



VILLAGE OF HARRISON HOT SPRINGS NOTICE OF MEETING AND AGENDA

REGULAR COUNCIL MEETING

Date: Monday, October 21, 2013
Time: Following Public Hearing
Location: Council Chambers, 495 Hot Springs Road
 Harrison Hot Springs, British Columbia

1. CALL TO ORDER		
Meeting called to order by Mayor Facio		
2. INTRODUCTION OF LATE ITEMS		
3. APPROVAL OF AGENDA		
4. ADOPTION OF COUNCIL MINUTES		
<p>THAT the Regular Council Meeting Minutes of October 7, 2013 be adopted.</p> <p>THAT the Special Council Meeting Minutes of October 16, 2013 be adopted.</p>	<p>Item 4.1 Page 1</p> <p>Item 4.2 Page 9</p>	
5. BUSINESS ARISING FROM THE MINUTES		
6. CONSENT AGENDA		
i. Bylaws		
ii. Agreements		
Committee/ Commission Minutes		
iv. Correspondence		
7. DELEGATIONS		
8. CORRESPONDENCE		
<p>Letter from the Corporation of Delta Re: Proposed Changes to Federal Reserve Policy</p>		<p>Item 8.1 Page 11</p>

9. BUSINESS ARISING FROM CORRESPONDENCE	
10. REPORTS FROM COMMITTEES, COMMITTEE OF THE WHOLE AND COMMISSIONS	
11. REPORTS FROM MAYOR	
L. Facio - Verbal	
12. REPORTS FROM STAFF	
13. BYLAWS	
Report of Chief Administrative Officer – Verbal Re: Zoning Amendment Bylaw No. 1043, 2013	Item 13.1 Page 59
RECOMMENDATION: THAT Zoning Amendment Bylaw No. 1043, 2013 be read a third time.	
14. QUESTIONS FROM THE PUBLIC (pertaining to agenda items only)	
15. ADJOURNMENT	

**VILLAGE OF HARRISON HOT SPRINGS
MINUTES OF THE REGULAR MEETING OF COUNCIL**

DATE: October 7, 2013
TIME: 7:00 p.m.
PLACE: Council Chambers
495 Hot Springs Road, Harrison Hot Springs, BC

IN ATTENDANCE: Mayor Leo Facio
Councillor John Buckley
Councillor Zoltan Kiss
Councillor Sonja Reyerse
Councillor Allan Jackson

CAO, Ian Crane
DCAO/CO, Debra Key
Operations Manager, Ian Gardner
Manager of Development and Community Services, Lisa Grant

Recorder: Debra Key

ABSENT:

1. CALL TO ORDER

Mayor Facio called the meeting to order at 7:00 p.m.

2. INTRODUCTION OF LATE ITEMS

- Introduction of new Manager of Development and Community Services, Lisa Grant

3. APPROVAL OF AGENDA

Moved by Councillor Jackson
Seconded by Councillor Buckley

THAT the agenda be approved as amended.

**CARRIED
UNANIMOUSLY**

4. ADOPTION AND RECEIPT OF MINUTES

Moved by Councillor Kiss
Seconded by Councillor Reyerse

THAT the minutes of the Regular Council Meeting of September 9, 2013, be adopted.

CARRIED

UNANIMOUSLY

Moved by Councillor Jackson
Seconded by Councillor Buckley

THAT the minutes of the Special Council Meeting of September 20, 2013, be adopted.

CARRIED
UNANIMOUSLY

Moved by Councillor Buckley
Seconded by Councillor Reyerse

THAT the Committee of the Whole Meeting Minutes of September 30, 2013, be adopted.

CARRIED
UNANIMOUSLY

5. BUSINESS ARISING FROM THE MINUTES

6. CONSENT AGENDA

i. Bylaws Municipal Ticketing Information Repeal Bylaw No. 1044, 2013

ii. Agreements

iii. Committee/
Commission
Minutes Advisory Planning Commission Meeting Minutes of June 13, 2013

iv
Correspondence

Moved by Councillor Jackson
Seconded by Councillor Kiss

i. Bylaws

iii. Committee/
Commission
Minutes

THAT the Bylaw be adopted and the Commission meeting minutes be received.

CARRIED
UNANIMOUSLY

7. DELEGATIONS

8. CORRESPONDENCE

British Columbia Achievement Foundation dated September 16, 2013.

9. **BUSINESS ARISING OUT OF CORRESPONDENCE**

10. **REPORTS OF COMMITTEES, COMMITTEE OF THE WHOLE AND COMMISSIONS**

Committee of the Whole Committee

Moved by Councillor Jackson
Seconded by Councillor Buckley

THAT Council recommend that the two unfinished double humps on Miami River Drive be removed and install one speed hump on Walnut Avenue as per the map.

**CARRIED
UNANIMOUSLY**

Moved by Councillor Buckley
Seconded by Councillor Jackson

THAT staff be directed to research the cost of a portable sign for advertisement purposes and report back to Council.

**CARRIED
UNANIMOUSLY**

11. **REPORTS FROM MAYOR FACIO**

Reported that a Wildsafe BC presentation will be held at Memorial Hall between 7:00 p.m. and 9:00 p.m. on October 10, 2013. This presentation is being facilitated by a representative of the Fraser Valley Regional District.

The Ministry of Transportation has paved the gravel shoulder to create a safer ride for cyclists on Hot Springs Road.

Moved by Councillor Kiss
Seconded by Councillor Buckley

THAT a letter be sent to Minister Todd Stone and Brian Atkins of the Ministry of Transportation for the construction of the bicycle lane on Hot Springs Road.

**CARRIED
UNANIMOUSLY**

*Village of Harrison Hot Springs
Minutes of the Regular Council Meeting
October 7, 2013*

Thank you to Councillor Buckley for acting as Deputy Mayor for the past three months. Councillor Jackson will be the Deputy Mayor for the months of October until December, 2013.

Chief Administrative Officer, Ian Crane introduced Lisa Grant as the Manager of Development and Community Services. Lisa has several years of experience in Municipal Government planning departments and was recently employed with the Fraser Valley Regional District and the Corporation of Delta. She is also a member of the Planning Institution of British Columbia.

UBCM was one of the best conferences to date. Council had a discussion with the District of Kent and First Nations and Premier Clark regarding gravel removal.

Resort Municipality of Whistler presented on the Resort Municipality Initiative and some of the RMI projects that other communities have completed.

Uceluet had an increase of tourists of 20-30%.

The Mayor's Caucus was very interesting. Approximately 126 Mayors from all over the Province that attended.

Attended the Community to Community Forum on October 1, 2013, which included a tour of the area and ended with a review of the plans for the proposed resort that will be built in Hemlock.

October is Foster Family month.

Attended the Canadian Shoreline Cleanup. A lot of garbage was collected and the volunteers commended the Village Staff with the amount of garbage that is picked up along the beach.

British Columbia Youth Parliament 85th for youth between the ages of 16-21 from December 1-December 31, 2013 will be held in Victoria in Provincial Legislative Chambers.

Attended the Terry Fox Run in Agassiz.

Thank you to Councillor Buckley for his participation in the goat milking in this year's Fall Fair.

September 10, 2013 attended the Lower Mainland District Mayors' Consolidated Forum at the RCMP Headquarters in Surrey.

Young Anderson distributed a booklet at UBCM. There was two interesting parts:

*Village of Harrison Hot Springs
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October 7, 2013*

1. This decision serves a reminder to Local Government employees, officers and elected officials, that they are not bared from suing for defamation issues stemming from untrue statements made about how they personally act in public office; and
2. In the Canadian Law the consistency rule is marked by high deference given by courts to locally elected councils. Courts have been reluctant to overturn Council's bylaws as not being consistent with the official plan. Supreme Court has led the way in this regard. As we know most communities' plans are full of broad, vague, and high sounding public policy. Many of the broad policies overlap and conflict with one another.

The Mayor reported that a flyer was distributed throughout the Village by a member of the public. The Mayor provided clarification on the issues made in the flyer. Mayor Facio commented that Harrison residents are upset to receive this sort of literature in their mailboxes and asked that residents attend the Village Office to make inquiries and obtain correct facts.

12.

REPORTS FROM STAFF

Report of Deputy Chief Administrative Officer/CO – August 27, 2013

Re: Agreement for Mutual Aid Fire Protection – District of Kent and Village of Harrison Hot Springs

Moved by Councillor Buckley

Seconded by Councillor Kiss

THAT the new Agreement for Mutual Aid Fire Protection, including Schedule "A" between the District of Kent and Village of Harrison Hot Springs be approved.

**CARRIED
UNANIMOUSLY**

Councillor Kiss excused himself from Chambers at 7:30 p.m. due to a potential conflict of interest stating that he completed surveying work at this location.

Report of Deputy Chief Administrative Officer/CO – September 24, 2013

Re: Development Variance Permit – Hot Springs Road, Parcel A, Fractional Section 13, Township 4, Range 29, West of the Sixth Meridian, New Westminster Land District Plan 70213

Village of Harrison Hot Springs
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Moved by Councillor Jackson
Seconded by Councillor Buckley

THAT Council approve the issuance of a Development Variance Permit for the Village of Harrison Hot Springs to vary Zoning Bylaw No. 1020, 2012, Village Community and Institutional Zone P-1, Section .4)(1)(1.1) Permitted Uses, *Front Lot Line* Setback by reducing the minimum setback of 6 meters to 4.5 meters and the *Interior side lot line* setback of 6 meters to 1.5 meters.

**CARRIED
UNANIMOUSLY
BY MEMBERS REMAINING**

Councillor Kiss re-entered the Chambers at 7:35 p.m.

Report of Deputy Chief Administrative Officer/CO – September 25, 2013

Re: Development Permit – Rockwell Drive – Block Fr. except Plan 251, 9656, 9786, 27133, 38836, 48818, 53383, 66843, 66844, 66845, 66846, 70213, except PL: LMP 10582

Moved by Councillor Reverse
Seconded by Councillor Buckley

THAT Council approve the issuance of Development Permit DP01/13 for a portion of the lands legally known as Block Fr. except Plan 25, 9656, 9786, 27133, 38836, 48818, 53383, 66843, 66844, 66845, 66846, 70213, except PL: LMP 10582 located on Rockwell Drive.

**CARRIED
UNANIMOUSLY**

Report of Chief Administrative Officer – September 26, 2013

Re: School Speed Zone

Moved by Councillor Reverse
Seconded by Councillor Kiss

THAT Council instruct staff to formally request the Ministry of Transportation and Infrastructure to consider changing the school speed restriction zone hours along Hot Springs Road from the existing 8:00 a.m. until 5:00 p.m. to 8:00 a.m. until 3:00 p.m.

**DEFEATED
OPPOSED BY COUNCILLOR BUCKLEY
OPPOSED BY COUNCILLOR JACKSON
OPPOSED BY MAYOR FACIO**

Councillor Kiss excused himself from the Chambers at 7:50 p.m. due to a potential conflict of interest stating his friend/neighbor is involved with the subject property.

Village of Harrison Hot Springs
Minutes of the Regular Council Meeting
October 7, 2013

13.

BYLAWS

Report of Chief Administrative Officer – Verbal
Re: Zoning Amendment Bylaw No. 1043, 2013

Moved by Councillor Buckley
Seconded by Councillor Jackson

THAT second reading of Zoning Amendment Bylaw No. 1043, 2013 be rescinded.

**CARRIED
UNANIMOUSLY
BY MEMBERS REMAINING**

Moved by Councillor Buckley
Seconded by Councillor Jackson

FURTHER THAT under Map Amendment 2. (a), the text be amended by deleting the words *Low Density Residential (Duplex) – R-2 zone* and Schedule 1 map text be amended by deleting the words *Low Density Residential (Conventional Lot)- R-1 zone* and replaced with *Low Density Residential (Duplex) – R-2 zone*; and

**CARRIED
UNANIMOUSLY
BY MEMBERS REMAINING**

Moved by Councillor Buckley
Seconded by Councillor Reyerse

FURTHER THAT Zoning Amendment Bylaw NO. 1043 be read a second time as amended and a Public Hearing be scheduled for October 21, 2013.

**CARRIED
UNANIMOUSLY
BY MEMBERS REMAINING**

Councillor Kiss re-entered the Chambers at 7:56 p.m.

14.

QUESTIONS FROM THE PUBLIC

Q: A member of the public asked why Council feels it is necessary to implement 30km/h since the school is on Walnut Avenue.

A: A representative from ICBC was in the Village assessing safety concerns.

15.

ADJOURNMENT

Moved by Councillor Buckley
Seconded by Councillor Kiss

THAT the meeting be closed to the public pursuant to Section 90(1)(d) of the *Community Charter*.

The meeting closed at 7:58 p.m.

**CARRIED
UNANIMOUSLY**

Leo Facio
Mayor

Debra Key
Corporate Officer

DRAFT

**VILLAGE OF HARRISON HOT SPRINGS
MINUTES OF THE SPECIAL MEETING OF COUNCIL**

DATE: October 16, 2013
TIME: 1:30 p.m.
PLACE: Council Chambers
495 Hot Springs Road, Harrison Hot Springs, BC

IN ATTENDANCE:

Mayor Leo Facio
Councillor John Buckley
Councillor Allan Jackson
Councillor Sonja Reyerse
Councillor Zoltan Kiss

Chief Administrative Officer, Ian Crane
Manager of Development and Community Services, Lisa Grant

Recording Secretary, Krystal Sobie

ABSENT:

1. CALL TO ORDER

Mayor Facio called the meeting to order at 1:30 p.m.

2. INTRODUCTION OF LATE ITEMS

3. APPROVAL OF AGENDA

- That Item 5.1 be amended to add Lisa Grant's job title and read:

THAT Council appoint Lisa Grant, Manager of Development and Community Services as the Village's representative to the Board of Directors of the Harrison Tourism Society.

Moved by Councillor Jackson
Seconded by Councillor Buckley

THAT the agenda be approved as amended.

**CARRIED
UNANIMOUSLY**

4. DELEGATIONS

Village of Harrison Hot Springs
Minutes of the Special Council Meeting
October 16, 2013

5. REPORTS FROM STAFF

Report of Deputy Chief Administrative Officer/CO – October 10, 2013

Re: Appointment of Village representatives to the Board of Directors Harrison Tourism Society

Moved by Councillor Kiss

Seconded by Councillor Buckley

THAT Council appoint Lisa Grant, Manager of Development and Community Services, as the Village's representative to the Board of Directors of the Harrison Tourism Society.

**CARRIED
UNANIMOUSLY**

Report of Manager of Development and Community Services

Re: 2014 Age-friendly Community Planning and Project Grants

Moved by Councillor Kiss

Seconded by Councillor Buckley

THAT Council supports undertaking an age-friendly plan and will manage the grant funding and project if the Village of Harrison Hot Springs is awarded a grant from the UBCM 2014 Age-friendly Community Planning and Project Grant Program.

**CARRIED
UNANIMOUSLY**

6. BYLAWS

7. QUESTION PERIOD

8. ADJOURNMENT

Moved by Councillor Buckley

Seconded by Councillor Jackson

THAT the meeting be adjourned at 1:45 p.m.

**CARRIED
UNANIMOUSLY**

Leo Facio
Mayor

Debra Key
Corporate Officer



THE CORPORATION OF DELTA

From the office of:

The Mayor,
Lois E. Jackson

October 8, 2013

All B.C. Mayors and Councils
Members of the Legislative Assembly, British Columbia
Premier Clark and Members of the Executive Council
British Columbia Members of Parliament
British Columbia Members of the Senate
Federation of Canadian Municipalities

Dear Sirs/Mesdames,

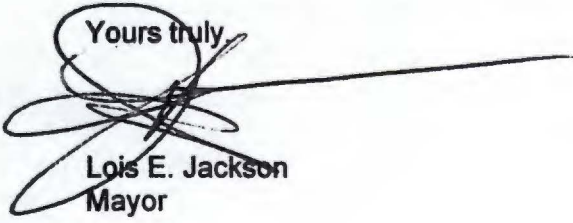
Re: Proposed Changes to Federal Reserve Policy

At the Union of BC Municipalities convention last month, I had the opportunity to speak with a number of municipal and provincial representatives regarding the proposed changes to the federal *'Policy on Additions to Reserve and Reserve Creation'*. I was concerned that many people have not been made aware of this issue and therefore do not understand the implications of the changes being proposed.

The proposed amendments to the *"Policy on Additions to Reserve and Reserve Creation"* have some very significant implications for local governments. In particular, the changes will allow First Nations to add lands to their Reserve that are outside of their traditional territory. This means, for example, that a First Nation in the Caribou could acquire land in Delta and include it in their Reserve thereby removing it from municipal jurisdiction.

Additional information regarding the proposed changes is provided in the attached documents. The significance of this issue cannot be understated, and I am seeking support to ensure the policy changes are not adopted as proposed. The federal government has requested feedback on this issue and I would urge those of you who share my concerns to contact the Minister of Aboriginal Affairs and Northern Development directly.

Yours truly,


Lois E. Jackson
Mayor

Enclosure

cc: Delta Council
George V. Harvie, Chief Administrative Officer



The Corporation of Delta
COUNCIL REPORT
Regular Meeting

To: **Mayor and Council**

From: **Human Resources and Corporate
 Planning Department**

Date: **August 20, 2013**

Proposed Federal Additions-to-Reserve/Reserve Creation Policy

The following report has been reviewed and endorsed by the Chief Administrative Officer.

▪ **RECOMMENDATIONS:**

- A. THAT the Mayor write a letter to the Minister of Aboriginal Affairs and Northern Development Canada expressing Delta's concerns with the 2013 draft Additions-to-Reserve/Reserve Creation Policy, substantially in the form of Attachment A.
- B. THAT a copy of this report be sent to the Premier, the Minister of Aboriginal Relations and Reconciliation, MP Kerry-Lynne Findlay, MP Jinny Sims, MLA Scott Hamilton, MLA Vicki Huntington, UBCM and the Metro Vancouver Aboriginal Relations Committee.
- C. THAT an Additions-to-Reserve/Reserve Creation Policy resolution be submitted to the Federation of Canadian Municipalities for consideration.

▪ **PURPOSE:**

The purpose of this report is to identify Delta's concerns associated with the proposed Federal Additions to Reserve/Reserve Creation Policy.

▪ **BACKGROUND:**

The federal government developed an Additions-to-Reserve Policy ("ATR Policy") in 1972 and last updated it in 2001. The ATR Policy sets out the conditions and issues to be addressed before land can be added to Indian Reserve ("Reserve"). The ATR Policy was created to fill a legislative gap, as additions to Reserves are not addressed in the *Indian Act* or other federal legislation. Under the 2001 ATR Policy, a parcel of land can be added to an existing Reserve to accommodate community growth and to meet social needs and legal obligations. Lands have been added to Reserves over time for many reasons, including more recently, for economic development purposes.

In recent years, First Nations have raised concerns regarding the ATR Policy describing it as complex, ineffective, time-consuming and unduly restrictive. In response to this criticism, the federal government and Standing Senate Committee on Aboriginal Peoples

("Senate Committee") initiated a review of the ATR Policy in 2010. In February 2012, the Senate Committee invited First Nations to provide input on the ATR Policy process; this invitation was not extended to local or regional governments. In November 2012, the Senate Committee released an additions to Reserve related report titled, *Additions to Reserve: Expediting the Process* summarizing the ATR Policy revision proceedings. In May 2013, Aboriginal Affairs and Northern Development Canada (AANDC) released a draft Additions to Reserve/Reserve Creation Policy ("draft ATR Policy") and requested comment from First Nations and other interested parties by September 30, 2013 (Attachment B). The UBCM recently sent a media release to local governments advising of the proposed ATR Policy revisions. UBCM members were requested to provide UBCM with any feedback submitted to AANDC so that this feedback could also be used in a consolidated member response (Attachment C). The Metro Vancouver Aboriginal Relations Committee has also advised member municipalities of the ATR Policy revisions and has requested that members provide the Committee with feedback for its response by September 20, 2013.

▪ DISCUSSION:

The proposed revisions to the ATR Policy are intended to streamline the additions to Reserve proposal process and remove duplication, clarify roles and responsibilities, and facilitate economic development for First Nations. However, while working to improve the process for First Nations, the proposed changes to the ATR Policy may have drastic implications for local governments.

The ATR Policy revisions has effectively reduced the policy from 73 pages (2001 Policy) to 31 pages (2013 Draft Policy) – this has left gaping holes in the consultation section while offering a fast-tracked economic development opportunity for First Nations. The following provides a summary of key local government concerns that Delta staff, in consultation with UBCM and Metro Vancouver have identified:

1. **Reasons for Additions:** the draft ATR Policy allows First Nations to add to an existing Reserve for economic development purposes. This is a major policy shift which may encourage First Nation acquisition of lands currently held under Local Government jurisdiction. This will likely cause multiple concerns for Local Governments, including legal, jurisdictional, fiscal, and service provision.
2. **Location of Reserve Lands:** the draft ATR Policy allows First Nations to add lands to Reserve even where the land is outside the First Nation's Traditional or Treaty Territory, as long as the majority of the First Nation's existing Reserve land is located within the Province or Territory. Local Governments may be faced with competing First Nations from across the province purchasing fee simple land outside their traditional territory to add to Reserve, likely for economic development purpose.
3. **Land Use:** when an addition to Reserve has been approved, Local Government land use bylaws, zoning and related enforcement would no longer be applicable on land. The First Nation has the authority to determine how to use their Reserve lands according to the needs and interests of the community. As a prerequisite to addition to Reserve approval, First Nations must negotiate areas of joint land use planning and bylaw harmonization with neighbouring Local Governments. However,

agreement with a Local Government is ultimately not necessary. Business owners and individuals that rent/lease land that forms part of lands added to Reserve will find themselves under new jurisdiction.

It is unclear how this policy will impact the Provincial Agricultural Land Reserve ("ALR") as it is not mentioned in the policy document. However, as this is Federal jurisdiction with no Provincial or Local Government veto power, it is realistic to be concerned about ALR designations on lands added to Reserve.

4. **Local Government Consultation:** under the draft ATR Policy, when land to be set aside as Reserve is within or adjacent/abutting a Local Government, the First Nation must notify the Local Government in order to provide an opportunity to assess the impact to existing land use plans and service delivery; however, Local Governments no longer have a three month timeframe in which to provide a formal response (note: the Province is still provided this benefit). It is unclear whether Local Government input will even be considered regardless of the timeframe.
5. **No Veto Power** – the Province and Local Governments have no general or unilateral veto to a Reserve Creation Proposal.
6. **First Nation-Local Government Agreements** – it is expected under the draft ATR Policy that the First Nation and Local Government will reach an agreement to service addition to Reserve land, yet there is no requirement to reach consensus and the policy does not provide for dispute resolution. Both parties are to "negotiate in good will, good faith and reasonableness". Further complicating this issue, Regional Districts are not obligated to provide utilities to any entities other than member municipalities.
7. **Net Tax Loss** – local governments will need to negotiate adjustments for net tax loss once land is transferred from the Local Government to the First Nation; however, the draft ATR Policy indicates that the adjustments are not intended to provide indefinite compensation. The draft ATR Policy does not specify a timeframe for how long adjustments should extend or a formula for compensation; thus, Local Governments will be fiscally impacted by the eventual loss of tax revenue. In addition, the Federal Government may approve the addition to Reserve even if the Local Government and First Nation do not agree on tax loss compensation. The Federal policy does not require the First Nation to pay compensation in all circumstances.

Delta Context: Any First Nation with the majority of their Reserve lands in BC could purchase land within Delta from a willing private seller and apply to have this land included as part of their Reserve. The Corporation of Delta would not have a veto over the granting of Indian Reserve status and municipal consent is not required for an addition to Reserve to take place. The Corporation of Delta would review an addition to Reserve proposal and would have the ability to try and negotiate for lost revenue (e.g., municipal tax loss). However, the federal government can approve an addition to Reserve regardless of whether a revenue agreement was reached between the Corporation of Delta and the First Nation.

It is unclear as to whether the municipality or Metro Vancouver would be obligated to provide the required services to ATR lands. In addition, it is unclear if lands currently held within the ALR could be removed from the ALR during the addition to Reserve process.

The federal ATR Policy does not apply to Tsawwassen First Nation, as Tsawwassen is a treaty First Nation. However, Tsawwassen First Nation does have a process under its 2009 Treaty Final Agreement for adding land to its Treaty Settlement Lands. Essentially, Tsawwassen can add lands that it owns in fee simple to Tsawwassen Lands once every 5 years. Tsawwassen has rights of first refusal on the Brunswick Point Lands and within the first 50 years of the Treaty these lands can be added to Tsawwassen Lands. After 50 years Tsawwassen can apply to have any Brunswick Point or other fee simple lands added to Tsawwassen Lands if the lands are owned in fee simple, within Tsawwassen Territory and with the municipalities consent. Included as Attachment D, is the Tsawwassen Final Agreement Addition to Tsawwassen Lands section. The process outlined in the Tsawwassen Final Agreement is more considerate of all parties needs as opposed to that being suggested by the Federal ATR policy.

MP Kerry-Lynne Findlay, Mayor Jackson and Chief Administrative Officer George Harvie Discussions: In recent discussions with Mayor Lois E. Jackson and Mr. Harvie, MP Findlay had identified issues with previous attempts of the Musqueam Indian Band to add lands to their Reserve. Though it was a different process it highlights some potential concerns. Musqueam Indian Band had tried to include lands into their Reserve without applying through the additions to Reserve process. In the late 1990s, the Musqueam attempted to include three properties at the North Arm of the Fraser River to their Reserve by interpreting the *Indian Act* in such a way that would see the parcels included as Musqueam Reserve lands. The BC Supreme Court ruled that only the federal Crown had the ability to convert land into Reserve land. An Appeal on this decision was held and the case was dismissed. There is no reference in the court proceedings that the Musqueam ever submitted an addition to Reserve application for these properties. The proposed changes to the ATR Policy will likely make such additions to Reserve easier and more compelling for First Nations. Subsequently, Mayor Lois E. Jackson has publicly commented on her concerns for the potential of a shrinking municipal land and tax base if Delta lands are added to First Nation Reserves (Attachment E).

Implications:

Financial Implications – there are no financial implications associated with the adoption of this report.

▪ **CONCLUSION:**

The Federal Government is proposing changes to the Addition to Reserves/Reserve Creation Policy. Staff have reviewed a draft version and have serious concerns for the potential implications to Delta and other Local Governments. These concerns have been summarized for Council's information.



Sean McGill

Director of Human Resources and Corporate Planning

Department submission prepared by: Paula Kolisnek, Senior Policy Analyst

▪ **ATTACHMENTS:**

- A. Letter from Mayor Jackson to the Minister of Aboriginal Affairs and Northern Development Canada
- B. Draft Reserve/Addition to Reserve Policy
- C. UBCM Media Release
- D. Tsawwassen Final Treaty – Addition to Tsawwassen Lands
- E. Newspaper article, Mayor's concerns

August 26, 2013

The Honourable Bernard Valcourt
Minister of Aboriginal Affairs and Northern Development

Dear Minister,

Re: Proposed Federal Additions-to-Reserve/Reserve Creation Policy

The proposed revisions to the Policy on Additions to Reserve/Reserve Creation are cause for great concern to The Corporation of Delta and its residents. The enclosed staff report describes Delta's concerns, but briefly they are as follows:

- potential additions to Reserves for economic development purposes;
- potential additions to Reserves outside the First Nation's Traditional Territory;
- land use concerns, particularly related to BC's Agricultural Land Reserve;
- elimination of the opportunity for local governments to submit a formal response when land is set aside as Reserve;
- lack of provincial or local government veto power against a Reserve Creation Proposal;
- lack of a dispute resolution process for the negotiation of service agreements; and
- net tax loss to local governments due to the lack of indefinite tax loss adjustments.

The importance of these issues to Delta cannot be understated. We remain deeply concerned about the proposed revisions to the Policy on Additions to Reserve/Reserve Creation and are asking for your assistance to ensure that local governments do not face undue hardship as a result of the policy changes.

Thank you for your consideration of this important matter.

Yours truly,

Lois E. Jackson
Mayor

Enclosure

cc: The Honourable Christy Clark, Premier of British Columbia

The Honourable John Rustad, Minister of Aboriginal Relations and Reconciliation
The Honourable Kerry-Lynne Findlay, Minister of National Revenue
Jinny Sims, MP, Newton-North Delta
Scott Hamilton, MLA, Delta North
Vicki Huntington, MLA, Delta South
Union of British Columbia Municipalities
Metro Vancouver Aboriginal Relations Committee
George V. Harvie, Chief Administrative Officer
Sean McGill, Director of Human Resources and Corporate Planning

Aboriginal Affairs and Northern Development Canada

Land Management Manual, Chapter 10

Additions to Reserve/Reserve Creation

DRAFT
2013

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Directive 10 – 1: **Policy on Additions to Reserve/Reserve Creation**

1.0 Effective Date

- 1.1** This Policy on Additions to Reserve/Reserve Creation (the "Policy" or the "Additions to Reserve/Reserve Creation Policy") is issued under the authority of the Minister of Indian Affairs and Northern Development (hereinafter called "the Minister of Aboriginal Affairs and Northern Development Canada" or "the Minister"). This Policy shall be administered by the Department of Indian Affairs and Northern Development (hereinafter called "Aboriginal Affairs and Northern Development Canada" or "AANDC"). This Policy received approval on XXXX, and is effective as of XXXX.
- 1.2** This Policy is Chapter 10 of AANDC's Land Management Manual (the "Manual"). It includes all the directives contained in this Chapter including their annexes. It replaces all prior policies, interim policies, directives, standards, procedures and guidelines relating to Reserve Creation, including Additions to Reserve.
- 1.3** In this Policy, the term Reserve Creation is used to refer to both Additions to Reserve and the creation of New Reserves.

2.0 Application (Purpose)

This Policy applies to employees of AANDC and provides guidance to First Nations with respect to the assessment, acceptance and implementation of Reserve Creation Proposals, including First Nations operating under the *First Nations Land Management Act*.

3.0 Interpretation

- 3.1** Definitions used in this Policy are found in Annex C.
- 3.2** Any reference in this Policy to a statute or regulation includes any amendment to that statute or regulation from time to time and any successor statute or regulation.

3.3 Any reference to a policy, directive, standard, procedure or guideline includes any amendment to that policy, directive, standard, procedure or guideline made from time to time.

4.0 Context

4.1 Orders in Council

The authority of the Governor in Council to grant Reserve status flows from the Royal Prerogative, which is a non-statutory authority. There is no statutory authority under the *Indian Act* to set apart land as a Reserve. Typically, lands must first be acquired or converted to federal title by Canada under the *Federal Real Property and Federal Immovables Act*, and then granted Reserve status by federal OIC on the recommendation of the Minister of AANDC.

4.2 Ministerial Orders

Other authorities to set apart land as Reserve are found in the *Manitoba Claim Settlements Implementation Act* and the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*. These allow for Reserve Creation in the provinces of Alberta, Saskatchewan and Manitoba by MO without the requirement for an OIC.

5.0 Policy Statement

Reserve Creation may be used to fulfill Canada's legal obligations, and may further serve a broader public interest by supporting the community, social and economic objectives of First Nations by expanding a First Nation's land base.

6.0 Objectives

This Policy is intended to:

- a) Provide clear policy direction for Reserve Creation.
- b) Promote consistent assessment, acceptance and implementation of Reserve Creation Proposals where possible.
- c) Consider the interests of all parties and find opportunities for collaboration where possible.
- d) Streamline the process for Reserve Creation Proposals.

7.0 Principles

The following principles must be respected in the application of this Policy:

- a) Nothing in this Policy constitutes a guarantee that any Reserve Creation Proposal will ultimately result in a particular parcel of land being set apart as Reserve. The final decision to set apart land as Reserve rests with the Governor in Council or the Minister. See clause 4.0 (Context).
- b) AANDC will consider the potential or established Aboriginal or Treaty rights of First Nation, Métis and Inuit peoples before setting apart lands as Reserve.
- c) The views and interests of provincial, territorial and local governments will be considered, and collaboration between the First Nations and those governments will be encouraged on issues of mutual interest and concern.
- d) Options to address third party interests or rights on lands will be identified when considering Reserve Creation Proposals.
- e) Reserve Creation Proposals will make cost effective use of financial resources.
- f) The environmental condition of land proposed for Reserve Creation will be acceptable for its intended use, and will comply with applicable federal requirements, including requirements for land acquisition as defined by Treasury Board policy.
- g) The use and development of community and land use planning tools is encouraged to assist First Nations in planning for land acquisition and Reserve Creation, and to facilitate land management after Reserve Creation.

8.0 Categories of Reserve Creation

To be eligible under this Policy, a Reserve Creation Proposal must fit within one of the following three categories:

- ### 8.1 Legal Obligations and Agreements - Where there is a legal obligation or an Agreement that contemplates Reserve Creation including:

- a) Settlement Agreements;
- b) Land exchange Agreements;
- c) Land transactions with a reversionary interest to the First Nation;
- d) Agreements for returns of former Reserve land where there is no express reversionary interest;
- e) Agreements with landless Bands;
- f) Agreements for the relocation of communities or the establishment of new Reserves.

8.2 Community Additions – Where a First Nation with an existing Reserve needs additional Reserve land for any of the following purposes:

- a) Residential, institutional, recreational uses, to accommodate community growth;
- b) Use or protection of culturally significant sites;
- c) Economic development;
- d) Geographic enhancements to improve the functioning of existing Reserve base;
- e) Where the First Nation has entered into a legally binding agreement with the Province or a Local Government or a corporation that is empowered by law to take or to use lands, and Canada is not a party to the agreement but agrees to implement those provisions of the agreement. This may include transactions under section 35 of the *Indian Act*.

8.3 Tribunal Decisions - Where a First Nation seeks to re-acquire or replace lands that were the subject of a Specific Claim. The specific claims tribunal under the *Specific Claims Tribunal Act* only has the authority to award compensation to First Nations. Reserve Creation Proposals will be considered where lands will be acquired with compensation awarded by the specific claims tribunal for decisions that establish a failure to fulfill a legal obligation of the Crown to provide lands under a treaty or another Agreement, or a breach of a legal obligation arising from the Crown's provision or non-provision of Reserve lands, or an illegal disposition by the Crown of Reserve lands.

9.0 Selection Area

9.1 The Proposed Reserve Land should normally be located within a First Nation's treaty or traditional territory.

9.2 Proposed Reserve Land may be outside the First Nation's treaty or traditional territory, provided the Proposed Reserve Land is within the Province or territory where the majority of the First Nation's existing Reserve land is located.

10.0 Reserve Creation Proposals

- 10.1** In order for Reserve Creation to be considered under this Policy, a First Nation must provide a Reserve Creation Proposal that satisfies the minimum proposal requirements set out in Directive 10 – 2: Reserve Creation Process.
- 10.2** Before submitting a Reserve Creation Proposal to the Governor-in-Council or the Minister for acceptance, all relevant Reserve Creation Proposal criteria set out in Annex A and all relevant special circumstances requirements set out in Annex B, all as identified in a Letter of Support, must be met.

11.0 Proposal Assessment

- 11.1** AANDC will review the Reserve Creation Proposal in accordance with Directive 10-2: Reserve Creation Process.
- 11.2** If a proposal will be supported, AANDC will identify in the Letter of Support the relevant criteria that must be satisfied before AANDC will recommend that the Proposed Reserve Lands be set apart as a Reserve.
- 11.3** AANDC will provide a written explanation for any Reserve Creation Proposal that will not be supported.

12.0 Financial Implications

- 12.1** In the absence of an Agreement or other arrangement providing funding, AANDC is not obligated by this Policy to provide funding for Reserve Creation activities, including:
- a) Land acquisition,
 - b) Surveys,
 - c) Environmental costs including but not limited to assessment activities, remediation and monitoring/mitigation activities,
 - d) Transactional costs associated with land acquisition,
 - e) Incremental costs resulting from negotiations with Local Governments, and
 - f) Any additional funding for infrastructure, housing, or other capital costs.
- 12.2** AANDC must identify any foreseeable financial implications for Canada, as well as potential sources of funding before a Letter of Support is issued.

13.0 Community Consent

13.1 Where community consent is required for Reserve Creation the following applies:

- a) A Band Council Resolution (BCR) is required for all Reserve Creation Proposals,
- b) In the limited circumstances where a Band vote is required under this policy, a vote will be held in accordance with the *Indian Referendum Regulations*, and will be decided by a majority of those eligible electors of each participating First Nation who voted (simple majority), and
- c) A First Nation may choose to establish a higher threshold for community consent for the conduct of these votes.

14.0 Roles and Responsibilities

14.1 The Minister is responsible for:

- a) The decision to approve Reserve Creation through the issuance of a MO,
or
- b) The decision to recommend Reserve Creation where the Reserve will be created by OIC.

14.2 The Deputy Minister is responsible for the administration of the Additions to Reserve/Reserve Creation Policy.

14.3 The role of the Regional Director General is to review and consider whether to issue a Letter of Support.

15.0 Policy Assessment and Review

15.1 Within five years from the effective date of this Policy, AANDC Headquarters, Lands and Economic Development, Lands and Environmental Monitoring Branch (LEMB) will conduct a review of the effectiveness of this Policy.

15.2 The effectiveness of the Policy will be examined by AANDC using the results of assessment activities undertaken for the Policy directives and other instruments that flow from it. LEMB will identify and undertake any additional monitoring and assessment activities as necessary to undertake an effective policy review.

16.0 Legislation and Related Policy Instruments

The following lists some of the legislation and policy instruments applicable to the Additions to Reserve/Reserve Creation Policy. The list is not exhaustive. Other legislation and policy instruments may apply.

16.1 Legislation

- a) *The Indian Act;*
- b) *The Constitution Acts;*
- c) *Manitoba Claim Settlements Implementation Act and the Claim Settlements (Alberta and Saskatchewan) Implementation Act;*
- d) *The Federal Real Property and Federal Immovables Act, and regulations;*
- e) *Canadian Environmental Assessment Act 2012 (CEAA 2012) and regulations;*
- f) *The Species at Risk Act;*
- g) *Canada Lands Surveys Act and regulations;*
- h) *Indian Lands Agreement (1986) Confirmation Act, 2010 (Statutes of Ontario);*
- i) *Indian Lands Agreement Act (1986);*
- j) *Specific Claims Tribunal Act;*
- k) *First Nation Statistical and Financial Management Act;*
- l) *First Nations Commercial and Industrial Development Act;*
- m) *Canadian Environmental Protection Act.*

16.2 Related Policy Instruments

- a) *AANDC's Land Management Manual;*
- b) *AANDC's New Bands and Band Amalgamations Policy ;*
- c) *Chapter 12 of AANDC's Land Management Manual (Environmental Obligations);*

- d) Treasury Board Secretariat *Policy on Management of Real Property*;
- e) AANDC's *Indian Lands Registration Manual*;
- f) AANDC's *Specific Claims Policy*;
- g) Geographical Names Board of Canada; *Principles and Procedures for Geographic Naming*, 2011; Public Works and Government Services Canada, ISBN 978-1-100-52417-7;
- h) *First Nation Taxation Commission and Federation of Canadian Municipalities* for information on First Nation/municipal tax/service agreements and models;
- i) *Framework Agreement between Lands and Trust Services, AANDC and Legal Surveys Division, Natural Resources Canada, February 25, 2009*, registered in the Indian Land Registry under Instrument No. 258930, for the type of land description requirements for Reserve land transactions, including additions/new Reserves.

17.0 Enquiries

For information on this Policy or to obtain any of the above-noted references, please contact:

Aboriginal Affairs and Northern Development Canada
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Quebec
Postal Address:
Ottawa, Ontario
K1A 0H4

Email: InfoPubs@aadnc-aandc.gc.ca

Phone: (toll-free) 1-800-567-9604

Fax: 1-866-817-3977

TTY: (toll-free) 1-866-553-0554

Directive 10 – 1: Annex A **Reserve Creation Proposal Criteria**

The criteria that apply to all Reserve Creation Proposals within the categories set out in clause 8.0 of Directive 10-1 of the Policy include, but are not limited to:

1.0 Duty to Consult - Aboriginal or Treaty Rights

- 1.1 As provided in clause 7.0(b) of the Policy, AANDC will consider the potential or established Aboriginal or Treaty rights of First Nation, Métis and Inuit peoples before setting apart lands as Reserve.
- 1.2 Before Reserve Creation, AANDC will assess whether the Crown has met its duty to consult (where the duty exists) with First Nation, Métis and Inuit peoples, as applicable, whose Aboriginal or treaty rights may be adversely impacted by Crown action related to the Reserve Creation. AANDC will follow the applicable policies and guidelines of the Government of Canada relating to consultation as they exist from time to time when considering a Reserve Creation Proposal.
- 1.3 This assessment may also include examination of any prior consultations by other parties.

2.0 Environmental Management (see Chapter 12 of the Manual)

2.1 Definitions

In this clause,

- a) "Applicable Environmental Standard" means the standard established to determine whether the environmental condition of land (including water and sediments) is suitable for the intended land use. The standard for such a determination is the standard established by the Canadian Council of Ministers of the Environment ("CCME"), or in the absence of a CCME standard, the provincial standard in the Province in which the Reserve is being created.
- b) "Indemnification Agreement" means an Agreement that sets out terms satisfactory to AANDC on the following matters: a release of Canada from liability for any existing and future claims relating to the environmental condition of the Proposed Reserve Land; an indemnity by the First Nation against such claims; agreement by the First Nation to impose appropriate

land use restrictions through land use plans and by-laws; provision of funds or security for remediation; any necessary ongoing monitoring or future remediation requirements; and any other conditions deemed necessary by AANDC in the circumstances.

2.2 General Policy

It is the policy of AANDC to avoid the acquisition of contaminated land for Reserve Creation. Acquisition of contaminated land will only be considered where the level of Contamination is consistent with the intended use, the risks to human health and the environment are minimal, the risks to Canada are manageable, and there is a strong business case supporting Reserve Creation.

2.3 Environmental Site Assessment

- a) An Environmental Site Assessment must be conducted in accordance with Chapter 12 of the Manual to determine the environmental condition of the Proposed Reserve Land. The Environmental Site Assessment identifies past or present activities that might have adversely affected the environmental condition of the Proposed Reserve Land. The Environmental Site Assessment should include information on the nature, scope and limitations of the assessment.
- b) If AANDC prepares or contracts for the preparation of the Environmental Site Assessment, AANDC shall provide a copy of it to the First Nation. If the First Nation contracts for the preparation of the Environmental Site Assessment, the First Nation shall provide a copy of it to AANDC.
- c) If the Environmental Site Assessment identifies some contamination, but determines that the environmental condition of the Proposed Reserve Land meets the Applicable Environmental Standard for its intended use following Reserve Creation, AANDC may consider recommending Reserve Creation provided that:
 - i. in the case of industrial or commercial use, a lease will be put in place containing environmental terms and a federal regulatory regime is in place to govern the use following Reserve Creation;
 - ii. the First Nation is fully apprised of the condition of the Proposed Reserve Land and has received independent expert advice;
 - iii. the First Nation has, by Band Council Resolution and (if requested by AANDC) Band vote, approved the acquisition of such Land on an "as is" basis; and

- iv. if requested by AANDC, the First Nation has entered into an Indemnification Agreement on terms satisfactory to AANDC.
- d) Where the Environmental Site Assessment determines that the environmental condition of the Proposed Reserve Land does not meet the Applicable Environmental Standard for the intended use following Reserve Creation, AANDC will reject the Reserve Creation Proposal but may reconsider it at a later date if the land is remediated to the Applicable Environmental Standard. Where either the vendor of the land or the First Nation undertakes the remediation, the First Nation must provide satisfactory evidence to AANDC of the remediation to the Applicable Environmental Standard, supported by an environmental consultant's report. Where, in rare cases, AANDC is responsible for remediation, the Department must ensure that satisfactory remediation has been completed. In all cases, the remediation should be well documented and the documentation retained on file by AANDC.

2.4 Environmental Assessment of a Proposed Project

- a) Where there is a proposed activity or project contemplated for the Proposed Reserve Land, AANDC may not be able to proceed with acquisition of the Proposed Reserve Land or with a recommendation for Reserve Creation until an environmental assessment or determination with respect to the activity or project has been completed in accordance with the applicable law and a decision has been made by the appropriate authority that the activity or project is not likely to cause significant adverse environmental effects or that the significant environmental effects that it is likely to cause are justified in the circumstances.
- b) In the case of certain projects, AANDC may not be able to recommend Reserve Creation unless and until that there is a federal regulatory regime in place to govern the activity or project, and the First Nation should be advised accordingly. An Indemnification Agreement may also be required in some circumstances.
- c) See Chapter 12 of the Manual for more detail on environmental assessment of activities or projects.
- d) Designations are usually required for activities or projects. See Chapter 5 of the Manual for more detail on designations.

3.0 Improvements to Proposed Reserve Land

- a) Any improvements made by the First Nation to the Proposed Reserve Land before Reserve Creation must be in compliance with applicable

federal legislative requirements that will apply once the Reserve is created.

- b) Any improvement on Proposed Reserve Land may delay or prevent Reserve Creation due to environmental issues or other matters. For example, improvements on Proposed Reserve Land may require an additional ESA and a designation vote in accordance with the *Indian Act*.

4.0 Other Federal Departments and Agencies

Following issuance of a Letter of Support, AANDC's regional office will contact other federal departments and agencies (e.g., Health Canada and the RCMP) and give them the opportunity to assess any potential impact of the Reserve Creation Proposal on their program delivery.

5.0 Existing Encumbrances

- a) As provided in section 5.1.1 of Directive 10-2, the First Nation must include in its Reserve Creation Proposal the results of investigations identifying existing encumbrances (third party interests or rights both registered or unregistered, i.e., leases, licenses, permits, easements, rights of way, etc.) normally achieved by a title search, provincial canvass, or site visit, and including supporting documentation if applicable.
- b) Following receipt of the Reserve Creation Proposal and prior to issuing the Letter of Support, a title review must be conducted by DOJ and all encumbrances identified and confirmed.
- c) Following issuance of the Letter of Support, existing encumbrances should be extinguished, or replaced, or minimized.
- d) In certain circumstances, taking title to Proposed Reserve Land subject to an encumbrance may be considered.
- e) Before Reserve Creation, the First Nation must resolve any issues related to lawful possession or rights for First Nation members occupying Proposed Reserve Land pursuant to section 22 or 23 of the *Indian Act*.

6.0 Third Party Access

- a) Before Reserve Creation, in conjunction with AANDC, the First Nation

must address:

- i. access to any third-party land that would be "landlocked" by the Reserve Creation; and
 - ii. access to utilities for that third-party land.
- b) If a third party has subsurface rights in the Proposed Reserve Land, the First Nation must negotiate access over the Proposed Reserve Land to exercise those rights, or a buy-out of those rights, before Reserve Creation.
- c) If a third party owns the Mines and Minerals in the Proposed Reserve Land, and intends to exploit the Mines and Minerals, the First Nation must have written consent of that party to a surface only Reserve, or a buy-out of the sub-surface title must be completed prior to the surface land being granted Reserve status.
- d) The First Nation has the lead role in the negotiations on third party access issues. Where requested by a First Nation, AANDC may provide facilitative or technical assistance in support of negotiations.

7.0 Land Descriptions

- a) Before recommending Reserve Creation, parcel boundaries will be described in accordance with the Framework Agreement between Lands and Trust Services Department of Indian Affairs and Northern Development and Legal Surveys Division, Earth Sciences Sector, Natural Resources Canada, from Chapter B1-2 - General Instructions for Surveys (<http://class.nrcan.gc.ca/standards-normes/b1-2-v3-eng.asp>), and such description must be reviewed by DOJ before being finalized.
- b) A land description may include a survey.

8.0 Provincial Considerations

- a) The First Nation must notify the Province in writing of the Reserve Creation Proposal and give them the opportunity to assess the potential impact on their existing land use plans and program delivery. Three months must be given to the Province to express any views in writing and set out any issues for discussion. Any issues must be addressed and documented by written correspondence between the First Nation and the Province.

- b) Provincial concurrence is required for the return of unsold surrendered land within the province where the unsold surrendered land is under provincial title (e.g. in Ontario, pursuant to the *Indian Lands Agreement Act, 1986*).
- c) While provincial Governments must be consulted, they have no general or unilateral veto with respect to a Reserve Creation Proposal. Where AANDC is satisfied that concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with the Policy.
- d) Where there are outstanding issues or concerns arising from provincial consultations, and the First Nation and the RDG agree to proceed, the Reserve Creation Proposal will be forwarded, with options, to the Deputy Minister or Minister for review.
- e) The First Nation is responsible for discussions with provincial governments. Where requested by a First Nation, AANDC may provide facilitative or technical assistance in support of the discussions.

9.0 Local Governments

General:

- a) In recognition that Reserve communities and Local Governments exist side by side, AANDC promotes a "good neighbour" approach, which means that any discussions between First Nations and Local Governments should be conducted with good will, good faith and reasonableness.
- b) First Nations and Local Governments will discuss issues of mutual interest and concern (joint land-use planning/by-law harmonization, tax considerations, service provision or dispute resolution).
- c) While Local Governments must be consulted, they have no general or unilateral veto with respect to a Reserve Creation Proposal. Where concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with the Policy.
- d) The First Nation is responsible for the negotiation of any agreements with Local Governments. Where requested by a First Nation, AANDC may provide facilitative or technical assistance in support of the negotiations.
- e) Canada will not be a party to any agreement between a First Nation and a Local Government.

Consultation:

- f) Where the Proposed Reserve Land is within or adjacent/abutting a Local Government, the First Nation will notify the Local Government in writing of the Reserve Creation Proposal in order to give the Local Government an opportunity to assess any potential impact of the Reserve Creation Proposal on their existing land use plans and service delivery.
- g) A First Nation-Local Government agreement may be necessary to address the provision of services, by-law compatibility, a consultation and dispute resolution process for matters of mutual concern, or potential net tax loss adjustments due to the loss of Local Government jurisdiction over the Proposed Reserve Land. The Local Government and First Nation should formalize such an agreement in writing.

Local Government Tax Considerations:

- h) Unless already provided for in an Agreement or in a service agreement between the First Nation and the Local Government, and where requested by a Local Government, the First Nation is responsible for paying any negotiated net tax loss adjustment.
- i) Negotiations concerning net tax loss adjustments are intended to allow the Local Government to adjust to the net effect of the combined reduction in Local Government servicing costs and reduced tax base caused by a Reserve Creation Proposal. It is not intended to compensate indefinitely for the gross level of lost taxes.
- j) The First Nation is responsible for negotiation of agreements with Local Governments, including agreements for municipal services or net tax loss adjustment. Where requested by a First Nation, AANDC may provide facilitative or technical assistance in support of the negotiations.
- k) AANDC is not a party to any agreement for municipal services or net tax loss compensation.

Outstanding Local Government issues:

- l) The RDG may agree to support the Reserve Creation Proposal where the First Nation is prepared to enter into an agreement on the issues raised by the Local Government and the RDG determines that the Local Government is unwilling to respond in good faith.
- m) Similarly, the RDG may choose to withdraw support for a Reserve Creation Proposal in cases where a First Nation has demonstrated an unwillingness to negotiate in good faith with a Local Government or where

a Municipal Service Agreement is required to provide essential services to a Reserve, but has not been concluded.

Directive 10 – 1: Annex B
Special Circumstances Policy Requirements

1.0 Accretion/Erosion

1.1 In this clause,

"Accretion" means the imperceptible and gradual addition to land by the slow action of water; and

"Erosion" means the imperceptible and gradual loss of land by the slow action of water.

1.2 Where the gradual movement of water boundaries occurs on Reserve lands:

- a) Any locatee or interest holder benefits from any accretion or suffers any loss due to erosion;
- b) Any lands accreting to a Reserve takes on the characteristics of the Reserve and any lands lost by erosion lose the characteristics of the Reserve; and
- c) No OIC or MO is required to change the boundary of the Reserve unless there are exceptional or controversial circumstances such as litigation or contentious relations between parties. These exceptional or controversial circumstances will be determined on a case by case basis.

1.3 For greater certainty, accretion and erosion do not apply to flooding.

2.0 Natural Disasters

2.1 Reserve Creation Proposals that are made as a result of natural disasters such as flooding will be considered on a case by case basis. These may include the use of replacement lands where an Agreement has been reached.

2.2 A proposal made under these circumstances will be assessed in accordance with the Reserve Creation Proposal Criteria set out in Annex "A" of Directive 10-1. In addition, such proposals resulting from a natural disaster may require consideration of the following:

- a) The risk involved if the community remains at the original site;

- b) The nature and extent of future risk;
- c) Extent of preventative or remedial action required;
- d) The cost of undertaking preventative or remedial measures compared to the cost of relocation, and
- e) The overall benefits to the community for each option.

3.0 Subsurface Rights

3.1 This Policy does not authorize Reserve Creation which consists of subsurface rights only. This Policy does authorize Reserve Creation for specific portions of subsurface rights described in clauses 3.0 and 4.0 of this Annex.

3.2 When the land being set apart as Reserve is subject to a provincial exception in the surface title, every effort should be made to include the mineral rights underlying the exception even if this makes the subsurface rights greater than the surface rights.

4.0 Partial Subsurface Interest Additions

4.1 In this clause,

"Partial Interests in Mines or Minerals" means that a First Nation would acquire only a part of an interest in Mines and Minerals. For example, if a $\frac{1}{4}$ interest is purchased, only that $\frac{1}{4}$ interest can be set apart as reserve providing that the conditions set out in this clause are met.

4.2 Where First Nations seek Reserve Creation to acquire Partial Interests in Mines and Minerals, the following conditions apply:

- a) The surface of the land described in the Reserve Creation Proposal must be Reserve;
- b) Title to the Partial Interest in the Mines and Minerals must be acquired by the First Nation and transferred to Canada before Reserve Creation;
- c) The First Nation must be fully informed of the complexities of dealing with Partial Interests in Mines and Minerals;

- d) A Partial Interest in Mines and Minerals cannot be explored or exploited without obtaining the appropriate provincial instrument including the written consent of each partial interest holder;
- e) All the owners of the partial subsurface interests must sign a joint agreement before Canada proceeds with Reserve Creation. This agreement must detail the conditions under which this partial interest would be held and how it would be managed for the group of owners.

5.0 Small Mineral Additions

5.1 In limited circumstances Reserve Creation may be considered for subsurface rights (i.e. Mines and Minerals) where the surface land is not Reserve. This may arise where a Province excludes the surface land from the transfer to Canada for Reserve Creation. The common provincial exclusions to the surface title are public roads, highways, certain water bodies and water courses.

5.2 Reserve Creation Proposals for subsurface interests may be greater than the surface rights due to the exclusions by the Province from the surface title. These subsurface rights can include Mines and Minerals which are potentially valuable resources for First Nations. The following would create this situation:

- a) The Province or Local Government holds the title to the surface while a private individual holds title to the subsurface. The Province is willing to transfer its interest to the surface for the purpose of granting Reserve status but wishes to Reserve a portion for purposes such as public roads, highways, certain water-bodies and water courses. However, the subsurface owner is willing to transfer the entire underlying subsurface interest. This will result in a lesser amount of surface rights being granted Reserve status than subsurface rights.
- b) A private individual holds title to both the surface and subsurface and is willing to transfer this interest for the purpose of granting Reserve status to the land. The Mines and Minerals may be included with the surface title or may be held under a separate subsurface title. However, the Province has the option of reserving a portion of the surface title for purposes such as public roads, highways, certain water-bodies and water courses. This will result in a lesser amount of surface rights being granted Reserve status than subsurface rights.
- c) Either the Province or a private individual has title to the surface and the province holds title to the subsurface. The province may, upon negotiated agreement, choose to transfer subsurface rights while reserving portions of the surface title to itself for purposes such as public roads, highways,

certain water-bodies and water courses. This will result in a lesser amount of surface rights being granted Reserve status than subsurface rights.

6.0 Correcting a Reserve Creation OIC or MO

6.1 Where provincial Crown Land has been acquired and set apart as a Reserve by an OIC or MO and the surface or subsurface rights are unclear, both an amending order in council from the Province and an amending OIC or MO from Canada are required to clarify the rights.

6.2 Where small amounts of mineral rights were purchased with the intention of Reserve Creation but this has not been done, an omnibus OIC or MO may be used.

7.0 Special Reserves under Section 36 of the *Indian Act*

7.1 Section 36 of the *Indian Act* states: *Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in Her Majesty, this Act applies as though the lands were a Reserve within the meaning of this Act.*

7.2 While section 36 of the *Indian Act* allows for the creation of special Reserves, Reserve Creation requires the exercise of the Royal Prerogative and therefore no Reserve may be created except with the agreement of Canada. A special Reserve, therefore, cannot be created by the unilateral act of a third party.

7.3 No special Reserves will be created using section 36 of the *Indian Act*.

8.0 Joint Reserves

8.1 Reserve Creation Proposals for Joint Reserves will be considered on a case by case basis where cost implications and other factors associated with the management of a Joint Reserve have been addressed.

8.2 Reserve Creation Proposals for Joint Reserves raise complex legal and administrative issues. Before a Reserve Creation Proposal for a Joint Reserve will be considered, a written co-management agreement between the parties is required, and must address the following elements:

- i. Cost implications for the creation and management of the Joint Reserve.

- ii. The requirement for unanimity of all First Nations involved for decisions requiring consent of the band council or membership (surrenders, designations, permits, leases, certificates of possession, etc).
- iii. Applicability of a First Nation Land Management ("FNLN") land code.
- iv. Treaty – generally speaking, in the Province of British Columbia, joint reserve lands will not be eligible for conversion to treaty settlement lands through the implementation of a treaty under the British Columbia Treaty Process unless all First Nations for whom the reserve was set aside were party to the same modern treaty.
- v. By-laws – for a band by-law to apply to joint reserve lands, the same by-law would need to be passed by each of the First Nations involved.
- vi. Interest - each First Nation will have an equal undivided interest in the Joint Reserve lands regardless of the size of the lands.

- 8.3** Reserve Creation Proposals for Joint Reserves require a vote by the electors of each participating First Nation, held in accordance with the *Indian Referendum Regulations*, and will be decided by a majority of those eligible electors of each participating First Nation who voted (simple majority).
- 8.4** Information Session. At a minimum, one information session is held for the benefit of the electors of each participating First Nation prior to a vote. The information session should include all the details of the Reserve Creation Proposal for a Joint Reserve including, but not limited to, details of the co-management agreement, complexities associated with designation requirements, the day-to-day administration, the requirement for unanimity for any decision affecting the use of the Joint Reserve and what that means, etc.
- 8.5** Separate Votes. While all participating First Nations may vote at the same time, separate voting results must be tabulated for each to confirm that the membership of each participating First Nation supports the Joint Reserve.
- 8.6** Failed Votes. If one or more of the participating First Nations fail to consent to the Reserve Creation Proposal for a Joint Reserve, those First Nations that did not vote in favour may hold a second vote following the same procedure as the first vote. If all of the First Nations do not vote in favour, the Reserve Creation Proposal for a Joint Reserve will not normally be considered further, unless the participating First Nations have previously agreed that the Joint Reserve may proceed without the First Nations who did not hold a successful vote.
- 8.7** Legal Obligation. Where the Reserve Creation Proposal for a Joint Reserve is in partial or full satisfaction of legal obligations, to one or more of the participating First Nations, the Reserve Creation Proposal for a Joint Reserve must address how the obligation is being satisfied with respect to those First Nations and include a release of Canada from any liability.
- 8.8** Indemnity. The Department will require that all participating First Nations indemnify Canada in writing from any claims by any of them or their members

pertaining to the use of the Joint Reserve or the division of benefits or losses derived from the Joint Reserve.

Directive 10 – 1: Annex C - Definitions

"AANDC" has the meaning given in sub-clause 1.1 of Directive 10-1;

"Addition to Reserve" means the act of adding land to an existing Reserve land base of a First Nation;

"Agreement" means any written agreement to which Canada is a party that includes provisions with respect to Reserve Creation;

"Canada" means Her Majesty the Queen in Right of Canada;

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

"DOJ" means the Department of Justice;

"Environmental Site Assessment" or "ESA" means an analysis of Proposed Reserve Land with respect to past and present uses, as well as on-site and off-site activities that may have the potential to affect the Proposed Reserve Land's environmental quality, including the health and safety of occupants/residents;

"First Nation" or "Band" means a "band" as defined under the *Indian Act*;

"Joint Reserve" means a Reserve that is set apart for the use and benefit of more than one First Nation;

"Letter of Support" or "LOS" means a letter from AANDC to the First Nation that states that the First Nation's Reserve Creation Proposal will be supported by AANDC to the extent indicated in this Policy and identifies the criteria that must be satisfied before AANDC will recommend the Proposed Reserve Land for Reserve Creation;

"Local Government" means a city, town, village or other built-up area with municipal or other authorities and includes a rural or urban municipality, as defined in relevant provincial legislation;

"Manual" has the meaning given in sub-clause 1.2 of Directive 10-1;

"Mines and Minerals" means mines and minerals, precious or base, including oil and gas;

"Minister" has the meaning given in sub-clause 1.1 of Directive 10-1;

"MO" means Ministerial Order;

"New Reserve" means the act of creating a Reserve for a First Nation with no existing land base;

"OIC" means Order in Council;

"Policy" or "Additions to Reserve/Reserve Creation Policy" has the meaning given in section 1.1 of Directive 10-1;

"Proposed Reserve Land" means land proposed by the First Nation for Reserve Creation;

"Province" means a province of Canada, and includes Yukon, the Northwest Territories and Nunavut;

"RDG" means Regional Director General;

"Reserve" means a reserve as defined in the *Indian Act*;

"Reserve Creation" means the act of adding land to an existing Reserve or creating a new Reserve for a First Nation by OIC or MO;

"Reserve Creation Proposal" means the formal proposal by a First Nation to add land to an existing Reserve or to create a new Reserve by OIC or MO;

"Reserve Creation Proposal Criteria" means the relevant criteria set out in Annex A of Directive 10-1 of the Policy and any other criteria as determined by AANDC;

"Royal Prerogative" means the power of the Crown, as represented by the Governor in Council, to take action as an exercise of its executive power. Setting apart Reserves is one such power and it is exercised by the Governor in Council acting through an OIC at the request of the Minister;

"Selection Area" has the meaning given in clause 9.0 of Directive 10-1.

Directive 10 – 2: **Reserve Creation Process**

1.0 Effective Date

- 1.1 This Directive on the Reserve Creation Process is effective as of **XXXX**.
- 1.2 This Directive forms part of AANDC's *Land Management Manual*, Chapter 10, Reserve Creation.

2.0 Application

- 2.1 This Directive applies to employees of AANDC and provides guidance to First Nations with respect to Reserve Creation Proposals, including First Nations operating under the *First Nation Land Management Act*.
- 2.2 This Directive sets out the process to be followed for Reserve Creation.
- 2.3 Definitions used in this Directive are found in Annex C of Directive 10-1 of Chapter 10 of the Manual.

3.0 References

- 3.1 Legislation and related policy instruments relevant to this Directive are set out in Directive 10-1, clause 16.0 (Legislation and Related Policy Instruments) of the Policy.

4.0 Objectives

- 4.1 The objectives of this Directive are set out in Directive 10-1, clause 6.0 (Objectives) of the Policy.

5.0 Requirements and Responsibilities

- 5.1 **Phase 1 – Reserve Creation Proposal Development**

5.1.1 The Reserve Creation Process begins when the First Nation submits a Band Council Resolution (BCR) and the Reserve Creation Proposal to the AANDC Region seeking Reserve Creation. At a minimum, the Reserve Creation Proposal must include:

- i. The applicable Policy category;
- ii. Selection Area;
- iii. Land Use – Unless otherwise stated in an Agreement, the First Nation must describe the current and intended use of the Proposed Reserve Land;
- iv. Where available, the offer to purchase, title search including, the registered owner(s), and a general description of Proposed Reserve Land sufficient to identify location;
- v. Proximity of the Proposed Reserve Land to a Local Government;
- vi. Whether mineral rights are to be included and, if so, the registered owner(s);
- vii. Although an Environmental Site Assessment is not required at this stage, any environmental information of the historical, current and intended use of the Proposed Reserve Land;
- viii. Transaction costs applicable under the Policy (and the potential source of funds);
- ix. Other net benefits of Proposed Reserve Land use;
- x. Results of investigations identifying existing encumbrances normally achieved by a title search, provincial canvass, and/or site visit, and including supporting documentation if applicable;
- xi. Any known provincial, municipal, Aboriginal, or other interests; and
- xii. Whether services are required. If services are required, enumerate what services and the plan to provide for or acquire them.

5.1.2 If the Reserve Creation Proposal adds to an existing Reserve, the BCR should set out the name and number of the existing Reserve. If the Reserve Creation Proposal involves the creation of a new Reserve, the proposed name and number of the new Reserve should be identified in the BCR. Naming should be in accordance with the Geographical Names Board of Canada.

5.1.3 Reserve Creation Proposals must be submitted to the AANDC Region within which the majority of the First Nation's land is located, regardless of the Selection Area.

5.2 Phase 2 - Letter of Support

5.2.1 AANDC staff may discuss the Reserve Creation Proposal with the First Nation before the determination contemplated by 5.2.3, and assist the First Nation in the preparation of the Reserve Creation Proposal where appropriate.

- 5.2.2** Upon receipt of a Reserve Creation Proposal, a written acknowledgement of receipt will be provided by AANDC Region to the First Nation.
- 5.2.3** Following receipt, AANDC will determine whether or not the proposal meets the minimum requirements set out in 5.1.1 of this Directive. When that review is complete, AANDC will advise the First Nation in writing of the results of the determination. If the Reserve Creation Proposal has not met the minimum requirements, the Region will advise the First Nation of the deficiencies to be addressed before the proposal will be considered further.
- 5.2.4** If the Reserve Creation Proposal has met the minimum requirements, AANDC will review the Reserve Creation Proposal for the purposes of determining whether a Letter of Support will be issued.
- 5.2.5** If a Reserve Creation Proposal is outside the RDG's authority but the RDG and the First Nation still wish to proceed, the RDG will forward the Reserve Creation Proposal to the Deputy Minister for review and consideration.
- 5.2.6** The RDG (or the Deputy Minister) may issue a Letter of Support or reject the Reserve Creation Proposal. If a Letter of Support is to be issued, AANDC will identify in the Letter of Support the Reserve Creation Proposal Criteria that must be satisfied before AANDC will recommend Reserve Creation.
- 5.2.7** AANDC will provide a written explanation for any Reserve Creation Proposal that will not be supported. Such explanation may include but is not limited to:
- a) Reserve Creation Proposal Criteria not able to be readily satisfied
 - b) Minister's discretion not to recommend Reserve Creation
 - c) AANDC Reserve Creation Proposal implementation planning

5.3 Phase 3 – Reserve Creation Proposal Completion

- 5.3.1** Where a Letter of Support is issued, Regional AANDC and the First Nation will work together to develop a work plan identifying the requirements to meet the Reserve Creation Proposal Criteria identified. AANDC and the First Nation will clarify their respective roles and responsibilities within the process, e.g., with respect to communications planning, environmental site assessments, surveys, community planning requirements, mechanisms to address third party interests, etc.
- 5.3.2** AANDC will initiate an annual review of each Reserve Creation Proposal with the First Nation to determine whether work plan objectives have been met. Where objectives have not been met, the work plan requirements may be revised.

5.3.3 Once all of the Reserve Creation Proposal Criteria have been satisfied, the First Nation will ensure that all of the required information has been forwarded to the AANDC Region and will advise AANDC that the Reserve Creation Proposal has been completed.

5.3.4 Transfer of administration and control from a Province or acquisition of the fee simple title is to be completed in accordance with the *Federal Real Property and Federal Immovables Act* and its regulations.

5.3.5 AANDC Region will verify that the Reserve Creation Proposal is complete, confirm the number and name of the proposed Reserve, and notify the First Nation that the Reserve Creation Proposal will be submitted to the Minister.

5.4 Phase 4 – Reserve Creation Recommendation

5.4.1 Regional AANDC staff will prepare the OIC or MO submission requesting Reserve Creation.

5.4.2 The OIC or MO submission is sent to the Minister who may in the case of an OIC submission recommend its approval to the Privy Council, or reject or approve the MO.

5.4.3 The Governor in Council either rejects or approves the OIC submission.

5.4.4 If the MO or OIC is granted, the MO or OIC is registered in AANDC's Indian Lands Registry. Regional Lands staff should arrange for the registration of all related land title documents in the Indian Lands Registry to be attached to, or accompany, the registration of the MO or OIC, as applicable.

5.4.5 AANDC Region will notify the First Nation and other relevant parties of the Reserve Creation and provide each with the registration particulars as required.

6.0 Directive Assessment and review

6.1 AANDC Headquarters, Lands and Economic Development, Lands and Environmental Monitoring Branch (LEMB) is responsible for any scheduled review of this Directive, as well as for any ad hoc reviews as necessary.

6.2 The effectiveness of the Directive will be examined using the results of assessment activities undertaken for the Policy, Directives and other instruments that flow from them. LEMB may identify and undertake any additional monitoring and assessment activities necessary.

7.0 Enquiries

For information on this Directive or to obtain any of the above-noted references, please contact:

Aboriginal Affairs and Northern Development Canada
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Quebec
Postal Address:
Ottawa, Ontario
K1A 0H4

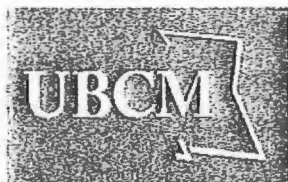
Email: InfoPubs@aadnc-aandc.gc.ca

Phone: (toll-free) 1-800-567-9604

Fax: 1-866-817-3977

TTY: (toll-free) 1-866-553-0554

8.0 Annexes (for templates, checklists)



MEMBER RELEASE

August 6, 2013

TO: Mayor and Council; Chair and Board; CAOs

FROM: Mayor Mary Sjostrom, UBCM President
Councillor Murry Krause, Chair, UBCM First Nations Relations
Committee

RE: Federal Additions to Reserve Policy – Feedback Requested

Local governments have an opportunity to provide feedback on the proposed revisions to the federal Policy on Additions to Reserves/New Reserves until September 30, 2013.

The Additions to Reserve (ATR) policy sets out the conditions and issues to be addressed before land can become reserve. The policy was created to fill a legislative gap, as ATRs are not addressed in the *Indian Act* or other federal legislation.

The UBCM First Nations Relations Committee has been monitoring the ATR policy review since December 2010. The Standing Senate Committee on Aboriginal Peoples conducted a review of the policy, culminating in the November 2012 report, *Additions to Reserve: Expediting the Process*. The Government Response to this report indicated that it would take action on issues raised by the Standing Committee, committing to:

- *Better support productive negotiations between First Nations and local governments and/or third parties through improved guidelines, tools and resources under the ATR policy and access to negotiating expertise through the National Aboriginal Land Managers Association;*
- *Identify and implement measures to mitigate predatory pricing on the sale of private land to First Nations, including an expanded ATR toolkit that outlines best practices and land acquisition strategies;*
- *Examine the provisions of existing federal legislation on claim settlement implementation, which authorize pre-reserve designation and replacement interests, and consider potential policy and legislative replacement changes that would assist in dealing with third party interests in all regions of Canada and expedite the overall ATR process; and*
- *Streamline procedural requirements in relation to the ATR policy through continued implementation or recommendations from the Auditor General, a re-design of internal lands processes, development of service standards for Canada's contribution to the reserve creation process and expansion of the National ATR Tracking System to allow First Nations to view progress on their ATRs.*

Aboriginal Affairs and Northern Development Canada (AANDC) recently released the proposed revised policy, and is looking for comments and feedback from First Nations practitioners and other interested parties. The proposed revisions aim to:

1. streamline the ATR proposal and remove duplication;
2. clarify roles and responsibilities; and
3. facilitate economic development.

The online feedback form, as well as a summary of the proposed policy changes, is available at the following link:

<http://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447>

UBCM is requesting a copy of any member feedback submitted to AANDC on the revised policy by September 13, 2013, so that a consolidated member response may be submitted prior to the feedback deadline. Please submit a copy of the feedback provided to Angela Turner (aturner@ubcm.ca, 604.270.8226 Ext. 117).

TSAWWASSEN FIRST NATION FINAL AGREEMENT

RIGHTS OF REFUSAL

35. Tsawwassen First Nation has the rights of refusal to purchase, on the terms and conditions set out in Appendix H-3, the Rights of Refusal Lands, which include Category B Lands within the meaning of the 1998 Roberts Bank Protocol Agreement between Tsawwassen First Nation and British Columbia.

ADDITION TO OR REMOVAL FROM TSAWWASSEN LANDS

36. Tsawwassen First Nation may add lands that it owns in fee simple to Tsawwassen Lands, in accordance with clauses 37 through 49, no more often than once every five years.
37. Nothing requires Canada or British Columbia to assume financial or other obligations associated with any addition to Tsawwassen Lands, including paying any costs arising because the lands added are not contiguous to Tsawwassen Lands.
38. Any financial charge or encumbrance on lands to be added to Tsawwassen Lands must be paid in full and discharged before the lands are added to Tsawwassen Lands, unless the holder of the charge or encumbrance agrees otherwise.
39. Any interest, other than a financial charge or encumbrance, on lands to be added to Tsawwassen Lands will continue, unless the holder of that interest agrees otherwise.
40. Tsawwassen First Nation will own the Subsurface Resources on lands that are added to Tsawwassen Lands if:
- a. the estate in fee simple includes ownership of Subsurface Resources;
or
 - b. British Columbia and Tsawwassen First Nation agree.
41. Specified Lands include Category B lands within the meaning of the 1998 Roberts Bank Protocol Agreement between Tsawwassen First Nation and British Columbia.
42. If, within 50 years after the Effective Date, Tsawwassen First Nation owns any parcel of Specified Lands in fee simple, that parcel of Specified Lands will become Tsawwassen Lands after completion of the process set out in clauses 43 and 44.

TSAWWASSEN FIRST NATION FINAL AGREEMENT

43. Before the addition of any parcel of Specified Lands to Tsawwassen Lands, Tsawwassen First Nation will:
- a. hold discussions with any resident of, or interest holder in, the parcel of Specified Lands and with the Corporation of Delta;
 - b. address the provision of any service provided by any municipality to a parcel of Specified Lands and any tax revenue matter related to such service;
 - c. consider whether a road that is adjacent to a parcel of Specified Lands should be a Local Road or a Local Boundary Road;
 - d. consider the compatibility of any land use plan of Tsawwassen First Nation with any municipal or regional land use or transportation plan applying to that parcel of Specified Lands; and
 - e. provide reasonable notice to Canada, British Columbia, the Greater Vancouver Regional District and the Corporation of Delta in respect of the addition of the parcel of Specified Lands and Tsawwassen First Nation will confirm in the notice that it has dealt with the matters set out in subclauses 43.a through 43.d.
44. Within 150 days of receipt of the notice referred to in subclause 43.e:
- a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;
 - b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the area of the Corporation of Delta; and
 - c. the parcel of Specified Lands will become Tsawwassen Lands upon the last of these events to occur.
45. After the 50-year period referred to in clause 42, British Columbia will consider a request by Tsawwassen First Nation to add land, including any parcel of the Specified Lands, to Tsawwassen Lands if:
- a. Tsawwassen First Nation owns the land in fee simple;
 - b. the land is within Tsawwassen Territory; and
 - c. the land is:

TSAWWASSEN FIRST NATION FINAL AGREEMENT

- i. outside municipal boundaries and a change in jurisdiction to that land will not unreasonably restrict the expansion or development of a municipality; or
 - ii. inside municipal boundaries and the municipality consents.
46. In addition to the matters set out in clause 45, British Columbia will take into account among other factors:
 - a. whether the land is contiguous to existing Tsawwassen Lands; and
 - b. the interests of a regional district in cases where the land is within a regional district but not within a municipality.
47. After the 50-year period referred to in clause 42, Canada will consider a request from Tsawwassen First Nation to add land, including any parcel of the Specified Lands, to Tsawwassen Lands if:
 - a. Tsawwassen First Nation owns the lands in fee simple;
 - b. the lands are within Tsawwassen Territory; and
 - c. the lands are:
 - i. free from any overlapping aboriginal claim; or
 - ii. subject to an overlapping aboriginal claim and the claimant consents.
48. In considering whether to consent to a request referred to in clause 45 or 47, British Columbia or Canada may take into account any other matter that British Columbia or Canada, respectively, considers relevant.
49. If Canada and British Columbia consent to an addition, then within 150 days of receipt by Tsawwassen First Nation of written notice of that consent:
 - a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;
 - b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the boundaries of the relevant municipality; and
 - c. the parcel of land will become Tsawwassen Lands upon the last of these events to occur.

TSAWWASSEN FIRST NATION FINAL AGREEMENT

50. Tsawwassen First Nation may request the consent of Canada and British Columbia to remove a parcel of Tsawwassen Lands from the jurisdiction of Tsawwassen First Nation and such lands, if removed, will cease to be Tsawwassen Lands. In considering whether to consent, Canada and British Columbia may consider:
- a. necessary jurisdictional, administrative and servicing arrangements;
 - b. the views of any affected municipalities and neighbouring First Nations;
 - c. any impact on fiscal arrangements; and
 - d. any legal or financial implications to Canada or British Columbia.
51. If Canada and British Columbia consent to the removal of a parcel of Tsawwassen Lands from the jurisdiction of Tsawwassen First Nation, then within 150 days of receipt by Tsawwassen First Nation of written notice of that consent:
- a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;
 - b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the boundaries of the relevant municipality; and
 - c. the parcel will cease to be Tsawwassen Lands upon the last of these events to occur.

HIGHWAY 17 CORRIDOR

52. On the Effective Date:
- a. the Highway 17 Corridor is not part of Tsawwassen Lands;
 - b. British Columbia owns the Highway 17 Corridor except for Subsurface Resources which are owned by Tsawwassen First Nation;
 - c. British Columbia owns the Highway 17 Corridor for use for provincial public highway purposes, subject to existing works of Public Utility set out in Appendix Q-2; and
 - d. Tsawwassen First Nation may use the Subsurface Resources if that use is consistent with the use of the Highway 17 Corridor for provincial public highway purposes and works of Public Utility.

Shrinking tax base worrisome

Mayor concerned by the financial implications of First Nations removing land from municipal jurisdiction

Sandor Gyarmati / Delta Optimist
August 7, 2013

Ottawa could make it easier for First Nations to buy land in other jurisdictions and remove it completely from any municipal taxation, something that could obviously have major implications for Delta.

"Whether or not the federal government is going to look at this as legislation, I don't know. That's why I've asked for a review of all the documents and the legislation, particularly federal legislation," said Mayor Lois Jackson.

The five-term mayor was responding to recommendations by the Standing Senate Committee on Aboriginal People, which has been examining how to improve the federal Additions to Reserve (ATR) policy. The policy is aimed at assisting First Nations wanting to add parcels outside their reserves for economic and community growth.

A hearing was held last year to discuss problems First Nations see in the current policy.

A subsequent report was released last fall by the committee, chaired by former senator Gerry St. Germain, titled Additions to Reserve: Expediting the Process. It notes that a key message conveyed by virtually all the witnesses was that although some positive change has occurred in recent years, major changes are required to the system.

The report, however, also states the committee concluded there is an urgent need for the federal government to improve Aboriginal Affairs and Northern Development Canada management practices to better deal with municipal and third-party interests, as well as exploring options for supporting First Nations in their negotiations.

Many witnesses at the hearing said the requirement of paying taxes to municipalities puts additional financial pressure on First Nations communities, thereby inhibiting their opportunity for economic development. The committee seemed to agree, noting benefits resulting from economic developments on First Nations' land outweigh any tax loss for municipalities.

It remains to be seen if the government will introduce legislation as a result of the committee's recommendations.

Last fall, St. Germain was a guest speaker at a Tsawwassen First Nation legislative session, where he urged the TFN to make every effort to add more land to its territory.

The TFN already added substantially to its land base when its historic urban treaty was signed just a few years ago and could add even more acreage if farming families in Brunswick Point eventually decide to sell their properties.

The families managed to buy back their farms that had been expropriated, but the TFN was granted the right of first refusal if those lands ever hit the market.

It's not clear if the TFN will purchase even more land elsewhere in Delta, especially when the First Nation's major commercial and industrial developments are completed.

Jackson is concerned what the Senate committee's recommendations could mean for Delta. It could result in the municipality's land base, as well as its tax base, shrinking if newly purchased properties become part of First Nation jurisdiction, she warned.

"We're not the only ones.

Local government has been left totally out of the loop. This is no aspersion on the Indian bands across this country, but local government has got to have a seat at this table. We could certainly lose municipal assets along the way, let alone municipal taxation. Our responsibility is to ensure the taxpayers' assets are protected," Jackson said.

A civic report is being prepared for council on the issue.

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**A bylaw to amend Village of Harrison Hot Springs
Zoning Bylaw 1020, 2012**

WHEREAS the Mayor and Council has deemed it advisable to amend the Village of Harrison Hot Springs Zoning Bylaw No. 1020, 2012, the Zoning Bylaw for the Village of Harrison Hot Springs, as adopted January 7th, 2013;

NOW THEREFORE in open meeting assembled, the Mayor and Council of the Village of Harrison Hot Springs enacts as follows:

CITATION

1. This Bylaw may be cited for all purposes as the "**Village of Harrison Hot Springs Zoning Bylaw Amendment Bylaw No. 1043, 2013**".

MAP AMENDMENT

2. That:
 - (a) Schedule A, the Zoning Map of the Village of Harrison Hot Springs Bylaw No. 1020, be amended by rezoning the lands located at 571 Echo Avenue, legally described as Parcel A (H62901E) Lot 15, Block 5, Section 13, Township 4, Range 29, West of the Sixth Meridian, New Westminster District Plant 251, outlined in heavy black outline and cross-hatched on Schedule 1 of this Bylaw from **Low Density Residential (Duplex) – R-2** zone to **Low Density Residential 3 (Small Lot) – R-3** zone; and,
 - (b) the map appended hereto designated as Schedule 1 showing such amendment is an integral part of this Bylaw.

READ A FIRST TIME THIS 9th DAY OF SEPTEMBER, 2013

READ A SECOND TIME THIS 9th DAY OF SEPTEMBER, 2013

RESCINDED SECOND READING THIS 7th DAY OF OCTOBER, 2013

AMENDED AND READ A SECOND TIME THIS 7th DAY OF OCTOBER, 2013

A PUBLIC HEARING WAS HELD ON THE DAY OF , 2013

READ A THIRD TIME THIS DAY OF , 2013

ADOPTED THIS DAY OF , 2013

Mayor

Corporate Officer

Bylaw No. 1043, 2013 Schedule 1

