

# Resource Management & Planning for Forests

Course Workbook



 **FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**

 **T M Training, Mentorship &  
P D Professional Development**

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## Resource Management & Planning for Forests

Course link: [https://labrc.com/public/courselet/Resource-Management-and-Planning-for-Forests/presentation\\_html5.html](https://labrc.com/public/courselet/Resource-Management-and-Planning-for-Forests/presentation_html5.html)

### Welcome

The Resource Management and Planning for Forestry courselet will examine issues associated with the management and planning of forests. The information is intended to aid Lands Governance Directors (LGD) in making decisions about the use of forest resources on their First Nation (FN) reserves. This courselet's purpose is to provide LGDs with the information and tools necessary to manage and plan these forest resources. It is only a guide and FNs should refer to their province/territory's legislation regulations and policies.

The material provided in this courselet is current to the date of the courselet. Thank you to the resource management experts and First Nations Land Management Resource Centre for aiding in the development of this courselet.

### Big Picture

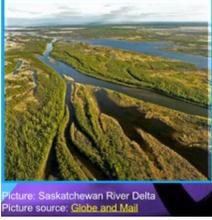
FNs that enact a Land Code (LC) under the Framework Agreement for First Nation Land Management (Framework Agreement) seek to develop their own governance models. More specifically a FN under its LC can develop laws related to resource management and manage their forest resources according to their culture and spiritual beliefs.

Forests are ecologically, culturally, and economically important on many FNs reserves across Canada. Forests provide habitat for culturally important plant and animal species, deliver ecological services such as clean water and air, and offer economic opportunities. At the same time, wildfire cycles and changes in forest cover at the interface with communities have serious implications for safety and security.



### Overview

Canada is home to 20% of the earth's forests and wants to double the size of its protected regions to ensure its lands and waters are protected. Forestry is Canada's third largest export sector. Managing forest resources on reserve can be a challenge due to the variety of often-incompatible environmental, cultural, social, and economic interests involved. Forest management planning is a tool used to understand these competing interests and develop an acceptable approach to managing forest resources.



Picture: Saskatchewan River Delta  
Picture source: [Globe and Mail](#)

## Forest Management and Planning

### Introduction

In this courselet common forest management themes are discussed. In the Creating a Forest Management Plan key considerations, tools, strategies and **Steps courselet** are provided for LGDs to create their FN Forest Management Plan.

Forest management and planning is used to safeguard forest lands and to ensure that forests remain healthy and vibrant. Managing this renewable natural resource includes managing it sustainably for the FN and all other users.

Refer to the First Nation Resource Management and Planning courselet for more general information on resource management and planning.

### Stewardship Planning

Stewardship planning is a living working guide that allows a FN to maximize a mix of forest benefits and convey its own unique values for its First Nation Land (e.g. wildlife, timber, spiritual, cultural, recreation).

For off-reserve, if a FN does very well in managing small volume forest licences and corresponding plans, those FNs may develop and manage more larger forest plans such as a Non-Replaceable Forest Licence or Replaceable Licences that are within a Forest Stewardship Plan. In BC, usually these higher-level plans and corresponding harvest licences are managed with a forest licensee, such as West Fraser, Canfor or Western Forest Products through a business partnership. There are some BC FNs that manage their licences on their own.

### First Nations and Forest Resources

FNs have a long history of using forest resources, using their knowledge and traditions relating to the management of this resource. Yet, it has only been in the last 40 years that FNs have been able to take a greater role in forestry through co-management to ensure sustainable development and to share in economic benefits. For more information click [here](#).



Picture: Forest near Quesnel BC Picture Source: [Vancouver Sun](#)

## Forest Sustainability

A FN's forest management and planning regime will need to look at forest sustainability. Forest sustainability recognizes the importance of maintaining the ecological function of forests, not just timber production. Achieving sustainability will ensure the community's economic sustainability and self-sufficiency, while protecting environmental amenities non-timber values and preserving the forest landscape, which will be critical to on-going traditional-use and community cultural values. Sustainable forest management can halt biodiversity, reduce deforestation, slow down or stop land and resource degradation and improve a FN's food security.

It is important a FN list their unique concerns, interests, and values that are included in any forest development plan for on-reserve lands. The most likely forest plans for on-reserve would be a woodlot plan or community forest plan, due to the small volume of wood and land area associated with these plans.

## Lands Governance Directors

A LGD should be aware of the challenges of defining or achieving forest sustainability. The term "sustained yield" is applied to a practice developed in Nineteenth Century Europe to replace old-growth or natural forests with even-aged stands of merchantable trees, so that the production of timber is efficient and "sustained." Sustained yield practices are widely applied by ministries of forests in Canada. A LGD may wish to explore this topic in more detail by online research or discussion with foresters and environmental groups.

Picture: Sustained Yield

Picture source: [worldatlas](http://worldatlas.com)



## Resources

Here are a few useful links to aid a FN in forest management and planning:

- [BCs Forest Stewardship Plans](#) (FSP) are good to use as a guide to developing forest plans
- [BCs Woodlot Plans and Community Forest Plans](#) and [woodlot licences](#) are a good resource guide for smaller forest licences which are made more like to be utilized by FNs due to the smaller land base scale for on-reserve
- [BCs Forest Tenures](#) regarding timber harvesting rights and forest tenure administration
- [BCs Timber Tenures](#) is a guide to managing public forests in the public interests
- [BC's Administrative Guide](#) for FNs in managing your new time tenure
- [BC's Timber Harvesting Rights](#) (e.g. community forest agreement, Free use permits)

## Value of Forests

### Introduction

Forests provide both commodity and non-commodity values to society. Consequently, there has been a separation in forest management between resources with a commodity value and non-commodity resources. (Canadian Model Forest Network, 2008).

Picture: Clayoquot Sound

Picture source: [Times Colonist](#)



### Commodity

Commodities can include goods such as lumber or services such as jobs that are commercially valued by workers and economic markets. Innovations in carbon sequestration are creating new "green economy" opportunities.

Picture: FN Sawmill

Picture source: [Northern Ontario Business](#)



### Non-commodity

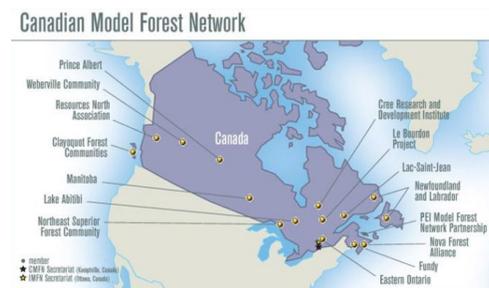
Non-commodity values can include, biodiversity, aesthetic views, slope stability, water filtration, and cultural and sacred sites. The environmental non-commodity values are commonly grouped together as ecological goods and services (EG&S). EG&S are not valued by conventional markets because the goods and services cannot be monetized to be bought or sold in a marketplace. In this same non-monetary category are the cultural values of FNs associated with intact wilderness for spiritual renewal, sources of traditional resources such as medicinal plants, connection with nature, and sense of identity from the land (pepper and White, 1996).

Because non-commodity values of the forests are treated separately from commodities, the non-monetary values, specifically EG&S, are often excluded or marginalized in resource management planning. That is why FN communities need to express their unique values and interests when discussing any forest plan. If any FN lacks capacity to manage its forests, they should utilize a reputable consultant that they trust will have the FN's unique concerns, interests, and values put first and foremost in any forest plan and subsequent business venture.

### Example: Non-commodity

In 2008, the [Canadian Model Forest Network](#) held a series of cross-Canada workshops to discuss the valuation of forest EG&S. This workshop series has been summarized in a report that provides case studies and information about valuation and management issues associated with EG&S.

Information in the Model Forest Network report may provide LGDs with ideas for identifying both the ecological and cultural non-commodity values that are present in forests on reserves. To access the report, follow this [link](#).



Picture: Canadian Model Forest Network

Picture Source: [International Model Forest Network](#)

### Trade-offs

Coping with trade-offs between monetary and non-monetary values of forests and between forest harvesting and preservation occurs worldwide. This video example from Borneo (Malaysia), describes traditional use of forest products in this indigenous culture and shows the loss of this resource to commercial forest harvesting. The video documents how community-based action can influence resource management policy. Community interests are documented from meetings, resource assessments (including geographical information system (GIS) mapping of identification of traditional use and spiritual areas), legal action, and other measures consistent with a "collaborative management" approach to resource management.

## Forest Values and Benefits

### Introduction

Forests provide a wide variety of benefits that are important to the sustainability Of a FN's economies, communities, and natural environment. Values and benefits provided by forest ecosystems are many and we will take a closer look at these values and benefits.

### Economic Goods

Forests provide a wide range of economic goods such as:

- Products typically associated with forests include timber, other wood products and pulp which are marketed as commodities
- Forests also provide fruits, berries, seeds, leaves, roots and fuel for heating homes
- Non-timber Forest Products (NTFPs), such as mushrooms, provide food, and mushroom harvesting provides seasonal employment for some communities
- Various forms of tourism, ecotourism and outfitting depend on forests and forest ecosystems for their marketability

Example: [Matix Lumber and Lake St. Martin FN](#)

Picture: HUU-AY-AHT purchase Sarita land from Western Forest Products

Picture: [Ha-Shilth-Sa News](#)



### Physical Functions

The vitality and health of forests is fundamental to many of its physical functions such as:

- Through the process of photosynthesis, plants transform carbon dioxide (CO<sub>2</sub>) into oxygen (O<sub>2</sub>), and remove particulates and chemical pollutants, providing clean air and sequestering carbon and greenhouse gases
- Riparian vegetation plays a role in maintaining stream, river and lake health by stabilizing banks, thereby reducing erosion and regulating water temperatures and evaporation by providing shade

- Unmanaged forests typically produce higher quality water than forests subject to logging. Community water supplies from unmanaged forests may be of sufficiently high quality that filtration is not needed

### Biological Functions

Forests are among the most important repositories of biological diversity which allows forests ecosystems to adapt continuously. Biological functions include:

- Forests provide habitat for plants, animals, fish and other essential life forms such as insects, fungi and bacteria.
- Water bodies in forested areas may contain fish, which provide food for animals and humans and nutrients to the surrounding natural system.
- Riparian vegetation supports production of invertebrates that are part of the aquatic food chain.
- Forests play an important role in maintaining biodiversity

Picture: Mackenzie River

Picture source: [Globe and Mail](#)



### Social Values

The social values of forests are:

- Recreational activities such as hiking, mountain biking, bird and wildlife viewing, and fishing are popular in forested areas.
- Aesthetic views of forested landscapes

### First Nation Spiritual Values

For FNs the forest holds a high spiritual value where they can carry out their traditional practices. Some FNs use forested areas for spiritual purposes and renewal and to conduct cultural practices. Forests provide a link to past generations, specifically trails and culturally modified trees that indicate traditional use of forest resources. For example, the [Sts'ailes FN](#) and the Chilliwack Forest District (located in BC) worked together, through lengthy negotiations, to co-manage a sacred area to the Sts'ailes. It was a pilot project by the two parties in 2007/2008, regarding aboriginal spirit areas and forest management. Click <https://www.for.gov.bc.ca/ftp/hfp/external/!publish/FREP/values/CH-KKH-Final-Report.pdf> here for the Kweh- Kwuch-Hum (Mt. Woodside) Spiritual Areas and Forest Management document

Picture: Totem Poles in Forest    Picture source: [New York Times](#)



### Cultural Values

For many FN communities, forests have played an important role in the seasonal round, and continue to provide culturally important resources and activities such as:

- Collecting berries, medicines, roots, and bark
- Hunting moose, deer, birds, and bear
- Trapping fur bearing mammals
- Fishing for trout, salmon, and other species

### **Threat to Forests**

There are many threats to a forest that can cause tree mortality or reduce their ability to provide a full range of goods and services or access to spirit places or cultural activities. To maintain a healthy forest a FN will need to include in its management plan the potential for threats to its forest such as: soil erosion, fire, insects, diseases, other pests, invasive plant species, overexploitation of wood and NTFPs, uncontrolled grazing, air pollution, and, flooding. A FN will need to look at ways to mitigate such threats by using techniques such as monitoring, holistic fire management, preparedness, suppression and restoration.

### **Laws and Regulations Applicable to Forests**

#### Before a Land Code

Before a FN becomes [operational](#) the *Indian Act's* [Indian Timber Harvesting Regulations](#) and [Indian Timber Regulations](#) regulate the removal of timber from Indian Reserves, and describe the procedures and permissions required for forestry activities.

#### After a Land Code

After a LC is implemented, a FN is able to develop laws related to resource management that will replace these provisions of the *Indian Act*.

Under a LC, FNs will have the option to mirror provincial forestry regulations in order to create a more harmonized harvesting and marketing process with the existing provincial forestry sector. Of course, the general law governing marking, transportation, marketing and export of timber products applies off-reserve.

## Example 1

A unique example of a complete forestry practices legislative system established under a LC is being implemented by the McLeod Lake Indian Band (MLIB).

Picture source: MLIB.



### MLIB Land Code

The authority for MLIB to enact forestry practices legislation comes from their [treaty 8 adhesion agreement](#) and from their [LC](#).

MLIB applied Part 7 (Forest Resources) of their LC to enact the [McLeod Lake Indian Band Forest Practices Code](#) (FPC).

Part 7 states:

"29.1 Forest practices on Band land will be regulated in accordance with Article 6 of the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement."

"29.2 For greater certainty, the Band will conduct forest practices on Band Land in accordance with:

- a. the McLeod Lake Indian Band Forest Practices Code;
- b. the McLeod Lake Indian Band forest development plans;
- c. the principles of sustainable development; and
- d. any applicable legislative requirements."

This process is designed to remain consistent with environmental and cultural values and to guide the Land Manager and the Lands Advisory Committee, who are responsible for overseeing natural resources development on MLIB lands. It also attempts to accommodate both the collective interests of all band members and individual commercial interests.

### MLIB Forest Practices Code

[MLIB FPC \(2003\)](#) ensures that all forest practices on reserve lands are carried out in accordance with principles of sustainable forest use for the benefit of present and future Band members.

To do this, the FPC addresses the following areas of forest management: planning and site plans, protection of forest resources, forest roads, harvesting practices, silviculture, riparian areas, fire use, wildfire prevention and control, cutting permit applications and cutting permits, investigations and

enforcement, penalties, stumpage, timber marking policy, administrative matters, annual reporting and audits.

The FPC beats the British Columbia (BC) provincial forest management standards.

### MLIB Forest Management Planning & Cutting Permits

Under the MLIB FPC and their LC, the Band has developed the [MLIB Forest Management Planning and Cutting Permit Approval Process](#). This document:

- Provides a mechanism for forestry planning and timber harvesting on MLIB reserve lands
- Sets out an efficient system for planning and issuing cutting permits

Picture source: [MLIB](#)



### MLIB Planning Review Process

The MLIB Forest Management Planning and Cutting Permit Approval Process sets out the planning review process. This planning review process sets out two main steps to forest harvesting on MLIB land:

#### 1. Two levels of planning:

- A. Forest Development Plans (minimum standards set out in the FPC)
- B. Site Plans

#### 2. Issuing legally binding permit documents

### MLIB Forest Development Plan

The MLIB Forest Development Plan (FDP):

- Sets out the Band's general approach to utilizing its commercial forest resources
- Is a five-year operational plan that projects where proposed harvesting and road related development will take place
- States that all harvesting, including salvage, Christmas trees and firewood cutting during that period must be consistent with the FDP
- Is prepared by the Band's Registered Professional Forester and is guided by the principles of sustainable resource management
- Goes through a 60-day public review and amendment period. It is and amendment period. It is recommended for approval by the Lands Advisory Committee and is ultimately approved by a Band Council Resolution

## MLIB Site Plans

All timber cutting will be done in accordance with individual Site Plans. These plans are prepared/overseen by a Registered Professional Forester. The Site Plans:

- Are detailed plans for forest harvesting operations including Cut block and road development at the site-specific level
- Illustrates existing conditions in the proposed harvest area
- Determines actual harvesting activities on individual sites (e.g. ecology, geology, hydrology)
- Involve issuing legally binding permit documents which give a proponent the legal authority to carry out forest harvesting operations according to Band law and policies

## MLIB Community Wildfire Protection Plan

[MLIB's Community Wildfire Protection Plan](#) (CWPP) process was developed as a result of a catastrophic fire season in 2003 that saw the loss of over two hundred homes. Also, the forest surrounding the community has been subject to significant adverse impacts from a mountain pine beetle infestation.

The objective of the plan is the identification of wildfire risk, spatial identification of possible CWPP treatment zones, strategies to reduce risk of wildfire, and recommendations to mitigate fire risk. The CWPP takes into account all other forest values and management activities must be ecologically appropriate, culturally and environmentally sensitive, and generally improves overall forest health (First Nations' Emergency Services British Columbia, 2011). The document's intention is to aid planners as they make decisions about future development activities, community bylaws and emergency planning.

## **Example 2- Opaskwayak Cree Nation**

### Land Code

Under the Opaskwayak Cree Nation (OCN) [LC](#), OCN manages the use of natural resources such as timber. Section 32 of their LC provides for the granting of interests and licences. Picture Source: OCN



### Land Use Community Plan including Natural Resources Law

OCN [has a Land Law for Land Use and Community Plan including Natural Resources](#).

The goal of this law is to promote planned community development, through its policies, which enhances growth consistent with OCN's overall goal to establish a complete and sustainable community.

In this law Natural Resource means a use or development that is directly dependent on the land's resources base including forestry.

Section 5.11 Mineral and Forestry Resources sets out OCN's objectives and policies in relation to forestry (such as forest activities including timber harvesting activities).

#### Governing Use and Occupying of OCN Lands Law

Subsection 6.5(g) of [Land Law Governing the Use and Occupancy of OCN Lands](#) provides for permits such as timber that requires a Band Council Resolution approved by absolute majority of Council.

#### Timber Permit Process Authority

OCN has a Timber Permit Process Authority and can be viewed online at the RC [Land Governance Manual](#).

#### Sample Timber Permit Documents

Also, see the RC [Lands Governance Manuel](#) for the following sample Timber resource documents

- SAMPLE 1 - Timber Cutting & Removal Process and Permit Policy
- Timber Permit Application - Sample
- Timber Permit Sample

#### **Forest Resource Uses**

The forests are used for a variety of purposes like cultural uses, sacred sites, timber, hiking trails, and medicines. Many different factors and implications work together to limit or alter the way forest resources are used. We will look closer at the following implications or forest resources use:

- Ecological
- Traditional
- Socio-economic

#### **Ecological Implication of Forest Resource Use**

##### Introduction

A forest ecosystem is composed of living and non-living components, including the soil, water, fungi, earthworms, bacteria, insects, birds and animals, as well as the trees, shrubs, herbs and mosses. Complex relationships exist between these components and effects on one can often affect others due to their interdependence.

##### Succession

Forests are always changing through a process known as "succession". Succession occurs on a continual basis and refers to the progressive change in forest species over time. It is most evident where some disturbance such as a flood, fire, the retreat of a glacier, or a volcanic eruption has affected the existing vegetation and the process of regenerating the forest begins. Understanding the natural patterns and pace of forest change and renewal is important in planning forest activities so that forest management plans can be developed that complement, rather than conflict with natural patterns.

Picture: Paul FN wildfire Picture source: [CBC News](#)

##### Human Disturbance

Human disturbance from logging introduces rapid change in a forest ecosystem. Logging systems can be designed to avoid some environmentally and socially important features: however large-scale industrial logging causes significant change to forest ecosystems, including:

- Removal of standing timber, preferentially selecting mature or old-growth trees that often support large populations of invertebrates, birds, and mammals
- Removal of understory vegetation including the small trees, shrubs and grasses beneath the forest canopy
- Alteration of riparian vegetation
- Simplification of forest ecosystems by replacing diverse species and ages of trees with uniform age classes and species usually favouring merchantable tree species
- Increased compaction or erosion of forest soils and sedimentation of water bodies and fish habitat
- Altered hydrology, with increased rates of runoff accompanied by reduced water storage capacity
- Loss of biodiversity of plants and animals

### Considerations in Forest Management Plans

Ecological effects highlight some of the key factors to consider when developing a forest management plan. A forest ecosystem is complex, and contains important environmental, social, cultural and economic values that should be considered before an action is undertaken.

Forested areas differ according to the species present, slope steepness, disturbance history and other factors. Numerous forest ecosystem types exist across this vast country. Coastal, boreal and eastern hardwood forests each present distinct management challenges for forest managers. LGDs are encouraged to obtain forest resource traditional information specific to their First Nation Land locations before assessing the issues and opportunities that exist.

### **Traditional and Cultural Implications of Forest Resources Use**

#### Introduction

FN communities often take a [holistic view](#) of the world around them, where the spiritual, emotional, mental, physical aspects of life and an extremely long-term time horizon are taken into consideration for decision making. The forest plays a vital role in maintaining balance in the environment and contains many culturally important values. Forests provide raw materials, food, shelter, medicines, places to practice cultural activities, and habitat for wildlife and plant species.

#### Traditional Ecological Knowledge

In many FNs across Canada, community members continue to hold traditional ecological knowledge (TEK) about forests. Some communities have taken steps to compile this information through TEK studies or other initiatives. In other cases, this knowledge has not been recorded in a written form, but remains with individuals, families or clans. For more information on TEK [click here](#)

## Traditional Patterns and Methods

Indigenous communities typically develop traditional patterns and methods of using environmental resources. For many communities, forest-based activities emphasize seasonal gathering activities. Although the forest species in each of the provinces and territories in Canada differ, similar types of goods are provided, including wood, bark, fruits, seeds, nuts, roots, leaves and a wide variety of animals. The forest ecosystem also contains understory plants and mushrooms that provide medicines, raw materials, berries, and other food resources. Understanding the ecological characteristic of a particular forest, specific traditional use areas and the location of archaeological sites is important in forest management. A FN can ensure that their unique history and contemporary relationships and needs are incorporated in their forest management and planning processes.

## **Socio-economic Implications of Forest Resource Use**

### Non-timber Forest Products

Forests provide a variety of goods that have economic value, including a group of products collectively known as NTFPs or botanical forest products. These products include foods such as wild mushrooms and berries, medicinal herbs, and a wide range of other products such as decorative greenery harvested from managed and unmanaged forests, under-utilized agricultural lands and agroforestry systems. Products such as wild blueberries, syrup from maple and birch trees, and fiddlehead ferns are examples of NTFPs that are currently subject to some level of management in Canada. For information on NTFPs: Non-timber Forest Resources for FNs in BC.

Picture: Nisga'a NTFP Picture Source: [Nisga'a](#)



### Timber Forest Products

Timber Forest Products Conifers such as Douglas fir, cedar, hemlock, black spruce, white spruce, jack pine and balsam fir, and deciduous trees are commercially logged in many areas. Logging-related employment includes jobs as fallers, road engineers, mapping specialists, biologists, tree planters, and truck drivers. Value-added employment includes milling, furniture construction and log home building.

### Economic Opportunities

Logging, value-added wood processing, NTFP harvesting and recreation provide economic opportunities for FN communities. Forested areas also provide opportunities for tourism and recreation. Common recreational activities include hiking, biking, horseback riding and fishing in the summer. Winter activities often include skiing and snowmobiling.

Picture: Pulp mill Picture source: [Nanaimo News](#)



## Resources

Some FNs have had success participating in commercial forestry operations. The document that describes some of these initiatives is the [First Nation Forestry Program Success Stories](#). The [BC FN Forestry Council](#) provides support to BC FNs in their forestry activities.

Picture: Pic River FN Forestry

Operation Picture Source: [CBC News](#)



## **Forest Plans**

### Introduction

FN Forest Plans represent a balance of ecological, cultural, spiritual, economic and social values. Planning is an important component of forest management. Plans are about determining and expressing the goals and clear objectives of a FN government and for deciding the targets and steps that should be taken in order to achieve these objectives.

### Planning for Sustainability

Planning helps retain the long-term health and sustainability of forests. Through plans FNs can provide for healthy forests now and into the future and provide a range of sustainable benefits (e.g. sacred spiritual spaces, cultural harvesting, timber, NTFPs).

### Monitoring and Evaluating

Planning will provide for monitoring and evaluation of future forest conditions to compare with planned outcomes which provides for improvement of forest management activities. Forest management plans are not static and can be amended over time to respond to changing environmental conditions or social interests.

## **Why have a plan?**

A completed forest management plan can serve as a strategic framework or as an operational plan, depending on the level of detail provided. The plan can serve as a decision-making tool for Chief and Council, as an information tool to guide forest harvesting operations, or as a communication tool for community members. A plan can aid Chief and Council to carry out its due diligence when making important decisions on its First Nation Lands.

## **Who prepares the management plan?**

LGDs will likely have to hire a professional forester, forest ecologist, or environmental planner to help with the development of a forest management plan. The contractor will need to become familiar with the forest on the reserve and potential forest values, potentially including commodity value of the timber. Community members and Chiefs and Council should be involved in the planning process to ensure that the plan incorporates social, cultural and traditional values and management objectives.

If logging is to occur, it will also be important to incorporate reforestation into the management plan, so a silviculturalist trained in the artificial culture of forest growth should be involved in the planning process. A Registered Professional Forester (RPF) or a Registered Forest Technologist (RFT) is required to sign off on all professional forestry work. The RPF or RFT can but, are not obligated to work with Registered Professional Biologist, Geo- Scientists, Ecologists, or Geologists to diligently complete plans.

## **Multi-use and User Plan?**

Note that a forest management plan does not imply that the forest must be logged. Multiple uses can occur in forests that do not necessarily include logging. The size of a reserve, the health of the forest, characteristics of the land, and the interests of the community are key considerations in forest management. Various values and interests are likely to exist among elders, leaders and members and should be recognized in the planning process.

A plan can be prepared that recognizes cultural or ecological values and develops policies for maintaining those assets. Various values and interests are likely to exist among elders, leaders and members and should be recognized in the planning process.

## **Benefits of Forest Management Planning**

The benefits of forest management planning include:

- Optimizing the various values associated with forest use
- Developing a better understanding of cultural interests in the plan area
- Developing a better understanding of cultural interests in the plan area
- Gathering information on streams and water bodies
- Identifying sensitive wildlife habitat, old growth forests, and environmentally sensitive areas
- Defining values in the forest that need to be managed
- Understanding community concerns and interests
- Developing an informed forest strategy whether areas are designated for preservation, conservation or commercial timber harvesting
- Producing a guide for those who use, or propose to use, forest resources

- Creating a tool that can communicate community interests to external parties and add to the non-indigenous awareness of a FN's interests

## **Planning Approaches**

In recent decades, a variety of planning approaches have been developed to attempt to reduce the impacts of industrial logging. In some cases, FNs have played a key role in helping to develop the concepts. Some of the more widely-known concepts are:

- Ecosystem-based management (EMB)
- Forest Certifications
- Model Forest Programs

### Ecosystem-based Management (EMB)

EBM integrates ecological, social, and economic goals and recognizes humans as key components of the ecosystem. EBM is a land use planning method that has been adopted by the province of BC, [FNs](#), industry, and other interests in the central and north coast regions.

For more information on the EMB process, visit the [Coast Information Team](#) website and [EMB Planning Handbook](#).

## **Forest Certification**

### Introduction

FN Forestry Certification is a certification process for FNs forest activities that demonstrate that forests are being managed sustainably. Forest certification in [Canada](#) assesses forestry operations against standards for sustainable forest management.

### Canadian Standards Association

FN forest companies can also pursue sustainable forest management certification through the [Canadian Standards Association](#) (CSA) Sustainable Forest Management (SFM) system.

The SFM Standard provides independent third-party assurance that a strict set of biological, environmental and social criteria are being met (CSA, 2011).

### Certification Programs

Certification programs include the [International Standards Organization](#) (ISO) 14001-2004 standard. ISO 14001 is one type of standard for an environmental management system (EMS) that has been applied to forest practices. An EMS helps a forestry company to focus management activities on monitoring and management of environmental impacts and risks, using administrative, planning and operational measures (BCTS, 2011).

## Certification

Certification can be considered a best practice in forest and sustainable resource management, and an important tool for market access. Domestic and international market interest in buying wood products from certified forests has increased steadily and many forest companies in BC have received third-party registration of their forest management programs (BCTS, 2011). For information on protecting Indigenous right through certification systems click [here](#).

## **Model Forest Program**

### Model Forest Programs

Model forest programs, such as: [Canada's Model Forest Network](#) (CMFN), create [tools](#) for forest communities to support and maintain the livelihoods of people living in Canadian forests.

### Cree Research & Development

FN communities have been involved in model forest programs, including the Cree FN of Waswanipi in Quebec. The Cree Research and Development Institute (CRDI) received funding from the Canadian Forest Service as the only Aboriginal-run Model Forest in the model forest network. The CRDI brought together stakeholders from northern Quebec in a novel partnership that allowed parties to air differences, find common ground and pursue research on better ways to manage the forests sustainably (CMFN, 2011).

Picture source: [CBC news](#)



### Cree Forest Lexicon

The CRDI also created a pioneering consultation and land-use mapping process- called *Ndoho Istchee*, or "Cree Hunting Ground." *Ndoho Istchee* integrates Cree's into the forest-management process. The FNs are able to translate their traditional cultural land use into language that forest planners and officials can take into account (CMFN, 2011). The CRDI have completed a [Cree Forest Lexicon](#) project that translates linguistic knowledge and terminology of Cree trappers and elders affected by forestry.

## Forestry Planning Preparation

### Community Input

An important part of developing a plan involves preparing for its success. The successful implementation of a forest management plan is strongly related to the acceptance of the plan by community leaders and community members. For this reason, plan preparation should include ample opportunities for community participation.

### Maps

Preparing an inventory of your forests is a crucial component of your plan. Accessing or ensuring there is property information (legal description). Many land use and forest plans create a map that identifies various resource values and designates the appropriate use of those areas, whether for logging, protection or cultural activities.

### Preparing an Inventory

The tree and animal species present, the harvesting history and health of forested lands, and the interests of the community will help to shape the forest management plan. A useful reference guide for Indigenous forest planning is provided at the following link: [The Aboriginal Forest Planning Process](#).

### Example - Menominee Tribe

As an example, the Menominee Indian Tribe of Wisconsin is internationally recognized as having sustainable forest management practices. The [Menominee Forest](#) is managed using sustained-yield techniques across a wide range of different forest cover types, habitat niches, and age classes (Menominee Tribal Enterprises, 2011). The goal of Menominee forest management is to provide for maximum diversity in the forest (species composition, age class distribution, structural diversity both within and between stands), habitat diversity, and to optimize growth and saw-log quality of the high value hardwood forest timber resource (Menominee Tribal Enterprises, 2011). Information on a range of topics from other FNs that have commercial forestry operations is provided at the following link: [Aboriginal Forestry](#).

### Example - Squamish Nation

The following example highlights the forest resource management objectives and strategies listed in the Squamish Nation Land Use Plan. Although not directly related to a reserve land base or LC, the management objectives and strategies highlight the importance of cultural values and ecological integrity while working towards an economically viable forestry sector.

Picture Source: [Pique](#)



## Summary

Forests play an important role for many of the FNs across Canada. Forests provide habitat for culturally important plant and animal species, ecological services such as clean water and air, and economic opportunities.

Managing forest resources on reserve can be a challenge due to the range of environmental, cultural, social, and economic interests that exist. Forest management planning is a tool used to understand these competing interests and develop the management of forest resources.

## References

Canadian Model Forest Network 2008. Valuing Ecological Goods and Services from the Forest: Overview and Results from Five Regional workshops. Accessed March 17, 2011.

Alberta Sustainable Resources Development. Forest Management Plan. Accessed March 6, 2011

Pepper, F.C., and White, W.A. 1996. First Nations Traditional Values. Aboriginal Liaison Office, University of Victoria. Accessed March 18, 2011

## Forest Resources

### Federal

- [Canadian Forestry Association](#)
- [NRCan Protected Areas](#)

### Indigenous

- [The Aboriginal Forest Planning Process: A guidebook for identifying community-level criteria and Indicators Aboriginal Forestry](#)
- [Aboriginal Forestry in Canada](#)
- [BC First Nation Forestry Agreements](#)
- [BC First Nation Forestry Council](#)
- BC First Nation Forest Council State of Law Regarding First Nations and Forestry
- BC First Nations Forestry & Land Stewardship Action Plan
- BC First Nations Forestry Training Program
- [Can Aboriginal Land Use and Occupancy Studies be applied effectively in Forest Management](#)

- [Can Forest Management Strategies Sustain the Development Needs Of the Little Red River Cree First Nation](#)
- [Centre for Indigenous Environmental Resources](#)
- [Chiefs of Ontario Forestry](#)
- [Forest products Association of Canada](#)
- [Integrating Aboriginal values into strategic-level forest planning on the John Prince research forest, central interior B.C.](#)
- [National Aboriginal Forestry Association](#)
- [Natural Resources Canada Indigenous Forestry Initiative and Funding](#)
- [Toronto Public Library](#)

#### Provincial

- [Alberta Forest Management Planning](#)
- [BC Sustainable Forest and Timber Management](#)
- BC Cutting Permit and Road Tenure Administration
- [BC Occupant License to Cut Application](#)
- [BC First Nation Emergency Services Society - On Reserve Fire Fighting Initiatives such as FireSmart Forest Fuel Management](#)
- Manitoba Forestry Branch
- [Newfoundland Labrador](#)
- [Ontario Crown Forest Sustainability Act](#)
- [Ontario Forestry](#)
- [Ontario Forest Management Planning Manual](#)
- Quebec Forestry
- [Saskatchewan Forestry](#)
- [Saskatchewan Forest Planning](#)

#### Tool

[LANDIS Site Tool](#)



## **ACRONYM LIST** **Resource Management Planning for Forests**

BC	-	British Columbia
CMFN	-	Canada's Model Forest Network
CO <sub>2</sub>	-	Carbon dioxide
CWPP	-	Community Wildfire Protection Plan
CRDI	-	Cree Research and Development Institute
CSA	-	Canadian Standards Association
EBM	-	Ecosystem Based Management
EG&S	-	Ecological Goods & Services
EMS	-	Environmental Management System
FN	-	First Nation
FPC	-	Forest Practices Code
FSP	-	Forest Stewardship Plan
<i>FRAMEWORK AGREEMENT</i>	-	<i>Framework Agreement on First Nation Land Management</i>
GIS	-	Geographical Information System
ISO	-	International Standards Association
LC	-	Land Code
LGD	-	Land Governance Director
MLIB	-	McLeod Lake Indian Band
NTFPs	-	Non-timber Forest Products



O <sub>2</sub>	-	Oxygen
OCN	-	Opaskwayak Cree Nation
RC	-	First Nations Land Management Resource Centre
RFT	-	Registered Forest Technologist
RPF	-	Registered Professional Forester
SFM	-	Sustainable Forest Management
TEK	-	Traditional Ecological Knowledge



## **GLOSSARY OF TERMS** **RESOURCE MANAGEMENT AND PLANNING FOR FORESTS**

### **ARCHAEOLOGICAL SITE**

An **archaeological site** may be defined as any property that contains an artifact or any other physical evidence of past human use or activity that is of a cultural heritage value or interest. For example, village and settlement sites, camps and burial grounds/sites

### **BEST PRACTICES**

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

### **BIODIVERSITY**

Biodiversity is a compound word derived from “biological diversity”. Biodiversity is the level of diversity among the types of organisms in an ecosystem.

### **CONSERVATION**

Conservation means “the management or control of human use of resources in an attempt to restore, enhance, protect, and sustain the quality and quantity of a desired mix of species and ecosystem conditions and processes for present and future generations.

### **DUE DILIGENCE**

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

### **ECOSYSTEMS**



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

## **EVAPORATION**

As water is heated by the sun, surface molecules become sufficiently energized to break free of the attractive force binding them together, and then rise or “evaporate” as invisible vapour in the atmosphere.

## **FIRST NATION LAND**

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

## **FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE**

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

The RC's functions are:

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

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

The *Framework Agreement on First Nation Land Management (Framework Agreement)* 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.

## **GEOGRAPHIC INFORMATION SYSTEM (GIS)**

A GIS is a system designed to capture, store, manipulate, analyze, manage, and present spatial or geographic data.

## **INDIAN ACT**

The *Indian Act* is Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian lands and to approve or disallow First Nations by-laws.

## **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.

## **NATURAL RESOURCE**

The World Bank defines natural resources as “gifts of nature – air, land, water, forests, wildlife, topsoil, minerals – used by people for production or for direct consumption” ([www.worldbank.org/depweb/](http://www.worldbank.org/depweb/)).



## NON-TIMBER FOREST PRODUCTS

Non-timber forest products (NTFPs) are any product or service other than timber that is produced in forests. They include fruits and nuts, vegetables, fish and game, medicinal plants, resins, essences and a range of barks and fibres such as bamboo, rattans, and a host of other palms and grasses.

## OPERATIONAL

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

## RESERVE

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

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

The basic legal framework underlying reserves is:

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

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

## RESOURCE MANAGEMENT

Resource management can be defined as the responsibility of governments to ensure that natural resources under their jurisdiction are used wisely or conserved (Canadian Encyclopaedia, 2010).

## RUNOFF

Heavy rain can saturate surface soil, resulting in runoff across the land surface. Runoff also occurs on frozen ground and other impermeable surfaces or during rapid melting of



snow. This runoff can produce overland flow to creeks and ditches. Runoff is visible as the flow of water in rivers and creeks into lakes and the ocean. Runoff that exceeds the capacity of the usual watercourses can result in flood events.

## **SACRED SITES**

Sacred Sites are the products of cultural and spiritual beliefs and place of practice.

## **SILVICULTURALIST**

A silviculturalist helps manage and plan the growing, protection and harvesting of trees and improve and conserve forest lands. They attempt to control forest regeneration and composition. They may develop techniques for measuring and identifying trees.

## **TRADITIONAL INFORMATION**

Traditional information is comprised of a number of types of information such as: traditional knowledge; traditional ecological knowledge; and, traditional land use.

## **TRADITIONAL PRACTICES**

Where First Nation peoples hand down their customs, spiritual beliefs, information, knowledge etc., from generation to generation, since time immemorial, especially orally and by practice.



## **Aboriginal Concept of Environment**

Aboriginal peoples see themselves as part of the environment, not removed from it. They view themselves as stewards of the land which they hold a spiritual connection and sacred trust.

The aboriginal approach to stewardship is done holistically, by respecting and recognizing the part every animate and inanimate thing plays in supporting the integrity of the whole ecosystem.

Stewardship of their sacred lands is not about the power and control over the land, but about a responsibility to take care of the land for the future generations. Stewardship has always been one of continuity as noted in the Great Law of the Iroquois Confederacy: ***“In our every deliberation we must consider the impact of our decisions on the next seven generations”***.

Under the Framework Agreement, First Nations can apply their concepts to managing the environment on reserves.

## **Western Concept of Environment**

Western society concepts of land tend to focus on individual or private ownership, resource exploitation and control. This concept often creates tension between natural law and man-made law. This can be complimented by a capitalistic based economic system that favours continuous growth and profit through exploitation of human and natural resources with little regard to long term consequences.

The consequences are often irreversible damage to the lands and environment as well as damage to cultures, and indigenous peoples through forced displacement and destruction of sacred sites.



Ministry of  
Forests, Lands and  
Natural Resource Operations

# ROAD PERMIT APPLICATION

File No: 11400-25/\_\_\_\_  
Date: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax. No: \_\_\_\_\_

E-mail address: \_\_\_\_\_

### Tick appropriate box:

New Road Permit                      **OR**     Amendment to Existing Permit R \_\_\_\_\_

1. Applicant's Tenure Type and No.: \_\_\_\_\_
2. Forest Stewardship Plan (name of operating area or geographical location and approval date)  
       \_\_\_\_\_ Amendment Date \_\_\_\_\_ Approval Date: \_\_\_\_\_
3. Application to include plan(s) or map(s) to suitable scale showing;
  - Road sections that will be constructed
  - Existing non-status road(s) for use & maintain only

Proposed construction date: month: \_\_\_\_\_ year: \_\_\_\_\_  N/A if use and maintain only

Any Additional Information:

\_\_\_\_\_  
\_\_\_\_\_

Signature of applicant

# FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

## EXECUTIVE SUMMARY

### INTRODUCTION

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

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

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

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

### TAKING CONTROL OF LAND GOVERNANCE

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

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

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

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

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

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

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

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

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

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

## **TITLE TO FIRST NATIONS**

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

## **LEGAL STATUS AND POWERS OF FIRST NATIONS**

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

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

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

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

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

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

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

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

The FNLRS is:

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

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

## **PROTECTION OF FIRST NATION LAND**

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

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

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

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

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

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

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

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

## **CONTINUING FEDERAL RESPONSIBILITY**

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

## **DISPUTE RESOLUTION**

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

## **LANDS ADVISORY BOARD AND RESOURCE CENTRE**

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

## FIRST NATIONS INVOLVED

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

### BC

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

### MB

1. Chemawawin
2. Opaskwayak
3. Swan Lake

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

### SK

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

### ON

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

(a) Now implementing treaty

(b) Now implementing full self-government



CANADA

CONSOLIDATION

CODIFICATION

## Indian Timber Harvesting Regulations

## Règlement sur la récolte du bois des Indiens

SOR/2002-109

DORS/2002-109

Current to April 12, 2016

À jour au 12 avril 2016

Published by the Minister of Justice at the following address:  
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :  
<http://lois-laws.justice.gc.ca>

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### **Published consolidation is evidence**

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

### **Inconsistencies in regulations**

**(3)** In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

## NOTE

This consolidation is current to April 12, 2016. Any amendments that were not in force as of April 12, 2016 are set out at the end of this document under the heading "Amendments Not in Force".

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### **Codifications comme élément de preuve**

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

### **Incompatibilité – règlements**

**(3)** Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

## NOTE

Cette codification est à jour au 12 avril 2016. Toutes modifications qui n'étaient pas en vigueur au 12 avril 2016 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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**TABLE OF PROVISIONS****Indian Timber Harvesting Regulations**

- 1 Interpretation
- 2 Removal of Timber from a Reserve
- 3 Application
- 4 Prohibition
- 5 Licences
- 6 Seizure of Timber
- 8 Penalty
- 9 Repeal
- 10 Coming into Force

**SCHEDULE**

British Columbia

**TABLE ANALYTIQUE****Règlement sur la récolte du bois des indiens**

- 1 Définitions
- 2 Enlèvement du bois d'une réserve
- 3 Champ d'application
- 4 Interdiction
- 5 Permis
- 6 Saisie
- 8 Peine
- 9 Abrogation
- 10 Entrée en vigueur

**ANNEXE**

Colombie-britannique

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Registration  
SOR/2002-109 February 28, 2002

INDIAN ACT

**Indian Timber Harvesting Regulations**

P.C. 2002-280 February 28, 2002

Her Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, pursuant to section 57 and subsection 73(3) of the *Indian Act*, hereby makes the annexed *Indian Timber Harvesting Regulations*.

Enregistrement  
DORS/2002-109 Le 28 février 2002

LOI SUR LES INDIENS

**Règlement sur la récolte du bois des Indiens**

C.P. 2002-280 Le 28 février 2002

Sur recommandation du ministre des Affaires indiennes et du Nord canadien et en vertu de l'article 57 et du paragraphe 73(3) de la *Loi sur les Indiens*, Son Excellence la Gouverneure générale en conseil prend le *Règlement sur la récolte du bois des Indiens*, ci-après.

## Indian Timber Harvesting Regulations

### Interpretation

**1** The following definitions apply in these Regulations.

**first nation lands** means the reserve lands and surrendered lands of a band named in the schedule. (*terres des premières nations*)

**licence** means a licence granted under section 5. (*permis*)

**peace officer** has the same meaning as in section 2 of the *Criminal Code*. (*agent de la paix*)

### Removal of Timber from a Reserve

**2** Nothing in these Regulations shall be interpreted so as to negate the requirement to obtain permission under section 93 of the *Indian Act* before removing timber from a reserve.

### Application

**3 (1)** These Regulations apply in respect of the cutting of timber on first nation lands.

**(2)** The *Indian Timber Regulations* do not apply in respect of the cutting of timber on first nation lands.

### Prohibition

**4 (1)** Subject to subsections (2) and (3), no person shall cut timber on first nation lands without a licence.

**(2)** A person acting on behalf of the council of a band may, without a licence, cut timber on behalf of that council of the band on any reserve lands of the band that have not been allotted by the council of the band or designated by the band and that are not already subject to a licence, if the timber and any product made from the timber is intended for use on first nation lands of the band.

**(3)** The holder of a Certificate of Possession in respect of land that forms part of reserve lands of a band may, with-

## Règlement sur la récolte du bois des indiens

### Définitions

**1** Les définitions qui suivent s'appliquent au présent règlement.

**agent de la paix** S'entend au sens de l'article 2 du *Code criminel*. (*peace officer*)

**permis** Permis accordé en vertu de l'article 5. (*licence*)

**terres des premières nations** Terres de réserve d'une bande figurant à l'annexe et terres cédées par une telle bande. (*first nation lands*)

### Enlèvement du bois d'une réserve

**2** Le présent règlement n'a pas pour effet de soustraire quiconque à l'obligation d'obtenir la permission visée à l'article 93 de la *Loi sur les Indiens* pour l'enlèvement du bois d'une réserve.

### Champ d'application

**3 (1)** Le présent règlement s'applique à la coupe du bois sur les terres des premières nations.

**(2)** Le *Règlement sur le bois des Indiens* ne s'applique pas à la coupe du bois sur les terres des premières nations.

### Interdiction

**4 (1)** Sous réserve des paragraphes (2) et (3), il est interdit de couper du bois sans permis sur les terres des premières nations.

**(2)** La personne qui agit au nom du conseil d'une bande peut, sans permis, couper du bois au nom de celui-ci sur les terres de réserve de la bande qui n'ont pas été attribuées par le conseil de la bande ou désignées par la bande et qui ne font pas l'objet d'un permis, si le bois coupé et les produits provenant de celui-ci sont destinés à être utilisés sur les terres des premières nations de la bande.

**(3)** Le titulaire d'un certificat de possession portant sur des terres faisant partie des terres de réserve d'une bande

out a licence, cut timber on the land described in the Certificate of Possession that is not already subject to a licence, if the timber and any product made from the timber is intended for use on the first nation lands of the band.

## Licences

**5 (1)** Subject to subsection (2), the Minister may grant a licence

**(a)** to any person, entitling that person, or another person acting on behalf of that person, to cut timber on first nation lands; or

**(b)** to the council of a band, entitling any person acting on behalf of the council of the band to cut timber on the first nation lands of the band.

**(2)** The Minister may grant a licence in respect of reserve lands of a band only with the consent of the council of the band.

## Seizure of Timber

**6 (1)** The Minister or a peace officer may seize any timber cut on first nation lands that was not cut under the authority of a licence or in accordance with subsection 4(2) or (3).

**(2)** Seizure of timber may be achieved by posting on or near the timber a notice stating that the timber has been seized under the authority of these Regulations.

**7** When timber has been seized and no claim to challenge the seizure or to recover the timber is made within 30 days after the seizure, the timber is forfeited to Her Majesty.

## Penalty

**8** Every person who contravenes a provision of these Regulations is liable on summary conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding three months, or to both.

## Repeal

**9** [Repeal]

peut, sans permis, couper du bois sur les terres visées par le certificat qui ne font pas l'objet d'un permis si le bois coupé et les produits provenant de celui-ci sont destinés à être utilisés sur les terres des premières nations de cette bande.

## Permis

**5 (1)** Sous réserve du paragraphe (2), le ministre peut accorder un permis :

**a)** à toute personne, autorisant celle-ci ou une personne agissant en son nom à couper du bois sur les terres des premières nations;

**b)** au conseil d'une bande, autorisant toute personne agissant en son nom à couper du bois sur les terres des premières nations de la bande.

**(2)** Si la zone visée par le permis comprend des terres de réserve d'une bande, le ministre ne peut accorder le permis qu'avec le consentement du conseil de cette bande.

## Saisie

**6 (1)** Le ministre ou un agent de la paix peut saisir tout bois coupé sur des terres des premières nations autre que le bois coupé en vertu d'un permis ou conformément aux paragraphes 4(2) ou (3).

**(2)** La saisie du bois peut être effectuée par affichage sur ce bois ou près de celui-ci d'un avis indiquant qu'il a été saisi en vertu du présent règlement.

**7** Si aucune contestation de la saisie ni aucune réclamation pour recouvrer le bois n'est faite dans les trente jours suivant la saisie, le bois est confisqué au profit de Sa Majesté.

## Peine

**8** Quiconque contrevient au présent règlement est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de 100 \$ et d'un emprisonnement maximal de trois mois, ou de l'une de ces peines.

## Abrogation

**9** [Abrogation]

## Coming into Force

**10 These Regulations come into force on the day on which they are registered.**

## Entrée en vigueur

**10 Le présent règlement entre en vigueur à la date de son enregistrement.**

**SCHEDULE**

(Section 1)

**British Columbia**

Tl'azt'en Nation

**ANNEXE**

(article 1)

**Colombie-britannique**

Nation Tl'azt'en



CANADA

CONSOLIDATION

CODIFICATION

## Indian Timber Regulations

## Règlement sur le bois des Indiens

C.R.C., c. 961

C.R.C., ch. 961

Current to April 12, 2016

À jour au 12 avril 2016

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### **Published consolidation is evidence**

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

### **Inconsistencies in regulations**

**(3)** In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

## NOTE

This consolidation is current to April 12, 2016. Any amendments that were not in force as of April 12, 2016 are set out at the end of this document under the heading "Amendments Not in Force".

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### **Codifications comme élément de preuve**

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

### **Incompatibilité – règlements**

**(3)** Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

## NOTE

Cette codification est à jour au 12 avril 2016. Toutes modifications qui n'étaient pas en vigueur au 12 avril 2016 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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## CHAPTER 961

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### INDIAN ACT

#### Indian Timber Regulations

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### Regulations in Respect of the Cutting of Timber on Indian Reserves and Surrendered Lands

## Short Title

**1** These Regulations may be cited as the *Indian Timber Regulations*.

SOR/94-690, s. 3(F).

## Interpretation

**2** In these Regulations,

**Act** means the *Indian Act*; (*Loi*)

**Assistant Deputy Minister** [Revoked, SOR/93-244, s. 2]

**Department** means the Department of Indian Affairs and Northern Development; (*ministère*)

**dues** means any stumpage or royalty charged for the right or privilege of the cutting and removal of timber; (*droit*)

**licence** means any written authority or contract granted by the Minister for the cutting of timber on surrendered lands or reserve lands; (*permis*)

**limit** means the area included in a permit or licence; (*limite*)

**Minister** means the Minister of Indian Affairs and Northern Development; (*ministre*)

**permit** means a licence granted to a band or to a member or group of members of a band for whose benefit the timber is being administered; (*licence*)

**person** includes corporation, syndicate, firm and partnership. (*personne*)

SOR/93-244, s. 2; SOR/94-690, s. 3(F); SOR/95-531, s. 2.

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## CHAPITRE 961

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### LOI SUR LES INDIENS

#### Règlement sur le bois des Indiens

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### Règlement sur la coupe du bois sur les réserves indiennes et les terres cédées

## Titre abrégé

**1** Le présent règlement peut être cité sous le titre : *Règlement sur le bois des Indiens*.

DORS/94-690, art. 3(F).

## Interprétation

**2** Dans le présent règlement,

**droit** Droit ou redevance exigé en échange du droit ou privilège de couper et d'enlever du bois. (*dues*)

**licence** Permis accordé à la bande ou à un membre ou groupe de membres de la bande au profit de laquelle s'opère la gestion du bois. (*permit*)

**limite** signifie l'étendue comprise dans la région spécifiée dans un permis ou une licence; (*limit*)

**Loi** signifie la *Loi sur les Indiens*; (*Act*)

**ministère** désigne le ministère des Affaires indiennes et du Nord canadien; (*Department*)

**ministre** désigne le ministre des Affaires indiennes et du Nord canadien; (*Minister*)

**permis** Autorisation ou contrat écrits octroyés par le ministre en vue de la coupe du bois sur des terres de réserve ou des terres cédées. (*licence*)

**personne** comprend une corporation, un syndicat, une firme et une société en nom collectif. (*person*)

**sous-ministre adjoint** [Abrogée, DORS/93-244, art. 2]

DORS/93-244, art. 2; DORS/94-690, art. 3(F); DORS/95-531, art. 2.

## Application

**3 (1)** These Regulations apply to the cutting of timber on surrendered lands and on reserve lands.

**(2)** These Regulations do not apply in respect of the cutting of timber on lands to which the *Indian Timber Harvesting Regulations* apply.

SOR/93-244, s. 2; SOR/95-531, s. 2; SOR/2002-246, s. 1.

## Prohibition

**3.1** No person shall cut timber on surrendered lands or on reserve lands without a licence.

SOR/95-531, s. 2.

## Permits for Indian Use

[SOR/95-531, s. 2(F)]

**4** Permits to cut timber free of dues may be issued by the Minister to a band for band purposes, or to a member or group of members of a band, to cut timber and fuel wood for his or their individual use.

SOR/93-244, s. 2; SOR/94-690, s. 3(F); SOR/95-531, s. 2(F).

## Permits to Cut for Sale

[SOR/93-244, s. 2; SOR/95-531, s. 2(F)]

**5 (1)** With the consent of the council of a band, permits to cut timber for sale may be issued by the Minister to a band or to a member or group of members of a band.

**(2)** Dues shall be charged at prevailing rates for timber cut on band land, and for timber harvested from individual locations or holdings of Indians the rate of dues may be reduced to one-half of such prevailing rates, and the rate of the dues shall be stated in the permit.

**(3)** [Repealed, SOR/94-690, s. 1]

SOR/93-244, s. 2; SOR/94-690, ss. 1, 3(F); SOR/95-531, s. 2(F).

**6** All timber cut under permit shall be measured by a licensed scaler or by some competent person appointed by the Minister,

**(a)** at the place of cutting or at a concentration point adjacent thereto; or

## Application

**3 (1)** Le présent règlement s'applique à la coupe du bois sur les terres de réserve et les terres cédées.

**(2)** Le présent règlement ne s'applique pas à la coupe du bois sur les terres assujetties au *Règlement sur la récolte du bois des Indiens*.

DORS/93-244, art. 2; DORS/95-531, art. 2; DORS/2002-246, art. 1.

## Interdiction

**3.1** Il est interdit de couper du bois sur des terres de réserve ou des terres cédées sans un permis.

DORS/95-531, art. 2.

## Licence de coupe pour l'usage des indiens

[DORS/95-531, art. 2(F)]

**4** Le ministre peut délivrer, franc de droits, des licences de coupe du bois à une bande pour les besoins de la bande, ou à un membre ou groupe de membres d'une bande, en vue de couper du bois et du bois de chauffage pour leur usage particulier.

DORS/93-244, art. 2; DORS/94-690, art. 3(F); DORS/95-531, art. 2(F).

## Licence de couper du bois pour la vente

[DORS/93-244, art. 2; DORS/95-531, art. 2(F)]

**5 (1)** Moyennant le consentement du conseil de la bande, des licences de coupe de bois pour la vente peuvent être délivrées par le ministre à une bande ou à un membre ou groupe de membres d'une bande.

**(2)** Des droits fixés au tarif courant seront imposés pour le bois coupé sur les terres de la bande. Le tarif des droits imposables pour le bois coupé dans les concessions ou emplacements particuliers des Indiens peut être réduit de la moitié de ces tarifs courants. Le tarif à exiger doit être inscrit sur la licence.

**(3)** [Abrogé, DORS/94-690, art. 1]

DORS/93-244, art. 2; DORS/94-690, art. 1 et 3(F); DORS/95-531, art. 2(F).

**6** Tout le bois coupé en vertu d'une licence doit être mesuré par un mesureur autorisé ou par quelque autre personne compétente nommée par le ministre,

**a)** au lieu de la coupe ou à un point de concentration contigu à ce lieu; ou

**(b)** in the Province of British Columbia, either at the place of cutting or at some point between such place and the mill.

SOR/93-244, s. 2; SOR/94-690, ss. 3(F), 4(F); SOR/95-531, s. 2(F).

**7** Unless with the consent of the Minister, timber cut under permit shall not be

**(a)** manufactured, or

**(b)** except in the Province of British Columbia, removed from the place of cutting or concentration point adjacent thereto,

until it has been measured and dues paid thereon.

SOR/93-244, s. 2; SOR/94-690, s. 3(F), 4(F); SOR/95-531, s. 2(F).

**8** All timber permits expire on April 30th in the year next following the year of issue.

SOR/94-690, s. 3(F); SOR/95-531, s. 2(F).

## Licences

[SOR/95-531, s. 2(F)]

**9** Subject to section 10, the Minister may grant licences for the right to cut timber

**(a)** on surrendered lands; or

**(b)** with the consent of the council of a band, on reserve lands.

SOR/93-244, s. 2; SOR/95-531, s. 2(F).

**10** Where it is estimated that the dues payable pursuant to a licence will exceed \$2,500, the Minister shall invite tenders for the licence by public advertisement.

SOR/93-244, s. 2; SOR/95-531, s. 2(F).

## Renewals

[SOR/95-531, s. 2(F)]

**11 (1)** Timber licences expire on April 30 in the year that follows the year in which the licence was granted, unless otherwise specified in the licence.

**(2)** Application for renewal shall be made during the term of the licence and if the application is not made within 30 days following the date of expiration of the licence it shall thereupon determine, and in the discretion of the Minister any security given by the licensee may be declared forfeited.

**(3)** If a limit has not been worked during the licence year, the licensee shall, with his application for renewal,

**b)** dans la province de la Colombie-Britannique, soit au lieu de la coupe, soit à quelque autre point situé entre ce lieu et le moulin.

DORS/93-244, art. 2; DORS/94-690, art. 3(F) et 4(F); DORS/95-531, art. 2(F).

**7** Sauf avec le consentement du ministre, le bois coupé en vertu d'une licence ne doit pas être

**a)** ouvré, ni,

**b)** sauf dans la province de la Colombie-Britannique, enlevé du lieu de la coupe ou du point de concentration contigu à ce lieu,

tant qu'il n'a pas été mesuré et que les droits n'ont pas été payés.

DORS/93-244, art. 2; DORS/94-690, art. 3(F) et 4(F); DORS/95-531, art. 2(F).

**8** Toutes les licences de coupe de bois expirent le 30 avril de l'année suivant celle de la délivrance de ladite licence.

DORS/94-690, art. 3(F); DORS/95-531, art. 2(F).

## Permis

[DORS/95-531, art. 2(F)]

**9** Sous réserve de l'article 10, le ministre peut accorder des permis pour la coupe du bois :

**a)** soit sur des terres cédées;

**b)** soit, avec le consentement du conseil d'une bande, sur des terres de réserve.

DORS/93-244, art. 2; DORS/95-531, art. 2(F).

**10** Si le montant estimatif des droits qui seront exigibles aux termes d'un permis dépasse 2 500 \$, le ministre doit lancer un appel d'offres par avis public avant d'accorder le permis.

DORS/93-244, art. 2; DORS/95-531, art. 2(F).

## Renouvellement des permis

[DORS/95-531, art. 2(F)]

**11 (1)** Les permis pour la coupe du bois expirent le 30 avril de l'année qui suit celle de leur délivrance, à moins d'indication contraire dans le permis.

**(2)** La demande de renouvellement doit être faite durant la période de validité du permis et, si telle demande n'est pas faite durant les 30 jours qui suivent la date d'expiration du permis, ce dernier devient périmé et prend fin; de plus, il est loisible au ministre d'opérer la confiscation du dépôt de garantie.

**(3)** Dans le cas où la concession n'a pas été exploitée durant l'année de permis, le détenteur de permis doit faire

furnish a sworn statement of the reasons for his failure to operate and a renewal shall be granted only if the Minister is satisfied with such statement.

SOR/93-244, s. 2; SOR/95-531, s. 2(F).

## Ground Rent

**12** Ground rent shall be paid for each licence year at the rate of \$10 per square mile, except in the Province of British Columbia where the rate shall be \$0.20 per acre, provided that in no case shall the rent for a licence year be less than \$40.

SOR/95-531, s. 2(F).

**13** [Revoked, SOR/93-244, s. 2]

## Security Deposit

**14 (1)** It is a condition of every licence that the licensee shall deposit security in cash or bonds for the performance of the terms and conditions of the licence, in an amount equal to 15 per cent of the estimated dues payable under the licence.

**(2)** The Minister may convert the security deposit and apply it against dues in arrears, and in such event the licence shall not be renewed until the security deposit has been restored to the full amount.

**(3)** If a licensee fails to comply with any condition of his contract or to complete the operation in a satisfactory manner, the Minister may declare the security deposit forfeited to the Crown for the benefit of the band.

SOR/94-690, s. 2; SOR/95-531, s. 2(F).

## Scaling

**15** Without the consent of the Minister, timber cut under licence shall not be

**(a)** manufactured, or

**(b)** except in the Province of British Columbia, removed from the place of cutting or concentration point adjacent thereto,

until it has been measured and dues paid thereon.

SOR/93-244, s. 2; SOR/94-690, ss. 3(F), 4(F); SOR/95-531, s. 2(F).

**16** Failing any other provision in the licence, all timber cut from May 1st to November 30th in any year shall be scaled and paid for by January 31st of the year next fol-

accompagner sa demande de renouvellement d'une déclaration sous serment exposant les motifs de son inaction, et un renouvellement ne sera accordé que si le ministre en admet le bien-fondé.

DORS/93-244, art. 2; DORS/95-531, art. 2(F).

## Loyer de terrain

**12** Le loyer de terrain doit être versé, pour chaque année de permis, au taux de 10 \$ le mille carré, sauf dans la province de la Colombie-Britannique où le tarif est de 0,20 \$ l'acre, pourvu que dans aucun cas le loyer d'une année de permis ne soit moindre que 40 \$.

DORS/95-531, art. 2(F).

**13** [Abrogé, DORS/93-244, art. 2]

## Dépôt de garantie

**14 (1)** La délivrance d'un permis est subordonnée à la condition que le détenteur dépose, pour assurer le respect des conditions du permis, une garantie en espèces ou sous forme d'obligations, d'un montant égal à 15 pour cent des droits estimatifs exigibles aux termes du permis.

**(2)** Le ministre peut faire servir le dépôt de garantie au paiement des droits en souffrance. Aucun permis ne doit être renouvelé tant que le dépôt de garantie n'a pas été reconstitué au complet.

**(3)** Si le détenteur d'un permis manque de se conformer à l'une quelconque des conditions du contrat ou d'en compléter l'exécution de façon satisfaisante, le ministre peut déclarer le dépôt de garantie confisqué par la Couronne au bénéfice de la bande.

DORS/94-690, art. 2; DORS/95-531, art. 2(F).

## Mesurage

**15** Sans le consentement du ministre, le bois coupé en vertu d'un permis ne doit pas être

**a)** ouvré, ni,

**b)** sauf dans la province de la Colombie-Britannique, enlevé du lieu de la coupe ou du point de concentration contigu à ce lieu,

avant d'avoir été mesuré, et avant que les droits en soient payés.

DORS/93-244, art. 2; DORS/94-690, art. 3(F) et 4(F); DORS/95-531, art. 2(F).

**16** À défaut de quelque autre prescription du permis, tout bois coupé, entre le 1<sup>er</sup> mai et le 30 novembre d'une année quelconque, doit être mesuré et payé au plus tard

lowing, and all timber cut from December 1st to April 30th in any licence year shall be scaled and paid for by June 30th next following the cutting.

SOR/94-690, ss. 3(F), 4(F); SOR/95-531, s. 2(F).

**17** A licensee shall at his expense supply scaler's returns verified by affidavit.

SOR/95-531, s. 2(F).

## Fire Protection

**18** The licensee shall pay all costs of fire protection service and of the suppression of any fire in the limit covered by his licence or occasioned by persons employed by him.

SOR/95-531, s. 2(F).

**19** [Revoked, SOR/93-244, s. 2]

## Records

**20 (1)** A licensee shall maintain a record of timber cut each month and, when required, shall furnish a copy of the record to the Minister.

**(2)** The Minister, or anyone authorized by him, shall at all times have free access to and be permitted to examine the books and memoranda kept by any licensee showing the quantity of timber in board measure sawn from logs and of other timber products cut under the licence, and failure to produce such books and memoranda when required so to do shall subject such licensee to a forfeiture of his rights under the licence.

SOR/93-244, s. 2; SOR/94-690, s. 3(F); SOR/95-531, s. 2(F).

## Cancellation

**21** It is a condition of every licence that, if the licensee fails to comply with the terms and conditions of the licence or with these Regulations, the Minister may cancel the licence.

SOR/93-244, s. 2; SOR/95-531, s. 2(F).

## Conservation

**22 (1)** With the consent of the licensee, the Minister may vary any licence in respect of one or more parts of a licensed area or in respect of any type, size or species of timber.

le 31 janvier de l'année suivante; et tout le bois coupé, entre le 1<sup>er</sup> décembre et le 30 avril d'une année quelconque de permis, doit être mesuré et payé au plus tard le 30 juin qui suit la coupe.

DORS/94-690, art. 3(F) et 4(F); DORS/95-531, art. 2(F).

**17** Un détenteur de permis est tenu de fournir, à ses propres frais, les rapports des mesureurs, vérifiés par affidavit.

DORS/95-531, art. 2(F).

## Protection contre les incendies

**18** Le détenteur de permis doit payer le coût entier du service de protection contre les incendies, ainsi que les frais d'enrayement de tout incendie survenu dans les limites prévues par son permis ou occasionné par ses employés.

DORS/95-531, art. 2(F).

**19** [Abrogé, DORS/93-244, art. 2]

## Registres

**20 (1)** Le détenteur de permis doit inscrire dans un registre la quantité de bois coupé, chaque mois, et fournir au besoin copie de ce registre au ministre.

**(2)** Le ministre ou toute autre personne autorisée par lui doit en tout temps pouvoir consulter et examiner les livres et mémoires de tout détenteur de permis, indiquant la quantité de bois en mesure de planche scié à même les billes, et la quantité d'autres produits du bois coupé en vertu du permis; le détenteur de permis qui s'abstient de produire lesdits livres et mémoires, lorsqu'il en est requis, perd les droits qui lui sont concédés dans son permis.

DORS/93-244, art. 2; DORS/94-690, art. 3(F); DORS/95-531, art. 2(F).

## Annulation

**21** Il est une condition de chaque permis que le ministre peut révoquer le permis si le détenteur n'en respecte pas les conditions ou ne se conforme pas au présent règlement.

DORS/93-244, art. 2; DORS/95-531, art. 2(F).

## Conservation

**22 (1)** Avec le consentement du détenteur, le ministre peut modifier le permis à l'égard d'une ou de plusieurs parties d'une étendue visée par ce permis ou à l'égard du bois de type, de taille ou d'essence forestière quelconques.

**(2)** Notwithstanding anything contained in a licence, the Minister may, for the purpose of forest management, watershed protection, fire protection or the preservation of the beauty of the landscape, game or game shelters, order the marking of such trees as are to be left standing or cut in the licensed area and order the licensee to pay the cost of such marking.

SOR/93-244, s. 2; SOR/94-690, s. 3(F); SOR/95-531, s. 2(F).

**23. and 24** [Revoked, SOR/93-244, s. 2]

## Compliance with Laws

**25** Every licensee shall exercise the rights conferred by the licence in accordance with the laws of the province in which the licensee is operating under the licence regarding disposal of slash, prevention of fire hazard and the conduct of timber operations.

SOR/93-244, s. 2; SOR/94-690, s. 4(F); SOR/95-531, s. 2(F).

## Seizure

**26 (1)** The Minister may seize and detain any timber and any product manufactured from timber, when he has reasonable grounds to believe that

- (a)** such timber or the timber from which such product was manufactured has not been measured or counted by a scaler as required by these Regulations;
- (b)** any charges in respect of such timber or on the timber from which such product was manufactured or in respect of the lands on which such timber was cut are in default; or
- (c)** such timber or the timber from which such product was manufactured was not cut under the authority of a licence or permit.

**(2)** Any timber or product that is seized under subsection (1) may be removed to such place as the Minister may deem proper for the protection of the timber or product, and if it is seized when in possession of a carrier it shall be removed by the carrier on behalf of the Minister to such place as the superintendent may direct, provided that

- (a)** the Department may defray the costs of transportation and other charges incurred in consequence of the directions given by the superintendent, and all such costs shall be included in the costs of seizure; and

**(2)** Nonobstant toute disposition contenue dans un permis, le ministre peut, aux fins de l'administration forestière, de la protection du bassin hydrographique, de la protection contre l'incendie, de la conservation de la beauté du paysage, du gibier et des refuges de gibier, ordonner de marquer les arbres qui doivent rester sur pied ou être coupés dans l'étendue visée par le permis et ordonner au détenteur de permis de payer le coût du marquage.

DORS/93-244, art. 2; DORS/94-690, art. 3(F); DORS/95-531, art. 2(F).

**23. et 24** [Abrogés, DORS/93-244, art. 2]

## Observation des lois

**25** Le détenteur de permis exerce les droits qui lui sont conférés par son permis en conformité avec les lois provinciales, régissant la disposition des déchets de coupe, la prévention des risques d'incendie et la poursuite générale des travaux de coupe du bois, en vigueur dans la province où il exerce les activités autorisées par son permis.

DORS/93-244, art. 2; DORS/94-690, art. 4(F); DORS/95-531, art. 2(F).

## Saisie

**26 (1)** Le ministre peut saisir et garder tout bois et tout produit manufacturé de ce bois, lorsqu'il a des raisons suffisantes de croire

- a)** que ce bois ou le bois dont tel produit a été manufacturé n'a pas été mesuré ou compté par un mesurateur, ainsi que l'exige le présent règlement;
- b)** que les frais à l'égard de tel bois ou à l'égard du bois dont tel produit a été manufacturé, ou à l'égard des terres sur lesquelles tel bois a été coupé, n'ont pas été payés; ou
- c)** que ce bois ou que le bois dont tel produit a été manufacturé n'a pas été coupé en vertu d'une licence ou d'un permis.

**(2)** Tout bois ou produit saisi en vertu du paragraphe (1) peut être transporté à tel endroit que le ministre pourra juger propre à la protection de ce bois ou produit, et s'il est saisi pendant qu'il est en la possession d'un voiturier, ce dernier devra le transporter, au nom du ministre, à tel endroit que le ministre peut désigner, pourvu

- a)** que le ministère puisse payer le transport et autres frais subis par suite des instructions du ministre, tous ces faits devant être compris dans les frais de saisie; et

**(b)** such seizure shall not prejudice or affect any lien to which the carrier may be entitled in respect of the timber or product to the time of such seizure.

**(3)** Where timber within the meaning of this section has been made up with other timber into a crib, dam or raft, or in any other manner has been so mixed at a mill or elsewhere as to render it impossible or difficult to distinguish such timber from other timber with which it is mixed, the whole of the timber so mixed may be seized and detained until separated by the person claiming to be the owner thereof to the satisfaction of the Minister.

SOR/93-244, s. 2; SOR/94-690, s. 3(F); SOR/95-531, s. 2(F).

**27** Seizure of timber or any product therefrom may be made by posting beside the timber or product a notice stating that the timber or product has been seized.

**28** Where timber or any product manufactured therefrom has been seized and no claim to recover it has been made within 30 days from the date of the seizure, the timber or product is forfeited to the Crown.

SOR/93-244, s. 2.

## Proceedings Following Seizure

**29 (1)** Any person claiming to be the owner of timber, or any product manufactured therefrom, that has been seized under section 26 may, on at least four days notice to the Minister, apply to a judge of a court of competent jurisdiction in the place in which the timber or product is held under seizure for an order for the release from seizure and delivery of the timber or product to that person.

**(2)** Upon receipt of a bond of the claimant, with two good and sufficient sureties in an amount not less than the market value of the timber or product and the costs of the seizure, to be forfeited to the Crown if the claimant is declared by the judge not to be the owner of the timber or product, the judge may order the timber or product to be released from seizure and to be delivered to the claimant.

**(3)** Upon the application of the Minister or the claimant, and upon at least seven days notice, the judge shall determine the ownership of the timber or product whether or not it has been released and delivered to the claimant under subsection (2) and shall make an order

**(a)** declaring the claimant to be the owner

**(i)** free of any claim for charges, or

**b)** que cette saisie ne porte pas atteinte ni ne nuise au privilège auquel le voiturier peut avoir droit à l'égard du bois ou du produit jusqu'au temps de la saisie.

**(3)** Lorsque du bois, selon les dispositions du présent article, a servi avec d'autre bois à la fabrication d'une cabane, d'un barrage ou d'un radeau, ou a été ainsi mêlé de toute autre manière, soit au moulin ou ailleurs, de sorte qu'il est impossible ou difficile de distinguer ce bois de tout autre bois avec lequel il est mêlé, la quantité totale du bois ainsi mêlé peut être saisie et retenue jusqu'à ce qu'elle soit séparée par la personne qui prétend en être propriétaire et à la satisfaction du ministre.

DORS/93-244, art. 2; DORS/94-690, art. 3(F); DORS/95-531, art. 2(F).

**27** La saisie du bois ou de tout produit manufacturé de ce bois peut se faire en affichant près de ce bois ou produit un avis public indiquant que le bois ou le produit a été saisi.

**28** Lorsque du bois ou un produit manufacturé de ce bois a été saisi et qu'aucune réclamation pour le recouvrer n'est faite dans les 30 jours suivant la date de la saisie, le bois ou le produit est confisqué par la Couronne.

DORS/93-244, art. 2.

## Procédure en cas de saisie

**29 (1)** Toute personne qui prétend être propriétaire du bois ou de tout produit manufacturé de ce bois qui a été l'objet d'une saisie selon l'article 26 peut, sur préavis d'au moins quatre jours au ministre, s'adresser à un juge du tribunal compétent de la région où ce bois ou ce produit est retenu dans le cadre de la saisie afin d'obtenir une ordonnance pour que ce bois ou ce produit soit libéré et lui soit livré.

**(2)** Sur réception d'un dépôt du réclamant, accompagné de deux garanties sérieuses et suffisantes d'un montant non inférieur à la valeur marchande du bois ou du produit et des frais de saisie, qui sera confisqué par la Couronne si le juge déclare que le réclamant n'est pas le propriétaire du bois ou produit, le juge peut ordonner que le bois ou produit saisi soit libéré et livré au réclamant.

**(3)** Sur demande du ministre ou du réclamant et préavis d'au moins sept jours, le juge déterminera la propriété du bois ou du produit, qu'il ait été ou non libéré et livré au réclamant en vertu du paragraphe (2) et décrètera

**a)** que le réclamant est le propriétaire

**(i)** exempt de toute réclamation de frais, ou

(ii) subject to payment of such dues, charges and expenses as he may find to be owing; or

(b) declaring the claimant not to be the owner and the bond, if any, forfeited to the Crown.

(4) The judge shall make such order as he may consider proper as to the costs of proceedings under this section and the costs of seizure.

(5) If the claimant is declared not to be the owner of the timber or product, it shall be disposed of in such manner as the Minister may determine.

SOR/93-244, s. 2.

## Penalties

**30** Every person who contravenes a provision of these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months, or to both.

SOR/94-690, s. 3(F); SOR/95-531, s. 2.

(ii) assujetti au paiement de tels droits, frais et dépenses exigibles selon lui; ou

b) que le réclamant n'est pas le propriétaire et que le dépôt qui aurait été fait est confisqué par la Couronne.

(4) Le juge rendra cette ordonnance selon qu'il le jugera convenable, quant aux frais des poursuites intentées en vertu du présent article et aux frais de saisie.

(5) S'il est reconnu que le réclamant n'est pas le propriétaire du bois ou du produit, il en sera disposé de la manière que pourra prescrire le ministre.

DORS/93-244, art. 2.

## Peines

**30** Toute personne qui contrevient à une disposition du présent règlement est coupable d'une infraction et est passible, sur déclaration sommaire de culpabilité, d'une amende maximale de 100 \$ ou d'un emprisonnement maximal de 3 mois, ou des deux peines à la fois.

DORS/94-690, art. 3(F); DORS/95-531, art. 2.

## 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.

**McLEOD LAKE INDIAN BAND  
LAND CODE**

**(Dated for Reference November 1, 2002)**

RECEIVED FEB 25 2003 *g*

*Certified*  
*February 27, 2003*  
Date  
*J. Jacobs*  
\_\_\_\_\_  
Mel W. Jacobs, Verifier

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## PREAMBLE

**WHEREAS** the Tsek'ehne of the McLeod Lake Indian Band have a special relationship with the land within their traditional territory based on respect for the spiritual value of the Earth and the creatures and plants placed thereon by the Creator;

**AND WHEREAS** the Tsek'ehne of the McLeod Lake Indian Band are determined to preserve this unique relationship and to care for and protect the land within their traditional territory;

**AND WHEREAS** the McLeod Lake Indian Band has, by resolution MLIB.041001.06 dated April 10, 2001 formalized these values in the following McLeod Lake Indian Band Vision Statement:

“We, the Tse'Khene Nation (People of the Rock) are a proud people. We believe the Creator put us here as stewards of the land. We will regain our Traditions to cultivate a respected, united, self-sufficient community. We recognize all people as equal regardless of name and ancestry. Our governing body is elected based upon integrity, honor, accountability and transparency to all members. Together we will provide healthy, educated self-sufficient and prosperous lifestyles for our future generations.”

**AND WHEREAS** on March 27, 2002 the McLeod Lake Indian Band and its members entered into a McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement with Her Majesty the Queen in Right of Canada and British Columbia;

**AND WHEREAS** the McLeod Lake Indian Band wishes to manage its lands and resources, thereby enabling the Band to become economically self sufficient, with the means to live in dignity and assume responsibility for its economic, political, cultural and social development within the context of the Canadian society, rather than having its lands and resources managed on its behalf by Canada in accordance with the *Indian Act*;

**AND WHEREAS** the McLeod Lake Indian Band wishes to manage its lands and resources by entering into the *Framework Agreement on First Nation Land Management* concluded between Her Majesty in right of Canada and fourteen first nations on February 12, 1996, as amended;

**NOW THEREFORE THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE TSEK'EHNE OF THE McLEOD LAKE INDIAN BAND.**

**PART 1  
PRELIMINARY MATTERS**

**1. Title**

1.1 The title of this enactment is the *McLeod Lake Indian Band Land Code*.

**2. Interpretation**

Definitions

2.1 The following definitions apply in this Land Code:

“Band” means the McLeod Lake Indian Band;

“Band Land” means any portion of a Band reserve that is subject to this Land Code;

“Common-law Marriage” means a man and woman not married to each other, who have lived together as husband and wife for a period of not less than one year;

“Community Land” means any Band Land in which all Members have a common interest;

“Council” means the Chief and Councilors of the McLeod Lake Indian Band;

“Eligible Voter” means, for the purpose of voting in respect of matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“First Nation Lands Register” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51.1 of the Framework Agreement;

“Forest Practices” means timber harvesting and related activities, road construction, road modification, road maintenance, road deactivation, silviculture treatments, botanical forest products collecting, grazing, fire use, control and suppression and any other forest activity that is carried out on Band Land;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* concluded between Her Majesty in right of Canada and fourteen first nations on February 12, 1996, as amended;

“Immediate Relatives”, in respect of an individual, means the individual’s parent, sister, brother, child or Spouse;

“Land Code” means this *McLeod Lake Indian Band Land Code*;

“Land Management Committee” means the Land Management Committee established under this Land Code;

“Law” means a Law enacted pursuant to this Land Code;

“Meeting of Members” means a meeting of Members held under Part 3 of this Land Code;

“Member” means an individual whose name appears or is entitled to appear on the McLeod Lake Indian Band Membership List;

“Panel” means the Dispute Resolution Panel established under clause 40.1 of this Land Code;

“Ratification Vote” means a vote under clause 13 of this Land Code;

“Resolution” means a resolution of Council enacted under this Land Code;

“Spouse” means an individual who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by Common-law Marriage;

“Transfer Agreement” means the Individual First Nation Agreement made between the McLeod Lake Indian Band and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement; and

“Trust Agreement” means the McLeod Lake Indian Band Trust Agreement appended as Attachment “C” to the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement.

2.2 In this Land Code, unless the context otherwise requires:

- (a) “Band” and “McLeod Lake Indian Band” have the same meaning as “First Nation” in the Framework Agreement;
- (b) “Band” and “McLeod Lake Indian Band” have the same meaning as “McLeod Lake” in the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement; and
- (c) “Band Land” has the same meaning as “First Nation Land” in the Framework Agreement.

Paramountcy

2.3 If there is an inconsistency or conflict between this Land Code and any other enactment of the Band, this Land Code prevails to the extent of the inconsistency or conflict.

2.4 If there is an inconsistency or conflict between this Land Code and the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement, the Treaty No. 8 Adhesion and Settlement Agreement prevails to the extent of the inconsistency or conflict.

2.5 If there is an inconsistency or conflict between this Land Code and the Trust Agreement, the Trust Agreement prevails to the extent of the inconsistency or conflict.

Non-abrogation

2.6 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the Band or its Members.

Fair Interpretation

2.7 This Land Code will be interpreted in a fair, large and liberal manner.

Fiduciary Relationship

2.8 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the Band and its Members.

Lands and Interests Affected

2.9 A reference to "land" or "Land" in this Land Code includes all rights and resources in and of the land, and includes:

- (a) all renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada or the Band, and without limiting the generality of the foregoing includes timber, mineral resources and water; and
- (b) any interest or license granted to the Band by Her Majesty in right of Canada as listed in the Transfer Agreement.

**3. Authority to Govern**

Source of Authority

3.1 The authority of the Band to govern its land and resources flows from its inherent right of self-government and its rights under the McLeod Lake Indian Band Treaty No.8 Adhesion and Settlement Agreement.

#### 4. Purpose

##### Purpose

- 4.1 The purpose of this Land Code is to set out the principles and administrative structures that apply to Band Land and by which the Band will exercise authority over those lands.

##### Ratification

- 4.2 The Framework Agreement is ratified and confirmed by the Band when this Land Code comes into effect.

#### 5. Description of Band Land

##### Band Land

- 5.1 The Band Land that is subject to this Land Code is:

- (a) McLeod Lake Indian Reserve No. 1, Cariboo District, British Columbia, C.L.S.R. Plan B.C. 101, a copy of which is deposited in the Land Registry Office at Prince George as 20072;
- (b) Pack River Indian Reserve No. 2, B.C. being District Lot 10118, Cariboo District, British Columbia, C.L.S.R. Plan B.C. 492, a copy of which is deposited in the Land Registry Office at Prince George as 20071;
- (c) Carp Lake Indian Reserve No. 3, being District Lots 10121 and 10122, Cariboo District, British Columbia, C.L.S.R. Plan B.C. 493, a copy of which is filed in the Land Registry Office at Prince George as 20187;
- (d) War Lake Indian Reserve No. 4, being District Lot 10120, Cariboo District, British Columbia, C.L.S.R. Plan B.C. 494, a copy of which is deposited in the Land Registry Office at Prince George as 20198; and
- (e) McLeod Lake Indian Reserve No. 5, being District Lot 10117, Cariboo District, British Columbia, C.L.S.R. Plan B.C. 495, F.B. 659, a copy of which is filed in the Land Registry Office at Prince George as 20537.

##### Additional Lands

- 5.2 The following lands will be made subject to this Land Code upon Canada carrying out its obligations under the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement and an environmental audit declares the lands free of environmental hazard and safe for community use:

- (a) District Lot 13044, as shown on official plan 1TU1869 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85641. Containing an area of 705 hectares, more or less;
- (b) District Lot 13036 and Block I of District Lots 5713 and 9608, as shown on official plans 1TU1872 to 14TU1872 inclusive, deposited in the Crown Land Registry in Victoria. A copy of the said plans is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85706, Sheets 1 to 14 inclusive. Containing an area of 8054.3 hectares, more or less;
- (c) District Lot 13031, as shown on official plan 2TU1894 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85704. Containing an area of 1.45 hectares, more or less;
- (d) District Lot 13046, as shown on official plan 2TU1869 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85643. Containing an area of 898 hectares, more or less;
- (e) District Lot 13045, as shown on official plans 1TU1891 to 7TU1891 inclusive, deposited in the Crown Land Registry in Victoria. A copy of the said plans is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85730, Sheets 1 to 7 inclusive. Containing an area of 3323 hectares, more or less;
- (f) District Lot 13037, as shown on official plan 9TU1868 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85642. Containing an area of 2674 hectares, more or less;
- (g) District Lot 13027, as shown on official plan 3TU1889 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85646. Containing an area of 1.98 hectares, more or less;
- (h) Block C of District Lots 2978 and 2980, as shown on official plan 9TU1871 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85644. Containing an area of 1.02 hectares, more or less;
- (i) District Lot 13028, as shown on official plan 8TU1871 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85645. Containing an area of 2.09 hectares more or less;

- (j) District Lot 13029, as shown on official plan 3TU1894 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85651. Containing an area of 2.02 hectares, more or less;
- (k) District Lot 13030, as shown on official plan 40TU1889 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85652. Containing an area of 1.05 hectares, more or less;
- (l) District Lot 13031, as shown on official plan 10TU1871 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85705. Containing an area of 4.00 hectares, more or less;
- (m) District Lot 13032, as shown on official plan 1TU1870 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85653. Containing an area of 12.0 hectares, more or less; and
- (n) District Lot 13033, as shown on official plan 11TU1871 deposited in the Crown Land Registry in Victoria. A copy of the said plan is recorded in the Canada Lands Surveys Records in Ottawa as plan number 85654. Containing an area of 4.00 hectares, more or less.

5.3 The following lands will be made subject to this Land Code upon Canada and British Columbia carrying out their respective obligations under the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement and an environmental audit declares the lands free of environmental hazard and safe for community use:

- (a) 26.0 hectares at the community of Bear Lake; and
- (b) 8.1 hectares in the District Municipality of MacKenzie.

5.4 Further lands may be made subject to this Land Code if they are, or become, reserve lands and the following conditions are met as applicable:

- (a) any lands owned jointly by the First Nation and another First Nation, when both First Nations agree upon a joint management scheme for those lands;
- (b) any land or interest acquired by the First Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use; and
- (c) any land in severalty selected under Article 8 of the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement.

- 5.5 For greater certainty, clause 5.4 does not apply to land acquired by voluntary land exchange in accordance with clause 16 of this Land Code.
- 5.6 If the relevant conditions in clause 5.4 are met, Council will call a Meeting of Members and, after receiving input at that meeting, may by enacting a Law declare the land or interest to be subject to this Land Code.

## PART 2 BAND LEGISLATION

### 6. Law-Making Powers

#### Council May Make Laws

- 6.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) the development, conservation, protection, management, use and possession of Band Land;
  - (b) interests and licenses in relation to Band Land; and
  - (c) any matter necessary or ancillary to a Law respecting Band Land.

#### Examples of Laws

- 6.2 For greater certainty, Council may make Laws in relation to Band Land including, but not limited to:
- (a) the regulation, authorization, control and prohibition of zoning, occupation, land use planning and development;
  - (b) the creation, granting and regulation of interests and licenses including leases, permits, easements, rights-of way or any other interest Council considers desirable or that is otherwise provided in this Land Code;
  - (c) environmental assessment and protection;
  - (d) the regulation and authorization of surveys and subdivisions;
  - (e) the setting aside and regulation of parks, parklands, and recreational lands for use by Members or others;
  - (f) the setting aside and regulation of heritage sites;

- (g) the creation, regulation and control of construction and building standards, occupancy and building maintenance standards, design criteria, infrastructure installation and servicing, repair, alteration, demolition and use of buildings;
- (h) the regulation, control and management of all renewable and non-renewable natural resources in and of Band Land to the extent that such resources are under the jurisdiction of Canada or the Band, including but not limited to Forest Practices and mining and extraction of minerals, mineral resources and soils in accordance with the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement;
- (i) subject to the Trust Agreement, general rules and procedures for the receipt, management and expenditure of Band moneys including revenues, royalties, profits and fees in respect of Band Land, the investment and borrowing of moneys, and the establishment of administrative structures to manage such moneys;
- (j) the establishment and regulation of administrative bodies or agencies for the management and administration of Band Land;
- (k) the regulation, control and management for the protection and preservation of fur-bearing animals, fish, game and other wildlife;
- (l) the regulation, control and management for the destruction of noxious weeds and prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation;
- (m) the removal and punishment of persons trespassing upon Band Land or frequenting Band Land for prohibited purposes;
- (n) the regulation of sanitary conditions and providing sanitary services in private premises and public places;
- (o) the construction and maintenance of boundary and internal fences;
- (p) the construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
- (q) the regulation of traffic and transportation;
- (r) provision of local services and the imposition of equitable user charges; and
- (s) the regulation, control or prohibition of any land-based actions, activities, or undertakings that constitute a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety.

Administration

- 6.3 Council will perform all the duties and functions, and exercise all the powers, of the McLeod Lake Indian Band that are not specifically assigned to an individual or body established pursuant this Land Code.
- 6.4 Council may by enacting a Law, delegate administrative authority in relation a Law enacted under clause 6.1 to an individual or a body established pursuant to this Land Code.

Forest Practices

- 6.5 Forest Practices on Band Land will be regulated in accordance with Part 7 of this Land Code.

**7. Law-Making Procedure**

Introduction of Laws

- 7.1 A proposed Law may be introduced at a duly convened meeting of Council by:
  - (a) the Chief;
  - (b) a Councilor; or
  - (c) a member of the Land Management Committee.

Tabling and Posting of Proposed Laws

- 7.2 Before a proposed Law may be enacted by Council, the proposed Law will be:
  - (a) tabled at a meeting of Council at least 28 days before the proposed Law is to be enacted;
  - (b) deposited with the Chair of the Land Management Committee at least 21 days before the proposed Law is to be enacted;
  - (c) posted in the Band administration offices and other public places on Band Land at least 21 days before the proposed Law is to be enacted; and
  - (d) mailed to all Members aged 18 years or older at their last known address at least 21 days before the proposed Law is to be enacted.

Urgent Matters

- 7.3 Council may enact a Law without the preliminary steps required under clause 7.2 if Council is reasonably of the opinion that the Law is needed urgently to protect Band Land or Members.
- 7.4 A Law enacted under clause 7.3 expires 28 days after its enactment unless it is reenacted in accordance with clause 7.2.

Approval of Law by Council

- 7.5 A Law is enacted if it is approved by a majority of Council at a duly convened meeting of Council open to the Members.
- 7.6 The original copy of any Law or Resolution concerning Band Land will be signed by a quorum of Council present at the meeting at which it is enacted.

Law Coming Into Force

- 7.7 A Law comes into force on:
- (a) the date it is enacted by Council; or
  - (b) a date set by the Law.

**8. Publication of Laws**

Publication

- 8.1 All Laws will be published in the minutes of Council.

Posting Laws

- 8.2 Within seven days after a Law has been enacted, Council will post a copy of the Law in the Band administration offices.

Registry of Laws

- 8.3 Council will cause to be kept at the main Band administration office a register of Laws containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are no longer in force.
- 8.4 Any person may, during normal business hours at the Band administration office, have reasonable access to the register of Laws.

Copies for Any Person

- 8.4 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by Council or a body designated by Council.

### **PART 3 COMMUNITY APPROVALS**

#### **9. Rights of Eligible Voters**

Rights of Eligible Voters

- 9.1 Every Eligible Voter is eligible to vote at a Meeting of Members and in a Ratification Vote.

#### **10. Community Input**

Prior Meeting of Members

- 10.1 Council will call a Meeting of Members to receive input from Members prior to enacting a Law in respect of the following:
- (a) a land use plan;
  - (b) a heritage site or an environmentally sensitive property;
  - (c) environmental assessment;
  - (d) the transfer or assignment of interests in Band Land;
  - (e) spousal property under clause 39;
  - (f) the rate and criteria for the payment of fees, user fees or rents for the use and occupation of Band Land; and
  - (g) any other matter or class of matters that Council, by Resolution, declares to be subject to this clause.

Process to Implement Laws

- 10.2 Subject to clause 39, Council will, in consultation with the Land Management Committee and within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Laws referred to in clause 10.1.

## 11. Community Approval at a Meeting of Members

### Community Approval by Meeting

11.1 Community approval at a Meeting of Members must be obtained for the following:

- (a) subject to clause 15, a land use plan or amendment of a land use plan;
- (b) a grant or disposition of an interest or license in Band Land for a term longer than 15 years;
- (c) renewal of a grant or disposition of an interest or license in Band Land for a term longer than 15 years, or that would have the effect of extending the grant or disposition being renewed for a term longer than 15 years;
- (d) a grant or disposition of natural resources on Band Land;
- (e) a charge or mortgage of a leasehold interest;
- (f) a Law respecting the rights and procedures for expropriation;
- (g) amendment of this Land Code;
- (h) rules and procedures, applicable on the breakdown of a marriage to the use, occupancy and possession of Band Land and the division of interests therein; and
- (i) any Law or class of Law that Council, by Resolution, declares to be subject to this clause.

## 12. Procedure at a Meeting of Members

### Voting

12.1 Decisions at a Meeting of Members will be made by a two-thirds majority vote of the Eligible Voters present at the meeting.

### Notice of Meeting

12.2 Council will give written notice of a Meeting of Members that:

- (a) specifies the date, time and place of the meeting; and
- (b) contains a brief description of the matters to be discussed and decided at the meeting.

Manner of Notice

- 12.3 Written notice of a Meeting of Members will be given to the Members by:
- (a) posting the notice in public places on Band Land at least 21 days before the date set for the meeting;
  - (b) mailing the notice to Members at least 21 days before the date set for the meeting;
  - (c) publishing the notice in a community newsletter or local newspaper at least ten business days before the date set for the meeting; and
  - (d) such additional methods as Council may consider appropriate in the circumstances.

Quorum

- 12.4 The quorum for a Meeting of Members is twenty-five percent of the Eligible Voters.

Other Meetings

- 12.5 Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members.

Procedural Laws

- 12.6 Council may make Laws respecting procedures for Meetings of Members.

**13. Ratification Votes**

Community Approval by Ratification Vote

- 13.1 Community approval by a Ratification Vote must be obtained for the following:
- (a) a voluntary exchange of Band Land;
  - (b) an expropriation under clause 14;
  - (c) amendment of a land use plan that alters the designation of a heritage site designated under that plan;
  - (d) an amendment to the Transfer Agreement that reduces the amount of funding provided by Canada; and
  - (e) any Law or class of Laws that Council, by Resolution, declares to be subject to this clause.

Transfer Agreement with Canada

- 13.2 For greater certainty, an amendment to, or renewal of, the Transfer Agreement does not require community approval by a Ratification Vote unless the amendment or renewal reduces the amount of funding provided by Canada.

Ratification Process

- 13.3 A Ratification Vote required under this Land Code will be conducted in substantially the same manner as that provided in the McLeod Lake Indian Band Community Ratification Process that was used to ratify this Land Code.

Minimum Requirements for Approval

- 13.4 A matter will be considered approved by a Ratification Vote if a majority of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote in favour of the matter.

No Verifier

- 13.5 A verifier is not required in a Ratification Vote.

**PART 4  
PROTECTION OF LAND**

**14. Expropriation**

Rights and Interests That May Be Expropriated

- 14.1 An interest or license in Band Land or in any building or other structure on Band land may only be expropriated by the Band in accordance with the Framework Agreement and a Law enacted in accordance with clause 14.3 of this Land Code.

Community Purposes

- 14.2 An expropriation may only be made for a necessary community purpose or works of the Band, including but not limited to fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospital health care facilities or retirement homes.

Expropriation Law

- 14.3 Before proceeding to make an expropriation in accordance with this Land Code, Council will enact a Law respecting the rights and procedures for expropriations, including provisions respecting:
- (a) the taking of possession of the interest or license;

- (b) transfer of the interest or license;
- (c) notice of expropriation and service of the notice of expropriation;
- (d) the effective date of the expropriation;
- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and
- (f) the method of payment of compensation.

#### Public Report

14.4 Before the Band expropriates an interest or license, the Band will:

- (a) make a public report on the reasons for the expropriation;
- (b) post a copy of the report in the Band administration offices; and
- (c) mail a copy of the report to all Eligible Voters.

#### Rights That May Not Be Expropriated

14.5 An interest of Her Majesty the Queen in right of Canada, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by the Band.

#### Acquisition By Mutual Agreement

14.6 The right of the Band to expropriate is exercisable only after a good faith effort to acquire, by mutual agreement, the interest or license in Band Land.

#### Community Approval

14.7 An expropriation of a Member's interest has no effect unless the proposed expropriation receives prior community approval by a Ratification Vote.

#### Compensation for Rights and Interests

14.8 The Band will, in accordance with its Laws and the Framework Agreement:

- (a) serve reasonable notice of the expropriation on each affected holder of the interest or license to be expropriated; and
- (b) pay fair and reasonable compensation to the holder of the interest or license being expropriated.

Compensation Calculations

- 14.9 The total value of the compensation payable under clause 14.8(b) will be based on:
- (a) the fair market value of the interest or license being expropriated;
  - (b) the replacement value of any improvement to the land being expropriated;
  - (c) the damages attributable to any disturbance; and
  - (d) damages for reduction in the value of any remaining interest.

Market Value

- 14.10 The fair market value of an expropriated interest or license is equal to the amount that would have been paid for the interest or license if it had been sold on Band Land by a willing seller to a willing buyer.

Neutral Evaluation to Resolve Disputes

- 14.11 The resolution of disputes concerning the right of the Band to expropriate will be determined by neutral evaluation in the same manner as provided in Part IX of the Framework Agreement and the sixty day period referred to in clause 32.6 of the Framework Agreement will be applied, as appropriate in the circumstances, by the neutral evaluator.

Arbitration to Resolve Disputes

- 14.12 The resolution of the following disputes will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:
- (a) disputes concerning the right of the holder of an expropriated interest or license to compensation; and
  - (b) disputes concerning the amount of compensation.

**15. Heritage Sites**

Community Approval

- 15.1 No land use plan may be amended to alter the designation of a heritage site designated under that plan unless the amendment receives community approval by a Ratification Vote.

## 16. Voluntary Land Exchange and Protection

### Conditions for a Land Exchange

16.1 The Band may agree with another party to exchange a parcel of Band Land for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.

### Land To Be Received

16.2 No land exchange may be agreed to unless the land to be received by the First Nation in the exchange:

- (a) is of equal or greater area than the Band Land to be exchanged;
- (b) is at least comparable to the appraised value of the Band Land to be exchanged; and
- (c) becomes a reserve and Band Land subject to this Land Code.

### Negotiators

16.3 Any person who negotiates a land exchange agreement on behalf of the Band must be designated by Resolution.

### Additional Compensation

16.4 The Band may receive other compensation, such as money or other land in addition to the land referred to in clause 16.3 and any such other land may be held by the Band in fee simple or other manner.

### Federal consent

16.5 Before the Band concludes a land exchange agreement, it must receive a written statement from Canada stating that Her Majesty in right of Canada:

- (a) consents to set apart as a reserve the land to be received in the land exchange under clause 16.2, as of the date of the land exchange or such later date as Council may specify by Resolution; and
- (b) consents to the manner and form of the land exchange as set out in the land exchange agreement.

Community Notice

- 16.6 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote provided for in clause 16.2, Council or the Land Management Committee will provide the following information to Members:
- (a) a description of the Band Land to be exchanged;
  - (b) a description of the land to be received by the Band;
  - (c) a description of any other compensation to be received;
  - (d) a report of a certified land appraiser stating that the conditions in clauses 16.3 (a) and (b) have been met;
  - (e) a copy of the land exchange agreement; and
  - (f) a copy of the statement referred to in clause 16.6.

Process of Land Exchange

- 16.7 A land exchange agreement will provide that:
- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
  - (b) council must pass a Resolution authorizing Canada to transfer title to the Band Land being exchanged, in accordance with the land exchange agreement; and
  - (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the Band Lands Register and the First Nation Lands Register.

## **PART 5 ACCOUNTABILITY**

### **17. Conflict of Interest**

Application of Rules

- 17.1 Clause 17.2 applies to the following:
- (a) a member of Council who is dealing with any matter before Council that is related to Band Land;

- (b) an individual who is an employee of the Band dealing with any matter that is related to Band Land; and
- (c) an individual who is a member of a board, committee or other body of the Band dealing with any matter that is related to Band Land.

Duty to Report and Abstain

- 17.2 If there is any interest, financial or otherwise, in the matter being dealt with that might involve the individual or the individual's Immediate Relatives, that person will:
- (a) disclose the interest to the Council, employment supervisor, board, committee or other body;
  - (b) take no part in any deliberations on that matter; and
  - (c) not vote on that matter.

Common Interests

- 17.3 Clause 17.2 does not apply to any interest that is held by a Member in common with every other Member.

Meeting of Eligible Voters

- 17.4 If Council is unable to vote on a proposed Law or Resolution due to a conflict of interest, Council may refer the matter to a Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Law or Resolution.

Inability to Act

- 17.5 If a board, committee or other body is unable to act due to a conflict of interest, the matter will be referred to Council and Council may decide the matter.

Specific Conflict Situations

- 17.6 Not more than two Immediate Relatives may be members of the same board, committee or other body dealing with any matter that is related to Band Land.
- 17.7 Clause 17.6 does not apply to Council or any other body elected by the Members.

Disputes

- 17.8 Questions about whether a breach of this section has occurred may be referred to the Panel.

Other Laws

17.9 Council may enact such further Laws as may be necessary to implement this section.

**PART 6**  
**LAND ADMINISTRATION**

**18. Financial Management**

Application

18.1 This section applies only to financial matters related to Band Land.

Financial Planning and Administration

18.2 Council will implement or cause to be implemented a system of financial planning and financial administration for the management of Band moneys through which Council, Band employees and other persons who manage moneys in relation to Band Lands are accountable to the Members.

Adoption of Budget

18.3 Council will, by Resolution, prior to the beginning of each fiscal year, adopt a land management budget for that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt supplementary budgets for that fiscal year.

18.4 Prior to adopting a budget referred to in clause 18.2, Council will consult with the Land Management Committee.

Procedure

18.5 After adopting a land management budget or supplementary budget, Council will as soon as practicable:

- (a) present the budget or supplementary budget to the Members at a community meeting or Meeting of Members; and
- (b) make a copy of the budget or supplementary budget available at the Band administration offices for inspection by Members.

If No Budget

18.6 If Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

## Other Laws and Policies

- 18.7 Council may enact such further Laws or adopt such further policies or rules as may be necessary respecting the preparation and implementation of land management budgets under this section.

## Expenditures

- 18.8 Council may not expend moneys related to Band Land or commit, by contract or otherwise, to expend moneys related to Band Land unless the expenditure is authorized under a Law or an approved budget.

## Trust Agreement

- 18.9 This Part is subject to the Trust Agreement.
- 18.10 For greater certainty, this Land Code recognizes and affirms that the Net Income from Forest Resources and Mineral Resources and Right of Way Revenues, as those terms are defined in the Trust Agreement, will be paid by the Band to the Trustees of the Trust Agreement pursuant to the terms of the Trust Agreement.

**19. Financial Records**

## Financial Records

- 19.1 The Band will keep financial records in accordance with generally accepted accounting principles.

## Preparation of Financial Statement

- 19.2 Within ninety days after the end of each fiscal year, Council will prepare a financial statement in comparative form, containing:
- (a) a balance sheet;
  - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
  - (c) any other information necessary for a fair and thorough presentation of the financial position of the Band in relation to Band Land.

## Consolidated Accounts

- 19.3 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other accounts, audits and reports of the Band.

Establishment of Bank Accounts

- 19.4 Subject to the Trust Agreement, Council will maintain one or more financial accounts in a financial institution and will deposit in those accounts:
- (a) transfer payments received from Canada for the management and administration of Band Land;
  - (b) moneys received by the Band from the grant or disposition of interests or licenses in Band Land with the exception of moneys received from Forest Resources, Mineral Resources and Right of Way Revenues as provided in article 2.8 of the Trust Agreement;
  - (c) all fees, fines, charges and levies collected under a Law or Resolution;
  - (d) all capital and revenue moneys received from Canada from the grant or disposition of any interests and licenses in Band Land; and
  - (e) other land revenue received by the Band from Band Land.

Signing Officers

- 19.5 Council will authorize at least three individuals, one of whom will be a member of Council, one of whom will be a member of the Land Management Committee and one of whom may be an individual employed as Land Manager, to sign cheques and other bills of exchange or transfer drawn on the accounts referred to in clause 19.4.

Two Signatures

- 19.6 A cheque or other bill of exchange or transfer drawn on an account referred to in clause 19.4 must be signed by the member of Council and either of the two other individuals authorized under clause 19.5.

Fiscal Year

- 19.7 The fiscal year of the Band will begin on April 1 of each year and end on March 31 of the following year.

Other Laws and Policies

- 19.8 Council may enact such further Laws or adopt such further policies as may be necessary to implement this section.

Offences

- 19.9 It is an offence for any person who has control of the financial records of the Band to:
- (a) impede or obstruct anyone from exercising a right to inspect those records; or

- (b) fail to give all reasonable assistance to anyone exercising a right to inspect those financial records.

## 20. Borrowing and Investment

### Loans

20.1 Council may borrow moneys for purposes related to Band Land.

### Detailed financial plan

20.2 Council will ensure that for any moneys borrowed, a detailed financial plan is developed to repay the debt or liability.

### Security pledge

20.3 Subject to section 29 of the *Indian Act* Council may pledge such security as may be necessary to secure a loan.

### Other laws and policies

20.4 Council may enact such further Laws or adopt such further policies as may be necessary to implement this section.

### Investment

20.7 Money borrowed or revenue raised from Band Land may be invested or reinvested by Council in one or more of the following:

- (a) investments guaranteed by a chartered bank or trust company;
- (b) deposits in a savings institution, or non-equity or membership shares of a credit union;
- (c) securities of Canada or of a Province;
- (d) securities guaranteed for principal and interest by Canada or by a Province;
- (e) pooled investment funds under the First Nation Finance Authority, which include the money market and intermediate funds;
- (f) commercial paper issued by a company incorporated under the laws of Canada or of a Province, the securities of which are rated in the highest security rating by at least 2 recognized security rating institutions;
- (g) any of the classes of investments permitted under Clause 15 of the Trustee Act; or

- (h) such other securities or investments that have relatively no risk, are of the highest quality, are diversified and have a high grade investment rating as determined by at least 2 recognized security rating institutions.

**21. Audit**

Appointment of auditor

- 21.1 For each fiscal year, Council will appoint a duly accredited auditor to audit the financial records under this Part.

Holding Office

- 21.2 An auditor will hold office until reappointed or replaced.

Vacancy in Office

- 21.3 If a vacancy occurs during the term of an auditor, Council will forthwith appoint a new auditor for the remainder of the former auditor's term.

Remuneration

- 21.4 An appointment under clause 21.1 will contain a statement approving the remuneration to be paid to the auditor.

Duty of Auditor

- 21.5 The auditor will, within 120 days after the end of the Band fiscal year, prepare and submit to Council an audit report on the Band's financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly the financial position of the Band in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

Access to Records

- 21.6 In order to prepare the report on the Band's financial statement, the auditor may at all reasonable times inspect any financial records of the Band and the financial records of any person or body who is authorized to administer money related to Band Land.

Presentation of Auditor's Report

- 21.7 Council will present the auditor's report to the Members at a Meeting of Members.
- 21.7 Nothing precludes an auditor appointed for other Band audits from being appointed under clause 21.1.

## **22. Annual Report**

Publish Annual Report

22.1 Council will, within thirty days of receiving an audit report under clause 21.5, prepare and table with the Land Management Committee an annual report on Band Land management that includes:

- (a) an annual review of Band Land management activities;
- (b) a copy and explanation of the audit report as it applies to Band Lands; and
- (c) such other matters as may be determined by Council or requested by the Land Management Committee.

## **23. Access to Financial Information**

Copies for Members

23.1 A Member may, during normal business hours at the Band administration office, upon payment of any reasonable fee set by Resolution, obtain a copy of the auditor's report, annual report on Band Land management, budget or supplementary budget.

## **24. Land Management Committee**

Land Management Committee Established

24.1 A Land Management Committee is hereby established to:

- (a) assist with the development of a Band Land administration system;
- (b) advise Council and Band staff on matters respecting Band Land;
- (c) recommend to Council Laws, Resolutions, policies and procedures respecting Band Land;
- (d) hold regular and special meetings of Members to discuss Band Land issues and make recommendations to Council on the resolution of such issues;
- (e) assist in the exchange of information regarding Band Land issues between Members and Council;
- (f) oversee community approvals under this Land Code; and
- (g) perform such other duties and functions as Council may direct.

Development of Land Related Rules and Procedures

24.2 Within a reasonable time after this Land Code takes effect, Council will, in consultation with the community and the Land Management Committee, establish rules and procedures that address the following matters:

- (a) the process and criteria for granting interests in Band Land;
- (b) the process and criteria for appeal from a decision to grant or refuse to grant interests in Band Land;
- (c) environmental protection and assessment in relation to Band Land;
- (d) resolution of disputes in relation to Band Land;
- (e) Band Land use planning and zoning; and
- (f) clause 39 respecting spousal property.

Implementation of Policies

24.3 Rules and procedures developed in accordance with clause 24.2 will be considered by Council for implementation as Laws, policies or amendments to this Land Code.

Internal Procedures

24.4 The Land Management Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.

**25. Membership of the Land Management Committee**

Composition

25.1 The Land Management Committee will be composed of five Eligible Voters.

Eligibility to be Nominated As Committee Member

25.2 Any Eligible Voter, whether or not resident on Band Land, is eligible to be nominated and elected to the Land Management Committee, except for:

- (a) an Eligible Voter convicted of an offence that was prosecuted by way of indictment;
- (b) an undischarged bankrupt;
- (c) an Eligible Voter convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct; and

- (d) an Eligible Voter who, at the time of the nomination or election, is a Plaintiff in legal proceedings against the Band regarding Band Land.

Selection of Land Management  
Committee Members

- 25.3 The members of the Land Management Committee are to be elected by Eligible Voters.
- 25.4 Council will appoint an interim Land Management Committee to hold office until an election is held under clause 25.3.

Term of Office

- 25.5 The term of office of an elected member of the Land Management Committee elected under this Land Code shall not exceed six years, but nothing precludes an incumbent from being nominated for further terms.

Staggered Term of Office

- 25.6 In the first election held after this Land Code comes into force:
  - (a) the nominees receiving the highest, second highest and third highest number of votes will hold office for a term commencing at midnight on the date of the election and expiring at midnight six years following the date of the election or upon being replaced in a subsequent election, whichever occurs first; and
  - (b) the nominees receiving the fourth highest and fifth highest number of votes will hold office for a term commencing at midnight on the date of the election and expiring at midnight three years following the date of the election or upon being replaced in a subsequent election, whichever occurs first.
- 25.7 Thereafter, the elected members of the Land Management Committee will hold office for a term commencing at midnight on the date of their election and expiring at midnight six years following the date of the election, or upon being replaced in office in a subsequent election, whichever occurs first.

Election Law

- 25.8 Council will enact a Law to establish the procedure for Land Management Committee elections, including such additional transitional rules as may be necessary for the members of the first Land Management Committee.
- 25.9 The first election for members of the Land Management Committee after this Land Code comes into effect will be held no more than fourteen days after the next election of a Council, and no more than fourteen days after each election of Council thereafter.

Vacancy on Land Management Committee

- 25.7 The office of a member of the Land Management Committee becomes vacant if the member, while holding office:
- (a) is or becomes ineligible to hold office under clause 25.2;
  - (b) ceases to be a Band Member;
  - (c) is absent for three consecutive meetings of the Land Management Committee for a reason other than illness or incapacity without being authorized to be absent by the Land Management Committee;
  - (d) dies or becomes mentally incompetent; or
  - (e) resigns.

Vacancy in term

- 25.8 Where the office of a member of the Land Management Committee becomes vacant more than 90 days before the date when another election would ordinarily be held:
- (a) The nominee, if any, having the next highest count of votes without being declared elected at the last Land Management Committee election will be declared elected to the Land Management Committee; or
  - (b) a special election may be held in accordance with this Land Code to fill the vacancy.

Balance of term of office

- 25.9 The term of a member of the Land Management Committee selected to fill a vacancy under clause 25.8 is the balance of the term in respect of which the vacancy occurred.
- 25.10 The members of the Land Management Committee will accept their selection as members, accept the duties and obligations of same and agree to observe and carry out the same according to the terms and conditions of this Land Code.

**26. Chair of the Land Management Committee**

Chair

- 26.1 The members of the Land Management Committee will select a Chair.

Alternate Chair

26.2 If the Chair is unable to perform the functions of office, the Land Management Committee will appoint another member of the Land Management Committee to serve as Chair.

Duties of the Chair

26.3 The duties of the Chair are:

- (a) to chair meetings of the Land Management Committee;
- (b) to ensure that financial statements relating to all activities of the Land Management Committee, including any applicable revenues and expenditures concerning Band Lands, are prepared;
- (c) to table any Land Management Committee financial statements with Council;
- (d) to report to Council and the Members on the activities of the Land Management Committee;
- (e) to monitor the presentation of the audited annual financial statements under clause 21.7; and
- (f) to perform such other duties as Council or the Land Management Committee may reasonably prescribe.

**27. Revenue From Lands**

Determination of Fees and Rent

27.1 The Land Management Committee will recommend to Council a process for determining:

- (a) fees and rent for interests and licenses in Band Land;
- (b) fees for services provided in relation to any Band Land and compliance with this Land Code; and
- (c) standards and qualifications for employees and contractors hired for purposes of implementing and administering this Land Code.

Consideration of Obligation

27.2 Subject to clause 19.4, the Land Management Committee will recommend to Council processes and criteria for managing the First Nation's obligations in relation to revenue from lands.

**28. Registration of Interests and Licenses**

Band Lands Register

- 28.1 Council will maintain a Band Lands Register in the same form and with the same contents as the First Nation Lands Register.
- 28.2 An interest or license in Band Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the Band Lands Register.
- 28.3 No instrument that requires the consent of Council or community approval may be registered in the Band Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.
- 28.4 Every person who receives an interest or license in Band Land from a Member will deposit an original copy of the relevant instrument in the Band Lands Register.

First Nation Lands Register

- 28.5 Council will ensure that a duplicate copy of the following instruments is deposited in the First Nation Lands Register:
  - (a) a grant of an interest or license in Band Land;
  - (b) a transfer or assignment of an interest in Band Land;
  - (c) a land use plan, subdivision plan or resource use plan; and
  - (d) this Land Code and any amendment to this Land Code.

**PART 7  
FOREST RESOURCES**

**29. Forest Practices**

- 29.1 Forest Practices on Band Land will be regulated in accordance with Article 6 of the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement.
- 29.2 For greater certainty, the Band will conduct Forest Practices on Band Land in accordance with:
  - (a) the McLeod Lake Indian Band Forest Practices Code;
  - (b) the McLeod Lake Indian Band forest development plans;

- (c) principles of sustainable forest use; and
- (d) any applicable federal legislative requirements.

## **PART 8 INTERESTS AND LICENSES IN LAND**

### **30. Limits on Interests and Licenses**

#### All Dispositions in Writing

- 30.1 An interest in, or license to use, Band Land may only be created, granted, disposed of, assigned or transferred by a written document issued in accordance with this Land Code.

#### Standards

- 30.2 Council may, after full and fair consideration of any recommendations made by the Land Management Committee under clause 24.2, establish mandatory standards, criteria and forms for interests and licenses in Band Land.

#### Improper Transactions Void

- 30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Band, a Member or any other person purports to grant, dispose of, transfer or assign an interest or license in Band Land after the date this Land Code comes into effect is void if it contravenes this Land Code.

#### Non-Members

- 30.4 A person who is not a Member may hold a lease, license or permit in Band Land.

#### Grants to Non-Members

- 30.5 The written consent of Council must be obtained for any grant or disposition of a lease, license or permit in Band Land to a person who is not a Member.

### **31. Existing Interests**

#### Continuation of existing interests

- 31.1 An interest or license in Band Land that exists when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with its terms and conditions.

**32. New Interests and Licenses**

Authority to Make Dispositions

32.1 Subject to clause 11.1, Council may under this Land Code grant:

- (a) interests and licenses in Community Land, including leases, permits, easements and rights-of-ways; and
- (b) permits to take resources from Community Land, including but not limited to, cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional Grant

32.2 The grant of an interest, license or permit may be made subject to written conditions.

Role of the Land Management Committee

32.3 The Land Management Committee will advise Council on the granting of interests, licenses and permits and may be authorized to act as a delegate of Council under clause 6.4.

**33. Possession of Land by Members**

Nature of Members Interest

33.1 Subject to clause 11.1, Council may enact Laws providing for interests in Band Land that entitle a Member holding Band Land to:

- (a) benefit from the resources in and of that land;
- (b) grant subsidiary interests and licenses in that land, including leases, permits, easements and rights-of-ways; and
- (c) transfer, devise or otherwise dispose of that land to another Member.

**34. Allocation of Land**

Allocation of Lots

34.1 Subject to clause 34.2, Council may, by lease or rental arrangement, allocate lots of available land to Members in accordance with Laws established by Council.

34.2 Council may not allocate permanent possession of Band Land to a Member.

**35. Transfers and Assignment of Interests**

Transfer of Interests

35.1 A Member may transfer or assign an interest in Band Land to another Member without community approval or consent of Council.

Consent of Council

35.2 Except for transfers or assignments under clause 35.1 and transfers that occur by operation of Law, including transfers of estates by testamentary disposition or in accordance with a Law enacted pursuant to clause 39:

- (a) there will be no transfer or assignment of an interest in Band Land without the written consent of Council; and
- (b) the grant of an interest or license is deemed to include clause 35.2(a) as a condition of any subsequent transfer or assignment.

**36. Limits on Mortgages and Seizures**

Protections

36.1 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to Band Land.

Mortgage of Member's Interest

36.2 The interest of a Member in Band Land may be subject to a mortgage or charge only to the Band.

Mortgages of Leasehold Interests With Consent

36.3 A leasehold interest may be subject to charge or mortgage only with the written consent of Council.

Time Limit

36.4 The term of any charge or mortgage of a leasehold interest will not exceed the lesser of:

- (a) the term of the lease;
- (b) 25 years; or
- (c) such longer period as may receive community approval at a Meeting of Members.

## Default in Mortgage

- 36.5 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:
- (a) the charge or mortgage received the written consent of Council;
  - (b) the charge or mortgage received community approval where required;
  - (c) the charge or mortgage was registered in the Band Lands Register; and
  - (d) a reasonable opportunity to redeem the charge or mortgage was given to Council.

## Power of Redemption

- 36.6 If Council exercises its power of redemption with respect to a leasehold interest, the Band becomes the lessee of the land and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

**37. Residency and Access Rights**

## Right of Residence

- 37.1 The following persons may reside on Band Lands:
- (a) a Member who has been allocated a residential lot by Council;
  - (b) a Spouse and children of a Member referred to in clause 37.1(a);
  - (c) a Member with a registered interest in Band Land; and
  - (d) a lessee or permittee in accordance with the provisions of the instrument granting the lease or permit.

## Right of Access

- 37.2 The following persons have a right of access to Band Lands:
- (a) an invitee of a Member referred to in clause 37.1(a) or (b) unless prohibited by a Resolution;
  - (b) a lessee of Band Land;
  - (c) a lessee of Band Land's invitee;

- (d) a permittee and any person who is granted a right of access under the permit;
- (e) a Member;
- (f) a Member's Spouse and children;
- (g) a person who is authorized by a government body or any other public body, established by or under an enactment of the Band, Canada or British Columbia to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey;
- (h) a person who has a right of access recognized under the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement; or
- (i) a person authorized in writing by Council, the Land Management Committee or by a Law.

Public Access

37.3 A person may have access to Band Land for social or business purposes if:

- (a) that person does not trespass on occupied land and does not interfere with any interest in land;
- (b) that person complies with all applicable Laws; and
- (c) no Resolution has been enacted prohibiting that person from having access to Band Land.

Trespass

37.4 It is an offence for any person to reside on, enter or remain on Band Land other than in accordance with a right of residence or access under this Land Code.

Civil Remedies

37.5 All civil remedies for trespass are preserved.

**38. Transfers on Death or Mental Incompetence**

Right of Surviving Spouse

38.1 In the event that:

- (a) a Member holding an interest in Band Land dies and is survived by a Spouse who does not hold a registered interest in that land; or

- (c) a Member holding an interest in Band Land is declared incompetent due to mental incapacity,

the Member's Spouse may reside on and use the land until such time as a determination is made under clause 38.2(b).

Location of Family Members

38.2 If no provision has been made by such Member for the disposition of the interest in the Band Land to another Member:

- (a) council will take reasonable steps to advise the Member's Immediate Relatives that the land held by the Member is available for disposition; and
- (b) the Member's Immediate Relatives may, with the assistance of the Panel if requested, decide who among them is to receive the interest in the land.

Meeting of Members

38.3 If such Member has no Immediate Relatives, or if the Immediate Relatives cannot within 12 months of the date of such Member's death or declaration of incompetence decide who is to receive the interest, Council will call a Meeting of Members to discuss the issue and make a decision on the disposition of the interest.

**39. Spousal Property Law**

Development of Rules and Procedures

39.1 Within twelve months after the date this Land Code takes effect Council will enact a spousal property Law providing rules and procedures applicable on the breakdown of a marriage, to:

- (a) the use, occupancy and possession of Band Land; and
- (b) the division of interests in that land.

Enactment of Rules and Procedures

39.2 The rules and procedures contained in the spousal property Law will be developed by the Land Management Committee in consultation with the community.

General Principles

39.3 The rules and procedures developed by the Land Management Committee under clause 39.2 will respect the following general principles:

- (a) the children of the Spouses, if any, should have a right to remain undisturbed in the matrimonial home;

- (b) each Spouse should have an equal right to possession of the matrimonial home;
- (c) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
- (d) the rules and procedures will not discriminate on the basis of sex; and
- (e) only Members are entitled to hold a permanent interest in Band Land.

Interim Rules

- 39.4 Council may enact a spousal property Law as soon as practicable after this Land Code comes into force.
- 39.5 A Law enacted under clause 39.4 will expire twelve months after the coming into force of this Land Code unless re-enacted, replaced or amended in accordance with clause 39.1.

**PART 9  
DISPUTE RESOLUTION**

**40. Dispute Resolution Panel**

Panel Established

- 40.1 A Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to Band Land.

Appointment of Panel

- 40.2 A Panel will be composed of three Eligible Voters.

Representation

- 40.3 The Land Management Committee will appoint the Panel, and may for the purposes of identifying potential members of the Panel, establish an eligibility list that will ensure that the Panel represents the various elements of the community, including Elders, youth and non-resident Members.

Disputes with the Land Management Committee

- 40.4 Notwithstanding clause 40.3, in the event of a dispute with the Land Management Committee, and unless otherwise agreed by the Parties to the dispute, a Panel will be appointed as follows:
  - (a) one Panelist by the Land Management Committee;

- (b) one Panelist by Council; and
- (c) one Panelist by the person initiating the dispute.

Term of Office

40.5 A Panelist will hold office for a maximum term of three years.

No Remuneration

40.6 Unless Council by Resolution provides otherwise, panelists will receive no remuneration.

**41. Dispute Procedure**

Disputes

41.1 Any matter or dispute related to Band Land may be referred to the Panel for resolution.

Prior Disputes

41.2 For greater certainty, disputes that originated before this Land Code comes into effect may be referred to the Panel.

Optional Process

41.3 Referral of a dispute to the Panel is optional and all other civil remedies continue to be available to a party to the dispute.

Informal Resolution of Disputes

41.4 If a Member, or a non-Member with an interest in Band Land, disputes a decision of Council or the Land Management Committee that person will attempt to resolve the dispute directly with Council or the Land Management Committee, as the case may be, before referring the dispute to the Panel.

Application Procedures

41.5 Referral of a dispute to the Panel will be made in accordance with procedures established by the Panel.

Limitation Period

41.6 The limitation period for referring a dispute to the Panel is:

- (a) thirty days after the day the decision, act or omission that is the subject of the dispute was made;

- (b) in the case of a decision under clause 38.2(b), 18 months after the date of the decision; or
- (c) in the case of a dispute with the Land Management Committee or Council, thirty days after the Land Management Committee or Council rejects resolution under clause 41.4.

**42. Impartiality**

Duty to Act Impartially

42.1 The Panel will act impartially and without bias or favour to any party in a dispute.

Offence

42.2 It is an offence for a person to act, or attempt to act, to improperly influence a decision of the Panel.

Rejection of Application

42.3 In addition to any other sanction, the Panel may refuse an application to hear a dispute if the Panel reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Panel's decision.

**43. Powers of Panel**

Powers of Panel

43.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased; or
- (d) refer the matter or dispute for reconsideration.

Rules of Panel

43.2 The Panel may establish rules for procedure at its hearings and the general conduct of its affairs.

Professional Services

43.3 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it will make best efforts to use professional services available in the community.

Written Decisions

43.4 Decisions of the Panel will be in writing and signed by the individual chairing the Panel or by an officer designated by the Panel.

Reasons

43.5 The Panel will give reasons for a decision.

43.6 The Panel will give written reasons for a decision if a party to the proceedings so requests within 14 days after the date of the decision.

Appeal of Decision

43.7 A decision of the Panel is binding but, subject to any exception established by a Law, may be appealed to the Federal Court of Canada.

## **PART 10 OTHER MATTERS**

### **44. Liability**

Liability Insurance

44.1 Council will arrange for, maintain and pay out of the transfer payments received from Canada, insurance coverage for:

- (a) liability of the Band in relation to Band Land; and
- (b) the Band's officers and employees engaged in carrying out any matter related to Band Land to indemnify them against personal liability arising from those activities.

Extent of Coverage

44.2 Council will determine the extent of insurance coverage under clause 44.1.

44.3 Every employee of the Band whose responsibilities include administration of Band Land or collecting or accounting for revenue from Band Land must be bondable.

### **45. Offences**

Application of the Criminal Code

45.1 Unless a Law provides for another procedure, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code or under a Law.

Justices of the Peace

45.2 For greater certainty, Council may enact Laws respecting justices of the peace for the enforcement of this Land Code and Laws.

Provincial Courts

45.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia.

**46. Amendments to Land Code**

Meeting of Members

46.1 An amendment to this Land Code must receive community approval at a Meeting of Members.

**47. Commencement**

Preconditions

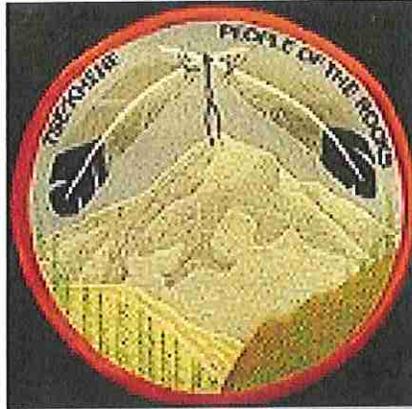
47.1 This Land Code will not take effect unless:

- (a) the Members approve this Land Code and the Transfer Agreement with Canada by a Ratification Vote; and
- (b) this Land Code has been certified by the verifier pursuant to the Framework Agreement.

Effective Date

47.2 Subject to clause 47.1, this Land Code will take effect on the first day of the month following certification of this Land Code by the verifier.

# McLeod Lake Indian Band Forest Practices Code



**June, 2003**

**Version 8.2**

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McLeod Lake Indian Band

**McLeod Lake Indian Band  
Forest Practices Code  
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## **Part 1 - Purpose**

### **1. Purpose**

The purpose of the McLeod Lake Indian Band Forest Practices Code is to ensure that on Band lands all forest practices are conducted in accordance with sustainable forest use for the benefit of all Band members, present and future.

## Part 2 - Definitions, Interpretation And Application

### 1. Definitions

(1) in this code;

**"active flood plain"** means a level area, with alluvial soils, adjacent to streams that is flooded by stream water on a periodic basis and is at the same elevation as areas showing evidence of:

- (a) flood channels free of terrestrial vegetation,
- (b) recently rafted debris or fluvial sediments newly deposited on the surface of the forest floor or suspended on trees or vegetation, or
- (c) recent scarring of trees by material moved by flood waters;

**"access management"** means the temporary removal of a major drainage structure or of a barrier, including a gate, excavation, or placement of boulders with the purpose of temporarily eliminating all vehicle access;

**"adjacent"** means an area contiguous to, or in close proximity to,

- (a) a road or proposed road,
- (b) a cutblock, or
- (c) an area under a stand management prescription or site plan that due to its location
  - i. could directly impact on,
  - ii. be impacted by, forest practices within the area of the road, cutblock or prescription;

**"aggressive harvest"** means removal or modification of up to 100% of original stand composition and natural levels of shading and light intensity reaching the forest floors.

**"annual audit"** means the audit of the McLeod Lake Indian Band's Forest Practices conducted in accordance with Part 10 Article 2(1) of the Code;

**"annual audit report"** means the report produced on the annual audit in accordance with the Part 10 Article 2(2) of the Code;

**"annual report"** means the report of the McLeod Lake Indian Band's Forest Practices produced in accordance with Part 10 Article 1(1) of the Code;

**"archaeological impact assessment"** means an assessment of archaeological impacts that meets the requirements and standards set out in the *Heritage Conservation Act*;

**"area to be treated"** means the total of the areas that are proposed for treatments under a stand management prescription, but does not include any of the following:

- (a) an area occupied by permanent access structures;

- (b) an area including an area of rock or wetland, that in its natural state is not capable of supporting a free growing stand of trees;
- (c) an area of non-commercial forest cover except and to the extent that it is specifically identified in the stand management prescription as an area for treatment;
- (d) an area indicated in a stand management prescription map as a reserve area where the treatment of a free growing stand is not proposed;

**"Band"** means the McLeod Lake Indian Band;

**"Band land"** means land administered by the McLeod Lake Indian Band including reserve lands of the Band;

**"Band member"** means 'member of the Band' as defined in the Indian Act, of the McLeod Lake Indian Band;

**"biodiversity"** means the diversity of plants, animals and other living organisms in all their forms and levels of organization, and includes the diversity of genes, species and ecosystems, as well as the evolutionary and functional processes that link them;

**"biogeoclimatic ecosystem classification"** means a hierarchical classification system of ecosystems that

- (a) integrates regional, local and chronological factors, and
- (b) combines climatic, vegetation and site factors;

**"bladed trail"** means a constructed trail that has

- (a) a width greater than 1.5 m and
- (b) a mineral soil cutbank height greater than 30 cm;

**"botanical forest product"** means a plant or fungus that occurs naturally on Band land;

**"bridge"** means a temporary or permanent structure carrying a road above a stream or other opening;

**"clearcut"** means a silvicultural system that

(a) removes the entire stand of trees in a single harvesting operation from an area that is:

- i. one ha or greater, and
- ii. at least 2 tree heights in width, and

(b) is designed to manage the area as an even-aged stand;

**"clearing width"** means the width required to be cleared of standing timber to accommodate road construction maintenance or use;

**"Code"** means the McLeod Lake Indian Band Forest Practices Code;

**"commencement date"** means for a site plan, the date when timber harvesting, excluding road and landing construction, begins on the area under the plan;

**"compacted area"** means an area of soil that

- (a) is greater than 100 m<sup>2</sup> in area and greater than 5 m wide,
- (b) has a moderate, high or very high soil compaction hazard or the assessment of its soil compaction hazard was not documented in an operational plan
- (c) has been compacted by equipment traveling over it, and
- (d) has one or more of the following attributes:
  - i. altered soil structure or increased density relative to the surrounding undisturbed soil;
  - ii. soil puddling;
  - iii. compacted deposits of forest floor, fine slash, and woody debris overlaying or crushed into the mineral soil;

**"corduroyed trail"** means logs and woody debris placed side-by-side to form a surface greater than 2 m in length capable of supporting equipment traffic;

**"Council"** means the 'council of the band' as defined in the Indian Act, of McLeod Lake, elected pursuant to the McLeod Lake Indian Band Custom Election Code;

**"culvert"** means a transverse drain pipe or log structure covered with soil and lying below the road surface;

**"cutblock"** means a specific area of land identified on a forest development plan within which timber is to be or has been harvested.

**"cut slope"** means the face of an excavated bank required to lower the natural ground line to the desired road profile;

**"Cutting Permit"** means a permit to harvest timber issued under this Code.

**"deactivation"** means to provide maintenance-free pathways for surface water, seepage and overland flow so that surface soil erosion, mass wasting and surface ponding of water are minimized and the road prism is stabilized;

**"designate"** means a person designated by the Council to act in its place;

**"determination"** means any act, omission, decision, procedure, levy, order or other determination made under the Code by the Council or designate;

**"direct tributary"** means the reaches of a tributary stream that have the same stream order as the most downstream reach of the tributary;

**"dispersed disturbance"** means any of the following:

- (a) an area of soil that is at least 1 m x 2 m in area and that otherwise meets the definition of 'compacted area';
- (b) a rut in the soil that
  - i. is at least 30 cm x 2 m, and
  - ii. has a minimum depth, for a distance of at least 2 m, of

- (a) 15 cm from the surface of the undisturbed forest floor, or
- (b) 5 cm from the surface of the undisturbed mineral soil, if the area has a high or very high soil compaction hazard or the assessment of its soil compaction hazard was not documented in an operational plan;
- (c) an excavation into mineral soil that is
  - i. deeper than 30 cm,
  - ii. deeper than 5 cm if it covers
    - (a) at least 80% of a 1.8 m x 1.8 m area, or
    - (b) an area of a least of 1 m x 3 m, or
  - iii. to the depth of bedrock;
- (d) an area in which the forest floor has been removed from
  - i. over 80% of a 3 m x 3 m area, or
  - ii. over 80% of a 1.8 m x 1.8 m area if the area
    - (a) has a moderate or high likelihood of landslides,
    - (b) has a very high soil erosion hazard,
    - (c) has a very high soil compaction hazard,
    - (d) has a very high soil displacement hazard, or
    - (e) has not had hazards relating to soil compaction, soil displacement or soil erosion documented in an operational plan;

**"ESSF"** means the Englemann spruce subalpine fir biogeoclimatic zone;

**"excavated trail"** means a constructed trail that has

- (a) an excavated or bladed width greater than 1.5 m, and
- (b) a mineral soil cutbank height greater than 30 cm;

**"fill slope"** means the face of an embankment required to raise the desired road profile above the natural ground line;

**"fire extinguisher"** means a fully charged and operable fire extinguisher bearing the Underwriters' Laboratories of Canada label that rates the extinguisher as suitable for use on class A, B or C fires;

**"fire watcher"** means a person at an industrial activity work site who provides surveillance for forest fires;

**"fish stream"** means a stream that

- (a) is frequented by any of the following species:
  - i. anadromous salmonids;

- ii. rainbow trout, cutthroat trout, brown trout, bull trout, Dolly Varden char, lake trout, brook trout, mountain whitefish, lake whitefish, arctic grayling, burbot, white sturgeon;
  - iii. identified threatened or endangered fish classified under section 71 of the Operational Planning Regulation of the Forest Practices Code of British Columbia Act;
  - iv. regionally important fish as determined by the Ministry of Environment - Regional Fisheries Biologist.
- (b) has a slope gradient, determined in accordance with the Fish-stream Identification Guidebook, of less than 20%,
- i. unless the stream has been identified in a fish inventory carried out in accordance with the Fish-stream Identification Guidebook, as not containing any of the species of fish specified in paragraph (a), or
  - ii. unless
    - (a) the stream is located upstream of a known barrier to fish passage, identified on a fish and fish habitat inventory map,
    - (b) all reaches upstream of the barrier are simultaneously dry at any time during the year, and
    - (c) no perennial fish habitats exist upstream of the barrier.

**"fisheries-sensitive zone"** means a flooded depression, pond or swamp, that:

- (a) either perennially or seasonally contains water, and
- (b) is seasonally occupied by a species of fish listed in the definition of "fish stream", but does not include a stream wetland or lake that has a riparian management zone established;

**"flat gradient"** means a stream with an average gradient of 0-3% where it flows through Band Land.

**"forest"** includes all of the following:

- (a) Band land that is predominantly maintained in one or more successive stands of trees, or
- (b) successive crop of forage;

**"forest development plan"** means the document that describes and illustrates how harvesting and road development for a specific area will be managed for a period of at least five years;

**"forest fire"** means a fire burning in a forest or a fire burning at an industrial activity work site which threatens to spread to a forest;

**"forest health factors"** means biotic and abiotic influences on a forest that are usually a naturally occurring component of forest ecosystems;

**"forest licence"** means a licence authorizing the harvesting of a specified allowable annual cut of timber and/or related forest products over a specified area of Band land;

**"forest practices"** means timber harvesting and related activities, road construction, road modification, road maintenance, road deactivation, silviculture treatments, botanical forest products collecting, grazing, fire use, control and suppression and any other forest activity that is carried out on Band land;

**"forest products"** means timber, special forest products and pulplogs; whether trees standing, falling, living, dead, limbed, bucked or peeled;

**"forest resources"** means resources and values associated with forests and range including, without limitation, timber, water, wildlife, fisheries, recreation, botanical forest products, forage and biological diversity;

**"Forestry Officer"** means the Forestry Officer of the McLeod Lake Indian Band, as provided in Part 13, Article 1;

**"free growing"** means a stand of healthy trees of a commercially valuable species, the growth of which is not impeded by competition from plants, shrubs or other trees;

**"free growing assessment period"** means the period of time within which the requirements of Part 7 will be met, wherein the beginning and end of the period are measured from the commencement date, if the site plan is approved by the Council;

**"free growing date"** means the period of years specified, by which the requirement to produce a free growing stand will be met;

**"greened-up"** means when used to describe a cutblock, a cutblock where at least 75% of the cutblock meets the following requirements, unless the Council or designate specifies another percentage in a written notice:

- (a) for the purposes of paragraph (b) **"adequately stocked"** means a total stand density of commercially valuable species of not less than 1000 stems per hectare.
- (b) if no higher level plan specifies a green-up requirement that applies to the cutblock, the cutblock is greened-up if:
  - i. it is adequately stocked and
    - (a) the leading species in the cutblock has attained a top height of at least 3 m, or
    - (b) the dominant overstory species has attained a top height of at least 3 m, where the leading species does not reflect the dominant stand height as a result of dense natural regeneration of the leading species under a well established overstory or
  - ii. it is not adequately stocked, and
    - (a) either
      - i. the leading species has attained a top height of greater than 3m specified by the Council or designate, or,

- ii. the dominant overstory species has attained a top height greater than 3m, specified by the Council or designate where the leading species does not reflect the dominant stand height as a result of dense natural regeneration of the leading species under a well established overstory and
- (b) the cutblock contains at least the minimum number of trees per hectare specified by the Council or designate, of a species specified by the Council or designate;
- (c) despite paragraph (c), the Council or designate, may specify in a written notice given to the holder:
  - i. a minimum number of trees per hectare required to attain a height of 3m that will be used for the purposes of that paragraph, or
  - ii. a top height of a species, other than the leading species, that will be used for the purposes of that paragraph, if the Council or designate is satisfied that the leading species:
    - (a) does not reflect the dominant stand height,
    - (b) if deciduous, does not meet hydrologic, wildlife or scenic values, or
    - (c) may be subject to removal or modification;
    - (d) despite paragraphs (c) and (d), the top height that will be attained may be a height of less than 3m, specified by the Council or designate in a written notice given to the holder, if the Council or designate is satisfied that the specified height adequately manages and conserves the forest resources;
    - (e) despite paragraph (c), the top height that will be attained by the leading species may be a height of more than 3 m specified by the Council or designate in a written notice given to the holder, if the Council or designate determines that the area does not support a stand sufficient to:
      - i. meet hydrological concerns,
      - ii. manage wildlife values, or
      - iii. manage recreation or scenic values;

**"harvesting"** means the practice of felling trees, removing trees or the removal of dead or damaged trees from an area;

**"hot work"** means any work generating significant amounts of heat and includes the cutting, grinding, welding and heating of metals;

**"indicators of potential slope instability"** means the indicators of potential slope instability as determined in accordance with the procedure set out in the Mapping and Assessing Terrain Stability Guidebook of the British Columbia Ministry of Forests;

**"industrial activity"** includes land clearing, timber harvesting, timber processing, mechanical site preparations and other silviculture treatments, mining, road construction and any prescribed activity;

**"initial fire suppression"** means action that is appropriate to take when a fire is first discovered, to contain or limit the spread of the fire, and, if possible, extinguish the fire;

**"intermediate cuttings"** means the harvesting of timber, other than minor salvage and minor harvesting operations, where

- (a) the harvesting takes place before the final harvest or regeneration cut, and does not result in a requirement to regenerate the area, and
- (b) the majority of the pre-harvest stand volume is not removed;

**"inner gorge"** means where a sidewall slope of a gorge breaks to less than 50% slope

**"inordinate soil disturbance"** means soil disturbance that

- (a) results in the Forestry Officer requiring rehabilitation of soil or
- (b) exceeds the soil disturbance limit specified in a site plan

**"large engine"** means an engine having a power greater than 7.5 kw (10 hp.) used in an industrial activity but does not include

- (a) a water-borne engine,
- (b) an engine in a vehicle which is primarily used for the transportation of people, or
- (c) an engine in a helicopter;

**"likelihood of landslides"** means the likelihood of landslides as determined by a terrain stability field assessment unless the context indicates otherwise;

**"Long Term Reserve"** means a parcel of land identified by Council, where commercial timber harvesting is restricted;

**"long term supply of large woody debris"** means the supply of large woody debris into a stream for the period between 50 and 150 years after forest harvesting.

**"major culvert"** means a stream culvert having a pipe diameter of 2,000 mm or greater or a maximum design discharge of 6m<sup>3</sup>/sec or greater;

**"mature layer"** means the layer of trees that have a stem diameter of 12.5 cm or greater measured at a height of 1.3 m;

**"minor harvesting operations"** means timber harvesting operations, including the harvesting of special forest products, of a volume **not** exceeding the greater of

- (a) a volume not exceeding 1000 m<sup>3</sup>
- (b) of an area not exceeding 1 ha contiguous.

**"minor salvage operation"** means any harvesting of timber that:

- (a) is dead, infested with pests or otherwise damaged or that is required to be harvested to facilitate the removal of the dead, infested or damaged timber, or

(b) is required as part of a sanitation treatment, and is of a total volume not exceeding 1,000 m<sup>3</sup>, or an area not exceeding 1 ha contiguous excluding the volume and area harvested from any road clearing width, if the road is required to facilitate the removal of timber referred to in paragraph (a) or (b).

**"moderate gradient"** means a stream with an average gradient of 4-12% where it flows through Band Land.

**"modification"** means, with respect to roads and trails, a significant alteration of an existing road or trail that involves rebuilding or relocating the road or trail;

**"natural levels of shading"** means the amount of shading and light intensity reaching the stream surface and forest floor prior to harvesting. The shading should be assessed using the concept of angular canopy density provided by Beaudry et al (1999).

**"net area to be reforested"** means that portion of the area under an operational or site plan that does not include

(a) an area occupied by permanent access structures,

(b) an area of rock, wetland or other area that in its natural state is incapable of growing a stand of trees that meets the stocking requirements specified in the plan, or

(c) a contiguous area of more than 4 ha that the council or designate determines is composed of non-commercial forest cover,

(d) a long term reserve where new stand is not required;

**"open fire"** means any burning conducted in such a manner that combustion products are not vented through a stack or chimney;

**"operational plan"** means a forest development plan, site plan or stand management prescription;

**"owner"** in relation to an industrial activity means,

(a) a person who owns the right to conduct the industrial activity if the industrial activity is conducted on Band land, or

(b) a licensee or permittee if the industrial activity is conducted on Band land under a licence or permit issued under the Code;

**"penalty"** means an assessed penalty consistent with the Administrative Remedies Section of McLeod Lake Indian Band - Forest Practices Code;

**"permanent access structure"** means

(a) a road, landing, pit or quarry that is

- i. reasonably required to be used, or to provide access for, timber harvesting or other forest management activities, and whose continuous or periodic use will continue for a long enough time to prevent the production of a commercial crop of trees, on the area of the road, landing, pit or quarry, that will be harvestable concurrently with the crop in adjacent areas, or

- ii. either constructed through soil or rock that is not suitable, or that contains component materials such as ballast that are not suitable, for use in carrying out the soil rehabilitation treatments necessary to grow a commercial crop of trees, unless the structure has been identified in an operational plan as a temporary access structure, and
- (b) an excavated or bladed trail, or other logging trail, whose continuous or periodic use will continue for a long enough time to prevent the production of a commercial crop of trees, on the area of the trail, that will be harvestable concurrently with the crop in adjacent areas;

**"permanent bridge"** means a bridge whose expected life at its current location is greater than 15 years;

**"person"** means any individual, company, corporation, partnership, the Band, trust, joint venture, unincorporated organization, Indian Band, union or governmental body; and their respective heirs, legal representative, successors or assigns;

**"person's area of operation"** means the area on which or within 500m of which the person is carrying out an industrial activity;

**"plant harvesting"** means the collection of plant life including, but not limited to, bark, berries, boughs, branches, burls, cones, conks, ferns, flowers, grasses, herbs, fungi, lichens, mosses, mushrooms, roots, shrubs, sedges, sprays and twigs;

**"pole layer"** means the layer of trees that have a stem diameter greater than or equal to 7.5 cm, but less than 12.5 cm measured at a height of 1.3 m;

**"preferred and acceptable species"** means the preferred and acceptable species of trees specified in an operational plan;

**"professional engineer"** means a Registered Professional Engineer (P.Eng) with the Association of Professional Engineers and Geoscientists of British Columbia;

**"professional forester"** means a Registered Professional Forester (RPF) with the Association of British Columbia Professional Foresters;

**"pulplog"** means a firmwood reject log where:

- (a) heart rot or hole runs the entire length of the log being scaled and the residual collar of the firmwood constitutes less than 50% of the gross scale of the log;
- (b) rot is in the log and the scaler estimates the net length of the log to be less than 1.2 m;
- (c) sap rot or charred wood exists and the residual firmwood is less than 10 cm in diameter at the butt end of the log;
- (d) that portion of a log that is less than 10 cm in diameter or that portion of a slab that is less than 10 cm in thickness;

**"qualified inspector"** means a person who, in the opinion of the Council or designate is qualified by training or experience to inspect bridges or major culverts and interpret the significance of the inspection results;

**"reach"** has the meaning defined in the Fish-stream Identification Guidebook;

**"reconnaissance terrain stability map"** means a map produced from aerial photographs, with few or no ground checks, that identifies unstable and potentially unstable terrain;

**"recreation feature"** means a biological, physical, cultural or historical feature that has recreational significance or value;

**"regeneration date"** means the date by which the requirements of Part 7 will be met, determined as follows: (a) the date is measured from the commencement date, if the site plan is approved by the council or designate;

**"regeneration layer"** means the layer of trees that is less than 1.3 m in height;

**"rehabilitation"** means restoring the site to a stable condition that will no longer require human intervention to maintain, and re-establishing soil productivity to a level capable of sustaining the production of a crop of commercially acceptable trees;

**"resource feature"** includes all of the following:

- (a) a cultural heritage resource;
- (b) a recreational feature;
- (c) a range development;
- (d) a wildlife habitat feature;
- (e) a stream, wetland and lake;
- (f) any other feature designated by Council;

**"restricted area"** means an area of land designated by the Council or designate as a restricted area;

**"riparian"** means of, on, or relating to the bank of a natural course of water;

**"riparian class"** means a riparian class determined under Part 8;

**"riparian management area"** means an area of a width determined in accordance with Part 8 that;

- (a) is adjacent to a stream, wetland or a lake and,
- (b) based on a site specific assessment by a professional forester, consists of a specific prescription for a riparian management area depending on the riparian class of the stream,

**"risk of sediment delivery to streams"** means the risk of sediment delivery to streams as determined in accordance with the Hazard Assessment Keys for Evaluating Site Sensitivity to Soil Degrading Processes Guidebook;

**"road"** means roads and landings within the reserve and roads outside the reserve leading to the reserve. Road outside the reserve include, but are not limited to the following: Ministry of Forests Forest Service Roads, Road Permitted Roads and Timber Sale Licence Roads; Ministry of Highways Roads; and other roads under the jurisdiction of B.C.

**"road prism"** means the area of the ground containing the road surface, cut slope and fill slope;

**"road subgrade width"** means the width of the top surface of the road fill or excavated surface before surfacing is applied;

**"sanitation treatment"** means tree removal or modification operations designed to reduce damage caused by forest pests and to prevent their spread;

**"sapling layer"** means the layer of trees that have a stem diameter of less than 7.5 cm measured at a height of 1.3 m;

**"SBS"** means the sub-boreal spruce biogeoclimatic zone;

**"seedlot"** means a quantity of cones or seeds having the same species, source, quality and year of collection;

**"sensitive slopes"** means the following areas:

- (a) areas mapped on terrain stability hazard maps as having a moderate or high likelihood of landslides;
- (b) if no terrain stability hazard mapping has been done, areas identified on reconnaissance terrain stability maps as having unstable or potentially unstable terrain;
- (c) if no terrain stability hazard mapping or reconnaissance terrain stability mapping has been carried out, areas with a slope gradient greater than 60%;
- (d) areas with indicators of potential slope instability;
- (e) other areas identified by the Council or designate as having unstable or potentially unstable terrain;

**"shading assessment"** means an assessment of the shading reaching a stream surface and forest floor. The shading should be assessed using the concept of *angular canopy density*<sup>1</sup>.

**"short term supply of large woody debris (LWD)"** means the supply of large woody debris into a stream for the 50 years following forest harvesting.

**"sidecast"** means the act of moving excavated material onto the downslope side of an excavated or bladed trail or a landing during their construction;

**"silviculture"** means the care and cultivation of forest trees;

**"single tree selection"** means a silvicultural system in which age classes are created or maintained by the removal, uniformly throughout the stand, of individual trees of all size classes;

**"site plan"** means the document that describes and illustrates how harvesting and silvicultural treatments for a specific area will be managed for a period up to the time the area is free growing;

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<sup>1</sup> The rationale and methodology are provided in Beaudry et. al. (1999).

**"slash"** means the residue left on the ground as a result of forest and other vegetation being altered by forest practices or other land use activities;

**"small engine"** means an internal combustion engine having a power of 7.5 kw (10 hp) or less but does not include

(a) a water borne engine

(b) an engine in a vehicle which is primarily used for the transportation of people;

**"smooth transition"** means a reasonable, gradual movement from existing harvest levels to a Sustainable Long-term Harvest Level;

**"snow course"** means permanent sample sites established or approved by the Council for the purposes of measuring the water content of the snow pack on a given area;

**"snow road"** means a road constructed of ice and snow;

**"soil compaction hazard"** means the soil compaction hazard as determined in accordance with procedures set out in the Hazard Assessment Keys for Evaluating Site Sensitivity to Soil Degrading Processes Guidebook;

**"soil displacement hazard"** means the soil displacement hazard as determined in accordance with procedures set out in the Hazard Assessment Keys for Evaluating Site Sensitivity to Soil Degrading Processes Guidebook;

**"soil disturbance"** means the soil disturbance caused by forest practices on an area covered by a site plan or stand management prescription including

(a) areas occupied by excavated or bladed trails of a temporary nature,

(b) areas occupied by corduroyed trails,

(c) compacted areas, and

(d) areas of dispersed disturbance;

**"soil erosion hazard"** means the soil erosion hazard as determined in accordance with procedures set out in the Hazard Assessment Keys for Evaluating Site Sensitivity to Soil Degrading Processes Guidebook;

**"soil erosion potential"** means the result of an interpretation of terrain maps that ranks the potential for soil erosion in accordance with the procedures set out in the Mapping and Assessing Terrain Stability Guidebook:

**"source"** means

(a) the geographic source of cones, seeds and vegetative material including the latitude, longitude and elevation of the source, or

(b) the name and licence number of the seed orchard, cutting orchard or production facility;

**"special forest products"** means poles, building logs, posts, pilings, mining timbers, props and caps, cribbing, car stakes, round stakes and sticks and pickets;

**"stand management prescription"** means the document that describes and illustrates how harvesting and silvicultural treatments for a specific area will be managed for a period from the time the area is free growing up to the time the area reaches maturity;

**"standard"** means a standard established by the Council;

**"standard unit"** means a portion of the net area to be reforested that will be managed through the application of the same;

- (a) stocking requirements, and
- (b) maximum limit for soil disturbance;
- (c) silviculture system;
- (d) harvesting method;

**"stocking requirements"** means the stocking specifications for a stand of trees that will be achieved for an area as specified

- (a) by the regeneration date and
- (b) by the free growing date;

**"stream"** means a reach flowing on a perennial or seasonal basis having a continuous channel bed, whether or not the bed or banks of the reach are locally obscured by overhanging or bridging vegetation or soil mats, if the channel bed

- (a) is scoured by water, or
- (b) contains observable deposits of mineral alluvium;

**"stream culvert"** means a culvert used to carry stream flow in an ephemeral or perennial stream channel from one side of the road to the other;

**"sump"** means a depression in the ground constructed for the purpose of storing water;

**"surface soil erosion"** means, for an area where forest practices have been carried out, the movement of soil particles from the area by wind, gravity, or water at a rate that is greater than that which would have occurred had forest practices not been carried out;

**"sustainable forest use"** means:

- (a) managing forest to meet present needs without compromising the needs of future generations;
- (b) providing stewardship of forests based on an ethic of respect for the land;
- (c) balancing productive, spiritual, ecological and recreational values of the forests to meet the economic, social and cultural needs of McLeod Lake and its members;
- (d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources; and,
- (e) restoring damaged ecologies.

**"sustainable long term harvest level"** means a harvest level that can be maintained indefinitely given a particular forest management regime which defines the timber-harvesting land base and includes objectives and guidelines for non-timber values and estimates of timber growth and yield. This method of forest management calls for a long term approximate balance between net growth and the amount harvested.

**"target stocking standard"** means the optimum number of healthy well spaced and free growing trees of the preferred and acceptable species per hectare;

**"target stocking standard for single tree selection"** means the optimum number of healthy well spaced and free growing trees of the preferred and acceptable species per hectare;

**"temporary access structure"** means

- (a) an excavated or bladed trail;
- (b) a main skid trail, backspar trail, corduroyed trail or similar structure that is identified in a silviculture prescription or logging plan as a temporary access structure, or
- (c) a road, landing, pit or quarry that is identified in an operational plan as a temporary access structure;

**"temporary bridge"** means a bridge whose expected life at its current location is 15 years or less.

**"terrain stability field assessment"** means an on-site assessment of the potential impact of harvesting, road construction, modification or deactivation, or the construction of excavated or bladed trails on terrain stability, carried out in accordance with the procedure set out in the Mapping and Assessing Terrain Stability Guidebook

**"terrain stability hazard map"** means a detailed map of terrain stability hazards produced at a terrain survey intensity level B or C, in accordance with procedures set out in the Mapping and Assessing Terrain Stability Guidebook:

**"understory"** means the layers of trees comprised of the C2 layer (pole), C3 layer (sapling) and C4 layer (regeneration), consistent with the Silviculture Surveys Guidebook if the BC Forest Practices Code;

**"vegetative lot"** means a quantity of vegetative material or vegetative propagules having the same species, source and year of collection;

**"vegetative material"** means plant parts or tissues used to produce vegetative propagules through asexual means;

**"vegetative propagule"** means a plant that has been produced through asexual means;

**"violation"** means a contravention of the McLeod Lake Indian Band - Forest Practices Code;

**"water delivery system"** means a system:

- (a) consisting of a water supply, a water pump or equivalent means of pressurizing water and the ancillary hoses, attachments and tools necessary for the operations and maintenance of the system, and
- (b) that can deliver, to any place on the work site,
  - i. water at a pressure of 280 kPa (40 psi) and a rate of 90 litres per minutethrough a 9.50 mm straight bore nozzle opening for 50 minutes, or
  - ii. 2,500 litres of liquid, of which 0.5% is a liquid surfactant concentrate that, when added to water and used with a pump, hose and nozzle is capable of producing foam that will extinguish a fire in ordinary combustibles such as wood, paper or forest products;

**"well spaced"** means

- (a) for other than a mature layer, trees that are at least the following minimum distance apart:
  - i. the distance specified in an operational plan for the area, or
  - ii. if there is no distance specified in an operational plan for the area,
    - (a) for the ESSF and SBS biogeoclimatic zones,
      - i. 1.6 m for planted areas, and
      - ii. 1.6 m for naturally regenerated areas.
- (b) for the mature layer, any distance apart.

**"well spaced trees"** means trees that meet the minimum allowable horizontal distance specified in the plan;

**"wetland"** means a swamp, marsh or other similar area that supports natural vegetation that is distinct from nearby upland areas;

**"wildlife"** means

- (a) a vertebrate that is a mammal, bird, reptile or amphibian prescribed as wildlife under the Wildlife Act, S.B.C. 1982, C.57,
- (b) a fish, including
  - i. any vertebrate of the order Petromyzoniformes (lampreys) or class Osteichthyes (bony fish) or
  - ii. any invertebrate of the class Crustacea (crustaceans) or class Mollusca (mollusks) from the Band land, and
- (c) an invertebrate or plant listed by the Minister of Environment, Lands and Parks, or the council or designate as an endangered, a threatened or a vulnerable species, and includes the eggs and juvenile stages of these vertebrates, invertebrates and plants.

**"wildlife habitat feature"** means

- (a) a significant mineral lick or wallow,

- (b) an active nest of a bald eagle, osprey or great blue heron, or
- (c) any other localized feature agreed to by the Forestry Officer or Council or designate.

**"wildlife tree"** means a tree with characteristics that provide present or future wildlife habitat;

**"wildlife tree patch"** means a group of trees that are identified in an operational plan to provide present or future wildlife habitat;

**"work site"** means

- (a) in the case of an industrial activity other than timber harvesting, the site at which the work is performed, or
- (b) in the case of timber harvesting, an area of land within which an operation relation to timber harvesting is performed.

## **2. Interpretation**

- (1) Distances referred to in this Code are horizontal distances except in relation to the widths of riparian reserve zones and riparian management zones, which are slope distances.
- (2) In this Code, references to the following are references to British Columbia Ministry of Forests' publications of the same name, as amended from time to time:
  - (a) Fish-stream Identification Guidebook;
  - (b) Gully Assessment Procedure Guidebook;
  - (c) Hazard Assessment Keys for Evaluating Site Sensitivity to Soil Degrading Processes Guidebook;
  - (d) Mapping and Assessing Terrain Stability Guidebook;
  - (e) Seed and Vegetative Material Guidebook.

## **3. Application**

This Code applies to the Band and its members, and their employees, agents, contractors or subcontractors and any person engaging in forest practices on Band land.

## Part 3 - Planning

### General

#### 1. Forest Practices

The McLeod Lake Indian Band will conduct forest practices on Band lands in accordance with:

- (a) the McLeod Lake Indian Band Forest Practices Code ;
- (b) McLeod Lake Operational Plans, including the Forest Development Plan;
- (c) sustainable forest use; and,
- (d) any applicable federal legislative requirement.

### Determination of Annual Allowable Cut

#### 2. Calculation of Annual Harvest

- (1) The Band will establish an annual allowable harvest level (or AAC) to enable it to carry out sustainable forestry use in accordance with the Code, subject to the following conditions:
  - (a) The annual allowable harvest level set by the Band will be based on a timber supply analysis of the Band lands conducted by a professional forester, and;
  - (b) The timber supply analysis referred to in Article 2(1)(a) will take into account:
    - i. the current composition of forest resources on the Band lands and its expected rate of growth,
    - ii. expected silviculture treatments including regeneration delays,
    - iii. standards of utilization, and
    - iv. yield estimating procedures in use in British Columbia which best represent the growth rates of the Band's forest resources;
  - (c) The annual allowable harvest level will be based on a harvest flow option from the timber supply analysis which takes into account all of the Band's management practices planned for the Band lands and which demonstrates a smooth transition to a sustainable long term harvest level; and,
  - (d) Written documentation will be maintained which describes the procedures, models and assumptions used in the timber supply analysis and the rationale for the annual allowable harvest level set by the Band.
- (2) The Band will carry out the analysis of the timber supply every 5 to 10 years.
- (3) The Band will harvest over each 5 year cut control period a volume of timber that is not less than 80 percent nor more than 120 percent of the total of the annual harvest levels established under Article 2(1) during that 5 year cut control period.

- (4) The allowable harvest level set out in Article 2(1)(a) and Article 2(3) may be exceeded as deemed necessary by the Council, if there is a serious risk to the timber such as insect and disease infestations, fire, windthrow and flooding.
- (5) If the volume of timber harvested during a 5 year cut control period exceeds the 5 year allowable cut for the 5 year cut control period in accordance with Articles 2(3) and 2(4), the excess is deemed to be timber harvested during the succeeding 5 year cut control period.
- (6) If the volume of timber harvested during a 5 year cut control period is less than the 5 year allowable cut for the 5 year cut control period the deficit volume not exceeding 10% of the 5 year allowable cut will be carried forward to the succeeding 5 year cut control period.

## **Operational Plans**

### **3. Authorized Signatures**

All operational plans and amendments thereto, to be effective, require and will contain;

- (1) the signature and seal of a professional forester,
- (2) the signature of the Forestry Officer, and
- (3) the signatures of a quorum of the Council.

## **Forest Development Plan**

### **4. Forest Development Plan Based On Sustainability**

- (1) A professional forester will produce a forest development plan based on sustainable forest use and sustainable long term harvest levels, prior to commencing any timber harvesting on Band land.
- (2) The forest development plan will be:
  - (a) approved by council;
  - (b) developed in accordance with the principles set out in the Code, including sustainable forest use;
  - (c) signed and sealed by a professional forester;
  - (d) made available for review by members of the Band including posting in a conspicuous place at the Band office in McLeod Lake, B.C. pursuant to Article 10(1);
  - (e) made available to British Columbia Ministry of Forests for public distribution.
- (3) The Council will consider any concerns that British Columbia may bring to their attention with respect to the Forest Development Plan.

### **5. Period And Effective Term Of A Forest Development Plan**

- (1) The forest development plan will cover a period of at least 5 years unless:

- (a) the remaining term of the plan is less than 5 years, or
- (b) the professional forester is satisfied that the plan cannot be developed for a period of 5 years because:
  - i. the plan was entered into shortly before the commencement of the harvesting season for the proposed cutblocks and as a result there is insufficient time to prepare a forest development plan that covers a period of 5 years,
  - ii. a significant portion of the plan is for the harvesting of timber that is damaged by wind, insects or fire and the exact location of the timber cannot be determined, or
  - iii. of reasons beyond the control of the Band.
- (2) Unless otherwise specified by the Council, a forest development plan expires 5 years from the date specified in the approval of the plan.

## **6. General Content Requirements For Forest Development Plans**

- (1) The forest development plan will address the entire Band land unless the Council is satisfied that a smaller area is sufficient.
- (2) The forest development plan will include the timing of:
  - (a) proposed timber harvesting and related forest practices, including road construction, modification, maintenance and deactivation, and
  - (b) proposed silviculture activities including measures for slash debris disposal, if, the Council determines that the timing is critical to the management of forest resources.
- (3) The forest development plan will describe or identify the following, including maps at sufficient scale to permit adequate assessment where applicable:
  - (a) the forest cover,
  - (b) the topography
  - (c) the location and classification of streams, wetlands and lakes that may be affected by proposed forest management activities shown on:
    - i. forest cover maps,
    - ii. terrain resource inventory maps, or
    - iii. fish and fish habitat inventory maps;
  - (d) public utilities including:
    - i. transmission lines,
    - ii. gas and oil pipelines,
    - iii. railways, and
    - iv. highways,
  - (e) the approximate size, shape and location of proposed cutblocks;

- (f) the location of previously harvested areas that are contiguous to the proposed cutblocks and that are not currently greened-up;
  - (g) the approximate location of road construction or modification operations to be carried out under the plan within or providing access to the proposed cutblocks;
  - (h) for any proposed bridge, whether the bridge will be temporary or permanent;
  - (i) the road structural maintenance operations that:
    - i. are to be carried out during the term of the plan, and
    - ii. concern maintenance and replacement of bridges and culverts;
  - (j) the road deactivation operations that have been conducted or are to be conducted under the plan, including a description of roads that are:
    - i. currently deactivated to a temporary or semi-permanent level, and
    - ii. to be deactivated under the plan and the level of that deactivation.
  - (k) roads proposed by others;
  - (l) temporary or permanent barriers to vehicle access;
  - (m) resource features, other than wildlife habitat features and archaeological sites;
  - (n) the general objectives for retention of:
    - i. coarse woody debris, and
    - ii. wildlife trees and wildlife tree patches, and
  - (o) measures to reduce any losses that are identified after evaluation of the occurrence of significant forest health factors which are causing or may cause damage.
  - (p) the silviculture activities, including slash debris disposal measures, that are to be conducted in accordance with a site plan or stand management prescription, in each of the first 2 years of the plan;
  - (q) general objectives of Riparian Management Areas;
  - (r) areas of sensitive slopes.
- (4) The forest development plan for each proposed cutblock will specify:
- (a) the silvicultural system, where known and
  - (b) whether the cutblock will be harvested by cable, aerial or ground based harvesting methods or a combination of those methods.
- (5) The Band may establish Long Term Reserves, and define the location and purpose of such reserves.
- 7. Information Required For Proposed Cutblocks**
- (1) For each proposed cutblock, the professional forester will include all of the following information either entirely in a forest development plan or entirely in a site plan, whichever plan the Band chooses:

- (a) the biogeoclimatic ecosystem classification of the area within each standards unit;
- (b) the total area of each cutblock;
- (c) net area to be reforested and non-productive areas for each cutblock;
- (d) the net area to be reforested for each standards unit within each cutblock;
- (e) the free growing stocking standards;
- (f) areas where the regeneration method is planting or natural;
- (g) the elevation range if planting is proposed;
- (h) the preferred and acceptable species for each standards unit;
- (i) the riparian class of streams, wetlands and lakes that are in or adjacent to the cutblock;
- (j) if the harvesting is proposed for areas that are within a riparian management area,
  - i. whether falling or yarding across streams will be undertaken and, if falling or yarding across streams will be undertaken, the measures for debris management;
  - ii. and measures to protect stream banks and debris management measures;
- (k) the selection criteria and level of retention for wildlife trees and wildlife tree patches;
- (l) the location of a known resource feature in or adjacent to the cutblock, other than an archaeological site, and:
  - i. any measures to protect the resource feature, or
  - ii. the reason for not protecting the resource feature;
- (m) If the following information in (m) i. and (m) ii. was not included in the development plan, a site plan will include the following:
  - i. location of permanent and temporary access structures, and
  - ii. permanent and temporary access structures that will be rehabilitated, and the timing of their rehabilitation;
- (n) the results of soil hazard assessments;
- (o) a detailed description of the silvicultural system;
- (p) the stand structure that will be retained at the completion of the proposed harvesting;
- (q) with respect to excavated or bladed trails all of the following:
  - i. the portions of each cutblock where excavated or bladed trails may be constructed;
  - ii. the maximum and average height of cutbanks into mineral soil;
  - iii. equipment to be used for trail construction if other than an excavator;

- (r) maximum limits for site disturbance and permanent access structures.
- (2) A site plan or stand management prescription prepared under this Article will be consistent with the forest development plan in effect when the site plan or stand management prescription is submitted for approval.
- (3) A site plan or stand management prescription may be prepared for an area within a forest development plan that is larger than a cutblock.
- (4) If the professional forester submitted for approval a site plan with the development plan the information referred to in Article 6(1) for a proposed cutblock:
  - (a) the Band is exempt from the development plan requirements of Article 6(1) and the forest development plan need only show the approximate size, shape and location of the cutblock, and
  - (b) the information in the site plan will be based on a field traverse.
- (5) The forest development plan, site plan or stand management prescription will include a map that identifies, for each proposed cutblock, the approximate location of any Long Term Reserve areas greater than .25 ha, including wildlife tree patches and riparian reserve areas.
- (6) The forest development plan, site plan or stand management prescription, for any riparian management area within a proposed cutblock, will specify:
  - (a) the stand structure that will be retained after the proposed harvesting operations or silviculture treatments are completed.
  - (b) the characteristics, species and function of trees that will be retained after the proposed harvesting operations or silviculture treatments are completed, and
  - (c) one of the following:
    - i. the basal area per hectare to be retained;
    - ii. the trees per hectare to be retained;
    - iii. the minimum total number of trees to be retained.
- (7) Without limiting Article 6(6), if within a cutblock harvesting or silviculture treatments are proposed in the riparian management area of a stream that:
  - (a) has a riparian class of S4, S5 or S6,
  - (b) is a direct tributary to a stream with a riparian class of S1, S2, S3 or S4 that is a known temperature sensitive stream, and
  - (c) currently has sufficient numbers and distribution of trees to provide the shade necessary to prevent the stream temperature from increasing, the Band will specify in the forest development plan, site plan or stand management prescription, a stand structure in the riparian management area that will continue to provide the shade necessary to prevent the stream temperature from increasing.
- (8) Without limiting Article 6(6), if within a cutblock harvesting or silviculture treatments are proposed in the riparian management area of a stream that:

- (a) has a riparian class of S4, S5 or S6,
- (b) is a direct tributary to a stream with a riparian class of S1, S2 or S3
- (c) currently has sufficient numbers and distribution of trees to provide, or contribute significantly to the maintenance of, stream bank or channel stability, or both, the Band will specify in the forest development plan, site plan or stand management prescription a stand structure in the riparian management area that will continue to provide, or contribute significantly to the maintenance of, stream bank or channel stability, or both, as the case may be.

#### **8. Archaeological Impact Assessment May Be Required**

- (1) The Forestry officer will carry out an archaeological impact assessment, and make the assessment available to Council, if the Council determines that an archaeological impact assessment is necessary to adequately manage and conserve archaeological sites in the area, prior to approval of a site plan or stand management prescription;
- (2) The archaeological impact assessment does not form part of an operational plan.

#### **9. Information Not Required For Minor Salvage And Minor Harvesting Operations**

- (1) The professional forester is not required to include the information set out in Article 6 if only minor salvage operations will be carried out, unless the Council, by written notice, requires some or all of that information.
- (2) For minor harvesting operations, the Band:
  - (a) is exempt from the requirements of Article 6 and
  - (b) is not required to include the information specified in Article 6 unless the Council, with a professional forester's written concurrence, by written notice, requires some or all of that information.

#### **10. Forest Development Plan Available For Review By Band Members**

- (1) The Band will post in a conspicuous place in the Band office at McLeod Lake, B.C., a copy of the forest development plan or any significant amendment 60 days prior to the approval of the plan by Council. Summaries of the forest development plan or amendment will be mailed to each Band member 18 years of age and older 60 days prior to the approval of the plan by Council.
- (2) The forest development plan or significant amendment will be made available for Band member review and comments for a period of 60 days, prior to the approval of the plan by Council.
- (3) The Band will hold Band member information sessions at McLeod Lake and Prince George, B.C. in the period indicated in Article 10(2). The Band and the signing professional forester will explain the purpose of the plan and be available for questions and discussions.
- (4) Comments from Band members will be required to be submitted to the Band prior to the end of the period specified in Article 10(2) in order that their comments can be

considered by the Council prior to the approval of the forest development plan by Council.

- (5) The Band will respond in writing to the comments received under Article 10(4), including either the proposed actions to address the comments in Article 10(4) or the rationale for why no action was taken.
- (6) The approved forest development plan or amendment, including the written comments received under Article 10(4) and the written responses from the Band under Article 10(5), will be made available at McLeod Lake, B.C. for Band member review until the expiry or replacement of the forest development plan.

## **Site Plans**

### **11. Requirement For A Site Plan If Site Information Was Not Included In Forest Development Plan**

- (1) A professional forester will, before the commencement of harvesting on the cutblock, prepare and obtain the Council's approval of a site plan for the cutblock that specifies the information referred to in Article 6.
- (2) The Band will implement the site plan in accordance with the Code and the site plan.
- (3) A site plan prepared under this Article will be consistent with the forest development plan in effect when the site plan is submitted for approval.

## **Stand Management Prescriptions**

### **12. Silviculture Treatments On Free Growing Stands**

- (1) A professional forester will prepare a stand management prescription before the commencement of silviculture treatment(s) on a free growing stand, and obtain the Council's approval of the stand management prescription.
- (2) The Band will carry out the silviculture treatment(s) in accordance with the Code and the stand management prescription.
- (3) A stand management prescription prepared under this Article will be consistent with the forest development plan in effect when the stand management prescription is submitted for approval.

### **13. Content Of Stand Management Prescriptions**

A stand management prescription will contain:

- (1) A map illustrating all of the following:
  - (a) the location of the area to be treated;
  - (b) the biogeoclimatic ecosystem classification for the area to be treated;
  - (c) the location of streams, wetlands and lakes that are within or adjacent to the area to be treated, and their riparian class;

- (d) the approximate location of reserve areas greater than .25 ha, including wildlife tree patches, that are in or adjacent to the area to be treated;
- (2) A description of all of the following:
    - (a) the current stand condition, including the tree species composition, height, age, density and site index;
    - (b) the area to be treated;
    - (c) the proposed silviculture treatments for the area to be treated and the objectives of those treatments;
    - (d) significant forest health factors that exist currently in the area, and the measures that will be required during the proposed treatments to mitigate the impact of those factors;
    - (e) non-timber forest resources on or adjacent to the area that may be adversely affected by the proposed treatment, and the measures that are proposed to accommodate those resources;
    - (f) measures that will be carried out in a riparian management area;
  - (3) If mechanized ground based stand tending involving heavy machinery is proposed, and is anticipated that soil disturbance as a result of the treatment will occupy more than 4% of the area to be treated, a description of:
    - (a) the hazard for soil compaction, and
    - (b) the maximum proportion of the area to be treated that may be occupied by soil disturbance;
  - (4) If mechanized ground based stand tending employing heavy machine is proposed for a sensitive slope, the likelihood of landslides;
  - (5) If the proposed treatment is spacing:
    - (a) the minimum distance between crop trees,
    - (b) the target number of crop trees per hectare to be retained, and
    - (c) any selection criteria for trees or vegetation that are to be retained;
  - (6) If the proposed treatment is pruning:
    - (a) the selection criteria for trees to be pruned,
    - (b) the target number of crop trees per hectare to be pruned, and
    - (c) for each crop tree, the minimum post treatment live crown;
  - (7) If the proposed treatment is fertilization, all of the following:
    - (a) the type of fertilizer,
    - (b) the rate of application,
    - (c) the method of application, the season the proposed treatment is to be carried out.

#### **14. Approval Of Plans By Council**

- (1) An operational plan will be approved by Council before it is effective.
- (2) The Council will approve an operational plan or amendment submitted under this part if:
  - (a) the plan was prepared and submitted in accordance with the Code and,
  - (b) the Council is satisfied that the plan will adequately manage and conserve the forest resources of the area to which it applies.
- (3) Before approving a plan or amendment the Council may require the Band to submit information that the Council reasonably requires in order to determine if the plan or amendment meets the requirements of Article 6(1).
- (4) The Council may approve an operational plan or amendment only if it meets the requirements of Article 6(2).
- (5) The Council may make its approval of a forest development plan or amendment subject to a condition.

## **15. Approval In Emergency Cases**

The Council may, in accordance with the Code, give effect to a forest development plan or amendment without the plan or amendment having been made available for Band review and comment if the Council determines that the plan or amendment

- (1) otherwise complies with this Code, and
- (2) the timber on the area under the plan or amendment should be harvested without delay because it is in imminent danger of being damaged or destroyed, or significantly reduced in value, and
- (3) is in the best interest of the Band to proceed without review and comment.

## **Amendments**

### **16. Amendments Required**

- (1) The Band or any person who is responsible for the plan, who knows or ought reasonably to know that performing the operations specified in an operational plan will not achieve the results specified in the plan or this regulation:
  - (a) will submit to the Forestry Officer an amendment to the plan, and
  - (b) will not carry out any operation under the plan on any parts of the plan area that would be materially affected by the proposed amendment until the amendment has been approved by Council.
- (2) If the requirements of the operational plan cannot be met as a result of:
  - (a) a person carrying out, or failing to carry out, forest practices on the area covered by the plan, or
  - (b) the occurrence of a natural event, the Forestry Officer will:
    - i. notify the Council or designate, and

- ii. if any amendment to the plan is required, not carry out an operation on an area covered by the plan that would be materially affected by the proposed amendment until the amendment has been approved.
- (3) If, a person:
  - (a) exceeds the limits for permanent access structures but has notified the Council and has carried out site rehabilitation as directed, or,
  - (b) exceeds the limits for soil disturbance but has promptly notified the Council and carried out any site rehabilitation as directed, that person is not required to amend the operational plan for the area.
- (4) Notwithstanding Article 19(1) the Forestry Officer is authorized to make minimal non- substantive changes to operational plans during the implementation of forest practices without the signature and seal of a professional forester and the approval of the Council. However, the Forestry Officer will immediately inform the professional forester of the change and record the change on the operational plan.

#### **17. Exemptions For Operation Planning Requirements Exemption For Forest Development Plans**

The Council may exempt the requirement for a forest development plan if it determines that:

- (1) the only timber harvesting that will take place is:
  - (a) the felling and removal of trees to eliminate a safety hazard
  - (b) the felling and removal of trees that have been or will be treated to facilitate the entrapment of pests, and
  - (c) and the total volume of timber on Band land felled and removed does not exceed 1000 cu.m. or an area not exceeding 1 ha., and
- (2) there is no road construction required to provide access for the timber harvesting under Article 20(1).

## Part 4 - Protection of Forest Resources

### General

#### 1. Unauthorized Timber Harvest Operations

- (1) A person will not cut, remove, harvest, damage or destroy timber unless authorized to do so:
  - (a) under a Cutting Permit,
  - (b) in the course of carrying out duties as a land surveyor at the request of the Band, or
  - (c) by the Code, in the course of fire control or suppression operations.
- (2) If a person cuts, removes, damages or destroys timber contrary to the direction of, or on behalf of, another person that other person also contravenes the Code.

#### 2. Unauthorized Dead Timber Harvest Operations

A person will not harvest, cut or remove any dead timber or wood for sale or resale unless authorized by Council.

#### 3. Trespassing Livestock

A person will not cause or permit livestock to be ridden or driven on, or to graze on Band land unless authorized to do so under an agreement with the Band.

#### 4. Unauthorized Trail Or Campsite Construction

- (1) A person will obtain the consent of the Forestry Officer before constructing, rehabilitating or maintaining a trail or campsite on Band Land.
- (2) Article 3(1) does not apply to a person who is authorized under another Band bylaw to construct, rehabilitate or maintain a trail or campsite.
- (3) The Forestry Officer may, in a notice serviced on a person who contravenes Article 3(1), order the person to:
  - (a) remove or destroy, or both, the trail or campsite, and
  - (b) restore the land underlying the trail or campsite.

#### 5. Tree Spiking Prohibited

A person will not:

- (1) drive or place any nail, spike or other potentially hazardous object into any timber,
- (2) possess any nail, spike or other potentially hazardous object with the intention of driving or placing it into any timber, or
- (3) solicit funds or materials from another person with the stated intention that the funds or materials will be used to enable any person to drive or place any nail, spike or other potentially hazardous object into any timber not authorized to alter.

## **6. Previously Unidentified Resource Features**

If a person carrying out forest practices, other than fire control or suppression, find a resource feature that was not identified on an approved operational plan or permit, the person carrying out forest practices will:

- (1) modify or stop any forest practices that are in the immediate vicinity of the previous unidentified resource feature to the extent necessary to refrain from threatening it, and
- (2) promptly advise the Forestry Officer of the existence and location of the resource feature.

## **7. Constraining Slash And Debris In And Around Aquatic Environments**

A person who carries out harvesting or a silviculture treatment will not deposit a volume of slash or debris, capable of damaging fish habitat or reducing water quality, into any of the following:

- (1) a lake;
- (2) a wetland;
- (3) a fisheries-sensitive zone;
- (4) a fish stream;
- (5) a stream that:
  - (a) can transport the slash and debris into any of the areas listed in paragraphs (1) to (4), or
  - (b) may be destabilized by the accumulated slash and debris and result in increased sediment deposition in the areas listed in paragraphs (1) to (4), or,
- (6) a stream or lake that is used for domestic or industrial water supply.

## **8. Restrictions On Use Of Machinery**

- (1) A person will ensure that the tracks or wheels of ground based machinery used in carrying out harvesting, road or trail construction or modification, or silviculture treatments are not permitted within 5 m of a stream bank except for any of the following:
  - (a) for carrying out fire fighting activities;
  - (b) in response to natural disasters;
  - (c) at stream crossings identified in an operational plan or otherwise authorized in writing by the Forestry Officer;
  - (d) if operations will be conducted in such a manner that they protect stream banks and minimize damage to understory vegetation;
  - (e) if approved in an operational plan or otherwise authorized in writing by the Forestry Officer, to
    - i. construct or maintain a range development,

- ii. construct or maintain a work or to carry out an activity within or adjacent to streams for the purpose of controlling soil erosion, protecting stream banks or managing fisheries or wildlife, or
- iii. carry out an activity similar to one described in subparagraph (i) or (ii);
- (f) if in the opinion of the Forestry Officer
  - i. no other practicable option exists, or
  - ii. operating the machinery more than 5 m from the stream bank will create a higher risk of sediment delivery.
- (2) A person will ensure that machinery used in carrying out harvesting, road construction or modification or a silviculture treatment is not fuelled or serviced within the riparian management area of a stream or a wetland or within 30 m of a lakeshore unless
  - (a) authorized, in writing by the Forestry Officer, or
  - (b) the machinery is:
    - i. on an approved road or landing,
    - ii. handheld,
    - iii. required for fire fighting, or
    - iv. broken down and requires fuelling or servicing to be moved.

## **9. Restrictions On Harvesting Or Modification Of Trees In Riparian Reserves**

A person who carries out harvesting or silviculture treatments will not harvest, fell or modify trees in a riparian reserve zone unless the harvesting, felling or modification has been identified in an operational plan or otherwise authorized in writing by the Forestry Officer for one or more of the following purposes:

- (1) undertaking recreational facility management;
- (2) reducing windthrow potential by topping or pruning;
- (3) creating corridors for full suspension yarding;
- (4) removing any tree that is hazardous to workers because of location, direction of lean, physical damage, overhead hazards, deterioration of limbs, stem or root system or a combination of these;
- (5) stream crossings, including roads;
- (6) carrying out, constructing, modifying or maintaining a range development;
- (7) trees that need to be modified to support rigging for cable yarding;
- (8) any other similar purpose.

## **10. Protection Of The Environment**

- (1) A person will not carry out forest practices that result in damage to the environment.

- (2) Subject to Article 9(3), a person does not contravene Article 9(1) if, with respect to forest practices referred to in Article 9(1):
  - (a) the person is acting in accordance with an approved operational plan issued under the Code, or
  - (b) the person has been exempted from the requirement to have an operational plan and is acting in accordance with the Code.
- (3) A person will not carry out forest practices if he or she knows, or should reasonably know that, due to weather conditions or site factors, the carrying out of forest practices may result, directly or indirectly, in:
  - (a) slumping or sliding of land,
  - (b) inordinate soil disturbance, or
  - (c) other significant damage to the environment.
- (4) A person who contravenes Article 9(1) or 9(3) will:
  - (a) stop the forest practices in the area affected,
  - (b) prevent any further damage to the environment,
  - (c) promptly notify the Forestry Officer, and
  - (d) take any remedial measures that the Forestry Officer requires.
- (5) A person who has stopped forest practices under Article 9(4)(a) may resume forest practices when:
  - (a) they can be resumed without contravening Articles 9(1) or 9(3), and
  - (b) any remedial measures required under Article 9(4)(d) have been carried out to the satisfaction of the Forestry Officer.
- (6) A person does not contravene Article 9(1) or 9(3) if the person is:
  - (a) carrying out fire control or suppression in accordance with this Code, or
  - (b) carrying out a controlled burn for the purpose of range improvement, or wildlife habitat management, authorized by the Forestry Officer.

## Part 5 - Roads

### 1. Limits On Area That May Be Occupied By Permanent Access Structures

- (1) The maximum proportion of the total area within a cutblock that may be occupied by permanent access structures is the amount specified for the area in an operational plan.
- (2) A person will not exceed the limit for permanent access structures specified in Article 1(1).
- (3) If the limit for permanent access structures specified in Article 1(1) is exceeded, a person will
  - (a) promptly notify the Forestry Officer and
  - (b) carry out any site rehabilitation measures required by the Forestry Officer.

### General Road Requirements

#### 2. Road Construction Or Modification

- (1) Before a road is constructed or modified, the road will be identified on an approved forest development plan, unless the road is immediately required for fire control or suppression or another emergency.
- (2) If a road referred to in Article 2(1) is constructed or modified because the road is required for an emergency and the road is not identified on a forest development plan, when the emergency is over the Forestry Officer will assess the condition of the road and ensure that the road is maintained or deactivated in accordance with the Code.

#### 3. General Requirements For Road Construction And Modification, Maintenance And Deactivation

- (1) A person when constructing or modifying, maintaining or deactivating the road, including bridges and major culverts, will do all of the following:
  - (a) provide for user safety;
  - (b) protect forest resources;
  - (c) maintain surface drainage patterns;
  - (d) protect water quality;
  - (e) protect stream bank stability;
  - (f) for fish streams, ensure the safe passage of fish for the purposes of spawning, rearing or migration;
  - (g) protect fish habitat;
  - (h) protect structural integrity of the road and drainage structures;
  - (i) maintain slope stability;

- (j) minimize surface soil erosion;
  - (k) minimize sediment entering into streams.
- (2) The road surface will have surface materials of a type necessary to:
    - (a) allow the road to carry the design wheel loads during the periods of use, and
    - (b) minimize the surface erosion of the road if it would otherwise have adversely affected adjacent streams, wetlands, or lakes.
  - (3) A person will, after completion of construction, modification or deactivation, revegetate to the satisfaction of the Forestry Officer all exposed soil that will support vegetation in the following areas:
    - (a) inactive borrow pits;
    - (b) waste areas;
    - (c) cut slopes;
    - (d) fill slopes;
    - (e) other disturbed areas within the road clearing width.
  - (4) A person referred to in Article 3(1) will not deposit slash, debris or erodible soil into a lake, wetland, stream or fisheries sensitive zone, if the deposit is capable of
    - (a) damaging fish habitat, or
    - (b) degrading water quality if there are downstream users of the water.

## **Layout and Design**

### **4. Road Layout And Design And Related Assessments - General**

- (1) Before a person carries out road construction or modification, the riparian class of a stream wetland or lake that is in or adjacent to the proposed road or road work will be determined;
- (2) The Band, when identifying the road location will, except for crossings, select a road location outside of any riparian management area, unless otherwise authorized by the Forestry Officer;
- (3) The Band will prepare a road layout and design which includes a map showing the location of:
  - (a) the road, as determined by a field traverse, by reference to:
    - i. survey references,
    - ii. any stream crossings, and
    - iii. any topographic features that control road location;
  - (b) the outer boundary of any riparian management area adjacent to a proposed road other than at a crossing of a stream, wetland or lake.
- (4) The road layout and design will include all of the following:

- (a) the location of known resource features in or adjacent to the road, other than archaeological sites, and:
    - i. any measures to protect the resource feature, or
    - ii. the reason for not protecting the resource feature;
  - (b) the actions, if any, that are necessary to:
    - i. adequately manage and conserve archaeological sites,
    - ii. adequately manage and conserve the non-timber forest resources that may impact on or be impacted by the road location.
  - (c) if stumps, root or embedded logs will be left or placed in the road prism of segments of roads that are not snow roads or that involve overlanding, a statement to that effect;
  - (d) the drainage design specifications, including designs and measures for stream culvert structures that will:
    - i. meet at least the peak flow for the specified return period, as specified in Table A and
    - ii. manage anticipated debris;
  - (e) the vegetation specifications for stabilization of cut and fill slopes
- (5) If a road layout and design has the statement referred to in Article 4(4)(c), the Forestry Officer may only approve the road layout and design if satisfied that:
- (a) leaving or placing stumps, roots or embedded logs in the road prism will not significantly increase the risk of a failure of the road subgrade, and
  - (b) the stumps, roots and embedded logs are located
    - i. outside the road subgrade width on the downhill side, or
    - ii. inside the road subgrade width and the road will be deactivated within 5 years

## **5. Road Layout And Design - Sensitive Slopes**

- (1) A terrain stability field assessment will be carried out by a geotechnical expert or professional civil engineer prior to road construction on a sensitive slope.
- (2) If the road will cross areas with a moderate or high likelihood of landslides, the road layout and design will include the following:
  - (a) the results of a road location survey, which includes plans, profiles and cross sections,
  - (b) a geometric road design based on the road location survey data, and
  - (c) measures in the road design specifications to maintain slope stability that are prepared by a person with the same qualifications as are required for a terrain stability field assessment.

**6. Road Layout And Design - Bridges, Major Culverts And Special Structures**

- (1) Where required, the Band will prepare a road layout and design for bridges and major culverts, including:
  - (a) references, locations and dimensions of bridges and major culverts, and
  - (b) any stream or lake crossing information that any reasonable person would expect to influence the size, location or type of the bridge or major culvert.
- (2) The Band, when determining the drainage design specifications for bridges and major culverts, will specify designs and measures for bridges and approaches that will:
  - (a) manage anticipated debris, and
  - (b) pass expected flows for:
    - i. the seasons of use, if the components of a bridge are to be removed at times of risk, or
    - ii. the peak flow criteria set out in the following table:

	Minimum design peak flow
Permanent bridges	100 year return period
Temporary bridges	50 year return period

- (3) Where road layout and design has been prepared, a professional engineer will specify designs for all of the following:
  - (a) cattle guard fabrication, and the construction or modification of:
    - i. retaining walls greater than 1.5 m high, and
    - ii. other specialized structures the designs of which fall within the practice of professional engineering as defined in the *Engineers and Geoscientists Act*;
  - (b) bridges and log culverts, unless;
    - i. the bridges and log culverts are temporary, single span structures on:
      - (a) cribs, or
      - (b) sills or pads up to and including 1.5 m high bearing on the original ground or any excavation below original ground,
    - ii. the person preparing the design can satisfy that
      - (a) the person has past experience with similar structures, and
      - (b) the structure is adequate for the given site conditions, and
    - iii. the person preparing the design is preparing it based on standard drawings, tables, charts and other tools that

- (a) are prepared by a professional engineer,
  - (b) individually and together reproduce the specific structure to be used at the site, including member size and connections, and
  - (c) are referenced in the road layout and design;
- (c) portable bridge superstructures that are being reused at a new site unless:
- i. the bridge superstructure was originally designed by a professional engineer,
  - ii. the bridge superstructure will be reused at the new site to carry the original design loads or lighter loads, and
  - iii. a qualified inspector is unable to detect any damage or deterioration in the bridge at the time the road layout and design is prepared;
- (d) major culverts.
- (4) A design for a bridge will:
- (a) be in accordance with the requirements of:
    - i. The Canadian Standards Association, Design of Highway Bridges, CAN/CSA-S6, and
    - ii. the Canadian Foundation Engineering Manual in effect at the time the design is done, and
  - (b) take into account logging trucks with unbalanced loads and off-centre driving.

## **7. Road Layout And Design - Authorized Signatures**

A road layout and design and a bridge and major culvert design will contain:

- (1) the signature of the person who prepared the layout and design,
- (2) the signature of the professional engineer or geotechnical expert under Articles 5(1) and 5(3),
- (3) the signature of the Forestry Officer as approval.

## **Construction or Modification**

### **8. Construction Or Modification - General**

- (1) A person, when constructing or modifying a road will remove from within the road prism width, stumps, roots, embedded logs, topsoil, and soils that are not capable of supporting the road and applied vehicle loads unless:
  - (a) the area does not have a moderate or high likelihood of landslides, or
  - (b) the area has a moderate or high likelihood of landslides, and:
    - i. the stumps roots and logs are used as retaining structures under or against the fill as a measure to maintain slope stability,
    - ii. the road will be
      - (a) permanently deactivated within 5 years after construction, or

(b) permanently deactivated more than 5 years, but not more than 10 years, after construction, if the person has reasonable grounds to believe, on the basis of assessments carried out more than 5 years after construction and at times the person considers appropriate, that the road is not likely to be at risk due to decomposition of the stumps, roots and embedded logs until the next assessment, and

iii. any deactivation prescription and deactivation works will incorporate measures to remove stumps, roots and embedded logs that may reasonably be expected to fail and de-stabilize the road fill.

- (2) Article 7(1) does not apply to overloading or snow roads.
- (3) A person, when constructing or modifying a road, will
  - (a) minimize ground, if the road being constructed or modified is a snow road, and
  - (b) remove gravel or fill from riparian management zones identified in an operational plan only with the prior approval of the Forestry Officer.

#### **9. Construction Or Modification - Sensitive Slopes**

If a road will cross areas with a moderate or high likelihood of landslides, when constructing or modifying the subgrade of the road, the Band will:

- (1) carry out a construction survey that includes:
  - (a) re-establishment of the road centre line,
  - (b) grade staking, and
  - (c) any centre line relocations and redesigns required to adjust for site conditions discovered during construction, and
- (2) have a qualified professional certify that the measures to maintain slope stability have been carried out in general conformance with the road layout and design.

#### **10. Construction Or Modification - Fish Streams And Fisheries-Sensitive Zones**

- (1) A person who, during construction or modification of a road, finds a previously unidentified fisheries-sensitive zone will modify or stop the activity to the extent necessary to refrain from damaging it.
- (2) A person will conform with timing windows and measures that are provided in writing by the Forestry Officer when constructing crossings in fish streams.

#### **11. Construction Or Modification - Bridges, Major Culverts And Special Structures**

The Forestry Officer will:

- (1) during and at the completion of construction activities, obtain and retain any pile driving records and, for new materials, mill test certificates in-plant steel fabrication drawings, concrete test results, compaction results, and other pertinent field and

- construction data,
- (2) during and at the completion of construction activities, prepare as built drawings and retain them for the life of the structure, and
  - (3) after the construction of bridges, culverts and other structures requiring professional design, if required by the road layout and design, have a qualified professional certify that:
    - (a) the entire structure is in general conformance with the design drawings and specifications, and
    - (b) if there are changes from the original design, the structure is at least as durable and as strong as the original design intended;
  - (4) Post at the bridge site the safe allowable loading for bridges, and the period that the load is valid for.

## **Bridge Maintenance**

### **12. Bridge And Major Culvert Inspection, Evaluation And Maintenance**

- (1) The Band will retain a qualified inspector to inspect bridges and major culverts, and produce a written inspection report concerning bridges and major culverts, at least once every 3 years after they are constructed, unless any portion of the structural components are untreated wood, in which case the inspection will be carried out at least once every 2 years after construction.
- (2) Without limiting Article 11(1), a qualified inspector will carry out any inspection of, and produce a written inspection report concerning, a bridge or major culvert:
  - (a) after the occurrence of an event that may cause damage to the structure, and
  - (b) more often than is required under Article 11(1) and at a level of frequency that a professional engineer determines in writing to be adequate for the continuing safe use of the bridge, if an inspection detects structural defects or if the defects are otherwise evident.
- (3) A written inspection report of a bridge or major culvert under this section will include all of the following:
  - (a) the date of the inspection;
  - (b) an assessment of, and report on, the condition of the components of the structure;
  - (c) a recommendation for any repairs that may be required and a schedule for those repairs;
  - (d) the date of the next scheduled inspection;
  - (e) the length of time a bridge has been at its current site;
  - (f) whether a bridge was designed and constructed to be at the current site for no more than 15 years.
- (4) The Band will retain a copy of the written inspection report for one year beyond the

actual life of the structure at the site.

### **13. Follow Up To Inspection Of Bridge And Major Culverts**

- (1) If as a result of an inspection under Article 11 the qualified inspector is of the opinion that the bridge may have structural deficiencies, the Forestry Officer will:
  - (a) correct the deficiencies; or
  - (b) close, remove or replace the bridge before users or downstream improvements and forest resources are placed at risk; or
  - (c) restrict traffic loads to a safe level.
- (2) For those bridges that are reported under Article 11 being designed and constructed to be at the current site for no more than 15 years that are now expected to be at their current site for more than 15 years:
  - (a) the Band will retain a professional engineer to evaluate the bridge to determine if the bridge meets peak flow criteria, including any debris considerations, for a 100 year return period, and
  - (b) if the professional engineer determines that the bridge does not meet peak flow criteria, including any debris considerations, for a 100 year return period, the Forestry Officer will:
    - i modify the bridge and its approaches in accordance with the Code to meet peak flow criteria, including any debris considerations, or
    - ii. remove or replace the bridge.
- (3) If a professional engineer determines that a bridge is unable to carry its original design load, the Forestry Officer will place a sign on each bridge approach stating the actual capacity of the bridge.

## **Road Deactivation**

### **14. Deactivation - General**

- (1) The Band will prepare and obtain the Forestry Officer's approval of a deactivation prescription if:
  - (a) the holder carries out semi-permanent or permanent deactivation of a road on an area of moderate or high likelihood of landslides, or
  - (b) a road deactivation prescription is requested by the Forestry Officer.
- (2) If the deactivation prescription is approved by the Forestry Officer, the Band may modify the prescription to address unforeseen site conditions on a road deactivation project
  - (a) without the authorization of the Forestry Officer, if the change is not expected to adversely impact forest resources, and
  - (b) with the authorization of the Forestry Officer, if the change is expected to adversely impact forest resources or impact proposed future access objectives on

the deactivated road.

- (3) A person who uses a road under the authority of a cutting permit or authority from the Forestry Officer, will deactivate the road temporarily, semi-permanently or permanently, or a combination of temporarily, semi-permanently or permanently, as required by, and in accordance with:
  - (a) any forest development plan,
  - (b) the Code, and
  - (c) the layout and design as required by Forestry Officer.
- (4) Before commencement of road deactivation activities, a person will post information at the beginning of the affected portion of road to advise road users of hazards that may be expected due to deactivation.

#### **15. Deactivation - Sensitive Slopes**

- (1) If a road crosses a sensitive slope and a terrain stability field assessment has not been carried out, the Band will carry out the assessment before anyone commences deactivation of the road.
- (2) If a road crosses areas with a moderate or high likelihood of landslides, the Band will:
  - (a) have a qualified professional prepare a prescription for deactivation work to reduce the likelihood of landslides, and
  - (b) not modify a prescription prepared in accordance with paragraph (a) unless the change is agreed to by a qualified professional.

#### **16. Deactivation Prescription - Authorized Signatures**

A deactivation prescription will contain:

- (1) the signature and the person who prepared the deactivation prescription,
- (2) the signature of the professional engineer or geotechnical expert where required, and
- (3) the signature of the Forestry Officer as approval.

#### **17. Deactivation - Fish Streams And Fisheries-Sensitive Zones**

A person who deactivates a road will conform with timing windows and measures for works in and around stream crossings developed and made available by the Regional Fisheries Biologist.

#### **18. Deactivation - Bridges**

- (1) A person who carries out semi-permanent deactivation on a road will protect road users during the period of deactivation by removing those bridges that may place users at risk, or by repairing or replacing them.
- (2) A person who carries out permanent deactivation on a road will:
  - (a) remove bridge superstructures, and

(b) if failure of a bridge substructure would affect downstream values, remove bridge substructures.

**19. Use Of Roads For Timber Harvesting Or Other Industrial Purposes**

- (1) A person will not use a road for timber harvesting and related forest practices, or any other purpose, unless the person is authorized to do so.
- (2) The Forestry Officer may exempt a person or a type of load from the authorization requirement on being satisfied that:
  - (a) the person's use of the road or the type of load will not:
    - i. materially affect the use of the road by others, or
    - ii. unnecessarily disturb the natural environment or cultural heritage resources, and
  - (b) the use of the road will be for a period of less than 60 days.
- (3) Subject to this section and to the Code, respecting roads, a road constructed, modified, or maintained by any person may be used for non-industrial purposes by any Band member, without charge.
- (4) If use of a road would likely cause significant damage to the road or environment, or endanger life or property, or if the presence on the road of a vehicle or animal would likely cause significant damage to the road or environment, or endanger life or property, the Forestry Officer may:
  - (a) close or restrict the use of the road, or
  - (b) at the expense of its owner, remove the vehicle or animal.

**Table A - Peak Flow Criteria**

<b>Structure Type</b>	<b>Minimum design peak flow</b>
Permanent bridges and culverts	100 year return period
Temporary bridges	50 year return period

## **Part 6 - Harvesting Practices**

### **1. Marking Wildlife Tree Patches**

- (1) The Band will mark in the field, before commencement of harvesting, the location of:
  - (a) wildlife tree patches that are located within the cutblock that are
    - i. .25 ha or more in size, unless exempted by the Forestry Officer, and
    - ii. less than .25 ha in size, if required by the Forestry Officer, and
  - (b) wildlife trees that are located within the cutblock, if required by the Forestry Officer.
- (2) Marking under Article 1(1) will be visible during harvesting and for a period of at least 6 months after the completion of harvesting.

### **2. Terrain Stability Field Assessments**

- (1) Before a person carries out harvesting on a sensitive slope within a cutblock, including the construction of roads excavated or bladed trails, the Band will carry out a terrain stability field assessment to the satisfaction of the Forestry Officer.
- (2) Despite Article 1(1), the terrain stability field assessment is not required in any area if terrain stability hazard mapping has been carried out and, as a result of this mapping the cutblock is shown on a forest development plan as having a moderate or less than moderate likelihood of landslides and
  - (a) all of the following conditions are met:
    - i. the proposed harvesting method is cable or aerial;
    - ii. no excavated or bladed trails will be constructed, or
  - (b) the assessment has been carried out for the purposes of a road layout and design, and the assessment included the area to be harvested.

### **3. Harvesting On Sensitive Slopes**

- (1) The provisions of this Article do not apply to harvesting that is necessary to construct or modify a road.
- (2) A person will not clearcut an area that is subject to a high likelihood of landslides, unless a terrain stability field assessment is done and it is the assessor's opinion that, based on the assessment, the assessor has reasonable grounds to believe that clearcutting the area will not significantly increase the risk of a landslide and that there is a low likelihood of landslide debris:
  - (a) entering into a fish stream or a perennial stream that is a direct tributary to a fish stream, or
  - (b) causing damage to public utilities, including but not limited to roads, bridges, transmission lines, pipelines, recreation sites or any other similar structures.

#### **4. Excavated Or Bladed Trails**

- (1) person will not construct any excavated or bladed trail on any area that is subject to a high likelihood of landslides.
- (2) person will not construct an excavated or bladed trail on an area that subject to a moderate likelihood of landslides, unless a terrain stability field assessment document is done and it is the assessor's opinion that, based on the assessment, the assessor has reasonable grounds to believe that:
  - (a) the excavated or bladed trail can be located, constructed and rehabilitated in a manner that will not significantly increase the risk of a landslide, and
  - (b) there is a low likelihood of landslide debris:
    - i. entering into a fish stream or a perennial stream that is a direct tributary to a fish stream, or
    - ii. causing damage to private property or public utilities, including but not limited to roads, bridges, transmission lines, pipelines, recreation sites, or any other similar structures.
- (3) A person will not sidecast material onto slopes that have a high likelihood of landslides.
- (4) A person will not construct any excavated or bladed trail unless it is:
  - (a) provided for in an operational plan, or
  - (b) otherwise authorized in writing by the Forestry Officer.
- (5) A person will ensure that excavated or bladed trails are constructed:
  - (a) to prevent subsurface seepage water from being diverted onto potentially unstable slopes or into stream channels or gullies that would not naturally have received the water;
  - (b) to maintain stability of cut slopes and fill slopes;
  - (c) to maintain surface drainage patterns;
  - (d) to minimize soil erosion and the amount of sediment entering streams
- (6) A person who constructs or modifies any excavated or bladed trail that is not a permanent access structure will rehabilitate the area occupied by the excavated or bladed trail within 1 year of completion of harvest.
- (7) Excavated or bladed trails requiring rehabilitation under Article 3(4) or 4(3) will be rehabilitated by:
  - (a) carrying out to the satisfaction of the Forestry Officer all of the following:
    - i. decompacting the running surface, unless the soil is sand, loamy sand, or contains in excess of 70% coarse fragments by volume;
    - ii. placing sidecast fill material on the excavated portion of the trail;
    - iii. recontouring the slope;

- iv. re-establishing surface drainage patterns;
  - v. scattering woody debris on exposed mineral soil surfaces, or
  - (b) carrying out other measures authorized in writing by the Forestry Officer.
- (8) The Forestry Officer may exempt a holder from the requirement to rehabilitate an area occupied by an excavated or bladed trail under Article 3(4) or 4(3) on the grounds that:
- (a) the area is too small to warrant rehabilitation,
  - (b) rehabilitating the area is unlikely to restore productivity to an acceptable level, or
  - (c) rehabilitating the area will create an unacceptable risk of further damage or harm to, or impairment of forest resources.

## **5. Landings**

- (1) A person will construct landings at least 30 m from a fish stream or a stream unless
- (a) there is no other practicable location for the landing
  - (b) constructing the landing closer to the stream will not create a higher risk of sediment delivery to the stream, and
  - (c) the landing is identified in an operational plan as being closer than 30 m to the stream.
- (2) A person required to rehabilitate a temporary landing must do all of the following:
- (a) incorporate drainage systems to minimize runoff flowing onto the landing and erosion of the landing fill and material;
  - (b) carry out measures to ensure that the landing is stable;
  - (c) decompact the landing area;
  - (d) spread retrievable soil material, that was displaced to construct the landing, over the surface of the landing;
  - (e) re-establish natural surface drainage;
  - (f) place woody debris over exposed mineral soil; and
  - (g) other activities as directed by the Forestry Officer.

## **6. Harvesting Adjacent To Streams, Wetlands And Lakes Not Identified Or Incorrectly Classified**

If a stream, wetland or lake was not identified or was incorrectly classified in an operational plan:

- (1) the riparian management area will have the widths established in Part 8, and
- (2) a person will not carry out harvesting within the riparian management area, except in accordance with the Forestry Officer's written authorization, and the Forestry Officer may give the authorization only if satisfied, based on the correct classification, that the harvesting will adequately manage and conserve the forest resources.

## **7. Temporary Stream Crossings**

A person carrying out harvesting will:

- (1) not construct a temporary stream crossing unless authorized by the Forestry Officer;
- (2) locate, design, construct, use, repair and remove temporary stream crossings in a manner that:
  - (a) protects the stream channel and stream bank immediately above and below the stream crossing, and
  - (b) mitigates disturbance to the stream channel or stream bank at the crossing;
- (3) locate, design, construct, use, repair and remove temporary stream crossings in a manner that is consistent with timing windows and measures provided in writing by the Forestry Officer, if the crossing is for a fish stream:
- (4) remove all temporary stream crossings at the completion of harvesting, unless otherwise directed by the Forestry Officer.

## **8. Maintaining Stream Bank Stability**

A person carrying out harvesting or stream cleaning, for purposes other than constructing or modifying an authorized stream crossing, will not remove stable natural material that is in a stream or that is embedded in a stream bank, or a root system that contributes to stream bank stability and fish habitat, unless authorized by the Forestry Officer.

## **9. Restrictions On The Location Of Helicopter Or Balloon Log Drop Areas**

A person will not locate an aerial harvesting log drop area in:

- (1) the littoral zone of a fresh water system,
- (2) water that is less than 10 m deep.

## **10 Felling, Yarding And Skidding**

A person will ensure that timber is:

- (1) felled onto a stream, lake, wetland or fisheries sensitive zone, only if approved in an operational plan or otherwise authorized in writing by the Forestry Officer, or
- (2) yarded or skidded through or over any stream or fisheries-sensitive zone, only if approved in an operational plan or otherwise authorized in writing by the Forestry Officer.

## **11. Landing And Roadside Slash Accumulations**

Unless otherwise authorized by the Forestry Officer, a person will burn the combustible slash that accumulates at landings and roadside work areas within the following time periods:

- (1) if the slash is insect-infested, before the insects emerge;
- (2) if the slash is not insect-infested, before the end of the first burning season after harvesting is completed.

## **12. Rehabilitation Of Compacted Areas And Corduroyed Trails**

At the conclusion of harvesting operations, or at another time directed by the Forestry Officer a person will rehabilitate compacted areas and areas occupied by corduroyed trails, to the satisfaction of the Forestry Officer, unless the Forestry Officer exempts the person from this requirement on the grounds that:

- (1) the area is too small to warrant rehabilitation,
- (2) rehabilitating the area is unlikely to restore productivity to an acceptable level, or
- (3) rehabilitating the area will create an unacceptable risk of further damage or harm to, or impairment of, forest resources.

## **13. Limits On Area That May Be Occupied By Soil Disturbance**

- (1) The maximum proportion of any standards unit within the net area to be reforested that may be occupied by soil disturbance is:
  - (a) If all assessments of the following hazards have been carried out and documented in the forest development plan or operational plan:
    - i. soil compaction hazard;
    - ii. soil erosion hazard;
    - iii. soil displacement hazard, the amount of site disturbance as specified in the site plan or forest development plan, or,
  - (b) 5%, if the requirements of paragraph (a) have not been met.
- (2) If the limit for soil disturbance specified in Article 13(1) or in a site plan is exceeded, the person will:
  - (a) promptly notify the Forestry Officer, and
  - (b) carry out any site rehabilitation measures required by the Forestry Officer.

## **Part 7 - Silviculture**

### **Obligations to Produce a Free Growing Stand**

#### **General**

##### **1. Site Plans**

Where a site plan has been prepared, the Band will establish, in accordance with the Code and the site plan, a free growing stand on those portions of the area under the plan that are within the net area to be reforested.

##### **2. Silviculture Treatments on Free Growing Stands**

- (1) Before silviculture treatments are done on a free growing stand, a Professional Forester will prepare a Stand Management Prescription on the area to be treated.
- (2) The Band will carry out the silviculture treatment in accordance with the Code and the Stand Management Prescription.

##### **3. Producing A Free Growing Stand On Required Areas**

- (1) The Band will produce, in accordance with Part 7 Article 3 to 6, a free growing stand on:
  - (a) the net area to be reforested, except on areas of intermediate cuttings, and
  - (b) areas where the timber was harvested in contravention of the Code.
- (2) The Council may exempt the Band from the requirements of Article (1) if the harvesting is limited to one or more of the following:
  - (a) harvesting timber on land that is, or will be, used for
    - i. grazing or growing of hay
    - ii. an experimental purpose,
    - iii. growing Christmas trees, or
    - iv. any use that is incompatible with the establishment of a free growing stand;
  - (b) harvesting activities limited to
    - i. removing a safety hazard,
    - ii. facilitating the collection of seed for reforestation, or
    - iii. facilitating the entrapment of pests;
  - (c) the felling and removal of special forest products;
  - (d) minor salvage operations;
  - (e) minor harvesting operations.

##### **4. Stocking Requirements At Regeneration Date**

- (1) When establishing a free growing stand under Part 7 Article 3, the Band will establish a stand that meets the stocking requirements of this section, by:
  - (a) the end of the regeneration date specified in an operational plan for the area, or
  - (b) if the regeneration date is not specified in an operational plan, the end of the regeneration date that is, for ESSF and SBS biogeoclimatic zones:
    - i. 4 years after denudation for areas where planting is specified in an operational plan, and
    - ii. 7 years after denudation for areas where natural regeneration is specified in an operational plan.
- (2) If the silvicultural system approved for the area is other than single tree selection, the stand of trees will contain at least:
  - (a) the minimum number of healthy, well spaced trees of the preferred and acceptable species per hectare specified in Part 7 Table A, and
  - (b) the minimum number of healthy, well spaced trees of the preferred species per hectare specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Part 7 Schedule A
- (3) If the silvicultural system approved for the area is single tree selection, the stand of trees will contain, for at least one layer of the stand:
  - (a) at least the minimum number of healthy, well spaced trees of the preferred and acceptable species per hectare specified in Part 7 Table B, and
  - (b) at least the minimum number of healthy, well spaced trees of the preferred species per hectare specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Part 7 Schedule A.
- (4) The Band will maintain the stocking requirements of this Article from the regeneration date referred to in Article 4(1) until the free growing date.

## **5. Stocking Requirements At Free Growing Date**

- (1) When establishing a free growing stand under Part 7 Article 3, the Band will establish a free growing stand that meets the requirements of this Article by the free growing date:
  - (a) specified in an operational plan for the area, or
  - (b) if not specified in an operational plan for the area, 15 years for the SBS and 20 years for the ESSF biogeoclimatic zones.
- (2) The period of years referred to in Article 5(1) begins:
  - (a) for cutblocks harvested after the coming into force of this Code, on the date when harvesting, excluding road and landing construction, begins on the cutblock;
  - (b) for areas where the timber was harvested by a person in contravention of Part 4 Article 1 of the Code on the date when the contravention occurred.

- (3) If the silvicultural system approved for the area is other than single tree selection, the stand of trees will contain at least:
  - (a) the minimum number of healthy, well spaced trees of the preferred and acceptable species per hectare, and
  - (b) the minimum number of healthy, well spaced trees of the preferred species per hectare specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Part 7 Schedule A
- (4) If the silvicultural system approved for the area is single tree selection, the stand of trees will contain, for at least one layer of the stand:
  - (a) at least the minimum number of healthy, well spaced trees of the preferred and acceptable species per hectare, and
  - (b) at least the minimum number of healthy, well spaced trees of the preferred species per hectare specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Part 7 Schedule A.
- (5) Healthy, well spaced trees of a preferred or acceptable species, referred to in Article 5(3) or 5(4), will have achieved:
  - (a) the minimum height for their species as specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Schedule A, and
  - (b) the height, relative to competing vegetation within a 1 m radius of the tree trunk:
    - i. specified in an operational plan for the area, or
    - ii. specified in Schedule A, or
    - iii. if there is no amount specified in an operational plan for the area or in Schedule A:
      - (a) 125% for the ESSF biogeoclimatic zone, and
      - (b) 150% for the SBS biogeoclimatic zone.
- (6) For healthy, well spaced trees of a preferred or acceptable species to be considered free growing, they will have been on the cutblock for at least 5 years from the date harvesting commenced on the cutblock, excluding harvesting for road or landing construction, unless Council specifies, in writing, another period.
- (7) The maximum number of coniferous trees allowed per hectare before a spacing treatment is required under Part 7 Article 5 is:
  - (a) a number established:
    - i. by the Council in writing, or
    - ii. in an operational plan for the area if a number has not been established under subparagraph 7(a)i., or:
  - (b) 10,000 trees per hectare if a number has not been established under paragraph 7(a).

- (8) If a spacing treatment is required under Part 7 Article 5 the number of coniferous trees per hectare that remain after the spacing treatment will not exceed:
- (a) the maximum number specified in an operational plan for the area or
  - (b) if there is no number specified in an operational plan for the area then
    - i. if a silvicultural system other than single tree selection is approved for the area 2,000 coniferous trees per hectare for the ESSF and SBS biogeoclimatic zones,
    - ii. if single tree selection is approved for the area, 1,500 coniferous trees per hectare in the sapling layer,
    - iii. a number established by Council in writing.

## **6. Maximum Density Spacing Treatment Requirement**

- (1) When establishing a free growing stand under Part 7 Article 5, if the maximum number of coniferous trees per hectare on an area exceeds the number specified in Part 7 Article 5, the Band will carry out a spacing treatment before the free growing date to reduce the number of coniferous trees per hectare on the area to:
- (a) a number not greater than the maximum number specified in an operational plan for the area, or
  - (b) if there is no number specified in an operational plan for the area, a number not greater than the number specified in Part 7 Article 5(8).
- (2) For a coniferous tree to be countable for the purposes of this Article, the coniferous tree will:
- (a) be of a height that is at least 20% of the median height of well spaced trees in the survey plot,
  - (b) if the silvicultural system is single tree selection, be at least 1.3 m in height and less than 7.5 cm in diameter measured at a height of 1.3 m, or
  - (c) meet the criteria specified by Council.

## **7. Target Stocking Standard**

- (1) When establishing a free growing stand under Part 7 Article 3:
- (a) if the silvicultural system approved for the area is other than single tree selection, the Band will carry out a regime of silviculture treatments designed to achieve the target stocking standard, as specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Part 7 Schedule A, or
  - (b) if the silvicultural system approved for the area is single tree selection, the Band will carry out harvesting and a regime of silviculture treatments that is designed to achieve the target stocking standard for single tree selection for at least one layer of the stand, as specified in an operational plan for the area, or if not specified in an operational plan for the area, as determined in accordance with Schedule A.

- (2) The Council may require the professional forester to prepare and obtain the Council's approval of a site plan or amendment, that outlines a regime of silviculture treatments designed to achieve a target stocking standard required under Article 7(1), if the Council is of the opinion that the Band is not complying with Article 7(1).

## **8. Use Of Seeds And Vegetative Material**

If the Band carries out planting to produce a free growing stand, they will comply with all of the following:

- (1) use only seedlots or vegetative lots collected and registered in accordance with the Tree Cone, Seed and Vegetative Material Regulation of the Forest Practices Code of B. C. Act;
- (2) unless otherwise authorized by the Council or designate, use the best genetic quality source available;
- (3) not exceed the limits for seed or vegetative material transfer specified in the Seed and Vegetative Material Guidebook of the BC Forest Practices Code Act, unless otherwise permitted by the Council or designate;
- (4) store seeds for reforestation with the Ministry of Forests;
- (5) keep a record of the registration numbers of the seedlots or vegetative lots used and the locations where they are planted;
- (6) use only seedlings or vegetative propagules that indicate on their shipping containers whether or not the seedlings or vegetative propagules have been treated with pesticides;
- (7) if the Band knows or should know of forest health concerns that affect the health of the species of trees that are required by the operational plan, use only naturally or genetically improved resistant seed sources, seedlings or vegetative propagules if they are available.

## **9. Livestock For Silviculture Purposes**

A person who uses livestock for site preparation or brush control will comply with the following:

- (1) all necessary measures, including any specified by the Council or designate, are taken to:
  - (a) protect fish, wildlife and their habitat,
  - (b) minimize conflict between livestock and animals that could prey on livestock,
  - (c) protect irrigation and licensed domestic water supply intakes,
  - (d) prevent transmission of disease from livestock to wildlife, and
  - (e) maintain the health of livestock;
- (2) a livestock corral is not constructed
  - (a) within a riparian reserve zone or riparian management zone, or

- (b) on a site that drains directly into a stream, lake or other watercourse bearing fish or used as a potable water source;
- (3) the Band is notified before the arrival of livestock;
- (4) all livestock health certifications and health inspections required by the Ministry of Agriculture and Food are carried out.

#### **10. Use Of Fertilizer For Silviculture Purposes**

A person using fertilizer in silviculture treatments will handle and apply the fertilizer in a manner that protects forest resources, and in accordance with applicable provincial regulations.

#### **11. Insect Behaviour Modifying Treatments**

Unless exempted by the Council, the Band, who uses trap trees or pheromones to concentrate insect populations, will destroy the insect brood before the insects emerge.

### **Surveys and Reports**

#### **12. Silviculture Surveys**

- (1) Where the Band is required to establish a free growing stand on an area, a professional forester will carry out an assessment for the net area to be reforested by the regeneration date, showing whether or not the stocking requirements for the regeneration date have been met.
- (2) The professional forester will carry out a survey for the net area to be reforested, on or before the free growing date or within the free growing assessment period for the area under a site plan, identifying the following:
  - (a) the area for which the free growing stocking requirements have been met;
  - (b) the number of healthy, well spaced free growing trees per hectare of the preferred and acceptable species;
  - (c) the number of healthy, well spaced free growing trees per hectare of the preferred species;
  - (d) the total number of countable coniferous trees per hectare for the purpose of determining compliance with the maximum number of coniferous trees allowed per hectare under Part 7 Article 5;
  - (e) for any areas for which the free growing stocking requirements have not been met, the areas that are
    - i. satisfactorily stocked, or
    - ii. not satisfactorily restocked;
  - (f) the inventory label and silviculture label, including species component, age, height, density and site index.
- (3) Where the professional forester has prescribed intermediate cuttings, the professional forester will carry out a survey, between 1 and 3 years after the completion of harvesting on the area, that identifies:

- (a) the area,
  - (b) the inventory label including species component, age, height, density and site index, and
  - (c) the incidence of damage by forest health factors affecting trees.
- (4) Without limiting Articles 12(1) to 12(3), the professional forester will:
- (a) carry out surveys and assessments to the satisfaction of the Council or designate;
  - (b) keep a written record of a survey or assessment and, if required, provide it to the Council or designate.

**Table A - Stocking Standards for Silvicultural Systems Other than Single Tree Selection**

(section 1 of Schedule 'A')

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Region	Subzone Variant	Site Series	Target Stocking Standard	Minimum number of healthy, well spaced trees of the preferred & acceptable species per ha.	Minimum number of healthy, well spaced trees of the preferred species per ha.	Minimum free growing height (m)
All Regions	ESSFmv1	01	1200	700	600	PI 1.6 Other 0.8
All Regions	ESSFmv1	02,03,04,05	1000	500	400	PI 1.2 Other 0.6
All Regions	ESSFmv2	01,02,04,05	1200	700	600	PI 1.6 Other 0.8
All Regions	ESSFmv2	03	1000	500	400	PI 1.2 Other 0.6
All Regions	ESSFmv2	06	400	200	200	PI 1.2 Other 0.6
All Regions	ESSFmv3	01,04,05,06	1200	700	600	PI 1.6 Other 0.8
All Regions	ESSFmv3	02,03,07	1000	500	400	PI 1.2 Other 0.6
All Regions	ESSFmv4	01,04	1200	700	600	PI 1.6 Other 0.8
All Regions	ESSFmv4	02,03	1000	500	400	PI 1.2 Other 0.6
All Regions	ESSFmv4	05	400	200	200	PI 1.2 Other 0.6
All Regions	SBSmk1	01,02,03,04,05,06,07,08	1200	700	600	PI 2.0 Fd 1.4 Other 1.0
All Regions	SBSmk1	09	1000	500	400	PI 1.4 Other 0.8
All Regions	SBSmk1	10	400	200	200	PI 1.4 Other 0.8
All Regions	SBSwk1	01,03,04,05,06,07,08	1200	700	600	PI 2.0 Fd 1.4 Other 1.0
All Regions	SBSwk1	02,09,10	1000	500	400	PI 1.4 Fd 1.0 Other 0.8
All Regions	SBSwk1	11	400	200	200	PI 1.4 Other 0.8
All Regions	SBSwk2	01,03,04,05	1200	700	600	PI 2.0 Other 1.0
All Regions	SBSwk2	02,06	1000	500	400	PI 1.4 Other 0.8
All Regions	SBSwk3	01,03,04,05,06,07	1200	700	600	PI 2.0 Fd 1.4 Other 1.0
All Regions	SBSwk3	02,08	1000	500	400	PI 1.4 Other 0.8

The minimum heights that are assigned for various tree species in a group of biogeoclimatic site series do not imply that the tree species are acceptable for all of the site series. The preferred and acceptable tree species for any site series will be approved in an operational plan. Once a tree species has been approved as preferred or acceptable on a given site series, the minimum height in the table will be achieved unless an alternative free growing height has been approved in an operational plan.

**Table B - Stocking Standards for Single Tree Selection Silvicultural Systems**

(section 2 of Schedule 'A')

(all numbers in this table are healthy well spaced trees per hectare)

Column 1	Column 2	Column 3	Column 4	Column 5
Target stocking standard for the appropriate biogeoclimatic ecosystem classification from Table 'A'	Layer	Target stocking standard for single tree selection	Minimum number of healthy, well spaced trees of the preferred and acceptable species per ha.	Minimum number of healthy, well spaced trees of the preferred species per ha.
1200	mature	600	300	250
	pole	800	400	300
	sapling	1000	500	400
	regeneration	1200	700	600
1000	mature	400	200	200
	pole	600	300	250
	sapling	800	400	300
	regeneration	1000	500	400
900	mature	400	200	200
	pole	500	300	250
	sapling	700	400	300
	regeneration	900	500	400
800	mature	300	150	150
	pole	400	200	200
	sapling	600	300	300
	regeneration	800	400	400
600	mature	300	150	150
	pole	400	200	200
	sapling	500	300	300
	regeneration	600	400	400
400	mature	200	100	100
	pole	300	125	125
	sapling	300	150	150
	regeneration	400	200	200

## Part 8 - Riparian Widths

### General

#### 1. Determining The Applicable Riparian Widths

- (1) The riparian management area widths specified in this Part apply to all forest practices on Band lands.
- (2) The Council on advice from a professional forester, may vary the width of a riparian management area established under this Part.
- (3) Prescriptions for the Riparian Management Areas will be provided on a site specific basis by a professional forester.

#### 2. Measuring Riparian Widths

- (1) Riparian management areas are the areas of a width specified in this Part that are measured from:

- (a) for streams:

- i. the edge of the stream channel bank, to the widest of:

- (a) the top of the inner gorge of the stream,

- (b) the width specified under Part 8 Articles 1 or 4, or

- (c) the outer edge of any:

- (i) active flood plain or

- (ii) wetland that is less than 1 ha in size and is located directly adjacent to the stream

- (b) for wetlands:

- i. the edge of the wetland, to the widest of the widths specified under Part 8 Articles 1 or 6

- (c) for lakes:

- i. the edge of the lake, to the widest of the widths specified under Part 8 Articles 1 or 8.

## Streams

### 3. Riparian Classes Of Streams

(1) Fish streams have the following riparian classes:

Stream Width (m)	Riparian Class
$>20$	S1
$>5 \leq 20$	S2
$1.5 \leq 5$	S3
$<1.5$	S4

(2) Streams that are not fish streams have the following riparian classes:

Stream Width (m)	Riparian Class
$>3$	S5
$\leq 3$	S6

### 4. Widths Of Riparian Management Areas For Streams

For each riparian class referred to in Article 3 above, the riparian management area width on each side of the stream is as follows:

Riparian Class	Riparian Management Area (m)
S1	70
S2	50
S3	40
S4	30
S5	30
S6	20

## Wetlands

### 5. Riparian Classes Of Wetlands

A wetland has a riparian class of

- (1) W1 if the wetland is greater than 5 ha in size,
- (2) W3 if the wetland is between 1 ha and 5 ha in size.
- (3) W5 if the area consists of 2 or more individual wetlands with overlapping riparian management zones and the combined size of the wetlands is 5 ha or larger.

## 6. Widths Of Riparian Management Areas For Wetlands

For each riparian class referred to in Article 5(1), the riparian management area width is the following:

Riparian Class	Riparian Management Area (m)
W1	50
W3	30
W5	50

## Lakes

### 7. Riparian Classes Of Lakes

A lake has a riparian class of:

- (1) L1 if the lake is:
  - (a) greater than 5 ha in size, or
  - (b) designated by the Council or designate,
- (2) L3 if the lake is between 1 ha and 5 ha in size;

### 8. Widths Of Riparian Management Areas For Lakes

- (1) A lake with a riparian class of L1 has a riparian management area width specified by the Council based on the recommendation of a professional forester.
- (2) A lake with a riparian class other than L1 has the following riparian management area width.

Riparian Class	Riparian Management Area (m)
L3	30

### 9. Specific Guidelines For Management Of Riparian Areas Located Along Streams Within Band Land

- (1) S2 streams with flat gradients:
  - (a) Harvest of adjacent Riparian Management Area is acceptable for limited stretches of stream, but aggressive harvesting should not exceed 100 meters of contiguous length of stream or eliminate the opportunity for the recruitment of large woody debris,
  - (b) Maintain a minimum 10 meter machine free zone,
- (2) S3 streams:

- (a) Maintain at least 65% of the natural levels of shading and light intensity reaching the stream surface,
  - (b) Maintain an adequate "short term supply" and "long term supply" of large woody debris (LWD) for the stream channel type, as defined in Part 8 Articles 10 and 11,
- (3) S4 Streams all gradients:
- (a) Maintain at least 50% of the natural levels of shading and light intensity reaching the stream surface,
  - (b) In the Riparian Management Area, leave standing 10 trees in a mix of sizes between 15 cm and 40(+) cm dbh, for every 100 meters of stream channel harvested,
  - (c) If a danger tree, located within the 30 meter Riparian Management Area, needs to be felled and falls across the stream channel, then it can count for the inventory of 10 residual trees per 100 meters of channel length,
  - (d) Maintain a minimum 5 meter machine free zone (seasonal or operability constraints may require a prescription for a wider machine free zone).

## **10. Maintaining An Adequate Long Term Supply Of Large Woody Debris**

The long term supply of large woody debris will be maintained by implementing the following practices:

- (1) For S3 Streams with flat gradients:
  - (a) If the stand structure permits, leave good quality understory coniferous trees that have a potential of responding positively to a partial cutting operation (these are the trees that will potentially supply the large woody debris to the stream channel during the long term period). The target number of "released" understory trees should be 20-25 trees per 100 meters of channel length.
  - (b) If the stand structure is not conducive to leaving good quality understory trees, then windfirm clumps or patches of mature trees should be left along the stream. These patches should cover at least 40% of the length of the channel, and be at least 150 meters in length.
  - (c) Maintain natural root structure adjacent to the stream, by utilizing a minimum 5 meter machine free zone (seasonal or operability constraints may require a prescription for a wider machine free zone).
- (2) For S3 streams with moderate gradients:
  - (a) Recommendations are similar to above, however because of the greater inherent sensitivity of these channel types the target number of "released" understory trees should be increased to 25 – 30 trees per 100 meters of channel length.

## 11. Maintaining An Adequate Short Term Supply Of Large Woody Debris

The short term supply of large woody debris will be maintained by implementing following practices:

- (1) For S3 streams with flat gradients:
  - (a) Do not remove any existing large woody debris that is either spanning the channel at the time of forest harvest, even if it is recent blowdown and has commercial value.
  - (b) In the Riparian Management Zone, leave at least 20 trees standing in a mix of sizes, between 15 and 40 cm (+) dbh, for every 100 meters of stream channel harvested. These residual trees should have a good potential for falling into or across the stream channel within the next 30 years. The species mix of these residual trees should represent the species mix of the original stand.
  - (c) To prevent excessive stream channel damage from blowdown events, harvest those trees immediately adjacent to the stream channel that are a high blowdown hazard. These trees are typically located within the first two to three meters from the stream edge.
  - (d) If a danger tree, located within the Riparian Management Zone, needs to be felled and falls across the stream channel, this can count for the inventory of 20 residual trees per 100 meters of stream length.
  - (e) If the harvest operation is a blowdown salvage, and many of the trees in the Riparian Management Zone have fallen across the stream channel, the following recommendations are provided:
    - i. Leave in place all trees and pieces of large woody debris that fell into the stream channel prior to the blowdown event;
    - ii. Leave at least 15 blowdown trees per 100 meters of channel length (the trees should be fairly evenly distributed along the length of the stream channel).
- (2) For S3 streams with moderate gradients
  - (a) Recommendations are similar to above, however because of the greater inherent sensitivity of these channel types the number of trees left standing should be increased to at least 40 trees in a mix of sizes, between 15 and 40(+)cm dbh, for every 100 meters of stream channel harvested.

## **Part 9 - Fire Use, Wildfire Prevention and Wildfire Control**

### **General**

#### **1. Application**

Part 9 applies only from April 1 to October 31 each year, unless extended by Council.

### **Division 1 - Wildfire Prevention**

#### **2. Fire Watcher**

- (1) When a fire watcher is required to be present by the Code, the fire watcher will:
  - (a) watch for sparks and fires,
  - (b) report any fires to the Forestry Officer or Council or designate, or the person carrying out an industrial activity at the work site at which the fire watcher is engaged, and
  - (c) assist in fighting any fire that occurs in the area being watched by the fire watcher.
- (2) When the fire watcher reports a fire to a person carrying out an industrial activity, the person will immediately report the forest fire to the Forestry Officer, Council or designate and the British Columbia Ministry of Forests.
- (3) A person carrying out an industrial activity will ensure that a fire watcher has access to the following:
  - (a) one round-nosed shovel;
  - (b) one Pulaski tool or mattock;
  - (c) one hand-tank pump containing at least 18 liters of water;
  - (d) a radio or telephone that can be used to report a fire and request assistance.
- (4) A fire watcher must comply with the requirements of Schedule 4 of this part.

#### **3. Fire Fighting Tools – General**

- (1) When the number of persons who normally work at an industrial activity work site is 3 or less, the person carrying out the industrial activity will ensure that the following fire fighting tools are kept at the work site:
  - (a) one round-nosed shovel;
  - (b) one Pulaski tool or mattock;
  - (c) one hand-tank pump containing at least 18 litres of water.
- (2) When the number of persons normally working at an industrial activity work site is more than 3, the person carrying out the industrial activity will ensure that the following fire fighting tools are kept at the work site:

- (a) one round-nosed shovel, Pulaski tool or mattock for each person;
  - (b) one hand-tank pump containing at least 18 litres of water for every 3 persons, to a maximum of 8 hand-tank pumps.
- (3) For the purpose of Article 3(2), the number of round-nosed shovels will, as nearly as possible, equal the combined number of Pulaski tools and mattocks.

#### **4. Fire Fighting Tools - Large Engines**

- (1) A person carrying out an industrial activity will ensure that every large engine used in an industrial activity has attached to it the following fire fighting tools:
- (a) one round-nosed shovel;
  - (b) one Pulaski tool or mattock;
  - (c) one fire extinguisher with a ULC rating of at least IA5BC;
  - (d) one fire extinguisher with a ULC rating of at least 3A 10BC or an integral vehicle fire suppression system.

#### **5. Fire Fighting Tools - Hot Work**

In addition to any other requirement of this Code, a person carrying out an industrial activity will ensure that the following fire fighting tools are kept at each work site where hot work is performed:

- (1) 2 fire extinguishers each with a ULC rating of at least 3 A 10BC;
- (2) one round-nosed shovel;
- (3) 2 hand-tank pumps containing at least 18 litres of water each.

#### **6. Fire Fighting Tools - Explosives**

In addition to any other requirement of this Code, if explosives are used in an industrial activity the person carrying out the industrial activity will ensure that the following fire fighting tools are kept at the place from which the blast will be controlled:

- (1) 2 round-nosed shovels;
- (2) hand-tank pumps containing at least 18 litres of water each.

#### **7. Fire Fighting Tools - Helicopters**

- (1) In addition to any other requirement of this Code, if one or more helicopters are normally used in an industrial activity to extract logs or to move personnel and equipment to and from a logging operation, the person carrying out an industrial activity will ensure that there is kept at a helicopter landing spot near the logging operation, for the exclusive use of each helicopter, a water bucket that is;
- (a) of a type designed and adapted for aerial fire fighting,
  - (b) capable of being attached to a helicopter, and

- (c) capable of being both filled and emptied from a helicopter while the helicopter is airborne.
- (2) A person carrying out a logging operation will ensure that all helicopters used in the operation area are:
  - (a) equipped and maintained so that they are capable of operating the water bucket specified in Article 7(1), and
  - (b) operated by pilots who are knowledgeable about the use of the water bucket.

## **8. Water Delivery Systems**

- (1) In this Article "portable pump unit" means a water pump, not affixed to another machine, that is capable of maintaining a pressure of 1,000 kPa (145 psi) while delivering 135 litres of water per minute from 30 m of hose with:
  - (a) a nozzle having a 9.5 mm opening,
  - (b) a suction hose,
  - (c) at least 450 m of discharge hose having a diameter not less than:
    - i. 38 mm, unlined, or
    - ii. 25 mm, lined, and
  - (d) the tools and accessories necessary to operate and maintain the water pump and hoses.
- (2) In addition to any other requirement of this Code, a person carrying out an industrial activity that includes an activity in risk classification A or B under Schedule 1 will ensure that each work site has:
  - (a) one water delivery system if there are 4 - 10 workers working at the work site normally or
  - (b) 2 water delivery systems if there are 11 or more workers working at the work site, normally.
- (3) For the purpose of Article 8(2), if more than one activity is carried on at a work site, the number of persons working at the work site is considered to be the sum of the number of persons normally working at each activity.

## **9. Central Equipment Cache**

- (1) In addition to any other requirement of this Code, a person carrying out an industrial activity that is an activity in risk classification A or B under Schedule 1 will ensure that extra equipment is kept at a central equipment cache where it can be delivered to the work site within 2 hours.
- (2) The quantity of extra equipment required by Article 9(1) is set out in Columns 2 to 5 of Schedule 2 opposite Column 1 which lists the number of persons who normally work at the work site.

- (3) For the purpose of Article 9(2), if more than one activity is carried on at a work site, the number of persons at the work site is considered to be the sum of the number of persons normally working at each activity.

## **10. Large Engines**

- (1) A person will not operate a large engine unless it is equipped with a safe and effective device for arresting sparks that is:
  - (a) an integral part of the exhaust system, and
  - (b) in good repair.
- (2) A person will not operate a large engine that operates in a stationary capacity unless the site has been cleared of combustible material for a distance of at least 3 m in each direction from the large engine.
- (3) A person carrying out an industrial activity will ensure that a large engine meets the requirements under Article 10(1) and that combustible material is cleared as required under Article 10(2).

## **11. Small Engines**

- (1) A person will not operate a small engine unless:
  - (a) the muffler on the small engine is maintained and in good repair, and,
  - (b) there is available at all times a fire extinguisher charged with at least 0.225 (0.5 lb.) of fire extinguishing chemical.
- (2) A person will not operate a small engine if the ability of the muffler to reduce hot carbon emissions has been lessened by modification of the muffler or by redirection of the emissions.
- (3) A person carrying out an industrial activity will ensure that a small engine is engine is equipped with a muffler that meets the requirements under Articles 1(1)(a) and 11(2) and that a fire extinguisher is available as required under Article 11(1)(b).

## **12. Hot Work**

- (1) A person will not perform hot work unless a fire watcher is present.
- (2) The fire watcher required under Article 12(1), must remain at the site of the hot work for 30 minutes after the hot work has ceased, unless a longer period is required, as directed by the Forestry Officer.
- (3) A fire watcher is not required under Article 12(1) if all combustible materials is removed for at least 10m from the place where the hot work is performed, as approved by the Forestry Officer.

## **13. Cable Logging**

A person carrying out an industrial activity that is a cable logging system will:

- (1) lay out all running lines in straight lines,

- (2) remove branches, brush and shrubs to a width of 75 cm on each side of the running line for a distance of 4 m in either direction from each corner block, and
- (3) in addition to any other requirement of this Code, provide a hand-tank pump containing at least 18 litres of water and keep it immediately adjacent to each corner block that is in use.

#### **14. Fireworks**

If an order made under the Code prohibiting the use of an open fire is in effect in an area, a person will not ignite fireworks in that area.

#### **15. Combustible Material**

- (1) A person carrying out an industrial activity that involves a place that is a camp, mine, sawmill, refuse disposal site or processing facility will ensure that an area that extends inward 15 m from the perimeter of the place is kept clear of combustible material.
- (2) A person carrying out an industrial activity that involves a camp, mine, sawmill, refuse disposal site or processing facility will ensure that all combustible material cleared from the area referred to in Article 15(1) is disposed of at least once in every calendar year.

#### **16. Explosives**

A person will not use explosives at the site of an industrial activity unless a fire watcher remains at the site where the explosives are used for at least 30 minutes after the explosives have been detonated, unless a longer period is required by the Forestry Officer.

#### **17. Restrictions On Industrial Activities**

- (1) A person carrying out an industrial activity will ensure that the activity is conducted in accordance with the requirements set out in Columns 3 and 4 of Schedule 4 that are opposite the industrial activity's risk classification in Column 2 and fire danger class in Column 1.
- (2) The person carrying out the industrial activity will determine:
  - (a) the industrial activity's risk classification from Schedule 1, and
  - (b) obtain from the Forestry Officer the fire danger class.
- (3) The Forestry Officer will determine the fire danger class for the industrial activity from data provided by representative weather stations and the tables set out in Schedule 3.

#### **18. Fire Hazard Assessment**

If required by the Code, a person who engages in a prescribed activity related to timber harvesting will, in accordance with the Code:

- (1) assess the fire hazard, in accordance with Schedule 1 and Schedules 3 and 4 of this section, and
- (2) submit the results of the fire hazard assessment to the Forestry Officer.

## **19 Responsibility For Abatement And Removal Of The Fire Hazard**

If a fire hazard exists on Band land as a result of an industrial activity, the person carrying out the activity and the person causing the activity to be carried out will abate, remove or both abate and remove, the fire hazard as required by, and in accordance with, the Code.

## **20. Burning Permit To Abate Or Remove A Fire Hazard**

- (1) Before a person abates or removes a fire hazard by burning, the person will apply for a burning permit and, subject to Article 20(2), a burning permit will be issued to the person.
- (2) If the Forestry Officer determines that burning is not an appropriate means of abatement or removal of the fire hazard, he or she will determine whether
  - (a) a burning permit should be issued at a later date, or
  - (b) the hazard should be abated or removed by a means other than burning,
- (3) The Forestry Officer who makes a determination under Article 20(2):
  - (a) will promptly advise the person who made the application for the burning permit of the determination, and may extend the prescribed time or the time specified in a notice for abating or removing the fire hazard.
- (4) A person responsible for carrying out a silviculture treatment that specifies burning, who is advised of a determination under Article 20(2)(b), will carry out an alternative type of silviculture treatment specified in the site plan.

## **21. Order To Abate Or Remove The Fire Hazard**

- (1) If the Forestry Officer determines that a fire hazard has not been removed as required by the Code, he or she may, in a notice of determination given to a person require the person to remove or abate the fire hazard and the person will comply.

## **22. Fire Preparedness Responsibilities Of A Person Engaged In An Industrial Activity**

A person carrying out an industrial activity on Band land will:

- (1) do so in accordance with the Code, and
- (2) at all times have:
  - (a) the tools and equipment in the quantity and of the type required by the Code,
  - (b) the prescribed number of personnel who meet the prescribed training requirements as described in Schedule 5 of this Part.

## Division 2 - Fire Use

### 23. Fires For Cooking, Warmth And Ceremony

A person may light, fuel or make use of an open fire without a burning permit for cooking, warmth or ceremonial purposes if the burning is conducted in accordance with the following conditions:

- (1) before the fire is ignited, all combustible material will be removed for at least 30 cm in every direction from the perimeter of the fire,
- (2) the fire will not be closer than 3m to any snag, slash, standing tree or wooden structure;
- (3) the fire will not be more than 1m in diameter or 1m in height;
- (4) a shovel, or a pail containing at least 8 litres of water, will be kept near the fire at all times;
- (5) the fire will be completely extinguished before the person leaves the site of the fire.

### 24. Fires For Disposal Of Waste

A person authorized to occupy Band land may light, fuel, or make use of, an open fire on the land without a burning permit for the purpose of disposing of waste material consisting of paper, cardboard, lumber, brush, slash, stumps, trees or other woody debris, if the burning is conducted in accordance with the following conditions:

- (1) Prior to ignition, the person receives **written permission** from the Forestry Officer to ignite material;
- (2) piles of material to be burned will not exceed 2 m in height and 3 m in diameter or width;
- (3) during light-up and until all fires are extinguished there will be at least one person at the site who:
  - (a) actively patrols to prevent the fire from escaping and
  - (b) is equipped with the following:
    - i. a shovel;
    - ii. either an axe or a Pulaski;
    - iii. a pail containing at least 18 litres of water, or something that is at least equivalent to an 18 litre pail of water;
- (4) before any fires are ignited, all combustible material will be removed for at least 1 m in every direction from the perimeter of the pile of material to be burned;
- (5) the material to be burned will be a minimum of 5 m from any snag, slash, wooden structure or standing timber;
- (6) the person lighting, fuelling, or making use of the open fire will, immediately on the fire escaping or threatening to escape, provide, in addition to the person patrolling, 2

adult persons with suitable fire fighting tools, and will ensure that they make reasonable attempts to extinguish the fire;

- (7) no more than 2 burn piles may be ignited at one time;
- (8) ignited piles will have burned down to a smoldering condition before more piles are ignited.

## **25. Use Of Planned Fire**

- (1) When carrying out forest practices a person will:
  - (a) comply with fuel management requirements established in an operational plan, and
  - (b) use fire only in accordance with the conditions of a burning permit and the Code.
- (2) In accordance with the Code, a person who has carried out a planned fire that is in the nature of a broadcast burn will, after the burn, promptly:
  - (a) carry out an impact assessment of the site and soil conditions, and
  - (b) if the assessment shows that the effects of the planned fire were more severe than specified in the site plan or the operational plan, develop a rehabilitation plan and submit it to the Forestry Officer for approval.
- (3) If the Forestry Officer approves the rehabilitation plan, the person who submitted the plan will implement it.

## **26. Council May Except Band Land**

Council may except Band land from some or all provisions of Division 2, Part 9, if Council determines that the resources and land of the Band are adequately managed and protected.

## **27. Fires Not Permitted**

The Forestry Officer may suspend, cancel or restrict burning in an area that has been excepted under the Code if he or she:

- (1) considers it necessary to limit the risk of a forest fire, and
- (2) in or near the area, posts or broadcasts, or both, a notice of the suspension, cancellation or restriction.

## **28. Issuing A Burning Permit**

The Forestry Officer may issue a burning permit containing the conditions that are:

- (1) in accordance with the Code, and
- (2) considered appropriate by the Forestry Officer issuing the permit.

## **29. Suspension, Cancellation Or Variation Of Burning As A Precaution Against Forest Fires**

The Forestry Officer may, where necessary as a preventative measure to limit the risk of a forest fire starting:

- (1) suspend, cancel or restrict the use of all burning permits issued for the area,
- (2) order that a person will not light, fuel or make use of an open fire in the area for any purpose referred to, and
- (3) in a notice served on its holder, vary, suspend, cancel or restrict the use of a burning permit.

### **Division 3 - Wildfire Control**

#### **30. Initial Fire Suppression**

- (1) A person carrying out an industrial activity will take appropriate action when a fire is first discovered to:
  - (a) contain or limit the spread of the fire, and
  - (b) if possible, extinguish the fire.
- (2) The person will commit, if necessary to meet the requirements of Article 30(1):
  - (a) all employees of the person who are working in the area of operation, and,
  - (b) all tools and equipment required by and under this Code, as well as any other tools and equipment that are available to the person.

#### **31. Restricted Area**

- (1) The Forestry Officer may, in a notice personally given, or in a notice that is published or broadcast in or near the area, order that for the period specified in the notice, that area is a restricted area, if the Forestry Officer considers it appropriate in a specified area:
  - (a) as a preventative measure to limit the risk of a forest fire starting,
  - (b) as a public safety measure to protect the public from an actual or potential fire or from fire control or suppression operations, or
  - (c) to avoid interference with fire control or suppression operations.
- (2) If an order made under Article 31(1) does not prevent a person from
  - (a) travelling to and from or occupying his or her residence, or
  - (b) carrying on or travelling to and from an operation of a type authorized under the order
- (3) A person entering a restricted area will comply with the Code.

#### **32. Order To Leave Area**

- (1) The Forestry Officer may order a person to leave an area specified in the order if the provincial government or Band is engaged in fire control or suppression operations.
- (2) A person who receives an order under Article 31(1) will immediately comply with the requirements of the order.

- (3) The Forestry Officer may make an order under Article 31(1) whether or not the area specified in the order has been declared a restricted area.

### **33. General Duty To Report A Fire**

- (1) A person who sees a fire burning on Band land, that appears to be unattended or burning without any precautions taken to extinguish or prevent its spread, will immediately report the fire to the Forestry Officer, Council or designate and the British Columbia Ministry of Forests.

### **34. Prohibition**

- (1) Except for the purpose of starting a fire in accordance with this Code, a person will not drop a burning substance on Band land.
- (2) A person who contravenes Article 34(1) will immediately take all reasonable steps to extinguish the burning substance.

### **35. Obligation Of Person Starting Fire**

- (1) A person will take the actions required if the person does any of the following things on Band land:
  - (a) starts or causes a fire, otherwise than as permitted by the regulations;
  - (b) starts or causes an open fire that spreads beyond the area authorized or intended for burning or otherwise becomes out of control.
- (2) A person to whom this applies will:
  - (a) immediately take all reasonable steps to extinguish the fire, if the fire can be extinguished, and after that to report the fire in accordance with 3 3(1), or
  - (b) if it appears the fire cannot be extinguished by the person, immediately report the fire in accordance with 3 2(1).

### **36. Fire Suppression Responsibilities Of A Person Engaged In An Industrial Activity**

If a person is carrying out an industrial activity and a fire occurs on Band land within 1 km of a person's area of operation, that person:

- (1) will report the fire to the Forestry Officer or Council or designate, and the British Columbia Ministry of Forests; and
- (2) carry out initial fire suppression in accordance with the regulations.

## **Division 4 - Rehabilitation**

### **37. Site Rehabilitation**

- (1) A person who carries out fire control or fire suppression operations will stabilize all fire access trails, fire guards and other fire suppression works to ensure that natural drainage patterns are maintained and surface soil erosion is minimized.

- (2) Without limiting Article 37(1), a person carrying out rehabilitation will include the following activities:
  - (a) stabilization and revegetation of soil disturbed or exposed by heavy equipment;
  - (b) disposal of slash and debris;
  - (c) stabilization of the stream channel and stream bed at stream crossings;
  - (d) stabilization of sump and dam locations.
- (3) A person responsible for stabilization activities under Article 37(1) will prepare and submit a site rehabilitation plan to the Forestry Officer for approval not later than 10 days after the fire is suppressed if heavy equipment was used to construct fire access trails, fire guards, fire camps, staging areas or heliports.

### **Schedule 1 – Forest Fire Risk Classification**

1. The activities of industrial operations have the risk classifications assigned to them in Table 1.
2. If an industrial operation includes more than one component activity, each activity is subject to this regulation.
3. An activity not specifically listed in Table 1 is deemed to be risk classification A.

**Table 1 - Risk Classification by Activity**

Risk Classification A (High)	Risk Classification B (Moderate)	Risk Classification C (Low)
Blasting Bucking - power saw Bucking - tree processor Log barking Log skidding - ground system Log yarding - cable logging Metal cutting, grinding or welding Rail grinding Road right of way grass Sawmilling Silviculture - using small engines Silviculture - use large engines Trail building - using small engines	Bucking, at landing Firewood cutting Land clearing Log forwarding Log yarding - helicopter Mining explorations Right of way clearing or maintenance Trenching	Bitumen processing - portable plant Bridge building Drilling Equipment transportation Excavating Fencing Gas or oil well operation Gravel processing, loading and hauling Guiding and packing Log sorting or reloading Log hauling Log loading Log scaling
Tree felling Wood chipping Wood processing		Log dumping Mining operations Mowing Pipeline construction Plant harvesting Power line construction Prospecting Quarrying Railway construction or maintenance Ranch operation Road construction or maintenance Silviculture - using hand tools Surveying or engineering Timber cruising Tourism resort operation Trail building - using hand tools

**Schedule 2 – Quantities of Equipment Required for a Central Equipment Cache**

Column 1 Number of persons	Column 2 Portable Pump Units	Column 3 Pulaski tools/ Shovels	Column 4 Hand-tank Mattocks	Column 5 Pumps
1-10	0	0	0	0
11-20	1	4	4	2
21-40	2	6	6	4
41-60	3	10	8	6
61-80	4	14	10	8
81-100	5	20	12	12
101+	6	22	14	14

### Schedule 3 – Fire Danger Class (DGR)

Buildup Index (BUI)	Fire Weather Index (FWI)				
	0	1-7	8-16	17-30	31+
0-19	I	II	II	III	III
20-42	II	II	III	III	IV
43-69	II	III	III	IV	IV
70-118	II	III	IV	IV	V
119+	III	III	IV	V	V

### Schedule 4 – Restrictions on Industrial Operations

Column 1 Fire Danger Class (DGR)	Column 2 Risk Classification	Column 3 Restriction	Column 4 Duration
III (Moderate)	A or B	After 3 consecutive days of DGR III maintain a fire watch after work for 1 hour	Until the fire danger class falls below DRG III
IV (High)	A	Maintain a fire watch after work for 1 hour  After 3 consecutive days of DGR I or greater, cease activity between 1 p.m. and 9 p.m. local time each day	Until the fire danger class falls below DGR III  Until the fire danger class falls to DRG III for 2 consecutive days, or until the fire danger class falls to DGR II or DGR I
	B	Maintain a fire watch after work for 1 hour	Until the fire danger class falls below DGR III
V (Extreme)	A	Maintain a fire watch after work for 1 hour  After 2 consecutive days of DGR V, cease all activity all day	Until the fire danger class falls below DGR III  Until the fire danger class falls below DGR V, then resume the activity except between 1 p.m. and 9 p.m. local time, or until the fire danger class falls to DGR III
	B	Maintain a fire watch after work for 1 hour  After 3 consecutive days, cease activity between 1 p.m. and 9 p.m., local time each day	Until the fire danger class falls below DGR III  Until the fire danger class falls to DGR IV for 3 consecutive days, or until the fire danger class falls to DGR III

## **Schedule 5 – Training Requirements**

1. A person carrying out an industrial activity must ensure at all times during the operation that a person in charge is present on the site who has been trained to a level acceptable to the council in the areas of fire suppression techniques, fire behaviour and fire line safety.
2. The following courses are prescribed for the purposes of Part 9, Article 22(2)(b) of the Code:
  - (a) Fundamentals of Fire Fighting s-130 (B.C.);
  - (b) Safety and Fire Behavior s-190 (B.C.);
  - (c) Portable Pumps and Water Use s-232 (B.C.);
  - (d) courses that, in the opinion of the Forestry Officer, are the equivalent of a course referred to in paragraphs (a) to (c).

## Part 10 – Forest Licence

### 1. Requirement Of A Forest Licence

- (1) The Council may issue a forest licence to a company wholly owned and controlled by, or established for the benefit of, the McLeod Lake Indian Band;
- (2) The Council may issue one or more forest licences.

### 2. Content Of A Forest Licence

A forest licence:

- (1) will be for a term not exceeding 15 years;
- (2) will specify an area of Band land within which its holder may harvest timber;
- (3) will require its holder to pay to the Band, in addition to other amounts payable under this Code, stumpage under Part 16;
- (4) will provide for cutting permits to be issued by the Council, within the limits provided in the forest licence and subject to this Code, to authorize its holder to harvest the allowable annual cut, from specified areas of Band land, and
- (5) may make provision for timber or other forest products to be harvested by persons under contract with its holder.

### 3. Replacement

- (1) Unless a forest licence provides that a replacement for the forest licence will not be offered, the Council, during the 6 month period following the fourth anniversary of the exiting forest licence, will offer its holder a replacement for the forest licence.
- (2) Despite Article 3(1), if the Council determines that
  - (a) the rights under the existing forest licence are under suspension, or
  - (b) the holder of the existing forest licence has failed to:
    - i. pay stumpage or other money payable in respect of timber harvested under the forest licence,
    - ii. perform an obligation under the forest licence to be performed by the holder in respect of an area of land specified in a cutting permit,
    - iii. comply with the requirement of the Code in respect of an area of land referred to in Article 3(2)(b)ii,the Council, to the extent provided in the Code,
  - (c) may decline to offer a replacement for the existing forest licence until:
    - i the suspension is rescinded,
    - ii the suspended rights are reinstated, or
    - iii the holder of the existing forest licence:

- (A) pays the stumpage or other money payable,
  - (B) performs the obligation to be performed under the existing forest licence in respect of land referred to in Article 3(2)(b)ii, or
  - (C) complies with the requirement of the Code in respect of land referred to in Article 3(2)(b)ii, and
- (d) may offer a replacement with special conditions.
- (3) A forest licence offered under this section will
- (a) have a term commencing
    - i on the fifth anniversary of the exiting forest licence, or
    - ii if the Council exercises the power conferred under Article 3(2)(c) on a date to be determined by the Council,
  - (b) be for a term equal to the lessor of
    - i 15 years, or
    - ii if the Council exercises the power conferred under Article 3(2)(c), a period, not exceeding the period referred to in Article 3(3)(b)i, to be determined by the Council,
  - (c) specify the Band land specified in the existing forest licence,
  - (d) subject to takings, reductions and deletions authorized or required under this Code, specify an allowable annual cut that may be harvested under it equal to the allowable annual cut under the existing forest licence, and
  - (e) include other terms and conditions, consistent with this Code.
- (4) An offer made under this Article may be
- (a) amended, and
  - (b) accepted by written notice of acceptance served on the Council not later than 3 months after the offer is served.
- (4) If an offer made under this Article is accepted
- (a) an agreement in the form of a forest licence containing the terms and conditions set out in the offer, including amendments, must be entered into by the Council and the holder of the forest licence, and
  - (b) the forest licence then in force expires on the commencement of the replacement licence.
- (5) If an offer made under this Article is not accepted, the existing forest licence continues in force until its term expires, after which it has no further effect.
- (6) No forest licence is renewable.

## **Part 11 – Cutting Permits**

### **1. Requirement Of A Cutting Permit**

- (1) No timber will be harvested, cut, or removed unless a cutting permit has been issued by the Council;
- (2) The Council will only issue cutting permits when there has been compliance with Parts 3, 4, 5, 6, 7, 8, 9, of the Code;
- (3) The Council will only issue cutting permits when there has been an environmental screening of the harvest proposal in accordance with the Canadian Environmental Assessment Act (CEAA);
- (4) The Council may issue cutting permits to any of the following:
  - (a) the McLeod Lake Indian Band, or any member thereof;
  - (b) a company wholly owned and controlled by, or established for the benefit of, the McLeod Lake Indian Band; or
  - (c) any person who is not a member of the Band.
- (5) Notwithstanding any other provision in the Forest Practices Code and provided a forest licensee has complied with all written terms and conditions of its forest licence issued by the Council pursuant to the Land Code, the Council shall issue or grant such licensee a cutting permit pursuant to these cutting permits provisions.

### **2. Content Of A Cutting Permit**

- (1) A cutting permit will include the following:
  - (a) an approved site plan;
  - (b) a approved CEAA environmental screening;
  - (c) a schedule of road use;
  - (d) the authorized timber mark;
  - (e) the stumpage rate for timber harvested on;
    - i. the area of harvest in the block;
    - ii. the area of harvest to access the block.
- (2) An authorized cutting permit will be signed by:
  - (a) the Forestry Officer;
  - (b) a quorum of Council.

## Part 12 - Investigations and Enforcement

### Inspecting, Stopping and Seizing

#### 1. Powers Of Forestry Officer

The Forestry Officer is empowered to enforce the Code including investigations into allegations of non-compliance with the Code and the assessments of penalties.

#### 2. Entry And Inspection

- (1) For any purpose related to the administration or enforcement of the Code, the Forestry Officer may enter any building or land, at any reasonable time, other than a dwelling house or a room being used as a dwelling, if the Forestry Officer has reasonable grounds to believe that the land or premises:
  - (a) has located on it timber that is required to be scaled or marked with a Band timber mark;
  - (b) is the site of timber harvesting that is regulated under this Code;
  - (c) is the site of forest practices that are regulated under this Code or is carried on by a person who is required under the Code to hold a licence or permit to carry out that forest practice;
  - (d) is the site of trading in botanical forest products;
  - (e) is the site of an activity that requires a permit, plan or approval under the Code;
  - (f) is the site of an industrial activity being carried out in or within 1 km of a forest.
- (2) The Forestry Officer may, at any reasonable time, enter on Band lands that are in or within 1 km of a forest to inspect for fire hazards if the Forestry Officer has reasonable grounds to believe that an activity is being carried out or a condition exists on the land that might cause or produce a fire hazard.
- (3) The Forestry Officer who enters on land or premises under this Article may:
  - (a) inspect any thing or any activity that is reasonably related to the purpose of the inspection, and
  - (b) require production for the purposes of inspection or copying of:
    - i. a licence, permit or operational plan that is required for the activity, and
    - ii. a record required to be kept under the regulations.

#### 3. Inspection Of Vehicle Or Vessel Carrying Forest Products

For any purposes related to the administration and enforcement of the Code, the Forestry Officer may at any time stop and inspect a vehicle or vessel on Band lands if the Forestry Officer has reasonable grounds to believe it :

- (1) contains or is transporting timber, special forest products, botanical forest products or hay, and

- (2) is under the operation or control of any person.

#### **4. Production Of Records**

- (1) The Forestry Officer may by written order require the holder of an agreement within the time specified in the order, to produce records that are:
  - (a) related to an activity that requires a permit, plan or approval under the Code, and
  - (b) specified or otherwise described in the order.
- (2) At any reasonable time the Forestry Officer may enter the business premises of a holder of an agreement under the Code where records are kept for the purposes of inspecting or copying records that are required to be kept under the Code.

#### **5. Obligation Of The Forestry Officer**

The Forestry Officer who conducts an inspection under this Part will provide proof of identity to the person who has apparent custody or control of the property or activity being inspected on the request of that person.

#### **6. Obligation Of Person Inspected**

- (1) A person will not obstruct the Forestry Officer in the lawful exercise of an inspection.
- (2) The operator of a vehicle or vessel will stop the vehicle or vessel when required to do so by the Forestry Officer.
- (3) A person who:
  - (a) has apparent custody or control of the land, premises, records or other property that is being inspected,
  - (b) is in charge of the activity that is being inspected, is operating a vehicle or vessel that is stopped will, on request of the Forestry Officer, produce proof of identity.

#### **7. Special Investigations**

In accordance with the Code, Council may carry out special investigations to determine:

- (1) compliance with the requirements of the Code, and
- (2) the appropriateness of the enforcement of the Forestry Officer under the Code.

## Part 13 - Penalties

### Administrative Remedies

#### 1. Penalties

- (1) If the Forestry Officer determines that a person has contravened the Code, the Forestry Officer may levy a penalty against the person up to the amount provided in the Schedule of Penalties herein.
- (2) If a person's employee, agent or contractor contravenes the Code in the course of carrying out the employment, agency or contract, the person also commits the contravention.
- (3) If a corporation contravenes the Code, a director or officer of it who authorized permitted or acquiesced in the contravention also commits the contravention.
- (4) Before the Forestry Officer levies a penalty, he or she:
  - (a) will consider any policy established by Council, and,
  - (b) subject to any policy established by Council may consider the following:
    - i. previous contravention of a similar nature by the person;
    - ii. the gravity and magnitude of the contravention;
    - iii. whether the violation was repeated or continuous;
    - iv. whether the contravention was deliberate;
    - v. any economic benefit derived by the person from the contravention;
    - vi. any other considerations that Council may prescribe.
- (5) The Forestry Officer who levies a penalty against a person under this Article, or any other Article, will give a notice of determination to the person setting out all of the following:
  - (a) the nature of the contravention;
  - (b) the amount of the penalty;
  - (c) the date by which the penalty will be paid;
  - (d) the person's right to a review and appeal.
- (6) For the purposes of Article (1) the Forestry Officer may prescribe penalties that vary according to:
  - (a) the area of land;
  - (b) the volume of timber;
  - (c) the number of trees, or
  - (d) the number of livestock affected by the contravention.

#### 2. Remedial Orders

- (1) If the Forestry Officer determines that a person has contravened the Code, he or she, in a notice of determination, may order the person to do work to remedy the contravention:
  - (a) by requiring the holder to carry out forest practices:
    - i. that is required by the Code, and
    - ii. that the holder has failed to carry out, or
  - (b) by requiring the holder to repair any damage caused by the contravention to the land on which forest practices were carried out.
- (2) The Forestry Officer who orders work to be done will give a notice of determination to the person setting out all of the following that is applicable:
  - (a) the nature of the contravention;
  - (b) the nature of the work to be done to remedy the contravention;
  - (c) the date by which the work will be completed;
  - (d) the person's right to a review and appeal;
  - (e) the right of the Band to carry out the work and levy a penalty if the person fails to comply with the order.
- (3) If a person fails to comply with an order by the date specified in a notice given under Article (2), the Forestry Officer may do one or more of the following:
  - (a) in a notice given to the person, restrict or prohibit the person from carrying out the work referred to in the order.
  - (b) realize on any security the person was required to provide under the Code.
- (4) If the Forestry Officer carries out work under Article (2) he or she may levy against the person who has failed to comply with the order a penalty in an amount the Forestry Officer determines to be equal to the expenses incurred in carrying out the work.
- (5) If the Forestry Officer carries out work that results from a contravention, the person who failed to comply with the order may pay a penalty of up to twice the amount the Forestry Officer determines to be equal to the expenses incurred in carrying out the work
- (6) If security is realized, the person will immediately replace the security to the extent it has been realized.

### **3. Penalties For Unauthorized Timber Harvesting**

- (1) If the Forestry Officer determines that a person has cut, damaged, removed or destroyed timber in contravention of the Code, he or she may levy a penalty against the person up to an amount equal to the greater of \$200/m<sup>3</sup> of timber affected and \$100,000 per ha of timber affected.

- (2) The Forestry Officer who determines that a person has cut, damaged, removed or destroyed timber in contravention of the Code, may levy a penalty against the person up to an amount equal to his or her determination of:
  - (a) the cost that will be incurred by the Band in re-establishing a free growing stand on the area, and
  - (b) the costs that were incurred by the Band in applying silviculture treatments to the area that were rendered ineffective because of the contravention.

#### **4. Notice Of Determination That A Person Contributed To A Fire**

The Forestry Officer who makes a determination that a person caused a fire, failed to comply with the Code or contributed to the cause or spread of a fire will give the person a notice of determination setting out sufficient information to enable the person to respond to the determination.

#### **5. Extension Of Notice Of Determination**

- (1) The Forestry Officer may extend a date referred to in a notice of determination under this division.
- (2) Any penalty or charge is due on the date set out in the notice of determination, unless the person requests a review in which case it is due on the date the stay ceases to apply.

#### **6. Policies And Procedures Established By The Council**

- (1) The Council may establish, vary or rescind policies and procedures respecting penalties and remediation orders.
- (2) Before the Forestry Officer levies a penalty or makes an order, the Forestry Officer will consider any applicable policy or procedure established under this Article.
- (3) The policies and procedures established, varied or rescinded will be made available for inspection by any person.

#### **7. Stopwork Order**

- (1) If the Forestry Officer considers that a person is contravening a provision of the Code, the Forestry Officer, in accordance with the Code may order that the contravention cease, or cease to the extent specified by the order until the person has a required licence, permit, plan, prescription or approval.
- (2) An order under this Article may be made to apply generally or to one or more persons named in the order.

#### **8. Suspension Or Cancellation Of Burning Permit**

The Forestry Officer may, in a notice served on the holder of a burning permit, suspend or cancel a burning permit, if the Council determines that the holder of the burning permit:

- (1) is not complying with the permit,
- (2) has contravened the Code.

## **9. Determination Not Effective Until Proceedings Concluded**

A determination that may be reviewed does not become effective until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

## **10. Right Of Review**

- (1) A person who is the subject of a determination, a penalty, or an order by the Forest Officer, may deliver to Council a written request for a review of the determination.
- (2) The person will attach, as part of the request, a written statement explaining why the person believes the determination is wrong.
- (3) The person will deliver the request to Council not later than 7 days after the date the notice of determination was given to the person.
- (4) Before or after the time limit expires, Council may extend it.
- (5) A person who does not deliver the request for a review within the time specified loses the right to a review.

## **11. Council Review**

- (1) Within 30 days of receipt of a written request for a review of a determination, the Council will review the determination.
- (2) The Council may confirm, rescind or vary the determination.

## **12. Extension Of Time**

The council may extend a time required to do anything under the Code other than a review or appeal of a determination or the time to commence a proceeding.

## **13. Taking Remedial Action Does Not Affect Penalties**

Taking remedial action after a contravention has occurred does not affect any fine or penalty to which a person may be liable under the Code, for the contravention.

## **14. Administrative Remedies**

- (1) The Council may make standards respecting administrative remedies.
- (2) Without limiting the generality of Article (1), the Council may make regulations respecting fees, charges and penalties in cases where there is a failure to comply with the requirements of the Code.

### Schedule 1: Schedule of Penalties

Part 3 Section 1	Failure to carry out forest practices in a manner consistent with subsections (1), (2), (3), (4), or (5).	\$50,000
Part 3 Section 6	Failure to carry out timber harvesting in accordance with the silviculture system and harvesting methods, and during the season, required by the site plan, the regulations or the standards.	50,000
Part 3 Article 6(1)(p)	Harvesting or damaging trees that are required by the site plan to be left standing or undamaged.	5,000
Part 3 Article 19(1)	Failure of a person who has a specified operational plan to submit an amendment to the plan or a new plan for approval if required.	5,000
Part 3 Article 19(2)(b)	Carrying out an operation under an operational plan before a required amendment or a new plan has been approved.	5,000
Part 4 Article (1) and (2) and Part 10 Article (1)	Cutting, removing, damaging or destroying timber without authorization.	the greater of \$200 per m <sup>3</sup> of timber affected and \$100,000 per ha of timber affected.
Part 4 Article 2	Causing or permitting livestock to be ridden or driven on, or to graze on land without authorization.	10,000
Part 4 Article 3(1)	Failure to obtain consent before constructing or rehabilitating a trail or campsite.	5,000
Part 4 Article 7(1)	Permitting the wheels or tracks of ground-based machinery within 5 m of a stream bank.	10,000
Part 4 Article 7(2)	Fueling or servicing machinery within a riparian reserve zone or riparian management zone or within 30 m of a lakeshore.	10,000
Part 4 Article 8	Harvesting, felling or modifying trees within a riparian reserve zone where no approval has been provided.	50,000
Part 4 Article 9(1)	Carrying out forest practices that result in damage to the environment.	50,000
Part 4 Article 9(3)	Carrying out forest practices if he or she knows or should reasonably know that, due to weather conditions or site factors, the carrying out of forest practices may result, directly or indirectly, in significant damage to the environment.	50,000
Part 4 Article 9(4)	Failure of a person who contravenes Part 3 Article 9(1) or (3) to take required action.	20,000
Part 4 Article 9(5)	Inappropriately resuming forest practices that were stopped under Part 3 Article 9(4)a.	20,000
Part 5 Article 1(1)	Exceeding the permanent access structure limit.	50,000
Part 5 Article 1(3)	Failure to carry out required site rehabilitation measures.	50,000
Part 5 Article 3	Failure to construct or modify a road in accordance with all of the requirements.	50,000

Part 5 Article 3(1)a	Failure to provide for user safety when constructing or modifying, maintaining or deactivating a road.	20,000
Part 5 Article 3(1)b	Failure to protect forest resources when constructing or modifying, maintaining or deactivating a road.	50,000
Part 5 Article 3(1)c	Failure to maintain surface drainage structures when constructing or modifying, maintaining or deactivating a road.	10,000
Part 5 Article 3(1)d	Failure to protect water quality when constructing or modifying, maintaining or deactivating a road.	5,000
Part 5 Article 3(1)e	Failure to protect stream bank stability when constructing or modifying, maintaining or deactivating a road.	10,000
Part 5 Article 3(1)f	Failure to ensure the safe passage of fish when constructing or modifying, maintaining or deactivating a road.	5,000
Part 5 Article 3 (1)g	Failure to protect fish habitat when constructing or modifying, maintaining or deactivating a road.	5,000
Part 5 Article 3(1)h	Failure to protect structural integrity of the road and drainage systems when constructing or modifying, maintaining or deactivating a road.	10 ,000
Part 5 Article 3(1)i	Failure to maintain slope stability when constructing or modifying, maintaining or deactivating a road.	10,000
Part 5 Article 3(1)j	Failure to minimize surface soil erosion when constructing or modifying, maintaining or deactivating a road.	10,000
Part 5 Article 3(1)k	Failure to minimize sediment entering into streams when constructing or modifying, maintaining or deactivating a road.	10,000
Part 5 Article 3(2)a	Failure to ensure that the road surface has surface materials of a type necessary to allow the road to carry the design wheel loads during the periods of use.	10,000
Part 5 Article 3(2)b	Failure to ensure the road surface has surface materials that will minimize surface erosion of the road.	50,000
Part 5 Article 3(3)	Failure to revegetate the required areas.	5,000
Part 5 Article 3(4)	Depositing slash, debris or erodible soil in prohibited areas.	20,000
Part 5 Article 4	Failure to obtain approval for a road layout and design before constructing or modifying a road to which the permit applies.	20,000
Part 5 Article 7(1)	Failure to remove from within the road prism width, if required, stumps, roots, embedded logs, topsoil and soils that are not capable of supporting the road and applied vehicle loads.	2,000
Part 5 Article 7(3)a	Failure to minimize ground disturbance when constructing or modifying a snow road.	10,000
Part 5 Article 7(3)b	Removing gravel or fill from riparian management zones without the prior approval of the Forestry Officer.	10,000
Part 5 Article 9(1)	Failure to modify or stop road construction or modification in vicinity of fisheries-sensitive zone.	10,000

Part 5 Article 9(2)	Failure to construct crossings in fish streams in accordance with timing windows and measures provided by the designated environment official.	50,000
Part 5 Article 13(1)	Failure to obtain authorization from the Forestry Officer prior to modifying a deactivation prescription if required.	50,000
Part 5 Article 13(3)	Failure to deactivate a road.	50,000
Part 5 Article 13(4)	Failure to post information respecting deactivation of roads as required.	20,000
Part 5 Article 14(2)b	Modifying a deactivation prescription without consent.	50,000
Part 5 Article 15	Failure to deactivate a road in accordance with timing windows and measures for works in and around streams.	50,000
Part 5 Article 16(1)	Failure to remove, repair or replace those bridges that may place users at risk during semi-permanent deactivation.	10,000
Part 5 Article 17(1)	Using a road for timber harvesting and related forest practices without authorization.	10,000
Part 6 Article 4(1)	Constructing an excavated or bladed trail that is not provided for in an operational plan or authorized by the Forestry Officer.	10,000
Part 6 Article 4(2)	Failure to meet requirements when constructing excavated or bladed trails.	20,000
Part 6 Article 4(3)	Failure to rehabilitate the area occupied by an excavated or bladed trail in the required areas.	50,000
Part 6 Article 4(4)	Failure to rehabilitate the area occupied by an excavated or bladed trail in accordance with Part 6 Article 4(4).	50,000
Part 6 Article 5(1)	Constructing a landing within 30 m of a fish stream.	20,000
Part 6 Article 5(2)	Failure to rehabilitate a landing in accordance with the requirements.	20,000
Part 6 Article 6	Harvesting in a riparian reserve zone of a stream wetland or lake without approval.	50,000
Part 6 Article 7(1)	Constructing a temporary stream crossing without authorization	10,000
Part 6 Article 7(2)a	Failure to protect a stream channel and stream bank when constructing and using a temporary stream crossing.	20,000
Part 6 Article 7(2)b	Failure to mitigate disturbance to stream channel or stream bank when constructing and using a temporary stream crossing.	20,000
Part 6 Article 7(3)	Failure to construct, repair or remove a temporary stream crossing in accordance with timing windows or measures.	20,000
Part 6 Article 7(4)	Failure to remove a temporary stream crossing.	20,000
Part 6 Article 8	Unauthorized removal of stable natural material or a root system.	20,000

Part 6 Article 9(1) and (2)	Using as a log drop area, the littoral zone of a fresh water system or water that is less than 10 m deep.	50,000
Part 6 Article 10(1)	Felling trees onto streams, lakes, wetlands, marine-sensitive zones or fisheries-sensitive zones.	10,000
Part 6 Article 10(2)	Yarding or skidding trees through or over a stream or fisheries-sensitive zone unless authorized.	5,000
Part 6 Article 11	If burning of landing and roadside accumulations is required, failure to complete the burning in the first burning season after use or before the insects emerge, if it is insect infested.	1,000
Part 6 Article 12	Failure to rehabilitate compacted areas and areas occupied by corduroyed trails.	20,000
Part 6 Article 13(1)	Exceeding the limit for soil disturbance specified in Part 6Article 13(1).	100,000
Part 6 Article 13(2)	Failure to carry out required site rehabilitation measures.	50,000
Part 7 Article 2	Failure to prepare and obtain approval of a stand management prescription for an area before carrying out a silviculture treatment on the area.	5,000
Part 7 Article 2(2)	Failure to carry out the silviculture treatment in accordance with a stand management prescription.	10,000
Part 7 Article 9(1)	Failure to take that all necessary measures to meet the requirements, when using livestock for site preparation or brush control.	2,000
Part 7 Article 9(2)	Constructing a livestock corral within a riparian reserve zone, riparian management zone or on a site that drains directly into a stream, lake or other prohibited watercourse.	2,000
Part 7 Article 9(3)	Failure to notify the Forestry Officer before the arrival of the livestock.	2,000
Part 7 Article 9(4)	Using livestock that fail to meet the health certifications and health inspections.	2,000
Part 7 Article 10	Failure to store, handle and apply fertilizer in a manner that protects forest resources.	5,000
Part 7 Article 11	Failure to destroy insect brood before the insects emerge when using trap trees or pheromones to concentrate insect populations.	5,000
Part 9 Article 2(1)(a)	Failure of a fire watcher to watch for sparks and fires.	1,000
Part 9 Article 2(1)(b)	Failure of a fire watcher to report any fires as required.	1,000
Part 9 Article 2(1)(c)	Failure of a fire watcher to assist in fighting any fire that occurs in the area being watched by the fire watcher.	2,000
Part 9 Article 2(3)	Failure of a person carrying out an industrial activity to ensure that a fire watcher has access to the specified tools and equipment.	2,000

Part 9 Article 3(1)	Failure of a person carrying out an industrial activity to ensure that the specified fire fighting tools are kept at the work site.	2,000
Part 9 Article 3(2)	Failure of a person carrying out an industrial activity to ensure that the specified fire fighting tools are kept at the work site.	2,000
Part 9 Article 4	Failure of a person carrying out an industrial activity to ensure that every large engine used in an industrial activity has the specified fire fighting tools.	2,000
Part 9 Article 5	Failure of a person carrying out an industrial activity to ensure that the specified fire fighting tools are kept at each work site where hot work is performed.	2,000
Part 9 Article 6	Failure of a person carrying out an industrial activity using explosives to ensure that the specified fire fighting tools are kept as required.	2,000
Part 9 Article 7(1)	Failure of a person carrying out an industrial activity using helicopters to ensure that a specified water bucket is kept as required.	2,000
Part 9 Article 7(2)	Failure of a person carrying out a logging operation to ensure that all helicopters used in the operation are properly equipped and maintained to operate fire fighting equipment.	2,000
Part 9 Article 7(2)(b)	Failure of a person carrying out a logging operation to ensure that all helicopters used in the operation are operated by pilots who are knowledgeable about the use of fire fighting equipment.	2,000
Part 9 Article 8(2)	Failure of a person carrying out an industrial activity that includes activities with specified risks to ensure that each work site has the specified water delivery systems.	2,000
Part 9 Article 9(1)	Failure of a person carrying out an industrial activity with a specified risk to ensure that necessary equipment is available as required.	2,000
Part 9 Article 10(1)	Operating a large engine without a safe and effective device for arresting sparks.	1,000
Part 9 Article 10(2)	Operating a large engine that operates in a stationary capacity without removing combustible material as requested.	1,000
Part 9 Article 10(3)	Failure of a person carrying out an industrial activity to ensure that the requirements of Article 10(1) and (2) are met.	2,000
Part 9 Article 11(1)	Operating a small engine without an effective muffler and fire extinguisher.	1,000
Part 9 Article 11(2)	Operating a small engine with an inappropriate muffler.	1,000
Part 9 Article 11(3)	Failure of a person carrying out an industrial activity to ensure that a small engine is equipped with an effective muffler and fire extinguisher.	2,000
Part 9 Article 12(1)	Performing hot work without a fire watcher.	1,000
Part 9 Article 12(2)	Failure of a fire watcher to remain at the site for a specified period.	1,000

Part 9 Article 13(1)	Failure of a person carrying out an industrial activity that is a cable logging system to meet the specified requirements.	2,000
Part 9 Article 15(1)	Failure of a person carrying out an industrial activity that involves a place that is a camp, mine, sawmill, refuse disposal site or processing facility, to ensure that a specified area is kept clear of combustible material.	2,000
Part 9 Article 15(2)	Failure of a person carrying out an industrial activity that involves a camp, mine, sawmill, refuse disposal site or processing facility, to dispose of all combustible material as required.	2,000
Part 9 Article 16	Using explosives at the site of an industrial activity to ensure that the activity is conducted in accordance with the specified requirements.	1,000
Part 9 Article 17(1)	Failure of a person carrying out an industrial activity to ensure that the activity is conducted in accordance with the specified requirements.	5,000
Part 9 Article 17(2)	Failure of a person carrying out an industrial activity to determine the industrial activity's risk classification and the fire danger class as required.	5,000
Part 9 Article 18(1)	Failure to assess the fire hazard in accordance with the regulations.	1,000
Part 9 Article 18(2)	Failure to submit the results of the fire hazard assessment to the Forestry Officer.	5,000
Part 9 Article 19	Failure to abate, remove or both abate and remove, the fire hazard as required by, and in accordance with the Code.	500 per ha
Part 9 Article 20(1)	Failure to apply for a burning permit before abating or removing a fire hazard by burning.	1,000
Part 9 Article 20(4)	Failure to carry out an alternate type of silviculture treatment specified in the site plan if required.	5,000
Part 9 Article 21	Failure to comply with a notice to remove or abate the fire hazard.	the greater of \$500 per ha and \$5,000
Part 9 Article 25(1)(a)	Failure to comply with fuel management requirements established in an operational plan.	10,000
Part 9 Article 25(1)(b)	Failure to use fire only in accordance with the conditions of a burning permit and the Code.	10,000
Part 9 Article 25(2)(a)	Failure to carry out an impact assessment of the site and soil condition where required.	5,000
Part 9 Article 25(2)(b)	Failure to develop a rehabilitation plan and submit it to the Forestry Officer for approval where required.	5,000
Part 9 Article 25(3)	Failure to implement an approved rehabilitation plan.	5,000
Part 9 Article 28(1)	Failure to comply with a notice respecting conditions attached to a burning permit.	1,000
Part 9 Article 29(1)	Failure to comply with a notice respecting the use of a burning permit.	1,000

Part 9 Article 30(1)	Failure of a person carrying out an industrial activity to take appropriate action when a fire is discovered.	5,000
Part 9 Article 30(2)	Failure of a person to provide the specified resources if required.	5,000
Part 9 Article 31(1)	Entering a restricted area without the written consent of the Forestry Officer.	1,000
Part 9 Article 31(1)	Failure to immediately comply with the requirements of an order under Part 9 Article 31(1).	1,000
Part 9 Article 31(3)	Failure to comply with the code in a restricted area.	1,000
Part 9 Article 33(1)	Failure to immediately report the fire as required.	1,000
Part 9 Article 34(1)	Dropping a burning substance, in or within 300 m of a forest.	2,000
Part 9 Article 34(2)	Failure to immediately take all reasonable steps to extinguish a burning substance that was inappropriately dropped.	2,000
Part 9 Article 35(2)(a)	Failure, if required, to immediately take all reasonable steps to extinguish a fire, if the fire can be extinguished, and after that to report the fire.	2,000
Part 9 Article 35(2)(b)	Failure, if required and it appears the fire cannot be extinguished by the person, to immediately report the fire.	2,000
Part 9 Article 37(1)	Failure of a person who carries out fire control or fire suppression operations to stabilize areas as required.	5,000
Part 9 Article 37(2)	Failure of a person to carry out the required rehabilitation activities.	5,000
Part 9 Article 37(3)	Failure of a person responsible for stabilization activities to prepare and submit a site rehabilitation plan where required.	5,000

## **Part 14 - Administrative Matters**

### **1. Forestry Officer**

- (1) The Forestry Officer will be appointed by the Council, and under its direction, will be responsible for carrying out the obligations for the Band pursuant to this Code.
- (2) The Forestry Officer is responsible for the administration and enforcement of the Code, including investigations into and allegations of non-compliance with the Code, and the assessment of penalties.

### **2. Forms**

The Council may prescribe forms for the purposes of this Code.

### **3. Fees**

The Council may make requirements respecting fees for the provision, under the Code, of a service by the Band, if any, to any person.

### **4. Security**

The Council may require security of any kind, including money, to be provided by the holder of an agreement under this Code.

### **5. Recovery Of Money**

The Council may make requirements respecting the recovery of money that is required to be paid to the Band under the Code.

### **6. Cost Of Performing Obligations**

- (1) If the Code requires a person to perform an obligation or otherwise comply with the Code, the person will do so at his or her own expense unless another provision of the Code specifically provides otherwise.
- (2) If a person is required under the Code to submit an operational plan or any other plan for approval to a person acting on behalf of the Band, any implementation of the plan or prescription is at the person's own expense.

### **7. Council To Establish Standards**

- (1) Based on sustainable forest practices, and upon recommendation of a professional forester, Council will establish standards for operational planning and forest practices respecting all of the following:
  - (a) biological diversity;
  - (b) forest practices ;
  - (c) timber quality standards for wood produced on areas that have been previously harvested;
  - (d) soil conservation;

- (e) silvicultural systems;
  - (f) roads and rights of way, including the location, survey, design, construction, maintenance and deactivation standards for various types of roads;
  - (g) timber harvesting, including:
    - i. felling and bucking,
    - ii. yarding and skidding,
    - iii. area marking,
    - iv. density, location, design, construction and rehabilitation of logging trails, landings and fireguards,
    - v. debris disposal,
    - vi. utilization standards, and
    - vii. cutblock size, shape and spatial distribution;
  - (h) silviculture, including vegetation management, seed, seedlings and propagule transfer and silviculture surveys;
  - (i) forest health;
  - (j) botanical forest products;
  - (k) range management, including range use, range development and weed control;
  - (l) recreation and wilderness management, including recreation use and resource enhancement and protection;
  - (m) fire use, prevention, control and suppression; the performance of surveys and assessments.
- (2) The Council may make requirements limiting the circumstances in which a standard may be set under the Part (1), and regulating the practice and procedure for setting the standards.

## **Part 15 - Annual Report And Annual Audit**

### **1. Annual Report**

- (1) The Forestry Officer will prepare and deliver to Council an annual report which will summarize for the previous fiscal year, the forest management operations and the current silviculture and reforestation status of Band lands.
- (2) The report will include:
  - (a) a summary of road construction and deactivation activity,
  - (b) a summary of harvesting activity,
  - (c) a summary of silviculture activity,
  - (d) a record of forest practices inspections conducted by the Forestry Officer,
  - (e) a record of forest practices violations,
  - (f) a record of forest practices penalty assessments,
  - (g) the applicable approved development plan map, and
  - (h) any other activities carried out.

### **2. Annual Audit**

The Band will instruct an independent professional forester to:

- (1) conduct an annual audit of forest practices on Band lands and
- (2) prepare and deliver to Council an annual audit report describing forest practices conducted over the past year, indicating the degree to which those forest practices comply with the Code and recommendations to bring the forest practices into compliance with the Code.

### **3. Reports Available For Review By Band Members**

The Band will post in a conspicuous place in the Band office at McLeod Lake, B.C. within 15 days of receipt a copy of the annual report and the annual audit report. Summaries of the annual report and annual audit will be mailed to each Band member 18 years of age and older within 30 days of receipt of the reports by the Band.

### **4. Council Will Provide An Annual Report Promptly**

The Band will promptly provide a copy of the annual report and annual audit report to Department of Indian Affairs and Northern Development and British Columbia Ministry of Forests.

## **Part 16 - Stumpage**

### **1. Stumpage Charges**

The Band will charge and collect stumpage on all forest products harvested from Band land.

### **2. Amount Of Stumpage**

- (1) The amount of stumpage payable to the Band will be determined by multiplying the volume or quantity of forest products reported in a scale by the rate of stumpage applicable to the cutting permit.
- (2) Stumpage will not be lower than a prescribed minimum, to be established by the Council from time to time but not less than once in each year during November of each year.
- (3) Notwithstanding any other provision in the McLeod Lake Indian Band Forest Practices Code, the Council may establish during the term of a licence issued to a person to harvest or cut merchantable timber from Band land pursuant to the Land Code, a prescribed minimum stumpage where the Council, acting reasonably, considers such licence to be in the best interest of the Band.

### **3. Stumpage Rate Determination**

The Forestry Officer will, subject to the approval of the Council, assess the value of the stand and determine the stumpage rate for the cutting permit, as follows:

- (1) determine the selling price of the forest products that can be recovered from the cutting permit,
- (2) determine the least total operating costs necessary to harvest and deliver the forest products from the cutting permit to the purchaser(s),
- (3) determine the indicated stumpage rate by deducting the costs in Article 2(2) from the selling prices in Article 2(1),
- (4) determine the final stumpage rate by selecting the greater of the indicated stumpage rate in Article 2(3) or the prescribed minimum.

### **4. Forest Products Stumpage Rates**

The Forestry Officer will determine stumpage rates by forest product within each cutting permit, based on the selling price and operating costs of each forest product.

### **5. Selling Price Of Forest Products**

The forest product selling price will be based on a sales agreement between the Band or its licensees and the purchaser.

## 6. Operating Costs

The operating costs will include harvesting, road construction, road maintenance, road deactivation, hauling, silviculture and administrative overhead.

- (1) Harvesting costs include, but are not limited to, expenses incurred for: felling, skidding, yarding, bucking, sorting, loading, fuel and equipment moves, crew accommodations, contractor overhead and profit and fringe benefits, lop and scatter, landing and roadside debris piling, skid and backspar trail construction, slashing and crew transport.
- (2) Road construction costs include, but are not limited to, expenses incurred for: new construction, reconstruction and replacement and access management. New construction is defined as the following phases: subgrade construction, placement of additional stabilizing material and installation of drainage and other pertinent structures. Reconstruction and replacement are defined as: replacement or structural repair of a major drainage structure (e.g., replacing stringers, cross ties or cribbing); major resurfacing, which means resurfacing sections of more than .3 km in length that were initially surfaced but have deteriorated due to long term wear and tear; major reconstruction, which means restoring at least .1 km of road (per occurrence) that requires complete rebuilding of the subgrade. Access management is defined as the temporary removal of a major drainage structure or construction of a barrier, including a gate, excavation, or placement of boulders with the purpose of temporarily eliminating all vehicle access.
- (3) Road maintenance costs include, but are not limited to road maintenance expenses incurred for: grading, snow plowing and freezing in, sanding, spot gravelling (< .3 km distance), culvert repairs and thawing, removal and replacement (< 950 mm), non-structural maintenance of bridges, bridge re-decking/wearing surface replacement, ditching, road use charges paid to other licensees, seasonal erosion control, roadside treatments, sign maintenance, dust control, brushing, minor flood and storm damage repair, slough removal (restricted to 250 cu.m. or less material volume per slough), water bar construction (seasonal), road ripping , cross ditch construction and grass seeding.
- (4) Road deactivation costs include, but are not limited to, expenses incurred for: permanent, semi-permanent or temporary deactivation and rehabilitation.
- (5) Hauling costs cover all aspects of log movement from the place of initial loading at the cutting permit to the purchaser, including truck, rail, water and other specialized transportation systems.
- (6) Silviculture costs include, but are not limited to, expenses incurred for: skid trail and backspar trail rehabilitation, three metre knockdown, landing and roadside debris disposal, and silviculture treatment costs that are required up to maturity.
- (7) Administrative overhead costs estimates are for the related administration and supervisory activities attributed to harvesting, road construction, road maintenance, road deactivation, hauling and silviculture that occur at the Band office, camp or operation. The costs include, but are not limited to, expenses incurred for: office operations, scaling, timber cruising, environmental protection, consultants fees and

expenses, engineering (road layout, survey and design and block layout), archaeological surveys, waste and residue surveys, tree marking and beetle probing and pheromone baiting.

## **7. Silviculture Account**

Payment of Silviculture Account:

- (1) The Band will establish a silviculture account into which will be deposited an amount equal to the silviculture costs described in Article 6(6).
- (2) The monies in the silviculture account will be used for silviculture treatment costs and expenditures only and for no other purposes.
- (3) The Band will produce within 90 days of the Band fiscal year end an audited financial statement of the silviculture account. The Council will deliver a copy of this financial statement to the Board of Trustees of the McLeod Lake Indian Band Trust and will make a copy available to any Band member upon request.

## **Attachment 1 - Cutting Permit Application**

**McLeod Lake Indian Band**

**CUTTING PERMIT NO. \_\_\_\_\_**

PURSUANT TO The McLeod Lake Indian Band, Forest Practices Code, this Cutting Permit is Issued to:

(the "Permittee")

**1.0 PERMIT AREA AND TERM**

- 1.01 Subject to the McLeod Lake Indian Band Forest Practices Code, the Permittee is authorized to harvest timber from the lands within the Cutting Permit Area that are designated for harvest on the map attached as Exhibit "A" to this cutting permit.
- 1.02 Subject to paragraph 1.03, the term of this Cutting Permit is one year, beginning on \_\_\_\_\_, 2003, and ending on \_\_\_\_\_, 2004.
- 1.03 Council, in a written notice given to the Permittee, may
  - (a) extend the term of this Cutting Permit, and
  - (b) amend this Cutting Permit to the extent necessary to ensure it is consistent with the forest development plan in effect at the time this Cutting Permit is extended.

**2.0 SPECIAL CONDITIONS AND REQUIREMENTS**

- 2.01 The Permittee must comply with the conditions and requirements set out in the McLeod Lake Indian Band Forest Practices Code, and, as set out in Schedule "A" to this Cutting Permit, and agrees to be subject to those provisions relating to penalties, and remedial orders as provided in Part 12 of the said code.

**3.0 FELLING, BUCKING AND UTILIZATION SPECIFICATIONS**

- 3.01 Subject to paragraph 3.04, the Permittee must
  - (a) fell standing timber of the species specified in Schedule "B" to this Cutting Permit, in accordance with the felling specifications set out in this schedule,

(b) buck felled and dead-and-down timber of the species referred to in subparagraph (a) in accordance with the bucking specifications set out in Schedule “B” to this Cutting Permit, and

(c) utilize all timber of the species and grades specified as obligatory utilization in Schedule “B” to this Cutting Permit if the timber meets the utilization specifications set out in that Schedule.

**3.02** Schedule “B” to this Cutting Permit may include a requirement that the Permittee fell other timber in addition to the timber referred to in subparagraph 3.01(a), in which case, subject to paragraph 3.04, the Permittee, must fell but need not remove such timber.

**3.03** Subject to paragraph 3.04, the Permittee may utilize

(a) timber of the species and grades specified as optional utilization in Schedule “B” to this Cutting Permit, and

(b) timber referred to in paragraph 3.02

**3.04** The Permittee must not fell standing timber, or must not buck or utilize felled or dead-and-down timber, as the case may be, if

(a) the timber is specified as reserved timber in Schedule “B” to this Cutting Permit, or

(b) under an operational plan, or standards referred to in the McLeod Lake Indian Forest Practices Code, the Permittee is required not to fell the timber, or not to buck or utilize the timber, for any reason, including silviculture, biodiversity or other forest management reasons.

#### **4.0 TIMBERMARK**

**4.01** The timber mark for timber harvested from McLeod Lake Indian Band Land is:

ML 0001(example)

**4.02** If directed to do so by the Forestry Officer, the Permittee must erect signs at all exits from the areas of land referred to in paragraph 1.01, clearly showing the timber mark(s) referred to in paragraphs 4.01.

**5.0 SCALE BASED STUMPAGE**

**5.01** For the purpose of determining the amount of stumpage payable in respect of timber harvested from areas of Band Land authorized for harvest under this Cutting Permit, the volume or quantity of timber harvested will be determined using information provided in a scale of the timber.

**5.02** The Permittee must ensure that

(a) all timber harvested from the areas of land referred to in paragraph 1.01 is scaled and,

(b) the scale of timber is conducted properly in accordance with the requirements of the government of British Columbia Forests Act, and the regulations made under that Act.

**6.0 ROADS**

**6.01** Subject to the McLeod Lake Indian Band Forest Practices Code, the Permittee may construct or modify roads under the authority of this Cutting Permit, authorized for harvest under this Cutting Permit if the roads are identified on an operational plan.

**7.0 MISCELLANEOUS**

**7.01** The Exhibit and the Schedules to this Cutting Permit are deemed to be part of this Cutting Permit.

DATED: \_\_\_\_\_  
(mm/dd/yy) Forestry Officer

Signed and authorized on behalf of the McLeod Lake Indian Band, by a quorum of council,

\_\_\_\_\_  
Councilor/Chief

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

## **Schedule A**

### **Special Conditions and Requirements**

1.00 Removal of Damaged Timber

This Cutting Permit only authorizes the harvesting of timber designated by the Council of the McLeod Lake Indian Band.

2.00 Orderly and Sanitary Condition

The Permittee shall, concurrently with harvesting operations, leave all areas in an orderly and sanitary condition.

3.00 Other Occupiers of Land

3.01 The rights granted under this Cutting Permit are subject to other rights of use and occupation, and the Permittee must not interfere with exercise of those rights.

3.02 The rights of use and occupation referred to in paragraph 3.01 are as follows:

(a) The Permittee will contact Trapper(s) and Guide(s) by mail, before starting harvesting activities.

4.00 Hazard Trees

4.01 The hazard tree felling area extends 30 metres beyond the cut-block boundary(s).

4.02 The Permittee may fell trees outside of the cut-block boundary(s) but within the area described in paragraph 4.01 if the Forestry Officer determines that the person conducting tree felling or rigging tail hold/anchor trees represents a safety hazard according to Workers' Compensation Board standards of British Columbia.

4.03 The Permittee must not buck or utilize a tree felled under paragraph 4.02 without the consent of the Council of the McLeod Lake Indian Band.

4.04 If consent is granted under paragraph 4.03, the felled hazard tree(s) shall be bucked and utilized according to the standards specified in Schedule "B" of this authority, unless otherwise directed by the Forestry Officer.

5.00 Marking Requirement - Scale

All timber harvested under this Cutting Permit shall be marked in accordance with the requirements of B.C. Ministry of Forests, Part 5 of the *Forest Act* and the Timber Marking and Transportation Regulation.

**Schedule B**  
**Felling, Bucking and Utilization Specifications**

1.00 FELLING SPECIFICATIONS

- 1.01 Subject to paragraph 1.02, standing timber of the species shown on the table attached to this Schedule must be felled in accordance with the following specifications:
- (a) all timber meeting the minimum diameter at stump height shown for that species in the table attached to this Schedule must be felled, and
  - (b) unless otherwise authorized in writing by Council of the McLeod Lake Indian Band, timber must be felled to a stump height that does not exceed the maximum stump height shown for that species in the table attached to this Schedule.
- 1.02 The Permittee must not fell standing timber if
- (a) the timber is specified in Part 6.00 as reserved timber, or
  - (b) under an operational plan or the McLeod Lake Indian Band Forest Practices Code, the Permittee is required not to fell the timber for any reason, including silviculture, biodiversity or other forest management reasons.

2.00 BUCKING SPECIFICATIONS

Subject to paragraph 2.02, felled and dead-and-down timber of the species referred to in paragraph 1.01 must be bucked so as to maximize the volume of logs and slabs which:

- (a) meet the utilization specifications referred to in paragraph 3.01, and
- (b) are of the species and grades specified as obligatory utilization under Part 4.00.

2.02 The Permittee must not buck felled or dead-and-down timber if

- (a) the timber is specified in Part 6.00 as reserved timber, or
- (b) under an operational plan or the McLeod Lake Indian Band Forest Practices Code, the Permittee is required not to buck the timber for any reason, including silviculture, biodiversity or other forest management reasons.

3.00 UTILIZATION SPECIFICATIONS

3.01 Subject to paragraphs 3.02 and 3.03, the following utilization specifications apply to timber authorized for harvest under this Cutting Permit:

- (a) all butt logs meeting
  - (i) the minimum diameter at stump height,

- (ii) the minimum log length, and
    - (iii) the minimum top diameter

shown for that species in the table attached to this Schedule must be utilized; and
  - (b) all top logs meeting
    - (i) the minimum log length, and
    - (ii) the minimum top diameter

shown for that species in the table attached to this Schedule must be utilized;
  - (c) all slabs meeting
    - (i) the minimum slab length, and (ii) the minimum slab thickness shown for that species in the table attached to this Schedule must be utilized.
- 3.02 The Permittee need not utilize timber of the species and grades specified in Part 5.00 as optional utilization.
- 3.03 The Permittee must not utilize timber if
- (a) the timber is specified in Part 6.00 as reserved timber, or
  - (b) under an operational plan or the McLeod Lake Indian Band Forest Practices Code, the Licensee is required not to utilize the timber for any reason, including silviculture, biodiversity or other forest management reasons.
- 4.00 OBLIGATORY UTILIZATION
- 4.01 Timber of the following species and grades is specified as obligatory utilization:
- (a) all coniferous species that are Sawlog Grade (Grade Code \_\_\_\_).
- 5.00 OPTIONAL UTILIZATION
- 5.01 Timber of the following species and grades is specified as optional utilization:
- (a) firmwood rejects;
  - (b) all deciduous species of all grades; and
  - (c) all coniferous species of the following grades:
    - (i) Dead and Dry Sawlog (Grade Code 3);
    - (ii) Lumber Reject (Grade Code 4);
    - (iii) Dead and Dry Lumber Reject (Grade Code 5); and
    - (iv) Undersized Log Grade (Grade Code 6).
- 6.00 RESERVED TIMBER

The following timber is specified as reserved timber:

6.01 In accordance with the Site Plan in effect for this Cutting Permit.

## 7.00 DEFINITIONS

7.01 In this Schedule, as exemplified by the diagrams attached to this Schedule,

- (a) "butt end" means the log end that was previously attached to the stump;
- (b) "butt log" means the log cut from the portion of the tree that was previously attached to the stump;
- (c) "diameter at stump height" means
  - (i) in the case of standing timber, the diameter of the tree (outside bark) measured at the point of the maximum stump height shown in the table attached to this Schedule, and
  - (ii) in the case of a butt log, the diameter (outside bark) at the butt end of the log;
- (d) "slab" means one of 2 or more parts of a log produced as a result of the log fracturing along its length;
- (e) "stump height" means the height of the stump measured on the side of the stump adjacent to the highest ground;
- (f) "top diameter" means the diameter (inside bark) at the narrowest end of the log;
- (g) "top log" means any log that is not a butt log.

## **Attachment 2 - Timber Marking Policy**

## **McLeod Lake Indian Band**

### **Timber Marking Policy**

#### **General**

All marking must be done on the cutting area. Loads of logs that are not properly marked contravene the McLeod Lake Indian Band Forest Practices Code and are subject to forfeiture by the McLeod Lake Indian Band.

#### **Marking Requirements**

All timber being transported will be marked as follows:

Two log ends on the back of each load **and** two log ends on the front of each load must be marked with the correct mark using hammer indentation. As well, both sides of each load must be marked with the correct timber mark using paint.

#### **Special Forest Products:**

May be exempted by the Council of the McLeod Lake Indian Band on a specific basis.

#### **Timber Mark Posted On Site:**

The Licensee must post a sign at the point of exit displaying the timber mark (not the cutting permit number) for the area. This will serve to remove any confusion on the part of log haulers as to the correct mark.

#### **Documentation Requirements**

- 1.) A person who transports timber, must at all times, have in his or her possession a written record of the timber being transported.

The written record must include all of the following information:

- a) identification, by license number or by name, of the truck, rail car or vessel in which the timber is being transported;
- b) a description of the location of the origin of the timber;
- c) the date on and time at which the transport of the timber begins;
- d) the destination of the timber;
- e) the timber mark or timber brand, or both, applied to the timber being transported;
- f) the name and signature of the timber transport operator;
- g) if the timber has been scaled, the scalers signature and license number or the signature of an authorized person at the scale site;
- h) a unique serial number.

When timber is being transported, the following persons must ensure that the written record required is accurately completed and copies of the written record are retained and remitted as directed by the Forestry Officer of the McLeod Lake Indian Band:

- a) the holder of the timber mark for the location of origin of the timber;
- b) the receiver of the timber or the operator of the scale site to which the timber is being transported;
- c) the holder of the scaled timber brand.

A person who is required to carry or retain a copy of the written record, must provide the record for inspection if requested to do so by the Forestry Officer of the McLeod Lake Indian Band and if requested to do so by a forest officer of the province of B.C.

Timber transported in contravention of this requirement is subject to forfeiture under Part 11 of the McLeod Lake Indian Band Forest Practices Code.

Please ensure all personnel involved in the transport of timber are made aware of the above noted policy.

All timber shall be scaled to the Schedule of Interior Grades of the B.C. Ministry of Forests.

## **Attachment 3 - Site Plan**

**McLeod Lake Indian Band**

**SITE PLAN**

<b>CP:</b>	<b>BLOCK:</b>	<b>PERMITEE:</b>
<b>LOCATION:</b>	<b>AERIAL PHOTO NUMBER:</b>	<b>MAPSHEET OPENING #:</b>
<b>LONGITUDE/ LATITUDE:</b>	<b>ELEVATION RANGE (m):</b>	
<b>LOGGING CONTRACTOR:</b>		

AREA

<b>TOTAL AREA(HA):</b>	<b>PERMANENT ACCESS (HA) :</b>
<b>NET AREA TO REFOREST (HA):</b>	<b>NP NATURAL (HA):</b>

STANDARDS UNIT (SU)	NET AREA TO BE REFORESTED (ha)	BIOGEOCLIMATIC CLASSIFICATION				REGEN METHOD PLANT(P) OR NATURAL(N)
		ZONE	SUBZONE	VARIANT	SITE SERIES	

**STOCKING STANDARDS**

SU	SPECIES		WELL SPACED TREES/HA				R E G D A T E	FREE GROW DATE (YRS)	MAX DEN. (s/ha)	MINIMUM FREE GROW. HT (m)		POST SPAC. DEN. (s/ha)	CROP TREE HT. VS COMP (%)
	PREF	ACC.	TSS PREF & ACC.	MSS PREF & ACC.	MSS PREF. ONLY	MIN. INTER. SPAC. (m)				SPECIES	HT(m)		
								10,000					

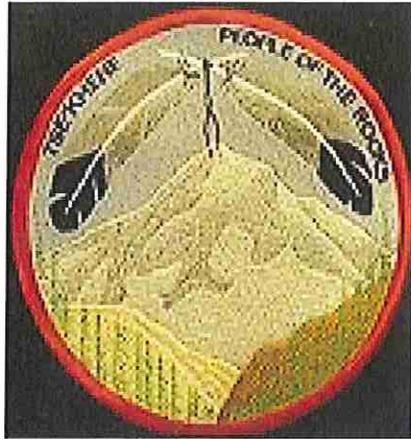
**SOIL DISTURBANCE**

<b>SOIL DISTURBANCE</b>		
Maximum Disturbance of the Net Area to be Reforested to be Occupied by Soil Disturbance <b>(% of NAR) :</b>		
Rationale for greater than 5% of the NAR being occupied by soil disturbance		
<b>Compaction Hazard:</b>	<b>Erosion Hazard:</b>	<b>Displacement Hazard:</b>

**APPROVAL**

Signature of Quorum of Council:		Name and Number of RPF:	
Chief / Councilor	Date:		(mm/dd/yy)
Councilor			
Councilor	Seal and Signature of RPF		
Councilor			
Councilor			
Date		(mm/dd/yy)	

## **Attachment 4 – Forest Licence Document**



**McLeod Lake Indian Band**

**FOREST LICENCE**

**with**

**Duz Cho Logging Limited  
Partnership**

THIS LICENCE, dated June 20, 2003

BETWEEN:

McLeod Lake Indian Band  
(the "Band")

AND:

Duz Cho Logging Limited Partnership  
(the "Licensee")

WHEREAS:

- A. The parties have entered into this Licence pursuant to Part 10 of the McLeod Lake Indian Band Forest Practices Code (the "Code").

THE PARTIES agree as follows:

## **1.00 GRANT OF RIGHTS AND TERM**

1.01 Subject to this Licence, the Licensee

- (a) may harvest an allowable annual cut of  $100,000 \text{ m}^3$  of timber each year for the first five years and  $60,650 \text{ m}^3$  for each of the subsequent 10 years during the term of this Licence from areas of land within McLeod Lake Indian Band Reserves which are specified in cutting permits and road permits, and
- (b) for this purpose may enter onto these areas.

- (c) Can increase the annual allowable cut to a maximum of 200,000m<sup>3</sup> of timber each year over the term of the licence if the credit facility deems it necessary to secure the existing debt. Furthermore if the annual allowable cut is exceeded, as identified in Section 1.01 (a), due to other catastrophic events or a serious risk to the timber, then all net profits received must be deposited in escrow as additional security for the credit facility.

1.02 The term of this Licence is 15 years, renewable every 5-years, beginning *June 20, 2003*.

## **2.00 REVISIONS TO ALLOWABLE ANNUAL CUT**

- 2.01 If the allowable annual cut is increased or reduced under the Code or the regulations made under that Code, subparagraph 1.01(a) is deemed to be amended accordingly.

## **3.00 FELLING, BUCKING AND UTILIZATION SPECIFICATIONS**

- 3.01 With respect to the harvesting of timber authorized under a cutting permit issued pursuant to this Licence, the Licensee must
- (a) fell standing timber of the species specified as obligation utilization in the Code Attachment 1 “Cutting Permit Application”, in accordance with the felling specifications set out in the Code Attachment 1 “Cutting Permit Application”,
  - (b) buck felled and dead-and-down timber of the species referred to in subparagraph (a) in accordance with the bucking specifications set out in the Code Attachment 1 “Cutting Permit Application”, and
  - (c) utilize all timber of the species and grades specified as obligatory utilization in the Code Attachment 1 “Cutting Permit Application”.
- 3.02 Timber that is not felled, bucked or utilized in accordance with paragraph 3.01 will be identified as waste in an assessment under Part 4.00.
- 3.03 A cutting permit may include a requirement that the Licensee fell timber not referred to in subparagraph 3.01(a), in which case, subject to paragraph 3.06, the Licensee must fell but need not utilize such timber.
- 3.04 Subject to paragraph 3.06, the Licensee may utilize
- (a) timber of the species and grades specified in Part 6.00 of the Code Attachment 1 “Cutting Permit Application”, and
  - (b) timber referred to in paragraph 3.03.

- 3.05 Timber referred to in subparagraph 3.04(a) that is not utilized by the Licensee will be identified as residue in an assessment under Part 4.00, unless otherwise provided in the current *B.C. Provincial Logging Residue and Waste Measurement Procedures Manual*.
- 3.06 The Licensee must not fell standing timber, and must not buck or utilize felled or dead-and-down timber, if under an operational plan under the Code referred to in paragraph 7.01, the Licensee is required not to fell the timber, or not to buck or utilize the timber.
- 3.07 If the Licensee fells, bucks or utilizes timber contrary to paragraph 3.06, the Licensee must
  - (a) within 5 business days notify the Forestry Officer, and
  - (b) comply with any directions of the Forestry Officer in respect of the timber.
- 3.08 A cutting permit may include felling, bucking and utilization specifications that are different from those specified in the Code Attachment 1 "Cutting Permit Application", if mutually agreed to by the Forestry Officer and the Licensee.

#### **4.00 RESIDUE AND WASTE ASSESSMENTS**

- 4.01 Subject to paragraphs 4.02 and 4.03, the Band must
  - (a) carry out an assessment of the volume of residue and waste left on an area of land harvested under a cutting permit and, where required by the Forestry Officer on an area of land harvested under a road permit,
    - (i) within 60 days after primary logging on the area has been completed and ground being sufficiently free of snow to allow for an adequate assessment to be carried out, or
    - (ii) if primary logging on the area is not completed before the expiry of the cutting permit, within 60 days after the expiry of the cutting permit and ground being sufficiently free of snow to allow for an adequate assessment to be carried out,
  - (b) as part of the assessment,
    - (i) measure the timber that was not felled, or was not bucked or utilized, in accordance with the specifications set out in the Code Attachment 1 "Cutting Permit Application",
    - (ii) classify the timber referred to in clause (i) as residue or waste, and
    - (iii) classify the residue and waste as avoidable or unavoidable, and
  - (c) within 30 days upon completion of the assessment, provide the Forestry Officer with the results of the assessment.
- 4.02 The Forestry Officer may extend the periods referred to in clauses 4.01(a)(i) and (ii).

- 4.03 If, for the purpose of determining the amount of stumpage payable in respect of timber harvested under a cutting permit, the cutting permit provides that the volume or quantity of timber harvested is to be determined using information provided by a cruise or estimate of the timber conducted before the timber is cut, the Forestry Officer may waive the requirement for an assessment of the volume of residue and waste left on the area.
- 4.04 An assessment referred to in paragraph 4.01 must be carried out in accordance with the current *B.C. Provincial Logging Residue and Waste Measurement Procedures Manual*.
- 4.05 The Forestry Officer, in a notice given to the Licensee, may require the Licensee to pay in respect of avoidable waste left on an area of land authorized for harvest under a cutting permit an amount determined in accordance with paragraph 4.06.
- 4.06 For the purpose of determining the amount payable under paragraph 4.05, the Forestry Officer will
- (a) multiply
    - (i) the volume of avoidable waste assessed under paragraph 4.01 based on sawlog grades, by
    - (ii) the average stumpage rate charged for sawlogs harvested under the cutting permit in statements or invoices issued during the 12 month period ending 1 month after the month in which
      - (A) primary logging on the area was completed, or
      - (B) the cutting permit expires or is otherwise terminated, as the case may be, and
  - (b) multiply
    - (i) the volume of avoidable waste assessed under paragraph 4.01 based on grades other than sawlog grades, by
    - (ii) the stumpage rate charged for timber of the applicable grades.
- 4.07 If the Forestry Officer carries out an assessment under paragraph 4.01, the Forestry Officer, in a notice given to the Licensee, may require the Licensee to pay the costs incurred by the Forestry Officer in carrying out the assessment.

## **5.00 CUT CONTROL**

- 5.01 For the purposes of the definition of "5 year cut control period" in Part 3, Section 2 of the Code, the first 5 year period for this Licence begins on June 20, 2003.
- 5.02 For the purposes of the definition of "volume of timber harvested" during a calendar year in Part 3, Section 2 of the Code, the volume of
- (a) avoidable residue,

- (b) unavoidable residue,
- (c) avoidable waste, and
- (d) unavoidable waste

left on areas of land authorized for harvest under a cutting permit and road permits associated with this Licence, as determined by an assessment under paragraph 4.01, will be charged to the Licensee as volumes of timber estimated to be wasted or damaged.

## **6.00 CUTTING PERMITS**

- 6.01 The Band will issue a cutting permit to the Licensee if the Band is satisfied that the requirements of Part 11 of the Code have been met.
- 6.02 Subject to 6.03, the Council may amend the cutting permit only with the consent of the Forestry Officer.
- 6.03 With the consent of the Forestry Officer, the Band, in a notice given to the Licensee, may
  - (a) extend the term of a cutting permit, and
  - (b) amend the cutting permit to the extent necessary to ensure the cutting permit is consistent with the Forest Development Plan (FDP), in effect at the time the cutting permit is extended.
- 6.04 A cutting permit is deemed to be part of this Licence.
- 6.05 All cutting permits in effect under the Forest Licence that is replaced by this Licence continue under this Licence for the duration of their respective term.

## **7.00 LEGISLATIVE FRAMEWORK**

- 7.01 This Licence is subject to
  - (a) the *McLeod Lake Indian Band Forest Practices Code (the "Code")*.
- 7.02 Nothing in this Licence or a cutting permit issued under this Licence is to be construed as authorizing the Licensee to engage in any activities or carry out any operations otherwise than in compliance with the requirements of the Code referred to in paragraph 7.01.

## **8.00 FINANCIAL AND DEPOSITS**

- 8.01 The Licensee must pay to the Band, within 60 days upon receipt of a notice, statement or invoice issued on behalf of the Band,

- (a) stumpage under Part 15 of the Code in respect of timber harvested under a cutting permit, at rates determined, re-determined and varied under Part 15 that Code,
- (b) any payments required under Part 4.00.

## **9.00 LIABILITY AND INDEMNITY**

- 9.01 The Licensee must indemnify the Band against and save it harmless from all claims, demands, suits, actions, causes of action, costs, expenses and losses faced, incurred or suffered by the Band as a result, directly or indirectly, of any act or omission of
- (a) the Licensee,
  - (b) an employee or agent of the Licensee,
  - (c) a contractor of the Licensee who engages in any activity or carries out any operation, including but not restricted to harvesting operations, under or associated with this Licence, or
  - (d) any other person who on behalf of or with the consent of the Licensee engages in any activity or carries out any operation, including but not restricted to harvesting operations, under or associated with this Licence.
- 9.02 For greater certainty, the Licensee has no obligation to indemnify the Band under paragraph 9.01 in respect of any act or omission of
- (a) an employee, agent or contractor of the Band, in the course of carrying out his or her duties as employee, agent or contractor of the Band, or
  - (b) a person, other than the Licensee, to whom the Band has granted the right to use or occupy Band land, in the course of exercising those rights.

## **10.00 LIMITATION OF LIABILITY**

- 10.01 The Band is not liable to the Licensee for injuries, losses, expenses, or costs incurred or suffered by the Licensee as a result, directly or indirectly, of an act or omission of a person who is not a party to this Licence, including but not restricted to an act or omission of a person disrupting, stopping or otherwise interfering with the Licensee's operations under this Licence by road blocks or other means.

## **11.00 TERMINATION**

- 11.01 If this Licence expires and is not replaced, or is surrendered, cancelled or otherwise terminated,

- (a) all cutting permits will immediately terminate, and
- (b) title to all
  - (i) improvements, including roads and bridges, constructed by the Licensee under the authority of this Licence, and
  - (ii) timber, including logs and special forest products, harvested under the authority of this Licence and are still located on Band land,

will vest in the Band, without right of compensation to the Licensee.

- 11.02 The Licensee must not remove any improvements or timber referred to in subparagraph 11.01(b), unless authorized to do so by the Forestry Officer.
- 11.03 If the Licensee commits an act of bankruptcy, makes a general assignment of its creditors or otherwise acknowledges its insolvency, the Licensee is deemed to have failed to perform an obligation under this Licence.

## **12.00 MISCELLANEOUS**

- 12.01 This Licence will enure to the benefit of, and be binding on, the parties and their respective heirs, executors, successors and permitted assigns.
- 12.02 Any power conferred or duty imposed on the Band under this Licence may be exercised or fulfilled by a person authorized to do so by the Band.
- 12.03 The laws of British Columbia and the Government of Canada will govern the interpretation of this Licence and the performance of the parties' obligations under this Licence.
- 12.04 Nothing in this Licence authorizes the Licensee to in any way restrict the Band's right of access to the areas of land referred to in paragraph 1.01, or the right of any other authorized entrant, user or occupier of these areas.

## **13.00 INTERPRETATION**

- 13.01 In this Licence, unless the context otherwise requires,
  - (a) "allowable annual cut" means the allowable annual cut referred to in paragraph 1.01 as amended under paragraph 2.01,
  - (b) "average stumpage rate charged for sawlogs" means the total stumpage charged for sawlogs divided by the total volume of sawlogs,
  - (c) "avoidable" in respect of residue or waste means timber that does not fall within the definition of unavoidable,
  - (d) "Band" means the McLeod Lake Indian Band,
  - (e) "close" or "closure" means cessation of production of the principal forest products normally produced by a timber processing facility,

- (f) "council" refer to definition in the McLeod Lake Indian Band Forest Practice Code Section 1 (definitions),
- (g) "cutting permit" means a cutting permit issued under this Licence,
- (h) "Forestry Officer" means
  - (i) a Forestry Officer appointed by the Council, and
  - (ii) any person authorized by the Council to exercise a power or fulfil a duty under this Licence,
- (i) "*Forest Practices Code*" means the McLeod Lake Indian Band Forest Practices Code, Version 8.0, July 15, 2001, as amended from time to time, or the successor to this Act if it is repealed,
- (j) "forest development plan" means a forest development plan approved under the Forest Practices Code,
- (k) "person" includes a corporation and a partnership,
- (l) "primary logging" means felling timber and yarding or forwarding the timber to central landings or road-sides, but does not include removing the timber from these landings or road-sides,
- (m) "residue" means timber of a species and grade specified in a Cutting Permit as optional utilization that is not utilized by the Licensee, excluding timber which, under the current *B.C. Provincial Logging Residue and Waste Measurement Procedures Manual*, is not assessed as residue,
- (n) "unavoidable" in respect of residue or waste means timber that was not felled, or was not bucked or utilized, in accordance with the specifications set out in the Forest Practices Code Attachment 1 "Cutting Permit Application", because the timber
  - (i) is inaccessible or physically obstructed,
  - (ii) could not be felled, bucked or utilized safely, or
  - (iii) could not be felled, bucked or utilized because of the restriction referred to in paragraph 3.06,
- (o) "utilize" means to remove timber from an area referred to in paragraph 1.01 for use or processing elsewhere,
- (p) "waste" means timber referred to in paragraph 4.01 that is not felled, bucked or utilized in accordance with the requirements of Code Attachment 1 "Cutting Permit Application".

13.02 Unless otherwise provided in paragraph 13.01, if a word or phrase used in this Licence is defined in the Forest Practices Code, the definition in the Forest Practices Code applies to this Licence, and where the word or phrase in the Forest Practices Code is replaced by a new word or phrase, this Licence is deemed to have been amended accordingly.

- 13.03 If a provision of the Forest Practices Code referred to in this Licence is renumbered, the reference in this Licence is to be construed as a reference to the provision as renumbered.
- 13.04 In this Licence, unless the context otherwise requires,
- (a) the singular includes the plural and the plural includes the singular, and
  - (b) the masculine, the feminine and the neuter are interchangeable.
- 13.05 This Licence is divided into parts, paragraphs, subparagraphs, clauses and sub clauses, illustrated as follows:
- 1.00 part,
  - 1.01 paragraph,
    - (a) subparagraph,
      - (i) clause,
        - (A) sub clause;

and a reference to a subparagraph, clause or sub clause is to be construed as a reference to a subparagraph, clause or sub clause of the paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

IN WITNESS WHEREOF this Licence has been executed by the Band and the Licensee on the date first written above.

SIGNED by the )  
Council in the )  
presence of: )

)  
)  
.....)  
Signature )

.....  
Councillor

)  
.....)  
Printed Name )

.....

THE COMMON SEAL of )  
the Licensee was affixed )

Councillor

in the presence of: )  
)

.....  
Councillor

)  
Signature )

.....  
Councillor

)  
.....)  
Printed Name )

**(or)**

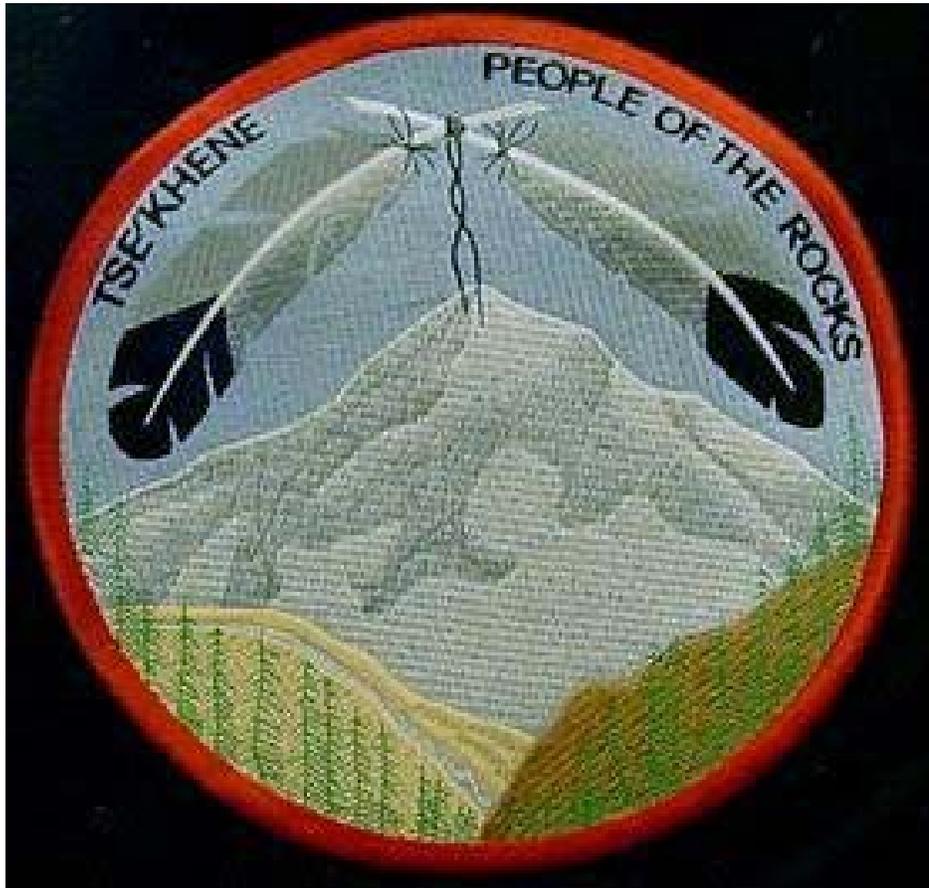
SIGNED by the Licensee )  
in the presence of: )

)  
.....)  
Signature )

.....  
Licensee Signature

)  
.....)  
Printed Name )

.....  
Printed Name and Title



## McLeod Lake Indian Band

### Forest Management Planning and Cutting Permit Approval Process

Draft of February 9, 2009



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## 1.0 Introduction

This McLeod Lake Indian Band (MLIB) Forestry Management Planning and Cutting Permit Approval Process document has been created to provide a mechanism for forestry planning and timber harvesting on MLIB reserve lands.

The McLeod Lake Indian Band has enacted its own Forest Practices Code to govern forestry management on its reserve lands. The authority to enact this legislation comes from the Treaty 8 adhesion agreement and from the Land Code enacted under the Framework Agreement on First Nations Land Management.

The McLeod Lake Forest Practices Code (2003) was agreed to as a term of the treaty in order to ensure that all forest practices on reserve lands are carried out in accordance with principles of sustainable forest use for the benefit of present and future Band members. To do this, the Forest Practices Code addresses the following areas of forest management: planning and site plans, protection of forest resources, forest roads, harvesting practices, silviculture, riparian areas, fire use, wildfire prevention and control, cutting permit applications and cutting permits, investigations and enforcement, penalties, stumpage, timber marking policy, administrative matters, annual reporting and audits.

The McLeod Lake Indian Band Land Code was enacted in 2003 under the Framework Agreement on First Nation Land Management and provides the Band's fundamental land and natural resources law. Part 7 of the Land Code applies to forest resources and implements the Forest Practices Code in the following terms:

“29.1 Forest practices on Band land will be regulated in accordance with Article 6 of the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement.”

“29.2 For greater certainty, the Band will conduct forest practices on Band Land in accordance with:

- a. the McLeod Lake Indian Band Forest Practices Code;
- b. the McLeod Lake Indian Band forest development plans;
- c. the principles of sustainable development; and
- d. any applicable legislative requirements.”

This process is designed to remain consistent with environmental and cultural values and to guide the Land Manager and the Land Management Committee, who are responsible for overseeing natural resources development on MLIB lands. It also



attempts to accommodate both the collective interests of all band members and individual commercial interests.

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## 2.0 Definitions

**Allowable Annual Cut (AAC)** means the rate of timber harvesting established by McLeod Lake Indian Band for McLeod Lake Indian Band Reserve Lands.

**Cutting Permit (CP)** means a permit that has been issued by the McLeod Lake Indian Band for the harvesting or salvaging of timber on McLeod Lake Indian Band Reserve Lands.

**Forest Development Plan (FDP)** means an operational plan that illustrates where proposed forest harvesting and related development such as road building is to take place on McLeod Lake Indian Band Reserve Lands over a five-year period.

**Harvest means removal of timber and** includes timber salvaging.

**Land Manager** includes a Designate who has been appointed by the Land Manager or Council to perform assigned tasks when the Land Manager is unavailable or otherwise requires assistance.

**McLeod Lake Indian Band Reserve Lands** means all lands that have been set apart for the use and benefit of the MLIB Band under Treaty 8. Legal title for these lands rests with the Crown in right of Canada.

**Site Plan (SP)** means a detailed plan for forest harvesting operations including cut block and road development at the site-specific level.



## 3.0 MLIB Forestry Planning Review Process

There are two main steps to forest harvesting on MLIB land. The first step involves two levels of planning: broad strategic plans known as Forest Development Plans which set out the Band's general approach to utilizing its commercial forest resources, and more specific Site Plans which determine actual harvesting activities on individual sites. The second step involves issuing legally binding permit documents which give a proponent the legal authority to carry out forest harvesting operations according to Band law and policies.

### *3.1. The Forest Development Plan*

The MLIB Forest Development Plan (FDP) is a five-year operational plan that projects where proposed harvesting and road related development will take place over a five-year period. All harvesting, including salvage, Christmas trees and firewood cutting during that period must be consistent with the Forest Development Plan. The FDP is prepared by the Band's Registered Professional Forester and is guided by the principles of sustainable resource management. After going through a 60 day public review and amendment period it is recommended for approval by the Land Management Committee and is ultimately approved by a Band Council Resolution.

The minimum requirements for an FDP are set out in the MLIP Forest Practices Code. In the 2003 version of the Code these requirements include:

[Insert list from Forest Practices Code]

### *3.2. FDP Public Review Period*

A draft FDP must be made available for a minimum 60-day public review period. Every band member 18 years of age or older are sent a copy of the FDP at their last known address. If applicable, the members will also be notified in writing that supporting material and maps will be available for review at the Natural Resource Centre.

The public review process is intended to allow Band members an opportunity to provide information regarding values such as cultural heritage, sustenance use, recreation or environmental issues. This information can be incorporated into the planning process to help identify mitigating actions that will avoid harming identified values.

Band members may submit comments regarding the FDP to the band Forestry Department, in writing or by email. The comments are reviewed by the Forestry Department and forwarded with recommendations to the Land Management Committee for consideration.



All comments, including a summary of any revisions to the FDP that were made in response to these comments will be included in the final submission of the FDP to Council.

The Land Management Committee may choose to extend the public review period to ensure that band members have adequate opportunity to review the plan and provide comment.

### **3.3. The Site Plan** [Ryan and Kienan to revise before next LMC meeting]

Once an FDP is formally approved, all timber cutting will be done in accordance with individual Site Plans that are consistent with the FDP. A Site Plan is a detailed plan for each cut block and road development. It is prepared or overseen by a Registered Professional Forester and may describe one or more cut areas. It is designed to illustrate the existing conditions in the proposed harvest area as well as the details of the proposed harvesting operation in accordance with standards adopted by MLIB. The Site Plan captures site specific information as it relates to the ecology, geology and hydrology of the proposed harvest activity, as well as the intended form of harvesting and special measures such as including leave trees or “patches” and reforestation prescriptions.

This information is used to review the operation’s compatibility with its environment and to assess how the harvesting will impact values such as soils, riparian areas, habitat, recreation and cultural use and visual quality. The duration of any given Site Plan for a cut block is from the start of pre-harvest development until the cut area returns to ‘free to grow status’ as defined by the Site Plan. A Site Plan created for road development is in effect for as long as the road remains in use.

The following information must be included with an MLIB Site Plan:

- An appropriately scaled Site Plan map (1:5000 or 1:10,000 depending upon opening size) that indicates where the proposed development is located on the current FDP map and including the following features:

North Arrow	Bridges and culverts
Legend	Landings
Contour lines	Terrain features
Block boundaries	Forest Cover information
Established roads	Elevation
Proposed roads	Skidding/yarding direction
Labeled and classified water courses (e.g. W1 wetland, S4 stream etc.)	Existing infrastructure – buildings, camps etc.



The map must be stratified and labeled to indicate areas where:

- different harvesting methods will be used, including “no harvest” areas
- wildlife tree patches will be created, and
- riparian areas exist, labeled RMZ for riparian management zone, RRZ for riparian reserve zone and buffer zones.

The map must also indicate the presence of fish-bearing streams, heritage sites and habitats requiring protection.

A summary table of all blocks covered by the Site Plan must also be included. The table is to include the size of each cut block, volume by tree species, and the proposed silviculture system to be used. For example:

Cut Block #	Area (ha)	Volume (m <sup>3</sup> )				Total vol (m <sup>3</sup> )	Silv System
		Sx	Pl	Fdi	At		
101	29.5	2300	4700	500	0	7500	Clear Cut with Reserves
102	18.7	1500	5100	300	0	6900	Clear Cut with Reserves

The Site Plan must also include details on the harvesting methods to be used as well as the proposed season of operations, including:

- Silviculture system- clear cut, clear cut with reserves, selective, partial cut, etc.
- Equipment to be used
- Season
- Rationale for opening size
- Direction of skidding relative to water courses and other identified values
- Post harvest prescription
- Slash disposal method
- Deactivation and rehabilitation plans for roads and landings
- Reforestation prescription
- Site preparation methods, if recommended
- Species composition and density
- Planting specific instructions – e.g. select high spots in low lying areas
- Forest health concerns – e.g. prevalence of gall rust, stem rust etc.
- Free growing requirements – spacing, density, height etc.
- Cultural use sites
- Wildlife habitat, including any habitats protected by the *Species at Risk Act* and provincial endangered species legislation
- Heritage sites
- Fisheries



- Community watersheds
- Recreation features
- Aesthetics and visual quality
- Additional comments which may include logging production, contingency plans etc.
- Canadian Environmental Assessment Act screening information

### ***3.4. Land Management Committee Review***

Unlike the FDP, a public review is not required for individual Site Plans. However, it is the responsibility of the Land Management Committee (LMC) and the Land Manger to ensure that development occurring on the reserve is done in accordance with the standards adopted by the MLIB and to ensure that the membership has a voice in development on reserve lands.

Site Plans for harvest operations under the MLIB FDP may therefore be reviewed by the MLIB Land Manager and the LMC. This review would provide the Land Manger and the LMC with an opportunity to assess the scope of proposed road and cut block developments, and to remain abreast of harvesting related development on MLIB lands. The LMC and the Land Manager may at any time request a site visit to a proposed road or cut block site.

### ***3.5. Summary***

The MLIB forestry planning process is summarized in Table 1, below.

**Table 1: Roles and Responsibilities in the MLIB Forestry Planning Process**

<b>Party Responsible</b>	<b>Action(s) Required</b>
Forester	Compiles five-year Forest Development Plan (FDP) for MLIB reserve lands and submits FDP to Land Manager
Land Manager	Reviews FDP for completeness and requests further information from the Forester if necessary
Forester	Advertises and prepares the FDP for a 60 day public review period. Presents FDP to the membership, Chief and Council and the LMC
Band Membership	Within 60 days reviews the FDP and provides comments to the forestry department, the Land Manager or a member of the Land Management Committee (LMC)
Land Manager and LMC	Reviews FDP and any comments, questions or concerns brought forward during the public review period
Land Manager and LMC	Coordinates site visits with the Forester if deemed necessary
Land Manager and LMC	Prepares written recommendations for referral to Chief and Council



Party Responsible	Action(s) Required
Land Manager	Refers submission along with recommendations and public comments to Chief and Council
Chief and Council	Reviews FDP and LMC recommendations, and provides approval by Band Council Resolution (BCR)
Forester or other applicant for timber harvesting rights	Develops Site Plans for cut blocks and road development proposed under the current FDP and applies for cutting permit
Land Manager and LMC	Reviews Site Plans
Land Manager	Determines if proposed harvesting is within Allowable Annual Cut
Forester or other applicant and Land Manager	Proceed to permit phase

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## 4.0 Issuing a Cutting Permit

### ***4.1. Application for a Cutting Permit***

Any party may apply to the Land Manager for a permit to harvest timber, including salvage timber, Christmas trees and firewood, from MLIB reserve land. Unless otherwise permitted under MLIB law, the proposed harvesting must be consistent with an approved MLIB Forest Development Plan.

### ***4.2 The Site Plan***

An applicant must prepare a Site Plan in accordance with section 3.3 above setting out the proposed harvesting activities and submit the Site Plan to the Land Manager.

### ***4.3 Preliminary Review of the Proposed Site Plan***

The Land Manager will review the Site Plan to determine if it is complete. If additional information is required, the Land Manager will contact the Proponent and make a request for the necessary information.

### ***4.4 Land Management Committee Review and Stumpage Determination***

The Land Manger and the LMC will review the Site Plan and, pending approval of the site plan will advise the applicant of the stumpage rate that has been set by the band. The LMC may require a deposit from the applicant. The Land Manager and LMC are also responsible for monitoring the screening of the harvesting proposal under the *Canadian Environmental Assessment Act*.

### ***4.5 Expedited Review Process***

The Land Manager may issue a Cutting Permit for an area that is not included in an approved FDP if, in the opinion of the Land Manager with the advice of the Land Management Committee and the MLIB Forester, the cut block is of insufficient size to warrant an FDP amendment or if harvesting operations are of an urgent nature such as to reduce a threat to public safety or salvage dead and damaged timber.

### ***4.6 Extraordinary Review Process***

At the discretion of the Land Manager, Site Plans that are not consistent with an approved FDP may be submitted to a public review process. This process will proceed in the same way



as a Forest Development Plan review and may result in amendment of the FDP, rejection of the application, or approval of the application in such form as may be acceptable to Council acting on the recommendation of the Land Management Committee.

The public review period will be 60 days unless otherwise determined by the Land Manager who may choose to reduce or extend the public review period.

#### ***4.7 Cutting Permit Approval***

A Cutting Permit is a legal contract between the applicant and the Band identifying the conditions of the authority to harvest timber from Band land.

The Land Manager will issue a Cutting Permit if satisfied that a Site Plan is consistent with the FDP and meets the management requirements of the Band. The Cutting Permit may consist of a signed letter approving the forest management operations as described in the Site Plan and the general direction in the FDP, or may be in such other form as MLIB determines. The Cutting Permit must reference both the approved Site Plan and Forest Development Plan.

#### ***4.8 Harvest Completion Report***

A harvest completion report must be filed with the Land Manager following the completion of harvesting activities under a Cutting Permit. The Harvest Completion Report must include the following:

- A reference to the original site plan and cutting permit
- A description of and rationale for any deviations in activities described in the original Site Plan
- A summary of the actual scaled volume of timber by species for each block
- A schedule of all post harvest surveys and other activities that are to be completed for a particular block
- GPS data of the final block boundary, location and status of roads and landings, streams, lakes and wetlands adjacent to blocks and retention patches

The cutting permit process is summarized in Table 2 below.

**Table 2:** Roles and Responsibilities in the MLIB Cutting Permit Application Process

Party Responsible	Action(s) Required
Applicant	Requests a Cutting Permit



Party Responsible	Action(s) Required
Land Manager	Provides information about application requirements
Applicant	Completes the application and submits to the Land Manager
Land Manager	Reviews application for completeness and requests further information from the applicant if necessary
Applicant	Provides further information if requested and completes environmental screening in accordance with the <i>Canadian Environmental Assessment Act</i>
Land Manager and LMC	Reviews full application, coordinates site visit if deemed necessary.
Land Manager and LMC	Reviews and monitors environmental screening report
Land Manager	Drafts Cutting Permit, checks the status of timber mark, sets performance bond or security deposit if deemed necessary and determines stumpage for the permit.
Applicant	Executes Cutting Permit
Proponent	Submits Harvest Completion Report and finalizes stumpage payment as appropriate

Notes for consideration:

1. May convert tables to flow charts
2. Review INAC and BC cutting permit documents
3. Ensure federal and provincial endangered species protection legislation is considered
4. Consider including non-timber forest products



## OPASKWAYAK CREE NATION

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1-888-763-1566

TELEPHONE: (204)627-7100

ADMIN FAX NO.: (204)623-5263

CHIEF'S OFFICE FAX NO.: (204)623-3819

# OPASKWAYAK CREE NATION LAND LAW FOR LAND USE AND COMMUNITY PLAN INCLUDING NATURAL RESOURCES

ENACTED MAY 14, 2009

Ratified by Chief and  
Council on June 9, 2009

 **Landmark**

Planning & Design Inc.

Suite 200 – 661 Pembina Highway  
Winnipeg, Manitoba R3M 2L5  
Phone: 204.453.8008  
Fax: 204.453.6626  
e-mail: [landmkpd@mts.net](mailto:landmkpd@mts.net)  
along with OCN Land Authority

NEKANOOTĀWINĒK - TIPĀNIMISOWIN

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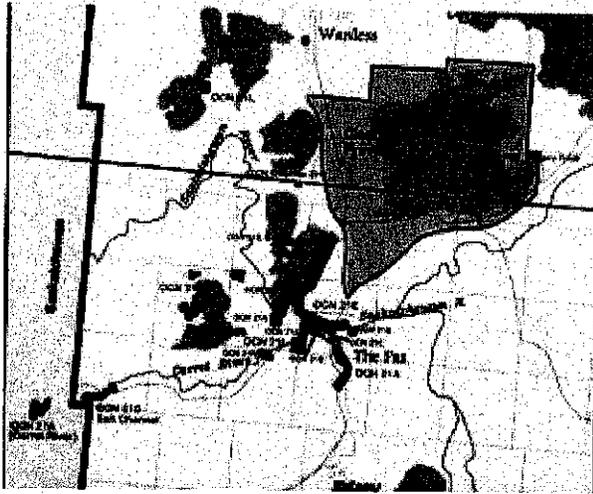
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**ANNEX - OCN Land Use Plan and Natural Resource Plan  
Community Plan Map dated March 2009**

**OPASKWAYAK CREE NATION**

**LAND LAW FOR LAND USE AND COMMUNITY PLAN**

**INCLUDING NATURAL RESOURCES**



Missing from map - Parcel 18 – Root Lake Beach Ridge  
which is located Near Wanless

**OPASKWAYAK CREE NATION**  
**VISION STATEMENT**

**GUIDED BY THE WISDOM OF OUR  
ELDERS AND THE ENERGY OF OUR  
YOUTH, OPASKWAYAK CREE NATION IS  
PROUD, PROGRESSIVE AND  
INDEPENDENT.**

**THROUGH OUR RICH CREE CULTURAL  
TRADITIONS AND VALUES, THE  
ININUWAK OF OPASKWAYAK ARE  
EMPOWERED TO ACHIEVE AN  
ENHANCED QUALITY OF LIFE IN A SAFE  
HEALTHY AND STRONG COMMUNITY.**

**OCN's Mission Statement:**

*OCN's mission is to have true aboriginal self-government as determined by the people which incorporates the community's cultural values and traditions and which is based on its unique history.*

*While pursuing this vision of self-government, independence and self-sufficiency, the community is determined to continue to progress toward the future through planned social and economic growth, not neglecting the needs of residents but by providing a range of social, educational and economic services necessary to support and raise the community's standard of living.*

*This mission will be reached through the development of OCN's human resources and economic base, the foundation of which is an adequate land base and control of the community's resources. These will also provide the sources for continued delivery of essential services.*

*The attainment of this vision will lead to the enhanced quality of life and general prosperity for the community as a whole. This quality of life will be sustained by OCN's rich cultural heritage and by ensuring that its values are a central part of this vision.*

**VISION STATEMENT FOR THE LAND AUTHORITY**

*The Opaskwayak Cree Nation Land Use Plan promotes planned community development, through its policies, thereby bringing together the membership, business, and resources which will enhance growth in a manner consistent with OCN's overall goals to establish a complete and sustainable community.*

**PREAMBLE**

**WHEREAS**, the Opaskwayak Cree Nation has entered into the Framework Agreement on First Nation Land Management with Canada on February 12, 1996, as amended, and as ratified on behalf of the Government of Canada by the *First Nation Land Management Act*, S.C.1999, C.24;

**AND WHEREAS**, the Opaskwayak Cree Nation had the option of withdrawing the provisions of the land management section of the *Indian Act* which sections are outlined in Section 38 of the *First Nation Land Management Act*;

**AND WHEREAS**, by withdrawing from those provisions of the *Indian Act*, Opaskwayak Cree Nation through their Land Code, was ratified by their citizens on June 20, 2002, now has the authority and jurisdiction to exercise control and management over their lands and resources for the use and benefits of its citizens, rather than having their lands managed by Canada;

**AND WHEREAS**, the *Opaskwayak Cree Nation Land Code* took effect as of August 1, 2002 pursuant to the ratification of the citizens of Opaskwayak Cree Nation;

**AND WHEREAS**, pursuant to Section 6.2(a) of the *Opaskwayak Cree Nation Land Code*, Land Laws may be enacted in relation to the regulation, control and prohibition of zoning, land use and land development;

**AND WHEREAS**, pursuant to Section 11.1(a) of the *Opaskwayak Cree Nation Land Code*, the Chief and Council shall convene a Community Meeting to receive members input prior to the introduction of a Land Law respecting a community plan or subdivision plan;

**AND WHEREAS**, pursuant to Section 14.1(a) of the *Opaskwayak Cree Nation Land Code*, the community approval by a ratification vote must be obtained for a land use plan and community plan including natural resources;

**AND WHEREAS**, the Chief and Council have deemed it necessary to enact a Land Law for Land Use and Community Plan including Natural Resources;

**AND WHEREAS**, that nothing in this Land Law shall alter, diminish, abrogate, derogate or breach the Treaty and/or aboriginal rights of OCN or its community members;

**AND WHEREAS**, the Land Authority Board of Directors on 3rd day of April, 2009 have approved this Land Law for recommendation to Chief and Council to call for a community ratification vote to enact this Land Law;

**THEREFORE IT IS HEREBY ENACTED THAT THIS LAND LAW HAS BEEN APPROVED** by way of a Ratification Vote of the OCN Community Members held on 14 day of May, 2009.

## 1.0 NAME

- 1.1 This Land Law shall hereinafter be known as the “Land Law for Land Use and Community Plan including Natural Resources” (“Land Use Plan” for short).

## 2.0 INTERPRETATIONS

### 2.1 General Interpretations within this Land Law

For the interpretation of this Land Law, the terms set out herein shall have the following meanings:

**Agricultural Activities** means a use of land for agricultural purposes, typical uses include farming, pasturage, agriculture, apiculture (bees), floriculture and horticulture;

**Approving Authority** means the OCN Council or other delegated authority;

**Chief and Council** means the members of the Chief and Council of the Opaskwayak Cree Nation acting collectively for the benefit of OCN community members;

**Community Members** means a person whose name appears on Opaskwayak Cree Nation membership list or is entitled to appear and shall have the same meaning as “Member” as defined in the *OCN Land Code*;

**Community Meeting** means a meeting of OCN Community Members under Part 3 of the *OCN Land Code*;

**Conditional Use** means those uses of land, building or structures that may be permitted in a particular zoning district as outlined in the OCN Zoning Regulation, and such use is at the discretion of the Land Authority;

**Crown Land** means Provincially owned land, which is administered under *The Crown Lands Act, The Forestry Act, The Wildlife Act, The Fisheries Act, The Ecological Reserves Act, or The Provincial Parks Act*;

**Development** means the carrying out of the construction, erection, structural alternation, placement or relocation of any building, excavation, other operation on, over or under land, or the making of any change in the use or intensity of use of any land or buildings or premises;

**Development Review Officer** means a person who has been appointed, contracted or hired by the Land Authority;

**First Nation Land Registry** means the registry maintained by the Department of Indian Affairs and Northern Development under the Framework Agreement on First Nation Land Management.

**Framework Agreement on First Nation Land Management** means the Framework Agreement on First Nation Land Management entered into between the Minister of Indian Affairs and Northern Development and fourteen First Nations, including OCN, on the 12<sup>th</sup> day of February, 1996, as amended;

**Green Space** means parcels of land that are available for passive or active public recreation activities;

**Hazard Land** means land that has become unstable as a result of flooding, water erosion, wind erosion, landslide or subsidence, or where the effects of same on the land have been predicted;

**Heritage Resources** means:

- a heritage site;
- a heritage object; and
- any work or assembly of works of nature or human endeavour that is of value for its archaeological, palaeontological, prehistoric, historic, cultural, natural, scientific or aesthetic features, and may be in the form of sites or objects or a combination thereof;

**Home Occupation** means occupation, trade, profession or craft carried on, in or from a dwelling unit or its accessory building and which is clearly incidental to the dwelling unit;

**Incompatible Land Use** means land use activities that can not co-exist without creating undesirable effects or interferences;

**Interest** means in relations to first nation lands, any interest, rights or estate of any nature in or to the land, including a lease, easement, right-of-way, servitude, or profit à prendre, but does not include title to that land in accordance with Section 1 of the Framework Agreement on First Nation Land Management, dated the 12<sup>th</sup> day of February, 1996;

**Land Authority** means the executive body that will facilitate present and future administration, management and land planning, and which is established by *Land Law #2002/002* as amended from time to time;

**Land Law** means a Law enacted pursuant to the *OCN Land Code* as amended for time to time;

**Mineral** means a non-living substance that is formed by natural processes and is found on or under the surface of the ground, irrespective of chemical or physical state and before or after extraction, and includes peat, peat moss and substances that are prescribed as minerals for purpose *The Mines and Minerals Act* but does

not include agricultural soil, oil, natural gas or any other gas, any surface or ground water or other substance that for purposes of *The Mines and Minerals Act* is prescribed not to be a mineral;

**Natural Resource** means a use or development that is directly dependent on the land's resources base including, mining, forestry, plants and fishing and trapping;

**Non-Commercial Farm** means a development for small scale, non-commercial agricultural pursuit's ancillary to rural residential uses and where animals are kept for the use or enjoyment of the householder only;

**OCN** means the collective body of first nation members governed by a Chief and Council exercising collective and individual rights of Opaskwayak Cree Nation;

**OCN Land Code** means the *Opaskwayak Cree Nation Land Code* enacted by the eligible registered voted Members of Opaskwayak Cree Nation and became effective August 1, 2002;

**OCN Lands** mean all the lands referred to in the *OCN Land Code* and the Individual Transfer Agreement, including any additional lands which may be registered and set aside by Canada as OCN Lands, from time to time made add;

**OCN Land Registry** means the registry system in which OCN Land Laws, regulations, policies, interest and licenses, relating to land management are maintained for recording of interest on OCN Lands.

**Person** means any person, including an OCN Community Member, who has any interest or license in OCN Land;

**Rural** mean those land that are located main stream activities, land used for agricultural, natural resources, concerned country area as opposed to urban;

**Urban means** a municipal type setting of land where there are commercial, governing centres, residential and community services along with town setting infrastructure;

**Use** means the purpose or activity for which a piece of land or its buildings are designed, arranged, developed or intended, or for which it is occupied or maintained.

**Variation** means the altering of any of the regulation found in a Zoning Regulation in accordance with this Land Law;

**Zoning Regulation** means a law enacted by OCN Chief and Council to regulate the use and development within OCN Lands;

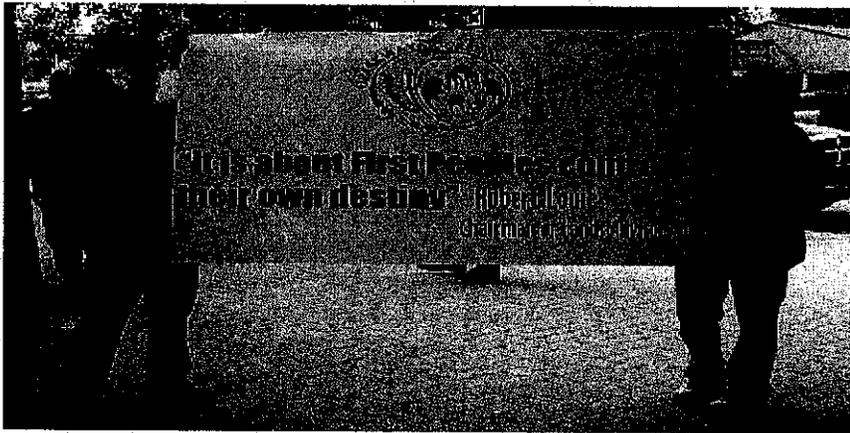
**Zoning District** means a section of the OCN Zoning Regulations that regulates the Use and development of land as depicted on a Zoning District map.

## 2.2 Phrases

2.2 Unless the context clearly indicates the contrary, where a policy in this Land Law involves two (2) or more items, conditions, provisions or events connected by the conjunctions **and**, **or**, or **either-or**, the conjunctions shall be interpreted as follows:

- (1) **and** indicates that all the connected items, conditions, provisions or events shall apply;
- (2) **or** indicates that all connected items, conditions, provisions or events may apply singularly or in combination;
- (3) **either-or** indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.

## 3.0 BACKGROUND ON THE OCN LAND CODE AND ITS LAND LAWS



*OCN's Land Code officially in place August 1, 2002*

## 3.1 Framework Agreement on First Nation Land Management

- (1) The Framework Agreement on First Nation Land Management and the *First Nation Land Management Act* enabled first nations to take over responsibility for the management and control of their reserve lands and resources under their own land codes.
- (2) Guidelines are provided that deal with the establishment and administration of a land management regime by these first nation, including:
  - a) the preparation and certification process of a land code; and
  - b) the enactment of land code laws such as land use and community plans and zoning regulation.

### **3.2 Opaskwayak Cree Nation Land Code**

- (1) A land code is a mechanism that allows for the development and enactment of land laws. The *OCN Land Code* makes provisions for the following matters:
  - a) identifying lands to be managed;
  - b) outlines the general rules and procedures for the use and occupation of OCN Lands;
  - c) sets out the financial accountability for revenues administered in relation to OCN Lands;
  - d) the preparation and implementation of OCN Land Laws, including zoning regulation;
  - e) the conflict of interest rules;
  - f) a Land Law applicable to OCN Lands upon a breakdown of spousal relationship;
  - g) a dispute resolution process;
  - h) procedures by which OCN can grant interest in land or acquire lands for community purposes;
  - i) the delegation of land management responsibilities; and
  - j) the procedure for amending the *OCN Land Code*.
- (2) OCN has administered and managed all OCN Lands under its land code since August 1, 2002 when it was ratified. The *OCN Land Code* set out the principles, guidelines and processes for the control and management over OCN Lands and its resources. The Land Code provides for land laws, regulations and policies to be enacted for the purpose of managing land and resource administration. Any proposed land law requires community input and/or community approval.
- (3) OCN has amended its Land Code on June 15, 2005. The amendment identified the community process for accepting additional lands under the Land Code.
- (4) The *OCN Land Code* under Section 14.1(a) provides authority for the preparation of the OCN Land Law for Land Use and Community Plan, including Natural Resource, (hereinafter referred to as “this Land Law”).

### 3.3 Existing Land Laws

- (1) As of December 31, 2008, OCN has enacted three (3) Land Laws under its Land Code:
  - a) the "*Land Law for the Establishment of a Land Authority*," enacted March 10, 2003. This Land Law sets out:
    - i) the composition of the Land Authority;
    - ii) the lines of authority when dealing with OCN Lands;
    - iii) outlines the Chief and Council, Land Authority and staff responsibilities; and
    - iv) the Land Authority Board of Directors members comprise of:
      - Chief and Council, appointing of two (2) Council members;
      - four (4) Directors elected by OCN Citizens; and
      - an elder appointed, along with a alternate, that will sit as an ex-officio member.
  - b) the "*Land Law Governing the Use and Occupancy of OCN Lands*," enacted August 11, 2003. This Land Law sets out:
    - i) the authority and process for granting an interest or license on OCN Lands;
    - ii) definitions for traditional/custom allocation, pre-existing interest, and newly granted interests;
    - iii) the various types of transactions;
    - iv) how interests are registered; and
    - v) how appeals or disputes are settled;
  - c) the "*Spousal Interest Land Law*," enacted February 15, 2006. This Land Law sets out:
    - i) the rights and remedies that can be utilized when there is a breakdown in a spousal relationship, when it come to land issues; and
    - ii) the process to be used when determining Land issues in relationship to a spousal breakdown.

### **3.4 Community Ratification under the OCN Land Code**

- (1) Community members must ratify specific Land Laws including this Land Law, as per the *OCN Land Code*.
- (2) The process for holding a community ratification vote by its members is outlined in the *OCN Land Code*. OCN has adopted Opaskwayak Cree Nation Community Ratification Process dated April 18, 2005, a process that will be used for enacting this Land Law.

### **3.5 Areas Covered by this Land Law**

- (1) The area that is covered is shown in Appendix A, "Community Plan" of this Land Law, and shall apply to all OCN Lands in it's entirely.
- (2) This Land Law does not affect any provincial government, municipal government or privately held lands within the plan area. This Land Law only applies to OCN Lands.
- (3) Identifies a process that adds additional newly created OCN Lands under this Land Law.

### **3.6 General Purpose**

- (1) The purpose for this Land Law is to provide it's community members with a set of fundamental planning policies, and procedures along with any regulations that may be required to assist with the management, compliance, and enforcement of any development within OCN Lands.
- (2) The general objectives seek to preserve and develop what is beneficial to OCN.
- (3) The general land use designations indicated on the maps in Appendix A illustrates the long-term land use and development strategy for OCN with the:
  - a) achievement of the land use objectives and polices that will take place over a period of years; and
  - b) ability to enact an OCN Zoning Regulation that will provide one of the principal means to effect transition.

### **3.7 Multi-Faceted Purpose**

- (1) The multi-faceted purposes of this Land Law are as follows:
  - a) to serve as a framework whereby the Chief and Council, the Land Authority and the community as a whole may be guided in formulating development policies and decisions;
  - b) to identify the factors relevant to the use and development of OCN Lands;
  - c) to identify the critical problems and opportunities concerning the development of OCN Lands and the social, environmental and economic effects thereof;
  - d) to set forth the desired timing, patterns and characteristics of future development of OCN Lands;
  - e) to establish programs necessary for the implementation of this Land Law; and
  - f) to identify those matters which affect the use and development of lands and other resources within OCN.

### **3.8 Zoning Principles**

- (1) Within this Land Law is the ability to enact zoning boundaries for the various land designations shown on map 1 in Appendix A.
- (2) Any lot size, distances and area requirements mentioned in this Land Use Plan are meant to serve as guidelines only.
- (3) Situations may arise that will necessitate a degree of flexibility in the application of these standards provided the intent of this Land Law is not compromised.
- (4) The standards within this Land Law will provide general guidelines for the preparation of the more specific performance standards and requirements of an OCN Zoning Regulation.

### **3.9 Polices under this Land Law**

- (1) Individual policies adopted under this Land Law should be interpreted within the overall spirit and intent of all other objectives and policies.
- (2) The examples of general land use classifications in the land use areas within this Land Law are used for explanatory purposes only.
- (3) Specific permitted and Conditional Use shall be established in the OCN Zoning Regulation.

## **4.0 OVERVIEW**

### **4.1 History**

Several thousand years ago, the junction of the Saskatchewan and Pasquia Rivers in what is now Manitoba was the meeting place for early aboriginal peoples. In 1741, a fur-trading place was established and the Cree soon adopted the economics of trading furs. Later they served as middlemen for the surrounding First Nations wanting to trade their furs with the Hudson Bay Company. During the Hudson's Bay Company rule (1670-1870) interest in this land was restricted to its fur potential.

People settled in the northern regions of Manitoba localities that provided opportunities for hunting, trapping, fishing and other land uses. The strategic locations of The Pas and OCN on the Saskatchewan River enhanced its importance as a "Gateway to the North" during the days of the fur trade.

The Pasquia region has been known since 1691 when the Saskatchewan River was the main artery of travel during the fur trade era.

Some grain and garden crops were grown around the forts and church missions.

OCN's land base presently consists of 23,207.879 acres (9,392.1 ha.) within 18 various parcels of land, which are dispersed over a vast area of north-west Manitoba including land in Saskatchewan. OCN lands vary in sizes of land base ranging from 10 acres (4.047 ha.) to 8,699.57 acres (3,520.6 ha.)

An additional 55,045 acres (22,276 ha.) of land will be acquired through Treaty Land Entitlement (TLE).

The main OCN community is situated along the north bank of the Saskatchewan River at the confluence with the Carrot and Pasquia rivers directly across from the Town of The Pas.

Today, OCN is the home to over 5,000 people of Cree descent. It is one of seven (7) First Nation's within the Swampy Cree Tribal Council.

OCN is one of the most progressive First Nations in Canada and has a thriving culture, rich heritage and bright future.

OCN is a traditional gathering place of the Cree who meet to hunt, fish and socialize.

The community is recognized as a model for self-government and was the first (1<sup>st</sup>) First Nation Band in Canada to be recognized as a municipality.

## 4.2 Existing Land Uses

- (1) Most of the occupied and developed areas are within OCN 21E along the Saskatchewan River from the Townsite area to the community of Big Eddy.
- (2) OCN is fully serviced with sanitary sewer/water infrastructure and the roads of OCN are mostly asphalt paved with surface land drainage with the exception being the rural area.
- (3) OCN 21E is comprised of various sections:
  - a) the Townsite area is the hub of the community and has a mixture of land uses with:
    - i) the greatest concentration of land use activities consisting of residences and community facilities;
    - ii) land along the Provincial Trunk Highway (PTH) No. 10 within the Townsite area is primarily devoted to the commercial enterprises including a hotel, shopping centre, OCN Shell, Casino and Gordon Lathlin Memorial Centre which is home of the OCN Blizzard Junior A hockey team; and
    - iii) the banks of Saskatchewan River serves as a gathering place (ie. Opaskwayak Indian Days and Powwow's);
  - b) residences are also situated along Umpherville Road (known to community members as Eastside), there are few cemeteries and one commercial MTS tower;
  - c) residences are also situated along Kiche Maskanow Road (known to community members as Carrot River and Cow's Head) to the community of Big Eddy, there are few community facilities such as a church, cemetery, and parks;
  - d) the community of Big Eddy primarily accommodates single-family housing with community facilities such as a youth centre, water treatment plant, cemetery, Moose Park, the Big E Mart and the road leading to Pike Lake; and
  - e) further north of Big Eddy:
    - i) are the gravel and sand excavation areas;
    - ii) is public use areas such as cemetery, landfill and land farms site;
    - iii) is timber resource;
    - iv) is the residential areas of Oliver Bay and residential small agricultural area of Watchi Bay.

### 4.3 Regional Development

- (1) The Pas region, also known as the “Gateway to the North”, is located approximately 375 miles (620 km) northwest of Winnipeg. The community is both a geographically and economically integrated region that is composed of three (3) distinct communities, namely, Opaskwayak Cree Nation (OCN), the Town of The Pas (The Pas), and the Rural Municipality of Kelsey (RM of Kelsey).



*Opaskwayak Cree Nation, The Pas, and R.M. of Kelsey*

- (2) Its unique location on rich soils of the Saskatchewan River Delta surrounded by dense boreal forests and countless fish stocked lakes endows the region with a colorful heritage and panoramic beauty.
- (3) OCN and The Pas serve as a major economic centre for many communities in northwest Manitoba. The businesses in the area provide goods and services to the large number of people in the neighboring communities. Businesses in OCN and The Pas also provide services and supplies to the local agricultural community. The RM of Kelsey has prime agricultural land.
- (4) The diverse regional economy includes strong forestry, agriculture, transportation and education sectors. In addition, with the agricultural section roughly 1.5 million bushels of grain and specialty crops are grown each year on up to 131,000 acres (53,051.7 ha.) of prime farmland within the Carrot River Valley area.

- (5) The area also has a thriving tourist industry due mainly to the forested woodlands of the Canadian Shield. The areas surrounding OCN and The Pas are home to beautiful lakes and rivers, with many scenic natural areas. The abundant forests of the area also support a strong forestry industry supplying local producers with raw timber.
- (6) OCN is one of the largest employers in the region with Tolko being the largest.
- (7) There is a local university within the region, located in The Pas. The University College of the North offers a broad range of post-secondary programs and opportunities to about 4,500 northern residents.
- (8) There are two (2) major festivals drawing hundreds of visitors to the area each year. The two events are:

The Northern Manitoba Trappers Festival, that features the World Championship Dog Sled Race, held in mid-February; and



The Opaskwayak Indian Days (OID), featuring the canoe classic, held in mid-August on OCN Lands. The site for the OID is where the Saskatchewan, Carrot and Pasquia Rivers meet and it is a traditional Cree meeting place where throughout history First Nations have converged to hunt, socialize and practice spiritual life.

#### **4.4 Current Land Use Plan**

- (1) The current OCN Land Use Plan is over thirty (30) years old and has not been updated since 1991. With numerous changes in land use, new additional lands and development, as well as, the approval of the *OCN Land Code*, the community has decided to enact this Land Law.
- (2) The existing OCN Land Use Plan provided development objectives for residential, commercial, industrial, community development, recreation, resources and green space. Community members have followed these objectives and implemented various recommendations outlined in the plan.

#### **4.5 Existing OCN Parcels**

OCN has 18 parcels of reserve land, totaling 23,208 acres (9,392.1 ha.) more or less, as listed below:

- (1) 21A - Timberland Trailer Court, small lot on Larose Avenue, and Connaught Avenue in The Pas, and a strip land along PTH No. 10 South just before Young's Point;
- (2) 21B - Cemetery Road; 1 mile east on PR 285 towards Rhals Island on the South bank of the Saskatchewan River;
- (3) 21C - Whitebridge; 0.5 km west of The Pas on the south bank of Saskatchewan River and the west bank of the Pasquia River;
- (4) 21D – Part of the Dyke, near The Pas with access via PR 283;
- (5) 21D Salt Channel – which includes some lands on the Dyke, near the Saskatchewan border, access is through the Dyke;
- (6) 21E – Main OCN areas which includes Eastside, Townsite, Carrot River, Cows Head, Big Eddy, Oliver Bay, and Watchi Bay;
- (7) 21F - Fischer Island with access provided via a local road;
- (8) 21G - Potato Island with access provided via water and winter road;
- (9) 21I - Bracken Dam and along PR 283; lands along the southeast bank of the Carrot River; 3 miles west of The Pas;
- (10) 21J - On the mouth of the Birch River and Saskatchewan River with access provided via the Saskatchewan River;
- (11) 21K - Saskeram with access provided via the Saskatchewan River;
- (12) 21L - Near Rocky Lake;
- (13) 21N - Mile 21 heading west to the Saskatchewan border with access provided via PR 283;
- (14) 21P - Saskeram & Pear Islands;

- (15) 21 Stoney Point - has some land along the Clearwater Lake area;
- (16) 231 Root Lake - Root Lake area with access provided via winter road;
- (17) 27A Carrot River - In the Province of Saskatchewan, with access provided via PR 283 (MB) and PR 9 (SK); and
- (18) Root Lake Beach - North of The Pas heading towards Wanless.

#### **4.6 Treaty Land Entitlement**

- (1) In January 1999, OCN signed its Treaty Land Entitlement Agreement (TLEA) and the resolution of the long outstanding treaty obligations.
- (2) The Framework Agreement settled the land debt that was owed to the 19 First Nations under Treaties 1, 2, 3, 4, 5, 6 and 10 because they did not receive all the land they were entitled to.
- (3) OCN was entitled to an additional 56,068 acres (22,669.72 ha.) to be set aside as reserve land and which OCN has converted 8,699.60 acres (3,520.60 ha.) as of December 31, 2008. The Province of Manitoba was to provide 47,658 acres (19,287.19 ha.) of Crown Land. The Government of Canada was to provide \$2,153,051 to enable OCN to purchase up to 8,410 acres (3,403.53 ha.) of land where Crown Land was unavailable. This land purchase is to be made on a willing buyer/willing seller bases. In addition, Canada was to provide OCN with \$1,364,397 for the use and benefit of its members.
- (4) There are five (5) other parcels of land that will soon receive Reserve status as follows:
  - a) OCN Egg Lake Indian Reserve No. 1 - 14,055.05 acres (5,688 ha.);
  - b) OCN Rocky Lake Indian Reserve No. 1 - 5,399.14 acres (2,185 ha.);
  - c) Attic Lake - 1,160.14 acres (469.5 ha.);
  - d) OCN Reserve 21A South - 113.42 acres (45.9 ha.); and
  - e) Barrier Settlement - 37.00 acres (55.4 ha.).

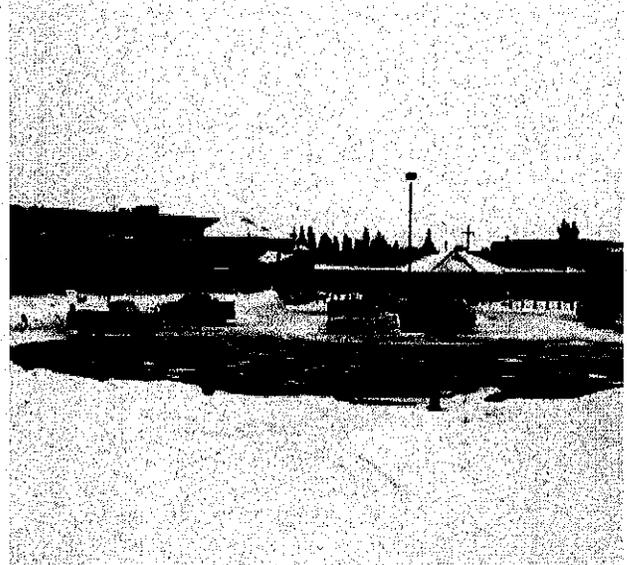
the process used to include these new lands under this Land Law, is that upon lands acquiring OCN reserve status, by way of a community approval process, these lands shall have their use pre-determined and approved at a community meeting.

## 5.0 COMMUNITY GOALS AND POLICIES

### 5.1 OCN's Community Goals

(1) OCN's community goals are:

- a) to encourage and promote community economic development initiatives, which utilizes the land base in a manner that contributes to the physical, social, cultural, spiritual and economic vitality of OCN;
- b) to develop land use policies that reflects sound environment management and complements the OCN Environmental Management System;
- c) to ensure the availability of an adequate supply of land to meet present and future land use requirements;
- d) to ensure development occurs in a manner that is harmonious with surrounding land uses and the environment;
- e) to encourage and promote the use and development of land in a manner that is consistent with the principles and guidelines of sustainable development;
- f) to support and enhance OCN as a regional centre;
- g) to support and enhance viable agricultural and natural resource areas;
- h) to ensure that developments does not occur on lands that are unsuitable for what is being proposed;
- i) to provided a sound framework for the administration of land use planning and development in the community;
- j) to provide a measure of protection for investments in community infrastructures, including utilities and transportation networks in order to maintain cost-effective operations of new, upgraded or extended infrastructure service;



Kikiwak Inn – located on OCN 21E

- k) to encourage that development review processes include careful consideration of the short and long term costs and benefits that may result from proposed developments;
- l) to promote cooperation between OCN and adjacent communities regarding the planning and development of areas of local or mutual concern;
- m) to provide policies that ensure that any revenues derived from natural resources is set aside that will benefit future generations and any expenditure from those resources shall be determined at an Annual General Meeting of OCN members;
- n) to ensure that funding is available for enforcement from the lands program revenue for this Land Law and any regulations made thereafter which complements this Land Law;
- o) to promote community networking and communication with newly acquired OCN Lands in areas that are outside of the main reserve, such as Cumberland House, when it comes to development of those lands and for the use of the land for their grandchildren;
- p) to support the idea of a satellite office in areas that are occupied by OCN members;
- q) to improve communications for all members regarding accountability and transparency with regards to lands, developments, and revenues;
- r) to enhance the land management program to run effectively and efficiently as its own separate entity, and
- s) to ensure that OCN continues to be an enjoyable place to reside.

## **5.2 General Community Policies**

- (1) Prior to submitting an application for a development approval, a development proponent will be required to provide information that is satisfactory to OCN in order to establish:
  - a) that the proposed land use(s) will be developed in such a manner that will eliminate or minimize conflicts with adjacent land uses;
  - b) that the land is physically suited for the purposes intended and in particular that the soil and drainage conditions are adequate for the proposed development; and

- c) that the land is not subject to an environmental hazard or that appropriate remedial measures have been or will be take to protect public health, safety and property.
- (2) Manitoba Hydro, Manitoba Telecom Services and other similar utilities will work with OCN to ensure the provision of their services in the most economical and efficient manner possible.
  - (3) When reviewing site requirements, the utility companies should ensure they will not have an adverse impact on adjacent land uses within the community, with such uses as:
    - a) communication towers; and
    - b) maintenance compounds.
  - (4) A site-specific groundwater pollution hazard appraisal may be required for major projects prior to the approval of a proposed new development or expanded facility.
  - (5) Information may be required from interest holders relating to:
    - a) the nature of any discharges into the air, soil or water;
    - b) the nature of outside storage requirements;
    - c) the compatibility of the proposed development or facility expansion with adjacent land uses; and
    - d) the nature of plans for buffering such activities from adjacent land uses.
  - (6) Development or activities that could cause pollution under normal operation conditions may not be permitted in an identified groundwater pollution sensitive area unless:
    - a) it can be proven by adequate engineering or hydro-geological investigation that the proposed activity will not cause pollution of the groundwater supply; or
    - b) appropriate remedial measures have been or will be taken to sufficiently mitigate the risk of endangering the potability of groundwater supply.
  - (7) No development of land shall be permitted unless it conforms to the general intent and provisions of this Land Law.

### 5.3 Hazard Lands, Flooding and Erosion

#### **A. Objectives**

- (1) To minimize personal hardship and inconvenience, adverse effect on public health, and loss of life and safety.
- (2) To minimize property damage and public expenditures for relief or protection.
- (3) To restrict activities which would accelerate or promote environmental damages arising from causes such as erosion or bank instability.
- (4) To maintain the natural capability of streams to convey flood flows.



*Bracken Dam, OCN 211 - Sandbagging*

- (5) To restrict activities that could negate the benefits derived from existing flood control works.

#### **B. Policies**

- (1) Low intensity uses such as some agriculture or green space recreational activities may be acceptable with hazard areas, but any other use involving higher intensity of development shall be restricted. Hazard areas include lands subject to flooding, water erosion, bank instability, landslides or subsidence. More specific criteria are as follows:
  - a) lands subject to flooding are all lands that would be flooded by a 100-year flood, or a flood specified by OCN or Provincial and Federal government agencies in area of protected flood control works;
  - b) lands subject to water erosion are all lands that would, within a 50-year period, be eroded or become unstable due to the action of water contained in an adjacent waterway or water body; and/or
  - c) land subject to other hazards such as landslides or subsidence are those lands where actual effects of such hazards have occurred or have been predicted by an accredited source such as a Provincial or Federal government agency.

- (2) It may not be practical or desirable for economic or social reasons to totally restrict development in all hazard areas. Developments shall, however, be carefully controlled to ensure that they are compatible with the risks or that the hazard has been eliminated or protected against. Where such exceptions are made, the following criteria shall be applied:
  - a) the development shall not adversely alter, obstruct or increase water flow, flood velocities or flood stages and should only be allowed if the cumulative effects of all foreseeable development in the flood prone area is within limits specified in the regulations or policies;
  - b) there shall be no added risk to life, health or safety;
  - c) all structures and services shall be protected against damage and shall be functional under hazard conditions;
  - d) activities such as dumping, excavation and clearing, which would accelerate or promote damages due to causes such as erosion or bank instability, should be prohibited; and
  - e) natural tree and vegetative cover should be preserved to reduce erosion and assist in maintaining bank stability.
- (3) Development proposals in hazard areas shall include completion of engineering studies by the proponent including recommendations regarding preventative and mitigating measures, which:
  - a) eliminate the risk or
  - b) reduce the risk to an acceptable level;
  - c) restore or rehabilitate damage that may occur; and
  - d) minimize or eliminate any liability to OCN.
- (4) In areas where the specific hazard has not been determined, buildings should be set back from all waterways a distance of at least 10 times the height of the bank above channel grade or 98 feet (29.87 m.) whichever is greater, unless an engineering investigation shows that these limits may be reduced.
- (5) A buffer strip of natural vegetation from 150 feet (45.72 m.) to 300 feet (91.44 m.) wide should be left adjacent to all water courses and permanent water bodies.
- (6) Wetlands should not be drained or filled without the approval of the Land Authority upon an Environmental Assessment being completed.

## 5.4 Heritage, Cultural and Spiritual Resources

### A. Objectives

- (1) To identify sites and structures having historic, architectural, spiritual, cultural or archaeological significance.
- (2) To protect these sites and structures from uses or activities that would endanger the specific areas.
- (3) To encourage public awareness, understanding and appreciation of these historic, spiritual and cultural sites.
- (4) To meet periodically with community elders and/or any relevant cultural groups, to ensure that heritage, cultural and spiritual artifacts and resources are protected for the benefit of future generations.



OCN 21E – Arbor Site – Pow Wow Grounds

### B. Policies

- (1) OCN will create, “A Community Heritage Registry” of all known historic, architectural, spiritual, cultural or archaeological resources within the community.
- (2) OCN will, within its resources, conduct comprehensive reviews of the historical significance and physical condition of each historic, architectural, spiritual, cultural or archaeological resource, and establish priorities for the preservation and management of these resources.
- (3) The development of those areas or sites that have been formally identified by the community elders, and/or any relevant cultural group and/or Chief and Council may be considered only after consultation with community elders and an examination of the site or area to determine if the heritage, spiritual and traditional resources would be endangered.
- (4) The development, designation and preservation of heritage, cultural and spiritual resources shall be coordinated with other heritage and recreational resources in OCN to maximize interpretive and tourism potential.

## **5.5 Transportation**

### **A. Objectives**

- (1) To protect and facilitate the various functions of the road system in order to move traffic safely and efficiently.
- (2) To direct large volumes of business and automobile traffic away from residential areas.
- (3) To ensure safe pedestrian movements.
- (4) To protect the main function of Provincial Trunk Highway (PTH) No. 10 as a primary arterial route.
- (5) To protect investments in the transportation network that is already in place and prevents its premature obsolescence.
- (6) To minimize disruption to local development in the future, and reduce public costs for land acquisition when upgrading to the transportation network is required.

### **B. Policies**

- (1) Strip development along a PTH, whereby direct connections to the roadway are continuously relied upon for providing access to abutting properties, shall not be permitted unless approved by the appropriate authority and copy provided to the Land Authority.
- (2) Developments that would generate traffic in an amount and/or type that would unduly impair the present and potential capability of the adjoining highway to carry traffic safely and efficiently, shall not be permitted unless adequate measures are taken to mitigate the problem(s).
- (3) Any improvements to upgrade the existing provincial highway system deemed necessary by the appropriate Provincial Government authority, which are directly associated with a development, shall be the responsibility of the development proponent.
- (4) The local road or street network associated with any type of proposed development shall be designed to conform to both the existing and planned transportation network of the neighboring areas.

- (5) Highway commercial developments may be permitted where interference with other resources is minimized and the safe and efficient operation of the highway is maintained. Direct private access to the highway shall be minimized by means of service or internal roads, where appropriate.
- (6) The location and construction of accesses to local roads shall be subject to the approval of the Land Authority.
- (7) Any development that is to occur within the control areas of PTH's and Provincial Roads (PR's) under provincial authority shall be subject to approval by the appropriate government authority.
- (8) The location and construction of an access to a Provincial Road (PR) and to a Provincial Trunk Highway (PTH) will be subject to approval by the appropriate government authority.
- (9) Land uses which generate significant amounts of regional vehicle traffic and/or significant truck traffic shall be located in proximity to major roadways, including PR's and PTH's, if appropriate.
- (10) Where an area of development is bordered on one side by a major transportation corridor or facility such as a highway or rail line, any new development should be directed to the same side of a corridor to maintain maximum safety conditions by eliminating unnecessary cross-corridor movements.
- (11) The drainage of any water into the highway drainage system shall require the approval of the appropriate government authority. Any improvements requires to upgrade the existing highway drainage system, which are directly associated with a development, shall be the responsibility of the development proponent.
- (12) Setbacks, changes in land use, signage, landscaping and access to PTH No. 10 shall be in accordance with the OCN Zoning Regulations and other applicable regulations.
- (13) Major new developments, as determined by the Land Authority, shall:
  - a) provide their own collector road system so not to impose increased traffic on adjoining local streets;
  - b) design the local road network in accordance with both existing and planned road system of neighboring areas;

- c) provide through routes that are direct, safe and pleasant for members to walk and cycle to neighbors, schools, shops and related community services;
  - d) provide mid-block crossing opportunities on major roads to make it easier for members to access business and community service areas; and/or
  - e) prepare transportation concept plans and traffic impact studies.
- (14) OCN roads shall be classified into the following three levels to reflect their respective roles in the transportation network:
- a) local roads will provide access directly to the property, will typically carry local only, and have a right-of-way width of approximately 66 feet (20.12 m);
  - b) collector roads may provide direct access to the property but in a controlled manner, will generally direct traffic to local destinations or to arterial roads, and have a right-of-way width of approximately 80 feet (24.38 m);
  - c) arterial roads are designed to carry high volumes of traffic to major destination points and have a right-of-way width of approximately 100 feet (30.48 m).
- (15) OCN shall promote the separation of vehicular, cycle and pedestrian traffic along major traffic routes, wherever possible.

## **5.6 Infrastructure Services**

### **A. Objectives**

- (1) To maintain a safe, efficient, effective and economical servicing system on a local and regional basis.
- (2) To ensure that development proponents pay a fair share of related servicing cost and do not unfairly burden OCN members.
- (3) To ensure that the expansion of utility services and corridors are coordinated with other local governments, interest holders and utility companies.
- (4) To maintain and enhance environmentally acceptable and economical methods of disposing all waste materials.

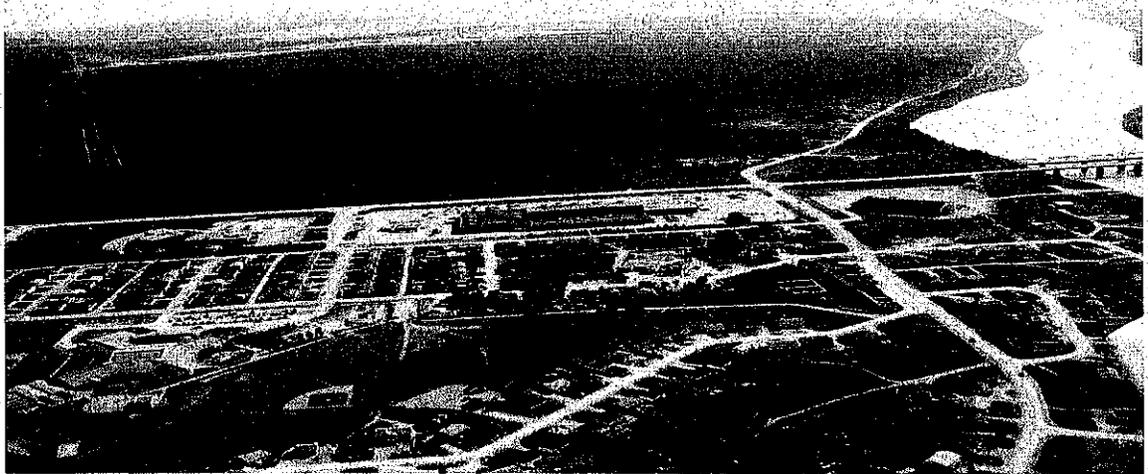
## **B. Policies**

- (1) All new development in the urban and central area shall be serviced by sewer and water infrastructure, if available. All lots not serviced by OCN must be capable of supporting a private on-site sewage disposal.
- (2) When considering development proposals, the Land Authority shall ensure that protection and emergency services such as police, fire and first responder services are sufficient to meet increased demands and that the location of these services are accessible to the proposed development.
- (3) OCN will pursue innovative and environmentally sensitive methods of handling solid wastes including the development of a recycling program based on reduce, reuse, recycle and recover.
- (4) The expansion of the water supply and wastewater treatment systems will be carried out within a logical phasing program on the basis of good engineering practice and cost effectiveness and will be subject to the community's ability to accommodate development without compromising existing community development.

## **5.7 Community Design and Improvements**

### **A. Objectives**

- (1) To promote and maintain a attractive and well designed appearance of the community, particularly with respect to new or expanded multi-unit residential and business areas.



*Town Site - Residential, Community Service Areas and Commercial Sites*

- (2) To recognize the long term benefits of the urban design as a sound investment.

**B. Policies**

- (1) The location of buildings shall accommodate, wherever possible, views of parks, as well as natural, spiritual, traditional and landscaped areas both on and off-site.
- (2) Local environmental effects of new development, particularly view blockage and sun shadow, shall be minimized, wherever possible.
- (3) New or expanding multiple family dwellings and business development projects should consider the following design criteria:
  - a) all exterior finishing materials should be of good quality, durable and attractive;
  - b) exterior finishing materials of exposed faces of the building(s) in a proposed development should be of equal standard and appearance;
  - c) consideration should be given to whether the proposed building design maintains the character of the surrounding area including any cultural or traditional areas;
  - d) where a proposed development is adjacent to existing residential areas, consideration should be given to the proposed location of mechanical equipment, outdoor storage and garbage collection areas to reduce any negative impacts to surrounding land uses;
  - e) the extent of the projection of a proposed building on a site should relate to neighboring properties, wherever possible;
  - f) the building footprint should attempt, wherever possible, to preserve existing on-site trees or other natural features;
  - g) building and site designs should incorporate features that address the functional needs of residents of all ages and abilities;
  - h) the appearance of a solid wall of buildings should be avoided by varying the street edge treatment through such means as the use of strategically placed green spaces and planting, and varied building setbacks;
  - i) major entrance points to proposed developments should be accentuated through landscaping, signage, lighting, and other design techniques in order to enhance security and reinforce a scale and rhythm to the street that is complimentary to local uses and pedestrian activities;
  - j) signs should be compatible in scale and character with the building to which they relate;

- k) all utilities should be underground, wherever possible; and
  - l) outdoor storage area should be screened from adjacent streets by fencing or landscaping.
- (4) New or expanding business, governmental, public interest area, institutional and multiple family residential developments should include landscape plans as part of the development plans and environmental assessment, prior to approval from the Land Authority.
- (5) Parking areas should incorporate appropriate landscaping, fencing and other treatments into order to improve the appearance of the lots and contribute to the continuity of the street edge.

## 5.8 Recreation and Green Space

### A. Objectives

- (1) To ensure that recreation developments are designed in a manner that is in keeping with good land use practice and includes provisions for adequate green space and protection from incompatible land use.
- (2) To provide the members and visitors with adequate indoor and outdoor recreation facilities and green spaces to ensure a healthy and aesthetically pleasing community environment.
- (3) To encourage and promote a variety of recreation, cultural, spiritual, and leisure opportunities that meets the needs of the members and responds to changing demographic trends.
- (4) To prevent overuse and consequent degradation of recreational resources.



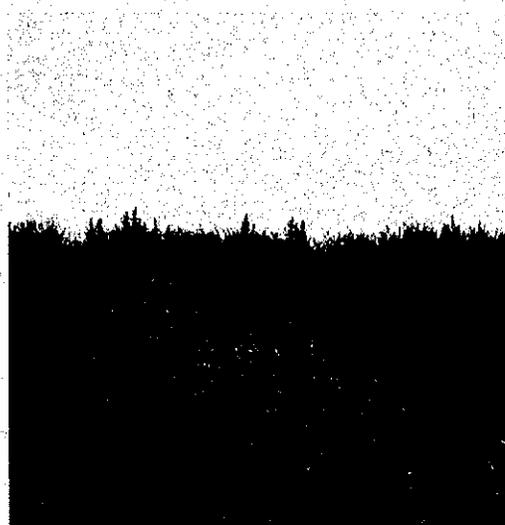
### B. Policies

- (1) Any proposed recreation trail systems shall inter-connect residential neighborhoods with commercial and community service areas, wherever possible.

- (2) Development on affected lands with significant capability for recreation shall only be permitted after the proponent has proven to the satisfaction of the Land Authority that there will be no adverse affects on those lands or that it cannot practically be located elsewhere.
- (3) Development of a recreation area shall be limited to a level of intensity that permits the sustainable use of the recreational resource.
- (4) Design and development of outdoor recreational resource opportunities shall be sensitive to such consideration as crowding and resource degradation.

## 5.9 Natural Environment Areas

- (1) To ensure the protection of scarce natural and scenic resources.
- (2) To manage community activities, lands and resources that ensures the ability of future generations to grow and prosper.
- (3) To protect significant natural features or areas which may be degraded or eliminated by certain types of development?
- (4) To help sustain threatened or endangered plants and animals.
- (5) To minimize the potential dangers of air, soil and water pollution.
- (6) To ensure that environmental issues are considered when economic development are planned.
- (7) To recognize the value of traditional knowledge and incorporate the use of traditional knowledge into the development review process.



OCN 21F

### ***B. Policies***

- (1) Design and development of outdoor recreational opportunities shall be sensitive to such considerations such as crowding and resource degradation.

- (2) Areas identified by OCN as having high recreation and natural resources capability shall be protected, wherever possible, from any negative affect and which areas are critical to sustaining:
  - a) threatened or endangered plants and animals;
  - b) Heritage Resources; and
  - c) flora and/or fauna.
- (3) Developments that would drain or fill any significant wetland or marshland area may be prohibited.
- (4) The retention of tree cover shall be encouraged as a means to control erosion and wind damage and protect significant wildlife habitat areas.
- (5) All agricultural lease/permit holders shall handle agricultural chemicals in a responsible manner.
- (6) Disposal of any chemical containers on OCN Lands will not be permitted without specific permission from the Land Authority.
- (7) Chemical spraying and other farming practices shall be in accordance with industry best practices.
- (8) OCN Members and lease holders shall not dispose of hazardous material in the OCN Landfill and shall utilize any recycling water disposal facilities and in the event that hazardous materials is required to be disposed of within OCN Lands, the Land Authority must first give approval and permission.
- (9) All projects and activities affecting OCN Lands and resources shall be in compliance with the requirements of:
  - a) the Canadian Environmental Assessment Act; and
  - b) any future environmental processes, procedures, regulations or agreements that OCN adopts and/or enacts.
- (10) If required by Federal government for capital projects, an environmental assessment must be undertaken by the proponent.
- (11) Upon OCN enacting their environmental management agreement and environmental assessment process, any requirements within the regulation will be followed by the proponent.

## **5.10 Water and Shore Land**

### **A. Objectives**

- (1) To maintain the natural capacity of waterways and water bodies to convey flows.
- (2) To preserve and maximize the capability of waterways and water bodies to be used for a variety of purposes.
- (3) To maintain and manage key shore lands:
  - a) to meet domestic water supply;
  - b) for recreation use;
  - c) for erosion protection;
  - d) ensure water table retention requirements; and
  - e) ensure the viability of local flora and fauna in areas that may be considered critical environment areas.
- (4) In addition to Section 5.10 (3) (e), it is anticipated that certain shore lands will be designed for protection solely to ensure the right of the public to fully utilize major waterways and water bodies.

### **B. Policies**

- (1) Land shall be developed in manner which ensures that waterways, water bodies, groundwater and shore land areas of significance are sustained.
- (2) Identification of waterways, water bodies, and groundwater and shore lands requiring protection will be achieved through ecological programs. The extent of protection required will be determined depending on:
  - a) the characteristics of the local situation;
  - b) the size and configurations of the waterway, water body, shore land or groundwater;
  - c) the need for public access;
  - d) the rate of erosion;
  - e) the recreation potential; and
  - f) the related criteria that will all have a bearing on the mode of protection adopted and shore land reserves may be created to protect shore land, waterways or water bodies.

- (3) Development shall occur in a manner that sustains the yield and quality of water from significant aquifers.
- (4) Groundwater pollution hazard areas shall be taken into account in development proposals. Provisions require to safeguard such areas shall be applied through the environmental assessment process in terms of land uses and structures that could potential pollute groundwater.
- (5) The preservation and rehabilitation of native vegetation will be encouraged in sensitive environment areas such as the shorelines of lakes, rivers, creeks and streams in order to stabilize banks, filter run-off and to promote surface water quality.
- (6) In the case of development proposals which require significant volumes of surface water and/or ground water, the proponent shall be required to investigate the need for any government approval.
- (7) Public access to water and shore land areas shall be encouraged to foster appreciation and enjoyment to nature.
- (8) Any access to water and shoreline areas shall not lead to levels of activity that will exceed the capability of the area to sustain the ecosystem and recreation integrity.
- (9) Any proposed development adjacent to fisheries habitats, spawning sites and fish nursery areas shall conform to the following development criteria:
  - a) measures are put in place to limit nutrient and sediment inflow;
  - b) the construction of dykes is preferred to channel deepening and straightening;
  - c) land shall not be cleared, cultivated or developed to the water's edge of creeks, streams and lakes;
  - d) organic loading or siltation from agricultural run-off shall be prohibited.

## **5.11 Mineral and Forestry Resources**

### **A. Objectives**

- (1) To protect mineral resources, including known sand and gravel deposits, from conflicting land uses which may prevent the economic extraction of minerals.
- (2) To rehabilitate, in accordance with applicable regulations, lands disturbed by mineral or forestry resource extraction to environmentally safe, stable and compatible with adjoining lands.

- (3) To promote the socio-economic benefits of harvesting timber and the production of forest products, goods and services.
- (4) To ensure that revenues derived from the mineral and forestry resources go back into the community for the future generations.

### ***B. Policies***

- (1) Aggregate and other quarry mineral deposits shall be protected from conflicting and potentially incompatible land uses.
- (2) Minimum setback regulations shall be established in the OCN Zoning Regulation for extraction operations and adjacent land uses.
- (3) In accordance with government standards and/or OCN Zoning Regulation, the proponent shall rehabilitate the lands disturbed by mineral, quarry mineral or metallic mineral exploration to a condition that is:
  - a) environmentally safe;
  - b) stable; and
  - c) compatible with adjoining land.
- (4) Land uses in close proximity to sites of active mineral extraction operations, and which may be sensitive to the impact of surface mining shall not be permitted.
- (5) OCN members who carry out timber harvesting activities shall be encouraged to ensure that:
  - a) roads, landings and excavated trails are:
    - i) constructed, maintained or deactivated in a manner that minimizes soil erosion, landslide hazards and ensures that nearby streams are maintained in their natural or existing courses; and
    - ii) restored to the extent necessary that reforestation requirements are achieved; and
  - b) woodland debris on the site does not result in damage to lakes, rivers, creeks, streams and wildlife habitat areas.
- (6) Forestry activities shall be conducted in such a manner that ensures maximum protection and enhancement of all resources and aesthetic for the area in which the activity is occurring.

- (7) Forestry harvesting methods shall be conducted in such a manner as to promote regeneration of the highest value species naturally occurring on the site.
- (8) Where one resource may be reduced through the extraction of another resource, OCN will try to recover both resources, if possible, such as cutting merchantable timber prior to the extracting of gravel.
- (9) Approval of resource development shall be conditional on the proponent demonstrating that the development is in the long-term interest of OCN and will not result in unacceptable environmental degradation or conflict with other land uses.

## **6.0 TOWNSITE AND CENTRAL AREAS**

### **6.1 Intent and General Objectives**

#### ***A. Intent***

- (1) In addition to the general objectives and policies outlined in Section 5 of this Land Law, the intent of the objectives and policies outlined in this section will address general issues that may arise from considering development proposals.

#### ***B. General Objectives***

- (1) To maintain or improve the social and physical characteristics of the residential, community and business area.
- (2) To recognize the diversity of land uses within OCN.
- (3) To promote future growth of residential, business, government, institutional and recreational development in such a manner that they can coexist with minimal land use conflicts.
- (4) To protect and improve the economic well-being of the area by encouraging and participating in programs that will promote new jobs, new capital investment, economic growth and an increased OCN tax base.
- (5) To ensure orderly growth in a manner beneficial to OCN.
- (6) To facilitate the development of a range of community service and facilities that is in close proximity to residential areas.
- (7) To ensure that attractive, affordable and compatible housing choices are available to meet the changing socio-economic and demographic needs.

- (8) To develop efficient, attractive and well-planned business areas serving OCN.
- (9) To ensure adequate recreational, leisure, spiritual and cultural opportunities for the health and enjoyment of OCN members.
- (10) To protect any traditional and spiritual areas from incompatible development.

## **6.2 Residential Areas**

### **A. Intent**

- (1) The intent of the Residential Areas in this Land Law is to outline policies for short and long term Community Development opportunities relating to existing developed and undeveloped residential areas.

### **B. Objectives**

- (1) To protect and enhance existing residential areas through the accommodation of residential and community service development.
- (2) To ensure land uses are compatible with adjacent areas and reflect the demographic and market profile of the community.
- (3) To ensure that adequate sewage disposal and public water supply are available.

### **C. Policies**

- (1) The following land uses shall be accommodated in Residential Areas for:
  - a) a range of housing opportunities such as single-dwellings, multiple family dwellings and mobile home subdivisions;
  - b) local commercial enterprises that serve the daily needs of local residents and visitors;
  - c) institutional and governmental facilities such as churches, public and private schools, libraries, cemeteries, day care facilities as well as police and fire stations;
  - d) recreation and green space uses such as neighborhoods parks, playgrounds, athletic fields and nature trails; and
  - e) spiritual and cultural uses such as burial grounds and meeting places.

- (2) Where available, all new developments shall be connected to sewer and water infrastructure.
- (3) All lots not serviced by sewer and water must comply with all Federal regulations including all OCN Land Laws and regulations.
- (4) New or pending developments shall have access to community roads.
- (5) The Land Authority shall, in the review process take into consideration the following criteria, when considering proposed multiple family dwelling, commercial and institutional developments;
  - a) the impact regarding building scale, street relationships, pedestrian safety, traffic volumes and movement;
  - b) the cost and feasibility of providing infrastructure service;
  - c) storm drainage patterns;
  - d) the protection or enhancement of existing treed or natural areas;
  - e) the proximity to, and availability of, public green space and recreational facilities; and
  - f) the use of buffers including berms, walls, fencing, landscaping, plantings, or a combination thereof, between adjacent or incompatible land uses.
- (6) Where large underdeveloped areas are being considered for future development the proponent shall:
  - a) prepare a Development Plan for the area in order to provide an efficient, well-planned outline which will include:
    - i) future roadways;
    - ii) site plan;
    - iii) green space;
    - iv) infrastructure;
    - v) drainage;
    - vi) erosion control; and
    - vii) any other major features.

- b) ensure that the design of the roadways and the site plan are integrated with the existing roadways and services;
  - c) conform to recognized engineering and planning standards; and
  - d) conform to OCN Zoning Regulation.
- (6) Home Occupation, which shall be regulated by the OCN Zoning Regulation, is secondary to a primary residential use and shall not have adverse effects on adjacent land uses.

### **6.3 Business and Mixed Use Areas**

#### ***A. Intent***

- (1) The intent of the Business and Mixed Use Areas in this Land Law is to outline policies that recognize:
- a) the vital role of the commercial area within OCN which diversities the local economy and generates employment; and
  - b) OCN's social and economic opportunities derived from having a mixture of residential and community service development in close proximity to each other.

#### ***B. Objectives***

- (1) To achieve a well-balanced local economy that facilities economic and employment opportunities.
- (2) To ensure an adequate supply of serviced and possibly un-serviced business sites that are available to accommodate present and future development opportunities.
- (3) To encourage businesses with similar characteristics to be grouped together to create a more pleasing business environment.
- (4) To ensure land uses are compatible with adjacent areas.
- (5) To promote a full range of business, multi-family residential, recreational and community service developments.
- (6) To encourage mixed-use developments that caters to different market and client needs.
- (7) To ensure that development effectively utilizes existing infrastructure.

**C. Policies**

- (1) The following land uses shall be accommodated in the Business and Mixed Use Area:
  - a) residential uses including but not limited to single dwelling units, condominiums, cottages, townhouses and duplexes that are used for personal use and not as a business;
  - b) commercial mobile parks including but not limited to single dwelling units within a mobile home park and mobile park head lease with sub-leases;
  - c) commercial uses including but not limited to any business enterprise that require a land base other than small business within a home dwelling, industrial, leisure, retail, recreational, residential for renting, and other general uses such as retail malls, restaurants, grocery stores, clothing, sporting good establishments, furniture/appliance outlets, professional offices, household repair businesses and various support services.
  - d) removal of resources including but not limited to:
    - i) selective timber cuts;
    - ii) removal and storage of peat;
    - iii) limited sand and gravel extractions; and
    - iv) cutting and cleaning of deadfall;
  - e) Utilities including but not limited to electrical, cable, water lines, sewer lines, lagoon, telephone, irrigation, infrastructure;
  - f) easements including but not limited to right of ways, encumbrances, roads, ditches, railways, waterline, and walking trails;
  - g) occupancy including but not limited to short term residential use, cabins, short term cottage and year to year leases, bill board permits, small agricultural activities; gardening; and community gathering;
  - h) public interest including but not limited to parks, schools, churches, cemeteries, camp grounds, water plant, sewage plant, traditional areas, burial grounds, land fill, land farms, fire/emergency/public safety buildings, public works building and yard; recreational sites; and general use areas that are used in common by OCN Citizens; and
  - i) any other land use which may not be listed above and that the Land Authority and Chief and Council deem appropriate.

- (2) Where available, all new major developments shall be serviced by sewer and water infrastructure and have access to community roads.
- (3) New business developments shall be designed to encourage safe pedestrian movements linking shopping, parking and recreation services.
- (4) The Land Authority shall, in the review process take into consideration the following criteria when considering proposed business, governmental, institutional, multiple family dwelling, and mixed used developments:
  - a) the local impacts regarding building scale, street relationships, pedestrian safety, traffic volume and movement;
  - b) adequacy of lighting, parking, universal access and the reduction of noise;
  - c) the availability and proximity to business and community services as well as public green space and school facilities;
  - d) the cost and feasibility of providing infrastructure services;
  - e) storm drainage patterns;
  - f) the protection or enhancement of existing treed or natural areas;
  - g) the use of buffers including berms, walls, fencing, landscaping, plantings, or a combination thereof, between adjacent or incompatible land uses;
  - h) the volume of water consumption in the peak use periods will not unduly strain OCN's water supply or distribution system;
  - i) the amount and type of waste will not reduce the effectiveness of OCN to collect, treat and dispose of solid or liquid waste; and
  - j) the proposed development, particularly it's gas, noise or light emissions, will neither disrupt adjacent areas nor diminish the quality of the environment beyond the site being used.
- (6) The proponent may be required to provide an environmental assessment and/or study.
- (7) Commercial type developments shall be restricted mainly to the PTH No. 10 strip.
- (8) Where large underdeveloped areas are being considered for future development the proponent shall:

- a) prepare a Development Plan for the area in order to provide an efficient, well-planned outline which will include:
  - i) future roadways;
  - ii) site plan;
  - iii) green space;
  - iv) infrastructure;
  - v) drainage;
  - vi) erosion control; and
  - vii) any other major features
- b) ensure that the design of the roadways and the site plan are intergraded with the existing roadway and services;
- c) conform to recognized engineering and planning standards; and
- d) conform to OCN Zoning Regulations

## **7. RURAL MIXED USE AREA**

### **7.1 Intent and General Objectives**

#### ***A. Intent***

- (1) The addition to the general objectives and policies outlined in Section 5 of this Land Law, the intent of the section is to address general issues that may arise from evaluating development proposals in the Rural Mixed Use Area.

#### ***B. General Objectives***

- (1) To ensure land uses are compatible with adjacent areas.
- (2) To provide a measure of protection for investments in the transportation networks in order to maintain cost-effective operations of new, upgraded or extended transportation infrastructure services.
- (3) To protect and enhance renewable and non-renewable natural resources, including water, forests, soils, aggregates, minerals and wildlife habitats.
- (4) To ensure that development does not occur on lands that is unsuitable for the proposed development.

## 7.2 Rural Settlement Areas

### A. Intent

- (1) The intent of the Rural Settlement Area in this Land Law is to outline policies that are not within the main developed areas.

### B. Objectives

- (1) To maintain and strengthen the viability of the Rural Settlement Areas as places to live.
- (2) To accommodate a variety of residential and limited commercial and recreation uses.
- (3) To ensure that uses located in the Rural Settlement Areas do not adversely affect adjacent uses.
- (4) To ensure that the Rural Settlement Areas remain compact and are not adversely affected within their immediate rural boundary.
- (5) To identify suitable areas for future development in keeping with the anticipated demand for land and efficient infrastructure servicing strategies.



OCN 21E – Watchi Bay Residence

### C. Policies

- (1) The following land uses shall be accommodated in the Rural Settlement Areas:
  - a) a range of housing opportunities such as single-family dwellings, multiple family dwellings, cottage dwellings and mobile home dwellings;
  - b) limited commercial developments that serve the public such as restaurants, convenient type stores and various support services;
  - c) recreation and green space uses ranging from parks and nature trails to various sports facilities including golf courses;
  - d) limited agricultural activities; and
  - e) spiritual and cultural uses such as burial grounds and meeting place.

- (2) Any new development shall occur in such a manner so that it is compatible with adjoining land uses and potential conflict between uses is minimized. The use of buffers may be required to minimize conflicts.
- (3) Minimum lot sizes shall be established in the OCN Zoning Regulation to permit effective disposal of sewage and to minimize the risk of groundwater pollution.
- (4) The growth of Rural Settlement Areas bordering on one side of a Provincial highway shall be located on the same side as the existing settlement.
- (5) Expansion of the Rural Settlement Area shall, wherever possible be directed away from prime agricultural land and other resource-related uses to avoid incompatibilities and so that land is not prematurely taken out of production or its use prematurely inhibited.

### **7.3 Rural Mixed Land Use**

#### ***A. Intent***

- (1) The intent of the Rural Mixed Land Use Areas in this Land Law is to outline policies that support and protect the natural aesthetics and wildlife with the rural areas.

#### ***B. Objectives***

- (1) To prevent incompatible land uses for intermixing.
- (2) To maintain the rural character and quality of life presently enjoyed in the Rural Mixed Land Use Area.
- (3) To ensure that proposed developments can be serviced to an appropriate rural standard and in a cost-effective manner with respect to access by way of road, trails, or waterways.
- (4) That any type of land use do not adversely effect the environment.

#### ***C. Policies***

- (1) The following land uses shall be accommodated in the Rural Mixed Land Use Areas:
  - a) small scale agricultural such as gardening and a limited amount of farm animals;

- b) public general industrial uses, such as timber mills and lumber yards, farm equipment and machinery repair shops, light manufacturing uses, general contractor services, warehouse sales as well as equipment or implement sales or rentals, that accommodate a mix of manufacturing, assembly distribution and services with indoor or outdoor operational storage characteristic;
  - c) limited housing opportunities such as single-family dwellings, mobile home dwellings and cottage dwellings;
  - d) outfitters and game farms as well as wildlife conservation reserves;
  - e) public interest areas such as water/sewer facilities, group and/or healing centres and cemeteries;
  - f) recreation, green space and natural trails;
  - g) seasonal recreation uses such as cottages, lodges, campgrounds, parks, and natural trails; and
  - h) spiritual and cultural uses such as burial grounds and meeting places.
- (2) The surface water quality in the area shall be protected.
- (3) For sites where there is potential for pollution of soils, groundwater or surface water may be required to incorporate mitigating measures that will reduce the risk to acceptable levels or shall be precluded from operating.
- (4) Residential lots shall be of such dimensions so as to maintain the rural character of the land and shall take into consideration:
- a) existing shelterbelts as well as other physical and natural features;
  - b) suggested minimum lot size of two (2) acres is preferred with a maximum lot size of 10 acres; and
  - c) where it can be demonstrated that the minimum and maximum figures are either deficient or excessive for their purposes, they may be altered at the discretion of the Land Authority.
- (5) Home Occupation or home-based businesses are:
- a) secondary to a primary residential use and shall not have adverse effects on neighboring land uses; and
  - b) such Home Occupation shall be regulated by the OCN Zoning Regulation.

- (6) Residential Development shall be directed towards sites with low potential for agricultural and natural resources development due to adverse topography, poor soil conditions, or other physical constraints and the proposed development will not unduly interfere with existing or proposed agricultural operations.
- (7) Residential development shall be planned in a manner that will not produce unacceptable social or economic costs. The Land Authority will consider the impact of such development on the provision of such public services as schools, school busing, hydro, telephone, highways, police and fire protection, health care and recreational facilities, snow removal and refuse collection.
- (8) Residential development shall accommodate adequate drainage, the proper function of a septic field or other acceptable method of domestic effluent disposal, and a potable water supply.
- (9) Land should be preserved and protected for Agricultural Activities on prime agricultural lands and lands where Agricultural Activities are dominant or could be viable on lower class land and where it is desirable and feasible to provide protection to such activities as determined by the Land Authority.

## **8.0 RURAL AGRICULTURAL AREAS**

### **8.1 Intent and General Objectives**

#### ***A. Intent***

The intent of the Rural Agricultural Areas in this Land Law is to outline policies that support and protect agricultural related uses in the rural areas.

#### ***B. Objectives***

- (1) To protect agricultural lands for a full range of agricultural activities.
- (2) To prevent incompatible land uses for intermixing.
- (3) To encourage measures to bring new land into productive agricultural uses provided it does not have a higher potential for wildlife management or other non-agricultural use.
- (4) To maintain the rural character and quality of life presently enjoyed in the Rural Agricultural Area.

- (4) To maintain the rural character and quality of life presently enjoyed in the Rural Agricultural Area.
- (5) To ensure that proposed developments can be serviced to an appropriate rural standard and in a cost-effective manner with respect to road access, water supply and wastewater disposal.
- (6) To ensure proposed developments do not negatively impact agriculture, the environment or development.

### **C. Policies**

- (1) The following land uses shall be accommodated in the Rural Agricultural Areas:
  - a) general agricultural uses such as farming, pasturage, agriculture, apiculture, floriculture, horticulture, non-commercial farms, and agricultural product storage facilities.
  - b) limited housing opportunities such as single-family dwellings, mobile home dwellings and cottage dwellings;
  - c) agri-commercial uses such as commercial seed cleaning plants, agricultural implement sales and service establishments;
- (2) The surface water quality in the area shall be protected.
- (3) For sites where there is potential of pollution of soils, groundwater or surface water, agricultural operations may be required to incorporate mitigating measures that will reduce the risk to acceptable levels or shall be precluded from operating.
- (4) Residential lots in the Rural Agriculture Areas shall be limited and take into consideration:
  - a) existing shelterbelts as well as other physical and natural features;
  - b) suggested minimum lot size of two (2) acres is required with a maximum lot size of five (5) acres;
  - c) where it can be demonstrated that the minimum and maximum figures are either deficient or excessive for their purposes, they may be altered at the discretion of the Land Authority.
  - d) if there is a home-based businesses that is secondary to agricultural purposes, the home-based businesses shall be regulated by the OCN Zoning Regulation;
  - e) residents development shall be directed towards sites with low potential for agricultural use and does not interfere with existing or proposed agricultural operations and impacts shall be considered

before the Land Authority grants permission for a residence to be located on agricultural land:

- i) public services available;
- ii) potable water supply (wells or existing infrastructure);
- iii) type of sewage disposal (septic field or holding tanks)
- iv) school busing;
- v) hydro hook up;
- vi) telephone hook up;
- vii) highways and accesses;
- viii) police protection;
- ix) fire protection;
- x) snow removal; and
- xi) refuse collection.

- (6) Land should be preserved and protected for agricultural activities on prime agricultural lands and lands where Agricultural Activities are dominant or could be viable on lower class land and where it is desirable and feasible to provide protection to such activities as determined by the Land Authority.

## 9.0 NATURAL RESOURCE AREAS

### 9.1 Intent and General Objectives



#### **A. Intent**

- (1) The intent of the Natural Resource Area in this Land Law is to outline policies that support and protect natural resource related uses in the rural areas.

#### **B. Objectives**

- (1) To prevent incompatible land uses for intermixing.
- (2) To maintain the rural character and quality of life presently

- (3) The intent of the Natural Resource Area in this Land Law is to outline policies that support and protect natural resource related uses in the rural areas.
- (4) To ensure that proposed developments can be serviced to an appropriate rural standard and in a cost-effective manner with respect to various means of accesses, water supply and wastewater disposal.
- (5) To ensure proposed developments do not negatively impact natural resource and the environment.
- (6) The protection of natural resource to be sustainable.
- (7) To protect the wildlife and their habitat.

### **C. Policies**

- (1) The following land uses shall be accommodated in the Natural Resource Areas:
  - a) limited housing opportunities such as single-family dwellings, mobile home dwellings and cottage dwellings;
  - b) natural resource developments such as forestry activities, mineral exploration and extraction operations, outfitters and game farms as well as wildlife conservation reserves;
  - c) limited agricultural use such as hayfields, wild rice, preservation farms and gathering;
  - d) seasonal recreation and green space uses ranging from parks, cottages, lodges, campgrounds and natural trails; and
  - e) spiritual and cultural uses such as burial grounds and meeting places.
- (2) The surface water quality in the area shall be protected.
- (3) For sites where there is potential of pollution of soils, groundwater or surface water, resource developments may be required to incorporate mitigating measures that will reduce the risk to acceptable levels or shall be precluded from operating.
- (4) Residential Development shall be directed towards sites with low potential for natural resources development due to adverse topography, poor soil conditions, or other physical constraints and the proposed development will not unduly interfere with existing or proposed natural resources.

## **10.0 OTHER TYPE OF USE APPROVALS**

### **10.1 Development Permit**

- (1) New development generally requires a Development Permit issued by:
  - a) the Development Officer; and/or
  - b) OCN Land Authority.
- (2) Before a permit is issued, proposals shall be reviewed to determine their conformance with this Land Law and the OCN Zoning Regulation.

### **10.2 Development Review Officer**

- (1) OCN may in the future authorize a Development Review Officer to issue:
  - a) development permits;
  - b) zoning memoranda;
  - c) other similar documents that allows for minor variations to the requirements of the OCN Zoning Regulation.

### **10.3 Conditional Use Approvals**

- (1) Within OCN Zoning Regulation, there will be provisions for the approval of various types of Development as a Conditional Use in each Zoning District.
- (2) With Conditional Use Applications the Land Authority will have the flexibility to:
  - a) review specific development proposals;
  - b) to receive community members input; and
  - c) to make decisions either approving or denying the proposal.
- (3) In addition, this process provides the Land Authority with the opportunity to establish conditions of approval appropriate for each proposal.
- (4) In utilizing the Conditional Use process, the Land Authority will:
  - a) have an opportunity to influence the location of certain types of development;
  - b) as well as to implement measures to ensure that the development occurs in a manner that is acceptable to OCN.

## **10.4 Variation Orders**

- (1) The OCN Zoning Regulation is structured to allow the Land Authority to issue Variation Orders for the purpose of
  - a) varying; or
  - b) altering the zoning regulations.
- (2) The Land Authority may attach conditions to a Variation Order in order to maintain the intent and purpose of this Land Law or the OCN Zoning Regulation.
- (3) The Land Authority may grant or refuse a minor Variation Order as set out in the OCN Zoning Regulation.

## **10.5 Subdivision**

### ***A. Approval***

- (1) Subdivision is the process of altering legal property boundaries. Most often this involves splitting larger tracts of land into separate legal properties.
- (2) Proposals involving the subdivision of land for individual or multiple lot developments will be subject to a review and approval process of the Land Authority.
- (3) This process provides an opportunity for development proposals to be evaluated in accordance with the provision of this Land Law.

### ***B. Criteria***

- (1) Development of a subdivision on OCN Lands requires approval from the Land Authority. Prior to requesting approval the proponent must provide:
  - a) a proposal for the use of land along with their application;
  - b) an environmental assessment;
  - c) a copy of engineering plans; and
  - d) any other relevant information that the Land Staff and/or Land Authority require.

## **11.0 IMPLEMENTATION MEASURES**

### **11.1 Basic Implementation Measures**

- (1) This section outlines the actions that are required in order to facilitate the overall community growth, objections and development policies.
- (2) This Land Law is based on short and long range policies, regulations and criteria for OCN to grow and prosper in a sustainable manner that reflects a diversity of interest and needs; however, this Land Law does not in itself manage and control development.
- (3) This Land Law is to be used in conjunction with other planning controls such as the OCN Zoning Regulation. With this in mind, the policies outlined in this Land Law will be implemented by the measures and methods provided below.

### **11.2 Implementation of OCN Zoning Regulation**

- (1) Regulations shall be established on the processes and procedures that the Land Authority and its staff will utilize to ensure that steps are followed prior to recommendation and approval and any specific developments.
- (2) One such regulation that OCN shall be implementing is the OCN Zoning Regulation. This regulation shall enhance this Land Law and shall set out the criteria for decision making based on intent, objectives and policies.
- (3) The OCN Zoning Regulation establishes various Zoning Districts that will:
  - a) determines allowable uses;
  - b) provides details regarding the appropriate development standards such as:
    - i) minimum lot sizes;
    - ii) maximum building heights;
    - iii) sign controls;
    - iv) landscaping, and
    - v) Home Occupation regulations; and
  - c) outlines on the applicable Zoning Districts for development.

### **11.3 Adoption of Other Regulations under this Land Law**

- (1) OCN Council may adopt or enact and administer other Regulations other than the OCN Zoning Regulation, concerning the use, development and maintenance of OCN Lands.
- (2) Such additional Land Laws or Regulations could be:
  - a) building regulation;
  - b) property maintenance regulation;
  - c) vehicular access approval regulation;
  - d) drainage regulation; and
  - e) any other types of regulations affecting the use and development of OCN Lands.

### **11.4 Amendment of this Land Law**

- (1) This Land Law shall be reviewed periodically and revised if necessary to anticipate and respond to changing conditions within OCN.
- (2) This Land Law may be amended by Chief and Council as follows:
  - a) a recommendation from the Land Authority supporting or requesting the amendment;
  - b) where the proposed amendments are substantial in nature, it may be referred to a Community Meeting for input; and
  - c) where an amendment is technical in nature, where urgent or following community input may be enacted by a written Resolution of Council.
- (3) A notice shall be provided to the community through the local newsletter and by such other means as the Chief and Council deems appropriate, informing them of the proposed amendment changes.
- (4) Upon community consultation process has been completed, Chief and Council shall approve or reject amendment.
- (5) If approved, Amendment to this Land Law shall be by written Resolution of Council.
- (6) All amendments shall be files in the OCN Land Registry.

- (7) Additional OCN Lands may be acquired and/or selected through land claim settlements, treaty land entitlement, land exchanges, unresolved exchanges and or other processes which are accepted and set aside as reserve lands shall identify the Land Use designation which will be pre-determined. The process for pre-determining the Land Use area shall:
  - a) include the pre-determination of Land Use Areas at the Community Approval Process, set out in the OCN Land Code for accepting new lands as OCN Lands; and
  - b) have the OCN members vote to accept Land Use Area designation;
  - c) upon the lands being converted into OCN Land status by Canada, the Land Use Area approved for such lands will be in full force and form part of this Land Law.
- (8) Chief and Council shall ratify such acceptance of each Additional OCN Lands by having an absolute majority of Chief and Council signing the amendment to this Land Law.
- (9) All decision of Chief and Council regarding amendments to this Land Law, whether approved or denied shall cause to have notice published in the local newsletter informing the community members of their decision.

## **12.0 GENERAL PROVISIONS**

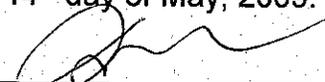
- (1) Except where otherwise specifically intended, the plural shall include the singular, the singular shall include the plural, the masculine shall include the feminine and the feminine shall include the masculine where used in this Land Law.
- (2) This Land Law will be interpreted in a full, fair and generous manner, in accordance with its spirit and intent, rather than the technical interpretation or construction of its words or technical or typographical errors or no technical defect, breach or failure in the conduct or implementation of the obligations and duties set out in this Land Law shall be considered material or shall affect the application of this Land Law.
- (3) This Land Law shall be interpreted in conformity with the following principles in priority:
  - a) in accordance with the values of the OCN Community Members;
  - b) in accordance with the OCN Land Code, Land Laws, by-laws, regulations, and policies enacted or adopted the OCN and its entities;
  - c) in accordance with appropriate Federal Law; and

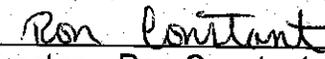
- (4) The headings used in this Land Law have been inserted for convenience only and shall not be used in the interpretation, within this Land Law.
- (5) Where any part, section, subsection of this Land Law is struck down or struck out by a Court of Law, that section, subsection or provision will be deemed to be severed, and the remainder of this Land Law will remain and continues to be in force.

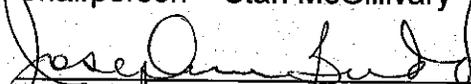
**13.0 OCN RATIFICATION AND ADOPTION OF THIS LAND LAW**

- (1) Adoption of this Land Law by OCN Community Members by way of a ratification vote will give effect to its validity and will be enforced.
- (2) This Land shall come into force and effect on 14<sup>TH</sup> day of May, 2009.
- (3) OCN Community Ratification vote was held on 14<sup>th</sup>, day of May, 2009, and has adopted this Land Law.
- (4) Upon adopted no development or land use change shall be carried out within the areas affected by this Land Law that is inconsistent or at variance with the proposals or policies set herein.

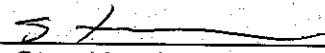
DONE AND PASSED by the Board of Directors of the Land Authority at a meeting held on the 3rd day of April, 2009 and FURTHER RECOMMENDS that Chief and Council request that Ratification Vote be held to enact this Land Law which vote will be held on the 14<sup>th</sup> day of May, 2009.

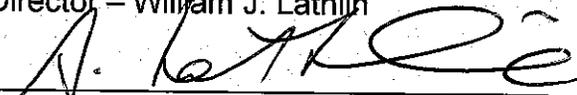
  
\_\_\_\_\_  
Chairperson – Stan McGillivray

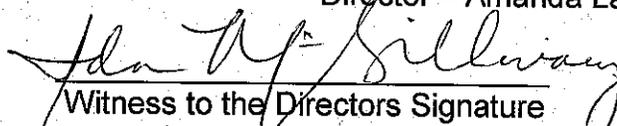
  
\_\_\_\_\_  
Director – Ron Constant

  
\_\_\_\_\_  
Director – Josephine Budd

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Director – William J. Lathlin

  
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Director – Stan Head

  
\_\_\_\_\_  
Director – Amanda Lathlin

  
\_\_\_\_\_  
Witness to the Directors Signature

THAT THE CHIEF AND COUNCIL of Opaskwayak Cree Nation **RATIFIES** by Band Council Resolution #09-049, the community ratification vote held on May 14, 2009, of the enactment of the Land Law for Land Use and Community Plan including Natural Resources at a meeting held on the 9<sup>th</sup> day of June, 2009

## SCHEDULE “A”

### Definition of words used in relationship to development project but is that is not commonly used.

**Buffer** means an area designed to separate and protect incompatible land uses from one another as through the use of buffers such as appropriate landscaping to insulate the surroundings from noise, smoke, dust, odours, or visual aspects of adjacent properties or uses.

**Erosion** means the process by which the earth’s surface is worn away by the action of wind or water.

**Exploration** means a search for minerals or oil and gas by prospecting, by geological, geophysical or geochemical surveys, by trenching, stripping, excavating or drilling or by any other method.

**Farmstead** mean a single-family dwelling, mobile or modular home, which is the principal residence of the owner or operator of a permitted or conditionally approved agricultural activity and which is located on the same site as the agricultural activity.

**Gas** means natural gas that:

- contains methane and other paraffin hydrocarbons, and might contain nitrogen, carbon dioxide, hydrogen sulfide, helium or minor impurities;
- is recovered or recoverable through a well from a reservoir; and
- includes any fluid hydrocarbon, before and after processing, that is not oil or condensate.

**Groundwater** means water below the surface of the ground.

**Hazard Land** means land that has become unstable as a result of flooding, water erosion, wind erosion, landslide or subsidence, or where the effects of same on the land have been predicted;

**Land** means all rights and resources in and of the land and includes:

- the water, beds underlying water, riparian rights, air space and renewable and non-renewable resources in and of the land, to the extent that these are under the jurisdiction of Canada or OCN; and
- all interests and licenses transferred by Her Majesty in Right of Canada list in the Individual Transfer Agreement and those interest and licenses approved and registered in the First Nation Land Registry;

**Landscaping** means any combination of trees, shrubs, flowers, grass or other horticultural elements, decorative stonework, paving, screening or other architectural elements, all of which are designed to enhance the visual amenity of a property or to provide a buffer between properties in order to mitigate objectionable features between them;

**Mineral Resource Development** means a development for the on-site removal, extraction and primary processing of raw material found on or under the site, or accessible from the site, typical uses include gravel pits, sandpits and the stripping of topsoil, but do not include the processing of raw materials transported to the site;

**Nuisance** means anything that interferes with the use or enjoyment of property or endangers personal health or safety;

**100 Year Flood** means a flood that is likely to occur, on average, only once in 100 years, or more specifically, a flood that has a one percent (1%) chance of being equaled or exceeded in any year;

**Ordinary High Water Mark** means the level at which the water in a water body or waterway has been held for a period sufficient to leave a mark on the vegetation and/or soil along the bank; the line identified in plan of survey as "O.H.W.M." or "Ordinary High Water Mark" or the line on a plan of survey delineating the bed of a water body or waterway;

**Pollution** means the presence of foreign substances that adversely affect the natural constituents of the air, water or soil;

**Prime Agricultural Land** means land composed of mineral soil:

- as determined by Manitoba Agricultural, Food & Rural Initiatives to be of dry-land Agricultural Capability Class 1, 2, or 3 and includes a land unit of one-quarter (1/4) section or more or a river lot, 60 percent (60%) or more of which is comprised of dryland Agricultural Capability Class 1, 2, or 3
- in certain circumstances, land composed of organic soil determined by Manitoba Agriculture, Food, & Rural Initiatives to be of dry-land Agricultural Capability Class 1, 2, 3; or
- land determined by Manitoba Agriculture, Food & Rule Initiatives to be of Irrigation Suitability Class 1A, 1B, 2A, or 2B may also be considered as prime agricultural land.

**Rehabilitate/Restoration/Remediation** means, in respect of a project site or an aggregate quarry, the actions taken for the purpose of:

- protecting the environment against adverse effects resulting from operation at the site or quarry;

- minimizing the detrimental impact on adjoining lands of operations at the site or quarry;
- minimizing hazards to public safety resulting from operations at the site or quarry; or
- leaving the site or quarry in a state that is compatible with adjoining land uses and that conforms, where applicable, to a land use plan and to the specifications, limits, terms and conditions of a license issued under The Environment Act in respect to the project.

**Renewable Resources** includes living things such as fish, wildlife, and trees and other plants and surface and groundwater;

**Shore lands** mean land within 984 feet (300 m) of the ordinary high water mark of a water body, or land within 295 feet (90 m) of the ordinary high water mark of a waterway.

**Structure** means anything that is erected, built or constructed of parts joined together or any such erection fixed to or supported by the soil or by any other structure.

**Subsidence** means the vertical settlement, lowering or falling of the earth surface.

**Surface Water** mean any body of flowing or standing water, whether naturally or artificially created, including but not limited to a lake, river, creek, spring, swamp, wetland, and marsh, including ice on any of them, but not including a dugout on the property of an agricultural operation.

**Watercourse** means an open, defined natural or made channel through which water flows either intermittently or continuously, and included but is not limited to, a lake, river, creek, spring, swamp, wetland and marsh.

**Wetlands** means digressional low land 0.5 acres (0.20 ha.) or more in area including sloughs, potholes, marshes, oxbows and fringed open water containing temporary, seasonal or permanent water and supporting emergent vegetation such as cattails, bulrushes, blue joint, white top and Pragmatism and submerged and floating aquatic plants such as water milfoil, bladderwort, pondweeds and water lily.

**Wildlife** means a vertebrate animal of any species or type that is wild by nature, but does not include fish.



**OPASKWAYAK CREE NATION**

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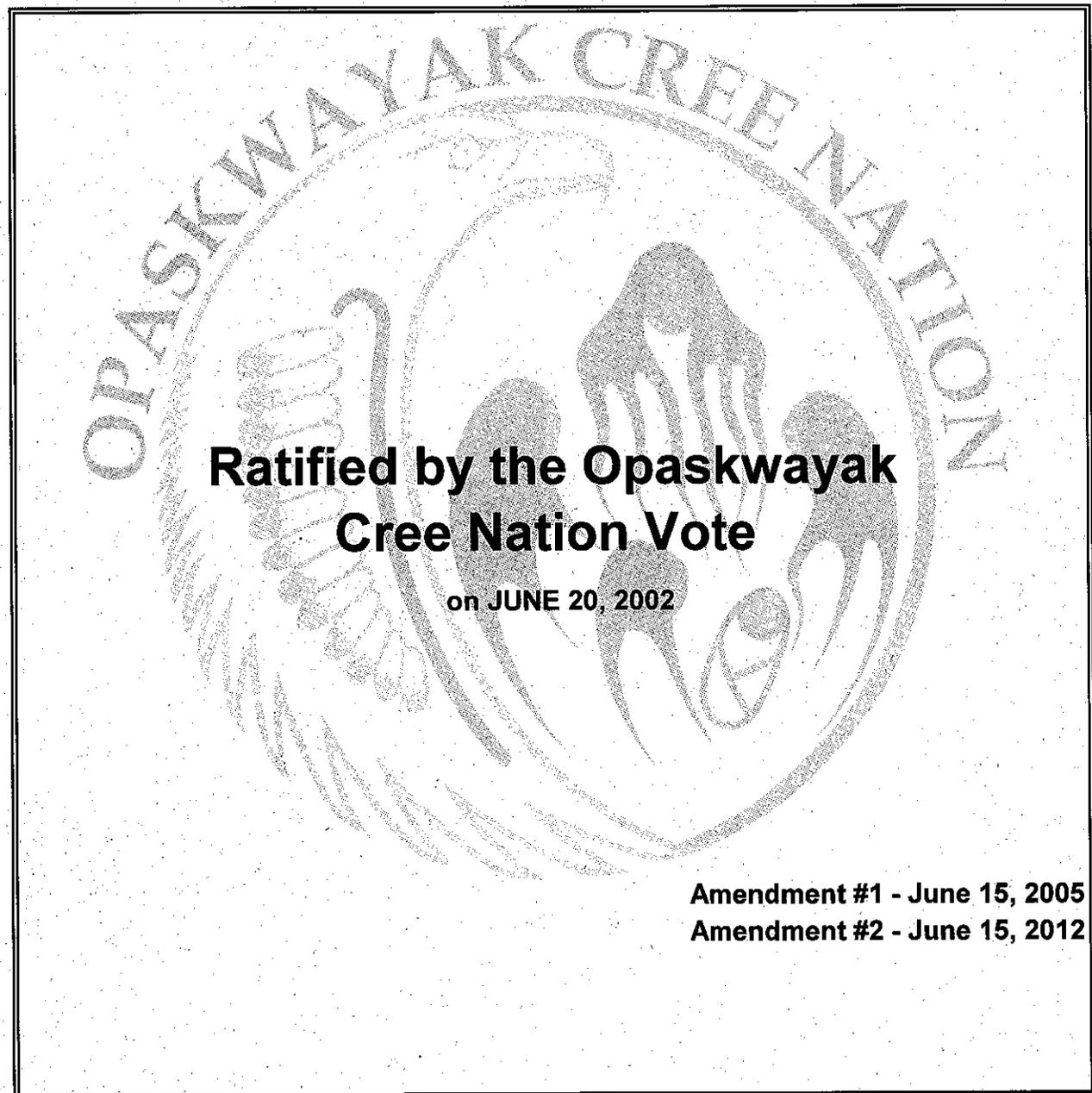
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# Opaskwayak Cree Nation Land Code



**NEKANOOTĀWINĒK - TIPĀNIMISOWIN**

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## OPASKWAYAK CREE NATION LAND CODE

### PREAMBLE

**WHEREAS** the Opaskwayak Cree Nation has a profound relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator and has a deep desire to preserve its relationship with the land;

**AND WHEREAS** Opaskwayak Cree Nation's Cree views land as being sacred, a gift from the Creator, from this cultural view, the land is held collectively for the use of all the community citizens with its rich resources belonging to everyone;

**AND WHEREAS** Opaskwayak Cree Nation Citizen's responsibility is to protect the land and keep it safe for future generations, the land and its resources are held by the people for the people and it is an important value and basic law of the Kitiniminawuk (Our People);

**AND WHEREAS** the Opaskwayak Cree Nation's vision is to have our people determine a true self-government which incorporates our cultural values and traditions as the center of this vision and collective holding of land which is based on our own unique history;

**AND WHEREAS** while pursuing this vision of self-government, independence and self-sufficiency, we are determined to continue to progress towards the future through planned social and economic growth providing a range of social, education and economic services necessary to support and raise our standard of living;

**AND WHEREAS** this vision will be reached through development of our human resources and economic base, the foundation of which is our land base and natural resources;

**AND WHEREAS** Opaskwayak Cree Nation has entered into the *Framework Agreement on First Nation Land Management* with Canada on February 12, 1996, as amended, and as ratified on behalf of the Government of Canada by the *First Nations Land Management Act*, S.C. 1999, C. 24;

## Opaskwayak Cree Nation Land Code

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**AND WHEREAS** the Opaskwayak Cree Nation (OCN) has the option of withdrawing its land from the land provisions of the *Indian Act* in order to exercise control over its land and resources for the use and benefits of its Citizens, rather than having its land managed on its behalf by Canada;

**AND WHEREAS** the *Opaskwayak Cree Nation Land Code* was ratified by the Opaskwayak Cree Nation Citizens on June 20, 2002 and registered in the First Nation Lands Registry as instrument number LMA000698;

**AND WHEREAS** the *Opaskwayak Cree Nation Land Code* came into effect on August 1, 2002;

**AND WHEREAS** the *Opaskwayak Cree Nation Land Code* pursuant to Section 49.2 states "All amendments the *Opaskwayak Cree Nation Land Code* other than technical amendments must receive community approval by Ratification Vote to be effective";

**AND WHEREAS** in Section 5.2 of the *Opaskwayak Cree Nation Land Code* states that Land which becomes a reserve through a land claim settlement or treaty land entitlement or land exchange or any other process may be made subject to the *Opaskwayak Cree Nation Land Code*, and to an environmental assessment satisfactory to Opaskwayak Cree Nation;

**AND WHEREAS** Opaskwayak Cree Nation Chief and Council and Opaskwayak Cree Nation Citizens has deemed it necessary to amend the *Opaskwayak Cree Nation Land Code* to build in a process for accepting any additional lands to be managed under the *Opaskwayak Cree Nation Land Code*;

**AND WHEREAS** Amendment #1 to the *Opaskwayak Cree Nation Land Code* was ratified by the Opaskwayak Cree Nation Citizens on June 15, 2005 and registered in the First Nation Lands Registry as instrument number LMA02962;

**NOW THEREFORE**, this *Opaskwayak Cree Nation Land Code* has been amended as of June 15, 2012, by Ratification Vote of Opaskwayak Cree Nation Eligible Voters;

**AND FURTHER THAT** the *Opaskwayak Cree Nation Land Code* is the fundamental Land Law of the Opaskwayak Cree Nation.

**PART 1  
PRELIMINARY MATTERS**

**1. Title**

Title

1. The title of this enactment is the *Opaskwayak Cree Nation Land Code*.

**2. Interpretation**

Definitions

- 2.1 The following definitions apply in this *Land Code*:

“Absolute Majority” means 50% + 1 of the whole Chief and Council;

“Aboriginal Rights” refers to a range of rights held by aboriginal peoples, including but not limited to hunting, fishing, gathering, social and ceremonial purposes and by which aboriginal rights and freedoms are constitutionally protected in s. 25 of the Canadian Charter of rights and Freedoms and s. 35(1) of the Constitution Act, 1982 recognizes and affirms the existing, aboriginal and treaty rights of aboriginal peoples;

“Aboriginal Title” means a unique bundle of property rights associated with land exclusively occupied by an aboriginal community before the assertion of British Sovereignty and held communally by members of an aboriginal nation (what OCN Citizens refer to as traditional territory, those lands that have not been set aside as reserve lands where OCN Citizens exercise their aboriginal rights);

“Appeal Panel” means a panel established by Chief and Council to hear complaints or contentious issues and renders a decision on an appeal, Chief and Council and the Land Authority shall be informed of the outcome;

“Community Approval” and/or “Community Approval Meeting” means a community meeting of eligible voters held for the purpose of voting on a lands issue or land law, as set out in this *Land Code*;

“Community Consultation” means process of information being presented to OCN Citizens either through a Community Meeting, notices, door-to-door, web sites media or other media;

"Community Land" means any Opaskwayak Cree Nation Land in which all OCN Citizens have a common interest;

"Community Meeting" means a meeting of Opaskwayak Cree Nation (OCN) Citizens under Part 3 of this *Land Code*;

"Community Vote" is a general vote of Opaskwayak Cree Nation (OCN) eligible voter conducted under this *Land Code* at a Community Meeting;

"Chief and Council" means the Council of the Opaskwayak Cree Nation (OCN) or any successor elected government of OCN;

"Elder" means an elder that sits on the Council of Elders and appointed by Chief and Council to provide advice and spiritual guidance;

"Eligible Voter" means for the purpose of voting in respect to land matters under this *Land Code*, an OCN Citizen of Opaskwayak Cree Nation who has attained the age of 18 years, on or before the day of the vote;

"Eligible Registered Voter" means an Eligible Voter who has registered to vote at a Ratification Vote;

"First Nation Land Register" means the register maintained by the Department of Indian Affairs and Northern Development under the *Framework Agreement*;

"Framework Agreement" means the *Framework Agreement on First Nation Land Management* entered into between the Minister of Indian Affairs and Northern Development and fourteen First Nations, including Opaskwayak Cree Nation, on February 12, 1996, as amended;

"Immediate Relative", in respect of a person, means the person's parent or stepparent, sister, brother or stepsister, stepbrother (natural or custom/adopted), child (natural or custom/adopted), or spouse (legal or common law);

"Individual Transfer Agreement" means the Transfer Agreement between the Opaskwayak Cree Nation and Her Majesty the Queen in Right of Canada in accordance with Section 6.1 of the *Framework Agreement*, dated February 12, 1996;

## Opaskwayak Cree Nation Land Code

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"Interest", in relation to First Nation land, means any interest, rights 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 in accordance with Section 1 of the *Framework Agreement*, dated February 12, 1996;

"Land Authority" means the executive body that set out the principles, guidelines, rules, procedures and processes by which Opaskwayak Cree Nation will exercise control and management over its lands and resources consistent with the *Framework Agreement on First Nation Land Management* and the *First Nation Land Management Act*;

"Land Authority Member" means a member of the Land Authority, either appointed by Council or elected, to take office as a Land Authority Member of the Land Authority;

"Land Division" means the administration office where technical staff is responsible for OCN Land issues;

"*Land Code*" means *Opaskwayak Cree Nation (OCN) Land Code*;

"Land Law" means a Law enacted pursuant to this *Land Code*;

"Land Resolution" means a resolution of Chief and Council made pursuant to this *Land Code*;

"License" in relation to First Nation Land, means any right of use or occupation of First Nation land, other than an interest in that land in accordance with Section 1 of the *Framework Agreement*, dated February 12, 1996;

"OCN Citizens" means a person whose name appears on the Opaskwayak Cree Nation Membership List (opaskwayak kowtukisochik);

"OCN" means the Opaskwayak Cree Nation;

"OCN Land" means all the lands referred to in this *Land Code*, including all the interests, rights and resources that belong to those reserve lands;

"OCN Land Register" means the register maintained by the Opaskwayak Cree Nation (OCN) for the registration of documents relating to OCN Land under this *Land Code*;

## Opaskwayak Cree Nation Land Code

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“Person” means any person, including an OCN Citizen, who has any Interest or License in OCN Land;

“Ratification Vote” means a vote as set out in this *Land Code*;

“Resolution” means a Band Council Resolution (BCR) enacted under this *Land Code*;

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony or common law;

“Spousal Interest” means the Interest of a Spouse in OCN Land as set out in, and accordance with, the Spousal Interest Land Law 2006/001 enacted on the 15<sup>th</sup> day of February, 2006.

“Youth” means a youth who has been elected a member of the Junior Chief and Council to provide advice from the youth’s perspective.

### Gender

2.2 Wherever the singular and the masculine are used throughout this *Land Code*, the same shall be construed as meaning the plural, or the feminine or neuter where the context or the parties hereto so require.

### Paramountcy

2.3 If there is an inconsistency between this *Land Code* and any other enactment of Opaskwayak Cree Nation in regard to the management, administration or governance of Lands, including by-laws enacted pursuant to Section 81 of the *Indian Act*, this *Land Code* prevails to the extent of the inconsistency.

### Culture and traditions

2.4 The structures, organizations and procedures established by or under this *Land Code* shall be consistent with the culture, traditions and custom of OCN, unless otherwise provided.

### Non-abrogation (not taking away)

2.5 This *Land Code* does not abrogate or derogate from any aboriginal, treaty or freedoms that pertain now or in the future to OCN or OCN Citizens.

## Opaskwayak Cree Nation Land Code

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### Fair Interpretation

2.6 This *Land Code* shall be interpreted in a fair, large and liberal manner.

### Lands and interest affected

2.7 A reference to "Land" in this *Land Code* means all rights and resources in and of the land, and includes:

- (a) the water, beds underlying water, riparian rights, air space and renewable and non-renewable resources in and of that land, to the extent that these are under the jurisdiction of Canada or OCN; and
- (b) all the Interests and Licenses transferred to OCN by Her Majesty in Right of Canada listed in the Individual Transfer Agreement

### Calendar Days

2.8 Any reference in this *Land Code* dealing with time frames such as days shall be calendar days.

## 3. Authority to Govern

### Origin of authority

3.1 By enacting this *Land Code*, OCN is giving effect to its Aboriginal Title in that portion of its territories comprised of OCN Land.

### Flow of authority

3.2 The authority of OCN to govern and administer its lands and resources flows from the Creator to the people of OCN, and from the people to the Chief and Council according to customs, traditions and laws.

## 4. Purpose

### Purpose

4.1 The purpose of this *Land Code* is to set out the principles, guidelines and processes by which OCN will exercise control over its lands and resources consistent with the *Framework Agreement*.

**5. Description of OCN Lands**

OCN Land

5.1 OCN Land includes all reserve lands listed in the Individual Transfer Agreement and such other lands as may be included in the Individual Transfer Agreement as amended from time to time, the OCN lands are identified as:

(a) those OCN Lands listed as of August 1, 2002 includes:

Opaskwayak Cree Nation Reserve 21A

- containing about 1,590 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21B

- containing about 150 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21C

- containing about 41 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21D

- containing about 177 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21D, Salt Channel

- containing about 649 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21E

- containing about 5,208 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21F

- containing about 366 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21G

- containing about 10 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21I

- containing about 893 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21J

- containing about 120 acres more or less including mines and minerals;

Opaskwayak Cree Nation Reserve 21K

- containing about 328 acres more or less including mines and minerals;

## **Opaskwayak Cree Nation Land Code**

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**Opaskwayak Cree Nation Reserve 21L**

- containing about 324 acres more or less including mines and minerals;

**Opaskwayak Cree Nation Reserve 21N**

- containing about 261 acres more or less including mines and minerals;

**Opaskwayak Cree Nation Reserve 21P**

- containing about 1,583 acres more or less including mines and minerals;

**Opaskwayak Cree Nation 21 - Stoney Point**

- containing about 48 acres more or less including mines and minerals;

**Opaskwayak Cree Nation Root Lake Reserve 231**

- containing about 60 acres more or less including mines and minerals;

**Opaskwayak Cree Nation 27A - Carrot River Saskatchewan**

- containing about 3,194 acres more or less including mines and minerals.

- (b) OCN Land added by way of amendment to the Individual Transfer Agreement after August 1, 2002 includes:

**Root Lake Beach Ridge Site Indian Reserve**

- containing about 8,699.60 acres more or less including mines and minerals, these lands are set apart as OCN Land, registered in the First Nation Land Registry as LMA04971;

**Opaskwayak Cree Nation 21A South Indian Reserve**

- containing about 123 acres more or less including mines and minerals, these lands are set apart as OCN Land, registered in the First Nation Land Registry as LMA09469;

**Opaskwayak Cree Nation Rocky Lake Indian Reserve No.1**

- containing about 1,857.70 acres more or less including mines and minerals, these lands are set apart as OCN Land, registered in the First Nation Land Registry as LMA09469;

**Opaskwayak Cree Nation Egg Lake Indian Reserve No.1**

- containing about 13,695 acres more or less including mines and minerals, these lands are set apart as OCN Lands, registered in the First Nation Land Registry as 4017143;

- (c) any additional lands accepted and approved.

## Opaskwayak Cree Nation Land Code

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### Additional OCN Lands

- 5.2 Additional lands acquired and/or selected through land claim settlements, treaty land entitlement, land exchanges, unresolved exchanges and/or other processes which are accepted and set aside as reserve lands shall be made subject to and managed pursuant to the *Opaskwayak Cree Nation Land Code*, in accordance with the procedures set out in Section 5.3 to 5.9.

### Community Approval of Additional Lands

- 5.3 Upon such additional lands being identified with reasonable certainty, but prior to the acceptance of such additional lands, a Community Approval Meeting shall be held, in accordance with Section 13 of the *Opaskwayak Cree Nation Land Code*, to approve and accept the additional lands under the management and jurisdiction of the *Opaskwayak Cree Nation Land Code*.

### Pre-Approval and Granting Interest to Third Party

- 5.4 Where additional lands are subject to pre-existing third (3<sup>rd</sup>) party interest, a Community Approval Meeting may authorize:
- (a) approving a contingent agreement to cancel the pre-existing third (3<sup>rd</sup>) party interest, in exchange for granting of such reasonable equivalent interest as may be conferred within the jurisdiction and scope of the *Opaskwayak Cree Nation Land Code*, in anticipation of and to take effect upon the additional lands entering under the management and jurisdiction of the *Opaskwayak Cree Nation Land Code*; and
  - (b) other agreements to confer rights or interests on additional lands, in anticipation of, and to take effect upon the additional lands entering under the management and jurisdiction of the *Opaskwayak Cree Nation Land Code*.

### Giving effect to Pre-Approval

- 5.5 An authorization of a contingent agreement or other agreement at a Community Approval Meeting as set out in Section 5.3 and 5.4 herein, shall:
- (a) be deemed to be a Community Approval Meeting as set out in Section 12 of the *Opaskwayak Cree Nation Land Code*;

## Opaskwayak Cree Nation Land Code

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- (b) be deemed to be binding upon the additional lands entering under the management and jurisdiction of the *Opaskwayak Cree Nation Land Code*; and
- (c) any contingent agreement entered pursuant to said authorization shall be deemed to be in compliance with the provisions of Section 12 and 13 of the *Opaskwayak Cree Nation Land Code*.

### Outstanding Land Exchange Process

5.6 Notwithstanding Section 14.1(d), 17.2 and 17.7 of the *Opaskwayak Cree Nation Land Code*, where exchange of lands are contemplated, pursuant to agreements previously entered into and set out in Annex E of the Individual Transfer Agreement, a Community Approval Meeting shall:

- (a) be held in accordance with Section 5.3 to give binding approval and authorization for the exchange;
- (b) include approving and authorizing the Chief and Council, and/or designate to enter into agreements or do such other things necessary to give effect to the exchange; and
- (c) FOR FURTHER CERTAINTY, Section 14.1(d), and 17.7 of the *Opaskwayak Cree Nation Land Code* are not applicable to and shall not be binding upon the exchanges set out in Annex E of the Individual Transfer Agreement.

### Ratifying Community Approval by Resolution

5.7 Upon community acceptance of additional lands and authorization for any contingent agreement, other agreement or exchange, the Chief and Council shall ratify the community's approval by:

- (a) signing a Land Resolution that ratifies the Community Approval Meeting process; and
- (b) entering into such agreements as are required, which shall be forwarded to the appropriate parties affirming the community's acceptance.

## Opaskwayak Cree Nation Land Code

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Process prior to  
Setting Land Aside

- 5.8 Subject to Section 5.9, the Chief and Council, in order to facilitate the transfer of the additional lands to the jurisdiction of the *OCN Land Code* or the exchange of lands pursuant to Section 5.6, and upon community acceptance of the additional lands and authorization for any contingent agreement, other agreement or exchange, shall do or undertake all things necessary and within their power, including but not restricted to:
- (a) notice to Canada and other third (3<sup>rd</sup>) parties as may required;
  - (b) requesting, obtaining or commissioning surveys with respect to the additional lands;
  - (c) requesting, commissioning or otherwise obtaining studies or reports with respect to the additional lands;
  - (d) negotiating, finalizing and signing contingent agreements or other agreements with respect to the additional lands;
  - (e) make a request to the applicable jurisdiction, that holds title to the land, that upon an agreement being reached, that applicable jurisdiction, will upon being advised by Opaskwayak Cree Nation, do everything necessary for the transfer of land to Canada as Federal Lands, and such jurisdiction may include:
    - i. lands held by the Province of Manitoba;
    - ii. lands held by the Province of Saskatchewan; and
    - iii. those lands held by OCN in fee simple;
  - (f) requesting that Canada accept additional lands as Federal Lands, where they are not already so;
  - (g) requesting that Canada set aside additional lands which are Federal Lands as Reserve Lands held in Trust and on behalf of OCN Citizens of the Opaskwayak Cree Nation, where they are not already so;
  - (h) requesting that Canada take such other additional steps to ensure that the additional lands are brought under the management and jurisdiction of the *Opaskwayak Cree Nation Land Code*; and

- (i) requesting amendments to the Individual Transfer Agreement and other documents or agreements to recognize, enact and put into effect the transfer of the additional lands to the management and jurisdiction of the *Opaskwayak Cree Nation Land Code*.

Environmental  
assessments

- 5.9 Notwithstanding any of the above, any additional lands or exchange lands shall be required to be subject to an environmental assessment satisfactory to the Chief and Council of OCN, prior to being brought under the jurisdiction and management of the *Opaskwayak Cree Nation Land Code*.

**PART 2  
OPASKWAYAK CREE NATION LEGISLATION**

**6. Law-Making Powers**

Council may make Laws

- 6.1 Chief and Council may make Land Laws which are consistent with this *Land Code*, respecting:
- (a) the development, conservation, protection, management, use and occupancy of OCN Land;
  - (b) Interests and Licenses in relation to OCN Land; and
  - (c) any matter necessary or ancillary to Land Laws respecting OCN Land.

Example of Laws

- 6.2 For greater certainty, Chief and Council may make Land Laws including, but not limited to:
- (a) regulation, control and prohibition of zoning, land use and land development;
  - (b) creation, regulation and prohibition of Interest and Licenses in relation to OCN Land;

- (c) regulation and control of mines and minerals to OCN Land;
- (d) environmental assessment and protection;
- (e) provision of local services in relation to OCN Land and the imposition of equitable user charges;
- (f) enforcement of OCN Land Laws; and
- (g) provision of services for the resolution, outside the courts, of disputes in relation to OCN Land.

## **7. Law-Making Procedures**

### **Request for Land Laws**

7.1 A request for the development of a Land Law may be introduced to Chief and Council by:

- (a) the Chief; or
- (b) a Councilor; or
- (c) the General Manager, or
- (d) the Land Authority or its delegate.

### **If a OCN Citizen Request**

7.2 If an OCN Citizen requests a Land Law be developed and introduced to Chief and Council they may do so by approaching any of the individuals listed in Section 7.1.

### **Initial Introduction of Land Law to Chief and Council**

7.3 The initial request for a Land Law to be developed shall be submitted at a duly convened meeting of Chief and Council by one (1) of the individuals listed in Section 7.1.

## Opaskwayak Cree Nation Land Code

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### Review of Request

- 7.4 Chief and Council will then review the request and if they agree that a Land Law is required the issue regarding drafting the Land Law and consultation with the community will be delegated to the Land Authority.

### Draft of Proposed Land Law

- 7.5 Upon development of a Land Law, the proposed Land Law will be reviewed and recommended by the Land Authority before an official notice is given to the community for Community Consultation.

### Community Consultation

- 7.6 Before a proposed Land Law is enacted by Chief and Council, the proposed Land Law will be presented to the community for Community Consultation in one (1) or more of the following means:
- (a) posting of notice along with a brief description of content, in a public place in the administration offices of OCN, and request for concerns in writing to be submitted to the Land Division;
  - (b) publishing a notice along with a brief description of content, in the weekly newspaper regularly distributed on OCN Land, for at least two (2) successive editions and request any concerns in writing to be submitted to the Land Division;
  - (c) making an announcement, via media which may include by not limited to radio, newspaper, web site and social media, requesting concerns be submitted in writing to the Land Division, such media usage will reach a wider area; or
  - (d) holding a Community Consultation Meeting.

### Submission of Land Law to Chief and Council

- 7.7 Once Community Consultation has been completed and the proposed Land Law has been reviewed by the Land Authority, the proposed Land Law will be recommended and forwarded to Chief and Council for their approval.

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### Process for Land Law

- 7.8 Chief and Council, upon receiving recommendation to enact a proposed Land Law will ensure that are three (3) separate readings. Before a Land Law is enacted:
- (a) the 1<sup>st</sup> reading of the proposed Land Law will be introduced by the Land Authority at a duly convened meeting of Chief and Council held a minimum of sixty (60) days before the Land Law is to be enacted;
  - (b) the 2<sup>nd</sup> reading of the proposed Land Law shall be after Community Consultation and legal review has been completed; and
  - (c) the 3<sup>rd</sup> reading shall incorporate any additional changes.

### Proposed Land Law Available

- 7.9 The proposed Land Law will be made available at the Land Division's office and Council chambers at during the reading process.

### Ceasing of Readings

- 7.10 During the three (3) reading process, Chief and Council may suspend and/or cease the enactment of a Land Law if:
- (a) more consultation or additional information is required or cannot be obtained within a reasonable time frame, or a timely manner; and/or
  - (b) where a significant time frame is required to gather the additional information or legal advice, the enactment process will cease and the proposed Land Law will start at the beginning with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> reading.

### Enactment of Land Law

- 7.11 A Land Law on the 3<sup>rd</sup> reading of Council shall be deemed enacted if it is approved by an Absolute Majority of Chief and Council at a duly convened meeting which is open to the OCN Citizens.

### Certificate of Land Law

- 7.12 Two (2) original copies of any Land Law enacted shall be signed by an Absolute Majority of Chief and Council at the duly convened meeting approving the Land Law.

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### Witness of Land Law

7.13 The Recording Secretary for Chief and Council meetings or such other person designated by Chief and Council shall sign as a witness to Chief and Council signatures to the enactment of a Land Law.

### Urgent matters

7.14 Chief and Council may enact a Land Law without the preliminary steps required under section 7.2 - 7.13, if Chief and Council are of the opinion that the Land Law is needed urgently to protect OCN Land or Citizens in cases such as health, safety or other emergencies.

### Expiry Interim Land Law

7.15 A Land Law enacted under Section 7.14 expires six (6) months after its enactment unless it is re-enacted in accordance with Section 7.2 - 7.13.

### Repealing Land Law Enacted by Ratification Vote

7.16 A Land Law enacted by way of a Ratification Vote shall not be repealed by Chief and Council without Community Consultation.

### Notice of Repealing a Land Law

7.17 A Land Law may be repealed from time to time, and such reason for repealing a Land Law will be specified pursuant to 7.18, upon giving a minimum of thirty (30) days notice to the OCN Citizens that a Land Law may be repealed and that the OCN Citizens shall have the opportunity within thirty (30) days to express any questions or concerns. The notice shall:

- (a) be posted at the administration offices of OCN;
- (b) be published in the weekly newspaper regularly distributed on OCN Land; and/or
- (c) use other media including but not limited to the web site and social media, Chief and Council deems it necessary.

### Reason for Repealing

7.18 The reason for repealing a Law Land may include but not limited to:

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- (a) the Land Law is deemed inadequate where the intent of the Land Law is no longer valid; or
- (b) such other reasons as Chief and Council deems sufficient and advises or set out.

Repealed

7.19 The Land Law being repealed will be presented to an Absolute Majority of Chief and Council and at a duly convened meeting, and that:

- (a) Chief and Council will be informed of:
  - i. the method of notifying OCN Citizens;
  - ii. the Community Consultation process utilized, if required
  - iii. any concerns or questions OCN Citizens had in regards to repealing the Land Law;
- (b) upon review of the information provided, Chief and Council shall make a decision whether to repeal the Land Law;
- (c) upon deciding to repeal the Land Law, Chief and Council shall sign a Resolution repealing a Land Law; and
- (d) a notice of the decision of Chief and Council will be posted in the OCN administration office, Council chambers and published in local newspaper.

## 8. Publication of Laws

Publication

8.1 All Land Law motions shall be recorded in the minutes of Chief and Council.

Posting Laws

8.2 Chief and Council shall:

- (a) post notice, that copies of the Land Law will be made available at minimum of seven (7) days after a Land Law has been enacted, in the administration offices of OCN;

- (b) within a minimum of fourteen (14) days after a Land Law has been enacted, publish a summary of the Land Law, in the weekly newspaper regularly distributed on OCN Land.

Registry of Land Laws

- 8.3 Chief and Council shall keep at its Council Chambers, a register of the original of all active Land Laws and Land Laws that have been repealed or are no longer in force.

Duplicate Registry  
for Land Laws

- 8.4 A duplicate register for all OCN Land Laws and repealed Land Laws will be maintained at the Land Division, of OCN, for administration purposes.

Land Law Copies

- 8.5.1 The following OCN Departments will be provided copies of Land Laws:

- (a) Land Division;
- (b) administration office;
- (c) enforcement department;
- (d) finance and administration department; and
- (e) any other department as required.

Access to Land Law

- 8.6 Any individual may obtain a copy of a Land Law or a Land Resolution during regular working hours and payment for such copy(s) of Land Law or Land Resolution will be at reasonable fee that is set by Chief and Council or body designated by Chief and Council.

## 9. Commencement of Laws

Law taking effect

- 9.1 A Land Law enacted by Chief and Council takes effect on the date of its enactment or such later date as may be specified by the Land Law.

**PART 3  
COMMUNITY APPROVALS**

**10. Rights of Eligible Voters**

Eligible to Vote:

10.1 Each OCN Citizen who has attained the age of eighteen (18) years on or before the day of a vote is eligible to vote at a Community Approval Meeting and at a Ratification Vote.

**11. Community Input**

Prior meeting of  
OCN Citizens

11.1 The Chief and Council shall convene a Community Meeting to receive OCN Citizens input prior to the 2<sup>nd</sup> reading, as set out in 7.8(b) for the following Land Laws:

- (a) a Land Law respecting a community plan or subdivision plan;
- (b) a Land Law affecting a heritage site;
- (c) a Land Law respecting mines and minerals;
- (d) a Land Law respecting environmental assessment;
- (e) a Land Law respecting an environmentally sensitive property;
- (f) a Land Law respecting the rate and criteria for the payment of fees of rent for land; and
- (g) any Land Law or class of Land Laws that Chief and Council, by Land Resolution, declares to be subject to this section.

Process to  
Implement Laws

11.2 The Chief and Council along with the Land Authority shall establish a community process to develop and implement the Land Laws.

## 12. Community Approval Meeting

### Process to Implement Laws

12.1 Community Approval at a Community Meeting must be obtained for the following:

- (a) any grant or disposition of an Interest or License in any OCN Land beyond 40 years;
- (b) any renewal of a grant or disposition of an Interest or License in any OCN Land that extends the original term beyond 40 years;
- (c) any charge or mortgage of leasehold Interest over 40 years;
- (d) enactment of a Land Law on heritage site referred to in Section 16;
- (e) any OCN natural resource inventory and management plan that grants disposition of any natural resources on OCN Land that has not been identified in the land use plan;
- (f) set out the general rules and procedures that apply to revenues from natural resources belonging to OCN Land; and
- (g) any other Land Law or class of Land Laws that Chief and Council, by Land Resolution, declares to be subject to this Section.

## 13. Procedure at a Community Approval Meeting

### Voting

13.1 Decisions at a Community Approval Meeting are to be made by a majority of 50% + 1 of the Eligible Voters present at that meeting.

### Notice of meeting

13.2 The Council shall give written notice of a Community Approval Meeting that:

- (a) specifies the date, time and place of the meeting;

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- (b) contains a brief description of the matters to be discussed and decided on at the meeting; and
- (c) the minimum number of Eligible Voters required to affirm or deny a Land Law.

### Manner of notice

13.3 The notice of a Community Approval Meeting must be given to the OCN Citizens by:

- (a) posting the notice in a public place at two (2) or three (3) locations on OCN Land, at least thirty (30) days before the meeting;
- (b) mailing the notice to OCN Citizens living off OCN Land who have registered their names to receive information;
- (c) publishing the notice in the weekly newspaper regularly distributed on OCN Land at least ten (10) days before the meeting;
- (d) making an announcement in the media, web site and social media, in such way as it will reach a wider area; and
- (e) such additional methods as the Chief and Council may consider appropriate in the circumstances.

### OCN Citizens to attend

13.4 All OCN Citizens have a right to attend a Community Approval Meeting.

### Other Individual attending

13.5 Other individuals may attend a Community Approval Meeting with the permission of the Chief and Council or their designate.

### Amount of Council to be in attendance

13.6 In order to hold a Community Approval Meeting there must be at least an Absolute Majority of Chief and Council in attendance.

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Minimum for  
quorum, community

13.7 The Chief and Council may by Land Law or Resolution, establish a minimum number or percentage of Eligible Voters who are required to be present as a quorum for the purposes of making a decision at a Community Approval Meeting.

Other meetings

13.8 The Chief and Council may schedule a second (2<sup>nd</sup>) Community Approval Meeting if:

- (a) not enough Eligible Voters attend the initial Community Approval Meeting;
- (b) the Community Approval Meeting was postponed due to unforeseen circumstances; or
- (c) additional information is requested by a substantial number OCN Citizens attending the first (1<sup>st</sup>) meeting;

Second Meeting

13.9 Where a second (2<sup>nd</sup>) meeting is scheduled, as a result of the attendance of less than a quorum of Eligible Voters at the first (1<sup>st</sup>) meeting, then the quorum provisions under Section 13.7 shall be suspended, and the Eligible Voters in attendance at the second (2<sup>nd</sup>) meeting shall constitute a quorum for purposes of making a decision.

Other Land Laws

13.10 For greater certainty, the Chief and Council may make Land Laws or Land Resolutions respecting Community Approval Meetings.

## 14. Ratification Votes

Ratification

14.1 Community approval by a Ratification Vote must be obtained for the following:

- (a) any expropriation of an Interest in OCN Land by OCN;
- (b) any voluntary exchange of OCN Land;

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- (c) any amendment to the *Individual Transfer Agreement* that reduces the amount of funding provided by Canada;
- (d) any amendment to this *Land Code* other than technical amendments under Section 46.1 of this *Land Code*; and
- (e) any Land Law or class of Land Laws that Chief and Council, by Land Resolution, declares to be subject to this Section.

### Individual Transfer Agreement with Canada

14.2. For greater certainty, an amendment to, or renewal of, the *Individual Transfer Agreement* does not require community approval by a Ratification Vote unless the amendment or renewal reduces the amount of funding provided by Canada.

### Ratification Process

14.3 Any Ratification Vote required under this *Land Code* shall be conducted in substantially the same manner as the *Opaskwayak Cree Nation Ratification Process*, which was used to ratify this *Land Code*.

### No Verifier

14.4 A Verifier is not required in a Ratification Vote.

### Percentage for Ratification Votes

14.5 Ratification Votes shall conform to and be in accordance with the Opaskwayak Cree Nation Community Ratification Process, including the minimum number or percentage of Eligible Voters required, approved by Chief and Council on April 18, 2005, and as amended from time to time by Chief and Council.

### Minimum Requirement for Approval

14.6 A matter shall be considered approved at a Ratification Vote, if a majority of the Eligible Registered Voters cast a vote in favour of the matter, subject only to the provisions of Sections 14.5.

**PART 4  
PROTECTION OF LAND**

**15. Expropriation**

Rights and interest  
may be expropriated

15.1 An Interest or License in OCN Land, or in any building or other structure on those lands, may only be expropriated by OCN in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community expropriations.

Community purposes

15.2 An expropriation may only be made for a necessary community purpose or works of OCN, including but not limited to; a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, education facilities, recreation facility, daycare facility, hospitals, health-care facility, retirement home or infrastructure and any works and appurtenances reasonably necessary thereto.

Expropriation laws

15.3 Before proceeding to make any expropriations in accordance with this *Land Code*, the Chief and Council shall enact a Land Law respecting the rights and procedures for expropriations, including provisions respecting:

- (a) the taking of possession of the Interest or License;
- (b) transfer of the Interest or License;
- (c) notice of expropriation and service of the notice of expropriation;
- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and
- (f) the method of payment of compensation.

Public report

15.4 Before OCN decides to expropriate an Interest or License, it shall make a public report on the reasons justifying the expropriation.

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Rights that may not  
be expropriated

15.5 An interest of Her Majesty the Queen in Right of Canada is not subject to expropriation by OCN.

Compensation by mutual agreement

15.6 The right of OCN to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest or License in OCN Land.

Community approval

15.7 In the case of an expropriation of an OCN Citizen's Interest, the expropriation must first receive community approval by Ratification Vote.

Compensation

15.8 OCN shall, in accordance with its Land Laws and the *Framework Agreement*,

- (a) serve reasonable notice of the expropriation on each affected holder of the Interest or License to be expropriated; and
- (b) pay fair and reasonable compensation to the holders of the Interest or License being expropriated.

Compensation calculations

15.9 The total value of the compensation under this clause will be based on the following:

- (a) the assessed value of the Interest or License that is being expropriated;
- (b) the replacement value of any improvement to the land that is being expropriated;
- (c) the damages attributable to any disturbance; and
- (d) damages for any reduction in the value of a remaining interest.

Assessed value

15.10 The "assessed value" as determined by reference to the property assessment found on the most recent assessment roll prepared pursuant to the OCN Land Tax By-Law (1996), if available, or by an assessment prepared according to the same criteria.

Neutral evaluation to  
resolve disputes

15.11 The resolution of disputes concerning the right of OCN to expropriate, compensation or amount of compensation shall be determined in accordance with Part 8 of this *Land Code*.

## 16. Heritage Sites

Community approval  
of development

16.1 No development shall be allowed on any site designated as a heritage site under the land use plan, unless the development receives community approval by a Community Approval Meeting.

Land Use Plan

16.2 No amendment may be made to a land use plan to delete a heritage site unless the amendments are passed at a Community Approval Meeting.

## 17. Voluntary Land Exchanges and Protections

Exchanges with  
other Parties

17.1 OCN may agree with another party to exchange a parcel of OCN Land for a parcel of land from that other party in accordance with this *Land Code* and the *Framework Agreement*.

No effect

17.2 A land exchange is of no effect unless it receives community approval by a Ratification Vote held in accordance with Section 14.

Land to be received

17.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:

- (a) it must be equal to or greater in size and assessed value than the OCN Land to be exchanged; and

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- (b) it must become OCN Land subject to this *Land Code* and set apart as a reserve for OCN by Canada, in accordance with Article 14 of the *Framework Agreement*.

### Negotiator

- 17.4 The individual who will have authority to negotiate a land exchange agreement on behalf of OCN must be designated by Resolution.

### Additional land

- 17.5 OCN may negotiate to receive other compensation, such as money or one or more other parcels of land, in addition to the parcel referred to above, which is intended to become a reserve. Such other parcels of land may be held by OCN in fee simple or some other manner.

### Federal consent

- 17.6 Before OCN concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Her Majesty in Right of Canada:
- (a) consents to set apart as a reserve the land to be received in exchange, as of the date of the land exchange or such later date as the Chief and Council may specify by Land Resolution; and
  - (b) consents to the manner and form of the exchange as set out in the exchange agreement.

### Community Notice

- 17.7 Once negotiations on the land exchange agreement are concluded, the Chief and Council and/or their designate shall provide the following information to Eligible Voters at least sixty (60) days before the vote:
- (a) a description of the OCN Land to be exchanged;
  - (b) a description of the land to be received in the exchange;
  - (c) a description of any other compensation to be provided;
  - (d) a report of a qualified appraiser setting out that the conditions in Section 17.3 have been met;
  - (e) a copy or summary of the exchange agreement;

- (f) a copy of the consent referred to in Section 17.6; and
- (g) and any other relevant documents.

Process of  
land exchange

17.8 The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) the Chief and Council must pass a Resolution authorizing Canada to transfer administration and control of the land being exchanged to OCN, in accordance with the exchange agreement; and
- (c) a copy of the instruments transferring administration and control to the relevant parcels of land must be registered in the OCN Land Register and the First Nation Lands Register in Ottawa.

## PART 5 ACCOUNTABILITY

### 18. Conflict of Interest

Application of rules

18.1 The rules in this part apply to the following individuals:

- (a) each member of Chief and Council;
- (b) each OCN employee whose responsibilities are land related; and/or
- (c) each individual who is a Land Authority Member or other body of OCN dealing with land related matters.

Duty to report and abstain

18.2 If an individual has any interest, financial or otherwise, in the matter being dealt with that might involve the individual or his Immediate Relative, the individual shall:

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- (a) disclose the Interest to the Chief and Council, or the Land Authority or other body as the case may be; and
- (b) not take part in any deliberations on that matter or vote on that matter.

### Common interests

18.3 Section 18.2 does not apply to any Interest that is held by a OCN Citizen in common.

### Inability to act

18.4 If the Land Authority, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to the Chief and Council.

### Meeting of Eligible Voters

18.5 If the Chief and Council is unable to vote on a proposed Land Law or Land Resolution due to a conflict of interest, the Chief and Council may refer the matter to a Community Meeting and, if a quorum of Eligible Voters is present at that Community Meeting, a majority of the Eligible Voters present at the Community Meeting may enact the Land Law or Land Resolution.

### Specific Conflict Situations

18.6 No more than one (1) Land Authority Member from the same Immediate Relative may sit as a Land Authority Member.

### Staff not Eligible

18.7 Any individual that is employed by the Land Division shall not be a Land Authority Member.

### Disputes

18.8 Questions about whether a breach of this section has occurred may be referred to and dealt with in Part 8 of the *Land Code*.

### Other laws

18.9 For greater certainty, the Chief and Council may enact a Land Law on enforcement process, to further implement this section.

## 19. Financial Management

### Application

19.1 This section applies only to financial matters relating to OCN Land.

### Establishment of bank accounts

19.2 The Chief and Council, shall maintain one or more financial accounts in a chartered bank, trust company, or First Nation's financial authority, as the case may be, and shall deposit in those accounts:

- (a) federal transfer payments made under the *Framework Agreement* for the management and administration of OCN Land;
- (b) all capital and revenue monies received from the sale, grant or disposition of any rights and interests in OCN Land;
- (c) all fees, rents, fines, charges and levies imposed by Land Law or Land Resolution in relation to use, occupation or transfer of a right or interest in OCN Land; and
- (d) any other land revenue received by OCN.

### Signing officers

19.3 The Chief and Council shall designate signing authority from two (2) different groupings as per OCN Financial Policy dated April 27, 1993 and amendments made to it thereafter, until such time as the Land Authority establishes a Finance Policy.

### Two signatures

19.4 To be valid, a cheque or other bill of exchange or transfer drawn on the account must be signed by two (2) financial signing authorities.

### Fiscal year

19.5 The fiscal year of OCN begins on April 1 of each year and ends on March 31 of the following year.

### Preliminary Budget Approval

19.6 The Land Authority will draft land budget for Council's approval at least than thirty (30) days prior to the new fiscal year, as per OCN Financial Policy.

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### If no budget

- 19.7 If Chief and Council do not adopt a Land budget for a fiscal year prior to the beginning of that fiscal year, the land budget and any supplementary land budget of the previous fiscal year apply until a new Land budget is adopted.

### Adoption of budget

- 19.8 Prior to the beginning of each fiscal year, Chief and Council shall by motion at a duly convened meeting, approve and adopt, a land budget for that fiscal year. If Chief and Council deem it necessary, it may, in the course of the fiscal year, adopt supplementary budgets for that fiscal year.

### Procedure

- 19.9 After adopting the Land budget or supplementary Land budget, the Council and/or appointed representative of the Land Authority shall:
- (a) explain the budget or supplementary budget to the OCN Citizens at an annual Community Meeting; and
  - (b) ensure that copies of the budget or supplementary budget are available to be viewed by OCN Citizens upon request, at the OCN administration office or Land Division offices during working hours.

### Budget rules

- 19.10 The Chief and Council may make rules respecting the preparation and implementation of the Land budget.

### Expenditures

- 19.11 The Chief and Council may not expend monies related to land or commit itself, by contract or otherwise, to expend monies related to land, unless the expenditure is authorized by or under a Land Law or an approved Land budget.

### Budgeting Expenditures

- 19.12 All expenditures must be budgeted items and must be coded accordingly.

### Financial Commitments

- 19.13 All payment and financial commitments will be in accordance with the annual budget, specific requirements of a funding arrangement, or with a Resolution of Chief and Council.

Financial Policy

19.14 OCN may, in accordance with this *Land Code*, adopt a financial policy to further manage monies related to OCN Land.

## 20. Financial Records

Financial records

20.1 Financial records related to OCN Land will be maintained and prepared in accordance with generally accepted accounting principles.

Financial statement

20.2 Within 120 days after the end of each fiscal year, the Chief and Council on behalf of OCN shall prepare a financial statement.

Consolidated accounts, etc.

20.3 The accounting, auditing and reporting requirements of this *Land Code* may be prepared and consolidated with, the other accounts, audits and reports of OCN for the initial fiscal year and each subsequent fiscal year.

## 21. Audit

Appointment of auditor

21.1 For each fiscal year, an independent auditor recognized by the province of Manitoba with a designation of Chartered Accountant, Certified General Accountant, or Certified Management Accountant, shall be appointed to audit the land related financial records of OCN.

Holding office

21.2 The auditor appointed under this section holds office until reappointed, or replaced.

Vacancy in office

21.3 Where a vacancy occurs during the term of an auditor, the Chief and Council shall, without delay, appoint a new auditor for the remainder of the former auditor's term.

Remuneration

21.4 The auditor's remuneration shall be determined by OCN Financial Policy.

Duty of auditor

21.5 The auditor shall, within 120 days after the end of OCN's fiscal year, prepare and submit to the Chief and Council, a report on OCN's financial statement, stating whether, in the opinion of the auditor, the financial statement presents fairly the financial position of OCN.

Access to records

21.6 In order to prepare the report on OCN's financial statement, the auditor may at any reasonable times inspect any financial records of OCN and any person or body who administers money on behalf of OCN, if necessary for completion with the audit.

Explanation of auditor's report

21.7 The Chief and Council along with the Chairperson of the Land Authority shall present the auditor's report to the OCN Citizens at a Community Meeting or forum within forty-five (45) days of receipt of the audit.

## 22. Annual Report

Annual report

22.1 The Chief and Council, on behalf of OCN, shall make available an annual report on OCN Land issues within forty-five (45) days of receipt of the community's audit.

Contents

22.2 The annual report will include:

- (a) annual review of land management;
- (b) a copy and explanation of the audit as it applies to OCN Land; and
- (c) any other matter considered worth including by the Chief and Council or Land Authority.

## **23. Access to Information**

### Access

23.1 Any OCN Citizen may, during normal business hours at the main OCN administrative office or the Land Division of OCN, have reasonable access to:

- (a) the register of Land Laws;
- (b) the auditor's report; and
- (c) the annual report on land issues.

### Copies to OCN Citizens

23.2 Any OCN Citizen may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under a Land Resolution of the Chief and Council.

### Access to records

23.3 An individual authorized by the Chief and Council or their designate, may, at any reasonable time, inspect the records relating to OCN Land.

## **PART 6 LAND ADMINISTRATION**

## **24. Land Authority**

### Land Law for Establishing a Land Authority

24.1 A Land Law known as the Land Law for Establishing a Land Authority, 2003/001, dated March 10, 2003, has been enacted, to establish and govern the conduct and operations of the Land Authority, and may be amended from time to time.

### Specific provision

24.2 The Land Law specifically provides:

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- (a) the ability to develop the land administration system;
- (b) advise the Chief and Council and its staff on matters respecting OCN Land;
- (c) recommend and draft Land Laws, regulations, Land Resolutions, policies and procedures respecting OCN Land to the Chief and Council;
- (d) the responsibility to hold regular and/or special Community Meeting to discuss land issues and make recommendations to Chief and Council on the decisions relating to Land issues;
- (e) to assist in the flow of information on land issues between OCN Citizens and the Chief and Council;
- (f) the responsibility to oversee community approvals under this *Land Code*; and
- (g) any other duties delegated by Land Resolution or Land Law.

### Internal procedures

24.3 The Land Authority will make rules for the procedure for holding Land Authority meetings. These procedures will be consistent with those established by Chief and Council.

## 25. Land Authority Member

### Land Authority Election Regulation

25.1 The Land Authority election and election procedures shall be governed by the Opaskwayak Cree Nation Land Authority Election Regulation, enacted on March 10, 2003 as amended from time to time.

### Criteria

25.2 The Land Authority Member shall in accordance with the following:

- (a) must be an Eligible Voter;
- (b) must not be employed by the Lands Division;

- (c) no immediate relative can sit as a Land Authority Member;
- (d) must not be convicted by way of indictment within five (5) years prior to their nomination excluding convictions arising from assertion of Aboriginal Rights and treaty rights or title;
- (e) must not be currently in bankruptcy or under the supervision of a trustee in bankruptcy; and
- (f) must not be convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty or wrongful conduct.

Residency

25.3 The majority of the Land Authority Members must be residents on OCN Land.

Selection and term

25.4 There shall be six (6) voting and two non-voting Land Authority Members, be selected as follows:

- (a) four (4) Land Authority Members shall be elected from the Eligible voters of OCN, in accordance with *OCN Land Authority Election Regulation* enacted on March 10, 2003, as amended from time to time, to sit for a term of four (4) years;
- (b) two (2) Land Authority Members shall be selected by and appointed by way of motion of Chief and Council from the sitting membership of the Chief and Council, to sit until replaced by motion of Chief and Council, or until their term of office as members of Chief and Council expires;
- (c) one (1) non-voting, ex-officio Land Authority Member shall be selected from the Council of Elders and appointed by way of motion of Chief and Council as elder by the sitting Chief and Council; and
- (d) one (1) non-voting ex-officio Land Authority Member shall be selected from the OCN Junior Chief and Council and appointed by way of motion of Chief and Council as the Youth representative by the sitting Chief and Council, until their term of office as a member of Junior Chief and Council expired.

## **26. Chairperson of the Land Authority**

### Chairperson

26.1 The Chairperson of the Land Authority will be determined at the beginning of the elected Land Authority Members' new term of office, by way of a vote. Chief and Council will be informed of the appointment of Chairperson

### Alternate Chairperson

26.2 If the Chairperson is unable to perform the functions of office, either temporarily or on a long term basis, the Land Authority shall appoint one (1) of the other Land Authority Members to act as or be the Chairperson and Chief and Council will be informed of the appointment.

### Functions of Chairperson

26.3 The functions of the Chairperson are to:

- (a) exercise general control over the affairs of the Land Authority;
- (b) ensure the preparation of financial statements relating to all activities of the Land Authority, including the revenues and expenditures concerning OCN Land;
- (c) table the Land Authority's financial statements with the Chief and Council;
- (d) make recommendation to Chief and Council for their approval on any issues relating to land activities that require approval from Chief and Council;
- (e) present the annual report to the OCN Citizens on the activities of the Land Authority; and
- (f) ensure the audited annual financial statements are made available in accordance with Section 21.

**27. Revenue from Lands**

Determination of fees, and rent

27.1 The Land Authority shall ensure that Land Laws established in Section 6 for the following are maintained and implement:

- (a) the fees and rents for Interests and Licenses in OCN Land; and
- (b) the fees for services provided in relation to any OCN Land.

**28. Registration of Interests and Licenses**

Establishment and maintenance of OCN Land Register

28.1 Chief and Council by Land Law shall establish an OCN Land Register for the registration of documents relating to OCN Land. Thereafter, the Land Authority shall be responsible to maintain the OCN Land Register.

Enforcement of interests and licenses

28.2 Following the passage of a Land Law by Chief and Council establishing a OCN Land Register any Interest or License on OCN Land created or granted after the enactment of this Land Law shall not be enforceable unless it is registered in the OCN Land Register.

Absence of OCN Register

28.3 Until such time as an OCN Land Register is established by Land Law, an interest or license in OCN Land is not enforceable unless it is registered in the First Nation Land Registry.

Registration of consent or approval

28.4 No instrument that requires the consent of Chief and Council, community approval or Ratification Vote, may be registered unless the original or certified true copy of the document that evidences the consent or approval is attached.

Forms and procedures

28.5 The Land Authority may prescribe forms and procedures to create evidence of consents or approvals referred to in this section.

Access during  
business hours

28.6 Unless certain documents are deemed confidential by Land Resolution, OCN Citizens shall have reasonable access to the OCN Land Register during normal business hours of the OCN administration, but no original documents shall be removed from the OCN Land Register, where necessary certified true copies of original documents may be provided by the OCN Land Register pursuant to Land Resolution or Land Laws regulating and governing the release of documents.

## 29. Duplicate Lands Registry

Duty to maintain  
duplicate register

29.1 The Land Authority shall ensure that a duplicate copy of all registered documents that are registered in the OCN Land Register, are forwarded for deposit in the First Nation Lands Register in Ottawa.

Duty of OCN Citizens  
to deposit

29.2 Every Person who wishes to have their Interest or License registered must submit application to the Land Authority for registration in both the OCN Land Register and the First Nation Land Register. The following must accompany the application for registering the document:

- (a) all documents must be approved by either the Land Authority, Chief and Council or community, whichever method is required for that document approval process.
- (b) an original or certified true copy of document.

**PART 7  
INTERESTS AND LICENSES IN LAND**

**30. Limits on Interests and Licenses**

All Dispositions  
in writing

30.1 An Interest or License to use OCN Land may only be created, granted, disposed of, assigned or transferred by a written document in accordance with this *Land Code* and any relevant Land Law.

Standards

30.2 The Land Authority may establish mandatory standards, criteria and forms for Interests and Licenses in OCN Land and receive approval of those standards from Chief and Council.

Improper transactions  
void

30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which any Person purports to grant, dispose of, transfer or assign an Interest or License in OCN Land after the date this *Land Code* takes effect is void if it contravenes this *Land Code*.

Non-OCN Citizens

30.4 A Person who is not an OCN Citizen must have any Interest or License registered in the OCN Land Register and the First Nation Land Register.

**31. REPEALED**

**32. Interests and Licenses**

Continuation of  
existing interests

32.1 Any Interest or License in OCN Land that existed when this *Land Code* takes effect will, subject to this *Land Code*, continue in force in accordance with its terms and conditions.

## Opaskwayak Cree Nation Land Code

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### Authority of dispositions

32.2 New Interest and Licenses in OCN Land may be granted on behalf of OCN in accordance with the Land Laws.

### Conditional grant

32.3 The grant of an Interest, License or Permit may be made subject to the satisfaction of written terms and conditions.

## 33. Allocation of Land

### Allocation of lots

33.1 The Chief and Council or delegate may allocate parcels of available land to OCN Citizens in accordance with the Land Law for Governing the Use and Occupancy of OCN Lands 2003/003 dated August 11, 2003, and which may be amended from time to time.

## 34. Transfer and Assignment of Interest

### Land Law for Transfer or Assignment

34.1 The Chief and Council may enact regulations governing transfer, assignment succession or testamentary disposition of Interest under the "Land Law for Governing the Use and Occupancy of OCN Lands."

### Approval

34.2 Subject to the provisions of any Land Law, the approval of the Land Authority shall be required for any transfer, assignment, succession or testamentary disposition of any Interest in OCN Land.

### Testamentary Interests OCN Citizens

34.3 An OCN Citizen, subject to the approval of Chief and Council, and subject to the provisions of any Land Law, may transfer their Interest in OCN Land by testamentary disposition, including a will or in accordance with their known wishes. In the event of a dispute as to the nature of an OCN Citizen wish in respect of their Interest in OCN Land, then the matter shall be referred to Article 8 section of this Land Code.

Testamentary Interests  
of non-OCN Citizens

- 34.4 A non-OCN Citizen, subject to the approval of Chief and Council, and subject to the provisions of any Land Law, may transfer their Interest in OCN Land by testamentary disposition of a legal will.

**35. Limits on Mortgages and Seizures**

Protections

- 35.1 In accordance with the with the *Framework Agreement*, Section 29, Section 87 and Subsections 89 (1) and (2) of the *Indian Act* continue to apply to OCN Land.

Mortgages consent

- 35.2 In accordance with Land Law a leasehold Interest may be subject to charge or mortgage.

**36. Residency and Access Rights**

Right for residence

- 36.1 The following individuals have a right to reside on OCN Land as long as they are not in breach of any other orders that may restrict them either by a Peace Order, the Court, Justice of the Peace, or Chief and Council:
- (a) OCN Citizens, who have been allocated a residential lot by way of entering into a land transaction, along with their spouses and children;
  - (b) any invitee of an OCN Citizen referred to in clause (a); and
  - (c) lessees and permittees, in accordance with the provisions of the instrument granting the lease or permit.

Right of Access

- 36.2 The following individuals have a right of access to OCN Land:
- (a) a lessee and his invitees;
  - (b) permittees and those granted a right of access under the permit;

- (c) OCN Citizens and their spouses and children;
- (d) a person who is authorized by a government body or any other public body, established by or under an enactment of OCN, parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- (e) a person authorized in writing by the Chief and Council.

Public access

36.3 Any individual may have access to OCN Land for any social, recreational, or business purposes, if:

- (a) the individual does not trespass on occupied land and does not interfere with any Interest in OCN Land;
- (b) the individual complies with all applicable Land Laws; and
- (c) no Resolution has been enacted barring that individual.

Trespass

36.4 Any individual who resides on, enters or remains on OCN Land other than in accordance with a residence or access right under this *Land Code* is guilty of an offence.

Civil remedies

36.5 All civil remedies for trespass are preserved.

## **37. Spousal Interest Land Law**

Rules and procedures

37.1 The Chief and Council enacted a Spousal Interest Land Law 2006/001 dated February 15, 2006, and which may be amended from time to time, that outlines the rules and procedures applicable on the breakdown of a marriage and/or relationship that affects lands, which includes but is not limited to:

- (a) the use and occupancy of OCN Land; and
- (b) the division of Interests in that land.

**PART 8  
DISPUTE**

**38. Purpose**

Intent

38.1 The intent of this Part is to ensure that all Persons entitled to possess, reside upon, use or otherwise occupy OCN Land do so harmoniously with due respect to the rights of others and of OCN and with access to OCN procedures to resolve disputes.

Informal Discussions

38.2 OCN intends that wherever possible, a dispute in relation to OCN Land will be resolved through informal discussion by the parties to the dispute and nothing in this Part will be construed to limit the ability of any Person to reach an agreement to settle a dispute without recourse to this Part.

Staged Processes

38.3 OCN further intends that a dispute in relation to OCN Land that is not resolved by informal discussion will, except as otherwise provided progress in sequence through the following stages provided for in this Part:

- (a) facilitated discussions
- (b) an Appeal Panel; or
- (c) final option is court of competent jurisdiction.

Civil Remedies  
Preserved

38.4 Nothing in this Part shall be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to validity of law

38.5 Nothing in this Part shall be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such challenge may be heard only in a court of competent jurisdiction.

### **39. Appeal Panel**

#### Panel Established

39.1 Chief and Council shall establish an Appeal Panel when required.

#### Panel members

39.2 The Appeal Panel will be composed of a maximum of three (3) members, all of whom must be Eligible Voters, and who represent various elements of the community, including but not limited to elders, youth, Councillor, or person(s) recognized by the Chief and Council for their skills, integrity and wisdom.

#### Advisors or Mediators

39.3 The Council may appoint or contract with expert advisors, mediators, professionals or other Persons to assist in resolving disputes, if the Appeal Panel requests assistance.

### **40. Procedure to File an Appeal**

#### Procedure to File

40.1 A Person who wishes to resolve a dispute with another Person or OCN in relation to the use or occupation of OCN Land may file a written notice of appeal with the Lands Division setting out:

- (a) the nature of the dispute or appeal;
- (b) the facts and supporting arguments upon which the Person filing the written notice of dispute relies; and
- (c) the relief that is sought.

#### Limitation Period

40.2 A written notice of dispute must be filed within thirty (30) days of the Person filing the written notice of dispute becoming aware of the decision, act or omission being disputed.

## Opaskwayak Cree Nation Land Code

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### Who May File a Dispute

- 40.3 The following Persons may file a written notice of appeal under this Part if they are not in agreement with the Land Authority's decision:
- (a) an OCN Citizen who claims an Interest in OCN Land based on a documented Interest;
  - (b) a Person who has a dispute with another Person or with OCN in relation to the use or occupation of OCN Land;
  - (c) OCN when asserting an Interest in OCN Land; and
  - (d) OCN when disputing the use or occupation of OCN Land by a Person.

### Appeal Panel not available

- 40.4 An Appeal Panel is not available under this Part for disputes in relation to:
- (a) administration or distribution of an estate;
  - (b) decisions relating to housing allocations; and
  - (c) decisions of Chief and Council to grant or refuse to grant an Interest or License in OCN Land.

### Duty of Fairness

- 40.5 All Persons involved in a dispute under this Part must be:
- (a) treated fairly;
  - (b) given a full opportunity to present their case; and
  - (c) given reasons for a decision made under this Part.

### Rules and Procedures

- 40.6 Chief and Council may prescribe such rules, policies, procedures, forms and reasonable fees not inconsistent with the *Land Code*, as may be necessary to give effect to this Part including but not limited to:

- (a) remuneration of facilitators, expert advisors, professionals or other Persons retained to assist in the resolution of disputes under this Part;
- (b) implementing recommendations of the Appeal Panel; and
- (c) any other matter necessary to give effect to this Part.

#### **41. Facilitated Discussions**

##### First stage Procedure

41.1 Within thirty (30) days of receiving a written notice of appeal under Section 40.1 the Land Manager will prepare and deliver a report on the dispute or appeal and a copy of the written notice of appeal to the Chief.

##### Notice of Dispute

41.2 As soon as practicable after receiving a report and written notice of appeal under Section 41.1 the Chief will present to Council to appoint OCN Citizens to sit on the Appeal Panel, those people appointed shall have no conflict of interest. The Appeal Panel will meet with the parties to resolve the dispute, through facilitated discussions.

##### Timing

41.3 In setting the date and time of the meeting referred to in Section 41.2 the Chair of the Appeal Panel or other person appointed, may consider any need to:

- (a) obtain further information;
- (b) give notice of the dispute to others who have or may have an Interest in it;  
or
- (c) obtain professional advice in relation to the dispute.

##### Decision-making authority

41.4 The Appeal Panel may, after hearing a dispute:

- (a) confirm in whole or in part the decision which is the subject of the dispute;

## Opaskwayak Cree Nation Land Code

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- (b) reverse in whole or in part the decision which is the subject of the dispute;
- (c) substitute its own decision for the decision in dispute;
- (d) direct that an action be taken or ceased;
- (e) refer the subject of the dispute for reconsideration by the decision maker, or
- (f) make an order to give effect to its decision, including any necessary order for the survey of an Interest in OCN Land, the registration of an Interest in OCN Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

### Decisions in writing

41.5 Decisions of the Appeal Panel will be in writing.

### Decisions Final And Binding

41.6 A decision of the Appeal Panel, unless appealed to a court of competent jurisdiction within thirty (30) days, shall be final and binding.

### Improper influence

41.7 Any attempt by a person who has filed a notice of appeal with the Appeal Panel to improperly influence a decision of the Appeal Panel will, in addition to any other remedies which may be available, result in the termination of proceedings under this Part and the matter being disputed will remain in effect as originally decided.

**42. Repealed**

**43. Repealed**

**44. Repealed**

**45. Repealed**

**PART 9**  
**TRADITIONAL UNREGISTERED OR UNDOCUMENTED INTERESTS**

**46. Traditional Interest Claim**

Filing claim

46.1 An OCN Citizen who claims an interest in OCN Land which is unregistered or undocumented, may file a written claim to the Land Authority setting out the basis for the claim, including but not limited to:

- (a) the facts upon which the claim is based;
- (b) the evidence available in support of the claim, and
- (c) the relief that is sought.

Assistance to  
OCN Citizen

46.2 The Lands Division staff may assist an OCN Citizen in preparing and filing a written claim under Section 46.

No time limit

46.3 An OCN Citizen may file a claim under Section 46 at any time.

Preparation of report

46.4 Within sixty (60) days of receipt of a claim under Section 46, the Land Authority will cause to be prepared a report on the claim.

Additional information

46.5 In addition to any other information, a report prepared under Section 46.4 will identify:

- (a) any other individuals who may supply relevant information pertaining to the claim; and
- (b) any other individuals who may be affected by the claim.

## Opaskwayak Cree Nation Land Code

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### Elders Hearing

- 46.6 If, after reviewing a report prepared under Section 46.4, the Land Authority is unable to approve a claim, it will request that Chief and Council convene a panel of three (3) elders to hear and consider:
- (a) the claim;
  - (b) the report on the claims;
  - (c) any evidence with respect to the claim; and
  - (d) the relief being sought.

### Giving Merit

- 46.7 Following a hearing under Section 46.6, the panel of elders will decide by majority vote whether the claim has merit.

### Unanimous decision

- 46.8 A unanimous decision of the panel of elders is required for a determination that a claim has no merit.

### Giving effect to decision

- 46.9 Where the panel of elders determine that a claim is valid, Chief and Council will, in accordance with this *Land Code*, take such steps as are necessary to give effect to that determination provided that, where it is inequitable or unjust in all the circumstances to perfect the claim, Chief and Council may substitute another interest in OCN Land of equivalent area or value.

### Dispute Resolution

- 46.10 An OCN Citizen who disputes a decision of the panel of elders or an action of Chief and Council or a Person affected by such decision or action may proceed to dispute resolution in accordance with Part 8 of this *Land Code*.

**PART 10  
OTHER MATTERS**

**47. Liability**

Liability Coverage

47.1 The Chief and Council shall arrange, maintain and pay, out of the transfer payments received from Canada, insurance coverage for OCN, the Land Authority and its Land Authority Members and lands staff engaged in carrying out any matter related to OCN Land to indemnify them against personal liability arising from the performance of those duties.

Extent of Coverage

47.2 The extent of the insurance coverage shall be determined by the Chief and Council.

Civil Proceedings only

47.3 For greater certainty, the Land Authority's indemnification under Section 47.1 relates to civil proceedings only, and not to the prosecution of an offence under a Land Law or under criminal law.

**48. Offences**

Application of the  
Criminal Code

48.1 Unless some other procedure is provided for by a Land Law, the summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under this Land Code or under a Land Law.

**49. Amendments to Land Code**

Technical amendments

49.1 Technical amendments to this Land Code may be made without a Ratification Vote, provided the OCN Citizens are advised of those technical amendments and the technical amendments are available for inspection at the Land Division and administration offices of OCN.

## Opaskwayak Cree Nation Land Code

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### Community Approval

49.2 All amendments to this *Land Code* other than technical amendments must receive community approval by Ratification Vote to be effective.

## 50. Commencement

### Effective

50.1 This *Land Code* is effective August 1, 2002, along with amendment made to it from time to time.

### Certification

50.2 Subject to Section 50.1 The certification of this *Land Code* by the verifier was confirmed on July 5, 2002.



OPASKWAYAK CREE NATION  
BAND COUNCIL RESOLUTION

Chronological Number: 12-42  
Date this 23<sup>rd</sup> day of July, 2012

AT A DULY CONVENED MEETING of the Chief and Council held in the Council Chambers on Opaskwayak Cree Nation Reserve 21E;

WHEREAS the Chief and Council of Opaskwayak Cree Nation called for a Ratification Vote to amend the Opaskwayak Cree Nation Land Code, as per Band Council Resolution 12-029 dated May 7, 2012;

AND WHEREAS pursuant to Section 49.2 of the Opaskwayak Cree Nation Land Code states:

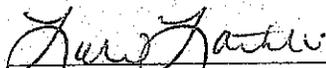
"All amendments to this Land Code other than technical amendments must receive community approval by Ratification Vote to be effective";

AND WHEREAS the Ratification Vote was conducted on June 15, 2012, at the Otineka Mall, from 9:00 a.m. to 6:00 p.m.;

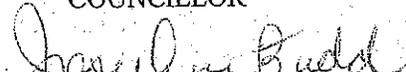
NOW THEREFORE BE IT RESOLVED THAT Chief and Council of Opaskwayak Cree Nation, ratifies and affirms the Community Ratification decision held on June 15, 2012 which approves the amendments to the Opaskwayak Cree Nation.

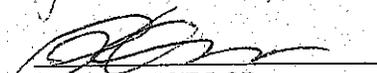
AND THAT the following are the results of the Ratification Vote held on June 15, 2012:

1. The minimum of 200 voters required to cast their vote was reached with 210 eligible voters casting their vote.
2. 187 eligible voters voted Yes to approving the amendments to the Land Code;
3. 22 eligible voters voted No to approving the amendments to the Land Code; and
4. 1 eligible voters had their vote rejected;

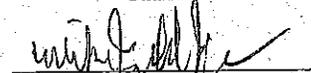
  
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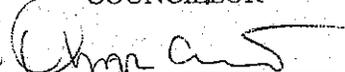
  
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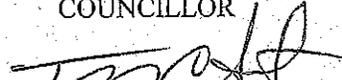
  
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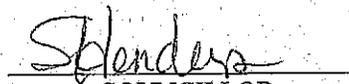
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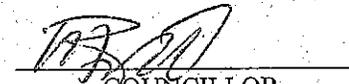
  
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I CERTIFY THAT THE WITHIN DOCUMENT IS DULY ENTERED  
AND RECORDED IN THE OPASKWAYAK CREE NATION LANDS  
REGISTER AT OPASKWAYAK, MANITOBA

ON THE 17 DAY OF Sept 1988

NUMBER 2501376 AT OPASKWAYAK, IN THE  
PROVINCE OF MANITOBA

[Signature]  
(FOR CCM LAND AUTHORITY REGISTRY)

11:38 am SEP 21 1988

22 DAY OF August

12 NUMBER 4019338

Opaskwayak

PROVINCE OF Manitoba

[Signature]