



March 30, 2011

To: Squamish Nation Membership

From: Chiefs and Council

Re: Questions and Answers about the Proposed Squamish Land Code

Attached for your information are responses from questions asked from the 6 scheduled Community Meetings on:

1. March 15 General Membership (Totem Hall)
2. March 16 Elders (Elders Centre North Vancouver)
3. March 16 General Membership (Chief Joe Mathias Centre)
4. March 22 Youth (Youth Centre North Vancouver)
5. March 23 Elders (totem Hall)
6. March 25 Youth (Totem Hall)

Final reminders there are **two meetings** scheduled for families to attend are:

1. Sunday, April 3 6 - 9 pm General Membership (Totem Hall)
2. Monday, April 4 6 - 9 pm General Membership (Chief Joe Mathias Centre)

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Questions and Answers about the proposed Squamish Land Code

Q1: Why are we considering replacing a quarter of the *Indian Act* with the proposed Squamish Land Code?

A1. The land management components of the *Indian Act* and the administration of the Department of Indian Affairs has not achieved good results for the Squamish Nation. Some effects stemming from the existing system of land management are described in the table below. Also included in the table are some objectives of the Squamish Land Code. The code should address the shortcoming of the current system.

Some effects of the <i>Indian Act</i> land management system	What should a Squamish Land Code do?
<ul style="list-style-type: none"> • Federal government has final decision on how Squamish Reserve Lands are used • Inadequate environmental protection • Limited coordination of land uses • Long response times for approvals • Inadequate physical infrastructure • No separation of politics and administration • Limited powers of enforcement 	<ul style="list-style-type: none"> • Enable Squamish Nation to decide how Squamish Reserve Lands are used • More effective management of lands to reflect membership priorities • Define development process and role of membership in approval of proposed developments • Develop more administrative capacity at local level • Enhance quality of the environment • Enhance coordination of land uses • Enhance coordination of transportation infrastructure • Separate administrative process from political process • Ensure Canada retains responsibility for other services (for example: health and education)

Q2. Will the proposed Squamish Land Code apply to all our Xay Temixw (sacred lands or traditional territory)?

A2. No. The proposed Squamish Land Code applies only to existing Squamish Indian Reserves.

Q3. How will the proposed Squamish Land Code affect funding?

A3. Operational funding will be available from Canada once the Land Code comes into effect (see Individual Agreement section 5).

Q4. Will the proposed Squamish Land Code change the structure of council?

A4. The proposed Squamish Land Code does not affect the structure of council. We will continue to elect council members every four years.

Q5. What is the difference between the “Community Development Plan” that has been discussed at family meetings, and the proposed Squamish Land Code?

A5. The proposed Squamish Land Code is the ‘rules to manage our reserve lands’. The Community Development Plan is about: (a) acquiring new lands, and (b) generating the revenue to support the costs of land acquisition, infrastructure provision and housing construction.

Q6. Is the proposed Squamish Land Code part of the BC Treaty Negotiation Process? Will our lands become fee simple lands like parcels of land located off-reserve?

A6. No. The proposed Squamish Land Code is not a treaty. Our reserve lands will be Squamish Lands (Squamish Land Code section 11). A concern about fee simple lands is that they could be sold to a non-member and in that way land could be ‘lost’ to the Nation. The proposed Squamish Land Code prevents this from happening by: (a) confirming that reserve lands are Squamish lands (section 11); (b) requiring membership votes on any proposed land exchange (section 32); and, (c) defining ‘eligible recipient’ of a Squamish Residential Interest as a Squamish member (schedule B, section 1).

Protecting the lands from being sold to non-Squamish members also limits the ability to use the lands as security for a loan. In other words, the lands cannot be ‘mortgaged’. This means that members that want to get a loan to build a house will not be able to use their “Squamish Residential Interest” as security in a loan with a bank.

Q7. Does the proposed Squamish Land Code affect the tax exemption?

A7. No. The proposed Squamish Land Code does NOT affect the tax exemption. Member homes on Squamish Nation reserves will continue to be exempt from property taxes. Members will still be able to use their status card at Park Royal or the Superstore to make purchases that are exempt from sales tax. If a member works on-reserve, their personal income will continue to be tax exempt.

Q8. How will people be selected to participate on the Land Stewardship Authority?

A8. Schedule F of the proposed Squamish Land Code sets out the rules for electing people to the Land Stewardship Authority. Squamish electors will elect three (3) members during each regular election. Council will appoint two (2) councillors. So all five (5) members of the Land Stewardship Authority will be Squamish members.

Q9. How will the proposed Squamish Land Code enable the Nation to support member small businesses?

A9. The proposed Squamish Land Code creates the ability to develop “FNLMA Laws” (section 36 of the proposed *Squamish Land Code*) which include land use and zoning laws (see section 20 of the *First Nations Land Management Act*). A land use plan, created under the land use law could include areas for small businesses. In addition, zoning could describe the types of home based businesses that would be permitted in a residential area.

Q10. Will CP holders be losing rights?

A10. CP holders maintain their rights. All CPs and custom allocations will be continued as Squamish Residential Interests (see section 12 of the proposed *Squamish Land Code*).

Currently, CPs are: (a) registered in the Indian Land Registry; (b) governed by Squamish *Indian Act* zoning bylaws; (c) governed by estate provisions of the *Indian Act* (for example: Section 48); and, (d) subject to expropriation provisions of the *Indian Act* (section 18 (2)).

Under the proposed Squamish Land Code, CPs will be continued as Squamish Residential Interests, which will be: (a) registered in the First Nation Land Registry System (an online system); (b) governed by a Squamish Nation land use law; (c) governed by estate provisions of the *Indian Act* (for example: Section 48); and, (d) subject to expropriation provisions of the proposed Squamish Land Code (Section 33).

Q11. Why did the Osoyoos membership vote “no” to their land code? How does the proposed Squamish Land Code compare?

A11. The following is an excerpt from an article written about the experience of the Osoyoos Indian Band.

“There were many outstanding issues. The Osoyoos Indian Band Land Code was in development for over two years but failed to address several of the community's major concerns. These included areas of: protection of aboriginal rights and title, extended powers of Council, jurisdiction over reserve lands and traditional territory, lands committee selection, increased liability risk and management, expropriation of individual's lands and a valid dispute resolution mechanism. However, the greatest concern was seen in the lack of community involvement.”

Each of these issues is discussed in the context of the proposed Squamish Land Code.

Aboriginal Rights and Title

The Squamish Nation asserts its aboriginal rights and title to its Xay Temixw. The proposed Squamish Land Code does not affect Squamish Aboriginal Rights and Title (see the preamble of the Squamish Land Code and section 1.5 and 1.6 of the *Framework Agreement on First Nations Land Management*.)

The Squamish Nation will continue to pursue accommodation agreements in accordance with the principles set out in the Delgamuukw, Haida and Taku River Tlingit court decisions.

Powers of Council

The proposed Squamish Land Code puts checks on the powers of Council over activities on reserve. The following sections restrict the powers of council:

- **Section 20-29:** New interests and licences set requirements for membership votes
- **Section 30:** Council may not grant leases or licences without appraisals
- **Schedule C:** rules for provision of information and voting
- **Section 32-33:** protection from other governments taking Squamish Land and protections for members from Squamish Nation Government taking their land
- **Section 36:** Requirement for membership involvement in law-making process
- **Section 40:** Requirement for membership referendum if there is an amendment to the proposed Squamish Land Code
- **Schedule D, Section 25:** Policy for Squamish member information or involvement in financial planning process
- **Schedule D, Section 46:** Complaints to Council or Auditor about financial affairs
- **Schedule E, Section 16(3):** Conflict of Interest - Requests for inquiry

Decision-making

The proposed Squamish Land Code applies to existing Indian Reserves and enables the Squamish Nation to make decisions on how its lands are used. The role of members, Council, and administration in making decisions is defined in the proposed Squamish Land Code. The legal authority of the land code is confined to existing Indian Reserves. It does not extend to our entire Xay Temixw. (Useful Squamish Land Code section references include sections 20-30 and schedule C).

Land Stewardship Authority

Schedule F of the proposed Squamish Land Code sets out the rules for electing people to the Land Stewardship Authority. Squamish electors will elect three (3) members during each regular election. Council will appoint two (2) councillors. So all five (5) members of the Land Stewardship Authority will be Squamish members.

Is the Nation taking on risk when it pursues economic development projects?

Yes. With or without a land code the Nation takes on risks with all economic development projects. The table below describes some risks and explains how they can be managed.

Name of risk	Description	How is it managed?
Market	Can prepaid leasehold space in developments be sold?	Pre-sell before construction
Rental	Can suites be rented to tenants?	Analyze vacancy rates and assess future supply of space
Interest rate	Will rates go up or down?	Use fixed term rates
Construction	Will the cost of construction go up or down?	Negotiate fixed price contracts

The Nation will need to continue to manage these risks.

What about expropriation?

There are protections in the proposed Squamish Land Code for the Nation and for members. Sections 32 and 33 of the proposed Squamish Land Code address land exchanges and expropriations. Schedule I sets out some requirements for an expropriation law. These provisions address two scenarios:

- (a) ***Another government (i.e. the federal government) using Squamish land.*** The Squamish Nation has experienced this in the past and these provisions are intended to protect the land base of the Squamish Nation. Other First Nations with land codes have used the land exchange provisions to protect against the loss of lands when other governments have wanted to use some of their lands for a road/bridge.
- (b) ***Squamish Nation using Squamish lands for 'community works or community purposes'.*** If the proposed Squamish Land Code is ratified by membership, no expropriations may be made by the Squamish Nation unless a number of conditions are satisfied including: (i) the enactment of an expropriation law (Schedule I requires rules and procedures respecting the process, method for determining fair compensation, and procedure for the resolution of disputes); (ii) written notice; (iii) council has attempted to negotiate an agreement with the holder of the interest; and, (iv) publication at information meetings.

What about membership involvement?

The development of the Squamish Land Code has been a membership-driven process. Over 40 meetings were held and over 90 members participated. [see Bulletin 1 at www.squamish.net]

A membership committee was established in 2003 to provide input into the proposed Squamish Land Code. The committee met 18 times through 2004. The committee reviewed other First Nation's land codes, heard guest speakers (from other First Nations), and reviewed questions and answers about the process established by the *Framework Agreement on First Nation Land Management* and the *First Nations Land Management Act*. In 2008, the committee was re-established and met 14 times through 2009. The focus of discussions in these meetings was questions that members had about the proposed Squamish Land Code. The Membership Committee submitted its report to council in November 2009.

In 2010, the first draft of the proposed Squamish Land Code was reviewed by a group that included Council, the membership committee, and administrators. This group was called the Land Code Working Group. Ten (10) meetings were held in 2010 to review the draft code and questions and comments about it. In November 2010, the Land Code Working Group submitted its report to Council that included three and a half pages of proposed revisions. Revisions included the establishment of a "residential unit licence" and a requirement for member involvement in the law-making process. The Land Code Working Group recommended that the proposed revisions be made and that the proposed Squamish Land Code be brought to membership for its consideration in a referendum.

Ten (10) membership meetings are being held in 2011 for members (general membership, elders, youth) to review and discuss the proposed Squamish Land Code.

Q12. Who will be able to vote on April 7-8, 2011 in the referendum on the proposed Squamish Land Code?

A12. Members of the Squamish Nation that are eligible voters.

Q13. How can this proposed land code be changed in the future?

A13. The rules for reviewing the land code and amendment are set out in sections 38-40 of the proposed Squamish Land Code. The land code must be reviewed every five years. If there are proposed changes to the body of the code, a membership vote is required.

Q14. Will the proposed Squamish Land Code make it easier to get a mortgage?

A14. The proposed Squamish Land Code confirms that lands are Squamish Lands (see section 11). This means that they can not be provided as security to a lender in a mortgage, and without the ability to seize the property as an asset, lenders will not provide a mortgage for an on-reserve house.

Some existing on-reserve housing loan programs (i.e. those currently offered through BMO and RBC) could be developed but these would expose the Nation to risk since the Nation would be required to guarantee the loans.

The proposed Squamish Land Code supports the development of market housing projects (i.e. prepaid leasehold interests like Ravenwoods) where members could secure mortgages if they qualify.

Q15. Can the proposed Squamish Land Code protect areas for ceremonial bathing?

A15. The proposed Squamish Land Code applies to existing Indian Reserves. The development of a land use plan, through the Land Code, could identify certain areas on our reserve lands for ceremonial bathing.

Q16. Will *Indian Act* Certificates of Possession automatically change to Squamish Residential Interests (SRI) or will members holding CPs have to apply to get an SRI?

A16. Members will not need to apply as all CPs and custom allocations will be continued as Squamish Residential Interests (see section 12 of the proposed Squamish Land Code).

Q17. Is it possible to compare CPs, custom lots and Squamish Residential Interests in a chart?

A17. The table below compares and contrasts the characteristics of a "Certificate of Possession" and "Custom Lot" (under the *Indian Act*) and a Squamish Residential Interest (under the proposed Land Code).

Life event	Custom Lot	Certificate of Possession	Squamish Residential Interest
Born into the Squamish Nation	<ul style="list-style-type: none"> Squamish Membership Code determines whether a person is a member of the Squamish Nation. 	<ul style="list-style-type: none"> Squamish Membership Code determines whether a person is a member of the Squamish Nation. 	<ul style="list-style-type: none"> Squamish Membership Code determines whether a person is a member of the Squamish Nation. The Membership Code sets out rules that were developed by the Squamish Nation and will continue in force if a land code is ratified.
Apply to housing list	<ul style="list-style-type: none"> Squamish Nation Housing Policy sets out the rules for application to the housing list. 	<ul style="list-style-type: none"> Squamish Nation Housing Policy sets out the rules for application to the housing list. 	<ul style="list-style-type: none"> Squamish Nation Housing Policy sets out the rules for application to the housing list. Our Housing Policy will continue to set out rules for application to the housing list if a land code is ratified.
Move to townhouses	<ul style="list-style-type: none"> N/A [Townhouse policy] 	<ul style="list-style-type: none"> N/A [Townhouse policy] 	<ul style="list-style-type: none"> A 'Squamish residential unit licence' has been established in the proposed Squamish Land Code to reflect this current practice.

Life event	Custom Lot	Certificate of Possession	Squamish Residential Interest
Get a house	<ul style="list-style-type: none"> • About three quarters of the current single family lots are custom allocations. <ul style="list-style-type: none"> - Registration: lots are registered by the Squamish Nation - Land use: the lots are governed by the use provisions of the Housing Policy, which permit a residential use of the CP lot 	<ul style="list-style-type: none"> • About one quarter of lots are certificates of possession or “CP’s” <ul style="list-style-type: none"> - Registration: lots are registered by Indian Affairs. - Land use: lots are governed by Squamish Nation zoning bylaws enacted through the <i>Indian Act</i>, which permit a residential use of the CP lot 	<ul style="list-style-type: none"> • Under the land code, all lots (both CPs and custom allocations) would be converted into “Squamish residential interests” or “SRI’s” <ul style="list-style-type: none"> - Registration: lots will be registered by the Squamish Nation through the First Nations Land Registry - Land Use: lots governed by Squamish Land Use and Zoning Laws, to be developed in consultation with membership
What happens to house if you separate from partner?	<ul style="list-style-type: none"> • Squamish Nation Housing policy has some provisions related to these issues 	<ul style="list-style-type: none"> • Squamish Nation Housing policy has some provisions related to these issues 	<ul style="list-style-type: none"> • If the land code is ratified, there is a requirement for the Nation to develop a matrimonial real property law to deal with these issues • It is expected that many of the provisions of the Squamish Nation Housing Policy (related to spousal property rights) will be carried forward into a matrimonial real property law.

Life event	Custom Lot	Certificate of Possession	Squamish Residential Interest
Leave house to relative in will	<ul style="list-style-type: none"> • If an individual has a will, then the wishes of the individual are followed • If there is no will: <ul style="list-style-type: none"> - those with a custom lot follow the Nation's custom intestate policy 	<ul style="list-style-type: none"> • If an individual has a will, then the wishes of the individual are followed • If there is no will: <ul style="list-style-type: none"> - those with a CP are required to follow the rules set out by Section 48 of the Indian Act 	<ul style="list-style-type: none"> • If an individual has a will, then the wishes of the individual are followed. For example, an individual could leave their home to another Squamish member such as a descendant or relative • If the person does not have a will, then the rules set out by Section 48 of the Indian Act will be followed.

Q18. What is a self-government agreement? What is a treaty? Why are people concerned about these types of agreements? Is the proposed Squamish Land Code a self-government agreement or treaty? How is it different?

A18. A self-government agreement is an agreement between a First Nation and Canada. An example of a self-government agreement is the one between Westbank and Canada. [<http://www.ainc-inac.gc.ca/al/ldc/ccl/fagr/wfn/wfn-eng.asp>]. A self-government agreement applies to existing reserves and covers a broad scope of governance matters including: powers of government, structures and procedures of government, agriculture, culture and language, education, health services. By contrast, a Land Code only deals with land management issues, replacing about a quarter of the *Indian Act*.

A treaty made in the BC Treaty Process is an agreement among a First Nation, the Government of British Columbia, and the Government of Canada. An example of a treaty is the Tsawwassen Treaty [<http://www.gov.bc.ca/arr/firstnation/tsawwassen/default.html>]. Treaties cover a broad range of governance matters. In addition, treaties deal with a First Nation's claim to land in its traditional territory. Additional lands and cash are negotiated as part of the agreement that 'settles' the claim.

Members may be concerned about treaties and self-government agreements because of specific components of the agreements (i.e. tax exemption, own source revenue policy, certainty of tax powers, land and cash mandates) and because of what they have heard about communities that have entered them (i.e. Nisga'a).

The proposed Squamish Land Code does not cover a broad range of governance matters. For example, it does not deal with culture and language, education, or health services. It does not deal with taxation. The proposed Squamish Land Code does not deal with the Squamish Nation's claim to its traditional territory. The Squamish Nation will continue to pursue accommodation agreements in its Xay Temixw in accordance with the principles set out in the Delgamuukw, Haida and Taku River Tlingit court decisions. The proposed Squamish Land Code does address land management on existing reserve lands. Some of the ways in which the proposed Squamish Land Code is different from a self-government agreement or a treaty.

	Self-government	Treaty	Land Code
To what lands does the agreement apply?	Indian Reserve	Indian Reserve + Treaty Settlement Lands	Indian Reserve
What topics are covered?	Governance, agriculture, culture and language, education, health, land management	Governance, culture, health, education, taxation, fiscal relations, wildlife, land management	Land management
Are claims to traditional territory settled?	No	Yes	No

Q19. Who will enforce the laws? What if there is a dispute? Are there dispute resolution provisions?

A19. It is the Nation's land, they are the Nation's laws, it will be up to the Nation to enforce them.

There are some specific dispute resolution provisions in the proposed Squamish Land Code. There are provisions related to: (a) Dispute resolution related to interests and licences (section 49); (b) Financial administration complaints (Schedule D section 46); and, (c) Conflict of interest complaints (Schedule E, section 16).

Laws developed under the authority of the proposed Squamish Land Code may have specific dispute resolution mechanisms.

Q20: What if there is a no vote?

A20: If there is a no vote, we remain under the *Indian Act*. Some of the challenges of the Indian Act land management system include: federal government decides what happens on our lands, inadequate environmental protection, long response time for approvals, limited powers of enforcement. (these are described in the bulletin at http://www.squamish.net/services/land_management.htm)

The implication of staying under the Indian Act is that it will be more difficult to complete proposed projects (for example the one at Senakw), and to generate the revenue required to implement the Community Development Plan (land acquisition and member housing).

Q21: How does the proposed Squamish Land Code support the implementation of the Community Development Plan?

A21: The proposed Squamish Land Code supports the implementation of the Community Development Plan in the following ways:

Establishes clear rules for approving leases and licences for proposed developments

The proposed Squamish Land Code defines how long leases, licenses and permits can be granted for on Squamish lands. In addition, it defines the approval process for the granting of leases, licenses and permits including rules on information meetings, ratification meetings, and referendums.

Establishes a framework for financial planning and financial reporting

The proposed Squamish Land Code includes a schedule on financial administration that sets out requirements for financial planning and financial reporting and ensures that members will have access to financial information. This framework will help us to effectively manage prepaid rent from projects, and to make strategic investments in land, infrastructure and housing to address membership priorities.

Enables Squamish Nation to develop Land Use Planning and Zoning regime

The proposed Squamish Land Code enables the Squamish Nation to establish a land use planning process and zoning regime. This process will include opportunities for members to provide input into proposed land uses for different areas at different reserve.

Enables Squamish Nation to develop more effective environmental assessments

The proposed Squamish Land Code will enable us to pass an environmental assessment law that works for large and small projects.

Requires appraisals to ensure value is achieved

The proposed Squamish Land Code requires appraisals to ensure fair market value is achieved for the land before any lease or licence can be granted. The Nation has a fiduciary duty to its membership to achieve value when it puts land to work. The appraisal law will set out the requirements for appraisals.

Q22. If membership decides to move ahead, what is the work plan for implementation? Will there be additional costs? How will these costs be paid?

A22. If membership decides to move ahead, there will be a twenty-four (24) month transition period (Section 52 of the proposed Squamish Land Code) to prepare the laws required to implement the land code. There will be several land laws to develop including: matrimonial real property (or spousal property rights), environmental assessment, land use, and appraisal.

There will also be some human resources work. The costs will depend on the ability to assign responsibilities to existing staff and the need to hire new staff.

Operational funding will be available from Canada once the proposed Squamish Land Code comes into effect (see Section 5 of the Individual Agreement).

Q23. Will there be a website created for members to access information?

A23. The information about the land code is online at: <http://www.squamish.net/community/events.htm> . Other governments (both First Nations and others) put land related information online.

It is possible to download the Squamish Indian Reserve boundaries from NRCan into Google Earth by going to the following link: <http://class.nrcan.gc.ca/googledata-donneesgoogle-eng.php>

To download a free google earth browser: <http://www.google.com/earth/index.html>