

NISGA'A LISIMS GOVERNMENT

WILP SI'AYUUKHL NISGA'A

**NISGA'A COMMUNITY PLANNING AND
ZONING ENABLING ACT**

Wilp Si'ayuukhl Nisga'a enacted this legislation on _____.

Signed _____
Kevin McKay, Acting President of the Nisga'a Nation

TABLE OF CONTENTS

PART 1 – DEFINITIONS AND INTERPRETATION4

1. Definitions4

2. Additional notices permitted6

PART 2 – OFFICIAL COMMUNITY PLANS7

3. Purposes of official community plans7

4. Authority to adopt by Nisga’a Village Act.....7

5. Required content7

6. Policy statements in official community plans8

7. Consultation during official community plan development.....8

8. Effect of official community plans9

PART 3 – OWNER AMENDMENT AND PERMIT APPLICATION PROCEDURES10

9. Regulation to define development approval procedures.....10

10. Information that must be available to the public10

PART 4 – PUBLIC HEARINGS ON OFFICIAL COMMUNITY PLANS AND ZONING ACTS.....11

11. Public hearings11

12. Notice of public hearing11

13. Notice of public hearing waived.....13

14. Procedure after a public hearing.....13

PART 5 – ZONING AND OTHER DEVELOPMENT REGULATION14

15. Nisga’a Village Zoning Acts14

16. Off-street parking and loading space requirements15

17. Runoff control requirement16

18. Construction requirements in relation to flood plain areas17

19. Non-conforming uses and siting19

20. Effect of expropriation in relation to non-conforming use and subdivision20

21. No compensation in relation to enactment of Nisga’a Village Act.....21

PART 6 – DEVELOPMENT PERMITS22

22. Designation of development permit areas22

23. Development permits22

24. Designation of development approval information areas or circumstances.....25

25. Development variance permits25

26. Lapse or cancellation of permit27

27. Notice of permit on land title27

28. General matters27

29. No compensation in relation to issuance of permit.....28

PART 7 – SUBDIVISION REQUIREMENTS.....29

30. Subdivision servicing requirements.....29

31. Completion of works and services.....30

32. Parcel frontage on road31

33. Completion of subdivision in progress31

34. No compensation in relation to enactment of Nisga’a Village Act.....31

PART 8 – FEES RELATED TO APPLICATIONS AND INSPECTIONS32

35. Fees related to applications and inspections32

PART 9 – ENFORCEMENT AND RELATED MATTERS33

36. Principles governing authority to enter on or into property33

37. Enforcement powers34

38. Enforcement by civil proceedings34

PART 10 – MISCELLANEOUS36

39. Regulations36

40. Existing official community plans36

41. Existing zoning laws36

42. Commencement36

PART 1 – DEFINITIONS AND INTERPRETATION**Definitions****1.** In this Act:

“**adopt**”, in relation to an official community plan, includes amend or repeal;

“**approving officer**” means the approving officer as defined in the *Nisga'a Land Title Act*;

“**building permit**” means a written permit issued by a Nisga'a Village Government permitting an owner to begin construction of a building, structure or other improvement on land within the Nisga'a Village under its jurisdiction;

“**density**”, in relation to land, a parcel or an area, means

- (a) the density of use of the land, parcel or area, or
- (b) the density of use of any buildings and other structures located on the land or parcel, or in the area;

“**development approval information**” means information on the anticipated impact of proposed activity or development on the community, including, without limitation, on such matters as

- (a) transportation patterns, including traffic flow,
- (b) local infrastructure,
- (c) public facilities, including schools and parks,
- (d) community services, and
- (e) the natural environment of the area affected;

“**development permit**” means a permit referred to in section 23(2);

“**development variance permit**” means a permit referred to in section 25(1);

“**enact**”, in relation to a Nisga'a Village Act, includes amend or repeal;

“**Executive flood plain rules**” means any conditions established by the Executive for the approval of subdivisions in flood plain areas designated by the Executive under the

Nisga'a Land Title Act;

“**immediately adjacent parcel**” means, in relation to a particular parcel,

- (a) any parcel that immediately adjoins the particular parcel, or
- (b) any parcel that would immediately adjoin the particular parcel if the borders of the particular parcel were extended across a road within a Nisga'a Village that immediately adjoins both parcels, on the same respective bearings as apply to each border of the particular parcel immediately before the border comes into contact with the road;

“**Nisga'a Nation entitlement**” means a Nisga'a Nation entitlement as defined in the *Nisga'a Nation Entitlement Act*;

“**Nisga'a Village Act**” means a law enacted by a Nisga'a Village Government, but does not include a regulation;

“**Nisga'a Village entitlement**” means a Nisga'a Village entitlement as defined in the *Nisga'a Village Entitlement Act*;

“**Nisga'a Village OCP Act**” means a Nisga'a Village Act referred to in section 4(1);

“**Nisga'a Village Zoning Act**” means a Nisga'a Village Act referred to in section 15(1);

“**occupier**” means

- (a) in respect of land or a building, a person who
 - (i) is qualified to maintain an action for trespass to the land or building, or
 - (ii) simply occupies the land or building, and
- (b) in respect of land owned by the Nisga'a Nation or a Nisga'a Village, a person who is in possession of the land under a Nisga'a Village entitlement, Nisga'a Nation entitlement, lease, easement or other grant made by the Nisga'a Nation or the Nisga'a Village;

“**official community plan**” means a community plan adopted by a Nisga'a Village Government under section 4(1);

“**owner**” means, in respect of land or a parcel within a Nisga'a Village,

- (a) the holder of a Nisga'a Village entitlement or Nisga'a Nation entitlement

for the land or parcel, or

- (b) the owner of the estate in fee simple to the land or parcel,

as shown in the records of the Nisga'a land title office, other than the governing Nisga'a Village;

“**owner application regulation**” means the regulation made under section 9;

“**parcel**” means a parcel as defined in the *Nisga'a Land Title Act*;

“**public hearing**” means a hearing referred to in section 11(1);

“**registrar of land titles**” means the registrar as defined in the *Nisga'a Land Title Act*;

“**road**” means a road as defined in the *Nisga'a Land Title Act*;

“**subdivision**” means a subdivision as defined in the *Nisga'a Land Title Act*.

Additional notices permitted

2. Neither a requirement in Part 4 or 6 for a Nisga'a Village Government to give notice respecting a matter nor any procedural requirement of Part 4 or 6 respecting the notice
- (a) limits the right of the Nisga'a Village Government to give an additional notice respecting the matter, or
- (b) requires that an additional notice respecting the matter satisfy any procedural or other requirement of Part 4 or 6.

PART 2 – OFFICIAL COMMUNITY PLANS

Purposes of official community plans

3. An official community plan is a statement of objectives and policies to guide decisions on planning and land use management, within the area covered by the plan, respecting the purposes of a Nisga'a Village Government.

Authority to adopt by Nisga'a Village Act

4. (1) A Nisga'a Village Government may, by a Nisga'a Village Act, adopt one or more community plans for land within the Nisga'a Village under its jurisdiction.
 - (2) An official community plan
 - (a) must be attached as a schedule to the Nisga'a Village OCP Act by which the plan is adopted, and
 - (b) must designate the area covered by the plan.

Required content

5. An official community plan must include statements and map designations for the area covered by the plan respecting the following:
 - (a) the approximate location, amount, type and density of residential development required to meet anticipated housing needs over a period of at least five years;
 - (b) the approximate location, amount and type of present and proposed commercial, industrial, institutional, recreational and public utility land uses;
 - (c) restrictions on the use of land that is subject to hazardous conditions or that is environmentally sensitive to development;
 - (d) the approximate location and phasing of any major road, sewer and water systems;
 - (e) the approximate location and type of present and proposed public facilities, including schools, health care facilities, parks, water treatment sites and waste treatment and disposal sites.

Policy statements in official community plans

6. (1) An official community plan may include policies of the adopting Nisga'a Village Government relating to
- (a) social needs, social well-being and social development, and
 - (b) the preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity.
- (2) If a Nisga'a Village Government includes a matter in an official community plan, the regulation of which is not within the jurisdiction of the Nisga'a Village Government, the plan may only state the broad objective of the Nisga'a Village Government with respect to that matter.

Consultation during official community plan development

7. (1) During the development of an official community plan, or the repeal or amendment of an official community plan, the proposing Nisga'a Village Government may provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected.
- (2) In deciding whether to provide for consultation under subsection (1), the Nisga'a Village Government must consider whether an interest of any of the following is likely to be affected by the development, repeal or amendment of the official community plan:
- (a) School District No. 92 (Nisga'a);
 - (b) Nisga'a Valley Health Authority;
 - (c) Nisga'a Lisims Government;
 - (d) the Regional District of Kitimat-Stikine, if the Nisga'a Village is party to an agreement with that Regional District respecting the delivery of a service;
 - (e) Canada, British Columbia and their respective agencies.
- (3) Consultation under this section is in addition to the hearing required under section 11(1).

Effect of official community plans

- 8.** (1) An official community plan does not commit or authorize a Nisga'a Village to proceed with any project that is specified in the plan.
- (2) After a Nisga'a Village Government adopts an official community plan,
- (a) all enactments enacted by the Nisga'a Village Government must, to the extent they apply to the area covered by the plan, be consistent with the plan, and
 - (b) all works undertaken by the Nisga'a Village Government in the area covered by the plan must be consistent with the plan.

PART 3 – OWNER AMENDMENT AND PERMIT APPLICATION PROCEDURES**Regulation to define development approval procedures**

- 9.** (1) The Executive must make a regulation setting out procedures under which an owner of a parcel within a Nisga'a Village that is subject to an official community plan or a Nisga'a Village Zoning Act may apply to the responsible Nisga'a Village Government for
- (a) an amendment to the official community plan or the Nisga'a Village Zoning Act, or
 - (b) the issuance of a development permit or development variance permit.
- (2) A Nisga'a Village Government must, in accordance with the regulation referred to in subsection (1), consider every application for
- (a) an amendment referred to in subsection (1)(a), or
 - (b) a permit referred to in subsection (1)(b).

Information that must be available to the public

- 10.** (1) A Nisga'a Village Government must maintain a current list and a true copy of
- (a) every Nisga'a Village Act permitted under this Act and enacted by the Nisga'a Village Government, and
 - (b) every development permit and development variance permit issued by the Nisga'a Village Government.
- (2) The list and copies referred to in subsection (1) must be available for public inspection at the principal administration office of the Nisga'a Village Government during the regular business hours of that office.
- (3) Non-compliance with subsection (1) or (2) does not affect the validity of a Nisga'a Village Act or permit referred to in subsection (1).

PART 4 – PUBLIC HEARINGS ON OFFICIAL COMMUNITY PLANS AND ZONING ACTS**Public hearings**

- 11.** (1) A Nisga'a Village Government must not enact a proposed Nisga'a Village OCP Act or, subject to subsection (4), a proposed Nisga'a Village Zoning Act, without holding a hearing on the proposed Nisga'a Village Act for the purpose of allowing the public to make representations to the Nisga'a Village Government respecting matters contained in the proposed Nisga'a Village Act.
- (2) At a public hearing all persons who believe that their interest in property will be affected by the proposed Nisga'a Village Act that is the subject of the hearing must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the proposed Nisga'a Village Act.
- (3) Subject to subsection (2), the chair of a public hearing may establish procedural rules for the conduct of the hearing.
- (4) A Nisga'a Village Government may, by resolution, waive the holding of a public hearing on a proposed Nisga'a Village Zoning Act if
- (a) an official community plan is in effect for the area that is subject to a proposed Nisga'a Village Zoning Act, and
 - (b) the proposed Nisga'a Village Zoning Act is consistent with the plan.
- (5) A public hearing may be adjourned and no further notice of the hearing is necessary if the time and place for the resumption of the hearing is stated to those present at the time the hearing is adjourned.

Notice of public hearing

- 12.** (1) Before holding a public hearing, a Nisga'a Village Government must give notice of the hearing in accordance with this section.
- (2) The notice must state the following:
- (a) the time and date of the hearing;
 - (b) the place of the hearing;
 - (c) in general terms, the purpose of the proposed Nisga'a Village Act that is the subject of the hearing;

- (d) the land or lands that are the subject of the proposed Nisga'a Village Act;
 - (e) the place where and the times and dates when copies of the proposed Nisga'a Village Act may be inspected.
- (3) The notice must
- (a) be placed in a conspicuous and accessible place for public viewing at the principal administration office of the Nisga'a Village Government during the regular business hours of that office, not less than 10 days before the public hearing, and
 - (b) be posted on the public website designated by the Nisga'a Village Government as the official website of the Nisga'a Village during such times as that website is in operation during the 10 days referred to in paragraph (a).
- (4) If the proposed Nisga'a Village Act in relation to which the notice is given alters the permitted use or density of any area, the notice must
- (a) include a sketch that shows the area that is the subject of the alteration, including the name of adjoining roads if applicable, and
 - (b) be mailed or otherwise delivered at least 10 days before the public hearing
 - (i) to the owners, at the address shown in the records of the Nisga'a land title office as at the date of the introduction of the proposed Nisga'a Village Act at a meeting of the Nisga'a Village Government, and
 - (ii) to the persons in occupation, as at the date of the mailing or delivery of the notice,
- of each parcel, any part of which is the subject of the alteration.
- (5) The obligation to deliver a notice under subsection (4) must be considered satisfied if a reasonable effort was made to mail or otherwise deliver the notice.
- (6) Subsection (4) does not apply if 10 or more parcels owned by 10 or more persons are the subject of the alteration.

Notice of public hearing waived

- 13.** (1) If a Nisga'a Village Government waives the holding of a public hearing on a proposed Nisga'a Village Zoning Act under section 11(4), it must give notice in accordance with this section.
- (2) The notice must state
- (a) in general terms, the purpose of the proposed Nisga'a Village Zoning Act,
 - (b) the land or lands that are the subject of the proposed Nisga'a Village Zoning Act, and
 - (c) the place where and the times and dates when copies of the proposed Nisga'a Village Zoning Act may be inspected.
- (3) Section 12(3) to (6) applies to a notice under subsection (2), except that
- (a) the placing and posting under section 12(3) is to be not less than 10 days before the proposed Nisga'a Village Zoning Act is enacted, and
 - (b) the mailing or other delivery under section 12(4)(b) is to be at least 10 days before the proposed Nisga'a Village Zoning Act is enacted.

Procedure after a public hearing

- 14.** After a public hearing, the Nisga'a Village Government may, without further notice or hearing,
- (a) enact or defeat the proposed Nisga'a Village Act that was the subject of the hearing, or
 - (b) alter and then enact the proposed Nisga'a Village Act, provided that the alteration does not
 - (i) alter the use,
 - (ii) increase the density, or
 - (iii) without the owner's consent, decrease the densityof any area from that originally specified in the proposed Nisga'a Village Act.

PART 5 – ZONING AND OTHER DEVELOPMENT REGULATION**Nisga'a Village Zoning Acts**

- 15.** (1) A Nisga'a Village Government may, by Nisga'a Village Act, do one or more of the following:
- (a) divide the whole or part of the land within the Nisga'a Village under its jurisdiction into zones, name each zone and establish the boundaries of the zones;
 - (b) limit the vertical extent of a zone and provide other zones above or below it;
 - (c) regulate within a zone
 - (i) the use of land, buildings and other structures,
 - (ii) the density of the use of land, buildings and other structures,
 - (iii) the siting, size and dimensions of
 - (A) buildings and other structures, and
 - (B) uses that are permitted on the land, and
 - (iv) the location of uses on the land and within buildings and other structures;
 - (d) regulate the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision, in which case
 - (i) the regulations may be different for different areas, and
 - (ii) the boundaries of those areas need not be the same as the boundaries of zones created under paragraph (a).
- (2) The authority under subsection (1) may be exercised by incorporating in a Nisga'a Village Zoning Act maps, plans, tables or other graphic material.
- (3) The regulations under subsection (1) may be different for one or more of the following, as specified in a Nisga'a Village Zoning Act:

- (a) different zones;
 - (b) different uses within a zone;
 - (c) different locations within a zone;
 - (d) different standards of works and services provided;
 - (e) different siting circumstances.
- (4) The power to regulate under subsection (1) includes the power to prohibit any use or uses in a zone.

Off-street parking and loading space requirements

16. (1) A Nisga'a Village Government may, by Nisga'a Village Act,
- (a) require owners or occupiers of any land or building or other structure within the Nisga'a Village under its jurisdiction to provide off-street parking and loading spaces for the building or other structure, or the use of the land, building or other structure, including spaces for use by disabled persons,
 - (b) establish design standards for spaces required under paragraph (a), including standards respecting the size, surfacing, lighting and numbering of the spaces, and
 - (c) permit off-street parking spaces required under paragraph (a) to be provided, other than on the site of the building or other structure or use, under conditions that are specified in the Nisga'a Village Act.
- (2) A Nisga'a Village Act permitted under this section may make different provisions for one or more of the following:
- (a) different classes of uses, or of buildings or other structures;
 - (b) different areas;
 - (c) different zones;
 - (d) different uses within a zone.
- (3) A provision under subsection (2) that establishes requirements with respect to the amount of space for different classes does not apply with respect to

- (a) land, or
- (b) a building or other structure existing at the time the Nisga'a Village Act came into force,

so long as the land, or building or other structure, continues to be put to a use that does not require more off-street parking or loading spaces than were required for the use existing at the time the Nisga'a Village Act came into force.

- (4) A Nisga'a Village Act permitted under this section may exempt one or more of the following from any of its provisions or any of the provisions of another Nisga'a Village Act permitted under this section:
 - (a) a class of use, or of buildings or other structures;
 - (b) a use, or building or other structure, existing at the time of the enactment of the Nisga'a Village Act.

Runoff control requirement

17. (1) A Nisga'a Village Government may, by Nisga'a Village Act, require that an owner of land within the Nisga'a Village under its jurisdiction who carries out construction of a paved area or roof area, manage and provide for the ongoing disposal of surface runoff and storm water.
- (2) A Nisga'a Village Government may, by Nisga'a Village Act, establish the maximum percentage of the area of land within the Nisga'a Village under its jurisdiction that can be covered by impermeable material.
- (3) A Nisga'a Village Act permitted under subsection (1) or (2) may be different for
- (a) different zones,
 - (b) different uses in zones,
 - (c) different areas in zones,
 - (d) different sizes of paved or roof areas, and
 - (e) different terrain and surface water or groundwater conditions.

Construction requirements in relation to flood plain areas

18. (1) If a Nisga'a Village Government considers that flooding may occur on land within the Nisga'a Village under its jurisdiction, the Nisga'a Village Government may, by Nisga'a Village Act, designate such land as a flood plain.
- (2) If land is designated as a flood plain under subsection (1), the Nisga'a Village Government may, by Nisga'a Village Act, specify
- (a) the flood level for the flood plain, and
 - (b) the setback from a watercourse, body of water or dike, or any landfill or structural support required to elevate a floor system or pad above the flood level.
- (3) A Nisga'a Village Government, in enacting a Nisga'a Village Act permitted under this section, must consider and comply with the Executive flood plain rules and any plan or program the Nisga'a Village Government has developed under those rules.
- (4) A Nisga'a Village Act permitted under subsection (2) may make different provisions in relation to one or more of the following:
- (a) different areas of a flood plain;
 - (b) different zones;
 - (c) different uses within a zone or an area of a flood plain;
 - (d) different types of geological or hydrological features;
 - (e) different standards of works and services;
 - (f) different siting circumstances;
 - (g) different types of buildings or other structures and different types of machinery, equipment or goods within them;
 - (h) different uses within a building or other structure.
- (5) If a Nisga'a Village Act permitted under subsection (2) applies,
- (a) the underside of any floor system, or the top of any pad supporting any space or room, including a manufactured home, that is used for

- (i) dwelling purposes,
 - (ii) business, or
 - (iii) the storage of goods which are susceptible to damage by floodwater

must be above the applicable flood level specified by the Nisga'a Village Act, and
 - (b) any landfill required to support a floor system or pad must not extend within any applicable setback specified by the Nisga'a Village Act.
- (6) Subject to the Executive flood plain rules and any plan or program a Nisga'a Village Government has developed under those rules, the Nisga'a Village Government may, by resolution, exempt a person from the application of subsection (5) or a Nisga'a Village Act permitted under subsection (2), in relation to a parcel or a use, building or other structure on a parcel, if the Nisga'a Village Government considers it advisable and
- (a) considers that the exemption is consistent with the Executive flood plain rules, or
 - (b) has received a report that the land may be used safely for the use intended, certified by a person who is
 - (i) a professional engineer or geoscientist and experienced in geotechnical engineering, or
 - (ii) a person in a class prescribed by the Executive under subsection (8).
- (7) The granting of an exemption under subsection (6), and the exemption, may be made subject to the terms and conditions the Nisga'a Village Government considers necessary or advisable, including, without limitation, that the grantee
- (a) comply with any term or condition contemplated by the Executive flood plain rules in relation to an exemption,
 - (b) at the grantee's expense, have prepared and submit a report described in subsection (6)(b), and
 - (c) enter into a covenant registrable under the *Nisga'a Land Title Act*.
- (8) The Executive may make regulations prescribing a class of persons the Executive

considers qualified, for the purposes of this section, to certify reports referred to in subsection (6)(b).

Non-conforming uses and siting

- 19.** (1) If, at the time a Nisga'a Village Act permitted under this Part is enacted,
- (a) land, or a building or other structure, is lawfully used, and
 - (b) the use does not conform to the Nisga'a Village Act,
- the use may be continued as a non-conforming use.
- (2) If a non-conforming use referred to in subsection (1) is discontinued for a continuous period of six months after the enactment of the Nisga'a Village Act to which the use does not conform, any subsequent use of the land, building or other structure becomes subject to the Nisga'a Village Act.
- (3) Subsection (2) does not apply if a non-conforming use referred to in subsection (1) is discontinued as a result of normal seasonal practices.
- (4) A building or other structure that is lawfully under construction at the time of the enactment of a Nisga'a Village Act permitted under this Part is deemed, for the purpose of this section,
- (a) to be a building or other structure existing at that time, and
 - (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.
- (5) If subsection (1) or (3) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.
- (6) A structural alteration or addition, except one that is required by an applicable enactment or permitted by an applicable development variance permit, must not be made in or to a building or other structure while a non-conforming use authorized under subsection (1) or (3) is continued in all or any part of it.
- (7) In relation to land, subsection (1) or (5) does not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that existing at the time of the enactment of the Nisga'a Village Act to which the use does not conform.

- (8) If a building or other structure, the use of which does not conform to the provisions of a Nisga'a Village Act permitted under this Part, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as certified by a professional engineer, it must not be repaired or reconstructed except for a conforming use in accordance with the Nisga'a Village Act.
- (9) If the use and density of buildings and other structures conform to a Nisga'a Village Act permitted under this Part but
- (a) the siting, size or dimensions of a building or other structure constructed before the Nisga'a Village Act was enacted does not conform with the Nisga'a Village Act, or
 - (b) the siting, size, dimensions or number of off-street parking or loading spaces constructed or provided before the Nisga'a Village Act was enacted does not conform with the Nisga'a Village Act,
- the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (10).
- (10) A building or other structure or spaces to which subsection (9) applies may be maintained, extended or altered only to the extent that the repair, extension or alteration would, when completed, involve no further contravention of the Nisga'a Village Act than that existing at the time the repair, extension or alteration was started.

Effect of expropriation in relation to non-conforming use and subdivision

- 20.** (1) If the use of land or the siting of existing buildings and other structures on the land ceases, as a result of expropriation of land, to conform to a Nisga'a Village Act permitted under this Part, the remainder of the property is deemed to conform.
- (2) Subsection (1) does not apply if compensation was paid to the owner or occupier of the land in an amount that is directly attributable to the loss, if any, suffered by the owner or occupier as a result of the non-conformity.
- (3) If
- (a) a parcel could have been subdivided into two or more parcels under the applicable Nisga'a Village Zoning Act in effect when land was expropriated and vested in an expropriating authority, and
 - (b) the parcel, as a result of the expropriation, can no longer be subdivided into the same number of parcels,

the parcel is deemed to conform to the applicable Nisga'a Village Zoning Act for the purposes of the subdivision as though the expropriation had not occurred, but only to the extent that none of the parcels that would be created by the subdivision would be less than 90% of the area that would otherwise be permitted by the applicable Nisga'a Village Zoning Act.

- (4) Subsection (3) does not apply if the owner of the parcel being subdivided has received compensation that is directly attributable to the reduction in the market value of the land that results from the inability to subdivide the parcel in the manner that would have been permitted under the applicable Nisga'a Village Zoning Act.

No compensation in relation to enactment of Nisga'a Village Act

- 21.** (1) Compensation is not payable to any person for any reduction in the value of that person's interest in land, or for any other loss or damages, resulting from the enactment of
- (a) a Nisga'a Village OCP Act, or
 - (b) a Nisga'a Village Act permitted under this Part.
- (2) Subsection (1)(b) does not apply if a Nisga'a Village Act permitted under this Part restricts the use of land to a public use only.

PART 6 – DEVELOPMENT PERMITS**Designation of development permit areas**

- 22.** (1) An official community plan may designate development permit areas for one or more of the following purposes:
- (a) protection of the natural environment, its ecosystems and biological diversity;
 - (b) protection of development from hazardous conditions;
 - (c) revitalization of an area in which a commercial use is permitted;
 - (d) establishment of objectives for the form and character of intensive residential development;
 - (e) establishment of objectives for the form and character of commercial, industrial or multi-family residential development.
- (2) With respect to areas designated in an official community plan under subsection (1), the official community plan must
- (a) describe the special conditions or objectives that justify the designation, and
 - (b) subject to subsection (3), specify guidelines respecting the manner by which the special conditions or objectives will be addressed.
- (3) The guidelines referred to in subsection (2)(b) may be specified in a Nisga'a Village Zoning Act rather than in the official community plan, but, in that case, the designation of the areas is not effective until the Nisga'a Village Zoning Act has been enacted.
- (4) If an official community plan designates areas under subsection (1), the plan or a Nisga'a Village Zoning Act may, with respect to those areas, specify conditions under which a development permit would not be required.

Development permits

- 23.** (1) If an official community plan designates areas under section 22(1), the following prohibitions apply unless an exemption under section 22(4) applies or the owner first obtains a development permit:

- (a) land within a designated area must not be subdivided;
 - (b) construction of, addition to or alteration of a building or other structure must not be started on land within a designated area;
 - (c) land within an area designated under section 22(1)(a) or (b) must not be altered.
- (2) Subject to subsections (3) to (5), a Nisga'a Village Government may, by resolution, issue a permit in respect of land within the Nisga'a Village under its jurisdiction that
- (a) varies or supplements a Nisga'a Village Act permitted under Part 5 or 7,
 - (b) includes requirements and conditions or sets standards under subsections (6) to (9), and
 - (c) imposes conditions respecting the sequence and timing of construction.
- (3) The authority under subsection (2) must be exercised only in accordance with the applicable guidelines specified under section 22 in an official community plan or Nisga'a Village Zoning Act.
- (4) A development permit must not
- (a) permit the breach of a covenant registered under the *Nisga'a Land Title Act*, or
 - (b) vary
 - (i) the use or density of land from that permitted in the applicable Nisga'a Village Act, except as authorized by subsection (5), or
 - (ii) a requirement of any applicable Executive flood plain rule.
- (5) If land has been designated under section 22(1)(b), the conditions and requirements referred to in subsection (7) may vary the use or density of the land from that permitted in the applicable Nisga'a Village Act, but only as those conditions and requirements relate to health, safety or protection of property from damage.
- (6) For land designated under section 22(1)(a), a development permit may do one or more of the following:

- (a) specify areas that must remain free of development, except in accordance with any conditions contained in the permit;
 - (b) require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit;
 - (c) require natural water courses to be dedicated;
 - (d) require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features or the environment;
 - (e) require protection measures, including that vegetation or trees be planted or retained in order to
 - (i) preserve, protect, restore or enhance fish habitat or riparian areas,
 - (ii) control drainage, or
 - (iii) control erosion or protect banks.
- (7) For land designated under section 22(1)(b), a development permit may do one or more of the following:
- (a) specify areas of land that may be subject to flooding, mud flows, torrents of debris, erosion, land slip, rock falls, subsidence, tsunami, avalanche or wildfire, or to other hazard if this other hazard is specified in the designation under section 22(1)(b), as areas that must remain free of development, except in accordance with any conditions contained in the permit;
 - (b) require, in an area that the permit designates as containing unstable soil or water which is subject to degradation, that no septic tank, drainage and deposit fields or irrigation or water systems be constructed;
 - (c) in relation to wildfire hazard, include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and other structures;
 - (d) in relation to wildfire hazard, establish restrictions on the type and placement of trees and other vegetation in proximity to the development.
- (8) If land has been designated
- (a) under section 22(1)(c) or (d), or

(b) subject to subsection (9), under section 22(1)(e),

a development permit may include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and other structures.

- (9) If land has been designated under section 22(1)(e), a development permit may include requirements respecting the character of the development, as referred to in subsection (8), but only in relation to the general character of the development and not to particulars of the landscaping or of the exterior design and finish of buildings and other structures.

Designation of development approval information areas or circumstances

- 24.** (1) An official community plan may do one or more of the following in respect of an application under the owner application regulation for the issuance of a development permit:
- (a) specify circumstances in which development approval information may be required under the regulation;
 - (b) designate areas for which development approval information may be required under the regulation;
 - (c) designate areas for which, in specified circumstances, development approval information may be required under the regulation.
- (2) An official community plan that specifies circumstances or designates areas under subsection (1) must describe the special conditions or objectives that justify the specification or designation.

Development variance permits

- 25.** (1) On application by an owner of land within a Nisga'a Village, the Nisga'a Village Government having jurisdiction over the Nisga'a Village may, by resolution, issue a permit that varies, in respect of the land covered by the permit,
- (a) the provisions of a Nisga'a Village Act permitted under Part 5 or 7, or
 - (b) the prohibition on a structural alteration or addition set out in section 19(6).
- (2) As a limit on subsection (1), a development variance permit must not

- (a) permit the breach of a covenant registered under the *Nisga'a Land Title Act*, or
- (b) vary
 - (i) the use or density of land from that specified in a Nisga'a Village Act permitted under Part 5 or Part 7, or
 - (ii) a requirement of any applicable Executive flood plain rule.
- (3) In the event of conflict, the provisions of a development variance permit prevail over any provision of a Nisga'a Village Act permitted under Part 5 or 7.
- (4) If a Nisga'a Village Government proposes to pass a resolution to issue a development variance permit, it must give notice in accordance with subsections (5) and (6).
- (5) A notice under subsection (4) must state the following:
 - (a) in general terms, the purpose of the proposed permit;
 - (b) the land or lands that are the subject of the proposed permit;
 - (c) the place where and the times and dates when copies of the proposed permit may be inspected.
- (6) A notice under subsection (4) must be mailed or otherwise delivered, at least 10 days before adoption of the resolution to issue the permit,
 - (a) to the owners, at the address shown in the records of the Nisga'a land title office as at the date the application referred to in subsection (1) was received by the Nisga'a Village Government, and
 - (b) to the persons in occupation, as at the date of the mailing or delivery of the notice,

of each parcel which would be subject to the permit and each parcel immediately adjacent to a subject parcel.
- (7) The obligation to give notice under subsection (4) must be considered satisfied if a reasonable effort was made to mail or otherwise deliver the notice.

Lapse or cancellation of permit

26. (1) Subject to the terms of the permit, if the holder of a permit issued under this Part does not substantially start any construction with respect to which the permit was issued within two years after the date it was issued, the permit lapses.
- (2) A permit issued under this Part may be cancelled as provided in the permit.

Notice of permit on land title

27. (1) If a Nisga'a Village Government issues a development permit or development variance permit, it must file in the Nisga'a land title office a notice that the land described in the notice is subject to the permit, and, on filing, the registrar of land titles must make a note of the filing against the title to the land affected.
- (2) In the event of any omission, mistake or misfeasance by the registrar of land titles or the staff of the Nisga'a land title office in relation to the making of a note of a filing under subsection (1) or (3),
- (a) neither the registrar nor the Nisga'a Nation is liable vicariously, and
- (b) neither the assurance fund nor any nominal defendant is liable under the *Nisga'a Land Title Act*.
- (3) If a development permit or development variance permit is amended or cancelled, the responsible Nisga'a Village Government must file in the Nisga'a land title office a notice of the amendment or cancellation, and, on filing, the registrar of land titles must make a note of the filing against the title to the land affected.
- (4) If a notice is filed under subsection (1) or (3), the terms of the permit or the amendment to it or cancellation of it are binding on all persons who acquire an interest in the land affected by the permit.
- (5) The Executive may prescribe fees for the filing of notices under this section.

General matters

28. (1) A Nisga'a Village Government may issue more than one permit under this Part for an area of land.
- (2) Land must be developed strictly in accordance with a permit or permits issued under this Part.

- (3) A permit issued under this Part is binding on the issuing Nisga'a Village Government as well as on the holder of the permit.
- (4) A Nisga'a Village Government may, by Nisga'a Village enactment, designate the form of the permits issued by the Nisga'a Village Government under this Part.

No compensation in relation to issuance of permit

- 29.** Compensation is not payable to any person for any reduction in the value of that person's interest in land, or for any other loss or damages, resulting from the issuance of a permit under this Part.

PART 7 – SUBDIVISION REQUIREMENTS**Subdivision servicing requirements**

- 30.** (1) A Nisga'a Village Government may, by Nisga'a Village Act, regulate and require the provision of works and services in respect of subdivisions within the Nisga'a Village under its jurisdiction, and for that purpose may, by Nisga'a Village Act, do one or more of the following:
- (a) regulate and prescribe minimum standards for the dimensions, locations, alignment and gradient of roads in connection with subdivisions;
 - (b) require that, within a subdivision, roads, sidewalks, boulevards, boulevard crossings, street lighting or underground wiring be provided, and be located and constructed in accordance with the standards established by the Nisga'a Village Act;
 - (c) require that, within a subdivision, a water distribution system, a fire hydrant system, a sewage collection system, a sewage disposal system, a drainage collection system or a drainage disposal system be provided, located and constructed in accordance with the standards established by the Nisga'a Village Act.
- (2) A Nisga'a Village Act permitted under subsection (1) may be different in relation to one or more of the following:
- (a) different circumstances;
 - (b) different areas;
 - (c) different land uses;
 - (d) different zones;
 - (e) different classes of roads.
- (3) If a Nisga'a Village Government operates a community water or sewer system, or a drainage collection or disposal system, the Nisga'a Village Government may, by Nisga'a Village Act, require that a system referred to in subsection (1)(c) be connected to the Nisga'a Village Government system in accordance with standards established in the Nisga'a Village Act.
- (4) If there is no community water system within a Nisga'a Village, the Nisga'a Village Government having jurisdiction over the Nisga'a Village may, by Nisga'a

Village Act, require that each parcel to be created by subdivision within the Nisga'a Village have a source of potable water having a flow capacity at a rate established in the Nisga'a Village Act.

- (5) As a condition of
- (a) the approval of a subdivision within a Nisga'a Village, or
 - (b) the issuance of a building permit for construction within a Nisga'a Village,
- the Nisga'a Village Government having jurisdiction over the Nisga'a Village may, by resolution, require that the owner of the land provide works and services, in accordance with the standards established in a Nisga'a Village Act permitted under this section, on that portion of a road within the Nisga'a Village immediately adjacent to the site being subdivided or developed, up to the centre line of the road.
- (6) As a condition of the issuance of a building permit, a Nisga'a Village Government may, by resolution, require that the owner of the land provide, on the site being developed, works and services in accordance with the standards established in a Nisga'a Village Act permitted under this section.
- (7) Requirements under subsections (5) and (6) may only be made insofar as they are directly attributable to the subdivision or development referred to in those subsections.

Completion of works and services

- 31.** (1) All works and services that a Nisga'a Village Government requires under section 30 to be constructed and installed at the expense of the owner of land being subdivided or developed must be constructed and installed to the standards established in the applicable Nisga'a Village Act before the approving officer approves of the subdivision or the Nisga'a Village Government issues a building permit for the land.
- (2) As an exception to subsection (1), the subdivision approval may be given or the building permit issued if the owner of the land
- (a) deposits, with the governing Nisga'a Village, security
 - (i) in the form and amount established in the Nisga'a Village Act, or
 - (ii) if no amount and form is established in the Nisga'a Village Act, in a form and amount satisfactory to the approving officer or Nisga'a

Village Government, as the case may be, having regard to the cost of installing and paying for all works and services required under the Nisga'a Village Act, and

- (b) enters into an agreement with the governing Nisga'a Village to construct and install the required works and services by a specified date or forfeit to the Nisga'a Village the amount secured under paragraph (a).

Parcel frontage on road

- 32. (1) If a parcel being created by a subdivision fronts on a road within a Nisga'a Village, the minimum frontage on the road must be the greater of
 - (a) 10% of the perimeter of the lot that fronts on the road, and
 - (b) the minimum frontage that the Nisga'a Village Government having jurisdiction over the Nisga'a Village may, by Nisga'a Village Act, provide.
- (2) A Nisga'a Village Government may, by resolution, exempt a parcel from the requirements of subsection (1).
- (3) A Nisga'a Village Government may, by resolution, delegate its powers under subsection (2) to the approving officer.

Completion of subdivision in progress

- 33. If a Nisga'a Village Government has by resolution approved a proposed subdivision within the Nisga'a Village under its jurisdiction, with or without conditions, before enacting a Nisga'a Village Act permitted under this Part, the Nisga'a Village Act does not apply to the proposed subdivision if, within 24 months after the enactment of the Nisga'a Village Act, any conditions imposed by the Nisga'a Village Government in the resolution approving the proposed subdivision are satisfied and the subdivision is completed.

No compensation in relation to enactment of Nisga'a Village Act

- 34. Compensation is not payable to any person for any reduction in the value of that person's interest in land, or for any other loss or damages, resulting from the enactment of a Nisga'a Village Act permitted under this Part.

PART 8 – FEES RELATED TO APPLICATIONS AND INSPECTIONS**Fees related to applications and inspections**

- 35.** (1) A Nisga'a Village Government may, by Nisga'a Village enactment, impose one or more of the following types of fees:
- (a) application fees for an application to initiate changes to the provisions of an official community plan or Nisga'a Village Zoning Act;
 - (b) application fees for the issuance of a permit under Part 6;
 - (c) subdivision application fees, which may vary with the number, size and type of parcels involved in a proposed subdivision;
 - (d) fees to cover the costs of administering and inspecting works and services under this Act that are additional to the costs related to fees under paragraphs (a) to (c).
- (2) A fee imposed under subsection (1) must not exceed the estimated average costs of processing, inspection, advertising and administration that are usually related to the type of application or other matter to which the fee relates.
- (3) A Nisga'a Village Government must not exempt a business from a fee imposed by the Nisga'a Village Government under subsection (1).

PART 9 – ENFORCEMENT AND RELATED MATTERS

Principles governing authority to enter on or into property

36. (1) This section applies in relation to an authority under this or another Nisga'a enactment for a Nisga'a Village to enter on property.
- (2) Subject to any limitations in the authorizing Nisga'a enactment, the authority may be exercised by employees of the Nisga'a Village or by other persons authorized by the responsible Nisga'a Village Government.
- (3) Subject to any limitations in the authorizing Nisga'a enactment and to this section, the authority includes authority to enter on property, and to enter into property, without the consent of the owner or occupier.
- (4) Except in the case of an emergency, a person
- (a) may only exercise the authority at reasonable times and in a reasonable manner, and
 - (b) must take reasonable steps to advise the owner or occupier before entering the property.
- (5) The authority may only be used to enter into a place that is occupied as a private dwelling if any of the following applies:
- (a) the occupier consents;
 - (b) the Nisga'a Village has given the occupier at least 24 hours' written notice of the entry and the reasons for it;
 - (c) the person exercising the authority has reasonable grounds for believing that failure to enter may result in a significant risk to the health or safety of the occupier or other persons;
 - (d) the entry is for a purpose referred to in subsection (6) in relation to regulations, prohibitions or requirements applicable to the place that is being entered.
- (6) Without limiting the matters to which this section applies, a Nisga'a Village may enter on property within the Nisga'a Village under its jurisdiction to inspect and determine whether all regulations, prohibitions and requirements are being met in relation to any matter for which the responsible Nisga'a Village Government, an employee of the Nisga'a Village or a person authorized by the Nisga'a Village

Government, has exercised authority under this or another Nisga'a enactment to regulate, prohibit and impose requirements.

Enforcement powers

37. (1) A Nisga'a Village Government may include in a Nisga'a Village Act permitted under this Act provisions for the purposes of enforcing the Nisga'a Village Act or any other Nisga'a Village Act permitted under this Act.
- (2) A Nisga'a Village Act permitted under subsection (1) may establish one or more of the following penalties to which a person convicted of an offence in a prosecution under the *Nisga'a Offence Act* is liable:
- (a) a minimum fine;
 - (b) a maximum fine of up to \$2,000;
 - (c) in the case of a continuing offence, for each day that the offence continues either or both of
 - (i) a minimum fine under paragraph (a), or
 - (ii) a maximum fine under paragraph (b);
 - (d) imprisonment for not more than six months.

Enforcement by civil proceedings

38. (1) A Nisga'a Village may, by a proceeding brought in the Supreme Court of British Columbia, enforce, or prevent or restrain the contravention of,
- (a) a Nisga'a Village Act or resolution of its Nisga'a Village Government permitted under this Act, or
 - (b) this Act or a regulation made under this Act.
- (2) For a civil proceeding referred to in subsection (1),
- (a) the proceeding may be brought by the Nisga'a Village in its own name,
 - (b) it is not necessary for any other person, including the Nisga'a Nation, to be a plaintiff in the proceeding, and

NISGA'A COMMUNITY PLANNING AND ZONING ENABLING ACT

- (c) the Nisga'a Village must serve a copy of the originating documents on the Chief Executive Officer
 - (i) before the end of the time limit for appearance by the defendant, or
 - (ii) within a further time that may be allowed by the court.
- (3) The authority under subsection (1) may be exercised whether or not a penalty has been imposed for the contravention.

PART 10 – MISCELLANEOUS**Regulations**

- 39.** (1) The Executive may make regulations it considers necessary or advisable for purposes of this Act.
- (2) Without limiting subsection (1), the Executive may make regulations
- (a) prescribing the form of notice that must be filed in the Nisga'a land title office under section 27(1) or (3), and
 - (b) within 180 days after this Act comes into force, designating a Nisga'a Village enactment as an existing official community plan for the purposes of section 40 or as an existing zoning Act for the purposes of section 41.

Existing official community plans

- 40.** An existing official community plan designated under section 39(2)(b)
- (a) is deemed to be an official community plan adopted by a Nisga'a Village OCP Act permitted under this Act, except to the extent of any inconsistency with section 6(2), and
 - (b) remains in force until amended or repealed by a Nisga'a Village Act permitted under this Act.

Existing zoning laws

- 41.** An existing zoning Act designated under section 39(2)(b)
- (a) is deemed to be a Nisga'a Village Zoning Act permitted under this Act, except to the extent of any inconsistency with Part 5, and
 - (b) remains in force until amended or repealed by a Nisga'a Village Act permitted under this Act.

Commencement

- 42.** This Act comes into force by regulation of the Executive.