



Introduction to Environmental Protection

Course Workbook

Last updated: 2018



Introduction to Environmental Protection

Course: https://labrc.com/public/courselet/Introduction_to_Environmental_Protection/player.html

Welcome to the Introduction to Environmental Protection (EP)

This course covers:

- EP Basics
- Transitional Issues of EP
- Sources of Contaminants Requiring Management

The material provided in this course is current to the date of this course.

Thank you to the environmental experts to the First Nations Land Management Resource Centre (RC), for aiding in the development of this course.

Overview:

This course will explain the fundamental elements of EP on First Nation (FN) reserves under the Framework Agreement on First Nation reserves under the Framework Agreement on First Nation Land Management (Framework Agreement) including:

- 1) EP basics
 - What is it?
 - Why is it necessary?
 - What are legacy EP issues?
- 2) Explaining EP
- 3) What does EP mean to a Lands Governance Director (LGD)/Lands Manager
 - EP and health and safety of community members
 - EP and socio-economic development
 - Concentration of contaminants in wildlife traditional foods
 - Transmission of contaminants to humans
- 4) EP issues and response

1) Environmental Protection as a Transitional Activity:

When First Nations transition to Operational status under the Framework Agreement, LGDs/Lands Managers will need to consider past management as well as ongoing follow up activities for contaminated sites, and how the condition of the land might affect First Nation responsibilities.

- Responsibility for contaminated sites
- Potential undiscovered contaminated sites
- Limited information about the contamination, risks and sources

2) Responsibility for Environmental Protection:

Introduction: The responsibility for Environmental Protection (EP) on reserves under the Framework Agreement depends on two key factors:

1. The type of EP issue (e.g., spill, authorized or unauthorized dumping, land fill management)
2. The timing of the creation of the contamination (pre- or post-Land Code). Pre-Land Code contamination is commonly known as a legacy issue.

Contaminated Sites Program:

The main national program that focuses on the management of contaminated sites on reserve lands in Canada is the [Contaminated Sites Management Program \(CSMP\)](#), administered by Indigenous and Northern Affairs Canada (INAC). The CSMP manages contaminated sites on more than 800 inhabited reserves in Canada (INAC, 2009). To rate the severity of contaminated site risks on reserve lands, INAC uses the [National Classification System for Contaminated Sites \(NCSCS\)](#), 2008. Canada usually remediates only sites that receive a high- risk rating under the NCSCS system.

Canada's Responsibility:

Operational First Nations are responsible for Environmental Protection on reserve after a Land Code has been enacted. However, the ongoing liability and responsibility for contaminated sites that pre-date the Land Code remains with the government of Canada. The responsibility for contamination will depend on the facts and circumstances of each case. When Canada is deemed responsible for remediation, several federal programs and policies apply. Click on Link for: [Canada's Responsibility for Contamination Before the Land Code Chart](#).

Contaminated Sites Policy:

The Contaminated Sites Management Policy of INAC (2009) provides direction for the management of contaminated sites on reserve lands and on any other lands under INAC's custodial responsibility (INAC, 2009). Funds for remediation for federal contaminated sites may be obtained from the [Federal Contaminated Sites Action \(FCSAP\)](#). The Program amount and availability of FCSAP funding varies annually and among regions of Canada.

First Nation Authority:

Under the Framework Agreement and First Nation Land Code, Operational First Nation has the authority to enact and enforce Environmental Protection laws that meet or exceed the standards and punishments of the applicable provincial Environmental Protection laws. This authority is dependent upon the Operational First Nation having adequate funding and expertise available to them. Operational First Nations are responsible for managing Environmental Protection on reserve after a Land Code has been enacted. However, the ongoing liability and responsibility for contaminated sites that pre-date the Land Code remains with the government of Canada.

Environmental Protection Regime:

The Framework Agreement commits a First Nation to prepare and adopt an Environmental Protection regime, subject to adequate funding and expertise being available to the First Nations. Essential Environmental Protection issues on reserves include but are not limited to:

- Hazardous substances
- Solid wastes
- Fuel storage tank management

- Sewage treatment
- Environmental emergencies

3) Environmental Protection Gaps and Unknown Sites:

Introduction:

Because of the nature of contamination and the media affected (i.e., subsoils, groundwater, and air) the full extent of environmental contamination may never be known. Decades of neglect, unregulated activity, and inadequate monitoring and assessment of contamination have created ongoing and persistent environmental concerns on many First Nation reserves.

Past Contamination:

In some cases, such as the mercury poisoning on the Grassy Narrows and Whitedog First Nations in Ontario, the source of contamination occurred off-reserve and the harmful effects endure for long periods. Often the contaminated sites result from past activities and occurred when environmental impacts were not fully understood (INAC, 2010).

Some common causes of contamination include:

- Intentional or accidental releases of chemicals from industrial processes to air, land, and water,
- Spills and leaks from fuel storage tanks
- Improper disposal of hazardous wastes, munitions laboratory wastes, lethal warfare agents (such as mustard gas), derelict vehicles and pesticides
- Use and disposal of polychlorinated biphenyls (PCBs) in electrical transformers, ballasts and other materials. (Waste oil from transformers rich in PCBs has been sprayed on roads to control dust)
- Creosote (a hydrocarbon), a preservative used on railroad ties, marine pilings, and other wood poles
- Use of herbicides by electric utilities to manage vegetation around hydro lines and transportation ministries during road construction and maintenance
- Use of pesticides in agricultural and forestry operations
- The use of chemicals during fire-fighting training and chemicals and weapons in military training operations

Individual Agreement:

The [Individual Agreement](#), in Section 2 – Information Provided by Canada, through a [Phase I ESA](#) report, may identify the potential areas of environmental concern or may identify contaminated sites resulting from past activities. Therefore, it is important that LGDs/Lands Managers are familiar with the results of the Environmental Site Assessment (ESA) and the terms of the Individual Agreement that may assign responsibilities for certain Environmental Protection actions. [Picture: phase 1 ESA](#)

Text block

Challenges:

Recognizing the challenges of identifying contaminated sites, an LGD/Lands Manager needs to understand tools and support available to improve their understanding of environmental conditions on reserves, including information contained in the First Nation's ESAs. The ESA that should have been completed prior to signing onto the Framework Agreement will provide information regarding known areas of contamination on reserve. These Phase I ESAs typically do not include sampling or laboratory analysis of suspected contamination; that work is contained in prepared after a First Nation Phase II ESAs becomes operational.

In addition, Clause 6.3(b) of the Framework Agreement states that a First Nation that is developing a Land Code can request that the federal government provide all existing information relating to any actual or potential environmental problems with First Nation reserve land. An ESA Phase I in the developmental phase is intended to satisfy Clause 6.3(b). Also, in the Framework Agreement Clause 6.3(b), upon the request of a First Nation the Minister will provide a First Nation with any other information in Canada's possession that materially affects the interests or land rights and licenses mentioned in Clause 6.3(b). LGDs/Lands Managers should verify whether Canada has complied with this obligation. The [Lands Advisory Board \(LAB\)](#) and [RC](#) can provide additional technical and political support in this regard if necessary.

4. Inadequate Environmental Protection Data:

Introduction:

LGDs/Lands Managers of operational or developmental First Nations are likely to face a variety of Environmental Protection issues on reserve but may only have a limited amount of information to guide decisions. Because Environmental Protection issues can have a variety of causes (e.g., landfills, sewage treatment, spills, industrial wastes, unauthorized fill dumping), information gaps are common.

Lack of information:

Lack of information can be a serious problem, particularly when dealing with spills, sites contaminated with hazardous materials, or leaching of chemicals or toxins from landfills, all of which increase ecological and human health risks. Environmental Site Assessments, particularly Phase I ESAs, cannot be relied on to identify all sources of contamination on a reserve.

Collecting Information:

If a First Nation's staff or members suspect that an area on a reserve is contaminated, some basic information should be collected including:

- Previous environmental record(s)
- Complaints by community members
- Similarities to other known contaminated sites
- Visual or olfactory evidence of previous leaks, spills or discharges (when it is safe to do so)
- Nature of current or past activities at the site or on adjacent properties (CSMWG, 2000)

Additional Contamination Identified:

As environmental inspection and environmental monitoring occur, additional sources of contamination may be identified. The staff of a First Nation's Environment Department should be on constant lookout for contamination and should have a response plan in place in case contamination is identified.

5. Environmental Protection Basics (tabs? Or just text block)

What is environmental protection?

For the interests of this course, Environmental Protection is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce associated 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.

How does a First Nation Deliver Environmental Protection Services?

To properly deliver Environmental Protection services, an LGD/Lands Manager should be able to answer the following questions:

- What are the environmental risks to the First Nation community?
- What causes the contamination?
- How severe are the human and ecological risks?
- Who is responsible for the contamination, and for a suitable response?
- What remediation options are available?

These questions are often difficult to answer, in part because of the following characteristics of Environmental Protection:

- In some cases, contaminated sites and their risks are not visibly obvious
- Causes and responsibility can be very difficult to determine
- Solving the EP problems requires technical analysis, monitoring, testing, suitable responses by involved institutions, funding, and public education
- There are often long time lags between an action causing contamination, the identification of the problem, and site remediation. Remediation may involve clean-up of contaminants or "risk management" that limits exposure to contaminants that are not or cannot be removed

Determine the Nature of the Contamination and Risks: (*image: risk assessment*)

LGDs/Lands Managers will have to determine the nature of the contamination and potential risks to the community or the environment. To do this, the First Nation may need to hire a contaminated sites specialist or environmental consulting firm to assess the site(s) and potential contamination risks.

Example: (*image: fuel storage*)

One example of a potential contamination risk at a site may be the presence of a fuel storage tank, which has the possibility of leaking fuel into the ground or a nearby water body. If the contamination can be confirmed to have occurred before a First Nation became Operational, Canada should be

engaged to ensure funding and appropriate follow up. Regardless of who was responsible for causing pre-Land Code contamination, Canada should fund remediation. In certain cases, Canada will seek damages from the party responsible rather than delay the remediation activity any further and risk further contamination.

Environmental Protection: Why is it necessary? *(image: environmental protection)*

The Framework Agreement commits a First Nation to prepare and adopt an Environmental Protection (EP) regime. Some of the EP issues on reserves that should be examined include, but are not limited to contamination associated with:

- Solid wastes
- Fuel storage tanks
- Sewage treatment or disposal
- Emission of air pollutants
- Environmental emergencies

Prevention of Contamination: *(image: contamination 2)*

Environmental is necessary →

- To prevent contaminants from reaching soil, water or air
- To control the movement of contaminants (e.g., mercury from mills, or polluted leachate from landfills, pesticides and herbicides from agriculture, residential lawn care, golf courses) that could harm the health of humans, plants and wildlife
- To reduce a First Nation's legal liability and financial risk associated with unmanaged contamination
- To protect, maintain, or improved environmental quality and human health on First Nation lands

Interconnected: *(image: interconnected)* (THIS CAN BE A TABS)

First Nations have long been aware of the interconnections that exist between humans, the soil, water, air, plants and wildlife. When studying sources of contamination, it is important to keep this interconnection in mind. For example: Air pollution becomes soil and water pollution when airborne particulates mix with rain and fall to the earth and to our lakes and rivers.

The contaminants are absorbed into the soil and affect plant growth or move into the aquatic food chain. They will also leach from soil into groundwater sources.

Contamination:

Contaminated soil, water, and sediment at a site may contain substances that can injure fish or mammals; impair the reproduction of birds, fish or reptiles; and accumulate in the food web resulting in impairment, or cause imbalance in, ecological functions or systems (British Columbia MOE, 2011).

Contaminated sites also remove productive land from use and limit traditional practices, such as hunting, fishing and gathering of foods and medicines as well as ceremonial activity.

Health Risk: *(image: health hazard)*

Widespread or acute contamination has been known to pose serious risks to human health and the socio-economic conditions of communities. Human health risks from contaminant exposure include but are not limited to:

- Cancer
- Respiratory illness
- Reproductive problems and birth defects
- Nervous system disorders
- Allergic reactions
- Hypersensitivity
- Decreased resistance to disease (OAG, 2002)

What does Environmental Protection mean to LGDs/Lands Managers? *(text block)*

Intro: An LGD/Lands Manager needs to be aware of and prepared to deal with environmental issues associated with contamination and types of activities on or near reserves that cause contamination.

Environmental Issues: An LGD/Lands Manager should be prepared to respond to Environmental Protection issues and potential ecological and human health effects of:

- Contaminated soil
- Contaminated water
- Air quality
- Hazardous material
- Fuel spills

Types of activities: LGDs/Lands Managers must be aware of Environmental Protection issues on reserves, such as:

- Unauthorized dumping of trash or contaminated soils
- Regulated and unregulated harvesting of natural resources such as forest clear cutting and mineral exploration, extraction, and processing
- Building and development activity
- Agricultural practices that contribute to soil degradation or erosion, or improper use of pesticides
- Commercial and industrial activity, including informal activities such as automotive repairs and maintenance
- Burning of debris or garbage (and even use of woodstoves in some circumstances)

These types of activities have the potential to have adverse long-term effects on and off reserve.

Environmental Issues and Responses

There are four (4) reasons why an LGD/lands manager needs to be knowledgeable about Environmental protection issues and responses.

Issue 1: Environmental Protection and the health and safety of community members.

Issue 2: Environmental Protection and Socio-Economic Development Picture credit: Axiomamuse
(image: ven diagram)

Issue 3: Concentration of contaminants in wildlife and traditional foods. *(image: animal containment)*

Issue 4: Transmission of contaminants to humans. Picture credit: Eco Water of Atlanta *(image: eco water)*

Case Study (its own section)

Introduction: An example of contaminant movement through food chains and effects on First Nation communities can be seen in the Grassy Narrows and Whitedog First Nations in Ontario. Mercury poisoning in these communities has had long lasting and adverse effects on individual's health and the socio-economic wellbeing of the community. *(image: mercury)*

Mercury poisoning:

Grassy Narrows and Whitedog First Nations are located in western Ontario, near the Wabigoon River. Between 1962-1970, a paper mill near Dryden, Ontario dumped 20,000 pounds of methyl mercury into the Wabigoon River, contaminating the fishery. The Ontario provincial government shut down the local fishery, causing widespread unemployment and social disruption in the First Nation communities. (Wheatley, 1997). *(image: river?)*

Medical Investigation: An internationally respected expert on mercury poisoning, Dr. Masazumi Harada from Japan, visited the Grassy Narrows and Whitedog communities in 1975, 2002, 2004 and 2010 to conduct medical investigations of mercury poisoning.

In 1975, Dr. Harada found community members with mercury levels above the Health Canada mercury safety guideline (50 parts per billion) and with symptoms of Minamata disease. Symptoms consisted of loss of sensation in the extremities and around the mouth, tunnel vision, ataxia (lack of voluntary coordination of muscle movements), and tremors. Hair samples from community members showed higher mercury levels at the section of hair that grew in the summer because they ate more fish in the summer, and mercury contamination came from locally caught fish. In addition, Dr. Harada reported that the effects of mercury poisoning were also visible in the behaviour of local wildlife and domestic animals (Harada, 2005).

Dr. Harada returned in 2002 and 2004 and diagnosed 79.4% of those who were examined exhibited symptoms consistent with Minamata disease, Minamata disease with complications, or possible Minamata disease. However, hair samples showed low mercury levels, indicating that long-term low exposure in the past must have caused the symptoms, which were becoming worse (Harada, 2005). To view Dr. Harada's 2005 report, click on the link: [Long-term study on the effects of mercury contamination on two indigenous communities in Canada \(1975 - 2004\).](#)

In 2010, Dr. Harada returned and diagnosed 58.7% of the 160 community members who were examined with Minamata disease or suspected Minamata disease. Dr. Harada concluded that "even if the pollution itself could come to an end, the impact on the health and socio-economic life of the people throughout the area is immense" (Harada, 2011). To view Dr. Harada's 2010 report, click on the link: [Mercury Poisoning in First Nations Groups in Ontario. Canada - 35 years of Minamata Disease in Canada \(2010\)](#).

More than four decades later, the effects of mercury are still present: Click on [Huffington Post 2016 article](#).

Government accountability: (*image: free grassy*)

Long after Dr. Harada's 2010 report, community members still have symptoms of mercury poisoning, and the leaders of the First Nation communities and environmental activists are asking for government accountability Click on link: [Montreal Gazette](#) and [Toronto Star](#).

Scars of Mercury: (*image: freegrassy net*)

In 2009, a film titled "The Scars of Mercury" examined the environmental and socio-economic effects of the mercury poisoning in the Wabigoon River. The movie "explores the processes that threaten the destruction of a traditional and contemporary Indigenous hunting, fishing and gathering way of life, through residential schools, relocation, treaty violations, and clear-cutting, with a special focus on mercury poisoning." Click on link to watch video: [The Scars of Mercury](#).

Formal Environmental Protection Programs and Courses

Several post-secondary schools across Canada offer programs and courses in Environmental Protection (EP). Generally, the programs are offered through community colleges. Students are able to use course credits to transfer into university programs, if desired. The types of courses offered in the EP programs include:

- Environmental chemistry
- Environmental toxicology
- Earth sciences
- Solid waste management
- Water resources protection
- Environmental law
- Health and safety

Examples of some EP programs include:

[Kwantlen Polytechnic University](#), Surrey, British Columbia (Diploma of Technology in EP)

[Lakeland College](#), Lloydminster and Vermillion, Alberta (Environmental Sciences: Bachelor of Applied Science in Environmental Management)

[Red River College](#), Winnipeg, Manitoba (Engineering Technology)

[Centennial College](#), Toronto, Ontario (Environmental Technician)

Environmental Protection: Key Issues

- ✓ Contamination can affect the health of the community
- ✓ Contamination affects the health of the environment and traditional food sources

Glossary of Terms and Acronyms

Adverse Effects

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

Clean Up

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

Contaminant

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

Contaminated Site

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

Contamination

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

Developmental

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

Due Diligence

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

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

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

Ecosystems

Ecosystems are the plants, animals, and non-living components of the environment that function together as a system.

Environmental Emergencies

The Westbank First Nation has defined environmental emergency as:

"an uncontrolled, unplanned or accidental release, or a release in contravention of laws or regulations, of a substance into the environment, or the reasonable likelihood of such a release into the environment, that:

1. has or may have an immediate or long-term harmful effect on the environment;
2. constitutes, or may constitute, a danger to the environment on which humans depend; or
3. constitutes, or may constitute, a danger in Canada to human life or health."

Environmental Inspection

Environmental inspection is a formal examination carried out by someone in an official capacity at a specific time and place to observe whether some activity or development meets required standards.

Environmental Management

Environmental management is the process used to reduce harmful effects of human activity on the environment, and to avoid environmental hazards and contamination that affect communities.

Environmental Monitoring

Environmental monitoring involves systematic longer-term observation to identify and measure changes in the environment in order to identify changes and trends over time. As an integral part of scientific research, it is also a means of verifying whether policies and programs are having the desired results and activities are in compliance with legislation.

Environmental Protection (EP)

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

Environmental Site Assessment (ESA)

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

Exposure

The contact between a contaminant and an individual or population.

First Nation Land

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

First Nation Lands Advisory Board Resource Centre (RC)

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

The RC's functions are:

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

- On request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty
- Proposing regulations for First Nation land registration

Framework Agreement on First Nation Land Management

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

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

Groundwater

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

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).

Leachate

Leachate, in environmental sciences terms, means a liquid that has dissolved or entrained environmentally harmful substances which may then enter the environment. It is most commonly used in the context of land-filling of putrescible or industrial waste.

Legacy Issues

Existing contamination, past survey errors, encroachment by third parties, or land title discrepancies on a First Nation(FN) reserve that occurred when land management responsibilities were under the jurisdiction of the Crown (i.e. before a FN's Land Code came into effect). In most cases, environmental legacy issues are identified in the Phase 1 Environmental Site Assessment, and land survey and title legacy issues are identified in the Land Description Report, both of which occur as part of the Land Code development process and are referenced in the FN's Individual Agreement with Canada.

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.

Munitions

Munitions are war materials, especially weapons and ammunition.

Operational

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

Phase I Environmental Site Assessment

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

Polychlorinated Biphenyls (PCBs)

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

Remediation

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

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

Reserve

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

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

The basic legal framework underlying reserves is:

- The underlying legal title to reserves belongs to the federal Crown
 - How the reserve was created (e.g. before or after Confederation in 1867)
 - Pursuant to section 2 of the *Indian Act*, reserves are set aside by the Crown in Right of Canada for the use and benefit of a First Nation
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The Framework Agreement (see Section 4) clarifies that reserve lands under a Land Code will continue to be reserves within the meaning of the *Indian Act* and that any reserve, title to which is vested in Canada, and managed by a First Nation under a Land Code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

Risk Management

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

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

Sediment

Any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid. (source:

<https://www.sciencedaily.com/terms/sediment.htm>

Standards

A legally enforceable numerical limit, i.e., parts per billion of contaminant allowed in water or soil, or a narrative statement, such as in a regulation, statute, contract, or other legally binding document, that has been adopted from a criterion or an objective (CCME, 1999).

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
Amendment #6 2018**

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
Modification #6 2018**

**FRAMEWORK AGREEMENT ON FIRST
NATION LAND MANAGEMENT
BETWEEN:**

THE FOLLOWING FIRST NATIONS:

WESTBANK, MUSQUEAM, LHEIDLIT'ENNEH (formerly known as "LHEIT-LIT'EN"), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, SAINT MARY'S, as represented by their Chiefs and all other First Nations that have adhered to the Agreement

AND

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

WHEREAS:

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

Canada recognizes that First Nations have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands;

Canada has committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples in a manner consistent with the Canadian Constitution;

The First Nations should have the option of withdrawing their lands from the land management provisions of the Indian Act in order to exercise control over their lands and

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

**LES PREMIÈRES NATIONS
SUIVANTES:**

WESTBANK, MUSQUEAM, LHEIDLIT'ENNEH (autrefois connue sous le nom de « LHEIT- LIT'EN »), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, SAINT MARY'S, représentées par leurs chefs et toutes les autres Premières Nations qui se sont jointes à l'Entente

ET

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

ATTENDU QUE :

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

Le Canada reconnaît que les premières nations ont un lien unique avec leurs terres et qu'elles possèdent des intérêts sur leurs terres qui sont protégés par la Constitution, notamment les prises de décisions, la gouvernance, la compétence, les traditions juridiques et les relations financières liées à ces terres;

Le Canada s'est engagé à mettre en œuvre la Déclaration des Nations Unies sur les droits des peuples autochtones d'une manière conforme à la Constitution canadienne;

Les premières nations devraient avoir la possibilité de soustraire leurs terres aux dispositions de la Loi sur les Indiens concernant la gestion des terres de façon à exercer un

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.

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.

PART I

PRELIMINARY MATTERS

1. INTERPRETATION

1.1 In this Agreement,

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

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

"federal law" means a law enacted by 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 or Lands Set Aside 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 législatif 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

PARTIE I

QUESTIONS PRÉLIMINAIRES

1. INTERPRÉTATION

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

« agent de ratification » La personne nommée en application de l'article 8.
("ratification officer")

« 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 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. ("Lands 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 voter")

« intérêt » Relativement aux terres de première nation situées dans toute province ou tout 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")

over its First Nation land (although each First Nation can select its own name for the land code); ("code 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")

"**Lands Set Aside**" means land in the Yukon reserved or set aside by notation in the property records of the Northern Affairs organization, Department of Indian Affairs and Northern Development, for the use of indigenous people in the Yukon; ("terres mises de côté")

"**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")

"**ratification officer**" means the person who may be appointed pursuant to clause 8; ("agent de ratification")

« **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 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, la totalité ou une partie d'une réserve ou des terres mises de côté, que la première nation décrit dans son code foncier.
("« First Nation land »")

« **terres mises de côté** » Au Yukon, des terres qui sont réservées ou mises de côté par une

"verifier" means the person appointed pursuant to clauses 8 and 44. ("vérificateur")

- 1.1.1** In this Agreement, the expressions "will" and "shall" are used interchangeably and are to be construed as imperative, and the expression "may" is to be construed as permissive.
- 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** If 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 terminology or meaning is intended to apply to this provision with respect to First Nations in the Province of Québec and the common law terminology or meaning is intended to apply with respect to First Nations in a province or territory other than Québec.

inscription aux registres fonciers de l'Organisation des affaires du Nord du ministère des Affaires indiennes et du Nord canadien, pour l'usage des Autochtones du Yukon. (« Lands Set Aside »)

« **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 nommée en application des articles 8 et 44. (« verifier »)

- 1.1.1** Dans le présent accord, l'obligation s'exprime essentiellement par l'indicatif présent ou le futur du verbe porteur de sens principal et, à l'occasion, par des verbes ou expressions comportant cette notion, et, s'il est dit qu'une chose « peut » être faite, il est facultatif de l'accomplir ou non.
- 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** Si une disposition du présent accord emploie à la fois des termes propres au

1.8 In this Agreement a reference to a statute or regulation shall be interpreted to be a reference to the statute or regulation as amended from time to time.

1.9 In this Agreement, the terms “family home” and “spouse” have the same meaning as in the Family Homes on Reserves and Matrimonial Interests or Rights Act.

2. FIRST NATION LAND

2.1 Land that is a reserve of a First Nation or is Lands Set Aside for a First Nation is eligible to be managed by that First Nation under a land code as First Nation land.

2.1.1 A reserve that is set apart for the use and benefit of more than one First Nation is eligible to be managed as First Nation land by those First Nations if each of those First Nations has a land code in force and has:

- (a) amended its individual agreement with the Minister; and
- (b) amended its land code to provide for:
 - (i) a description of the external boundaries of the reserve;
 - (ii) a uniform set of rules and procedures for the management of the reserve;
 - (iii) uniform law-making or delegation of law-making in respect of First Nation laws on the reserve; and
 - (iv) the resolution of disputes between the First Nations

droit civil et à la common law ou des termes qui ont 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 tout territoire autre que le Québec.

1.8 Dans le présent accord, le renvoi à une loi ou à un règlement est réputé se rapporter à sa version éventuellement modifiée.

1.9 Dans le présent accord, les termes «foyer familial » et « époux » s'entendent au sens de la Loi sur les foyers familiaux situés dans les réserves et les droits ou intérêts matrimoniaux.

2. TERRES D'UNE PREMIÈRE NATION

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

2.1.1 Une réserve qui est mise de côté à l'usage et au profit de plus qu'une première nation est admissible à être gérée comme des terres de première nation par ces premières nations si chacune d'elles a un code foncier en vigueur et a:

- (a) modifié son accord distinct avec le ministre;
- (b) modifié son code foncier afin qu'il prévoit:
 - (i) une description des limites externes de la réserve;

- concerning the management of the reserve.
- 2.1.2 The amendments to the land codes and individual agreements in respect of a reserve that is set apart for the use and benefit of more than one First Nation will come into force on the same date and the reserve becomes First Nation land on that date.
- 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 Reserves that become First Nation land continue to be lands reserved for the 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.
- 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.
- (ii) un ensemble uniforme de règles et de procédures pour la gestion de la réserve;
- (iii) un processus législatif uniforme ou de délégation du pouvoir législatif se rapportant aux textes législatifs de la première nation sur la réserve;
- (iv) le règlement des conflits entre les premières nations au sujet de la gestion de la réserve.
- 2.1.2 Les modifications des codes fonciers et des accords distincts à l'égard d'une réserve qui est mise de côté pour l'usage et le profit de plus d'une première nation doivent entrer en vigueur à la même date, et la réserve devient des terres de première nation à cette date.
- 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 Des terres de première nation continuent d'être 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 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 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

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

4.1.2 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.

4.1.3 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, except as provided in sub-clauses 4.4, 4.5 and 4.5A.

4.1.4 Subject to sub-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 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;

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

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

4.1.2 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.

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

4.1.4 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 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) 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.
- 4.1.5** 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.
- 4.1.6** 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.
- 4.1.7** 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.
- 4.2. LANDS SET ASIDE**
- 4.2.1** Lands Set Aside for a First Nation are eligible to be managed by that First Nation under a land code as First Nation land.
- 4.2.2** For greater certainty, Lands Set Aside that become First Nation land do not become a reserve within the meaning of the Indian Act.
- (c) cette partie de la réserve est inhabitabile 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.
- 4.1.5** Une partie de la réserve ne peut être exclue si l'exclusion avait pour effet d'assujettir un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion foncière.
- 4.1.6** 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.
- 4.1.7** 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.
- 4.2. TERRES MISES DE CÔTÉ**
- 4.2.1** Les terres mises de côté pour une première nation sont admissibles à être gérées par celle-ci en vertu d'un code foncier à titre de terres de première nation.
- 4.2.2** Il est entendu que les terres mises de côté qui deviennent des terres de

4.2.3 The provisions of this Agreement dealing with exclusions of land from the application of a land code apply to Lands Set Aside with such changes or modifications as may be required.

PART II

OPTING IN PROCEDURE

5. DEVELOPMENT OF A LAND CODE

5.1 A First Nation that wishes to manage one or more of its reserves or its Lands Set Aside 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) licences 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;
- (c) set out the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or land rights in First Nation land;

première nation ne deviennent pas une réserve au sens de la Loi sur les Indiens.

4.2.3 Les dispositions du présent accord traitant des exclusions de terres de l'application d'un code foncier s'appliquent aux terres mises de côté, en leur apportant les modifications nécessaires.

PARTIE II

PROCÉDURE D'ADHÉSION

5. ÉLABORATION D'UN CODE FONCIER

5.1 La première nation qui souhaite gérer une ou plusieurs de ses réserves ou ses terres mises de côté 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;
- (c) les règles de procédure applicables en matière de transfert d'intérêts

- (d) set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land;
 - (e) set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under the land code;
 - (f) set out the procedures for making and publishing its First Nation laws;
 - (g) set out the conflict of interest rules for land management;
 - (h) 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;
 - (i) 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;
 - (j) 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;
- ou de droits fonciers sur les terres de première nation, par disposition testamentaire ou succession;
 - (d) les règles générales — de procédure et autres — applicables aux revenus tirés des ressources naturelles relatives aux terres de première nation;
 - (e) les exigences touchant l'obligation de rendre compte de la gestion des fonds et des terres de première nation aux termes du code foncier devant les membres de la première nation;
 - (f) les règles d'édition et de publication des textes législatifs de la première nation;
 - (g) les règles applicables en matière de conflit d'intérêts dans la gestion des terres;
 - (h) 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;
 - (i) 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;
 - (j) 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

- (k) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land; and
- (l) set out that it will come into force within six months of certification.
- 5.3** A land code may also contain the following provisions:
- (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 Québec, any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;
 - (c) in the Province of Québec, 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;
 - (d) any provisions respecting encumbering, seizing, or executing a right or an interest or land right in First Nation land as provided in clause 15;
 - (e) rules and procedures that apply when accepting land to be added to reserve that will become First Nation land, including rules and procedures regarding the granting of new or replacement interests or land rights in that land;
 - (f) provisions respecting First Nation laws which may be made under this Agreement that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner, or provisions for obtaining nation;
- (k) la procédure selon laquelle la première nation peut modifier son code foncier ou approuver un échange de ses terres de première nation;
- (l) la mention qu'il entrera en vigueur dans les six mois suivant la certification.
- 5.3** Peuvent également figurer dans le code foncier:
- (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;
 - (c) 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;
 - (d) 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;
 - (e) des règles et des procédures qui s'appliquent au moment de l'acceptation des terres qui seront ajoutées à la réserve qui deviendra des terres de première nation, notamment des règles et des procédures concernant l'attribution sur ces terres de nouveaux intérêts ou droits fonciers ou d'intérêts ou

- community input regarding those laws;
- (g) general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to a person or entity who also has authority to manage First Nation land of another First Nation or First Nations; and
- (h) any other matter respecting the management of First Nation land.

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.

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; or, with respect to Lands Set Aside, the property records of the Northern Affairs organization, Department

- de droits fonciers de remplacement;
- (f) des dispositions concernant des textes législatifs de la première nation qui s'appliquent durant une relation conjugale, à la rupture de cette relation ou au décès d'un époux ou d'un conjoint de fait, ou des dispositions en vue de recueillir les points de vue de la communauté au sujet des textes législatifs en cette matière;
- (g) l'autorité et la procédure selon lesquelles le conseil de la première nation peut déléguer l'autorité administrative pour gérer des terres de première nation à une personne ou entité ayant le pouvoir de gérer des terres de première nation d'une ou plusieurs premières nations;
- (h) toute autre disposition concernant la gestion des terres de première nation.
- ## **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 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

- of Indian Affairs and Northern Development;
- (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 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 individual agreement 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.
- 7.3** The land code and individual agreement will be considered approved by the community if a majority of participating eligible voters vote to approve them.
- 7.4** Despite 7.3, the First Nation council may, by resolution prior to a vote, do either or both of the following:
- (a) establish a percentage of eligible voters who must participate in the vote in order for the result to be binding;
- 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, ou, en ce qui concerne les terres mises de côté: consignés dans les registres fonciers de l'Organisation des affaires du Nord du ministère des Affaires indiennes et du Nord canadien;
- (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 6.3a).
- 6.4** L'accord distinct est modifié selon la procédure prévue dans celui-ci.
- 7. APPROBATION DE LA COMMUNAUTÉ**
- 7.1** Le code foncier de la première nation et l'accord distinct 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, tout membre de la première nation qui a au moins 18 ans, qu'il réside ou non dans la réserve.
- 7.3** Le code foncier et l'accord distinct sont réputés validement approuvés par la communauté si une majorité d'électeurs participants ont exprimé un vote favorable.
- 7.4** En dépit de l'article 7.3, le conseil de la première nation peut, par résolution

- (b) require that a percentage greater than fifty percent of participating eligible voters must vote to approve the land code and individual agreement in order to obtain community approval.
- 7.5** A First Nation will take reasonable steps to locate its eligible voters and inform them of:
- (a) their right to participate in the voting process and the manner in which that right can be exercised;
 - (b) the content of this Agreement, the individual agreement, the proposed land code and the federal legislation; and
 - (c) resolutions, if any, adopted by the First Nation council pursuant to sub-clause 7.4.
- 7.6** A First Nation may use electronic voting for the purpose of any vote contemplated in this Agreement.
- 7.7** Reasonable steps to locate and inform eligible voters may include:
- (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
- avant la tenue du scrutin:
- (a) établir un pourcentage minimum d'électeurs qui doivent participer au scrutin pour que le résultat soit exécutoire;
 - (b) exiger que plus que cinquante pour cent des électeurs participants doivent avoir exprimé un vote favorable à l'approbation du code foncier et de l'accord distinct pour qu'il y ait approbation de la communauté.
- 7.5** 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 scrutin et de la manière d'exercer ce droit;
 - (b) du contenu du présent accord, de l'accord distinct, du projet de code foncier et de la loi de ratification;
 - (c) le cas échéant, de toute résolution visée à l'article 7.4.
- 7.6** Une première nation peut utiliser le vote électronique pour tous les scrutins prévus dans le présent accord.
- 7.7** Parmi les mesures 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;

- voters warrants;
- (e) posting notices in the community;
 - (f) holding information meetings in the community and in other places where appropriate;
 - (g) making copies of the documents referred to in clause 7.5(b) available at the administration office of the First Nation and in other places where appropriate;
 - (h) posting notices and information on the internet; and
 - (i) using electronic mail to communicate with eligible voters.
- 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** 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. The verifier will be chosen in accordance with clause 44.
- 8.2** The council of the First Nation may appoint a person to act as ratification officer.
- (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) rendre disponible, au bureau d'administration de la première nation et à tout autre endroit approprié, une copie des documents mentionnés à l'alinéa 7.5b);
 - (h) afficher des avis et de l'information sur Internet;
 - (i) utiliser le courrier électronique pour communiquer avec les électeurs.
- 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** 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. Le vérificateur est choisi conformément à l'article 44.

- 8.3** The representatives of the First Nation and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and, if applicable, the ratification officer, and provide information and advice to them, after consulting with their respective Parties.
- 8.4** The First Nation will submit the following information to the verifier and, if one has been appointed, the ratification officer:
- (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.
- 8.5** The verifier will:
- (a) decide whether the proposed land code conforms with the requirements of clause 5; and
 - (b) decide whether the proposed community approval process conforms with the requirements of clause 7.
- 8.6** The verifier also has the power to make a final decision to resolve:
- (a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and
- 8.2** Le conseil de la première nation peut nommer une personne pour agir en tant qu'agent de ratification.
- 8.3** Les représentants de la première nation et du ministre, qui ont participé au processus de transfert de la gestion des terres, rencontrent le vérificateur et, le cas échéant, l'agent de ratification, et leur fournissent renseignements et avis, après avoir consulté leurs parties respectives.
- 8.4** La première nation communique au vérificateur et, si un agent de ratification a été nommé, à celui-ci, 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.
- 8.5** 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.
- 8.6** Le vérificateur a également le pouvoir de trancher de façon définitive:
- (a) tout différend ayant trait à la question de savoir si une partie d'une réserve peut être soustraite à l'application du code foncier

- (b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.
- 8.7 A verifier will make decisions that are consistent with clauses 4.4 and 4.5.
- 8.8 A verifier will not deal with disputes over funding.
- 8.9 Within 30 days of receiving the First Nation's information pursuant to clause 8.4, 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.
- 8.10 The verifier will provide written reasons to the First Nation and the Minister if he or she decides that the proposed land code or community approval process are not consistent with this Agreement.
- 9. CONDUCT OF COMMUNITY VOTE**
- 9.1 Once the verifier confirms that the 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, for community approval.
- 9.2 The verifier or the ratification officer 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 or the ratification officer may designate one or more assistants to
- selon l'article 4.4;
- (b) tout différend concernant les modalités du transfert des pouvoirs d'administration entre le Canada et la première nation.
- 8.7 Les décisions du vérificateur doivent être conformes aux paragraphes 4.4 et 4.5.
- 8.8 Le vérificateur ne peut être saisi des différends concernant le financement.
- 8.9 Le vérificateur émet à la première nation et au ministre, dans les 30 jours de la réception des documents visés à l'article 8.4, un avis écrit indiquant si le projet de code foncier et le processus d'approbation de la communauté proposé sont conformes au présent accord.
- 8.10 Dans tous les cas où, à son avis, le projet de code foncier ou le processus proposé pour obtenir l'approbation de la communauté ne sont pas conformes au présent accord, le vérificateur consigne par écrit les motifs de cette décision qu'il transmet à la première nation et au ministre.
- 9. TENUE DU SCRUTIN**
- 9.1 Après que le vérificateur ait décidé que 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.
- 9.2 Le vérificateur ou l'agent de ratification fait publier un ou plusieurs avis informant la communauté de la date, de l'heure et du lieu du scrutin.
- 9.3 Le vérificateur ou l'agent de ratification peut s'adoindre un ou plusieurs assistants pour l'aider à surveiller le

- help observe the conduct of the vote.
- 9.4** The verifier or the ratification officer 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 or the ratification officer 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. If the ratification officer issues this report, he or she will also send a copy to the verifier.
- 10. DISPUTED VOTE**
- 10.1** Any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting process to the verifier.
- 10.2** A verifier will not certify a land code if he or she is of the opinion that the following conditions exist:
- (a)** the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and
 - (b)** the land code might not have been approved but for the irregularity in the process.
- 10.3** Before making a decision under this clause, the verifier will provide the First Nation with a reasonable opportunity to make submissions on the issue.
- 10.4** Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.
- déroulement du scrutin.
- 9.4** Le vérificateur ou l'agent de ratification et ses adjoints ont pleins pouvoirs pour surveiller le processus d'approbation de la communauté.
- 9.5** Le vérificateur ou l'agent de ratification 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. Si l'agent de ratification remet ce rapport, il ou elle doit également en envoyer une copie au vérificateur.
- 10. CONTESTATION DU VOTE**
- 10.1** Tout électeur peut, dans les cinq jours suivant la clôture du scrutin, informer le vérificateur de toute irrégularité dont a été entaché le déroulement du scrutin.
- 10.2** Le vérificateur ne peut attester la validité du code foncier s'il en vient aux conclusions suivantes:
- (a)** 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;
 - (b)** d'autre part, le code n'aurait peut-être pas été approuvé sans cette irrégularité.
- 10.3** Avant de prononcer une décision aux termes du présent article, le vérificateur donne à la première nation l'occasion de présenter des observations.
- 10.4** Toute décision du vérificateur en vertu du présent article doit être prise dans un délai de 10 jours suivant la conclusion du vote.

11. CERTIFICATION OF LAND CODE

- 11.1** Where a First Nation approves a land code and its individual agreement in accordance with the process as previously confirmed, 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 signed individual agreement.
- 11.2** Upon receiving a copy of a First Nation's land code, and signed individual agreement, the verifier will, subject to clause 10, certify the land code as being valid.
- 11.3** The verifier will immediately provide the First Nation, the Lands Advisory Board and the Minister with a copy of any certified land code.
- 11.4** The Lands Advisory Board will publish a notice announcing the certification of a land code and the date the land code comes into force and advising the public of the means of obtaining copies of it.
- 11.4.1** Immediately upon the land code coming into force, and upon the coming into force of any amendment to the land code, the First Nation will post a copy of the land code on the website of the First Nation, if the First Nation has a website, and will make a copy available to any member of the public, upon request.
- 11.5** Once a land code is certified by a verifier and comes into force, the land code has the force of law and will be given judicial notice.
- 11.6** A land code that has been certified pursuant to this Agreement is deemed to have been validly approved by the First Nation.

11. CERTIFICATION DU CODE FONCIER

- 11.1** Lorsque la première nation approuve le code foncier et l'accord distinct en conformité avec le processus d'approbation retenu, le conseil de la première nation adresse au vérificateur, dans les meilleurs délais, une copie certifiée conforme du code foncier et de l'accord distinct signé.
- 11.2** À la réception de la copie du code foncier, et de l'accord distinct signé, le vérificateur atteste la validité du code foncier, sous réserve de l'article 10.
- 11.3** 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.
- 11.4** Le Conseil consultatif des terres publie 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.
- 11.4.1** Dès l'entrée en vigueur du code foncier ou de toute modification de ce code, la première nation doit afficher une copie du code foncier sur son site Internet, si elle en a un, et en mettre une copie à la disposition de tout membre du public qui en fait la demande.
- 11.5** 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.
- 11.6** Une fois sa validité attestée conformément au présent accord, le code est réputé avoir été dûment approuvé par la première nation.

PART III

FIRST NATION LAND MANAGEMENT RIGHTS AND POWER

12. LAND MANAGEMENT POWERS

- 12.1 A First Nation with a land code in force will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.
- 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, 18.10 and 23.6.
- 12.3 In any province or territory other than Québec, 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.
- 12.3.1 In the Province of Québec, 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.

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 Elle peut notamment:
- (a) exercer tous les droits, pouvoirs et priviléges d'un propriétaire, pour ce qui est de ses terres de première nation;
 - (b) sous réserve des articles 3, 18.10 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 assujetti aux exclusions, réserves, conditions ou délimitations énoncées par la première nation dans son code foncier.
- 12.3.1 Dans la province de Québec, un droit foncier ou un permis relatif aux terres de première nation est assujetti 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** 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.
- 12.6** 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** Subject to 12.10, when a First Nation's land code comes into force, all revenue and capital moneys collected, received or held by Canada for the use and benefit of the First Nation before that date, and from time to time thereafter, shall cease to be Indian moneys under the Indian Act and shall be transferred by Canada to the First Nation.
- 12.9** For greater certainty, nothing in this Agreement affects the application of paragraph 90(1)(a) of the Indian Act.
- 12.10** Canada and a First Nation that has a land code in force on the date this sub-clause comes into effect may amend the individual agreement to provide for the transfer of that First Nation's capital moneys collected, received or held by Canada for the use and benefit of the First Nation whether or not those monies are collected, received or held before the date of the amendment of the individual agreement, or from time to time thereafter.
- 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** 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 priviléges 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** Sous réserve de l'article 12.10, au moment où le code foncier d'une première nation entre en vigueur, les revenus et les capitaux perçus, reçus ou détenus par le Canada à l'usage et au profit de la première nation 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 et sont transférés par le Canada à la première nation.
- 12.9** Il est entendu qu'aucune disposition du présent accord n'a d'incidence sur l'application de l'alinéa 90(1)(a) de la Loi sur les Indiens.
- 12.10** Le Canada et une première nation qui a un code foncier en vigueur à la date où l'article 12.10 entre en vigueur peuvent modifier l'accord distinct afin de prévoir le transfert des capitaux perçus, reçus ou détenus par le Canada à l'usage et au profit de la première nation qu'ils aient été perçus, reçus ou détenus avant ou qu'ils le soient après la modification de l'accord distinct.
- 12.11** Le conseil d'une première nation doit, au moins 30 jours avant la modification de l'accord distinct visant à transférer les capitaux, informer les membres de la première nation du montant de capitaux

- 12.11** The Council of a First Nation will, at least 30 days before the amendment of the individual agreement to transfer capital moneys, inform the members of the First Nation of the amount of capital moneys held for the First Nation and the intention of Council to amend the individual agreement.
- 12.12** Upon amendment of the individual agreement to transfer capital moneys, those capital moneys shall cease to be Indian moneys under the Indian Act 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 comes into force.
- 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.
- 14. VOLUNTARY EXCHANGE OF FIRST NATION LAND**
- 14.1.1** 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.
- 14.1.2** Any exchange of First Nation land will require community approval in accordance with the process established in the land code.
- détenus pour la première nation et de l'intention du conseil de modifier l'accord distinct.
- 12.12** Dès que l'accord distinct visant à transférer les capitaux est modifié, ceux-ci cessent d'être de l'argent des Indiens au sens de la Loi sur les Indiens, et le Canada doit les transférer 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 accord.
- 14. ÉCHANGE VOLONTAIRE DE TERRES DE PREMIÈRE NATION**
- 14.1.1** 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.
- 14.1.2** 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.

- 14.1.3** First Nation land will only be exchanged for land that Canada consents to set apart as a reserve or as Lands Set Aside. In addition, the agreement of Canada is required on the technical aspects of the exchange.
- 14.1.4** 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 or as Lands Set Aside, 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.
- 14.1.5** Where an exchange of First Nation land is approved by a First Nation in accordance with its land code, the First Nation can execute an authorization to Canada to transfer title to the land.
- 14.1.6** 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.
- 14.1.7** A copy of the instruments or acts transferring title to First Nation land will be registered in the First Nation Lands Register.
- 14.1.8** 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.
- 14.1.3** 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 ou à titre de terres mises de côté. L'accord du Canada est également requis quant aux aspects techniques de l'opération.
- 14.1.4** 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 ou à titre de terres mises de côté, 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.
- 14.1.5** Lorsque l'échange des terres de première nation est approuvé par la première nation conformément à son code foncier, la première nation peut délivrer au Canada une autorisation de procéder au transfert du titre sur les terres en question.
- 14.1.6** 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.
- 14.1.7** 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.
- 14.1.8** 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.

14.1.9 For greater certainty, the First Nation land that was exchanged will cease to be a reserve or Lands Set Aside, as the case may be.

14.2. ADDITION OF LAND TO FIRST NATION LAND

14.2.1 In accordance with any request made by a First Nation that has a land code in force, the Minister may, by order, set apart as a reserve, for the use and benefit of the First Nation, any lands the title to which is vested in Canada, and provide in the order that the lands are First Nation land.

14.2.2 Before the lands are transferred to Canada by the First Nation or a third party for the purpose of being set apart as a reserve, or before the lands are set apart as a reserve, the First Nation may, in accordance with its land code,

- (a) grant interest or land rights in and licences in relation to the lands, and
- (b) enact zoning or other laws within the scope of this Agreement in relation to the lands that will come into force only if and when the lands become First Nation land.

14.2.3 As of the date of any ministerial order adding land to First Nation land, the description of the First Nation land in the land code and in the individual agreement will be deemed to be amended to add the description of the First Nation land set out in the order.

14.2.4 The Minister will register a copy of any ministerial order adding land to First Nation land in the First Nation Land Register.

14.1.9 Il est entendu que les terres de première nation qui ont été échangées cessent de constituer une réserve ou des terres mises de côté, selon le cas.

14.2. AJOUT DE TERRES À DES TERRES DE PREMIÈRE NATION

14.2.1 Conformément à toute demande faite par une première nation ayant un code foncier en vigueur, le ministre peut, par décret, mettre de côté à titre de réserve, à l'usage et au profit de la première nation, toutes terres dont le titre est attribué au Canada et prévoir, dans le décret, que les terres sont des terres de première nation.

14.2.2 Avant qu'une première nation ou un tiers transfère les terres au Canada afin qu'elles soient mises de côté à titre de réserve, ou avant que les terres soient mises de côté à titre de réserve, la première nation peut, conformément à son code foncier :

- (a) attribuer des intérêts ou des droits fonciers sur ces terres ainsi que des permis relativement à ces terres;
- (b) adopter un zonage ou d'autres textes législatifs relativement aux terres, dans le champ d'application du présent accord.

Ces mesures entrent en vigueur uniquement si les terres deviennent des terres de première nation et au moment où elles le deviennent.

14.2.3 À la date de tout décret ministériel ajoutant des terres aux terres de première nation, la description des terres de première nation dans le code foncier et dans l'accord distinct sera réputée avoir été modifiée afin d'ajouter la description des terres de première nation énoncée dans le décret.

14.2.4 Le ministre doit enregistrer dans le registre des terres de première nation

14.2.5 Without limiting the generality of clause 50, Canada will not be liable for, and the First Nation will indemnify Canada from, any loss arising from any act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in relation to the obtaining of any discharges or granting of any interests or land rights or licences prior to a ministerial order adding land to First Nation land.

14.2.6 Without limiting the generality of clause 50, the First Nation will not be liable for, and Canada will indemnify the First Nation from, any loss arising from any act or omission by Canada, or any person or entity acting on behalf of Canada, in relation to the obtaining of any discharges or granting of any interests or land rights or licences prior to a ministerial order adding land to First Nation land.

14.2.7 Nothing in this Agreement precludes Canada from setting apart lands as a reserve for a First Nation under the royal prerogative or an Act of Parliament.

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 came into force if the First Nation land was designated land at that time.

une copie de tout décret ministériel ajoutant des terres aux terres de première nation.

14.2.5 Sans limiter la portée générale de l'article 50, le Canada ne peut pas être tenu responsable, et la première nation doit indemniser le Canada, de toute perte découlant de tout acte ou toute omission de la part de la première nation ou de toute personne ou entité agissant pour son compte relativement à l'obtention de toutes décharges ou à l'attribution de tous intérêts ou droits fonciers ou permis antérieurs à un décret ministériel ajoutant des terres aux terres de première nation.

14.2.6 Sans limiter la portée générale de l'article 50, la première nation ne peut pas être tenue responsable, et le Canada doit indemniser la première nation, de toute perte découlant de tout acte ou toute omission de la part du Canada ou de toute personne ou entité agissant pour son compte relativement à l'obtention de toutes décharges ou à l'attribution de tous intérêts ou droits fonciers ou permis antérieurs à un décret ministériel ajoutant des terres aux terres de première nation.

14.2.7 Aucune disposition du présent accord n'empêche le Canada de mettre des terres de côté à titre de réserve pour une première nation en vertu de la prérogative royale ou d'une loi du Parlement.

15. INSAISISSABILITÉ, 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 vigueur, dans le cas où les terres de

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

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

- (a) the interest of an Indian or a First Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the Indian Act; and
- (b) the personal property or the movables of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.

16. THIRD PARTY INTERESTS

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

16.2 For greater certainty, the terms of a designation or surrender made by a First Nation under the Indian Act do not restrict the ability of the First Nation and third parties, by agreement, to modify an interest, land right or licence in First Nation land.

16.3 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.

première nation étaient des terres désignées à ce moment.

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

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

- (a) le droit d'un Indien ou d'une première nation sur une réserve faisant partie des terres de première nation demeure exempté de taxation, sous réserve de l'article 83 de la Loi sur les Indiens;
- (b) les biens personnels ou les meubles d'un Indien ou d'une première nation situés sur une réserve faisant partie des terres de la première nation demeurent exemptés de taxation.

16. INTÉRÊTS DES TIERS

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

16.2 Il est entendu que les modalités de toute désignation ou cession faite par une première nation en vertu de la Loi sur les Indiens ne restreignent pas la capacité de la première nation et de tiers de s'entendre pour modifier un intérêt, un droit foncier ou un permis sur des terres de première nation.

16.3 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

- 16.4** Once a land code comes into force, no interest, land right or licence in relation to First Nation land may be acquired or granted except in accordance with the land code.
- 16.5** 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 force 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.
- 17.3.1** In the Province of Québec, the First Nation that expropriates a land right in its First Nation lands becomes the holder of that 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
- Indiens, en matière de transfert, de bail et de partage des revenus provenant de ressources naturelles seront définis par le code foncier.
- 16.4** 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.
- 16.5** 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.
- 17.3.1** La première nation qui exproprie un droit foncier sur ses terres de première nation dans la province de Québec devient 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

- 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
 - (b) the 30th day after the day the last copy of the notice is served.
- 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) le 30e jour suivant la signification de la dernière copie de cet avis.

PART IV

FIRST NATION LAW MAKING

18. LAW MAKING POWERS

- 18.1** The council of a First Nation with a land code in force 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 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.

PARTIE IV

POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

18. POUVOIRS DE LÉGIFÉRER

- 18.1** Le conseil de la première nation ayant un code foncier en vigueur peut édicter des textes législatifs, conformément à celui-ci, concernant le développement, la conservation, la protection, la gestion, l'utilisation et la possession des terres de première nation et des intérêts ou droits fonciers et permis les concernant. Cela comprend les textes législatifs portant sur des questions nécessaires ou afférentes à l'élaboration des textes législatifs relatifs aux terres de première nation.
- 18.2** Les exemples qui suivent illustrent certaines des fins pour lesquelles les premières nations peuvent adopter des textes législatifs, comme l'envisagent les parties:
- (a) pour réglementer, régir ou interdire le zonage, l'aménagement, l'utilisation, le lotissement ou la mise en valeur des terres;
 - (b) pour créer et réglementer les permis et les intérêts ou les droits fonciers relatifs aux terres de première nation ou prévoir des interdictions à cet égard;
 - (c) pour régir la protection de l'environnement et l'évaluation environnementale;
 - (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

18.3 A First Nation with a land code in force has the power to make First Nation laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner, respecting:

- (a) use, occupation and possession of family homes on its First Nation land;
- (b) the division of the value of any interests or land rights held by spouses or common-law partners in or to structures and lands on its First Nation land; and
- (c) the period of cohabitation in a conjugal relationship to qualify as a common-law partner.

18.4 First Nation laws made pursuant to sub-clause 18.3 may include provisions for:

- (a) administering those laws;
- (b) despite subsection 89(1) of the Indian Act, provisions for enforcing, on First Nation land, an order of a court or a decision made or an agreement reached under those laws; and
- (c) procedures for amendment and repeal of those laws.

18.5 The council of a First Nation will provide, to the Attorney General of any province or territory in which its First Nation land is situated, notice of its intent to make laws pursuant to sub-clause 18.3 and, upon enactment, provide a copy of those laws to the Attorney General.

18.6 The council of a First Nation with a land code in force will have the power to make laws providing for limits on liability, defences and immunities to any

relatifs aux terres de première nation.

18.3 Une première nation ayant un code foncier en vigueur peut édicter des textes législatifs qui s'appliquent durant une relation conjugale, à la rupture de cette relation ou au décès d'un époux ou d'un conjoint de fait, et qui concernent:

- (a) l'utilisation, l'occupation et la possession des foyers familiaux sur ses terres de première nation;
- (b) le partage de la valeur de tous droits fonciers ou intérêts détenus par les époux ou les conjoints de fait sur les constructions et terres situées sur les terres de première nation;
- (c) la période de cohabitation requise, dans le cadre d'une relation conjugale, pour qu'une personne soit considérée comme conjoint de fait.

18.4 Les textes législatifs édictés en vertu de l'article 18.3 peuvent inclure:

- (a) des dispositions concernant l'application de ces textes;
- (b) malgré le paragraphe 89(1) de la Loi sur les Indiens, des dispositions visant à faire appliquer, sur des terres de première nation, l'ordonnance d'un tribunal ou une décision prise ou un accord conclu en vertu de ces textes législatifs;
- (c) des dispositions concernant les procédures de modification et d'abrogation de ces textes législatifs.

18.5 Le conseil d'une première nation doit donner, au procureur général de toute province ou de tout territoire où se trouvent ses terres de première nation, un avis de son intention d'édicter des

- person or entity in respect of any act or omission occurring in the exercise of a power or the performance of a duty under the land code or a First Nation law.
- 18.7** The limits on liability, defences and immunities in a First Nation law shall be no greater than those that would apply to a person or entity performing a similar duty under the laws of the province or territory in which the First Nation land is situated.
- 18.8** A land code will not address the taxation of real or personal property or of immovables or movables. Federal laws that address the taxation of real or personal property or of immovables or movables on reserve will continue to apply to First Nation land.
- 18.9** 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.
- 18.10** This Agreement does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries.
- 18.11** For greater certainty, a First Nation may enter into agreements with other governments or government agencies in Canada regarding the performance of duties under First Nation laws by officials or bodies of those governments or agencies.
- textes législatifs en vertu de l'article 18.3 et, lui transmettre une copie de ces textes dès leur adoption.
- 18.6** Le conseil de la première nation ayant un code foncier en vigueur a le pouvoir d'adopter des textes législatifs prévoyant des limites de responsabilité, des moyens de défense et des immunités pour toute personne ou entité relativement à tout acte ou toute omission se produisant dans l'exercice d'un pouvoir ou dans l'exécution de fonctions en vertu du code foncier ou d'un texte législatif de la première nation.
- 18.7** Les limites de responsabilité, moyens de défense et immunités prévues dans un texte législatif de la première nation ne doivent pas excéder celles qui s'appliqueraient à une personne ou une entité exécutant les mêmes fonctions en vertu des lois de la province ou du territoire où se trouvent les terres de première nation.
- 18.8** Le code foncier ne traite pas de l'imposition des biens réels ou personnels ou des immeubles ou meubles. Les lois ou personnels ou des biens meubles ou immeubles sur réserve continuent de s'appliquer aux terres de première nation.
- 18.9** 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.
- 18.10** 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.
- 18.11** Il est entendu qu'une première nation peut conclure des accords avec d'autres

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, restitution, community service, and alternative means for achieving compliance;
 - (c) establish comprehensive enforcement procedures consistent with federal, provincial or territorial law, including inspections, searches, seizures and compulsory sampling, testing and the production of information; and
 - (d) provide for the collection of non-tax debts, fees or charges owed to the First Nation using taxation collection remedies made under First Nation taxation laws.
- 19.2** A First Nation may enter into agreements with other governments or government agencies to collect any fines, debts, fees or other penalties imposed by its land code or First Nation laws.
- 19.3** First Nation laws may adopt or incorporate by reference the summary conviction procedures of the Criminal Code for the purpose of enforcement.
- 19.4** 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 or

gouvernements ou organismes gouvernementaux au Canada concernant l'exécution, par des fonctionnaires ou des organes de ces gouvernements ou organismes, de fonctions en vertu des textes législatifs de la première nation.

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 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 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 compatibles aux lois fédérales, provinciales ou territoriales;
 - (d) prévoir le recouvrement de créances non fiscales, de droits et de frais qui sont dus à la première nation, en se servant de mesures de recouvrement de taxes prévus dans les textes législatifs de nature fiscale adoptés par la première nation.
- 19.2** Une première nation peut conclure des ententes avec d'autres gouvernements ou organismes gouvernementaux au Canada afin de procéder au recouvrement des amendes, dettes, frais ou autres pénalités imposé par son code foncier ou texte législatif de la première nation.

- territorial courts.
- 19.5** 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.
- 19.6** Decisions made by a justice of the peace appointed under this clause may be appealed to a court of competent jurisdiction.
- 19.7** The First Nation will protect the independence of each justice of the peace it appoints in a way similar to that in a province or territory, for example tenure, removal and remuneration.
- 19.8** 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 or territories may also be parties to such agreements with First Nations.
- 19.9** 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 or territory will be invited to participate in the development of and to be a party to such agreement.
- 19.3** Les textes législatifs de la première nation peuvent, à ces fins, reproduire ou incorporer par renvoi la procédure sommaire du Code criminel.
- 19.4** 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 ou territoriaux.
- 19.5** 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.
- 19.6** Les décisions du juge de paix nommé aux termes du présent article sont susceptibles d'appel devant un tribunal compétent.
- 19.7** 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 ou les territoires, par exemple la durée de leur mandat, leur destitution et leur rémunération.
- 19.8** 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 ou les territoires peuvent également être parties à ces ententes avec les premières nations.
- 19.9** 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 ou le territoire concerné sera invité à participer à l'élaboration de cette entente

19.10 For the purpose of prosecuting offences, the First Nation will retain its own prosecutor or enter into an agreement with a province or territory to arrange for a provincial or territorial prosecutor.

et à être partie à celle-ci.

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 federal legislation.

20.2 Notwithstanding any inconsistency with the federal legislation, the Emergencies Act will apply on First Nation land, but any expropriation 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 Notwithstanding any inconsistency with the federal legislation, the Nuclear Safety and Control Act and the Nuclear Energy Act apply on First Nation land, but any expropriation of an interest or land right in First Nation land under the Nuclear Energy Act shall be subject to the expropriation rules under Part VII of this Agreement.

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

21.1 Once a land code comes into force, 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 31 and 34 to 35 of the Indian Act;

19.10 Aux fins des poursuites, la première nation embauchera son propre procureur ou conclura avec une province ou un territoire une entente prévoyant le recours à un procureur provincial ou territorial.

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 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, l'expropriation 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 La Loi sur la sûreté et la réglementation nucléaire et la Loi sur l'énergie nucléaire s'appliquent sur les terres de première nation, même si elles sont incompatibles avec la loi de ratification. Cependant, l'expropriation d'intérêts ou de droits fonciers sur ces terres en vertu de la Loi sur l'énergie nucléaire est subordonnée aux règles prévues à la partie VII du présent accord.

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;

- (c) sections 37 to 41 of the Indian Act;
 - (d) sections 49, 50(4) and 53 to 60 of the Indian Act;
 - (e) sections 61 to 69 and 71 of the Indian Act;
 - (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.
- 21.2** Notwithstanding sub-clause 21.1, a First Nation whose capital moneys are transferred to it by way of an amendment to the individual agreement remains subject to sections 61 to 65 and 67 to 68 of the Indian Act until such time as the amendment to the individual agreement takes effect.
- 21.3** Notwithstanding sub-clauses 21.1 and 21.2, sections 61 to 65 and 67 to 68 of the Indian Act continue to apply to the extent necessary in respect of moneys collected, received or held by Canada under the Indian Act for the use and benefit of an individual.
- (b) les articles 30, 31, 34 et 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 61 à 69 et 71 de la Loi sur les 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.
- 21.2** Malgré l'article 21.1, une première nation à qui les capitaux sont transférés suite à une modification à l'accord distinct demeure assujettie aux articles 61 à 65 et 67 à 68 de la Loi sur les Indiens jusqu'à ce que la modification à l'accord distinct soit en vigueur.
- 21.3** Malgré les articles 21.1 et 21.2, les articles 61 à 65 et 67 à 68 de la Loi sur les Indiens, continuent de s'appliquer dans la mesure nécessaire en ce qui a trait à l'argent perçu, reçu ou détenu par le Canada en vertu de la Loi sur les Indiens à l'usage et au profit d'une personne.

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.

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.

PART V

ENVIRONMENT

23. GENERAL PRINCIPLES

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

23.1.1 The following examples illustrate some of the First Nation environmental laws relating to First Nation land contemplated by the Parties:

- (a) laws relating to contaminants on First Nation lands;
- (b) environmental protection requirements, including requirements in respect of natural resources, soils, water and ground water;
- (c) environmental emergencies and natural disasters;
- (d) conservation and heritage management requirements;
- (e) nuisances, including noise, odours and vibrations;
- (f) recycling, solid waste management and garbage disposal;
- (g) unsightly premises;
- (h) sewage and effluent discharges; and
- (i) implementation of any provisions of a First Nation environmental management plan.

PARTIE V

ENVIRONNEMENT

23. PRINCIPES GÉNÉRAUX

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

23.1.1 Les exemples qui suivent illustrent certaines des fins pour lesquelles la première nation peut adopter des textes législatifs de nature environnementale relativement aux terres de première nation, comme l'envisagent les parties:

- (a) des textes législatifs relatifs aux contaminants sur les terres;
- (b) des exigences concernant la protection de l'environnement, notamment des exigences relatives aux ressources naturelles, aux sols, à l'eau et aux eaux souterraines;
- (c) les urgences environnementales et les désastres naturels;
- (d) des exigences relatives à la conservation et à la gestion du patrimoine;
- (e) les nuisances, notamment le bruit, les odeurs et les vibrations;
- (f) le recyclage, la gestion des déchets solides et le traitement des ordures;
- (g) les lieux inesthétiques;
- (h) les égouts et les rejets d'effluents;
- (i) la mise en œuvre de toutes dispositions d'un plan de gestion environnementale de la première nation.

- 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.
- 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 or territories 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 force 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 or territory in which the First Nation is situated, where the province or territory agrees to participate.
- 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** Les régimes de protection et d'évaluation environnementales seront mis en œuvre 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 ou les territoires à participer à cette opération si celles-ci le souhaitent, dans le but de promouvoir l'uniformité et l'efficacité des régimes et processus environnementaux et d'éviter les incertitudes et le double emploi.
- 23.6** Le présent accord n'a pas pour effet de modifier les droits et pouvoirs concernant les oiseaux migrateurs et les espèces en voie de disparition. Ces questions pourront faire l'objet d'autres négociations. Le présent accord n'a pas pour objet de déterminer la résolution de ces questions ou d'y porter préjudice.
- 24. GESTION DE L'ENVIRONNEMENT**
- 24.1** Sous réserve de l'article 27, une première nation qui a un code foncier en vigueur élaborera un régime de protection environnementale, avec l'appui des organismes fédéraux concernés, dans la mesure où la province accepte de participer.
- 24.2** Chaque première nation accepte d'harmoniser son régime de protection environnementale avec celui de la province ou du territoire où elle est située, dans la mesure où la province ou le territoire 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 or territory 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 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 comes into force, 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
- 24.3** Les normes de protection environnementale et pénalités de la première nation devront avoir au moins l'effet équivalent à celui des lois de la province ou du territoire 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 Conseil consultatif des terres et des organismes fédéraux intéressés, d'élaborer un processus d'évaluation environnementale dans l'année suivant l'entrée en vigueur du code foncier de la première nation ou dans un délai plus long convenu entre le ministre et la première nation.
- 25.2** L'accord distinct conclu entre la première nation et le ministre conformément à l'article 6 doit prévoir les modalités de l'évaluation environnementale des projets devant être réalisés sur les terres de première nation au cours de la période transitoire, jusqu'à ce que la première nation ait élaboré un processus d'évaluation environnementale.
- 25.3** Le processus d'évaluation environnementale mis sur pied par la première nation doit être compatible avec les exigences de la Loi canadienne sur l'évaluation environnementale.
- 25.4** Sera un élément déclencheur du processus d'évaluation environnementale dans les cas indiqués,

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 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.
- 25.6** The Parties agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces or territories where they agree to participate.

26. OTHER AGREEMENTS

- 26.1** The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.
- 26.2** Where matters being negotiated pursuant to clause 26.1 normally fall within provincial or territorial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the Parties will invite the affected province or territory to be a party to such negotiations and resulting agreements.

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 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.
- 25.6** Les parties conviennent d'élaborer un plan visant à harmoniser leurs processus d'évaluation environnementale respectifs, avec la participation des provinces ou des territoires si ceux-ci le souhaitent.

26. AUTRES ENTENTES

- 26.1** La première nation et le Canada reconnaissent qu'il pourrait être souhaitable de conclure d'autres ententes, entre elles et avec d'autres gouvernements, dans le domaine de l'environnement, notamment au sujet des questions d'harmonisation, de mise en œuvre, de calendrier, de financement et de contrôle d'application.
- 26.2** Si une question faisant l'objet de négociation en vertu de l'article 26.1 relève normalement de la compétence de la province ou du territoire, 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 ou le territoire concerné à être partie à ces négociations et à l'entente qui en résulte.

27. RESOURCES

27.1 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.

27. RESSOURCES

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

PART VI

FUNDING

28. APPROPRIATION

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

29. DEVELOPMENTAL FUNDING

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

30. OPERATIONAL FUNDING

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

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

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

PARTIE VI

FINANCEMENT

28. CRÉDITS

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

29. FINANCEMENT DE DÉMARRAGE

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

30. FINANCEMENT DE FONCTIONNEMENT

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

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

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

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.

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.

PART VII

EXPROPRIATION OF FIRST NATION LAND BY CANADA

32. RESTRICTIONS

- 32.1** In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that First Nation lands will not be subject to expropriation.
- 32.2** Despite the general principle against expropriation, First Nation land may be expropriated by Canada:
- (a)** only with the consent of the 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;

PARTIE VII

EXPROPRIATION DE TERRES DE PREMIÈRES NATIONS PAR LE CANADA

32. RESTRICTIONS

- 32.1** Conformément au principe énoncé à l'article 13.2, les parties conviennent qu'en règle générale, les terres de première nation ne peuvent faire l'objet d'une expropriation.
- 32.2** Malgré le principe général voulant que les terres ne puissent faire l'objet d'une expropriation, le Canada peut toutefois exproprier les terres de première nation, si les conditions suivantes sont 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;

- | | |
|--|---|
| <p>(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;</p> <p>(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</p> <p>(e) in every case, it will first provide the First Nation with information relevant to the expropriation.</p> | <p>(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;</p> <p>(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 période pour laquelle il est exproprié;</p> <p>(e) dans tous les cas, il communiquera d'abord à la première nation tous les renseignements se rapportant à l'expropriation.</p> |
| <p>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.</p> | <p>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.</p> |
| <p>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.</p> | <p>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.</p> |
| <p>32.7 An order of the Governor in Council consenting to the expropriation will not be issued earlier than:</p> <ul style="list-style-type: none"> (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. | <p>32.7 Un décret du gouverneur en conseil consentant à l'expropriation ne sera pas émis avant :</p> <ul style="list-style-type: none"> (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. COMPENSATION BY 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 came into force.
- 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 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. INDEMNISATION PAR LE CANADA

- 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 une indemnité;
 - (e)** les dommages attribuables à la diminution de la valeur de

- 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 or territory 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 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.
- 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 ou du territoire 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 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

- 34.2** Alternate land accepted by the First Nation as part of the compensation will become both a reserve and First Nation land or, in Yukon, Lands Set Aside and First Nation land.
- 35. REVERSION OR RETURN OF INTERESTOR LAND RIGHTIN 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.
- 35.1.1** 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 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
- 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 ou, au Yukon, des terres mises de côté 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 un 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.
- 35.1.1** 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, 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**

- 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 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.
- 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 convue 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 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.

PART VIII

LANDS ADVISORY BOARD

38. LANDS ADVISORY BOARD

- 38.1 The Lands Advisory Board shall consist of at least three members appointed by the Councils of the First Nations that have ratified this Agreement.
- 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 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

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 par les conseils des premières nations qui ont ratifié le présent accord.
- 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 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 œuvre 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;

- regimes;
- (d) assisting a verifier or ratification officer when requested by the verifier or ratification officer;
 - (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;
 - (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 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
- (d) à leur demande, il apporte son aide au vérificateur ou à l'agent de ratification;
 - (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 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 doit, en consultation avec le ministre, prescrire les procédures qu'une première nation doit suivre pour autoriser la signature du

- has completed the procedures.
- 40.2** Subject to sub-clause 40.1, 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.
- 40.3** The Lands Advisory Board shall receive and record the adhesion of a First Nation party to this Agreement, made after January 1, 2001, and advise the Minister that the said First Nation has signed the Framework Agreement.
- 41. ANNUAL REPORT**
- 41.1** Within 90 days following the end of each year of operation, the Lands Advisory Board will deliver to the Parties an annual report, in both official languages, on the work of the Board for that year.
- 42.** [Repealed]
- 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** Sous réserve de l'article 40.1, 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.
- 40.3** Le Conseil consultatif des terres doit recevoir et inscrire l'adhésion d'une première nation qui est parties au présent accord, intervenue après le 1er janvier 2001, et aviser le ministre de la signature de l'accord par celle-ci.
- 41. RAPPORT ANNUEL**
- 41.1** Le Conseil consultatif des terres remet aux parties, dans les 90 jours suivant la fin de son année de fonctionnement, un rapport annuel, dans les deux langues officielles, concernant les travaux accomplis pendant cette année.
- 42.** [abrogé]

PART IX

DISPUTE RESOLUTION

43. GENERAL PRINCIPLES

- 43.1** The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out-of-court processes referred to in this Part to resolve the dispute.
- 43.2** Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.
- 43.3** Subject to clause 43.4, any dispute arising from the implementation, application or administration of this Agreement, the federal legislation or an individual 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

PARTIE IX

RÈGLEMENT DES DIFFÉRENDS

43. PRINCIPES GÉNÉRAUX

- 43.1** Les parties s'engagent à résoudre entre elles, à l'amiable et de bonne foi, les différends qui peuvent découler du présent accord. Lorsque les parties n'arrivent pas à s'entendre pour résoudre un différend par la négociation, elles conviennent de mettre sur pied les processus extrajudiciaires de règlement des différends décrits dans la présente partie et d'y avoir recours.
- 43.2** Les dispositions du présent accord n'empêchent pas les parties de recourir à la médiation en vue de régler à l'amiable un différend. Lorsqu'une partie a soumis un différend à un médiateur, l'autre partie est tenue d'assister à une première rencontre avec le médiateur. L'une ou l'autre des parties peut toutefois mettre fin à la médiation en tout temps après cette première rencontre.
- 43.3** Sous réserve de l'article 43.4, les différends découlant de la mise en œuvre, de l'application ou de l'administration du présent accord, de la loi de ratification ou d'un accord distinct 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

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

46. ARBITRATION

- 46.1** Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.
- 46.2** The procedure will follow the Commercial Arbitration Code, which is a schedule to the Commercial Arbitration Act.
- 46.3** If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.
- 46.4** The arbitrator will establish the procedures of the arbitration, subject to this clause.

47. RELATED ISSUES

- 47.1** The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.
- 47.2** Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if:
- (a) all parties to the process consent; and

46. ARBITRAGE

- 46.1** Sauf entente contraire des parties, l'arbitrage s'effectuera conformément au présent article.
- 46.2** La procédure qui sera suivie est celle du Code d'arbitrage commercial, figurant à l'annexe de la Loi sur l'arbitrage commercial.
- 46.3** Si ce Code ne contient pas de disposition procédurale appropriée, les parties au différend peuvent suivre les Règles d'arbitrage commercial établies à l'occasion par le British Columbia International Commercial Arbitration Centre.
- 46.4** L'arbitre est tenu de déterminer la procédure d'arbitrage à suivre, sous réserve du présent article.

47. QUESTIONS CONNEXES

- 47.1** Les parties à un différend assument les frais relatifs à sa résolution à parts égales.
- 47.2** Toute personne dont les intérêts seraient lésés par un différend porté devant l'un des mécanismes de règlement des différends peut participer au mécanisme de règlement si:
- (a) d'une part, toutes les parties au mécanisme y consentent;

- (b) 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 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, a ratification officer, 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 principle of natural justice.
- (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 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'agent de ratification, 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.

PART X

RATIFICATION AND ENACTMENTS BY THE PARTIES

48. RATIFICATION OF AGREEMENT

- 48.1 The Parties 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 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.

PARTIE X

RATIFICATION PAR LES PARTIES ET MESURES LÉGISLATIVES

48. RATIFICATION DE L'ACCORD

- 48.1 Les parties s'efforceront de ratifier le présent accord et de le mettre en œuvre 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 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.

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 comes into force.
- 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 comes into force.
- 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 comes into force.
- 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 comes into force.
- 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, ratification officer, 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.

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 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, d'agent de ratification, 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.

50.6 Following the transfer to a First Nation of that First Nation's revenue or capital moneys Canada is not liable for the management of those moneys by the First Nation or any acts or omissions of the First Nation in respect of those moneys.

51. FIRST NATION LANDS REGISTER

51.1 Canada will establish a First Nation Lands Register to record documents respecting First Nation land or interests or land rights in First Nation land.

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

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 AND TERRITORIAL 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 or territorial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province or territory to be a party to the negotiations and resulting agreement.

50.6 À la suite du transfert à une première nation de ses revenus ou capitaux, le Canada ne peut être tenu responsable de la gestion de ces argent par la première nation ou de tout acte ou toute omission de la part de la première nation relativement à ces argent.

51. REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Le Canada est tenu d'établir un 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.

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 ET LES TERRITOIRES

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 œuvre du présent accord, et si cette entente traite des questions qui relèvent normalement de la compétence des provinces ou des territoires ou risque d'avoir des effets importants à l'extérieur des terres de première nation, le Canada et la première nation

54. TIME LIMITS

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

55. OTHER REGIMES

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

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

56. REVIEW PROCESS

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

57. AMENDMENTS

57.1 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 This Agreement, may, subject to 57.1, 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.

inviteront la province ou le territoire concerné à participer aux négociations de l'entente ainsi qu'à l'entente qui en résulte.

54. DÉLAIS

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

55. AUTRES RÉGIMES

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

55.2 Les articles 38.1 et 57 ne s'appliquent pas à une première nation à laquelle l'article 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.

57. MODIFICATIONS

57.1 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.

57.2 Sous réserve de l'article 57.1, le présent accord peut être modifié avec le consentement du Canada et des deux tiers des premières nations qui l'ont ratifié que ce soit à cette date, ou avant ou après cette date.

58. RECITALS

58.1 The recitals form part of this Agreement.

59. COMING INTO FORCE

59.1 This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.

58. PRÉAMBULE

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

59. ENTRÉE EN VIGUEUR

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

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY

INTRODUCTION

The *Framework Agreement on First Nation Land Management* (*Framework Agreement*) is a government-to-government agreement signed by 13 First Nations and Canada on February 12, 1996. One other First Nation was added on December 10, 1996.

The *Framework Agreement* was initiated by these 14 First Nations to opt out of the land management sections of the *Indian Act* and take over the governance and management control of their First Nation Land and natural resources.

The *Framework Agreement* represented an historical new approach in government-to-government conventions. Today, it can only be amended with the approval of 2/3 of the First Nations who have ratified the *Framework Agreement* and Canada.

Canada ratified its commitment to implement the *Framework Agreement* by enacting federal legislation. The *First Nations Land Management Act* (*Act*) was given royal assent on June 17, 1999. The *Act*, which must be consistent with the *Framework Agreement*, formally ratifies it on behalf of Canada together with all subsequent amendments made according to its terms.

First Nation signatories ratify the *Framework Agreement* by enacting a Land Code. Until a Land Code is enacted, federal administration of their lands continues under the *Indian Act*. As of April 2019, the *Framework Agreement* has expanded from the original 14 signatories to 165 signatories, of which 82 First Nations have enacted their own Land Codes.

In a first for Canada, in the most recent December 13, 2018 amendments to the *Framework Agreement* and *Act*, the introductory clauses commit Canada to implementing the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

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, the Land Code becomes the basic land law of the First Nation. When it comes into effect, approximately 30 sections of the *Indian Act* no longer apply and Canada is no longer involved in the land governance of the First Nation's land and resources. The Land Code does not have to be approved by the Minister or any federal department.

Individual Agreement: An Individual Agreement, developed between each First Nation and Canada.

Community Ratification Process: In order for the First Nation to re-assume control over First Nation Land, the Land Code and the Individual Agreement must be ratified by the eligible voters of the First Nation. All eligible voters, 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.

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*.

Recognition of Land Governance Authority: Upon the enactment of the Land Code, jurisdictional control over First Nation Land and natural resources are recognized to be under the governance authority of the First Nation and are no longer subject to the *Indian Act*.

TITLE TO FIRST NATION LAND

Title to First Nation Land is not affected when a Land Code comes into force. Under the *Indian Act*, reserve lands 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 continue to be Lands reserved for Indians under section 91(24) of the *Constitution Act, 1867*.

In the Yukon, the title of lands set aside by reservation or notation in the property records of Canada will not be affected by the enactment of a Land Code.

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 First Nation Land and natural resources. A First Nation power includes all the rights, powers and privileges of an owner and the authority to grant interests or land rights and licences in relation to its First Nation Land and to manage its natural resources.

Law-Making Powers: A First Nation, with 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. This includes laws on zoning, land use, interests and licences, environment assessment and protection, services, dispute resolution, and matrimonial real property.

Land Management: In accordance with their respective Land Code and First Nation laws, a First Nation has jurisdiction over decision making in relation to the First Nation Land and natural resources, including leasing, developing, managing revenues and authorizing expenditures. However, First Nation Land cannot be sold or surrendered for sale. In keeping with the principle that First Nation land will not be reduced in area or quality, there is a procedure for exchanging lands if the First Nation regards such an exchange as advantageous.

Land management powers only relate to First Nation Land. The *Framework Agreement* does not affect any lands, or any rights in lands, that are not subject to the Land Code.

First Nation Expropriation: A First Nation will have the power to acquire interests in First Nation Land for community works or other First Nation community purposes. It must pay fair compensation to members or non-members whose interests are affected. The First Nation will provide 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 First Nation Land, natural resources and revenues.

Marriage Breakdown: A First Nation has the power to make First Nation laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner.

Registration of Interests: The First Nation Lands Register was established to record documents respecting First Nation Land for First Nations with a Land Code in force.

PROTECTION OF FIRST NATION LAND

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

Description of Land and Addition of Land: A Land Code will describe the lands that are subject to the Land Code, called First Nation Land. The description of land does not resolve or prejudice any claim of the First Nation to any other lands, or to any proper adjustment to the boundaries, and serves the sole purpose of administrative implementation of the *Framework Agreement*. The Land Code prescribes a process to add other lands to the jurisdiction of the Land Code once those lands become First Nation Land. Canada and the First Nation signatories declare that it is of fundamental importance to maintain the amount and integrity of First Nation Land.

Environmental Protection: A First Nation with a Land Code in force will have the power to develop an environmental assessment and environmental protection regime by implementing First Nation laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation Land for other lands, at least equal in area and quality, that then become First Nation Land.

No Provincial Expropriation: First Nation Land is immune from expropriation by provinces, municipalities and corporations.

Restricted Federal Expropriation: Canada's power to expropriate First Nation Land is greatly restricted. That power can only be exercised with the approval of the Governor in Council, only when the expropriation is justified and necessary for a federal public purpose that serves the national interest and only if other non-First Nation land is not reasonably available. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished. The land will revert to the First Nation once the land is no longer required by Canada, eventually resulting in a larger land base.

Enforcement: A First Nation has full power to enforce its Land Code, First Nation laws and environmental laws. A First Nation may appoint its own Justice of the Peace and special prosecutor, and may enter into further agreements with other jurisdictions regarding enforcement. A First Nation has the power to establish comprehensive enforcement procedures including establishing offences that are punishable on summary conviction, and providing for inspections, searches, seizures, fines, imprisonment, restitution, community service and alternative means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will continue to hold title to First Nation Land, although Canada will have no decision making authority and will no longer be involved in the management of the First Nation Land.

Canada will remain liable for and will indemnify a First Nation for any losses arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect to First Nation Land that occurred before the Land Code comes into force. After that date, the First Nation is responsible for its own acts or omissions in managing First Nation Land.

DISPUTE RESOLUTION

A First Nation will establish its own processes for dealing with disputes in relations to First Nation Land. These alternative dispute resolution processes may include mediation, facilitated discussions, negotiations, neutral evaluation and arbitration.

LANDS ADVISORY BOARD AND RESOURCE CENTRE

Under the *Framework Agreement*, the First Nations have established a Lands Advisory Board whose functions in relation to implementation of the Framework Agreement are set out. In turn, the Lands Advisory Board incorporated the First Nations Land Management Resource Centre Inc. to assist First Nations in developing and implementing their own land governance regimes.

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

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

TABLE OF CONTENTS

1. INTERPRETATION	3
2. INFORMATION PROVIDED BY CANADA	4
3. TRANSFER OF LAND ADMINISTRATION	5
4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION.....	5
5. OPERATIONAL FUNDING	6
6. TRANSFER OF REVENUES	6
7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION.....	7
8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS	7
9. AMENDMENTS.....	8
10. NOTICES BETWEEN THE PARTIES	8
11. DISPUTE RESOLUTION	9
12. DATE OF COMING INTO FORCE.....	9
SIGNATURE BLOCK.....	10
ANNEX "A" - FUNDING PROVIDED BY CANADA.....	11
ANNEX "B" - DETAILS FOR THE REVENUE MONEYS TRANSFER.....	12
ANNEX "C" - LIST OF INTERESTS AND LICENCES GRANTED BY CANADA.....	13
ANNEX "D" - LIST OF ALL EXISTING INFORMATION IN CANADA'S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST NATION LANDS	14
ANNEX "E" - LIST OF OTHER MATERIAL INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENSES.....	15
ANNEX "F" - INTERIM ENVIRONMENTAL ASSESSMENT PROCESS	16

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

ANNEX "G" - LEGAL DESCRIPTION OF _____ FIRST NATION LAND 17

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

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

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

AND

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

(@the Parties@)

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

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

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

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

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

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

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

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

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

1. INTERPRETATION

1.1 In this Agreement,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. INFORMATION PROVIDED BY CANADA

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

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

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

- (b) a list, attached as Annex AD@, 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 AE@, and copies of any other information in Canada=s possession that materially affects the interests and licences mentioned in clause 2.1(a).
- 2.2 The First Nation hereby acknowledges that it has received or been provided access to all the documents referred to in clause 2.1.

3. TRANSFER OF LAND ADMINISTRATION

- 3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the _____ First Nation Land in accordance with section 18 of the Act and clause 12 of the Framework Agreement.
- 3.2 As provided in subsection 16(3) of the Act, Canada hereby transfers to the First Nation all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to _____ First Nation Land that exist on the coming into force of the Land Code.
- 3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement, the Framework Agreement and the Act, the following:
 - (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a license in or in relation to _____ First Nation Land; and
 - (b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada=s responsibility.
- 3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to section 39 of the Act, which provides for the continuation of the application of the *Indian Oil and Gas Act*.

4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION

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

5. OPERATIONAL FUNDING

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

6. TRANSFER OF REVENUES

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

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

7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION

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

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

8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

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

9. AMENDMENTS

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

10. NOTICES BETWEEN THE PARTIES

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

Canada:

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

Region

[insert address of regional office]

[insert fax number for regional office]

First Nation

[Insert title of recipient]

[insert address of First Nation]

[insert fax number for First Nation]

11. DISPUTE RESOLUTION

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

12. DATE OF COMING INTO FORCE

- 12.1 The Parties acknowledge that, in order to be effective, the Land Code and this Agreement must be approved by the members of the First Nation in accordance with the Framework Agreement and the Act.
- 12.2 Articles 7, 9 and 10 of this Agreement shall come into force as of the day the First Nation and the Minister sign this Agreement.
- 12.3 The remainder of this Agreement shall come into full force and effect on the date the Land Code comes into force.

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

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

[Name of First Nation]

Minister of Indian Affairs and Northern
Development

[Name of Chief]

Councillor

Councillor

Councillor

ANNEX “A”**FUNDING PROVIDED BY CANADA⁵**

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

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

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

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

ANNEX “B”

DETAILS FOR THE REVENUE MONEYS TRANSFER⁶

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

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

ANNEX “C”

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA⁷

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

OR

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

- § Reserve General Abstract Reports for:
 - § Enter name and Number of reserve(s)
- § Lawful Possessors Reports for:
 - § Enter name and Number of reserve(s)
- § Lease or Permits Reports for:
 - § Enter name and Number of reserve(s)

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

[List interests]

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

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

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

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

ANNEX “D”

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

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

ANNEX “E”

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

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

ANNEX “F”

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

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

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

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

ANNEX “G”

LEGAL DESCRIPTION OF _____ FIRST NATION LAND¹³

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

(Insert name of FN) INDIVIDUAL AGREEMENT SUMMARY

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

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

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

Section 1 – Interpretation

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

Description of (Insert name of FN) Land

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

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

Section 2 – Information Provided by Canada

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

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

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

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

Section 3 – Transfer of Land Management

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

Section 4 – Transfer of Rights

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

Section 5 – Operational Funding

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

Section 6 – Transfer of Revenues

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

Section 7 – Notice to Other Persons

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

Section 8 – Interim Environmental Assessment Process

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

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

Sections 9 and 10

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

Section 11 – Dispute Resolution

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

Section 12 – Date of Coming into Force

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



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.



OVERVIEW OF PHASE II AND III ENVIRONMENTAL SITE ASSESSMENTS (ESA)

Developmental First Nations (FNs) would have done a Phase I ESA. Phase I ESA only suggests potential or actual contamination, based on available reports and field observation. No physical sampling (e.g., of soil or water) is conducted, so a Phase I ESA cannot confirm the presence or extent of contamination on reserve land. Furthermore, a Phase I ESA report is accurate only at the time of assessment, and may become outdated if conditions at a site change.

A FN ideally would have ensured that its Individual Agreement and work plan contain a commitment by Canada to assist the FN in identifying contaminated sites by conducting a Phase II ESA and a workplan and timeline to remediate them in a Phase III ESA. Without a Phase II ESA, a FN will not be sure about the extent of contamination on its lands, and without a Phase III, it will not know the cost of remediation.

Phase II and III investigations may be required to support, refute or extend the Phase I ESA findings and fulfill Canada's obligations set out in the Individual Agreement environmental work plan.

WHAT IS A PHASE II ESA?

Phase II ESA is an intrusive investigation and assessment of a property's surface and subsurface media. Phase II studies typically investigate "Areas of Potential Environmental Concern" (APECs) identified by Phase I ESAs to determine whether they are "Areas of Environmental Concern" (AECs). A Phase II ESA investigates and confirms the environmental condition of the APECs and determines the site characteristics (chemicals, contamination, and concentrations) present. This information is necessary to file a Record of Site Condition (RSC) and perform a Risk Assessment, which assesses and physical pathways to human exposure, ecological effects, and the potential for off-site migration of contaminants.

Phase II ESAs are intended to examine the areas identified during a Phase I ESA and to determine whether contamination actually exists on a site. The Phase II ESA focuses on gathering specific information as required about an APEC and can include the following tasks:

- Sampling of surface and subsurface soil, groundwater and surface water, soil vapour (along with laboratory analysis), sediment, and collection of terrestrial or aquatic plant samples;
- Aboveground and underground fuel storage tank content and tightness testing, asbestos containing material (ACM) sampling, polychlorinated biphenyl (PCB) sampling and identification, geomagnetic or geophysical surveys;
- Directly measuring conditions such as noise levels or radiation;
- Using environmental fate or transportation models to evaluate the potential migration of the contamination.

The result of a Phase II ESA is the determination of the need for a remedial work plan and may also reveal whether conditions or events at the site are causing or likely to cause adverse effects that require notification of regulatory authorities. The results of Phase II analyses are typically compared with federal guidelines and provincial standards for contaminant concentrations. If contaminant concentrations exceed these established levels, then AECs may be identified.

The typical scope of work may include:

- collection of soil, groundwater, surface water, sediment, or vapour samples,
- chemical analysis of samples for relevant parameters,
- surveying the site and establishing groundwater flow direction,
- determining the appropriate criteria to which the results must be compared,



- interpretation of data, possibly including modeling, qualitative risk assessment, or development of a Conceptual Site Model,
- preparation of a clear, comprehensive report documenting the findings and presenting a conclusion regarding the environmental condition of the site.

Phase II ESAs are guided by the Canadian Standards Association (CSA) Standard Z769 (1998) - [CAN/CSA-Z769-00](http://www.csa.ca/en/standards/can-csa-z769-00.aspx)

The CSA standard establishes the principles and practices that are applicable to a Phase II ESA. The standard is intended to provide a consistent framework and minimum requirements for conducting Phase II ESAs that can accommodate broad regulatory and liability requirements, and can address pertinent site-specific conditions. The CSA framework involves developing a sampling plan, preparing for and undertaking an investigation for sampling and measuring, and interpreting and reporting on the information gathered. This Standard is an updated version of the previous CSA Standard Z768.

WHAT IS A PHASE III ESA?

Phase III ESA examines the need for, and methods of, remediating identified contamination on a site. If delineation was not conducted during the Phase II investigations, Phase III sampling is conducted to delineate the physical extent of previously-identified contamination. Phase III investigations may involve intensive testing, sampling, and monitoring, "fate and transport" studies and other modeling, and the design of feasibility studies for remediation and remedial plans. A Phase III study normally involves assessment of alternative cleanup methods, risk management strategies, and costs and logistics. Phase III reports detail the steps needed to minimize human or ecological risk, to perform site cleanup, and conduct follow-up monitoring for residual contaminants.

If a Phase II confirms contamination and determines that unacceptable levels of contamination exist, a Phase III Remedial Investigation should be carried out to determine what approach should be taken to clean up or contain the contaminants present at the site.



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.