
**Key First Nation
Pelly Haylands Trust Manager / Coordinator Report
June 16th, 2009 (KFN Web-Site Report November 2009)**

I Introduction: Pelly Haylands Trust Manager Report, June 16th, 2009

Please be advised the purpose of the following report is to provide the Key First Nation Chief & Council and Band Membership, a preliminary description of the Pelly Haylands Trust Agreement. This report shall serve as an initial survey of the most pertinent issues associated with the effective management of the Pelly Haylands Trust Agreement at the Key First Nation band administration level.

It should be noted this report has not been prepared as a legal opinion but rather has been prepared as assessment of Pelly Haylands Trust management requirements at the *band level*.

Therefore this report has been prepared by the PHL Trust Agreement KFN Trust Manager. The position of KFN Trust Manager has recently been established (May 26, 2009) by the Key First Nation Chief & Council to assist and coordinate the activities required and contemplated through the formal adoption of the Pelly Haylands Trust Agreement.

Through the presentation of this report it should be noted that the Pelly Haylands Agreement was adopted through a Key First Nation Referendum in February 2006. Due to legal appeal however the date of effectiveness of the Pelly Haylands Settlement did not occur until all legal appeal issues were duly resolved through the court process. The date of effective settlement of the Pelly Haylands is therefore September 18, 2008.

With the position of Key First Nation Trust Manager only being recently implemented, it should be stated that there is a substantial amount of orientation and coordination of matters that will naturally need to occur as a result of the latter implementation of the Pelly Haylands Trust Agreement.

For the purpose of greater understanding on the part of KFN Chief & Council, and the KFN Band Membership this initial report has also been prepared to outline and describe the various functions, responsibilities and processes immediately required by the trust agreement. This report is presented for the purpose of achieving a greater understanding of the workings of the agreement in general which are required, in order to effectively trigger the various functions contemplated through the trust agreement.

Please be finally advised through the introduction of this report, that this presentation is only an initial report. Further reporting, communication and coordination must occur before maximum effectiveness of management operation is achieved. Issues and concerns can only be addressed through effective communication and coordination of the responsibilities to be undertaken through the implementation of the Pelly Haylands Trust Agreement.

II Duties & Responsibilities of KFN PHL Trust Manager

Be advised that the position of KFN Trust Manager is made possible by sections 20.01 and 1.01(6)(a) of the PHL Trust Agreement. This position has been implemented to assist and coordinate the activities of KFN Chief & Council with regard to the Trust Agreement. The duties and responsibilities of the KFN PHL Trust Manager can be generally summarized by the following points;

- Preparation of PHL advisory reports and communications to KFN Chief & Council, Band Membership, relevant banking institutions, legal counsel and potential land sellers that are interested in selling land to KFN. (* Please note that the advisory reports entailed in these duties are critical for monitoring the continuing effective capital growth of the PHL Trust Fund.)
- To assist PHL Trustee (CIBC Trustee), and KFN Chief & Council with the timely payment to eligible KFN Band Members turning eighteen (18) years of age, as per KFN Pelly Haylands Trust Agreement Section 6 Per Capita Distribution.
- Provide coordination and documentation of and for KFN Band Meetings pertaining to the execution of membership approval to purchase lands, band development investments, or in the event of proposed amendments to the PHL Trust Agreement.
- Other such duties as related to the PHL Trust Agreement that may from time to time be directed by KFN Chief & Council. (*Please see attached job description.)

III Highlights of KFN Pelly Haylands Trust Agreement

The main high-lights of the Pelly Haylands Trust Agreement are as follows;

- As per PHL Trust Agreement section 4.01 (b) a per-capita payment to all KFN Band Members in the amount of \$3,000.00 (three thousand dollars). Please see part VII of this report for an overview of the Per-Capita Distribution Process.
- As per PHL Trust Agreement section 4.01 (f) the purchase of land, (or any subsequent improvements to land purchased) up to the value of \$3,000,000.00 (three million dollars).
- As per PHL Trust Agreement section 2.07 the main purpose of the PHL Trust is to establish a permanent trust fund that will provide ongoing financial benefits along with occasional payments to the Key First Nation (as will be described in part V of this report).
- As per PHL Trust Agreement section **10.02-Contribution Procedure**: The purpose of this section is designed to require that all possible steps are to be taken to ensure the continuing capital growth/permanence of the Pelly Haylands Trust Fund. (*A complete description of this section shall be provided in article V of this report.)

- Accountability is required through the Pelly Haylands Trust Agreement through section 25.03 of Pelly Haylands Trust Agreement. This is made possible through the required the annual accounting (*and auditing section 25.04) that must occur with respect to the PHL Trust Management.

IV PHL Trust Agreement Pre-Authorized Purchases and Expenditures

With the successful KFN PHL referendum adoption (and subsequent September 18th, 2008 court decision to quash any appeals), the PHL Trust Agreement allows for certain purchases and expenditures in addition and/or conjunction with the high-lights listed in the previous article.

The following items are identified as authorized purchases and expenditures are as follows;

1. Compensation to (CIBC) Trustee
 2. Per-Capita Distribution (Sept. 18, 2008 Effective Date)
 3. Ratification and/or Legal Cost -\$100,000.00 (one hundred thousand dollars)
 4. Payment of Existing Key First Nation Debt - \$600,000.00 (six hundred thousand dollars)
 5. Authorized Expenses of PHL Trust Excluding Acquisition Cost- \$250,000.00 (two hundred fifty thousand dollars). (subject to article 7 of Pelly Haylands Trust Agreement)
 6. Acquisition Costs- \$450,000.00 (subject to article 7 of Pelly Haylands Trust Agreement)
- ❖ Please note that a required auditing of these accounts is currently being undertaken at the time of this writing. A complete report on these matters will be provided in further reporting.
 - ❖ A summary of the per-capita payout process for minors turning eighteen (18) years of age is outlined and described in part IIX of this report.

V PHL Trust Agreement Article 10.02 Contribution Procedure;

Once again as per article 2.07 of the PHL Trust Agreement; the objective of the trust agreement is to establish a permanent trust fund that will provide on-going financial benefits to the Key First Nation. Certain steps are required to be carried out by the PHL Trust Agreement with regard to the over-all Pelly Haylands Settlement or Trust Property (or the amount remaining after land purchase(s) of \$3,000,000.00, and Per Capita Distribution, and other authorized expenses). These steps are entailed through the trust agreement to ensure the permanence of the Value of the Trust Property.

Article 2.07 further declares that the Chief & Council, an Investment Consultant, and the Trustee in order to maintain the Value of the Trust Property shall develop an Investment Policy that includes;

- i) An asset mix,
- ii) An investment structure,

iii) A spending policy.

Please be advised that further reporting will be provided to identify and explain these listed items for Chief & Council and band membership review.

With respect to article 2.07, PHL Trust Agreement article 10.02 further sets out that in order to meet the objectives of maximizing the dollar amounts to be paid to Key First Nation, as well as to maintain the permanence of the PHL Trust Account the Chief & Council are required to adhere to the contribution procedure provided in the following description;

- As per article 10.02 (a), each year following PHL Fiscal Year End date of December 31st, the (CIBC) Trustee shall calculate the ***Inflation Adjusted Capital Amount (IACA)*** and compare it to the ***Value of the Trust Property (VTP)***, and will advise KFN Chief & Council of this calculation. Any excess amount of the ***Inflation Adjusted Capital Amount*** over the value of the ***Trust Property*** shall be determined to be the ***Contribution Amount*** that the Pelly Haylands Trust pays to the Key First Nation for that fiscal year.
- Article 10.02 (a) further states that the contribution from the PHL Trust to the Key First Nation shall be zero for that fiscal year if the difference between the IACA and the VTP is a negative amount.
- As per article 10.02 (b), where the VTP is less than the IACA and after being advised of this calculation by the (CIBC) Trustee, then the Key First Nation shall be required to contribute to the PHL Trust Account a contribution amount that will ensure the VTP is equal to the IACA.
- Article 10.02 (c) sets out that in the case of the VTP falling below 90% (ninety per-cent) of the IACA then the (CIBC) Trustee shall consult with KFN Chief & Council to determine either subsequent KFN Contribution Increases, or other investment and financial strategies that will ensure continuing growth of the VTP.
- Furthermore article 10.02 (c) states that in the event the KFN Chief & Council and the (CIBC) Trustee cannot agree upon the KFN Contribution increase amount, then the (CIBC) Trustee has the absolute discretion to determine either the KFN Contribution Amount, and/or other strategies to implemented in order to make up for any 90% VTP/IACA shortfall. Furthermore this article sets out that the (CIBC) Trustee has the authority and discretion to withhold the amount of any ***Revenues Realized*** equal to the required KFN Contribution Amount from subsequent fiscal year budgets in order to recover this shortfall.
- Article 10.02 (d) sets out that the KFN Contribution Amount shall be zero when the VTP is greater than the IACA Amount.
- Further to article 10.02 (d), article 10.02 (e) sets out that in the case where the VTP is in excess of the IACA the (CIBC) Trustee shall consult with KFN Chief & Council and the Investment Consultant (required by the PHL Trust Agreement) in order to determine if or when ***Authorized Investments*** (also as required by the trust agreement) will be sold to reduce the VTP to an amount closer to the IACA. The financial amount of this transaction shall be considered ***revenues realized*** and shall be utilized according to article 10.03 of the PHL Trust Agreement. Once again in the event the KFN Chief & Council cannot reach an agreement to sell authorized investments in order to generate ***revenues***

realized, then the Trustee (CIBC) has the discretion and authority to determine this decision.

- Article 10.02 (f) expressly states that article 10.02 can only be amended according to section 29.02 (b), whereby a referendum must be held in accordance with any current *Indian Referendum Regulations* as prescribed and required by Indian Act legislation, (or for greater clarity; 50% plus 1 eligible members take part in a vote to amend, and 50% plus 1 of these voters agree to amend PHL Trust Agreement).

VI Band Membership Approval Meeting(s): Required Process and Due Diligence of Chief & Council and Band Membership & Required PHL Band Membership Meetings

Please be advised Band Membership approval is required of any expenditure not identified as a pre-authorized expense in the trust agreement, or of any purchase of a parcel of land over the amount of fifty thousand dollars. Section 27 (pg 38) PHL Trust Agreement prescribes that in any event contemplated by the trust agreement where a KFN Band Member resolution is required the following steps are required in order to validate the approval of any and all band member resolutions;

- KFN Chief & Council shall formally declare a meeting according to PHL subsection 27.01 (b), which requires the following steps are to be taken;
 - i. The PHL Band Member Meeting notice must be in writing.
 - ii. PHL Band Member Meeting must be posted in an area of the administrative office of the KFN where the public can have access to this notice.
 - iii. Notice for PHL Band Member meetings shall be posted at other locations deemed appropriate by KFN Chief & Council with the goal of ensuring that all attempts have been made to provide total band membership notice.
 - iv. Notice for PHL Band Membership Meetings must be posted thirty (30) days in advance of the proposed PHL meeting.
 - v. Notice for PHL Band Membership Meetings must be provided in accordance with the format set out by Schedule D of the PHL Trust Agreement. Schedule D sets out the format and required information to be posted with regard to the proposed scheduled PHL Band Membership meeting.
- Article 27.01 (c) sets out that where a Band Membership Meeting takes place and where a Band Membership vote takes place to approve any proposed purchase or band development initiative, a full quorum of KFN Chief & Council is required to be present at this proposed meeting. Furthermore the following guidelines are required to be administered by the attending quorum of KFN Chief & Council and for ease of reference are described as follows;

- i. KFN Chief & Council are required to provide sufficient information to such an extent as to allow the attending KFN Band Membership to make an informed decision with respect to the KFN Chief & Council intention to make any purchases and/or any withdrawal from band account of PHL.
- It should also be noted that KFN band members may make similar applications for band development funding. Further clarification and report summary shall be provided on this matter in upcoming reports.
- ii. A statement must be made before any poll takes place on any matter of business, declaring any conflict of interest on the part of KFN Chief & Council or any member making an application and presentation.
- Please note that conflict of interest guidelines are provided for in section 28 of the Pelly Haylands Trust Agreement, and are applicable to all KFN Chief & Council and Band Members making Band Development applications to the Pelly Haylands Trust.
- iii. A member of KFN chief & council shall conduct a poll by a show of hands of the band members present to approve or disapprove the issue being voted upon.

On the same point members can also vote to table or adjourn a matter to be dealt with at a later date for the purpose of gathering and presenting more information for the benefit of the band members.

VII Key First Nation Pelly Haylands; LAND ACQUISITION & PURCHASE PROCESS

Please be advised that the purchase and acquisition of land with respect to the Pelly Haylands Trust Agreement is defined in Section 8 of the Pelly Haylands Trust Agreement, (*Please See – 8. Purchase And Use of Land pg20.) The process of land acquisition is perhaps the most intensive management and coordination requirement of the trust agreement.

The Chief & Council (management and administration) must adhere to a strict accordance with the exercise of their Pelly Haylands Trust responsibilities. The task of land acquisition can be summarily defined as follows;

- i) 8.01 (a) KFN Chief & Council Written Statement of Approval Required**
 - Must be indicated by a KFN Band Council Resolution, outlining the selected land, the price of the land, and any possible conditions of purchase of the land to be acquired.
 - KFN Chief & Council must prepare a *written statement of intention* to purchase land, and to have this land set aside as reserve land.
 - KFN Statement of Intention to Purchase Land must include a legal or any civic description of the land to be purchased.

- KFN Statement of Intention to Purchase Land must also include a list of all Land Improvements on the Land, and confirmation that any improvements to the land have been inspected by a qualified land inspector.
- Qualified Land Inspectors Report Required on the land to be purchased and any potential land improvements with regard to the land shall also include a summary of the recommended price of purchase of the land, and any environmental concerns, or any potential problems with having the land set apart as reserve status.
- KFN Member Resolution required following adhesion to the PHL Trust Agreement described in the previous points. Please see 8.01 (b) pg. 21 of PHL Trust Agreement.

ii) **Band Member Approval Requirement**

The Pelly Haylands Trust Agreement requires that all due diligence is taken with regard to any meeting that occurs requiring Band Member Approval. This due diligence must occur according to the information provided in part VI, of this report or section 27 of the Pelly Haylands Trust Agreement.

IIX Per Capita Distribution Process – PHL Trust Agreement Management

Perhaps the most pressing area of KFN PHL Trust Agreement management is the Per Capita Distribution required through the agreement. Please be advised that the agreement specifically identifies an effective date of implementation the agreement takes effect. (*In response to concerns raised by KFN Band Members at the last KFN General Band Meeting of May 28, 2009, the Pelly Haylands Trust Agreement specifically states that band members *living* on the effective date of settlement qualify for the Per Capita distribution.)

- \$3,000.00 payment to each band member living as of September 18, 2008 Effective Date of Settlement Agreement, as per PHL Trust Agreement.
- \$3,000.00 payment was originally scheduled to occur over a period of two fiscal years from the effective date of settlement.
- Payment to children turning age 18 (eighteen) years, shall include interest from the effective date of PHL settlement to the end of the month preceding the child's eighteenth (18th) birth-date, * as per PHL Trust Agreement article 6.02 (d) .

i) **Pelly Haylands Per Capita Distribution For Minors Turning Eighteen (18) Years;**

The Pelly Haylands Payout Distribution Process for minors turning eighteen years of age shall be summarized in the following process;

1. **KFN must confirm in writing to the (CIBC) trustee** the age and identity of any KFN child reaching the age of eighteen (18) years. The CIBC Trustee is not responsible for any payment if this KFN confirmation is not received (*as per article 6.02 (d) PHL Trust Agreement).

2. **KFN prepares a band council resolution (BCR) confirming their band membership.**
This same BCR shall also request payment from the (CIBC) Trustee for the KFN child turning eighteen years of age. (PHL section 6.02 c)

 3. **KFN issues to the (CIBC) Trustee a Schedule F- Trust Account First Nation Use Direction form.** Only after receiving the BCR, the KFN confirmation of membership and the PHL Schedule F, will the (CIBC) Trustee issue the payment to the Key First Nation. The Key First Nation has the responsibility of issuing the payment to the eighteen year old KFN Band Member. (PHL section 6.02 h)
- ii) **Other Issues of PHL Trust Agreement Payment to Minors turning Eighteen (18) years of age;**
- KFN is responsible for making every reasonable effort to locate the band member the PHL payment cheque is issued. If after sixty (60) day KFN cannot locate or deliver the payment to the band member (turning 18 yrs.), the payment will be returned to the (CIBC) Trustee. The payment will be held for a period of seven (7) years.

 - In spite of the previous point band members (turning 18 yrs.) that for whatever reason fail to notify KFN of a contact or mailing address, they are not entitled to any additional interest upon payment of PHL per capita distribution beyond the preceding month before their eighteenth (18th) birthday. (PHL section 6.02 h). Therefore KFN band members should be aware that they must make their own effort to advise KFN (and administration) of their contact addresses.

 - Another very important issue associated with the per capita distribution payment to minors turning eighteen (18) years of age, is the issue of minors becoming deceased. In this matter KFN band members should be advised that if the minor does not possess a will upon their becoming deceased then their payment will be provided by the (CIBC) Trustee to the department of Indian Affairs.

 - KFN Band Members (in particular those turning 18 yrs.) should also be advised that there is a dissolution date of seven (7) years following the date of their eighteenth birthday. That is if they fail to advise KFN, or they cannot be located in this seven (7) year period then their per capita distribution payment is forfeited.

