



'NAMGIS FIRST NATION LAND CODE SUMMARY

'Namgis members ages 18+ will have the opportunity to vote on the 'Namgis Land Code. This summary provides an overview and some important highlights from each section of the Land Code.

We encourage all members to take the time to read all of the information materials provided at meetings, online and in the information package that will be mailed to all eligible voters that have shared their current address with our office.

You can find the 'Namgis Land Code and lots of other information on the website:

<http://www.namgis.bc.ca/landcode/>

NOTE TO READERS: Terms that are capitalized in this summary document refer to terms defined in the Land Code.

LAND CODE PREAMBLE

WHEREAS 'Namgis is continuously taking steps towards self-governance by rejecting the systems of the *Indian Act*;

WHEREAS the Government of Canada has adopted the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and 'Namgis holds Canada accountable to this commitment;

WHEREAS 'Namgis continues to assert its rights and title over the entirety of the territory, including the reserve lands;

WHEREAS 'Namgis has the right to manage and protect the lands and resources as the ancestors have done for generations;

WHEREAS 'Namgis is committed to protecting the lands, waters and resources within its territory, including the reserve lands;

WHEREAS 'Namgis is committed to building a sustainable local economy for 'Namgis and its Members;

Preamble: A preamble is a statement about our community's reasons for adopting our own land management law.

WHEREAS 'Namgis continues to seek opportunities for Members to return home and connect with the land, waters and resources;

WHEREAS 'Namgis strives to reintegrate traditional values, laws and practices into land management;

WHEREAS 'Namgis aims to create processes relating to reserve land management that are inclusive of its Members;

WHEREAS 'Namgis recognizes the importance of building accountability and transparency into all processes relating to reserve land management;

WHEREAS 'Namgis has the option of having its reserve lands be managed pursuant to this Land Code, rather than having them be managed by Canada under the provisions in the *Indian Act*;

WHEREAS 'Namgis is asserting its right to exercise control over its reserve lands and resources for the use and benefit of its members by adhering to the Framework Agreement on First Nations Land Management and by having the Framework Agreement on First Nations Land Management apply to its reserve lands;

WHEREAS pursuant to the Framework Agreement on First Nations Land Management, a First Nation that wishes to establish a land management regime must adopt a Land Code applicable to its reserves; and

NOW THEREFORE, this 'Namgis Land Code is hereby enacted as the fundamental land law of 'Namgis.

PART 1 - PRELIMINARY MATTERS

PURPOSE

The purpose of this Land Code is to set out the principles and administrative structures that will guide 'Namgis exercise of authority and jurisdiction over 'Namgis First Nation Land.

RIGHTS TO SERVICES NOT AFFECTED

The Land Code does not affect the eligibility of 'Namgis or any Member to receive government services or participate in government programs.

FIDUCIARY RESPONSIBILITY

The Land Code does not abolish or diminish the fiduciary relationship between the Government and 'Namgis.

RIGHTS NOT AFFECTED

Nothing in the Land Code or any decisions made under the Land Code changes any Aboriginal, Indigenous, treaty, inherent or other rights of 'Namgis or Members now or in the future.

For the purposes of the Land Code, 'Namgis First Nation Land means the eight (8) 'Namgis reserves including: Alert Bay IR 1, Alert Bay IR 1A, Nimpkish IR2, Ches-la-kee IR 3, Ar-Ce-wy-ee IR 4, O-tsaw-las IR 5, Ksui-la-das IR 6 and Kuldekdum IR 7.

ABORIGINAL RIGHTS AND TITLE

'Namgis has never ceded, surrendered, or in any way given up these rights and we will continue to assert our interests and exercise our rights over the territory.

ORIGIN OF AUTHORITY

'Namgis traditional teachings speak of the obligation of the people to care for and respect the land. By bringing this Land Code into force, we further confirm this special responsibility.

PART 2 - FIRST NATION LEGISLATION

LAW MAKING POWERS

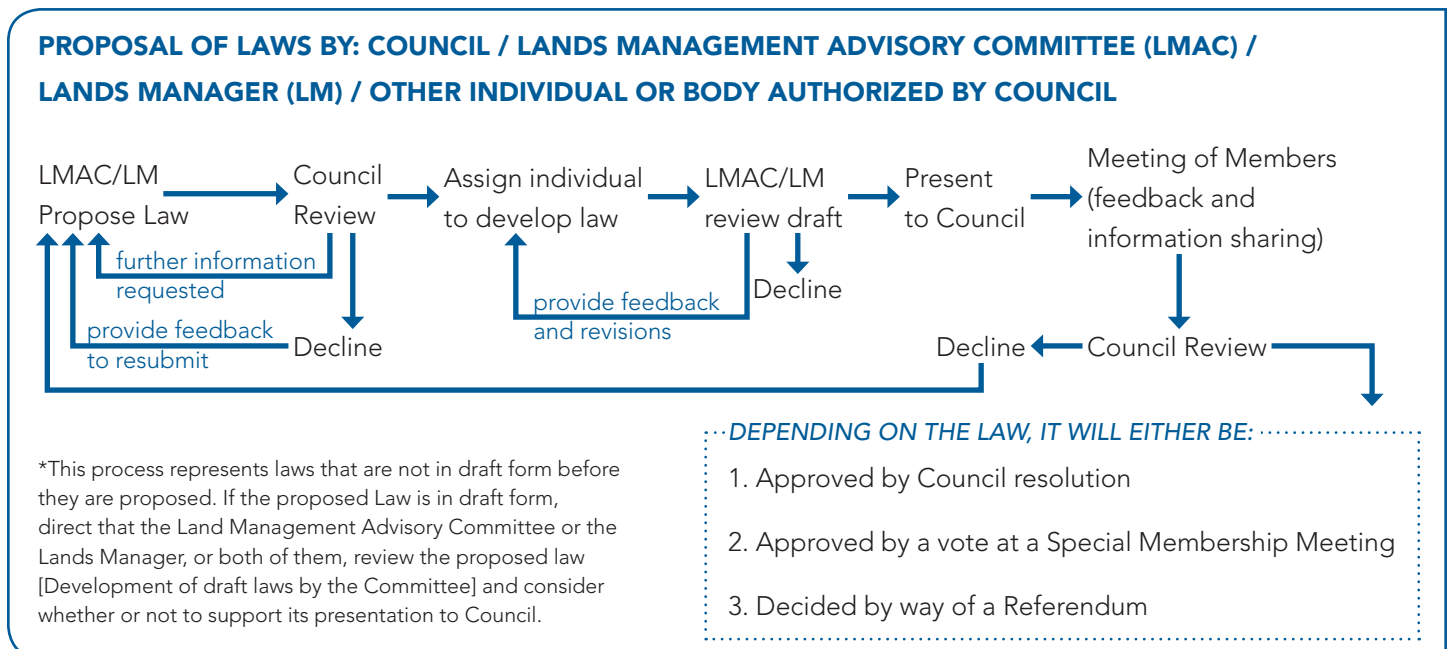
Council has the power to make all the laws that the *First Nations Land Management Act* empowers Council to pass. Some laws will need to be passed by the community in a Special Members Meeting or by Referendum.

In general, here are some examples that can be passed and enforced under a Land Code.

- Community standard laws (noise, littering, speeding, unsightly premises etc)
- Environmental assessment and protection
- Construction, installation, maintenance and management of utilities
- Business permitting and licensing on reserve

LAW MAKING PROCEDURE

This section explains how land management laws will be proposed, developed, approved (or declined) and shared.



Council can pass urgent laws without the involvement of the Land Management Advisory Committee if the law is urgently needed for public health and safety, to protect Members or to further an economic objective that benefits 'Namgis.

Who is on the Committee and how they organize their work is outlined in Part 6.

PUBLICATION OF LAWS

All approved laws will be posted in the administrative office, on the website and recorded in the 'Namgis Land Register. This is important because our laws will apply to anyone who is on our reserve lands.

A register is a system that keeps a record of the laws and administrative paperwork about any licenses, easements, permits, certificates of Home Ownership or other rights and interests to 'Namgis First Land.

PART 3 - MEETING OF MEMBERS AND APPROVALS

MEETING OF MEMBERS

All Members are eligible to participate in a meeting of members regarding a proposed law. The purpose of the Meeting of Members is to inform Members and gather Members' input about a proposed law or land management matter. Council will call a Meeting of Members before passing a Law and before holding a Special Membership Meeting.

MEMBER APPROVAL

Member approval will be needed for passing any proposed law, except where Council has the authority to pass a law, or if the matter must be decided in a Referendum. This section also says that all Eligible Voters (members aged 19+) can participate in a vote about a law (Member Approval Vote).

SPECIAL MEMBERSHIP MEETINGS

A Special Membership Meeting consists of Council and Members and will be held specifically for a vote about a proposed law or an amendment to a law. A law will pass if the Majority (50%+1) of Members present at the meeting vote in favour.

PUBLIC NOTICE

A Public Notice for Special Meetings will be posted at the 'Namgis main administrative building and other public buildings, as well as on the 'Namgis website. It will also be emailed to Members that have up-to-date contact information. Council can also choose to provide Public Notice using other methods like mail and phone.

PART 4 - CERTIFICATES OF HOME OWNERSHIP, INTERESTS, EASEMENTS, LICENSES, AND PERMITS IN 'NAMGIS FIRST NATION LAND

STANDARDS AND WRITTEN INSTRUMENTS

Individuals or companies can hold an Interest in 'Namgis Members First Nation Community Lands. The types of Interests they hold include:

Certificate of Possession: documented evidence of a 'Namgis member's lawful possession of Reserve lands.

Leaseholds: the holding of property by lease or sublease, which gives a person the right to use a parcel of land for a specific period of time. In the Land Code, Leaseholds also refer to sub - leases.

Easements: a right to use and/or enter onto the property of another without possessing it.

Permits: a land use permit is required where a person(s) wishes to conduct a specific land use activity.

Mortgages: a mortgage loan is an agreement that allows a person(s) to borrow money from a bank or similar organization to purchase land and/or property.

EXISTING INTERESTS

Interests that were granted by the Minister under the *Indian Act* and before the Land Code will be managed by 'Namgis under the Land Code. These interests and/or licenses will continue unless the grantee (the person or business with the Interest) agree to have it replaced.

NO INTEREST CREATED

An Interest in 'Namgis First Nation Land can only be created by following the rules in the Land Code. No one can gain an Interest in 'Namgis First Nation Land in any way that is not authorized in the Land Code.

LEASEHOLD IN 'NAMGIS FIRST NATION COMMUNITY LAND

Council can grant a Leasehold in 'Namgis First Nation Community Land EXCEPT FOR WHEN:

- The proposed Leaseholds has a term longer than fifteen (15) years (but not more than forty-nine (49) years). These require Member Approval at a Special Members Meeting
- The proposed Leaseholds has a term long than forty-nine (49) years. These require a Referendum.

The granting of any Leasehold does not entitle the leaseholder to any Interest on or under the land.

EASEMENTS, LICENSES, AND PERMITS IN 'NAMGIS FIRST NATION COMMUNITY LANDS

Council can grant an easement, License or Permit to 'Namgis First Nation Community Land to utility companies, corporations or other organizations where 'Namgis has an economic Interest EXCEPT FOR WHEN:

- The proposed easements, licenses or permit has a term longer than fifteen (15) years (but not more than forty-nine (49) years). These require Member Approval at a Special Members Meeting.
- The proposed easements, licenses and permits has a term longer than forty-nine (49) years. These require a Referendum.

CERTIFICATE OF HOME OWNERSHIP

If a Member has paid for their house in full, or agrees to make payments towards the house, the Council can grant a Certificate of Ownership to that Member. This Certificate of Home Ownership acknowledges that a person owns their home and has the exclusive right to use the parcel of 'Namgis First Nation Land where the home is located.

MORTGAGES

The holder of a Leasehold or Certificate of Home Ownership can grant a Mortgage of that Leasehold or certificate of Home Ownership with the written consent of Council.

TRANSFERS OF INTEREST

A Certificate of Home Ownership or a Certificate of Possession can only be transferred to another Member or to 'Namgis. A Member or 'Namgis with a Mortgage can only transfer or assign that Mortgage to another Member or 'Namgis.

CANCELLATION

Council can confirm, cancel, release, amend or correct any Interest or License that was given out in error or fraud, or that has expired.

NATURAL RESOURCES

Natural resources that are on or under 'Namgis First Nation Land belong to 'Namgis and are subject to the following rules:

- The removal or use of natural resources from 'Namgis First Nation Lands without written consent of Council is not permitted.
- Unless it is specifically included in a Leasehold, permit or license, the Interest does not include any right to any Natural Resource.
- No person can remove or permit someone else to move minerals, stone, sand, gravel clay soil, trees, saplings, shrubs, underbrush, timber, cordwood, hay, water or other types of materials without permission from Council.

TRANSFER AND ASSIGNMENT OF INTERESTS

The transfer of an Interest or license will be guided by the Land Manager and approved by Council unless they are transferred through a will or as a gift when the Interest holder passes away. The transfer will take effect on the date the documents are registered in the 'Namgis Land Register.

NON-APPLICATION OF INDIAN ACT PROVISIONS

When the Land Code is in place, all of *Indian Act* section 38 no longer applies to 'Namgis.

DUTIES OF THE LANDS MANAGER

The Lands Manager is responsible for ensuring that every law, Land Use Plan, subdivision plan, natural resource plan, and amendments to the Land Code are recorded in the Lands Register.

SURVEYS

All surveys of 'Namgis First Nation Land will follow the rules set out in the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*. All surveys require Council approval.

TRANSFERS ON DEATH

The provisions of the *Indian Act* that deal with wills and estates will continue to apply to Interests in 'Namgis First Nation Land. A person who inherits an Interest from a deceased Member is entitled to have their Interest registered in the 'Namgis Land Register.

PART 5 - PROTECTION OF LAND

ENVIRONMENT AND CULTURAL HERITAGE RESOURCES

'Namgis will create its own custom laws and policies for environmental assessments and cultural heritage resource protection. Until the custom laws are created 'Namgis will use the *British Columbia Heritage Conservation Act* and the *Canadian Environmental Assessment Act* to manage environmental and cultural heritage resource protection.

PROHIBITED ACTIVITIES

The following are activities that are prohibited on 'Namgis First Nation Land:

- Dumping or spilling liquid, gas, polluting materials or materials that are harmful to human and environmental health
- Activities that contaminate the land or natural resources on 'Namgis First Nation Land
- Activities that could potential damage or impact any cultural sites or artifacts including modified trees.

EXPROPRIATION - TAKING LAND FOR COMMUNITY PURPOSES

'Namgis may need to use land that is held by an Interest for a Community Purpose. Council can only expropriate land if it is necessary for a Community Purpose and if there is no other land available to satisfy that community purpose. Before expropriating the land, Council must try and reach agreement with the Interest holder and compensate them.

Expropriation: Expropriation is the action by an authority or government to take property from its owner for public use or benefit.

VOLUNTARY EXCHANGE OF 'NAMGIS FIRST NATION LAND

'Namgis may agree to exchange a parcel of the 'Namgis First Nation Land for another parcel Land. An exchange must always be for a parcel of land that is the same size or bigger. Also, the assessed value of the parcel must be the same or higher. If the assessed value is lower, 'Namgis must receive financial compensation for difference.

All Land exchanges must be decided by Referendum.

PLANNING

As soon as the Land Code takes effect, the Council, Lands Management Advisory Committee, and Lands Manager will work to develop a Land Use Plan. They will also establish legislation and policies for land use planning.

PART 6 - LAND ADMINISTRATION

GENERAL

Council will hire a Lands Manager to oversee land management and the implementation of the Land Code. However, it is ultimately Council's responsible for ensuring all administrative duties are completed.

LANDS MANAGEMENT ADVISORY COMMITTEE

A Committee will be created to assist with the administration of 'Namgis First Nation Land. This Committee will support the development of laws and give advice to Council and Land Department staff on lands-related issues.

MEMBERSHIP OF THE LANDS MANAGEMENT ADVISORY COMMITTEE

The Committee is made up of no less than five (5) and no more than seven (7) members. Reasonable efforts will be made to include at least one Elder, at least one youth, a representative appointed by the Hereditary Chiefs, and at least one member of the 'Namgis staff or a consultant. Committee members will be appointed by Council and will serve a term of four (4) years. Vacancies will be filled if they are more than 90 days before the date when another appointment can be made.

In the Land Code, an Elder means a Member that is 65 years or older.

CHAIR OF THE LANDS MANAGEMENT ADVISORY COMMITTEE

The Lands Management Advisory Committee will appoint a Chair at the first meeting. The Chair will serve as Chair for the duration of their term. This section also includes the duties of the Chair.

DECISION-MAKING BY THE LANDS MANAGEMENT ADVISORY COMMITTEE

A majority of Committee members must be at the meeting to make decision. The Committee will strive for consensus on decisions.

REPORTING FROM THE LANDS MANAGEMENT ADVISORY COMMITTEE MEETINGS

The Lands Management Advisory Committee will prepare at least one (1) annual activity report for which will include an overview of the proposals for new laws that were received throughout the year, a summary of the activities that were completed, an update on current activities, and information about upcoming activities.

REVENUE FROM 'NAMGIS FIRST NATION LAND

The Lands Management Advisory Committee and the Lands Manger will establish a process for determining fees and rent such as:

- Application fees
- Fees for lands transactions and services
- Standards and qualifications for employees and contractors assisting to implement the Land Code

PART 7 – ACCOUNTABILITY

CONFLICT OF INTEREST OR APPEARANCE OF CONFLICT OF INTEREST

The **conflict of interest** rules in the Land Code applies to Council, members of the Lands Management Advisory Committee and 'Namgis employees. If any of these people has a conflict of interest, it must be communicated with Council, the Lands Management Advisory Committee and the Lands Manager. This person must not take part in any discussions or vote on the matter and should not be in the room while the discussions and/or vote are taking place.

Conflict of interest relates to situations where a person has a real or perceived interest in the outcome of a decision, and is also involved in making the decision.

FINANCIAL MANAGEMENT

This section only applies to financial matters related to 'Namgis First Nation Land. 'Namgis Financial Management Policies will be used for all land-related matters. These policies may be amended from time to time or repealed.

ANNUAL REPORT

Council will publish an annual report on land matters which will include an annual review of 'Namgis First

Nation Land, an annual budget in respect to land matters, a copy and explanation of the audit, and any other matters as determined by Council.

ACCESS TO INFORMATION

Members can access information that pertains to 'Namgis First Nation Land during regular business hours at the main administrative office including information about Laws and auditors' reports. Council can also authorize individuals to review the financial records related to 'Namgis First Nation Land.

PART 8 - DISPUTE RESOLUTION

DISPUTE RESOLUTION PROCESS

Wherever possible, land-related disputes will be resolved through informal discussions between the parties in a dispute. If the parties are unable to resolve their disputes they may agree to try and resolve the dispute through **mediation**. If the parties aren't able to decide on a mediator or the mediation process, one or more parties can escalate the dispute to **arbitration**. 'Namgis will not be responsible for the costs of dispute resolution between two parties where 'Namgis is not a party.

Mediation is the process of working through an issue with a neutral third party called a mediator. The role of the mediator is to work with both parties through the issues of the dispute and assist them to arrive at an agreement about how the dispute should be settled.

Arbitration also involves a neutral third party who works with both parties to understand the issues the dispute. However, the terms of a settlement agreement are decided by the arbitrator.

PART 9 - REFERENDUM PROCEDURES

APPLICATION

The process for conducting a referendum regarding land laws and land matters only applies to Referendums required by the Land Code (e.g. in relation to Leaseholds over 49 years). It does not apply to the referendum to bring the Land Code into effect or any other referendum held by 'Namgis.

HOLDING A REFERENDUM

At least ninety (90) Days before a Referendum, Council will:

- Set the Referendum Date
- Identify the ballot question
- Appoint the Electoral Officer
- Appoint an Arbitrator to decide any appeals of the Referendum

ELECTORAL OFFICER AND DEPUTY ELECTORAL OFFICERS

This section outlines the roles and Responsibilities of the Electoral Officer and Deputy Electoral Officers.

CONTACT ADDRESSES

The 'Namgis Administration will be responsible for providing the names and contact information of eligible voters.

LIST OF ELIGIBLE VOTERS

A list of eligible voters will be created by the Electoral Officer. Any person whose name does not appear on the final List of Eligible Voters will not be entitled to vote.

PREPARATION OF BALLOTS

The Electoral Officer will prepare the ballots with the question that will be asked in the Referendum. Voters will express their choice with an "X" or other mark next to the word "YES" or "NO" for each question stated on the ballot.

ENTITLEMENT TO VOTE BY MAIL-IN BALLOT AND ELECTRONIC VOTING

This section outlines how Members will be notified about the Referendum. This includes information on the conditions for voting by mail-in ballot, and if Council chooses, electronic voting.

NOTICE OF POLLS

At least thirty (30) days prior to the date of the referendum, the Electoral officer will post a public notice with information about the dates of the referendum, the dates of advanced voting, and the time and location of the polling stations.

VOTING BY MAIL-IN BALLOT

This section outlines how Members can vote by vote-in ballots.

ADVANCE VOTING

An advanced voting date will be held for Members to vote.

VOTING AT POLL STATION

This section includes information on the voting station procedures.

PROCEDURES AFTER THE CLOSE OF THE POLLS

This section provides information on the procedures after the close of the polls.

DISPOSAL OF BALLOTS

This section explain how all ballots will be disposed after the referendum.

APPEALS

Any eligible voter may file an appeal in writing to the 'Namgis Administrator. This section explains the steps and procedures for filing an appeal.

PART 10 - OTHER MATTERS

LIABILITY

Council will arrange for and maintain insurance coverage for liability of 'Namgis in relation to 'Namgis First Nation Land.

OFFENCES AND ENFORCEMENT

Unless a different procedure is developed under a law, the summary conviction procedures of Part XXVII of the Criminal Code will apply to offences under the Land Code or under a law.

AMENDMENTS TO LAND CODE

The Land Code will be amended in accordance with the rules in the Land Code which state that amendments to the Land Code requires Member Approval.

COMMENCEMENT

This Land Code will not take effect unless:

- 'Namgis Members vote to approve the Land Code and Individual Agreement
- The Land Code is certified by the Verifier in accordance to the Framework Agreement