

Summary of Key Changes to the Lax Kw'alaams Indian Band Settlement Trust Agreement (2003)

July 11, 2019

No.	Section Heading	Section no. in original	Section no. in final draft	Original Provision	Amended Provision in final draft
1	Section 1 "Interpretation"	s. 1.1 (f)	s. 1.1 (f)	<p>Currently, under section 1.1(f):</p> <ul style="list-style-type: none"> • Band governance and administration; and • loans, mortgages and grants to Members for education, housing, or health <p>are eligible for trust funding under current definition of "Band Benefit".</p>	<p>Band governance & administration would no longer be eligible for trust funding, and direct loans/grants to Members would no longer be available. Proposed amendment would revise the definition of "Band Benefit" as follows:</p> <p>(f) "Band Benefit" means a non-business activity or undertaking which is intended to provide benefit to the membership of the Band, and which comes within one of the following categories:</p> <ul style="list-style-type: none"> (i) education and vocational training; (ii) housing on and off Reserve; (iii) health including dental benefits and drug and alcohol counselling or rehabilitation; (iv) social, cultural and recreational programs; (v) loans to the Trust pursuant to Section 9 of this Agreement.
2	Section 1 "Interpretation"	s. 1.1 (g)	s. 1.1 (g)	<p>"Band Development" defined broadly as "a business activity in which the Band has a financial interest pursuant to a Council Resolution."</p>	<p>Proposed amendment would revise the definition of "Band Development" to limit it to the purchase or construction of capital assets for the benefit of the membership, as follows:</p> <p>(g) "Band Development" means an activity that is for the benefit of the membership including:</p> <ul style="list-style-type: none"> (i) purchase or construction of lands, buildings, infrastructure, equipment and related assets for the benefit of the Band, and (ii) construction of facilities and infrastructure related to social, cultural and recreational programs.
3	Section 4 "Trust Accounts – Purpose and Overview"	s.4.3	s.4.3	<p>Provides that funds in the Trust Revenue Account will be available for payment of expenses and disbursements as Council may direct.</p>	<p>Proposed amendment would delete Council's power to direct payment of disbursements and instead would ensure that all disbursements are made pursuant to section 8 – "Disbursement for Band Developments and benefits"</p>

4	Section 4 “Trust Accounts – Purpose and Overview”	s. 4.4 (c)	s. 4.4 (c)	Permits Trustees to distribute loans to members as part of a Band Benefit.	Proposed amendment would no longer permit direct loans/grants to individual members: (c) No Lending. The Trustees shall not lend, invest, release, distribute or advance in any way, including to themselves or to any other Person, the Settlement Monies or any interest therein save for Authorized Investments as provided in Section 14.
5	Sections 6, 8 and throughout	The broad term “Band Project” will be replaced with “Band Benefit” and “Band Development”, defined under s. 1.1(f) and (g).			
6	Section 8 “Disbursement for Band Developments and Benefits”	s. 8.2 (c)	s. 8.2 (c)	Trustees can only transfer up to 5% of the previous year’s Net Income to a single Band Development. Requests for funding exceeding 5% of Net Income require authorization by referendum.	Proposed amendment would authorize the Trustees to transfer up to 25% of the Net Income for the preceding Fiscal Year from the Trust Revenue Account to the Settlor for a particular Band Development in any Fiscal Year without requiring a referendum. A transfer greater than 25% would still require a referendum.
7	Section 8 “Disbursement for Band Developments and Benefits”	s. 8.2 (d)	s. 8.2 (d)	Application for funding from the Trust Revenue Account must be approved by Council and indicate the purpose for the funding as well as Council’s compliance with s. 8.2 referendums, if applicable.	Proposed amendment would impose a robust and transparent application and review process for funding Band programs and projects from the trust. A Band Council resolution for an application for trust funding to the Trustees must indicate: (i) the purpose for which the money is requested; (ii) compliance with the conditions set out in Section 8.2 (a); (iii) when required by Section 8.2 (b) or Section 8.2 (c), the approval of Adult Members by way of a Referendum; (iv) the Band department which will be responsible for using the funds requested in the application for the Band Benefit or Band Development project and for reporting on the expenditure of the funds so used to Council and to the Trustees; (v) Any other requirements that the Trustees may impose on such applications from time to time pursuant to their powers under Article 11 and their duties under Article 13 of this Agreement

8	Section 8 “Disbursement for Band Developments and Benefits”	s. 8.2 (e)	s. 8.2 (e)	Allows Trustees to request information or documents from Council to confirm that the proposed use will qualify as a Band Project and to ensure compliance with s. 8.2.	Proposed amendment would strengthen the Trustees’ powers of review of applications for trust funding from the Band Council: (e) upon receipt of an application by Section 8.2 (d) from Council, the Trustees will review the application to ensure that the proposed use qualifies as a Band Development or Band Benefit, and that all other application requirements imposed by this Agreement or by the Trustees pursuant to this Agreement are met before exercising their discretion to approve the application
9	Section 8 “Disbursement for Band Developments and Benefits”	s. 8.2 (f)	s. 8.2 (f)	Provides that funds transferred from the Trust Revenue Account to the Settlor will be transferred to Settlor’s account at a Financial Institution set out in a Council Resolution.	Proposed amendment would clarify that Band departments, and not the Trustees, will be responsible for managing trust funds approved by the Trustees for Band programs and projects once disbursed to the designated Band department: (f) if an application is approved by the Trustees, the Trustees may disburse the approved funds from the Trust Revenue Account to an account of the Settlor with a Financial Institution as set out in the Council Resolution for use by the Band department so designated in the Council Resolution and, for greater certainty, upon such disbursement of funding by the Trustees the Council is solely responsible, through the designated Band department, to ensure that the funding is used in accordance with the terms of the application
10	Section 8 “Disbursement for Band Developments and Benefits”	N/A	s. 8.2 (g)	NEW PROVISION	Proposed new provision would ensure accountability for how the trust funds approved by the Trustees are spent by the designated Band department: (g) Council shall provide the Trustees with annual audited statements, within 90 days of the end of the Fiscal Year, indicating how the funding for each application was used in that Fiscal Year.
11	Section 10 “Appointment and Replacement of Trustees”	s. 10.1 (c)	s. 10.1 (c)	Imposes requirement that no less than four Trustees be ordinarily resident on reserve.	Proposed amendment would remove reserve residency requirement for all Trustees.
12	Section 10 “Appointment and Replacement of Trustees”	s. 10.3	s. 10.3	Provides that four of the Trustees may not serve as a Council Member.	Proposed amendment would provide: <ul style="list-style-type: none"> • that none of the Trustees may also serve on the Band Council. • that a Trustee cannot be in arrears with the Band. A candidate for Trustee would not be considered “in arrears with the Band” if the Band has accepted a payment plan to pay off the debt.

13	Section 10 "Appointment and Replacement of Trustees"	s. 10.4	s. 10.4	Requires that a Trustee replacing a Trustee who is ordinarily resident on reserve must also be ordinarily resident on reserve.	Proposed amendment would remove the ordinarily resident on reserve requirement for a replacement Trustee.
14	Section 10 "Appointment and Replacement of Trustees"	N/A	s. 10.5	NEW PROVISION	Proposed amendment would create a process for vacant Trustee position: 10.5 Vacant Trustee Position: In the event that less than five delegates stand for election for a Trustee position, Council may appoint a Trustee to fill the vacant position(s). Any Trustee so appointed will hold a temporary office of 2 years, after which Council shall call for a by-election to fill the position for the remainder of the vacant term (i.e. until the next set of elections under Section 10 (c). The Trustee to be elected in the by-election will be elected by the Adult Members in the same manner and for the same terms as elections are conducted for Council.
15	Section 12 "Conduct of Trust Meetings"	s. 12.1 (b)	s. 12.1 (b)	Quorum for a Trust meeting requires that a majority of attendees be ordinarily resident on reserve.	Proposed amendment would remove reserve residency requirement.
16	Section 12 "Conduct of Trust Meetings"	s. 12.1 (d)	s. 12.1 (d)	Refers to the representative of the Corporate Trustee as the "chairman".	Proposed amendment would replace the term "chairman" with the gender-neutral term "chairperson".
17	Section 13 "Duties of Trustees"	N/A	s. 13.2 (b)	NEW PROVISION	Proposed amendment would create a transparent and clear process for the Band Council to make funding request applications to the Trustees: (b) Receipt and Review of Applications for Funding from Council: The Trustees will accept applications for funding from Council pursuant to Section 8.2 (d) biannually on March 31 and September 30 in each Fiscal Year. The Trustees will review and decide whether to approve such applications for funding in April and October respectively of each Fiscal Year.
18	Section 20 "Referendum"	s. 20.1	s. 20.1	Referendum conducted exclusively by secret mail-in ballot.	Proposed amendment would allow for in-person and online voting but would still accommodate mail-in ballots upon requests made within a specified time frame.