

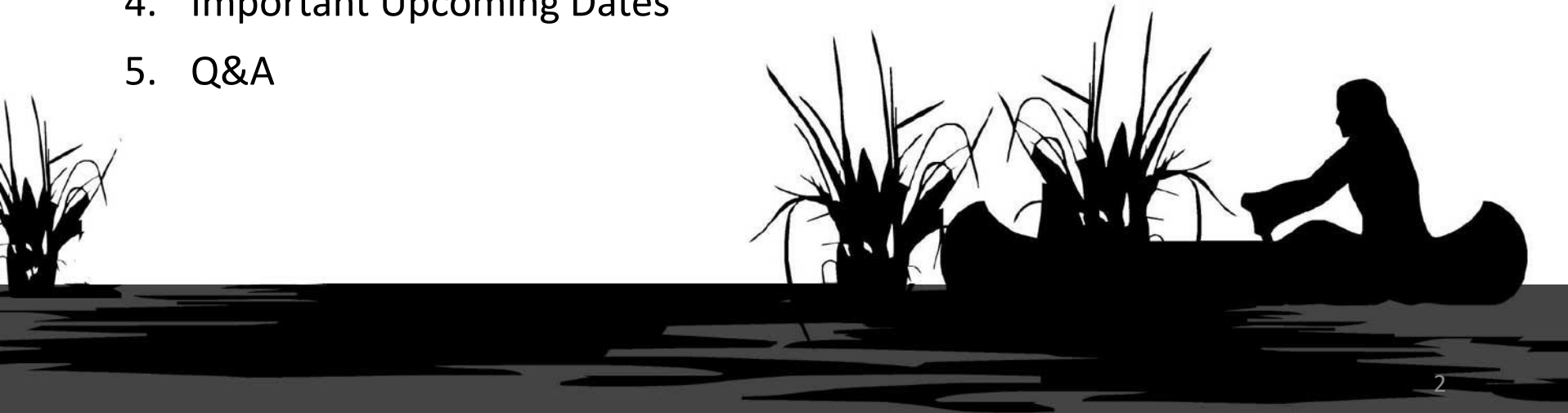


HIAWATHA FIRST NATION LAND CODE

Community Meeting #1 - March 10, 2021

Today's Presentation

1. What should a land code accomplish?
2. Law Making under the draft Land Code
 - a. Legislative Authority of Council
 - b. Overview of the Law Making Procedure
 - c. Three Ways of Enacting Law Laws
 - d. Accountability
3. Land Management Tools
4. Important Upcoming Dates
5. Q&A



What should a Land Code Accomplish?



01

Transfer land management to the First Nation

Transfer ISC's administrative functions with respect to reserve land to First Nation governance structures and provide them with complete and workable rules and powers under which they will operate, capable of implementation within the context of HFN's human and financial resources.



02

Establish the rules for making decisions, land laws

Provide substantive and procedural rules for decision-making and the enactment of land-related laws by the Council and the community. The rules should be complete, legally sound, and enforceable in courts of law.



03

Improve community life and facilitate development

Provide rules, processes and governance institutions to promote a prosperous, respectful and vibrant community, to guide and control community development – residential, commercial and industrial – for the benefit of all, and to protect the environment.

What should a Land Code Accomplish?



02

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Provide substantive and procedural rules for decision-making and the enactment of land-related laws by the Council and the community. The rules should be complete, legally sound, and enforceable in courts of law.

Making First Nation Land Laws

a. Legislative Authority of Council ^{1/3}

Section 4.01 of the draft Land Code sets out Council's legislative authority to enact land laws covering a wide variety of matters:

Power to enact land laws

4.01 Council has the power to make land laws in accordance with this Land Code, respecting

- (a) interests or land rights in Hiawatha First Nation land;
- (b) the development, conservation, protection, management, use and possession of Hiawatha First Nation land; and
- (c) any matter arising out of or ancillary to the exercise of that power.

a. Legislative Authority of Council ^{2/3}

Section 4.02 of the Land Code lists some of the particular legislative powers of Council – i.e. examples of land laws that can be enacted.



a. Legislative Authority of Council

- Land use and zoning
- The creation and granting of interests or land rights in relation to HFN Land
- Environmental assessment, permitting and protection
- Services and user fees
- Dispute resolution
- Enforcement measures

Particular powers

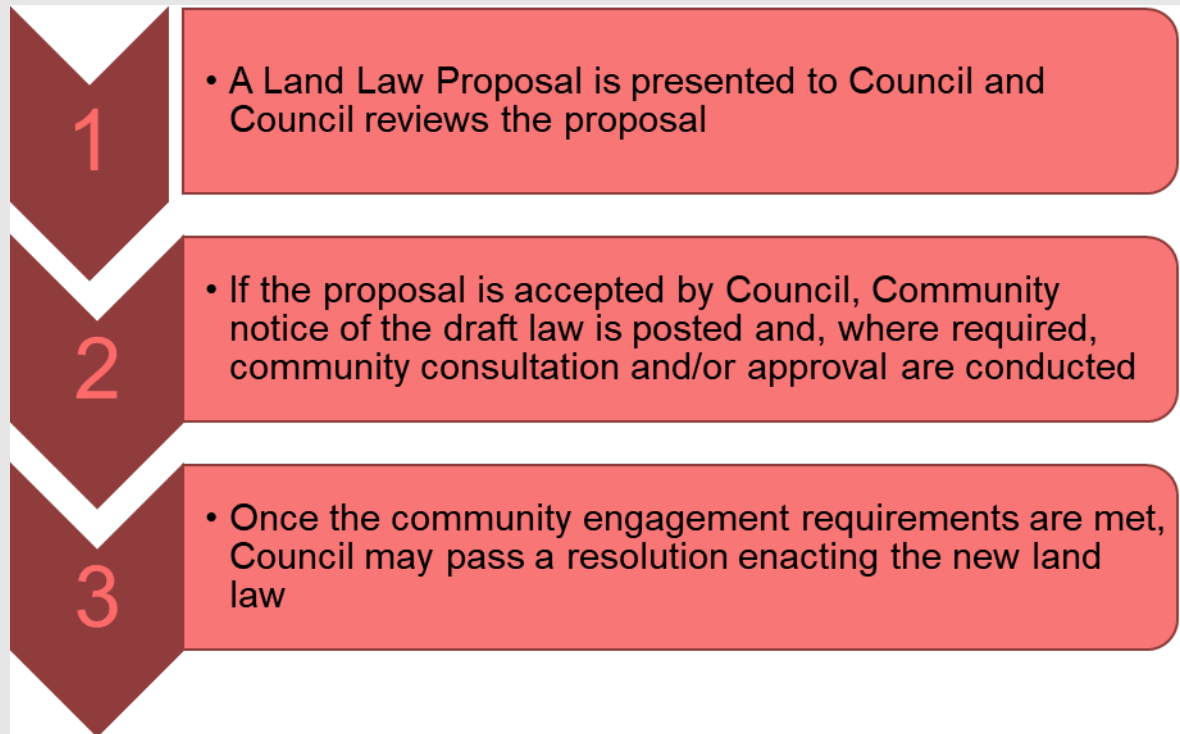
4.02 Without restricting the generality of section 4.01, Council may enact land laws as provided in this Land Code respecting:

- (a) the regulation, control or prohibition of land use and development including zoning and subdivision control;
- (b) the creation, acquisition and granting of interests or land rights in relation to First Nation land and prohibitions in relation thereto;
- (c) environmental assessment, permitting and protection, in accordance with the terms and conditions set out in the *Framework Agreement*;
- (d) the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services;
- (e) the provision of services for the resolution of disputes in relation to First Nation land; and
- (f) enforcement measures, consistent with federal laws, including the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.

b. Law-making procedure ^{1/4}

The draft Code provides a complete set of procedures for introducing and enacting a new law (**Part 5**):

Brief Overview



b. Law-making procedure ^{2/4}

Land Law Proposal

S. 5.01 Land law enactment begins with a land law proposal, a simple document which must contain certain key information:

PART 5 ENACTMENT OF LAND LAWS

Definition

5.01 In this Part, “land law proposal” means a written proposal for a land law, setting out

- (a) the subject matter of the proposed land law and what it is intended to accomplish;
- (b) the benefit of the proposed land law to Hiawatha First Nation;
- (c) optionally, an outline or draft of the provisions of the proposed land law; and
- (d) the provision or provisions of this Land Code authorizing Council to enact the proposed land law.

b. Law-making procedure ^{3/4}

Scenario:

Amy, a citizen of HFN, wants a land law enacted that will protect an area of community land in which traditional medicines are found. The plants are important for spiritual and cultural purposes.

Applying s. 5.01 of the Restated Land Code:

- Amy prepares a land law proposal:
 - **“Proposal:** Council should enact a land law to protect the area shown on the attached map from any development because important medicine plants grow there. The area should be designated a heritage site.”
 - **“Benefit:** These plants are needed for spiritual and cultural activities.”
 - [Could have a draft of the land law, but not essential]
 - **“Authority:** Subsection 4.01(b) of the Land Code gives Council the power to enact land laws to protect Hiawatha First Nation land.”

LAND LAW PROPOSAL

Subject Matter: Protection of Medicine Garden by making it a heritage site.

Benefit to HFN: Protect endangered plants which are spiritually important to our people

Draft Land Law: To be prepared by Council

Council's authority to enact: Subsection 4.01 of the Land Code allows Council to pass a land law to protect land

b. Law-making procedure ^{4/4}

Land Law Proposal

5.02-5.03 A land law proposal can be introduced in an open meeting of Council by any Councillor or by a eligible voter with the permission of the Chief or chair of the meeting:

Motion to consider a land law proposal

5.02 Any member of Council may, by motion in an open session of Council, submit a land law proposal for consideration.

Introduction of land law proposal by eligible voter

5.03 An eligible voter may, at the time provided in the agenda of an open session of Council, or with the leave of the Chair at an open session of Council, request that Council consider a land law proposal.

c. Three Ways of Enacting Land Laws ^{1/5}

The procedure to get from a land law proposal to an enacted land depends on the subject matter:

1. Enactment after notice to the community: s. 5.06

- Land laws on most matters can be enacted by Council in an open Council meeting after giving 21 days notice to HFN's citizens (s. 5.06)
- The exceptions to this general rule are listed in s. 5.07 and 5.08.

2. Enactment with community consultation: s. 5.07

- Land laws covering certain matters can only be enacted by Council after it has consulted with HFN's citizens in a community meeting. Council can however require community consultation for any proposed land law

3. Enactment with community approval: s. 5.08

- Land laws listed in s. 5.08 cannot be enacted unless Council obtains the prior approval of HFN's citizens through a community approval vote
- Council can decide to make any proposed land law subject to a prior vote

c. Three Ways of Enacting Land Laws ^{2/5}

Enactment by Council with notice

S. 5.06 Land laws on most issues can be enacted by Council by FNCR, on 21 days' notice to Citizens (notice is required for ALL land laws):

Notice that draft land law was tabled

5.06 At least 21 days before the date of the first open session of Council at which the draft land law may be enacted, Council shall cause notice to be given to the eligible voters by:

- (a) posting a copy of the tabling resolution on a notice board accessible to citizens in the administration offices of the Hiawatha First Nation;
- (b) posting notice or a copy of the tabling resolution on a citizen-accessible portion of the Hiawatha First Nation website; and
- (c) any other methods specified in the tabling resolution or other resolution of Council.

c. Three Ways of Enacting Land Laws ^{4/5}

Enactment only with Community Consultation

S. 5.07 Certain land laws can only be enacted by Council after it has consulted with HFN's citizens in a community meeting:



Community Consultation

- Certain types of land laws cannot be enacted unless Council convenes a community meeting to consult with the eligible voters.

Section 5.07 sets out the list of subject matters for which community consultation is required.

- Council can decide to require community consultation for any land law (**s. 5.08(h)**)

Community consultation

5.07 Council shall consult with HFN's eligible voters in a community meeting prior to enacting any of the following:

- (a) a grant or disposition of an interest, permit or licence in community land by the First Nation to a person other than a citizen for a term exceeding 25 years;
- (b) a law to govern expropriation procedure or any particular expropriation for community purposes pursuant to PART 14;
- (c) a land law which creates an offence punishable under Part XVII of the *Criminal Code*;
- (d) any land law or class of land law that Council, by resolution, declares to be subject to community consultation.

c. Three Ways of Enacting Land Laws ^{4/5}

Enactment only with Community Approval

S. 5.08 Certain land laws can only be enacted after a Community Approval vote:



Community Approval Vote

- Certain types of land laws cannot be enacted unless Council obtains the prior approval of the eligible voters. **Section 5.08** sets out a list of such land laws.
- Council can decide to require community approval for any land law – i.e. Council may choose to require community approval where the subject matter of the land law is controversial (**s. 5.08(h))**

Community approval

5.08 Land laws in respect of the following matters may be enacted by Council only with community approval:

- (a) comprehensive land use planning and approval controls for Hiawatha First Nation land, as provided in subsection 7.02(a);
- (b) an environmental stewardship law affecting all or substantially all of the land within the reserve, as provided in subsection 7.02(b);
- (c) the designation of a heritage site and any amendment or cancellation of a designation;
- (d) general rules and procedures respecting, in cases of breakdown of marriage and other conjugal partnerships, the use, occupation and possession of Hiawatha First Nation land and the division of interests or rights in that land;
- (e) any matter submitted to the eligible voters pursuant to the conflict of interest rules in PART 13
- (f) any voluntary exchange of Hiawatha First Nation Land referred to in PART 15 of this Land Code; and
- (g) any land law or class of land law that Council, by Resolution, declares to be subject to community approval.

c. Three Ways of Enacting Land Laws 5/5

Community Approval Vote Threshold

- A matter submitted for community approval will be approved if a majority of the eligible voters who participated in the vote voted to approve the matter (s. 5.11(a))
- Council may choose to impose a special vote quorum or a minimum number of votes that must be cast for certain community approval votes (s. 5.11 (b))

Majority approval

- 5.11 A matter submitted for community approval shall be approved if:
- (a) a majority of eligible voters who participated in the vote voted to approve the matter; or
 - (b) where Council by resolution prescribed a minimum number of votes required to be cast for the vote to be certified, the number of votes cast equaled or exceeded that minimum and a majority of the unspoiled votes cast approved the matter.

c. Three Ways of Enacting Land Laws

Scenario:

Council has accepted Amy's land law proposal and has prepared a draft land law that designates the area as a heritage site and provides that anyone who interferes with the site is punishable by a fine or imprisonment. What procedures must Council follow to enact the land law?

Applying ss. 5.06-5.08 of the Land Code:

- In all land law enactments, Council must provide a minimum of **21 days' notice** to citizens before it can enact the land law [s.5.06]
- A land law designation a heritage site requires **community approval** [s.5.08(d)]
- A land law that creates offences punishable under the Criminal Code requires prior community consultation (i.e. a **community meeting**) [s.5.07(c)] (likely to be combined with the community approval vote process)

d. Accountability ^{1/4}

Checks and Balances

Despite the broad legislative power of Council, the draft Code provides for various checks and balances of Council's legislative authority:

1. **Community Engagement** (ss. 5.06, 5.07 and 5.08) discussed above
2. **Publication and Registration of Laws** (Part 6)
3. **Reporting to the Community** (s. 8.02)

d. Accountability ^{2/4}

Publication

Every land law must be published:

- in the administration offices
- on the FN's website, and
- possibly in the *First Nations Gazette*

Publication

6.02 Every land law, regulation, standard, code or policy shall be recorded in the minutes of the Council meeting at which it is adopted and published within ten days after enactment by posting a certified copy for not less than sixty days:

- (a) on a notice board accessible to Citizens in the administration offices of Hiawatha First Nation;
- (b) on a citizen-accessible portion of the Hiawatha First Nation website; and

and where Council so directs, by publication of a notice of the land law or other instrument in the *First Nations Gazette* or a similar publication.

d. Accountability ^{3/3}

Registration of land laws

Every land law must be:

- registered in an HFN Land Laws Registry (to be established) and
- registered or deposited on title to the lands affected

Registration of land laws and other instruments

- 6.06 Subject to the establishment of the Hiawatha First Nation Land Laws Registry, Council shall submit to the Registrar of Land Laws a certified copy of every land law, regulation or other instrument adopted by Council pursuant to this Land Code, signed by a majority of a quorum of Council or by a person appointed by Council to certify its enactments, for registration or recording against the lands affected, including notices that instruments previously registered or recorded have been amended, repealed or are no longer in force.

d. Accountability

4/4

Annual reporting requirement

The Code requires Council to provide to HFN citizens a yearly report on :

- all land management activities including any laws enacted, interests, permits and licences created or granted, income from lands,
- Council's progress on its land management responsibilities
- an audited financial statement for all Land Code activities:

Annual Land Management Report

8.02 Within six months of the First Nation's fiscal year end in each year, Council shall publish for the benefit of citizens an Annual Land Management Report which shall include, for the reported period:

(a) a summary of:

- i. interests, permits and licences created, granted or cancelled in Hiawatha First Nation land, including any expropriations;
- ii. land laws regulations, standards, codes or policies enacted by Council or coming into force; and
- iii. the findings and recommendations of any completed operational, financial or governance review;

(b) an update on the implementation of section 7.02; and

(c) an audited financial statement with respect to revenues generated from interests, permits and licences, natural resources and local services, prepared and presented in compliance with accounting rules approved by the First Nations Financial Management Board or with International Financial Accounting Standards, as approved by Council from time to time.

3. Land Management Tools ^{1/3}

The draft Land Code requires Council to develop, in consultation with the community, key land management tools as soon as practicable (s. 7.02), including:

Comprehensive Land Use Plan

- Plan for development of lands and the zoning of permitted and prohibited land uses, development application processes, etc.

Matrimonial Property Law

- General rules and procedures respecting, in cases of breakdown of marriage and other conjugal partnerships, the use, occupation and possession of Hiawatha First Nation land and the division of interests or rights in that land

Environmental Stewardship Regime

- General law governing environmental assessment, environmental permitting and environmental protection

Lands, Resources and Services Revenues Law

- General rules governing rates for resource extraction, land rentals and user fees

3. Land Management Tools ^{2/3}

- Comprehensive Land Use Plan - s. 7.02(a)
- Environmental Stewardship Law - s. 7.02(b)

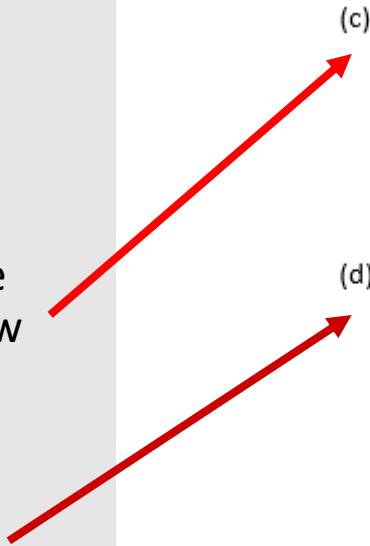
Land use planning, environmental stewardship and resource revenues

7.02 Without limitation of Council's management powers provided in section 7.01, Council shall be committed to the development and implementation, in consultation with citizens, of the following land management regimes, laws and policies:

- (a) comprehensive land use planning and approval controls for Hiawatha First Nation land, including:
 - i. a general land use plan and development scheme for the lands to which this Land Code applies,
 - ii. zones of permitted and prohibited land uses;
 - iii. controls on the subdivision of land; and
 - iv. authorities, processes and procedures for reviewing land use and development plans before any person may construct or replace works or change the permitted use of land;
- (b) an environmental stewardship law for Hiawatha First Nation land providing for:
 - i. the identification, protection and restoration of heritage sites and features of natural, historical, scientific, spiritual or cultural interest; and
 - ii. environmental assessment, permitting and protection in accordance with the procedures, terms and conditions set out in the *Framework Agreement*;

3. Land Management Tools _{3/3}

- Comprehensive Land Use Matrimonial Property Law s. 7.02(c)
- General rules governing land and services revenues s. 7.02(d)

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- (c) general rules and procedures respecting, in cases of breakdown of marriage and other conjugal partnerships, the use, occupation and possession of Hiawatha First Nation land and the division of interests or rights in that land;
- (d) general rules and procedures respecting revenues generated from:
- i. natural resources produced or obtained from First Nation land; and
 - ii. the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services; and

Important Upcoming Dates

Monday, March 22 at 1:30PM – Community Meeting #2

- Creation and Treatment of Interests in HFN Land

Saturday, April 17 at 10:00AM – Community Meeting #3

- Dispute Resolution, Enforcement & Summary of Advantages

Saturday, May 1 (Proposed) – Ratification Vote

Questions?

Thank you!

