

Suggested Amendments to Bill C-49, *First Nation Land Management Act*

Proposed by the Lower Mainland Treaty Advisory Committee (LMTAC),
Union of British Columbia Municipalities (UBCM), and
the Fraser Valley Treaty Advisory Committee (FVTAC)

- **Bold lettering** indicates either a suggested amendment to an existing section within the Bill or the addition of a new section.

RELATIONS WITH LOCAL AND REGIONAL GOVERNMENT

Amendment 1: The Bill provides no requirement for consultation with neighbouring local and regional governments on development of the land code or on land use decisions made pursuant to the land code. Municipalities would prefer that any requirement for consultation be included directly and specifically in the Bill. An amendment to provide for reciprocal consultation is suggested.

Suggested Wording: **20(5) A first nation law respecting the use or development of first nation land that provides for the granting by a first nation of authorizations to use or subdivide land, must provide for the notification of the governing body of any adjacent municipality and regional government of any proposed land use or subdivision authorization and an opportunity for that municipality or regional government to comment on the proposed authorization, if the laws of the province governing land use or subdivision authorizations by that adjoining municipality or regional government require notification of the first nation in equivalent circumstances.**

Amendment 2: The Bill contains no requirement for mechanisms to address and resolve disputes between adjacent jurisdictions in respect of land use and in respect of the servicing, infrastructure, fiscal, and planning issues that are connected to land use.

Suggested Wording: **6(1)(n) mechanism for dealing with disputes between adjacent jurisdictions in respect of land use and in respect of the servicing, infrastructure, fiscal, and planning issues that are connected to land use.**

EXPROPRIATION

Amendment 3: Exceptions to expropriation powers by a first nation under section 28(2) of the Bill should be expanded to make reference to local and regional governments.

Suggested Wording: 28(2) An interest in first nation land obtained under section 35 of the *Indian Act* or held by Her Majesty **or by local or regional governments, is not subject to expropriation by a first nation.**

Amendment 4: Section 6(1) of the Bill requires that in developing its land code, a first nation include provisions relating to the general rules and procedures for granting or expropriating interests in first nation land. We suggest that this section be amended to contain a procedure to address and resolve disputes that may arise over the compensation paid by a first nation when it expropriates an interest in the first nation's land.

Suggested Wording: 6(1)(j) the general rules and procedures that apply in respect of the granting or expropriation by the first nation of interests in first nation land, **including the establishment of a mechanism to resolve disputes over compensation for expropriation;**

Amendment 5: Section 28(5) of the Bill states that a first nation shall pay fair compensation to the holder of an expropriated interest and in determining that compensation, the first nation shall take into account the rules set out in the *Expropriation Act*. We believe the term "take into account" is unnecessarily vague and therefore suggest the following amendment.

Suggested Wording: 28(5) A first nation shall pay fair compensation to the holder of an expropriated interest and, in determining that compensation, **the rules for determining compensation set out in the *Expropriation Act* shall apply.**

NOTIFICATION AND VOTING

Amendment 6: Prior to conducting a vote to approve its land code, a first nation, under section 10 of the Bill, should be required to inform neighbouring municipal jurisdictions of the date of the vote.

Suggested Wording: **10(5) The council shall, within at least 20 days before the vote, take appropriate measures to inform, in writing, the adjacent local and regional governments of the date of the vote.**

Amendment 7: Under section 10(4) the Bill requires a first nation, within a reasonable time before the vote, to inform those persons with an interest in the land that will be subject to the land code, of the proposed land code, the Act and the date of the vote. We suggest the following amendment to improve the clarity of this section of the Bill.

Suggested Wording: 10(4) If other persons have an interest in the land that is to be subject to the proposed land code, the council shall, **within at least 20 days before the vote, notify in writing those persons of the proposed land code, this Act and the date of the vote, and shall deliver to those persons to whom notification is given, a copy of the proposed land code.**

Amendment 8: The duties of the verifier under section 8 of the Bill should be expanded to include the following:

Suggested Wording: **8(1)(d) determine that the adjacent local and regional governments have been notified of the band's intention to establish a land management regime in accordance with section 10(5).**

ENVIRONMENTAL PROTECTION

Amendment 9: The Bill as it is currently drafted creates an inconsistency between sections 21(2) and 40(1). Under the current wording of the Bill, if a provincial law established a standard that was higher than that established in a federal law, compliance by a first nation with s.21(2) would be pointless because under s. 40 the lower federal standard would apply. We therefore suggest the following amendment to s. 40(1).

Suggested Wording: 40(1) For greater certainty, in the event of any inconsistency or conflict between a land code or a first nation law and any federal law that relates to environmental protection, the federal law prevails to the extent of the inconsistency or conflict, **except that a first nation law establishing standards of environmental protection or punishments for failure to meet those standards that are higher or more onerous than the standards established in a federal law prevails over that federal law.**