

# ᑭᐱᑭᐱᑭ Lands Management Manual 2.0 (2019)

The Lands Management Manual is a comprehensive document, endorsed by Council (March 2019), that sets out policies, procedures, roles and responsibilities for the management of ᑭᐱᑭᐱᑭ land under the *ᑭᐱᑭᐱᑭ Amended Land Code*. In doing so, ᑭᐱᑭᐱᑭ seeks to achieve sound land management through clearly prescribed transparent policies that offer clarity for members, Council, Lands Committee, staff and proponents. The Lands Management Manual complements ᑭᐱᑭᐱᑭ Land Code laws and Plans (e.g. ᑭᐱᑭᐱᑭ Community Land Use Plan, ka kniᑭwi·tiyaᑭ: Strategic Plan and forthcoming Environmental Management Plan) and supports environmental governance by navigating away from the *Indian Act*.

The first version of the Manual was developed in 2015, shortly after ᑭᐱᑭᐱᑭ ratified Land Code. The Manual is hereby subject to its first revision after three years of application. Amendments have occurred to accommodate changing conditions which include the development of new Laws and Plans, new knowledge obtained from **ᑭᐱᑭᐱᑭnik' and leadership, research and development, and** lessons learned by understanding and responding to ᑭᐱᑭᐱᑭ needs and perspectives. The majority of changes are to address usability and functionality. ᑭᐱᑭᐱᑭ Lands Department has proactively taken the approach of keeping the Manual up to date and will amend in the future on an as-needed basis.

Transforming from *Indian Act* governance to sectoral governance through Land Code is no simple task. Broadly speaking through the Framework Agreement on First Nation Land Management and the associated *First Nation Land Management Act* (S.C. 1999, c. 24), and the ratification of Land Code, ᑭᐱᑭᐱᑭ has chosen to exercise jurisdiction over two broad categories: environmental assessment and environmental protection. It is our intent that this Manual is a useful and practical toolkit to support land and resource management.

## CONTACT INFORMATION

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### Purpose

The Lands Management Manual (LMM) has been prepared as a resource tool for Ṛaqam to govern its land and resource management decision making through the application of policies and procedures approved by Council. The LMM is an operational manual to guide decision making through prescribed procedures in a transparent and fair manner.

The objectives of Policy 1 are to provide the user with:

- an overview of the application, content, and layout of this Manual
- information on the legislative framework under which Ṛaqam lands are managed

**This Manual is not intended to provide legal advice to any person.**

**This Manual Supports Land Code endeavours and seeks to operationalize the legislative and administrative structures that apply to Ṛaqam Lands and authority on those lands by providing guidance for implementation.**

### Decision Making Guidance

The LMM is designed to assist, broadly three (3) user groups:

- Council and Lands Committee;
- Lands Department employees;
- Persons/organizations (e.g. government) who have, or wish to acquire, land instruments on

ᐃᐱᑖᐱ lands (e.g. members or proponents).

## Land Code Overview

### *What is Land Code?*

Lands and natural resources that were previously managed under the *Indian Act* are now governed under a Land Code. ᐃᐱᑖᐱ, operating under Land Code, has legal status and powers to manage and govern its lands and resources. This power covers both the administrative management aspect and the governance and jurisdictional elements of land management. ᐃᐱᑖᐱ exercising jurisdiction not only has local government type-powers over areas such as land use planning, but also provincial and federal type-powers such as the establishment of laws under which interests are created, transferred and registered.

Link to ᐃᐱᑖᐱ Land Code:

<http://www.aqam.net/sites/default/files/Aqam%20Amended%20Land%20Code-%20FINAL.pdf>

## ᐃᐱᑖᐱ Lands

Lands and Interests Affected

Under the ᐃᐱᑖᐱ Amended Land Code (S.11), lands include:

- ✓ the water;
- ✓ beds underlying the water;
- ✓ riparian rights, including to lands acquired through accretion;
- ✓ minerals and subsurface resources;
- ✓ and all other renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada and ᐃᐱᑖᐱ; and
- ✓ all the interests and Licences granted to ᐃᐱᑖᐱ by Canada that are listed in the Individual Agreement.

**Table 1.1.** ᐃᐱᑖᐱ Laws and Applicable Federal Laws

ᐃᐱᑖᐱ Laws	Summary
<i>ᐃᐱᑖᐱ Amended Land Code 2016</i>	This Law sets out the principles and legislative and administrative structures that apply to ᐃᐱᑖᐱ and by which ᐃᐱᑖᐱ shall exercise authority over ᐃᐱᑖᐱ lands.
<i>Matrimonial Real Property Law, 2015</i>	This Law addresses the use, occupancy and possession of the family home and divisions of interests in a family home, and the break down of marriage or death of a spouse.
<i>ᐃᐱᑖᐱ Allotment Law, 2016</i>	This Law sets out the creation, granting, disposal, assignment and transfer of allotments, and the acquisition of a Certificate of Possession.
<i>ᐃᐱᑖᐱ Trespass and Access Law, 2017</i>	This Law applies to all ᐃᐱᑖᐱ Lands, and all persons who enter ᐃᐱᑖᐱ Lands.
Federal Laws	

<b><i>Canadian Environmental Protection Act</i></b>	This Act (CEPA) is the primary element of the legislative framework for protecting the Canadian Environment and human health. A key aspect of CEPA 1999 is the prevention and management of risks posed by toxic and other harmful substances. CEPA also manages environmental and human health impacts of products of biotechnology, vehicle, and equipment emissions, fuels, hazardous wastes, environmental emergencies and other sources of pollution.
<b><i>Fisheries Act</i></b>	The <i>Fisheries Act</i> is administered by the Department of Fisheries and Oceans. It is a key piece of regulation over fish and habitat in Canada.
<b><i>Migratory Birds Convention Act</i></b>	The <i>Migratory Birds Convention Act</i> provides for the protection of migratory birds through the Migratory Birds Regulations and the Migratory Birds Sanctuary Regulations
<b><i>Species at Risk Act</i></b>	The <i>Species at Risk Act</i> (SARA) aims to prevent wildlife species in Canada from disappearing, to provide for the recovery of wildlife species that are extirpated (no longer exist in the wild in Canada), endangered, or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened. SARA applies automatically only to federal lands.
<b><i>Indian Oil and Gas Act</i></b>	This Act continues to apply in respect to an interest or right in First nation land that is granted to Her Majesty for the exploitation of oil and gas.
<b><i>Case Law</i></b>	Consult with Legal Counsel

See the *First Nation Land Management Act* S. 37-44 for further information on ‘Other Acts’

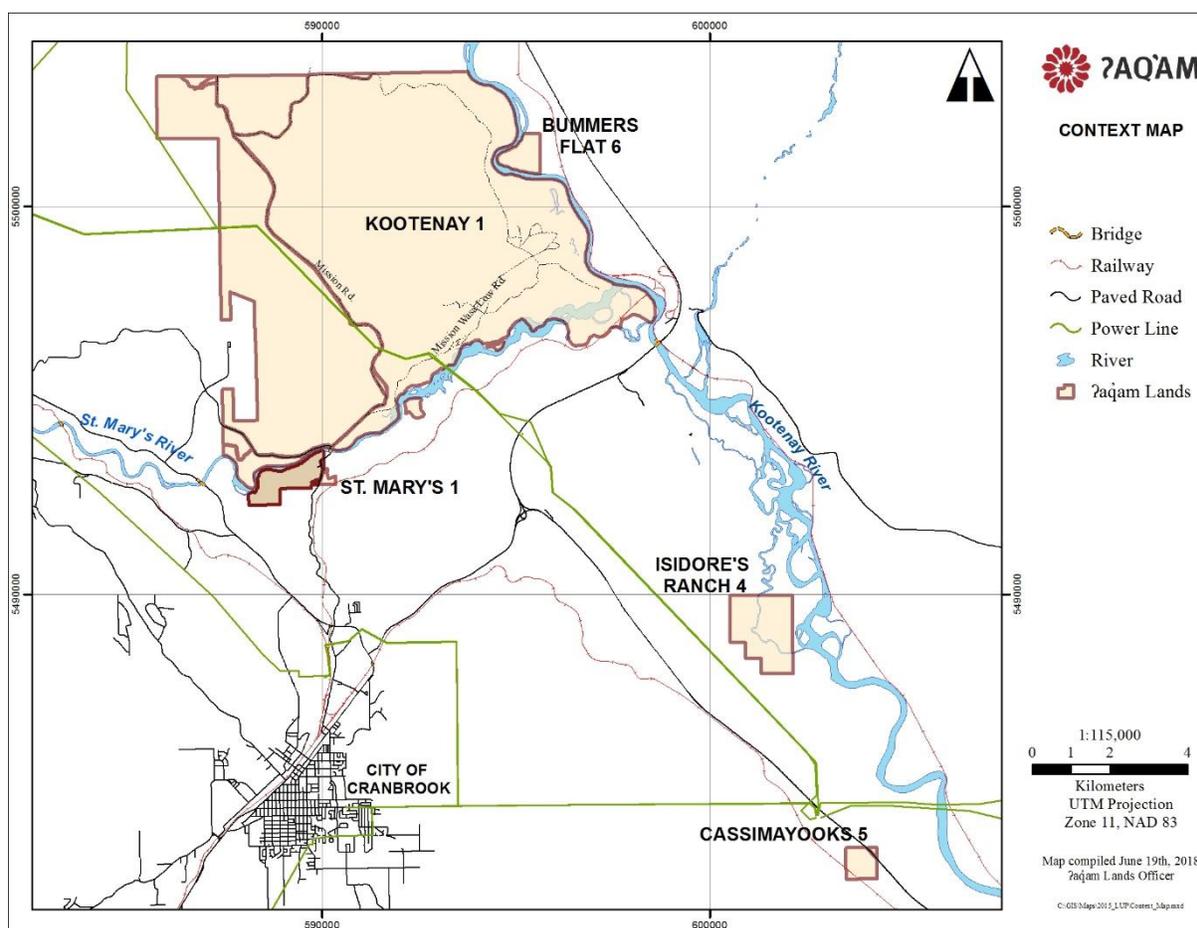
All land instruments must comply with all applicable laws of Canada and ʔaqam, including the:

- (a) *ʔaqam Amended Land Code*;
- (b) *ʔaqam Allotment Law, 2016*
- (c) *ʔaqam Community Land Use Plan 2016*
- (d) *ʔaqam Trespass and Access Law, 2017*
- (e) *Canadian Environmental Protection Act*
- (f) *Fisheries Act*
- (g) *Migratory Birds Convention Act*
- (h) *Species at Risk Act*
- (i) *Indian Oil and Gas Act*
- (j) *Case Law*

The LMM pertains to ʔaqam lands which consist of five different reserves totalling approximately 7,810 hectares and 19,300 acres, below.

<b>Indian Reserve Name</b>	<b>Hectares</b>	<b>Acres</b>
Kootenay No.1	7,467 hectares	18,452 acres
Isidore’s Ranch No. 4	277 hectares	685 acres
Cassimayooks No. 5	63 hectares	156 acres
Bummer’s Flat No. 6	78 hectares	192 acres
St. Mary’s 1 No. 1	10 hectares	25 acres

**Figure 1.1** Map of ʔaq̓am Lands



### Legal Framework for Lands Management on ʔaq̓am Lands: Overview

The legal framework underlying the management of ʔaq̓am lands is as follows:

- section 91(24) of the *Constitution Act* states that only the federal government can pass laws about "Indians and lands reserved for Indians;"
- in 1996, fourteen (14) First Nations and Canada signed the *Framework Agreement* on First Nation Land Management (the "Framework Agreement"), which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by:
  - (i) developing a Land Code and a community approval process,
  - (ii) concluding an *Individual Agreement* with Canada, and
  - (iii) ratifying their Land Code and *Individual Agreement* through a vote of their eligible members;
- in 1999 Canada passed the *First Nations Land Management Act* (the "FNLMA") to ratify the Framework Agreement;
- in 2001 the fourteen (14) First Nations and Canada agreed to amend the *Framework*



**Equal Application of Laws and Policies:** Section 15 of the *Canadian Charter of Rights and Freedoms* requires equal protection of the law without discrimination based on race, national or ethnic origin, etc. The intent of Land Code is in part to have Council accountable to community members for their decisions. Therefore, the policies within need to be applied fairly and equally.

### Adaptive and Integrative Management

The LMM informs, and is informed by different laws, plans, procedures and decision making bodies which include but are not limited to the ʔaąam Community Land Use Plan 2016, ka knitwi·tiyała: **Strategic Plan 2017**, Land Code laws, and the forthcoming Environmental Management Plan. ka knitwi·tiyała: **Strategic Plan** guides all decisions; therefore, if a proposed activity does not align with the ka knitwi·tiyała: Strategic Plan, or ʔaąam Community Land Use Plan it will likely not be approved.

### Manual Layout and Content

The Manual Policy Chapters are *typically* arranged as follows:

**Table 1.3** Lands Management Manual Layout

<b>Purpose:</b> Sets out objectives and provides an overview of what is addressed in the policy chapter.
<b>Legal Authority:</b> References relevant Acts or Laws regarding policy
<b>Roles &amp; Responsibilities:</b> Sets of <i>specific</i> roles of Lands Staff, Lands Committee, Chief and Council or instrument proponent (e.g. Allotment Holder).
<b>Policy:</b> Sets out policy statements and procedures that are specific to each type of land transaction or land management responsibility.
<b>Process:</b> Sets out a sequence of steps for the Lands Department to follow for administering the Policy.
<b>Resources &amp; Forms:</b> Provides references, resources and Applicable Forms

### Definitions

Please refer directly to the *ʔaąam Amended Land Code* or relevant ʔaąam law or federal legislation and regulation noted in the legal authority section. For the purpose of clarity several definitions have been included to set a foundation for moving forward.

ʔaąam Lands mean inclusively all 5 Indian Reserves set out in the Individual Agreement between Canada and ʔaąam set above in S.7.

ʔaąam Community Lands means any ʔaąam lands in which all members have a common interest.

Certificate Possession land: refers to a member who is lawfully in possession of ʔaąam lands.  
See Policy

Land Instrument means a written document that creates, changes, transfers or terminates an interest in ʔaąam land. E.g. Permit or Lease.

## **Key Policy Content**

Broadly speaking, the Manual addresses the following subjects. *See Table of Contents for detailed description.*

Policy 1: Introduction and Manual Overview

Policy 2: Registration

Policy 3: Allotment

Policy 4: Leases

Policy 5: Licences, Permits, Right-of-Ways, and Easements

Policy 6: Correcting/Cancelling Land Instruments

Policy 7: Expropriations

Policy 8: Environmental Assessment

Policy 9: Monitoring & Enforcement

## Selecting A Land Instrument

- STEP 1: Select a Land Instrument (see Table 1.4 and 1.5)
  - STEP 2: Refer to the appropriate Policy number for detailed information
  - STEP 3: Fill out an Application for Use; 5-1-01 to instigate the application process
- Land instruments must comply with all requirements set out in their relevant policies contained in this Manual.
  - Land instruments should align with the *ḡaqam* ka kniḡwi·tiyaḡa: Strategic Plan, ḡaqam Community Land Use Plan, and forthcoming Environmental Management Plan.
  - Land instruments that are unauthorized, or fail to comply with appropriate laws and policies and proper procedures, may be void or of no effect, see Policy 6.
  - **An outcome regarding the application for a Land Instrument, takes a minimum of 3 months.**

**Table 1.4** Land Instrument Descriptive Table

	Allotment	Lease	Permit	Licence	Easement	Right of Way	Expropriation
<b>Policy # in Lands Management Manual</b>	3	4	5	5	5	5	7 (not yet developed) see Amended Land Code S.14
<b>Duration for Member</b>	In perpetuity	Up to 99 years	No noted minimum	Minimum 2 years	No noted timeframe	No noted timeframe	
<b>Duration for Non Member</b>	N/A	10 years or more, legal description required	10 years or more, legal description required	Min 2 years; 10 years or more, legal description required	No noted timeframe	No noted timeframe	
<b>Agricultural</b> - Grazing - Farming - Orchards		✓	✓	✓			
<b>Industrial Use</b> - Quarry - Log Handling - Mining and Energy - Forestry		✓	✓	✓			
<b>Commercial</b> - Recreation - Businesses		✓	✓	✓			
<b>Community Institutional</b> - Educational institutions - Cultural centers - Community organizations		✓	✓	✓			✓

- Transportation Roadways			✓	✓	✓		✓
Communication Sites			✓	✓	✓		✓
Public & Private Utilities			✓	✓	✓		✓
Residential Land	✓	✓					

**Table 1.5** Land Instrument Summary Table

<b>Allotment</b>	Allotments in Ṛaqam land are created when a parcel or block of land is granted to a member by Council pursuant to a law enacted in accordance with section 33.1 of the <i>Ṛaqam Amended Land Code</i> .
<b>Lease</b>	A lease of Ṛaqam community lands is an agreement entered into by Ṛaqam and a third party that grants an interest in and <u>exclusive use and possession</u> of Ṛaqam community lands to either a person who is Ṛaqamnik' or not, for a specific period of time, with a commencement and end date and for a specific purpose.
<b>Licence</b>	Licences grant a person a right to use, occupy or take resources from Ṛaqam community lands for a specified term which must be a minimum two years in duration.
<b>Permit</b>	Permits grant a person a right to use, occupy or take resources from Ṛaqam community lands for a specified term which must be a maximum five years in duration, unless the permittee is a member in which case the term may be longer.
<b>Easement</b>	Easements grant a person who owns property adjacent to, or close in proximity to, Ṛaqam community lands a permanent right to use and/or enter onto Ṛaqam community lands in a specified manner.
<b>Right of Way</b>	A right-of-way grants a person with a right of access over Ṛaqam community lands for a specified purpose.
<b>Expropriation</b>	An interest or Licence in Ṛaqam lands or in any building or other structure on such land may only be expropriated by Ṛaqam in accordance with the Framework Agreement and any forthcoming Law enacted in accordance with S.14.3

## Roles and Responsibilities for Policy Administration

### Role of Council

Council is responsible for, per s. 6.2 of the *Ṛaqam Amended Land Code*:

- (a) developing laws consistent with the *Ṛaqam Amended Land Code* regarding the management, administration, possession, conservation, use and protection of Ṛaqam lands;
- (b) complying with the mandatory law-making procedures set out in Parts 2 and 3 of the *Ṛaqam Amended Land Code* in the development of laws; and
- (c) approving the enactment of laws by Band Council Resolution in all cases except when a meeting of members or ratification vote are required for the enactment of the law.

### Role of Lands Department

The Lands Department is responsible for the:

- administration of ʔaqam Lands in accordance with this Land Code and any other applicable law or policy of ʔaqam;
- development of forms for the purpose of registering or recording of land instruments in the First Nation Land Register;
- processing of applications for the registration or recording of land instruments by registering or recording the land instruments in the First Nation Land Register;
- arranging and organize for the execution of land instruments that relate to ʔaqam Community Lands;
- maintenance and protection of records in relation to ʔaqam Lands in the Lands Department using a secure and safe filing system; and
- perform such other duties and functions consistent with this Land Code as Council may direct.

*See ʔaqam Amended Land Code Section 26 for detailed list*

**Role of Lands Committee**

The Lands Committee is responsible for:

- assisting ʔaqam Lands and Natural Resources staff with administrative decisions in relation to ʔaqam Lands;
- reviewing draft laws and providing comments to Council;
- recommending to Council laws, policies and procedures in relation to ʔaqam Lands;
- consulting with Members on land issues; and
- performing such other duties and functions as Council may direct.

*See ʔaqam Amended Land Code Section 27 for detailed list*

**Role of ʔaqam Legal Counsel**

Legal counsel is responsible for:

- where instructed by the Lands Department, drafting clear, comprehensive and comprehensible laws;
- where instructed by the Lands Department, identifying and resolving issues related to:
  - jurisdiction and authority,
  - administrative law (such as the requirement for procedural fairness),
  - issues related to the *Canadian Charter of Rights and Freedoms*,
  - issues related to the *Canadian Human Rights Act*, and
  - other federal or ʔaqam laws; and
- where instructed by the Lands Department, addressing financial, procedural and other practical implications of a proposed new law.

**Environmental Assessment**

Until ʔaqam enacts its own Environmental Assessment Law, **Policy 8**, which outlines the ʔaqam Interim Environmental Assessment Process, must be consulted each time Council takes action or makes a decision within the scope of the ʔaqam Amended Land Code, that may have an environmental effect on the land, as defined in this Policy section.

## Law Making Policy

### What is Law Making?

Law making involves the development and enactment of laws regarding the management, administration, use and protection of ʔaḡam lands. Certain laws are enacted by Council, while others are enacted by member approval at either a meeting of members or through a ratification vote. The *ʔaḡam Amended Land Code* sets out the manner in which a law must be enacted.

### Policy Development and Amendments

The *ʔaḡam Policy Committee* is responsible for the development, review and reporting to Council on Policy. Council is the ultimate authority to approve Policy.

### Law Making Powers and Procedures

The *ʔaḡam Amended Land Code*, Part 2, details the following:

- Section 6, ʔaḡam Legislation, provides detail on Law Making Powers, examples of Laws Council may enact (e.g. enforcement laws, zoning laws, etc.).
- Section 7, Law Making Procedures

In addition to the Law Making Procedure, Section 7 of the *ʔaḡam Amended Land Code*, detailed above, Policy steps for a proposed Law shall include:

- the Language Speakers and Knowledge Holders Advisory Group review of the Law in the community consultation phase. This step is to ensure that the law is in compliance with Ktunaxa traditions and customs.
- Directors are sent the Law to review to ensure compliance with their directives.

Please consult the *ʔaḡam Amended Land Code* for primary information regarding the above, and related content such as Publication of Laws, Member Input and Approvals.

**\*All land instruments issued are to be posted publically.**

### Amendments to the Lands Management Manual

Amendments to the manual are to be taken to the Lands Committee for recommendation and then to Council for Approval.

The Policy Committee shall be involved when a new Policy is created. From there the proposed policy goes to the Lands Committee for a recommendation, and then to Chief and Council for approval.

### Resources and Forms

First Nations Land Advisory Board <https://labrc.com/home/>

**ʔaḳam Lands and Resources Website** <http://www.aqam.net/resources/land-code>

### **Forms**

The following ʔaḳam forms are relevant to this policy section, specifically the Law Making Policy Section, whereby the user refers to the ʔaḳam Land Code.

- 1-1-01 Oath of Office
- 1-1-02 Notice of Meeting and Vote
- 1-1-03 Statement of Witness
- 1-1-04 Certification of Meeting of Members Vote Result
- 1-1-05 Notice of Land Law Vote
- 1-1-06 Voter Registration
- 1-1-07 Declaration
- 1-1-08 Certification of Ratification Vote Results

## APPENDIX A: Legal Authorities for ʔaᑭam Environmental Management

### FRAMEWORK AGREEMENT

#### PART IV FIRST NATION LAW MAKING

##### Section 18 Law Making

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

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

- (a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;
- (b) laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;
- (c) laws on environmental assessment and protection;
- (d) laws on the provision of local services in relation to First Nation land and the imposition of equitable user charges; and
- (e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

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

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

##### Section 20 Application to Federal Laws

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

##### Section 21 Inapplicable Section of Indian Act and Regulations

21.1 Once a Land Code takes effect, the First Nation, its members and its First Nation land will not be subject to the following Sections of the Indian Act, 18-20, 22-28, 30-35, 37-41, 49, 50(4), 53, 60, 66, 69, 71, 93 and regulations made under section 57 of the Indian Act, and regulations made under sections 42 and 73 of the Indian Act to the extent that they are inconsistent with this Agreement or the land code or the laws of the First Nation.

#### PART V ENVIRONMENT

##### Section 23 GENERAL PRINCIPLES

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

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

23.3 The principles of these regimes are set out below.

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

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

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

#### Section 24 ENVIRONMENTAL MANAGEMENT

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

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

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

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

#### 25. ENVIRONMENTAL ASSESSMENT

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

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

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

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

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

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

#### 26. OTHER AGREEMENTS

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

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

#### 27. RESOURCES

27.1 The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

Section 51 First Nation Lands Registry

### **First Nations Land Management Act**

### **Section 18.1 Power to Manage**

**18.1** A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular may,

- a. exercise powers, rights, and privileges of an owner in relation to land;
- b. grant interests or rights in and licences in relation to that land;
- c. manage the natural resources of that land; and,
- d. receive and use all moneys acquired by or on behalf of the First Nation under its land code.

18.3 The power of a First Nation to manage First Nation land shall be exercised by the council of a First Nation, or by any person or body to whom a power is delegated by the council in accordance with the First Nation's land code, and that power shall be exercised for the use and benefit of the First Nation.

### **FIRST NATION LAWS**

#### **Section 20.1 Power to Enact Laws:**

20. (1) The council of a First Nation has, in accordance with its land code, the power to enact laws respecting:

- (a) interests or rights in and licences in relation to First Nation land;
- (b) the development, conservation, protection, management, use and possession of First Nation land; and
- (c) any matter arising out of or ancillary to the exercise of that power.

#### **Section 20.2 Particular Powers**

20.2 Without restricting the generality of subsection (1), First Nation laws may include laws respecting

- (a) the regulation, control or prohibition of land use and development including zoning and subdivision control;
- (b) subject to section 5, the creation, acquisition and granting of interests or rights in and licences in relation to First Nation land and prohibitions in relation thereto;
- (c) environmental assessment and environmental protection;
- (d) the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services; and
- (e) the provision of services for the resolution of disputes in relation to First Nation land.

#### **Section 20.3 Enforcement Measures**

20.3 A First Nation law may provide for enforcement measures, consistent with federal laws, such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.

#### **Section 20.4 Inconsistency**

(4) In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the [Indian Act](#), the land code prevails to the extent of the inconsistency or conflict.

### **Section 21 Environmental protection regime**

21.1 After the coming into force of a land code, a First Nation shall, to the extent provided in the Framework Agreement, develop and implement through First Nation laws an environmental protection regime. The regime must be developed in accordance with the terms and conditions set out in the Framework Agreement.

### **Section 21.2 Minimum Standards**

The standards of environmental protection established by First Nation laws and the punishments imposed for failure to meet those standards must be at least equivalent in their effect to any standards established and punishments imposed by the laws of the province in which the First Nation land is situated.

### **Section 21.3 Environmental assessment regime**

First Nation laws respecting environmental assessment must, to the extent provided in the Framework Agreement, establish, in accordance with that Agreement, an environmental assessment regime that is applicable to all projects carried out on First Nation land that are approved, regulated, funded or undertaken by the First Nation.

## **FIRST NATION LAND REGISTRY**

### **Section 25.2 Administration of Register**

The First Nation Land Register is to be administered, subject to this section, in the same manner as the Reserve Land Register established under the *Indian Act*.

#### Section 37 Other Acts

37 In the event of any inconsistency or conflict between this Act and any other federal law, this Act prevails to the extent of the inconsistency or conflict.

#### Section 38 Indian Act

38.1 On the coming into force of the land code of a First Nation, the following cease to apply to the First Nation, First Nation members and First Nation land

- a. sections 18 to 20, 22 to 28, 30 to 35, 37 to 41 and 49, subsection 50(4) and sections 53 to 60, 66, 69, 71 and 93 of the *Indian Act*;
- b. any regulations made under section 57 of that Act; and
- c. to the extent of any inconsistency or conflict with the Framework Agreement, the land code or First Nation laws, any regulations made under sections 42 and 73 of that Act.

#### Environmental Laws

40.1 For greater certainty, in the event of any inconsistency or conflict between a land code or a First Nation law and any federal law that relates to environmental protection, the federal law prevails to the extent of the inconsistency or conflict.

#### Migratory Birds, endangered species, fisheries

40.2 For greater certainty, this Act does not extend or limit any right or power in relation to migratory birds, endangered species or fisheries.

## ***ᑭᓐᓇᓂᓐ* AMENDED LAND CODE**

Part 2 of the *ᑭᓐᓇᓂᓐ Amended Land Code* sets out the:

law-making powers of Council and types of laws that Council may develop under the *ᑭᓐᓇᓂᓐ Amended Land Code* regarding the management, administration, use and protection of *ᑭᓐᓇᓂᓐ* lands, which include the following subject areas:

- (i) the development, conservation, protection, management, use and possession of *ᑭᓐᓇᓂᓐ* lands,
- (ii) interests in and licences to use *ᑭᓐᓇᓂᓐ* lands,
- (iii) any matter necessary to give effect to the *ᑭᓐᓇᓂᓐ Amended Land Code*, and
- (iv) any matter necessary or ancillary to a law in relation to *ᑭᓐᓇᓂᓐ* lands;

- (a) mandatory procedures that must be complied with in the development of laws under the *ᐱᐱᐱᐱ Amended Land Code*; and,
- (b) mandatory requirements that must be complied with in relation to the publication and registration of laws.

Section 14 of the *ᐱᐱᐱᐱ Amended Land Code* sets out that Council must enact a law setting out the rights and procedures for expropriation. Section 14 also provides the mandatory requirements that must be included in an expropriation law.

Section 33 of the *ᐱᐱᐱᐱ Amended Land Code* sets out that Council may enact a law providing for the rules and procedures that apply to the granting of an allotment in ᐱᐱᐱᐱ lands and the rights and interests to which an allotment holder is entitled.

Section 37 of the *ᐱᐱᐱᐱ Amended Land Code*, sets out that Council must enact a law providing for the rules and procedures that are applicable on the breakdown of a marriage of a member to the use, occupancy and possession of an interest in ᐱᐱᐱᐱ lands held by that member and the division of that member's interest in land. Council has enacted the *ᐱᐱᐱᐱ Matrimonial Real Property Law, 2015*.

Section 44.2 of the *ᐱᐱᐱᐱ Amended Land Code* sets out that Council may establish processes or laws in addition to the dispute resolution process set out in Part 8 of the *ᐱᐱᐱᐱ Amended Land Code* for resolving disputes, which processes may include facilitated discussion, mediation, administrative appeals or referrals to another forum.

Section 46.2 of the *ᐱᐱᐱᐱ Amended Land Code* sets out that Council may enact laws in relation to the appointment of justices of the peace for the enforcement of the *ᐱᐱᐱᐱ Amended Land Code* and laws.