
KEY FIRST NATION

PELLEY HAYLANDS TRUST AGREEMENT PROTOCOL FOR:

BAND DEVELOPMENT REQUEST & LAND ACQUISITION

I INTRODUCTION; PHL BAND DEVELOPMENT REQUEST & LANDS ACQUISITION PROTOCOL:

Please be advised the purpose of this report and documentation is to provide a general description and outline of the Band Development Request process contemplated and provided for in the Key First Nation (KFN) Pelly Haylands (PHL) Trust Agreement. Be further advised that the adoption of this report shall serve as the basis for a formal KFN PHL Band Development & Lands Acquisition Protocol.

In presenting this report it is critical to note that the same procedures for Band Membership approval described in this protocol for Band Development Requests are generally the same requirements for Band Membership Approval of Land Acquisition and land purchase contemplated by the Trust Agreement.

Therefore this documentation is provided for the greater understanding by KFN Chief and Council and Band Membership of the PHL Band Development Request and Lands Acquisition Process as defined and required by the Pelly Haylands Trust Agreement.

.i) KFN PHL Band Development Terms of Reference:

Be advised that Band Development is defined and described in the PHL Trust Agreement Article 1 and is provided here in this document section along with other relevant Band Development terms of reference;

Band Development; means the investment and/or utilization of money in the (PHL) Band Account for the following purposes:

- (a) Business;
- (b) Acquisition of Land or Improvements; or
- (c) Any socio-economic benefit, or any other program, or service or project which is for the use, development, advantage or benefit of the First Nation or a Member, excluding however, per capita distributions to the Members and payment to the First Nation to cover any shortfall in operating funding of the First Nation other than those specifically provided for in this agreement;

Band Development Request; means a request in writing from the Chief and Council or a Member or Members of the First Nation in the form set out in Schedule "B", with amendments as necessary, for a distribution of funds from the Band Account for Band Development purposes, which shall:

- (a) Contain at least the following information:
 - (i) a detailed description of the Band Development for and in respect of which the distribution is requested including any equity that the Member or Members are prepared to contribute to the Band Development;

- (ii) the Projected Cost and profit, if expected, of the Band Development;
- (iii) a schedule of the date or dates when the funds requested will be required; and
- (iv) a statement declaring any conflict of interest on the part of a member of the Chief and Council;

(b) Be signed by at least a quorum of Chief and Council or Member or Members of the First Nation making the request.

Business: means an economic development project, activity or undertaking with the primary objective of providing goods, services, programs or capital assistance to Members of the First Nation or any activity or undertaking to make profit by either a Member or Members of the First Nation or the First Nation itself.

Band Account: means the account of the First Nation to be established by the Chief and Council on behalf of the First Nation at a financial institution for the specific purposes required under this (PHL Trust) Agreement. The monies deposited to this account annually are the entire funds for Band Development Request funding on a continuing annual basis.

Band Account Development Direction: means the direction, in the form attached (in the Trust Agreement) hereto as Schedule “E”, which is to be prepared and signed by the Chief and Council in respect of the release of, or payment of, monies from the Band Account for Band Development purposes as contemplated in this (KFN PHL Trust) Agreement.

Member Resolution: means a resolution of the Eligible Members following a vote held in accordance with Article 27, in the form set out in Schedule “C”, and must be signed by at least a quorum of the Chief and Council.

Eligible Member means a person: (*For the Purpose of Band Development Request Applications or for the purpose of participation in KFN PHL Band Member Approval Voting. Not to be confused with the KFN PHL Per Capita Distribution Effective Date for Eligible Members.)

- (a) Whose name appears on the KFN Membership List or whose name does not so appear but who has submitted an application to have his or her name so entered and that application has been approved;
- (b) Who is at least 18 years of age; and
- (c) Who has not been found mentally incompetent or otherwise unable to manage his or her own affairs by a court of competent jurisdiction;

as of the date of any vote of the Eligible Members referred to in this Trust Agreement.

II PELLY HAYLANDS ARTICLE 22 BAND DEVELOPMENT REQUEST PROCESS

The following is a description of the KFN PHL Band Development Request Process and is drawn entirely from the Trust Agreement.

Subject to section 22.01 the Chief and Council are hereby authorized and empowered to carry out the Trust in respect of Band Development as set forth in subsection 17.01(d) of the Pelly Haylands Agreement in accordance with the following procedures:

- (a) The Chief and Council, a Member or Members of the First Nation shall be entitled to initiate or apply for Band Development by preparing or delivering to the Chief and Council a Band Development Request;
- (b) The Chief and Council, upon preparing or receiving the Band Development Request and being satisfied that the request for distribution is for and in respect of a Band Development, and upon being satisfied that sufficient funds are available and will not be required otherwise to meet the obligations under this Agreement and, if in the absolute discretion of the Chief and Council they consider that the request is a reasonable one, shall call a meeting of the Eligible Members in accordance with section 27.01. Prior to the Chief and Council providing their approval, the Band Development must firstly be approved by the Eligible Members in accordance with Article 27. If the Chief and Council and Eligible Members approve of the Band Development, a Band Council Resolution and a Member Resolution must be prepared evidencing such approval. The Chief and Council shall then arrange for the withdrawal of funds from the Band Account by means of a Band Account Development Direction and the transfer of the funds in the amount referred to in the Band Development Request from the Band Account into an account of the First Nation or directly to the Member making the request. If sufficient funds are not available for the Band Development and for that reason a meeting of the Eligible Members will not be called, the Band Development Request will be deferred and reconsidered by the Chief and Council the next time the Chief and Council consider a Band Development Request;
- (c) The Chief and Council shall not disburse any funds to the First Nation from the Band Account for Band Development purposes unless the expenditure of funds has firstly been approved by the Eligible Members in accordance herewith, and the Chief and Council are in receipt of the Band Development Request, Band Council Resolution, Member Resolution and Band Account Development Direction; and
- (d) Unless the Member Resolution authorizing the Band Development states otherwise, if the Band Development to be undertaken or established is not completed within one year following the distribution of the funds, or not all of the funds distributed are required to complete the Band Development, the First Nation shall forthwith repay to the Band Account any remaining funds not utilized plus any interest earned which funds, when received, shall be forthwith deposited by the Chief and Council to the Band Account.

**III PELLY HAYLANDS TRUST AGREEMENT: ARTICLE 27-MEMBER RESOLUTIONS
(*For KFN Band Development or Land Acquisition Purchase)**

The following description is taken from Article 27 of the KFN Pelly Haylands Trust Agreement and is the legally required procedure for meetings with respect to KFN PHL Band Development Request Member Approval Meetings, or for meetings to approve PHL Land Acquisition Purchase(s) over the amount of \$50,000. (*Please be advised that a full report shall be pending outlining and describing the Land Acquisition and Purchase Process for Chief and Council and Band Membership review.)

(27.01) Procedure for Meetings of Eligible Members: Where in accordance with any provision of this Trust Agreement, a Member Resolution is required or the approval of the Eligible Members is required, the following process will be followed:

- (a) The Chief and Council shall call a meeting of the Eligible Members by giving notice to the Eligible Members in accordance with subsection 27.01(b);
- (b) The notice referred to in subsection 27.01(a);
 - (i) shall be in writing;
 - (ii) shall be posted in an area of the administrative offices of the First Nation to which the public has access;
 - (iii) shall be posted at other times and in other locations as the Chief and Council determine appropriate with the goal of ensuring that to the extent possible all Eligible Members have notice of the meeting;
 - (iv) shall be posted at least thirty (30) days in advance of the date of the meeting;
 - (v) shall be substantially in the form set out in Schedule "D" and contain the following information:
 - the date, time, and place of the meeting;
 - give notice of the purpose of the meeting including a detailed description of the matters which will be considered at the meeting; and
 - advise the Eligible Members that a vote will be taken at the meeting;
- (c) A meeting of the Eligible Members shall be held on the date and at the time and place set out in the notice, at which time and in the presence of a quorum of the Chief and Council:
 - (i) the Chief and Council shall provide sufficient information to the Eligible Members in attendance so as to permit the Eligible Members to make an informed decision, including, where the purpose of the meeting is inform the Eligible Members of the intent of Chief and Council or Member or Members to make a request for a distribution from the Band Account for Band Development, a description of the proposed Band Development and the amount of the distribution the Chief and Council or Member or Members intend to request;

- (ii) a statement shall be provided declaring any conflict of interest on the part of a member of the Chief and Council; and
- (iii) a poll shall be conducted by a member of the Chief and Council by a show of hands to determine the decision of the Eligible Members on the matter in respect of which the meeting was called. Approval will be given if a simple majority (50% plus 1 of the Eligible Members who vote) of those who vote are in favour of the matter. At any time before the poll is conducted and on a motion by any Eligible Member passed by a show of hands of the Eligible Members in attendance, the meeting or the decision with respect to a particular request or proposal for Band Development may be postponed for the purpose of compiling further information for the benefit of the Eligible Members; and

(d) The member of Chief and Council who conducts the poll in accordance with subsection 27.01(c)(iii) shall, following a count of the votes, announce the results of the vote and complete a resolution of the Eligible Members in the form set out in Schedule "C", and the same shall be signed by a quorum of the Chief and Council.

- (27.02) Rules and Procedures:** The Chief and Council may make and amend, from time to time, rules and procedures that they deem appropriate and reasonable to govern the meetings and votes to be conducted under this article provided that such rules and procedures are not inconsistent or do not conflict with the provisions of this article.
- (27.03) Postponement:** The Chief and Council may only postpone the meeting of the Eligible Members as a result of the death of a Member.
- (27.04) Rules Where Meeting Postponed:** Where a meeting of the Eligible Members to be held in accordance with section 27.01 or the decision with respect to a particular request or proposal for Band Development is postponed for any reason, then section 27.01 to 27.03 shall apply to any subsequent meeting called in respect of the same subject matter.
- (27.05) Effect of Error:** Despite section 27.01, no decision of the Eligible Members may be impugned on the grounds that a technical and non-substantial procedural breach of section 27.01 occurred which could not be reasonably inferred to have affected the outcome of the vote of the Eligible Members.

4.0 KFN PHL CONFLICT OF INTEREST GUIDELINES AND REQUIREMENTS

The KFN Pelly Haylands Trust Agreement Section 28., CONFLICT OF INTEREST places specific conflict of interest guidelines and requirements upon the Chief and Council and also upon members who participate in the KFN PHL Member Approval Process. For easy reference they are provided as follows;

(28.) CONFLICT OF INTEREST

(28.01) Related: For the purposes of this article “related” shall mean one’s immediate family, being one’s spouse or biological or adoptive parent, child, brother or sister.

(28.02) Duty to Disclose: A Chief or Councilor who:

- (a) Is a party to a contract, or proposed contract entered into or to be entered into in accordance with this Agreement; or
- (b) Is a director or an officer of or has an interest in or is related to any Person who is a party to a contract or proposed contract entered into or to be entered into in accordance with this Agreement,

Shall disclose in writing to the Chief and Council, or shall request to have entered in the minutes of meetings of the Chief and Council, the nature and extent of the Chief or Councilor’s relationship and extent of his or her interest.

(28.03) Timing of Disclosure: The disclosure required of a Chief or Councilor by section 28.02 shall be made:

- (a) At the meeting at which a proposed contract is first considered by the Chief and Council;
- (b) If the Chief or Councilor was not then interested in a proposed contract, at the first meeting after he or she becomes so interested;
- (c) If the Chief or Councilor becomes interested after a contract is made, at the first meeting after he or she becomes so interested;
- (d) If a person who is interested in a contract becomes a Chief or Councilor subsequent to execution of the contract, at the first meeting after he or she becomes a Chief or Councilor.

(28.04) Exclusion from Discussion: A Chief or Councilor described in 28.02 shall not take part in discussions or deliberations concerning any such contract, shall leave the meeting during those discussions and deliberations and shall not vote on any resolution to approve the contract.

(28.05) Method of Disclosure: For purpose of this Article 28, a general notice to the Chief and Council by a Chief or Councilor declaring that he or she is a director or officer of or is related to, or has an interest in, a Person and is to be regarded as interested in any contract made with the Person, is a sufficient declaration of interest in relation to any contract so made.

(28.06) Effect on Contracts: A contract is neither void nor voidable by reason of a relationship described in section 28.02 or by reason only that a Chief or Councilor with an interest in the contract is present at, or is counted to determine the existence of a quorum at, a meeting of Chief and Council that authorized or approved the contract if the Chief or Councilor disclosed his or her interest in accordance with sections 28.02 or 28.03 as the case may be, and the contract was

approved by the Chief and Council and was reasonable and fair at the time the same was approved.

(28.07) Not Relieved of Duty: For greater certainty, nothing in section 28.06 shall relieve a Chief or Councilor of his or her duty under section 28.02.

**V RULES FOR GOVERNANCE AND DECORUM OF KFN PHL BAND DEVELOPMENT
GENERAL BAND MEETINGS (PHL Trust Agreement Article 27.02) October 7, 2009**

- i) Prohibition of Attendance of Anyone Under The Influence of Drugs or Alcohol.
- ii) The Chief (or his/her designate) shall chair the meeting under Robert's Rules of Order.
- iii) Band Development Presentations must be vetted in accordance with this Band Development Protocol (or as required under PHL Trust Agreement Article 22.01, subsection b). For greater certainty this means that any Band Development Requests must be presented to Chief and Council for their approval, at least 30 days prior to the Band Development Meeting.
- iv) Speakers may be permitted by the Chair, in order of sequence of request.
- v) Requests to Speak to issues of discussion will be signified by raising of a hand by members of Council, or Band Members in attendance.
- vi) Prior to any vote occurring the Chief (or designated chair) shall declare the question that if there is no conflict of interest on the part of anyone partaking in the pending vote, then a vote on the issue shall occur. Any Eligible Member that is in conflict of interest will be disallowed from participating in the pending vote. (*For greater certainty Conflict of Interest is defined in PHL Trust Agreement Section 28 CONFLICT OF INTEREST)
- vii) After sufficient discussion a vote will occur on the Band Development issue of presentation and discussion. This vote shall be conducted by a show of hands or as per PHL Trust Agreement Article 27.01(d)(iii).
- iiix) The results of any such vote occurring with respect to Band Development at any KFN PHL Band Development meeting shall be officially recorded by the recording secretary of the meeting. This vote shall be considered binding and no further debate shall occur.
- ix) Any Band Development project or issue may be tabled (or deferred) for the gathering of more information for further discussion and resolution at the next KFN PHL Band Development meeting.
- x) The recording secretary will be designated and announced by the Chief prior to official Band Development agenda business commencing.
- xi) Disruptive or Abusive band members will not be tolerated and will be required to leave the meeting before any further discussion continues.
- xii) All members of Chief and Council are required to be in attendance at any given KFN PHL Band Development meeting. Based upon the availability of the Chief and Council, in the case that all members of Chief and Council cannot be present then the meeting will occur only if a full quorum of Chief and Council is present. Absence of any member of the Chief or Council shall be duly recorded into the minutes of the meeting.
- xiii) KFN PHL Band Development meetings may be postponed only in the case of death of a KFN Band Member.
- xiv) All items of discussion taking place at the Band Development Meeting must be included in the 30 Day Notice of Meeting for Band Development.

VI SUMMARY OF KFN PHL BAND DEVELOPMENT PROTOCOL

- 1) Preparation and Formal Submission of Band Development Request to Key First Nation Chief and Council. The submission shall be formatted according to PHL Trust Agreement Schedule B.**
- 2) Review and Approval by Key First Nation Chief and Council of proposed Band Development Request. This approval shall be evidenced by a 30 Day Notice as required by section 27.01 of the PHL Trust Agreement.**
- 3) 30 Day Public Notice of Band Development Request Meeting minimum upon Chief and Council Approval. This notice shall be in the form set out in Pelly Haylands Trust Agreement Schedule "D"**
- 4) Presentation of Band Development Request at Official KFN PHL Band Development. At this point the presenter must give a sufficient explanation of the proposed Band Development so as to allow the Band Members present to make an informed decision.**
- 5) Public Vote by Show of Hands of Eligible Voters for Approval/Disapproval of Proposed Band Development Request.**
- 6) Approval of Chief and Council to be based upon availability of PHL Trust Agreement funding.**
- 7) Final Approval by CIBC Trustee based upon availability of PHL Band Account funding.**
- 8) Disbursement of Funding Provided According to Approved Schedule of Funding.**

VII PELLY HAYLANDS TRUST AGREEMENT LAND ACQUISITION PROCESS

The general procedure for the acquisition or purchase of land is set out in PHL Trust Agreement Section 8; Purchasing And Use Of Land. For the purpose of presentation of this protocol Section 8 of the trust agreement is provided herein this part of this report. A general summary will be provided at the conclusion of this section.

(8.) Purchasing And Use Of Land

(8.01) Purchase Procedure: The following procedure shall be followed when Purchasing Land:

- (a) The Chief and Council shall consider and must approve all Purchases of Land and shall, if they choose to Purchase Land, indicate their approval by passing a Band Council Resolution in respect of the selected Land, Price and conditions, if any, upon which they are prepared to Purchase such Land. Prior to providing its approval the Chief and Council shall firstly consider all matters that a prudent purchaser of land would consider when purchasing land, and shall prepare a written statement of intention to Purchase Land and to have such Land set apart as a Reserve, which shall include but are not limited to the following;
 - (i) the legal and, where applicable, civic description of the selected Land;
 - (ii) a list of all Improvements on the Land and confirmation that such Improvements have been inspected by a qualified inspector, along with a copy of the inspector's report;
 - (iii) the recommended Price to be paid for the Land;
 - (iv) confirmation that the selected Land is available for acquisition;
 - (v) any other specific terms upon which the Land is to be Purchased;
 - (vi) any potential environmental concerns; and
 - (vii) any potential problems with having the Land set apart as a Reserve;
- (b) Upon the passing of a Band Council Resolution by the Chief and Council approving the Purchase of the selected Land, and, if required under section 8.03, upon obtaining a Member Resolution evidencing the written approval of the Eligible Members to Purchase Land, the First Nation may enter into a binding Agreement to Purchase the approved Land at a price not in excess of the approved Price;
- (c) The First Nation, upon entering into an Agreement to Purchase Land in accordance with this Article 8, shall;
 - (i) arrange for the withdrawal of money from the Trust Account by means of a Trust Account Land Acquisition Direction that is not in excess of the approved Price to Purchase the selected Land;

- (ii) arrange for placement by the Trustee of the necessary funds as detailed in the Trust Account Land Acquisition Direction into the trust account of a practicing solicitor in and for the Province of Saskatchewan in trust for the First Nation, to complete the Purchase of Land at the approved Price in accordance with the terms of the Agreement to Purchase and the terms of this Agreement;
- (iii) ensure that the title to the Land Purchased is transferred into the name of the Holding Corporation, which shall be incorporated by the Chief and Council for this purpose; and
- (iv) arrange for the discharge of the Third Party Interests.

(8.02) Purchasing Land: The Trustee shall only permit the release of monies from the Trust Account for the purpose of Purchasing Land as set out in subsection 4.01(f) as follows:

- (a) The Trustee shall be in receipt of a Band Council Resolution containing the written approval of the Chief and Council to Purchase Land and, if required under section 8.03, a Member Resolution evidencing the written approval of the Eligible Members to Purchase Land;
- (b) The Trustee shall be in receipt of a written statement of intention to Purchase Land and to have such Land set apart as a Reserve. Such written statement of intention shall contain a statement that the Chief and Council have considered all matters that a prudent purchaser of land would consider when purchasing land, which shall include but are not limited to the following:
 - (i) the legal and where applicable, civic description of the selected Land;
 - (ii) a list of all Improvements on the Land and confirmation that such Improvements have been inspected by a qualified inspector, along with a copy of the inspector's report;
 - (iii) the recommended Price to be paid for the Land;
 - (iv) confirmation that the selected Land is available for acquisition;
 - (v) any other specific terms upon which the Land is to be Purchased;
 - (vi) any potential environmental concerns; and
 - (vii) any potential problems with having the Land set apart as a Reserve;
- (c) The Trustee shall be in receipt of a copy of the signed Agreement for Sale;
- (d) The Trustee shall be in receipt of a Trust Account Land Acquisition Direction signed by a majority of the Chief and Council named in the most recent Band Banking Certificate then in the Trustee's possession; and

- (e) The Trustee shall disburse the amount of funds set forth in the Trust Account Land Acquisition Direction from the Trust Account to the practicing solicitor (or firm of practicing solicitors) in and for the Province of Saskatchewan named in the said Trust Account Land Acquisition Direction.
- (8.03) Member Approval:** In the event the Purchase of a single parcel of Land involves a Price in excess of \$50,000, involves Land in an urban municipality or involves Land that has a business located on the Land (other than a family farming operation) then prior to the Chief and Council providing their approval, the Purchase must firstly be approved by the Eligible Members in accordance with Article 27 and a Member Resolution must be provided to the Trustee evidencing such approval.
- (8.04) Land Sold:** Prior to any Land that was purchased under the terms of this article being sold by the Holding Corporation, the approval of the Chief and Council must firstly be obtained, such approval to be evidenced by a Band Council Resolution. The Chief and Council shall forthwith deposit the net proceeds from the sale of any such Land back into the Trust Account.
- (8.05) Reserve Status:** The First Nation shall be responsible for having any Land Purchased set apart as a Reserve for the use and benefit of the First Nation in accordance with the requirements set out in the Settlement Agreement.

General Summary of KFN PHL Lands Acquisition Process:

The following summary of the most relevant high-lights of the KFN PHL Lands Acquisition is provided here for easy reference;

1. Key First Nation must purchase up to 4,266.7 acres of land (or up to the equivalent amount of \$3,000,000 worth of land).
2. All KFN PHL land acquisition purchases must be purchased in the province of Saskatchewan, and must be converted to reserve status.
3. Any purchase of land over the amount of \$50,000., must be approved by the KFN Band Membership (Eligible Members) in the manner prescribed by the Pelly Haylands Trust Agreement Article 27, or as described herein this protocol.
4. Documentation Requirements for KFN PHL Land(s) Acquisition include the following;
 - KFN Band Council Resolution identifying; i.) the legal land description of the land to be purchased, ii.) the price of the land to be purchased, iii.) any conditions of purchase.
 - Written Statement of Intention to Purchase Land and to have such land converted to reserve status. (This letter must be shared with the Federal Government and Provincial Government.)
 - Qualified Lands Inspector's Report listing and verifying all Land Improvements of the land to be purchased.

- Legal or Civic Description of Land to be Purchased.
 - Appraised Recommended Value to be paid for the land to be purchased.
 - Letter of Confirmation Land to be purchased is available for sale.
 - A written report of any potential environmental concerns.
 - A written report outlining and identifying any potential problems with having the land to be purchased in converting to reserve status.
 - A report listing any conditions of purchase which the land purchase may be contingent upon.
5. Following the compilation of these documentation requirements a KFN PHL Member Approval meeting (as described in this protocol) must be convened to receive Eligible Band Member Approval for authorization to purchase the targeted land. (*Please note that Land Purchases under the value of \$50,000., do not require Band Member Approval but do however require the same documentation listed in the previous item of this summary.)
 6. The Corporate (CIBC) Trustee will have final approval and will be contingent upon the successful completion of all the documentation and steps described herein this protocol.
 7. Following successful approval and acquisition the land must be converted to reserve status.