

WE WAI KAI NATION

Individual Agreement

Summary

We Wai Kai and Canada signed an adhesion to the *Framework Agreement on First Nation Land Management* on April 23, 2007 as part of its process to develop and pass a We Wai Kai Nation Land Code.

We Wai Kai and Canada wish to provide for the assumption by We Wai Kai of responsibility for the administration of We Wai Kai Lands in accordance with the *Framework Agreement on First Nation Land Management* and the *First Nations Land Management Act*;

Clause 6.1 of the *Framework Agreement on First Nation Land Management* and subsection 6(3) of the *First Nations Land Management Act* (“Act”) require that First Nations intending to pass a Land Code and Canada enter into an Individual Agreement for the purpose of providing for the specifics of the transfer of administration and settling the level of operational funding to be provided to We Wai Kai;

The Individual Agreement is between We Wai Kai Nation and Her Majesty the Queen in Right of Canada and it sets out the specifics of the transfer of land administration from Canada to the We Wai Kai Nation.

The following describes the different parts of the Individual Agreement:

INTERPRETATION

“Land Code” means the We Wai Kai Land Code, developed in accordance with clause 5 of the *Framework Agreement*.

"We Wai Kai Lands" means the lands to which the Land Code will apply and more specifically means the Indian Reserves known as Village Bay #7 (06965), Open Bay #8 (06966), Drew Harbour #9 (06967), Cape Mudge #10 (06968) (excepting the Excluded Land), and Quinsam #12 (06969) all as described in the Legal Description Reports referred to in Annex G, and includes all the interests in, and resources of, the land that are within the legislative authority of Canada.

“Excluded Land” means the portion of Cape Mudge Indian Reserve #10 that is shown as Lots 27 and 28 on Plan 95965.

This Agreement is to be interpreted in a manner that is consistent with the *Framework Agreement* and the *Act*. For greater certainty, the *Framework Agreement* and the *Act* continue to apply and in the event of a conflict between the *Individual Agreement* and *Framework Agreement* and/or the *Act*, the *Framework Agreement* and/or the *Act* prevail to the extent of the conflict.

INFORMATION TO BE PROVIDED BY CANADA

- (a) a list, attached as Annex “C”, and copies or access to copies, of all the interests and licences granted by Canada in or in relation to We Wai Kai Lands, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;
- (b) a list, attached as Annex “D”, and copies of all existing information in Canada’s possession, respecting any actual or potential environmental problems with We Wai Kai Lands; and
- (c) a list, attached as Annex “E”, and copies of any other information in Canada’s possession that materially affects the interests and licences mentioned in clause 2.1(a).

This information will be received by We Wai Kai prior to the membership vote on the We Wai Kai Nation land Code.

TRANSFER OF RIGHTS

As of the date the Land Code comes into force, Canada transfers to We Wai Kai the following:

- (a) all of Canada's rights, obligations and powers as a grantor in or under instruments creating, granting, transferring or disposing of interests or licences in We Wai Kai Lands; and
- (b) all of Canada’s rights to the benefit of covenants, stipulations and provisions contained in those instruments.

TRANSFER OF LAND ADMINISTRATION

As of the date the Land Code comes into force:

- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the *Framework Agreement* and section 38 of the *Act*, cease to apply and Canada retains no powers in relation to We Wai Kai Lands under these provisions.
- (b) We Wai Kai shall have all the powers required to manage We Wai Kai Lands and resources; and
- (c) We Wai Kai shall commence administering We Wai Kai Lands pursuant to its Land Code.

We Wai Kai and the Minister agree that the portion of Cape Mudge Indian Reserve #10 shown as Lots 27 and 28 on Plan 95965 will be excluded from the application of the Land Code. These lands are the road located on Cape Mudge Indian Reserve #10 where there is a dispute with the province over the boundaries of the road that is not likely to be resolved before the land code is submitted for community approval. The dispute affects a minimal amount of lands and does not affect access to Cape Mudge Indian Reserve #10. We Wai Kai is not giving up any rights to this land.

TRANSFER OF REVENUE MONIES

Within 30 days of the coming into force of the Land Code Canada will transfer to We Wai Kai the revenue monies they have been holding on behalf of We Wai Kai. These amounts are set out in Annex "B" to the Individual Agreement

OPERATIONAL FUNDING

Canada agrees to provide We Wai Kai with annual funding to cover the costs of lands administration. The amount of this funding is set out in Annex "A" to the Individual Agreement.

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

The environmental assessment process set out in Annex “F” will apply to projects on We Wai Kai Lands until the enactment of We Wai Kai laws in relation to that subject.

SPECIFIC CLAIMS

Nothing in the Individual Agreement prejudices or prevents We Wai Kai from pursuing its Specific Claims, including specific claims already identified by We Wai Kai and those still to be identified, either through the specific claims process, the proposed Specific Claims tribunal, any new or alternative forum for specific claims resolution, or through litigation.

LIABILITY

The liability provisions, as set out in the *Act*, apply to this Agreement:

- (a) We Wai Kai is not liable in respect of anything done or omitted to be done before the coming into force of its Land Code by Canada or any person or body authorized by Canada to act in relation to We Wai Kai Lands.
- (b) Canada shall indemnify We Wai Kai for any loss suffered by We Wai Kai as a result of an act or omission described in clause 12.1 (a).
- (c) Canada is not liable in respect of anything done or omitted to be done after the coming into force of the Land Code of We Wai Kai by We Wai Kai or any person or body authorized by We Wai Kai to act in relation to We Wai Kai Lands.

We Wai Kai shall indemnify Canada for any loss suffered by Canada as a result of an act or omission described in subsection 12.1 (c).

Several Annexes form part of the Individual Agreement. They are the following:

ANNEX A SETS OUT THE FUNDING PROVIDED BY CANADA TO WE WAI KAI FOR LANDS ADMINISTRATION

ANNEX B - IDENTIFIES WE WAI KAI REVENUE MONEY THAT WILL BE PAID BY CANADA TO WE WAI KAI

ANNEX C – IS A LIST OF ALL INTERESTS AND LICENCES GRANTED BY CANADA ON WE WAI KAI LANDS

ANNEX D – IS A LIST OF ALL INFORMATION AND REPORTS PROVIDED BY CANADA RELATING TO ENVIRONMENTAL CONDITIONS ON WE WAI KAI LANDS

ANNEX F – SETS OUT THE INTERIM ENVIRONMENTAL ASSESSMENT PROCESS THAT WILL APPLY UNTIL WE WAI KAI ENACTS ITS OWN ENVIRONMENTAL ASSESSMENT LAW

ANNEX G IS THE LEGAL DESCRIPTION OF WE WAI KAI LANDS

Proposed We Wai Kai Land Management (FNLMA) Phase II Environmental Site Assessment (ESA)
 Program as derived from the Recommendations of the ESA Assessor's Phase I ESA, that would be
 Conducted on the event of a **Successful Ratification Vote** of the We Wai Kai Nation Land Code and the
 Individual Agreement (IA)

Site Description and APEC Numbers from Phase 1 ESA	Nature of Potential Contamination	Recommended Investigations
Drew Harbour I.R. No. 9		
Campground	Discarded car batteries, i.e., metals	Remove materials, conduct surficial soil sampling, submit for laboratory analysis, interpret results and recommend course of action as required.
Cape Mudge No. 10		
On the beach near the carving shed	Scrap metal, i.e., metals	Remove materials, conduct surficial soil sampling, submit for laboratory analysis, interpret results and recommend course of action as required.
Diesel AST (5,500 L) and generator at Tsa Kwa Luten Lodge.	Hydrocarbons, metals	Inspect AST, conduct surficial soil sampling, submit for laboratory analysis, interpret results and recommend course of action as required.
Homes heated by oil furnaces with ASTs.	Hydrocarbons, metals	Inspect ASTs, where surficial staining noted, conduct surficial soil sampling, submit for laboratory analysis, interpret results and recommend course of action as required.
Cape Mudge Lightstation		Determine status of remediation of soil, PCB light ballasts, lead based paint and additional contamination, and recommend course of action as required.
Boat Works:	Unlabelled containers of unidentified liquid; Piles of scrap metal, wood, a discarded generator, jerry cans and hazardous waste (e.g., paint cans, car batteries), improper storage of solvents, and boat scraping	Characterize, remove and properly dispose of unidentified liquid waste. Remove and properly dispose of solid and hazardous waste. Conduct surficial and borehole soil sampling, and groundwater monitoring well sampling, submit for laboratory analysis, interpret results and recommend course of action as required.

Site Description and APEC Numbers from Phase 1 ESA	Nature of Potential Contamination	Recommended Investigations
	(chips, sandblasted materials, fiberglass, etc.) and painting on exposed, previous surfaces. Metals, hydrocarbons, PAHs, TBT, etc.	
Quinsam I.R. No. 12		
Three (3) areas along edge of abandoned logging road.	Dumping of household waste (e.g., mattresses, drywall, plastic, scrap metal and wood, car batteries, appliances, etc.).	Remove materials, conduct surficial soil sampling, submit for laboratory analysis, interpret results and recommend course of action as required.