

**Henvey Inlet First Nation
Land Designation Referendum
- Information Package -**



**Announcement Date:
October 13, 2005**

**Vote Date:
November 24, 2005**

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**Referendum
Vote:
August 25,
2005**

August 25, 2005 Referendum Vote Results: A Land Designation Referendum was launched on June 30, 2005 to seek permission from the community to set aside lands for commercial development and establish the terms and conditions for all future leasing at one time. The official posting by Indian and Northern Affairs occurred on July 8, 2005.

Community Information Sessions were held in Killarney, Sudbury and Sault Ste. Marie on July 12, 13, 14th and a final session was held from 12:00 Noon - 10:30 PM at the Community Fire Hall on August 11th. The vote was held on August 25th. 129 total votes cast with two spoiled ballots. Here are the results:

**YES = 63
NO = 64**

Chief and Council considered the results and decided to revise their developmental proposal and seek permission from the community to launch an adjusted development plan.

Changes:

- The total acreage proposed for designation is reduced from 8,096 Hectares (20,005 acres) to 4,109 Hectares (10,154 acres).
- All the land on the north side of Henvey Inlet lying between Henvey Inlet and Key River has been removed from the proposed designation and will remain available for general Band use.

All other features of the proposal as outlined in the first referendum package remain unchanged, including the permitted uses of the land, the corporate and band structures which will be required, and the Headlease with Canada.

Introduction: **Document Purpose:** The purpose of this *Information Package* is to provide factual information about the proposed “designation” of Band Lands for the purpose of leasing.

Each section of this document is presented to fulfil legal requirements for conducting a community vote on whether or not to set lands aside for future development.

Informed Consent: To launch a community vote, the Band Membership must be fully informed about the proposed leasing opportunities and the pros and cons to setting Band Lands aside for future development before holding the vote. “Informed Consent” means that you must have access to sufficient information about future projects and activities to decide whether you support or oppose the setting aside of land for development. All of the known information about the proposed “designation” is contained in this Information Package which must be mailed to all Off-Reserve Band Members at least 42 days before the vote is held. On-Reserve Members can obtain copies at the Band office.

This information document will also be presented in an information meeting scheduled to occur on November 3rd at 7:00 PM at the Community Fire Hall.

In addition, an Environmental Assessment Study and the full size survey maps are available for review at the Band Office along with legal papers for the entities established by the Band to support leasing and developmental activities.

Instructions for requesting additional information are stated in the Additional Information section of this document on page 11.

Organizational Structure: Please pay special attention to Appendix “B” showing the Band’s Organizational Structure and the legal relationship between the Band Council, the Membership, the two corporations and the Limited Partnership entities set up to manage future activities. While these new entities provide a sound legal structure it is challenging to explain the purpose and function of each entity in a short summary. Appendix “B” shows how these entities fit into the present Band structure and their legal relationship with each other.

Both Indian Affairs and the Band are involved in conducting the Referendum Process.

Duties of Indian Affairs:

- prepare legal documents to call the referendum and to “designate” the lands after the vote is held, if the vote is in favour of developing the property,
- mail out the referendum notice to all eligible voters plus the ballots and the date, time, location and instructions for voting,
- participate in information meetings to explain the referendum process
- conduct the vote, count ballots and certify the results.

Duties of the Henvey Inlet Band:

- numerous Chief and Council meetings to review and approve all related actions and documents,
- ongoing liaison with Indian Affairs,
- review all past studies and reports,
- liaison with stakeholders,
- liaison with professional agents to ensure that all legal and technical requirements are met,
- produce the Referendum Information Package,
- hold one community information meeting, scheduled for November 3rd, Henvey Inlet First Nation Fire Hall, Pickerel River Road,
- coordinate all activities related to this process.

Differing Opinions:

Differing Opinions: Please be aware that the opinions offered from each agent will cover different topics, and this is intentional. For example, it is the Band’s Lawyer’s obligation to provide an opinion on legal issues, not to discuss whether this project or future projects are a good idea or not. It is the obligation of the Referendum Coordinator to ensure that all of the relevant information is presented to you in this information package and in the information sessions, again, not to comment on whether a project such as Marina or a Youth Camp is the best use of the land. INAC’s comments are specifically related to the voting process, verification of results and the legal implications of setting the land aside.

Chief and Council and Community Members and Representatives - can discuss and promote the potential projects and other possibilities for the future.

What is a Referendum?

The referendum process is similar to an election except in this case you will vote either “Yes” or “No” to a question asking if you support the designation of a portion of the property known as “Henvey Inlet Reserve #2”.

A Referendum is required when a First Nation plans to “designate” a portion of Reserve Lands for development. This Referendum is being called to “designate” a portion of Reserve Lands for the purpose of future commercial activities.

If this property is set aside for development, the rights of future lease holders must be protected and respected for the term of the lease, whether for 5 years or 50 years. The right to quiet enjoyment to the leased property is the same for a business owner or cottage lot tenant.

A “Yes” vote would set aside the property shown in Appendix “A” for developmental activities outlined later, on page 6. Band Lands that have been “designated” are still considered “Reserve Lands” under the meaning of the Indian Act

A “No” vote would mean that the status of these Band Lands would remain unchanged.

This Referendum is called in accordance with Sub-section 39(1) (b) (iii) of the Indian Act, R.S.C. 1985, Chapter 1-5 and the Indian Referendum Regulations stated therein.

One the referendum is announced, a mandatory forty two (42) day period allows time for all Members to gain information about the proposed developments.

Proposed Land Designation:

The designation of a portion of the Reserve Lands known as Henvey Inlet Reserve #2 on the south shore of the Key River, west of Highway #69 is being proposed.

A “designation” legally sets lands aside from overall Band lands to lease lots on this property to Band Members and to non-members for commercial purposes.

These lands will be set aside for future development up to 99 years or as long as the Band wishes to continue these activities, subject to the rights of existing leaseholders.

**Specific
vs.
General
Designation:**

There are two types of designations for setting lands aside and each contains different problems and risks. The two types are a “specific” or a “general” designation.

A “specific” designation requires a detailed plan for one project at a time. A vote is then held to seek approval to set aside land for this one project. When only one project is considered the Band Member’s consent is clear as the benefits and risks for one project are easier to assess. A “Yes” vote would support this one project and a “No” vote would cancel it.

A “general” designation defines the outside boundaries of a tract of land with specific activities to be determined later.

As we are conducting a “general” designation it is important that voters understand that some current planned activities may not occur. Other projects that are not currently known could be launched at some future date but would require another referendum. Permitted uses are shown next on page 6. Schedule “D” in the Commercial Lease attached contains this list.

Special Note: Please be advised that including a project on this list does not constitute “final approval”. Each project is still subject to an environmental assessment (that is discussed further below) once final locations are determined.

The main benefit to a general designation is that a community vote is held once instead of holding a referendum vote for each project. The risk to a general designation is that Band Members may not have sufficient information about future activities to give their consent to develop the property. Any future land use must comply with an environmental assessment, which can include public consultation, prior to a project being approved. Until the Band develops their own land use codes they must comply with Government environmental assessment laws to ensure that environmental concerns are respected. In this case the Crown, as represented by INAC, would consent to projects only after an Environmental Assessment is conducted. If impacts were uncertain, a more detailed study could be ordered to determine impacts before a future project could continue.

**Permitted
Uses:**

If the referendum is approved, the following uses are permitted within the area proposed for designation:

Youth Camp
Conference Centre with Accommodation
Cultural Centre
Education Centre
Cottages and Cottage Lots for Lease
Marina
Multipurpose Arena
Small Business and Professional Offices
Commercial/Retail Stores
Golf Course
Roads, Electrical and Other Infrastructure Components

These are not listed in order of priority. Project schedules and sequencing are subject to further planning.

Under this “general designation” the outside boundaries of the lands required to develop these projects is defined. Once business plans are developed for the entire concept and each project and ideal location defined, the Bikanon Limited Partnership (described on page 13) can return lands not used for development to general Band use. The method used for such adjustments is noted next (page 7).

Band Authority to revoke or amend this designation in the future:

Normally, once Band Lands are set aside in a “designation” any change requires another vote. Two new clauses allow the Band to revoke or amend this designation in the future if required without having to conduct another referendum:

To Revoke: subject to the wishes of the Band Council and the approval of the Crown this designation can be revoked from all or part of the Lands in question, provided no legal rights of property holders are disturbed,

To Amend: subject to the wishes of the Band Council and the approval of Crown this designation can be amended to correct clerical errors or mistakes, provided no legal rights of property holders are cancelled, violated or otherwise changed.

Property Description:

The property known as Henvey Inlet Reserve #2 is located on the south side of Key River, west of Highway #69. The portion being considered for designation is comprised of approximately 4,109 Hectares (see Appendix “A”). For reference here are the measurements in various formats:

	Original Proposal Vote Held August 25 th	Revised Proposal Vote Scheduled for November 24 th
Hectares	8,096	4,109
Acres	20,005	10,154
Square Kilometers	81	41
Square Miles	31	16

The land proposed for designation has been reduced by approximately 50% for the November 24th vote as compared to the proposal voted upon on August 25, 2005.

**Legal
Description:**

Henvey Inlet Reserve #2,
Blocks 1 & 3,
Plan T 781 C.L.S.R.,
R.S.O. 6664R

Block #2 registered under this reference comprising approximately 3,980 Hectares on the north side of Henvey Inlet is not being considered for designation purposes. It will remain as General Reserve Lands.

**Narrative
Description:**

Starting from the north east corner of the property, about 2 Kilometers south of Key River Marina on Hwy #69, the northern property boundary runs westward to Georgian Bay along the south side of Henvey Inlet, a distance of approximately 6 miles (10 Km). From here proceeding southward or slightly south east, the property extends for another 3 miles. From this south west corner running slightly north east the property line extends another 5 miles (8 KM) back towards Highway #69. The distance from this point northward to the starting point is just under 2 miles with ½ of that distance or about 1 mile of highway frontage (Hwy #69) with the remaining property line set back from the existing lots along the highway.

**Property
Leasing and
Rental Rates:**

If the vote to supporting commercial development is “Yes” the Crown enters into a 99 year lease with the Bekanon Limited Partnership over the entire lands for \$10.00 per year. The Partnership will in turn enter into leases with tenants. The tenant rental and leasing rates for these leases will be subject to Fair Market Value (FMV) appraisals and the leasing policies established by the Partnership. Most of the net profits will be drawn into the Band’s General Revenues each year.

The length of each sub-lease will be less than 99 years and each lease term can be different depending on the circumstances. Some First Nations limit sub-lease terms to 20 years with terms for renewal, others do use a 99 year term.

**Environmental
Assessment
Results:**

In this section we will discuss the status of current developmental plans plus comment on how new development ideas will be considered.

An Environmental Assessment is necessary to identify potential harmful environmental effects that any development activity can have on the property, before they occur. Any future activity on the proposed property will be subject to further assessment. Community consultation to allow input from community members can form part of any future assessment.

A preliminary study was required prior to launching the Referendum. It was conducted in 2002 to gauge the possible effect of a number of conceptual uses including:

- roads
- cottage lots
- kids camp
- marina
- golf course

In October 2003, the Study rendered an opinion that negative environmental impacts from the above noted activities were “insignificant.” Copies of this study are available for review at the Band Office. Appendix “A” also shows a map of the proposed area.

Any new ideas, whether it be a commercial mall on the highway, a cultural or traditional centre or business activities anywhere on the property, will be subject to either this type of environmental review or a more detailed study which could include the previously mentioned public consultation.

An additional Environmental Assessment was conducted in December 2004 to document the overall current conditions of the lands prior to allowing any activities to occur. Each sub-lease will require that the environmental health of the land be maintained and be returned to the original condition if any damage occurs. Ordinary use of the land is expected to cause change and this is not considered “damage”.

**Environmental
Damage
Protected by a
Restoration
Fund:**

Any tenant on the leased lands can accidentally cause environmental damage. In all cases, the tenant is held responsible for any and all environmental damage they cause whether by accident or intentionally. They can protect themselves through an insurance policy but if they are unable or refuse to compensate the Band for damages they can be prosecuted to attempt to gain compensation via the courts. In the event that the tenant or their insurance company or a court order doesn't raise the funds necessary to restore damaged lands, an Environmental Restoration Fund will be set up to pay for the restoration.

Currently 2% of annual leasing revenues will be set aside in a protected account for this purpose. It can be adjusted if required.

**Additional
Information:**

In addition to this information package one (1) information session will be held during the 42 day process. It is scheduled for 7:00 PM at the following location:

- November 3rd - Henvey Inlet First Nation - Community Fire Hall

Chief and Council representatives and the following individuals or their representatives will be present at this meeting: an Election Officer designated by INAC, Bill Taggart, Legal Counsel for the Band and Ken Noble, Referendum Coordinator. The meeting purpose is to:

- provide detailed information about the proposed activities on the land,
- explain how future activities and projects will be determined,
- explain the technical details of the Referendum Process and
- answer any questions about the property boundaries or characteristics.

Additional Information Requests:

Due to the high volume of information, especially legal documents, the following additional information can be requested:

- Environmental Assessment
- Land Survey Maps
- Incorporation Papers, Bekanon Corporation for Community Development
- Incorporation Papers, Bekanon Lease Management Corporation LTD.
- Bekanon Limited Partnership Agreement
- Bekanon Trust Agreement
- Proposed Head Lease between the Crown and Bekanon Limited Partnership

All of these documents will be available at the community information meeting.

In addition, you can ask for an appointment with the Referendum Coordinator, Ken Noble, to gain more details about the process in person. Please contact Millie Pawis to set up an appointment.

Additional ways to request the documents listed above:

- Call Millie Pawis at the Band Office: (705) 857-2331 to request a copy of these documents by mail or for pick up.
- Send an E-mail listing the documents you would like to Ken Noble at kennoble@cyberbeach.net. Provide your full mailing address if you require a printed copy. Copies requested for return via e-mail will be sent in the Adobe Portable Document Format (PDF)
- The www.hifn.ca web site also contains the same information as that contained in this information package.

**Bekanon
Corporation
for Community
Development**

Two new corporations are set up to manage projects and leases. The first is a not-for-profit corporation to manage economic development activities on behalf of Henvey Inlet Band. It will have a Board of Directors separate from but accountable to Chief and Council and the Band Membership. Full Incorporation Papers are available for review.

The Corporation's Board of Directors are drawn from Members appointed by the Chief and Council. The Directors serve a three year term at which time the Chief and Council in office at that time can appoint new Directors. Normally, a Director would stay in office until the end of their three year term.

Making the Directors of the Development Corporation subject to appointment by the Band binds Chief and Council and the Development Corporation to a legal relationship whereby the Band Membership can influence the appointment of Directors to the Board. In addition, to protect the interests of the Band Membership in this Corporation, a majority of the Directors must always be Band Members of Henvey Inlet First Nation.

As this Corporation will not hold title to Band Lands nor any authority to lease or otherwise manage Band Lands, it is not part of the legal review necessary to conduct the Referendum.

**Bekanon
Lease
Management
Corporation
LTD:**

This corporation's main activity is to engage in a Partnership with Henvey Inlet First Nation to manage the leased lands. As a General Partner, it will hold title to the Head Lease with Henvey Inlet First Nation under a partnership called Bekanon Limited Partnership, for the entire tract of land and enter into sub-leases with tenants. The Chief and Council controls the corporation by holding shares and appointing Directors.

**Bekanon
Limited
Partnership:**

The relationship between Henvey Inlet First Nation and Bekanon Lease Management Corporation is defined in a Partnership Agreement. The Partnership shall lease the entire tract from the Crown. This allows the subleasing of parcels of the land to third parties and management of those subleases only. This Partnership shall not carry on any other business.

This Limited Partnership has some unique features intended to protect the Band and Band Lands. It has a General Partner and a Limited Partner. The Band being the Limited Partner can't be sued for normal business activities of the General Partner. The General Partner, the Bekanon Lease Management Corporation, carries on the business of leasing lands only and the Band is protected from any liabilities created during the normal business of leasing providing the business of leasing is carried on at "arms length". In a way the Band should be thought of as a "silent" partner who leaves all of the management obligations to the Corporation.

While the level of protection provided by the proposed legal structure provides a high level of protection, which is desirable, it also creates complex legal issues. It is highly recommended that business management workshops be conducted regularly to ensure that the business activities of this Partnership and that of the Band are kept entirely separate otherwise the Band could inadvertently expose itself to unnecessary liabilities.

**Why are
Multiple
Corporations
Necessary?**

Much debate has occurred about possible problems in the future due to unforeseen circumstances.

The main purpose of creating a corporation is to protect the owners from liability, in this case Henvey Inlet First Nation and its Membership. The main benefit to creating two corporations is to further limit the liability of the Band by separating economic development and leasing activities from each other to protect lands and monies made from leasing these lands.

An example: If the Band, through Chief and Council, sets aside lands and leases these lands to a non-member for business purposes, consider what could happen if a law suit sought to gain compensation for a loss. A contractor, bank, organization or an individual could suffer a loss, for example, from a failed project. If the law suit was successful assets could be seized and re-distributed by the courts. In this case Band assets and assets of other corporations and programs are entirely separate and not exposed to the liabilities of the Bekanon Lease management Corporation.

If the Band didn't set up a separate corporation other Band assets could be lost in a law suit. In this case the law suit could only be launched against the Band's corporation and its assets.

Appendix "B" shows how these corporations are set up.

What are the Main Benefits Expected?

- Income from property leases
 - Jobs for Community Members
 - Direct Employment in New Ventures
 - New Business Opportunities
 - Increased Self Sufficiency for the Band
 - Expanded Band Programs
-

What is the Best Possible result of this Project?

The best possible result expected from the proposed activities would be to provide employment opportunities for Community Members plus an enriched life in the community due to expanded programs and new cultural and economic activities.

In addition, as the number of new jobs could exceed the number of people available for work in the community, new activities would attract off-reserve members back to the community and contribute to it's future growth. Beneficial impacts could materialize in 5-10 years.

In the long term, the creation of more than 30 new jobs is anticipated. Large numbers of temporary jobs in infrastructure development may occur in the first 5 years.

Types of Potential Jobs in First 5 Years:

Road Construction Crew, Site Preparation Crew, Project Management, Administration, Camp Management, Camp Counsellors, Construction Crew, Road and Cottage Lot Maintenance, Small Business Opportunities.

What is the Worst Case Scenario?

If no new activities are launched on the property the hope for new jobs and expanded opportunities would vanish. However, this may not be the worst case scenario.

A worst case scenario could occur if the community launched a few major activities that failed. If a large project failed then financial losses could also reduce future financial gains and the creation of new jobs expected by Band Members. Future financial gains might be needed to pay deficits created by failed or poorly performing projects. Project failures could also erode the Band's credibility with funding agents and the Band could be found liable as partners in development if the Band actively attempts to **manage** the leases, which is the responsibility delegated to the Bekanon Limited Partnership.

In addition, even though prudent measures have been adopted for protection, environmental damage to the lands is always a risk.

What are we giving up to gain access to more jobs?

Any type of development causes change. The question often asked is, what are we giving up to gain the expected benefits, and are these benefits worth the risk?

For example, the Youth Camp project provides programs for youth, income from the lease and jobs for people running the camp. To gain these benefits, what is lost? For this project, prime waterfront property is leased, presumably for a few decades at a minimum. Access to this property for any other purpose, whether for recreation or hunting or fishing can only occur with the permission of the lessee.

Each new activity will bring new opportunities but also limit other future possible uses.

Additional Risks and Concerns:

New Corporations: The down side to establishing a separate corporation to hold the Head Lease to Band Lands for management purposes is the possibility that future differences can develop between Chief and Council and the Development Corporation and Leasing Corporation's Board of Directors. Some may feel that the Corporations are too independent and the community may lose control. Others may feel that the Corporation is too close to Chief and Council and that political tensions could have negative impacts on the operational activities of the corporations. In this structure we have considered these possible problems and established a legal relationship between the two bodies that minimizes but does not eliminate the possibility of conflict.

Complex Structure: Some may feel that the multiple corporation structure is too complex and not understand the relationship between the Band and the new Corporations.

Unknown Environmental Concerns: Future activities may have impacts not considered at this time.

Disagreement Over Best Use: Divisions could spring up over different opinions about the best use of designated lands.

Competing Interests for a Lot: Once a lease is granted, this leased lot is unavailable for any and all other uses for the life of the lease. Disagreements could surface about which activity should or could occur on any lot.

Conclusion:

Both some of the positive and negative elements of the development plans have been presented here.

The opportunity for more jobs for Band Members and additional revenues for the Band to expand programs represents the key reasons for development.

Negative aspects have been explored in this document as well to fully disclose some of the risks associated with development.

Appendix "A"
Map of Subject Property

Appendix "B"
Organizational Structure for the Band

Appendix "C"
Commercial Lease