

SUMMARY OF THE HENVEY INLET FIRST NATION LAND CODE

INTRODUCTION

The Land Code has been developed by the Land Code Committee in consultation with Council and the Community. The Land Code was drafted according to guidelines under the *Framework Agreement on First Nation Land Management*.

If the Land Code is passed, the Minister under the *Indian Act* no longer governs matters related to Reserve lands and resources. Henvey Inlet First Nation will be self-governing under the Land Code with regard to Reserve lands and resources only, so about 25% of the *Indian Act* will no longer apply to Henvey Inlet First Nation. The *Indian Act* continues to apply in large part to other matters related to the government of Henvey Inlet First Nation and its members such as education, medical services, and wills and estates.

With regard to funding, the Individual Agreement (IA) deals with the funding amount that Canada will provide for Henvey Inlet First Nation to manage its lands under the Land Code. The only time that the Land Code deals with funding is under **Ratification Vote** summarized under Part 3.

CONTENTS OF THE LAND CODE

The following highlights are sections summarized or taken from the 9 Parts of the Land Code.

PART 1 PRELIMINARY MATTERS

Special Responsibility - The Land Code states “the traditional teachings of Henvey Inlet First Nation to care for and respect the land and the magnificent wonders of Nature created on the land. By enacting this Land Code, Henvey Inlet First Nation is renewing this special responsibility”.

Flow of Authority - The Land Code states that “the authority of Henvey Inlet First Nation to govern its lands and resources flows from the Creator to the people of Henvey Inlet First Nation, and from the people to the Council”.

Purpose - The purpose of the Land Code is to set out the principles, guidelines and processes by which Henvey Inlet First Nation will exercise control and management over Reserve lands and resources consistent with the *Framework Agreement*.

Henvey Inlet First Nation Lands - All of French River Indian Reserve No. 13 will be managed under the Land Code. Henvey Inlet Indian Reserve No. 2 may be added once the land description report is completed by the government.

PART 2 FIRST NATION LEGISLATION

With Indian Affairs no longer in control, Council takes the place of the Minister of Indian Affairs. Part 2 outlines Council's authority over making, enacting, and filing land laws. Laws are officially enacted by a majority of Council at a meeting open to members.

Law-Making Powers - The Council may, subject to the terms of the Land Code, make laws respecting all aspects of its lands. Any band member of voting age may introduce a land law for review by Council and Committee. Band members living on and off Reserve have at least 35 days to review a land law before the law is enacted by Council.

Majority of Council signs land laws - Two official true copies of any land law or land resolution concerning First Nation lands **shall** be signed and witnessed by a quorum of the Council present at the meeting at which it was enacted and delivered to the Lands Committee.

Land Law Registry - Land Laws have to be filed for reference, so a Land Law Registry will be established. The Land Code states that “Council *shall* cause to be established and maintained, at the administrative offices of Henvey Inlet First Nation, a registry of official true copies of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force”.

PART 3 COMMUNITY INVOLVEMENT

An important Part of lands management, the members of Henvey Inlet First Nation are involved in 3 different ways in lands management – through community input, community approval, and ratification vote.

Community Input - Council *shall* consult with members at a community meeting of members before a land law can be enacted on each of the following matters:

- respecting a community plan or subdivision plan
- affecting a heritage site or an environmentally sensitive property
- respecting environmental assessment and protection
- respecting the transfer and assignment of rights and interests in Henvey Inlet First Nation Land
- respecting spousal property on Henvey Inlet First Nation Land under section 38
- respecting the rate and criteria for the payment of fees or rent for Henvey Inlet First Nation Land
- respecting the rights and procedures on community expropriation

Members unable to be at a community meeting of members may give input in other ways such as a feedback form or any other method decided on by Council. Any band member regardless of age may participate at a community meeting of members for the purpose of community input.

Community Approval - Certain land laws and other important land matters must be approved/ voted on by the community before they can take affect. Every member of Henvey Inlet First Nation 18 years of age or older and resident on or off reserve can participate in a community meeting of members to discuss and decide the following matters:

- any Master land use plan
- any new grant or disposition of an interest or licence to a non-member in any Henvey Inlet First Nation Land exceeding a term of thirty-five (35) years
- any renewal of a grant or disposition of an interest or license to a non-member in any Henvey Inlet First Nation Land that extends the original term beyond thirty-five (35) years
- a grant of disposition of any non-renewable natural resources on any Henvey Inlet First Nation Land exceeding a term of five (5) years
- any deletion of a heritage site
- any voluntary exchange of Henvey Inlet First Nation land

Members unable to attend community meetings of members for voting will be able to vote by mail-in ballot or any other method decided on by Council.

Ratification Vote - Community approval by a ratification vote is more complex and costly. Ratification votes require the hiring of a Ratification/Electoral Officer and following a similar ratification process like the process used to approve this Land Code and Individual Agreement. The list is therefore much shorter for ratification votes, so a ratification vote is required for more serious matters like the following:

- any amendment to the Individual Agreement that reduces the amount of funding provided by Canada;
- any amendment to this Land Code; or
- any law or class of law that Council, by Resolution, declares to be subject to this section.

PART 4 PROTECTION OF LAND

Expropriation - The Land Code allows expropriation of individuals' interests for community purposes in accordance with the *Framework Agreement*. Fair compensation must be given in every case. A community purpose includes but is not limited to: a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, day-care facility, hospitals, health-care facility, and retirement home. After community input, Council would enact a land law on the rights and procedures for community expropriations.

Voluntary Exchange of Land - The *Framework Agreement* enables Henvey Inlet First Nation to exchange a parcel of Reserve land for another parcel of land. The Land Code sets out the procedure for how this would happen. For example, the new land must be at least as big as the land being exchanged and must be of comparable value. If such a deal were ever negotiated in the future, it must receive community approval.

PART 5 ACCOUNTABILITY

Conflict of Interest - There are rules for conflicts of interest that may arise in land management. These rules apply to the Council and anyone who is administering land or handling revenues from land. The basic rules are for the person to declare a conflict of interest, to refrain from voting on the issue, and to remove themselves from the proceedings.

Also, in an attempt to lessen the chance of conflict of interest, the Land Code states that "No Immediate Relatives and not more than two (2) Members from the same Extended Family **shall** be concurrent Members of an appointed board, committee or other body dealing with any matter that is related to Henvey Inlet First Nation Land".

Financial Accountability of Council - Council is accountable to members for the management of moneys and land under the Land Code. An annual financial report will be prepared and audited. The audited financial report will be presented to the members at an annual meeting of members. Also, the Land Code states that "the Henvey Inlet First Nation may, in accordance with this Land Code, adopt a financial policy to further manage monies related to Henvey Inlet First Nation Land".

PART 6 LAND ADMINISTRATION

Lands Committee - A Lands Committee of either 5 or 7 **shall** be established to advise the Council on land matters. The Committee under the Land Code will have various responsibilities such as assisting in the making of policies and procedures, conducting community meetings of members, and recommending laws and resolutions. Council has to select the first Lands Committee to serve for 3 years. This first Committee will work on a Terms of Reference for the Lands Committee and the development of a land law for selecting future Lands Committees.

Registration of Interests - To be protected, interests in land must be registered. The Council will keep a Lands Register at an office on Henvey Inlet First Nation and ensure that deeds and other land documents are also registered with the First Nation Lands Register, maintained by INAC/Indian Affairs.

PART 7 INTERESTS AND LICENCES IN LAND

In accordance with the Land Code, policies and procedures for allocating, granting, and transferring interests will be worked on by Council and the Lands Committee at meetings of members. Non-members can not hold a permanent interest in land except a lease, licence, or permit.

Lands transactions in writing - All lands transactions **shall** be in writing, so the documents/instruments can be recorded in the First Nation Lands Register at Indian Affairs and the Lands Register referred to above under **Registration of Interests**.

Interests of Members in Land - "Certificates of Possession" issued under the *Indian Act* will continue under the Land Code. Allocations of land under the Land Code will be made by Council according to policies and procedures established under the Land Code. A CP will be renamed a "Certificate of Entitlement" as issued under the Land Code.

Natural Resources - The natural resources of Henvey Inlet First Nation lands are considered a part of the land. A member has the right to the natural resources on his or her land and the revenues from those resources.

Transfer of Interests - A member with a lot can freely transfer it to another member by a valid deed or will. All other transfers of interests in land must be approved by Council.

PART 8 DISPUTE RESOLUTION

Dispute Resolution - The Lands Committee will establish the Roster Panel from which the Dispute Resolution Panel of 3 is chosen. The list of Panelists are selected in accordance with section 41.02 in the Land Code: "Notwithstanding section 19.06, in order to avoid conflict of interest, no Council member, or employee of Henvey Inlet First Nation or person already serving on another board, body, or committee of Henvey Inlet First Nation **shall** sit on the Roster Panel."

The DRP can review land management decisions if a member or non-member with an interest in Reserve land disputes a decision that affects their land. The parties to the dispute will have exhausted all other efforts to settle the dispute before taking it to the DRP for final arbitration.

The following matters can not be settled by Dispute Resolution:

- administration or distribution of an estate;
- decisions relating to housing allocations;
- decisions of Council to grant or refuse to grant an interest or license in Henvey Inlet First Nation Land to a non-Member;
- decisions on expropriation under section 16 of this Land Code: and
- prosecution or conviction of an offence under a Land Law or under criminal law.

PART 9 OTHER MATTERS

Insurance coverage - Council has to have insurance coverage for persons taking care of lands related business.

Criminal Code or other land law - The Criminal Code or other land laws will apply to offences made under the Land Code.

Revisions to Land Code - A new section included for practical reasons - to avoid voting on the Land Code for changes like correction of grammar/typos, reformatting, and amendments to other Acts referred to in the Land Code. Council can make changes to words/sections in the Land Code without a ratification vote so long as the meaning in the section(s) of the Land Code is not changed.

Requirements for enactment of Land Code - The Land Code does not come into force unless both the Code and the Individual Agreement with Canada are ratified / approved by the eligible voters of Henvey Inlet First Nation.

Land Code takes effect - After the Verifier certifies the Land Code as valid under the *Framework Agreement*, the Land Code will then "take effect on the first day of the month following the certification of this Land Code by the verifier".