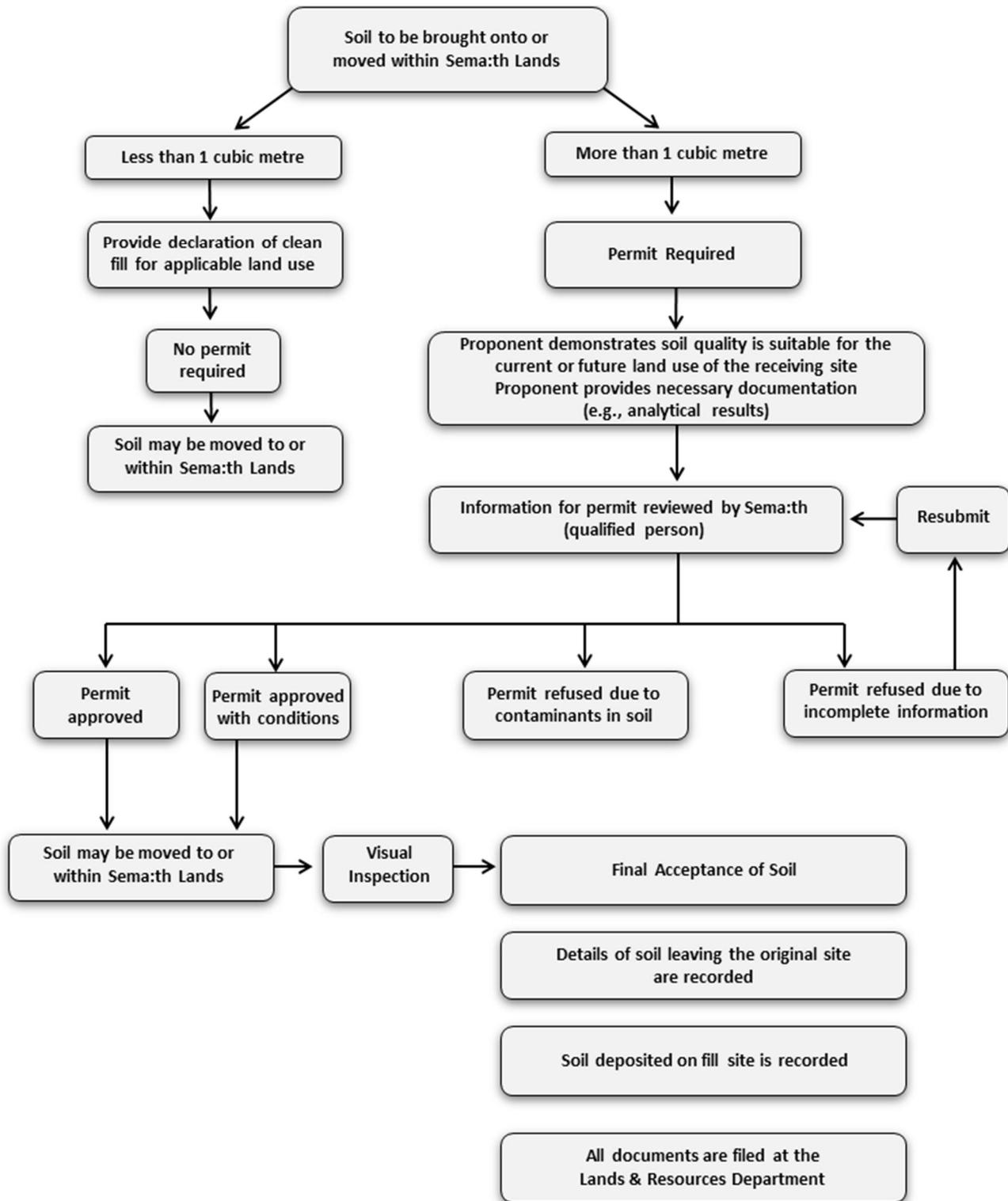
### Strategy 4: Complete recommendations of the ESA

Work with the appropriate authorities to carry out the recommendations provided in the Environmental Site Assessment (ESA) with regards to contaminated soil. For example, the draft Phase III recommended that a human health and ecological risk assessment for chromium, nickel, and dissolved metals concentrations in soil in several areas on Sema:th Lands be carried out to determine if their concentrations pose a potential threat.



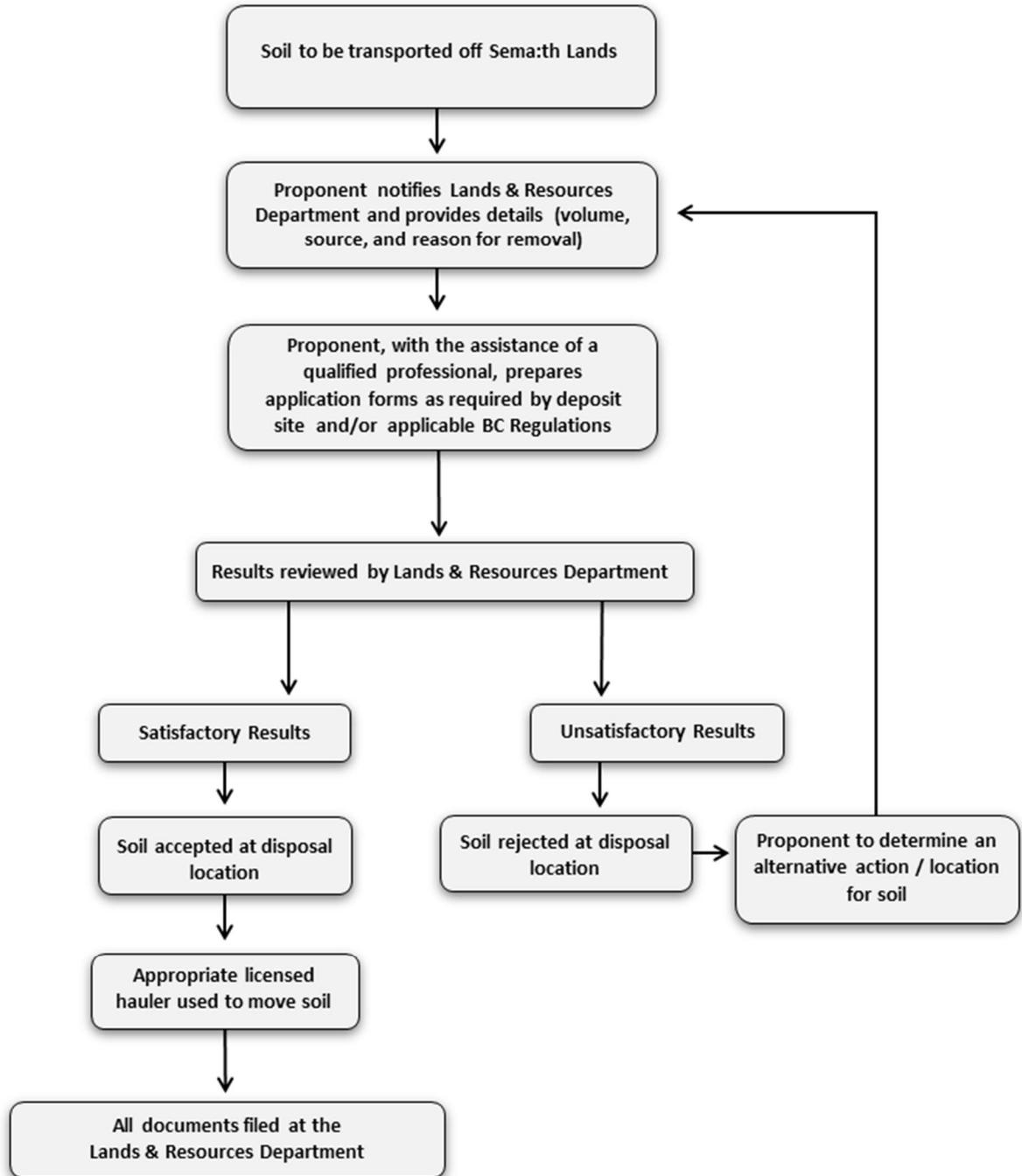
# Appendix I

## EOP Process: Incoming Soil and Within Sema:th Lands





## Appendix II EOP Process: Outgoing Soil





## EOP 9

# Solid Waste Handling & Disposal

Solid waste is produced by residential, commercial, institutional, demolition, land clearing, or construction sources. (Province of BC, 2013c). Integrated Solid Waste Management (ISWM) is a comprehensive waste prevention, recycling, composting, and disposal program. An effective ISWM system considers how to prevent, recycle, and manage solid waste in ways that most effectively protect human health and the environment. ISWM involves evaluating local needs and conditions, and then selecting and combining the most appropriate waste management activities for those conditions. The major ISWM activities are waste prevention, recycling and composting, and combustion and disposal in properly designed, constructed, and managed landfills. Each of these activities requires careful planning, financing, collection, and transport. (US Environmental Protection Agency)

### Goal:

- We will lessen our environmental footprint by embracing the 'reduce, reuse, and recycle' approach to waste management.

### Objectives:

- Educate members and generate awareness on reducing, reusing, recycling, and proper waste disposal.
- Develop and implement a community composting program.
- Enforce proper solid waste handling and disposal procedures.
- Reduce and eliminate illegal dumping.
- Work with developers and companies who promote and facilitate leadership in waste reduction.
- Become part of the "Zero Waste Challenge".

Environmental Operating Procedure No. 9	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

Municipal solid waste: commonly known as trash or garbage generally refers to waste consisting of everyday items that are discarded by the public. It does not include industrial waste, agricultural waste, medical waste, radioactive waste or sewage sludge.

Residential Sector: Waste materials are often classified by source. Waste generated by single family and multi-family residential households is referred to as “residential sector” waste.

ICI (Industrial, Commercial and Institutional) sector: Waste materials are often classified by source. Waste generated through industrial, commercial and institutional activities is referred to as “ICI sector” waste.

Waste stream: Waste can also be classified by stream or material. Typical terminology used by the municipal waste stream is provided in Appendix I.

## Legislation, Standards and Policies

- *Canadian Environmental Protection Act, 1999 (CEPA 1999)*
- *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*
- *Interprovincial Movement of Hazardous Waste Regulations*
- *British Columbia's Environmental Management Act (Part 3 – Municipal Waste Management)*
- *British Columbia Recycling Regulation (B.C. Reg. 132/2011)*
- *BC Waste Discharge Regulation (B.C. Reg. 320/2004)*
- *Fraser Valley Regional District Integrated Solid Waste Management Plan (Draft, April 18, 2011) – contains information on waste policies and goals and how waste materials will be managed in the region.*
- *Municipal policies and bylaws – can contain information on material bans; i.e., materials which are prohibited or banned from disposal at municipal landfills. Because waste generated on the reserve is collected and transported off-site for disposal, banned materials cannot be included in the garbage. Inclusion of these banned materials in the waste stream can result in fines and charges, which would be levied on the collection contractor and likely passed on to Sema:th Nation.*



- British Columbia Extended Producer Responsibility (EPR) Programs  
BC's policies and programs are designed to have producers of designated products take responsibility of the full life-cycle management of their items, including costs, collection, recycling and final disposal. EPR programs shift responsibility to the producer and away from local waste authorities. It also provides incentives for producers to incorporate environmental considerations and waste reduction measures into the design of their products. EPR materials should be managed responsibly. A list of current EPR products available on the Recycling Council of British Columbia (RCBC) website: <http://rcbc.bc.ca/education/product-stewardship/programs#Top>

## Potential Impacts

Waste materials introduced into the environment, through unauthorized burning, landfilling, burying, littering and storage, can cause pollution of the environment, including the land, air and water.

As stewards of the environment, Sema:th will take the necessary precautions and steps to ensure waste is managed responsibly on its lands. This includes responsible management of waste materials generated by residents and activities on the reserve, and the importation of waste materials onto Reserve lands.

## Best Management Practices

This section will provide some guidance and management practices that will assist Sema:th in acting as stewards of the environment. Understanding the standards an activity/development must meet will allow Sema:th to carry out future development in a safe and sustainable manner.

### Waste Management Hierarchy

The waste management hierarchy is a nationally and internationally accepted guide for prioritizing waste management practices with the objective of achieving optimal environmental outcomes. It sets out the preferred order of waste management practices, from most to least preferred.

The waste management hierarchy is generally referred to as the 6 R's of waste management:

- Rethink: to re-evaluate our current lifestyle and the way in which products are designed and produced in an effort to minimize/reduce/eliminate waste.



- Reduce: to minimize the amount of material and energy used in a product's life cycle.
- Reuse: to use an existing product (that would otherwise become waste) for another purpose, without processing it.
- Recycle: to remove a product from the waste stream before it is disposed and to process it into a new product.
- Recover: to reclaim a material or product destined for the landfill for an alternate use.
- Residual management: to responsibly manage any remaining waste that cannot be reduced, reused, recycled or recovered, preferably using a triple bottom line approach.

#### Zero Waste Challenge

The term "Zero Waste" is a concept that promotes a future where landfills are no longer needed. The term is intended to encourage people to think more holistically about their waste and to view it as a resource instead of garbage destined for burial. Zero Waste is a mindset meant to propel change in the existing solid waste management system and to promote the adoption of more aggressive waste reduction policies aimed towards stopping waste before it is created and maximizing reuse and recycling programs.

## Strategy 1: Understand current waste streams and quantities

A first step in any waste management program is to gain an understanding of current or existing waste quantities and sources. A thorough review and understanding of the current position is essential to understand "where we are now". In addition, the definition of a baseline year (or years) serves as the benchmark against which future progress can be measured.

'Typical' municipal waste streams generated on Sema:th Lands are summarized in Appendix I: Municipal Waste Streams. Follow Appendix II: EOP Process, Solid Waste Management for responsible management of municipal waste materials.

Sema:th will work with its waste collection contractor and other relevant parties (e.g., consultants) to define a methodology for tracking the quantity of waste generated on the reserve. Opportunities to more accurately determine the composition of the waste streams (such as waste compositions studies / waste audits) will also be investigated. Information on waste quantities and composition will be used to (a) define a baseline against which progress can be measured and (b) inform waste reduction, reuse and recycling programs going forward.



## Strategy 2: Provide municipal household waste collection

Sema:th will ensure that waste collection services are provided by an authorized waste contractor and the collected waste must be disposed of at an appropriately licensed waste facility (e.g., Landfill, Transfer Station, Composting Facility and/or Material Recovery Facility).

A list of questions to ask potential waste collection contractors is provided in Appendix III: Questions to Ask When Selecting a Waste Collection Provider.

## Strategy 3: Manage illegal dumping

Littering is an offence under the *BC Environmental Management Act*. Sema:th will enact a law which prohibits individuals from littering or dumping waste materials on Sema:th Lands.

Other proactive and reactive approaches (or a combination of) can be considered for adoption. As with Strategy 1, the first step should be to establish a more accurate picture of the current (baseline) situation; which will include the introduction of a process to record incidents of illegal dumping (date, time, location, items disposed, approximate quantity, etc.).

Proactive approaches:

- Waste attracts waste – keep areas clean and tidy;
- Access prevention measures – fencing, placement of large stones at ‘hotspots’;
- Signage – erect signage “Protection of our lands is important to us; please don’t litter / dump waste”;
- Patrols of volunteer groups; and
- Method for recording illegal dumping incidents – date, time, location, materials left, action taken.

Reactive approaches:

- Organize clean-up days;
- Adopt-a-Street;
- Utilize FVRD’s Illegal Dumping Hotline 1-800-655-DUMP (3867) or call the RCMP. Callers are asked to make note of the 4W’s when reporting an incident:
  - Where did the illegal dumping take place?
  - When did you notice the illegal dumping?
  - What materials were illegally dumped?
  - Who committed the illegal dumping?



### Strategy 4: Prohibit illegal burning of waste

The burning of any household or hazardous waste is prohibited under the *Indian Reserve Waste Disposal Regulations* (Section 10) and will not occur on Sema:th Lands (EOP 1). Instead, waste shall be removed from the area and taken to the authorized recycling facilities or an authorized landfill.

### Strategy 5: Prohibit illegal burial of waste

The illegal burial of waste is prohibited under the *Indian Reserve Waste Disposal Regulations* (Section 3) and will not occur on Sema:th Lands, except in accordance with a permit issued under Section 5 of the *Indian Reserve Waste Disposal Regulations*. Waste burial sites, especially in areas with lots of precipitation, can easily produce harmful leachate that can flow as surface water or migrate to the groundwater or other nearby surface water bodies. Instead, waste shall be removed from the area and taken to the authorized recycling facilities or an authorized transfer station or landfill.

### Strategy 6: Create Education and Awareness Campaign

Develop community waste management awareness through education and outreach programs including, but not limited to:

- Waste management hierarchy (Reduce, Reuse, Recycle);
- Zero Waste Challenge;
- Responsible management of waste materials (Appendix II: EOP Process, Solid Waste Management);
- Ban on burning of waste materials (Strategy 4); and
- Ban on unauthorized burial of waste materials (Strategy 5).



## Appendix I Municipal Waste Streams

Waste Stream	Typical Materials / Examples
Garbage or 'residual waste'	<ul style="list-style-type: none"><li>Materials that cannot be recycled, composted or diverted through other programs include:</li><li>Diapers</li><li>Sanitary products</li><li>Styrofoam</li><li>Cigarette butts</li><li>Lint</li></ul>
Recyclables or 'blue box / bag' materials	<ul style="list-style-type: none"><li>Paper and envelopes</li><li>Newspapers, magazines, flyers</li><li>Cardboard</li><li>Boxboard (e.g., cereal boxes)</li><li>Milk cartons and juice boxes</li><li>Containers – plastic, metal and glass</li></ul>
Organic or 'compostable' waste	<ul style="list-style-type: none"><li>'Green Waste' – yard trimmings, grass, clippings, branches, etc.</li><li>Food waste scraps</li><li>Tissue paper</li><li>Food-soiled paper packaging</li></ul>
Demolition and Land Clearing (DLC) waste (also referred to as Construction and Demolition (C&D) waste)	<ul style="list-style-type: none"><li>Building / demolition materials</li><li>Bricks</li><li>Concrete</li><li>Gypsum / drywall</li><li>Wood</li></ul>
Household Hazardous Waste (HHW)	<ul style="list-style-type: none"><li>Batteries</li><li>Electronic waste</li><li>Fluorescent tubes and compact fluorescent lights</li><li>Household paints</li><li>Pesticides and flammable liquids, medications</li><li>Waste oil, filters and containers</li></ul>

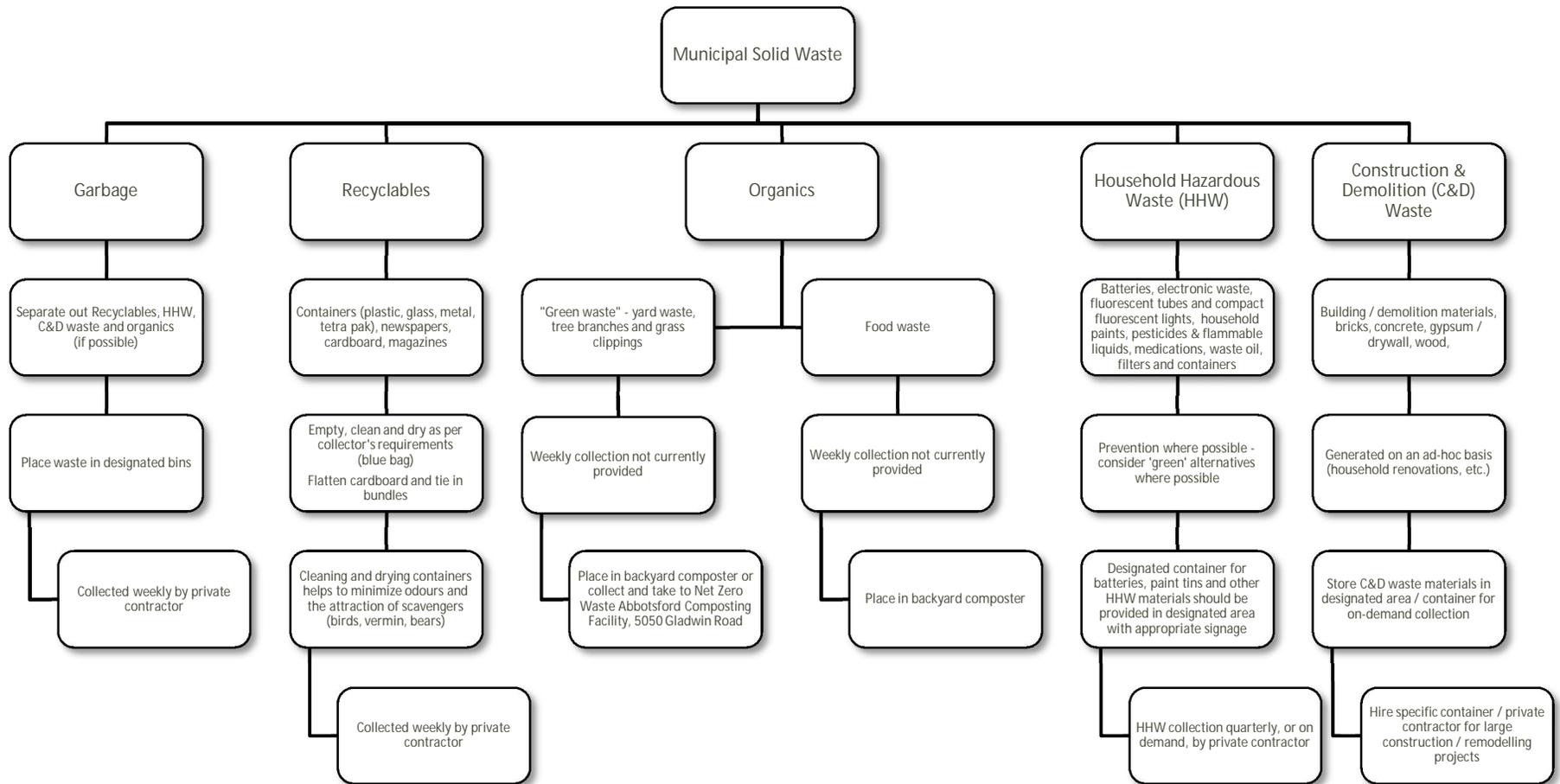


Waste Stream	Typical Materials / Examples
Extended Producer Responsibility (EPR) Materials	<ul style="list-style-type: none"><li>▪ Expired smoke alarms</li><li>▪ Cell phones</li><li>▪ Antifreeze, lubricating oil, oil filters and oil containers</li><li>▪ Rechargeable batteries and cell phones</li><li>▪ Electronic products and small appliances</li><li>▪ Light bulbs</li><li>▪ Medications</li><li>▪ Paint, flammable liquids, domestic pesticide and gasoline</li><li>▪ Thermostats</li><li>▪ Tires</li></ul>



## Appendix II

# EOP Process: Municipal Solid Waste Management





## Appendix III

# Questions to Ask When Selecting a Waste Collection Contractor

- What materials do you collect?
  - Garbage
  - Organics
    - Yard trimmings and grass clippings
    - Food waste
  - Recyclables
    - Single stream recycling – paper cardboard and containers mixed together
    - Three stream recycling – recyclables separated into three streams (newspapers, paper and cardboard, containers)
  - Other materials, for example:
    - White goods
    - Waste oil
- What types of containers do you provide?
  - Front load containers
  - Toters
  - Other
- What signage do you provide for our containers?
  - Symbols, text, pictures to educate users as to “what goes in what bin”
- What educational materials do you provide?
  - Brochures, pamphlets, etc. to educate users as to “what goes in what bin”
- Where do you take the waste you collect from our Reserve?
  - Garbage
    - Landfill - name, location
    - Transfer Station - name, location
  - Recyclables
    - Material Recovery Facility - name, location
    - Transfer Station - name, location
- What information can you provide us on the quantities of waste you collect from our Reserve?
  - Estimated based on collection frequency and bin size
  - Actual weights (on board scale or transfer station scale)
- What do your services cost?
  - Cost per lift
  - Cost per agreed collection schedule (e.g., weekly, bi-weekly)
  - Cost per on-demand pick up



## EOP 10

# Surface Water Management

Surface water refers to water flowing across or accumulating on the ground surface as a result of precipitation processes and most often due to the influence of rainfall and snowmelt. As water inundates and accumulates on the surface, it begins to flow towards creeks, streams, lakes, ditches, or installed storm sewer systems or reservoirs. Regionally, surface water originates in mountainous areas and then flows through creeks, streams, and as overland flow to larger creeks and streams in lowland areas.

### Goal:

- We will keep our waterways clean for the protection of all living things.

### Objectives:

- Ensure compliance with applicable legislation and regulations.
- Evaluate the quality and quantity of surface water on Sema:th Lands.
- Monitor surface water quality to track long-term trends and to assess the effectiveness of surface water management programs.
- Educate the community to generate awareness about environmental stewardship and Sema:th Traditional Ecological Knowledge.

Environmental Operating Procedure No. 10	EOP Revision: 01
Responsibility: Lands Manager, Lands Advisory Committee, Developers/Proponents, Band Members	Revision Date: July 25, 2013



## Terminology

Base Flow: Portion of (stream) flow that comes from groundwater or other delayed sources.

Peak Flow: The maximum instantaneous discharge of a stream at a specific location. Corresponds to the highest stage of a flood.

## Legislation, Standards, and Policies

- *Fisheries Act* (1996)
- *BC Water Protection Act* (1996)
- Environment Canada's Federal Water Policy (1987)
- Canadian Environmental Quality Guidelines

## Potential Impacts

Surface water can be negatively impacted through contamination from human and natural sources. Human-caused contamination can occur through the release of hazardous materials to surface water from residential, industrial, and commercial operations. For example, water within a creek which runs through an agricultural area can be negatively impacted if pesticides and fertilizers are released into the creek. Pesticides and fertilizers may cause detrimental impacts to the aquatic life of the creek, reducing the creek's productivity, and reducing the quality of the surface water.

Natural sources of surface water contamination include bacteria, viruses, or toxins within the water which are naturally occurring. If the water is consumed by wildlife or humans, they may become ill.

Surface water quantity impacts are often due to peak flow increases, reduction in baseflows and general loss of infiltration to groundwater resources.

The following major surface water bodies collect surface water and flowing through or adjacent to Sema:th Lands:

- Sumas River – The Sumas River is a 32 km long tributary to the Fraser River. Impacts to this river are largely from influences from adjacent agricultural activities and runoff.
- Marshall Creek – Marshall Creek flows west through Sema:th Lands on the north side of Highway 1, originating as a branch off of Sumas River, found west of Lakeview Drive. Marshall Creek flows west for approximately 6 km then crosses south to confluence with Sumas River again, approximately 1.5 km west of Whatcom Road.
- Kilgard Creek – Discharges south from McKee Peak through Sema:th Lands to its confluence with Marshall Creek near the south end of Sumas Mountain Road.



## Best Management Practices

All development must comply with applicable Sema:th, federal, and provincial regulations, permits, authorizations, conditions, and agreements with respect to surface water protection. Additional BMPs, environmental standards, and guidelines that could be applied are described below.

Canadian Council of Minister of the Environment (CCME) and the BC Ministry of Environment (MoE) have a series of guidelines that act as benchmarks to identify the safe level of substances for the protection of a given water use. For example, the water quality guidelines are specified as a single maximum value to protect aquatic life where the BC water quality guidelines are specified as two values: one to protect aquatic life from short-term lethal effects and the other to protect from long-term sub-lethal effects.

Best practices for the protection of surface water, ensure compliance with the following guidelines:

- BC Approved Water Quality Guidelines (2006 Edition);
- A Compendium of Working Water Quality Guidelines for BC;
- Ambient Water Quality Guidelines;
- CCME Water Quality Guidelines for the Protection of Aquatic Life; and
- CCME Water Quality Guidelines for the Protection of Agricultural Water Uses.

General BMPs for the protection of surface water quality include, but are not limited to:

- All surface water leaving a work area (e.g., construction site) must meet or exceed CCME and BC Water Quality Guidelines for the Protection of Freshwater Aquatic Life;
- Areas of exposed soil must be properly contained and/or covered to prevent the mobility of sediments into receiving surface water bodies;
- Soils or other loose materials should not be stockpiled adjacent surface water body without proper management;
- Stormwater runoff from roads and hard surfaces may contain grit, sediment and petrochemical residues. Road runoff should go through a solids interceptor prior to its discharge into watercourses.



Additional guidelines, protocols, and BMPs for designing and implementing a water quality monitoring program include:

- BC Resource Information Standards Committee (RISC) guideline documents for Designing and Implementing a Water Quality Monitoring Program in BC;
- RISC Guidelines for Interpreting Water Quality Data;
- CCME Protocols Manual for Water Quality Sampling in Canada; and
- US Environmental Protection Agency State Monitoring and Assessment Program Guidelines.

Common water quality issues and their associated pollution sources that are likely to be encountered are provided in Appendix I.

## Strategy 1: Develop a baseline surface water overview

Work collaboratively with proponents (through the development process – see Appendix II, EOP Process: Surface Water Management for Proposed Development) and other agencies (e.g., Environment Canada) to develop an on-going baseline overview of surface water resources on Sema:th Lands. Previous studies will also contribute to the overview (e.g., Ambient Water Quality Monitoring in Kilgard Creek, 2001). The baseline should include but is not limited to the identification of:

- Existing surface water conditions to determine overall health including hydrological regime (i.e., quantity);
- Specific pollutants and sources of pollution (i.e., point and non-point sources); and
- Designated uses (e.g., fishing, swimming, suitable for fish and other aquatic organisms) and whether surface water resources are meeting applicable requirements.

The Lands & Resources Department will maintain a database of all files (e.g., shape, drawing), maps, studies, and analytical results at the Lands & Resources Department Office.

## Strategy 2: Promote surface water protection and enhancement

Through the surface water assessment process (see Appendix II, EOP Process: Surface Water Management for Proposed Development), Sema:th will promote protect and enhance by identifying potential impacts, assessing proposed mitigation, determining net effects, and providing relevant recommendations and comments to promote surface water protection and enhancement measures.



### Strategy 3: Ongoing monitoring

The Lands & Resources Department shall review annual monitoring reports for approved developments and assess for compliance with associated mitigation measures. Sema:th will work collaboratively with the proponent to address any monitoring issues.

### Strategy 4: Fuel spill response

In the case of a spill threatening a water source refer to EOP 7 Process: General Spill Response.

### Strategy 5: Participate in watershed management initiatives

Sema:th Lands have nearby activities (e.g., residential and commercial development) that may affect our surface water resources but are out of our jurisdiction. By participating in regional committees, we will be more likely to affect change in the best interest of our resources.

Participation in these committees will also allow for Sema:th to draw upon the existing efforts of regional watershed management planning and assist us in defining baseline conditions and developing and implementing water quality and quantity monitoring programs.

### Strategy 6: Consider policies to enforce surface water protection

Sema:th will consider the adoption of policies, supported where necessary by bylaws. An example includes the City of Abbotsford's Erosion and Sediment Control Bylaw (No. 1989-2010) that was established to help reduce the amount of sediment-laden water entering the drainage system. This bylaw requires the implementation of BMPs on construction sites to ensure that discharge water quality standards are met.

### Strategy 7: Education and awareness

Develop surface water resources awareness through education and training, emphasis on natural resources and Traditional Ecological Knowledge. This may include, but may not be limited to:

- Collaborating with agencies to develop surface water protection programs;
- Promoting awareness of Traditional Ecological Knowledge (e.g., Elders workshops, signage of creeks);
- Providing community awareness on surface water resources within or adjacent to Sema:th Lands;
- Raising awareness to empower community members to identify and report environmental incidences (i.e., "Community Environmental Watch"); and
- Training for Sema:th members to work as environmental/construction monitors, field assistants, etc.



## Appendix I

### Common Activities, Pollutant Sources, and Associated Surface Water Quality Parameters

Land Use/Monitoring Activity: Agricultural Runoff	
<p>Priority Parameters:</p> <ul style="list-style-type: none"> <li>▪ Turbidity;</li> <li>▪ Total suspended solids (TSS);</li> <li>▪ Nitrates;</li> <li>▪ Temperature;</li> <li>▪ Phosphorus;</li> <li>▪ Dissolved oxygen; and</li> <li>▪ Microbiological parameters (E. coli, faecal coliforms).</li> </ul> <p>Secondary Parameters:</p> <ul style="list-style-type: none"> <li>▪ pH;</li> <li>▪ Conductivity; and</li> <li>▪ Nutrients.</li> </ul>	<p>Potential Sources of Pollution:</p> <ul style="list-style-type: none"> <li>▪ Effluent from septic systems or sewage discharges;</li> <li>▪ Runoff of organic contaminants (e.g., manure and biosolids);</li> <li>▪ Runoff of chemical and organic fertilizers and pesticides;</li> <li>▪ Excess accumulation of heavy metals (e.g., selenium) from irrigation; and</li> <li>▪ Soil erosion and sedimentation.</li> </ul>
Land Use/Monitoring Activity: Industrial Effluent Discharge	
<p>Priority Parameters:</p> <ul style="list-style-type: none"> <li>▪ Temperature;</li> <li>▪ Conductivity;</li> <li>▪ pH;</li> <li>▪ Turbidity;</li> <li>▪ TSS; and</li> <li>▪ Total and dissolved metals.</li> </ul> <p>Secondary Parameters:</p> <ul style="list-style-type: none"> <li>▪ pH;</li> <li>▪ Conductivity;</li> <li>▪ Dissolved oxygen; and</li> <li>▪ Nutrients.</li> </ul>	<p>Potential Sources of Pollution:</p> <ul style="list-style-type: none"> <li>▪ Effluent from industrial activities (e.g., acids, toxic metals, dyes, etc.);</li> <li>▪ Oil spills; and</li> <li>▪ Urban runoff of grease and toxic chemicals.</li> </ul>



Land Use/Monitoring Activity: Urban Runoff

Priority Parameters:

- Turbidity;
- Phosphorus;
- Nitrates;
- Temperature;
- Conductivity;
- Dissolved oxygen;
- Biochemical oxygen demand;
- Total and dissolved metals; and
- Hydrocarbons.

Secondary Parameters:

- pH;
- Dissolved oxygen; and
- Nutrients.

Potential Sources of Pollution:

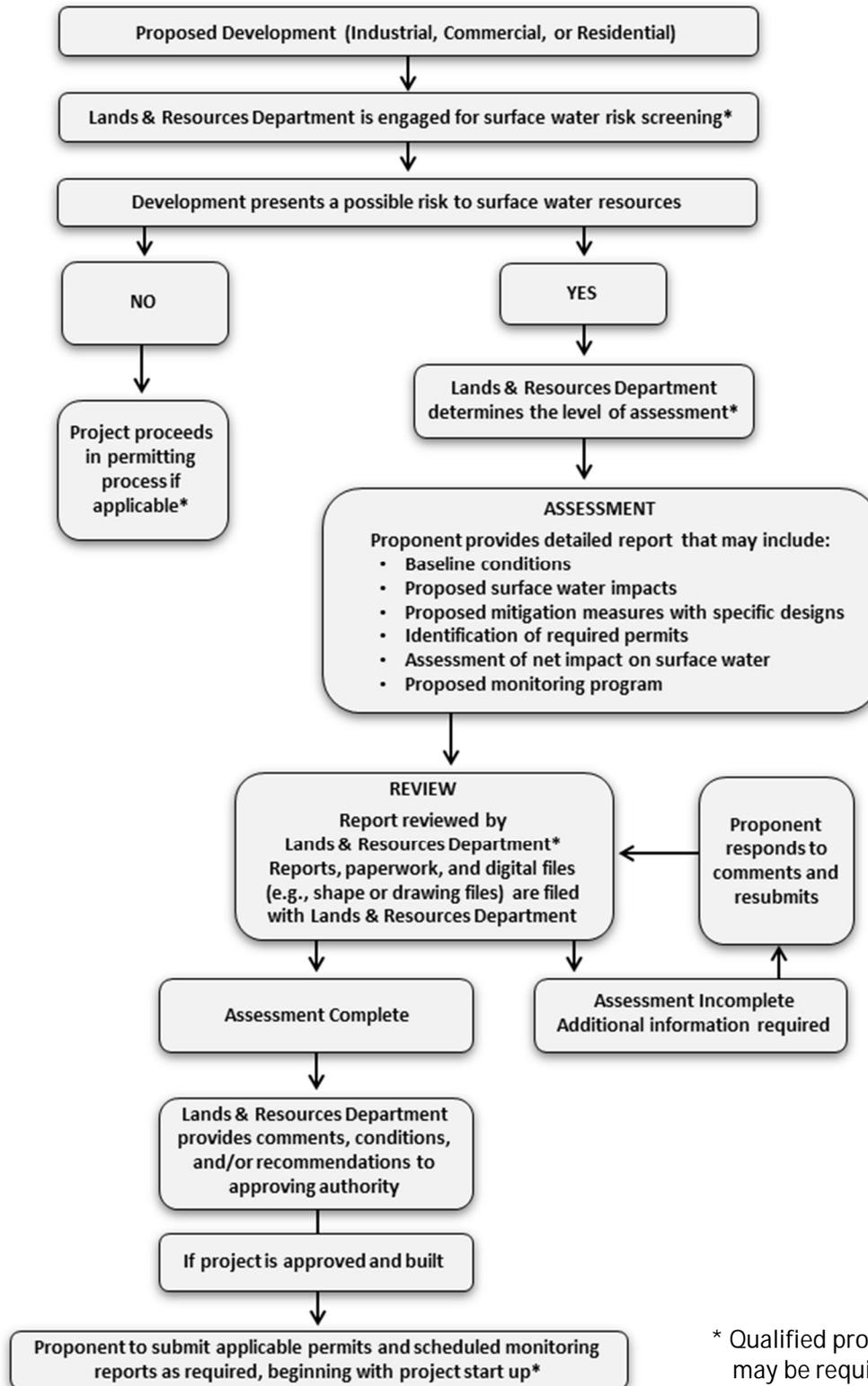
- Stormwater runoff;
- Snow melt; and
- Construction-related activities or land development.

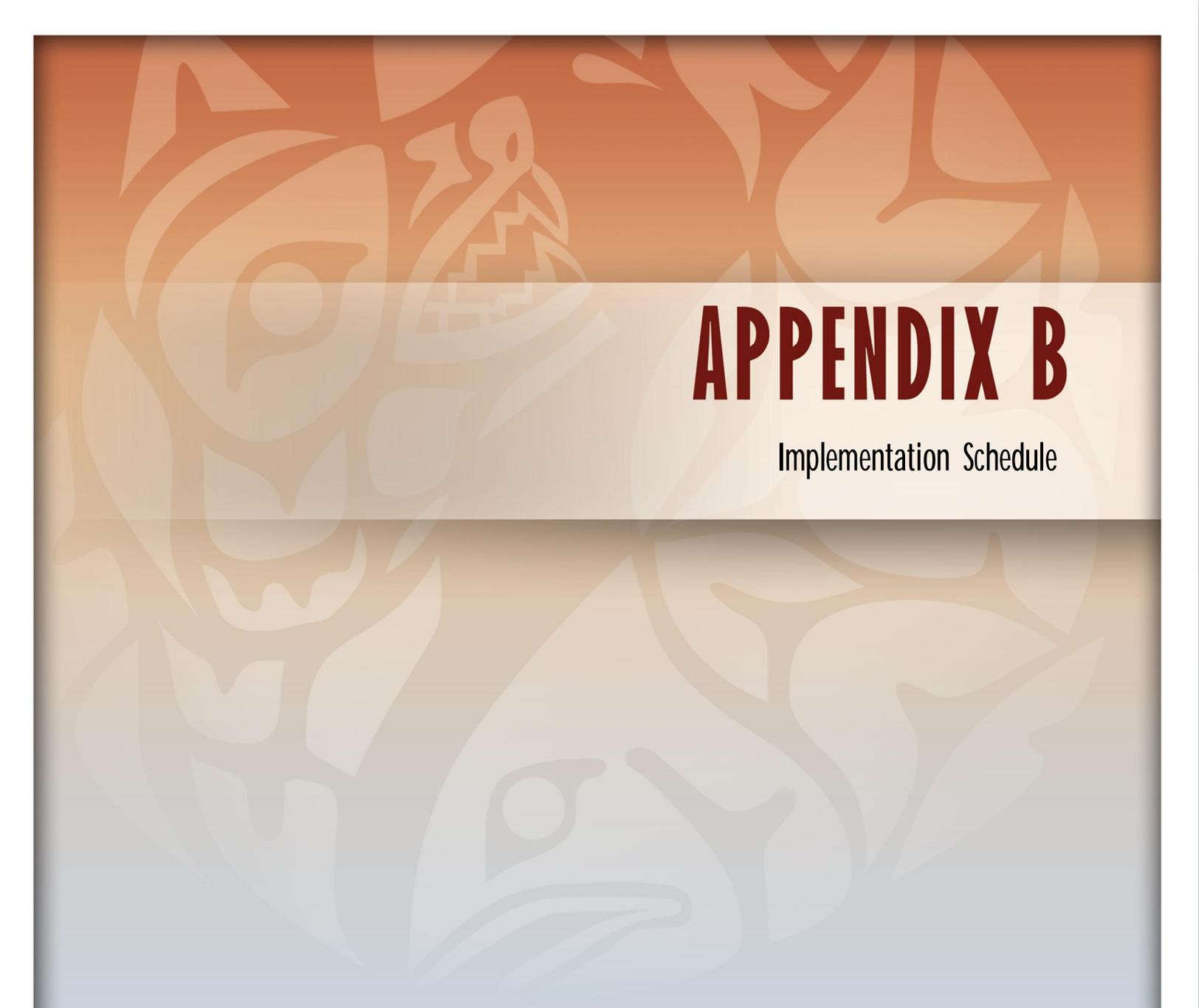
Source of information: <http://water.epa.gov/type/rsl/monitoring/vms50.cfm>



## Appendix II

# EOP Process: Surface Water Management for Proposed Development





# APPENDIX B

## Implementation Schedule



DRAFT IMPLEMENTATION TIMELINE FOR SEMA:TH EMP

	Month and Year																																																										
	Fiscal 2013/14						Fiscal 2014/15						Fiscal 2015/16						Fiscal 2016/17						Fiscal 2017/18						Fiscal 2018/19																												
	Apr-01	May-01	Jun-01	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01	Jan-01	Feb-01	Mar-01	Apr-01	May-01	Jun-01	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01	Jan-01	Feb-01	Mar-01	Apr-01	May-01	Jun-01	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01	Jan-01	Feb-01	Mar-01	Apr-01	May-01	Jun-01	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01	Jan-01	Feb-01	Mar-01											
<b>Foundation Activities</b>																																																											
Finalize Development Permit Process (EOP 7 - 2)																																																											
Issue RFP to pre-qualify Consultants to assist with EOPs 1 - 10 on an as needed basis.																																																											
Develop Data Management System for EMP (e.g. database/filing system for baseline data, monitoring reports, tank inventories, consultant reports, etc...)																																																											
Create and keep an updated list of regional, provincial, and federal organizations that can provide grants, funding, and in-kind support to implement the EMP.																																																											
Create and keep an updated list of relevant contacts (e.g. FVRD, City of Abbotsford, Metro Van)																																																											
Create and keep an updated list of industry contacts operating in and around Sema.th.																																																											
<b>Short Term Activities</b>																																																											
Purchase and locate spill response kits at key locations (EOP 4 - 4)																																																											
Initiate communication with FVRD and Metro Van to share information and goals regarding air quality (EOP 1 - 5)																																																											
Create Land Use Plan (EOP 2 - 1, EOP 6 - 1, EOP 7 - 1)																																																											
Initiate communication with identified support agencies (Foundation Activity 4) to support cultural resource protection (EOP 2 - 5)																																																											
Establish review process for Sumas Emergency Plan (EOP 3 - 1)																																																											
Ensure that Development Process has a mechanism for identifying new and/or upgraded fuel tank storage system(s) (EOP 4 - 2)																																																											
Create system to file copies of fuel tank/system certifications and maintain in database (EOP 4 - 2)																																																											
Make all owners/operators aware of EOP 4 Process: Fuel Tank Inspections and EOP 5 Process: General Response Plan (EOP 4 - 3, 4)																																																											
Engage Qualified Professional to develop and implement a drinking water management plan (EOP 5 - 5)																																																											
Create Zoning Bylaw (EOP 7 - 2)																																																											
Create Subdivision, Development, and Servicing Laws (EOP 7 - 2)																																																											
Develop Standards and Building Code (EOP 7 - 2)																																																											
Create an Environmental Law for riparian areas, flood plain and creek setbacks (EOP 7 - 2)																																																											
Develop soil removal and deposit bylaw (EOP 8 - 1)																																																											
Develop and implement a soil management permit process (EOP 8 - 2)																																																											
Communicate process for incoming and outgoing soil (EOP 8 - 3)																																																											
Ensure waste collection is done by an authorized contractor (EOP 9 - 2)																																																											
Work with Qualified Professional to create cultural design guidelines (EOP 2 - 4)																																																											
Create and maintain an inventory of fuel storage tank/systems (EOP 4 - 1)																																																											
Create awareness campaign for EOP 6 as per Strategy 5																																																											
Obtain copies of local Industry's (Foundation Activity 6) Emergency Plans and Procedures and file in Data Management System (Foundation Activity 2) (EOP 3 - 4)																																																											
Create a training plan for responsible parties identified in the Sumas Emergency Plan (EOP 3 - 2)																																																											
Initiate communication with Regional Air Quality Committee(s) (Foundation Activity 5) to assist in obtaining baseline data (EOP 1 - 4)																																																											
Engage Qualified Professional to develop groundwater baseline assessment (EOP 5 - 1)																																																											
Engage Qualified Professional to develop watershed management plan (EOP 5 - 3)																																																											
<b>Medium Term Activities</b>																																																											
Meet with representative from the FVRD and City of Abbotsford (Foundation Activity 5) in relation to Emergency Program (EOP 3 - 5)																																																											
Implement relevant groundwater protection measures (EOP 5 - 4)																																																											
Develop process to record incidence of illegal dumping (EOP 9 - 3)																																																											
Develop policies if warranted, to enforce surface water protection (EOP 10 - 6)																																																											
Develop and implement an anti-idling policy (EOP 1 - 4)																																																											
Create education materials to communicate air quality goals/objectives (EOP 1 - 6, 7, 8)																																																											
Engage Qualified Professional to undertake waste baseline assessment (EOP 9 - 1)																																																											
Create a permitting process for open burning (EOP 1 - 7)																																																											
<b>Long Term Activities</b>																																																											
Create a database of culturally significant sites (EOP 2 - 2)																																																											
Initiate communication with identified support agencies (Foundation Activity 4) to support habitat protection (EOP 6 - 2)																																																											
Initiate communication with identified support agencies (Foundation Activity 4) to support watershed management initiatives (EOP 10 - 5)																																																											
Develop education and training plan for EOP 2 as per Strategy 5																																																											
Create an awareness campaign to inform community members of the Sumas Emergency Plan (EOP																																																											

## Sema:th Environmental Management Plan Sample

### 2.1 Document Control

Document control is a means of keeping track of documents, procedures, and processes. The purpose is to ensure that everyone has easy access to and uses the correct and most up-to-date versions.

Environmental legislation, best management practices (BMPs), and procedures can change over time which will require amendments and updates to the EMP. Therefore it is important that documents related to the EMP are controlled to ensure that only the current versions of the documents are referred to and used.

To help ensure that the EMP and related documents remain current and that only the most up-to-date versions are used, the following document control measures will be implemented:

- Include a date and version number on all documents;
- Review all documents on a pre-determined schedule;
- Revise documents as required;
- Obtain appropriate approvals and sign-offs on all revised documents prior to issuing or re-issuing;
- Remove and destroy/recycle all outdated documents;
- Maintain an electronic master copy at the Lands & Resources Department Office; and & Resources Department Office; and
- Store all EMP records in hard copy and/or on an electronic data records system for 5 years.



