

**NISGA'A LISIMS GOVERNMENT**

**WILP SI'AYUUKHL NISGA'A**

**NISGA'A CAPITAL (NEW ASSET) FINANCE  
COMMISSION ACT**

**UNOFFICIAL CONSOLIDATION**

**TO JANUARY 31<sup>st</sup>, 2007**

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**Definitions****1**

(1) In this Act

“approved project funds in relation to an owner” means, in respect of

- (a) the Nisga'a Nation, the amount included for application to funded capital (new asset) projects of the Nisga'a Nation,
- (b) the village of Gingolx, the amount included for application to funded capital (new asset) projects of Gingolx,
- (c) the village of Gitwinksihlkw, the amount included for application to funded capital (new asset) projects of Gitwinksihlkw,
- (d) the village of Laxgalt'sap, the amount included for application to funded capital (new asset) projects of Laxgalt'sap, and
- (e) the village of New Aiyansh, the amount included for application to a funded projects of New Aiyansh,

in the commission budget for the fiscal year;

“chairperson” means the chairperson of the commission;

“commission” means the Nisga'a Capital (New Asset) Finance Commission established under this Act;

“commission budget” means an annual budget for the commission approved by the executive under this Act;

“commission fund” means the capital (new asset) finance commission fund established under the *Nisga'a Financial Administration Act*;

“commission funding application” means an application under section 22(1)(f) for inclusion in the commission budget of funding for the acquisition or construction of a new capital asset, as amended under section 24(1)(a);

“commission records” means the records of the commission that are required to be kept under this Act;

“commissioner” means a person who is a commissioner as provided under section 4;

“consolidated inventory of new capital assets” means the consolidated inventory of new capital assets described in section 26(1);

“director” means the Director of Finance;

“ffa listed assets” means ffa listed assets as defined in the *Nisga'a Capital Finance Commission Act*;

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“finance employee” means an employee of a Nisga'a Village appointed under section 93(1) of the *Nisga'a Financial Administration Act*;

“funded capital (new asset) project” means the acquisition or construction of a new capital asset for which funding is included in the commission budget for the fiscal year;

“generally accepted accounting principles” means generally accepted accounting principles as defined in the *Nisga'a Financial Administration Act*;

“housing services provider” means a corporation designated under section 57;

“inflation adjusted value”, in relation to an expenditure, means the amount of the expenditure adjusted, on the basis of changes to the All-items Consumer Price Index for Vancouver as published under authority of the *Canada Statistics Act*, to account for the aggregate effect of inflation from the month during which the expenditure was incurred to the time as of which the adjusted value must be established;

“inventory of new capital assets” means an inventory of new capital assets described in section 21;

“major maintenance or replacement” includes acquisition, erection, alteration, extension, major maintenance, renovation, and replacement, of a new capital asset but does not include routine operation or maintenance;

“municipal finance authority” means the Municipal Finance Authority of British Columbia under the *British Columbia Municipal Finance Authority Act*;

“new capital asset” means a capital asset acquired or constructed under this Act or listed in the consolidated inventory of new capital assets;

“Nisga'a Capital Finance Commission” means the Nisga'a Capital Finance Commission established under the *Nisga'a Capital Finance Commission Act*;

“Nisga'a Financial Administration Act budget” means a budget

- (a) if the owner is the Nisga'a Nation, for the Nisga'a Nation, and
- (b) if the owner is a Nisga'a Village, for the Nisga'a Village,

prepared under the *Nisga'a Financial Administration Act*;

“owner” means, in relation to a new capital asset, the person that

- (a) subject to paragraphs (b) and (c), has had acquisition or construction of the new capital asset included in a commission budget as a funded capital (new asset) project,
- (b) subject to paragraph (c), is listed as the owner of the new capital asset in the consolidated inventory of new capital assets, or
- (c) is prescribed as the owner of the new capital asset in a regulation made under this Act;

“programs or services” means programs or services as defined in the *Nisga'a Programs and Services Delivery Act*;

“projected appropriation to the commission fund for the next fiscal year” means the projected amount, if any, and expected dates of payment of funds that will be appropriated to the commission fund in the Nisga'a Nation draft provisional target budget required to be prepared by November 1 under Part 5 of the *Nisga'a Financial Administration Act* for the next fiscal year,

“replacement” includes a substitution in whole or in part with another capital asset or assets of the owner either alone or in combination with another owner;

“securities” means securities as defined in the *Nisga'a Financial Administration Act*;

“vice-chairperson” means the vice-chairperson of the commission.

#### **Conflict with the *Nisga'a Financial Administration Act***

- 2** Despite the *Nisga'a Financial Administration Act*, if there is a conflict or inconsistency between this Act or its regulations and the provisions of the *Nisga'a Financial Administration Act* or its regulations, this Act and its regulations prevail to the extent of the conflict or inconsistency.

**Part One - Nisga'a Capital (New Asset) Finance Commission****Commission established**

- 3 The Nisga'a Capital (New Asset) Finance Commission is established and consists of its commissioners.

**Commissioners**

- 4 The individuals who are commissioners of the Nisga'a Capital Finance Commission under the *Nisga'a Capital Finance Commission Act* are also commissioners of the Nisga'a Capital (New Asset) Finance Commission under this Act.

**Purposes**

- 5 The purposes of the commission are
- (a) to provide for the application of funds appropriated to the commission fund under the *Nisga'a Financial Administration Act*, to the acquisition or construction of new capital assets,
  - (b) to take reasonable steps to ensure that the construction of new capital assets that are buildings or other improvements is financed, planned and carried out in accordance with procedures, and to standards, that generally apply to the financing, planning and construction of public buildings and other improvements of organized communities in north-west British Columbia that are of similar size and remoteness to the Nisga'a Villages, and
  - (c) to manage, control and protect funds appropriated to the commission fund under the *Nisga'a Financial Administration Act*, for the purposes set out in paragraphs (a) and (b).

**Special programs and projects**

- 6 In addition to carrying out its purposes set out in section 5, the commission must carry out any additional program or project provided for in the regulations, in any other Nisga'a Lisims enactment, or in a written directive of the executive.

**Commission authority**

- 7 In addition to carrying out its responsibilities and exercising its authorities set out elsewhere in this Act, the commission may do all other things as may be necessary for it to carry out those responsibilities or to exercise those authorities.

**Execution of documents**

- 8 Except as specifically otherwise provided in this Act, the Secretary-Treasurer and one other commissioner may execute and deliver on behalf of the commission, and for or in the name of the Nisga'a Nation, any agreements and other written instruments required or permitted under this Act or the regulations.

**Address**

- 9 The address of the commission is the same as that of the principal administration offices of the Nisga'a Lisims Government in New Aiyansh, British Columbia.

**Alternate commissioners****10**

- (1) The individuals who are alternate commissioners of the Nisga'a Capital Finance Commission under the *Nisga'a Capital Finance Commission Act* are also alternate commissioners of the Nisga'a Capital (New Asset) Finance Commission under this Act.
- (2) An alternate commissioner may take the place, and have the vote, of the commissioner they are the alternate commissioner for, if
  - (a) the commissioner they are the alternate commissioner for is absent from a commission meeting, and
  - (b) a notice of the alternate commissioner's appointment is filed with the chairperson.

**Officers and secretarial services****11**

- (1) The Secretary-Treasurer is the chairperson of the commission.
- (2) The individual who is the vice-chairperson of the Nisga'a Capital Finance Commission is also the vice-chairperson of the commission.
- (3) In addition to any duties of the chairperson or vice-chairperson required under this Act, the commission may determine other duties to be performed by the chairperson or vice-chairperson.
- (4) If the chairperson is absent or unable to act or the office is vacant, the vice-chairperson must act as chairperson.
- (5) If the chairperson and vice-chairperson are absent or unable to act or their offices are vacant, another commissioner designated by those commissioners present must act as chairperson.
- (6) The same personnel as the chief executive officer requires to provide secretarial services to, and to maintain records for, the Nisga'a Capital Finance Commission must provide secretarial services to, and maintain records for, the commission.



**Delegation****12**

- (1) The commission may with the written approval of the executive delegate any of its powers, authorities, duties or responsibilities under this Act and the regulations, specified in the approval, to a professional engineer, or consultant approved by the executive.
- (2) A copy of the approval of a delegation under subsection (1) must be kept in the commission records.

**Commissioner remuneration****13**

- (1) The cost of remuneration, if any, of a commissioner must be borne by the person responsible for remunerating the individual when the individual acts in their capacity as a commissioner of the Nisga'a Capital Finance Commission.
- (2) Expenses incurred by a commissioner in connection with attending commission meetings may be reimbursed, in accordance with the policies established by the executive under the *Nisga'a Personnel Administration Act* for payment or reimbursement of expenses of its employees, by the person that is responsible, under subsection (1), for the cost of remuneration, if any, of the commissioner.
- (3) If a commissioner is remunerated or paid expenses in respect of a meeting of the Nisga'a Capital Finance Commission that immediately precedes the commission meeting, they must not be remunerated or reimbursed expenses in connection with attending the commission meeting.

**Conduct****14**

- (1) A commissioner must not enter into, or be financially interested, directly or indirectly, in any contract or work in respect of the acquisition or construction of a new capital asset that is a funded capital (new asset) project.
- (2) A commissioner who contravenes subsection (1) commits an offence punishable under the *Nisga'a Offence Act*.

**Commissioner liability****15**

- A commissioner, when exercising a power or authority, or performing a duty or responsibility, under this Act or the regulations, must
- (a) act honestly and in good faith and in the best interests of the Nisga'a Nation and the commission fund, and
  - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

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**Meetings****16**

- (1) The commission must meet immediately after each meeting of the Nisga'a Capital Finance Commission.
- (2) Despite subsection (1), the commission is not required to meet if the chairperson determines that there is no business for the commission to carry out.
- (3) Notice of a commission meeting must be included with a notice of a Nisga'a Capital Finance Commission meeting given under the *Nisga'a Capital Finance Commission Act*.
- (4) Despite subsection (3), if all commissioners are present at a commission meeting the notice requirement under that subsection is waived for all purposes.
- (5) If all commissioners consent, a commissioner may participate in a commission meeting by telephone, or other communications facilities, by which all commissioners participating in the meeting can hear each other.
- (6) A commissioner participating in a commission meeting in accordance with subsection (5) is
  - (a) deemed to be present at the commission meeting,
  - (b) deemed to have given consent under subsection (5),
  - (c) counted in the quorum, and
  - (d) entitled to speak and vote at the meeting.
- (7) The Secretary-Treasurer and three other commissioners constitute a quorum of the commission for the transaction of business.
- (8) Each commissioner has one vote on all questions.
- (9) All questions must be decided by a majority vote of the commissioners present at a commission meeting and entitled to vote on the question.
- (10) A vacancy in the commission does not impair the power of the remaining commissioners to act.
- (11) Subject to subsection (12), a resolution set out in writing, whether in one or more copies, that is approved by each commissioner, either
  - (a) by the commissioner signing a copy of the resolution, or
  - (b) by facsimile or other electronic means of communication that sets out a copy of the resolution and includes a copy of the commissioner's signature,is as valid as if it were passed at a commission meeting properly called and constituted.
- (12) A resolution will be valid under subsection (11) only if all approvals under that subsection are delivered to the chairperson or vice-chairperson.

(13) Each approval delivered under subsection (12) must be kept in the commission records.

(14) The director and the chief executive officer may each attend a commission meeting unless the chairperson directs otherwise.

### **Other commission rules**

**17** Subject to this Act and the regulations, the rules and methods of procedure of the commission are the same as the rules and methods of procedure of the Nisga'a Capital Finance Commission.

### **Mandatory reviews**

**18**

- (1) At each commission meeting, the commission must
  - (a) review the year to date performance of the commission fund in comparison to the commission budget for the most recent period for which relevant information is available,
  - (b) compare year to date expenditures to the commission budget,
  - (c) review year to date payments in respect of each funded capital (new asset) project including, but not limited to, any problem affecting the commission or the commission fund,
  - (d) receive and review reports under subsection (2),
  - (e) on the basis of the reviews and comparisons required under this subsection,
    - (i) update plans of the commission for the remainder of the fiscal year, and
    - (ii) identify and implement any corrective action required by the commission to carry out its purposes, exercise its powers or authorities and carry out its duties and responsibilities for the remainder of the fiscal year.
- (2) At each commission meeting, each owner proceeding with a funded capital (new asset) project in the fiscal year must provide a report to the commission on the status of the funded capital (new asset) project which includes, without limitation,
  - (a) a comparison of expenditures to date with commission budget,
  - (b) a detailed description of any legal, financial, construction or other problem known to the owner, and
  - (c) an outline of the manner in which the problem has been or will be addressed.

**Minutes****19**

- (1) Minutes must be taken of all commission meetings.
- (2) The minutes of the commission must
  - (a) record the mover and seconder of, and the results of the votes on, all resolutions,
  - (b) be signed by
    - (i) the chairperson as a true record of the decisions of the commission, and
    - (ii) the person taking the minutes,
  - (c) be distributed before the next commission meeting, and
  - (d) be subject to correction at the next commission meeting.

**Records****20**

- (1) Commission records must
  - (a) be kept in an orderly and complete manner at the office of the commission, and
  - (b) include a copy of
    - (i) the minutes of all commission meetings,
    - (ii) all agreements and other instruments entered into by the commission, and
    - (iii) all other records and information required to be maintained in the commission records by this Act, the regulations, the commission, the Secretary-Treasurer or the executive.
- (2) A copy of the commission records must be open to inspection at all reasonable times by each member, or any authorized representative, of Wilp Si' ayuukhl Nisga'a, the executive, the finance committee or a Nisga'a Village Government.
- (3) Despite subsections (1) and (2), with the written consent of the executive, a commission written record that
  - (a) is at least seven years old, and
  - (b) is identified in the consent,may be copied to microfilm or to another long term storage medium acceptable to the executive, and, in that event, the written copy of the commission record may be destroyed.

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**Part Two - Life Cycle Management Inventories, and New Capital Asset Approval Applications****Owner annual new capital asset management inventory by November 1**

- 21** Before November 1 of each fiscal year, each owner must
- (a) inspect and review each of its new capital assets as required to establish or update information on
    - (i) its present use,
    - (ii) its condition and state of repair including, but not limited to, whether it is being maintained in accordance with the requirements of section 34,
    - (iii) its suitability for its present use,
    - (iv) its estimated remaining life,
    - (v) its estimated replacement cost,
    - (vi) estimated dates, and costs, of its required future major maintenance,
    - (vii) an appropriate major maintenance factor determined in the same manner as the major maintenance factors are required to be determined for ffa listed assets under the *Nisga'a Capital Finance Commission Act*,
    - (viii) the relative priority of its expected future major maintenance or replacement in relation to the other new capital assets and ffa listed assets of the owner,
    - (ix) a comparison of annual operating and maintenance, other than major maintenance, costs for the five most recently completed fiscal years,
    - (x) maintenance records for all periods up to the date of inspection,
    - (xi) property, and liability, insurance of the owner in effect, and
    - (xii) any other matters the commission requires, and
  - (b) on the basis of its inspection and review under paragraph (a) prepare, or update, its inventory of new capital assets to
    - (i) incorporate the information required to be established or updated under paragraph (a),
    - (ii) add any new capital asset acquired or constructed since the date of the last inspection and review under paragraph (a) that is not already included in its inventory of new capital assets,
    - (iii) identify any asset of the owner not already included in its inventory of new capital assets that might reasonably be regarded as a replacement for any of its new capital assets,

- (iv) identify any new capital asset that is due for replacement and whose function might be reasonably combined with that of another new capital asset or an ffa listed asset,
- (v) identify any new capital asset that no longer serves a purpose for the delivery of programs or services or whose function is better served by another property, and
- (vi) remove any new capital asset that has been replaced since the last inspection and review under paragraph (a) and that has not already been removed from its inventory of new capital assets.

**Provisional target budgets and applications to commission by November 30**

22

- (1) On or before November 30 of each fiscal year, each owner must
  - (a) prepare a report to the commission
    - (i) certifying that it has carried out the inspection and review and established or updated its inventory of new capital assets, as required under section 21,
    - (ii) certifying that it has maintained records of maintenance performed on each of its new capital assets as required under section 21,
    - (iii) certifying that, except for any exception noted under subparagraph (iv), each of its new capital assets
      - (A) has been maintained in accordance with all schedules of maintenance required to be prepared under this section for all fiscal years, and
      - (B) is in good condition for its current use as required under section 34, and
    - (iv) identifying each of its new capital assets for which a certification cannot be given under subparagraph (iii) and providing the reasons why,
  - (b) prepare a schedule of annual maintenance, other than major maintenance, for each new capital asset for the next fiscal year,
  - (c) prepare or update a 5, 10 and 30 year forecast of the estimated cost for major maintenance and replacement of its new capital assets,
  - (d) prepare its draft provisional target budget for any major maintenance of new capital assets to be included in its draft Nisga'a Financial Administration Act budget required to be prepared by November 30 under that Act for the next fiscal year, setting out
    - (i) its proposed major maintenance program and schedule,
    - (ii) the estimated cost, including contingencies, of each proposed major maintenance project, and

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- (iii) the estimated amounts and timing of funds that would be required by it under its proposed Nisga'a Financial Administration Act budget to carry out each proposed major maintenance project,
- (e) prepare its draft provisional target budget for any replacement of new capital assets to be included in its draft Nisga'a Financial Administration Act budget required to be prepared by November 30 under that Act for the next fiscal year, setting out
- (i) its proposed replacement program and schedule,
  - (ii) the description of each new capital asset to be replaced,
  - (iii) the estimated cost, including contingencies, of each proposed replacement,
  - (iv) the estimated amounts and timing of funds that would be required by it to carry out each replacement, and
  - (v) the reasons why it believes each proposed acquisition should be regarded as a replacement for the new capital asset to be replaced,
- (f) taking into account
- (i) the projected appropriation to the commission fund for the next fiscal year,
  - (ii) the owner's inventory of new capital assets,
  - (iii) the consolidated inventory of new capital assets, including the records required to be maintained under section 26(1)(a)(iv) and (b), and
  - (iv) the requirements of section 46(2),
- prepare an application for any funding it is applying to the commission for inclusion of in the commission budget for the acquisition or construction of new capital assets in the next fiscal year, describing separately each proposed new capital asset and
- (v) its proposed schedule for acquisition or construction of the new capital asset,
  - (vi) the estimated cost, including contingencies, of the acquisition or construction of the new capital asset, and
  - (vii) the estimated amounts and timing of funds that would be required by it to acquire or construct the new capital asset, and
- (g) provide the commission with copies of its inventory of new capital assets under section 21, the report referred to in paragraph (a), the schedule referred to in paragraph (b), the forecasts referred to in paragraph (c), the draft provisional target budgets referred to in paragraphs (d) and (e), and any owner applications for funding prepared under paragraph (f).

- (2) The inventory of new capital assets, and the report, schedules, forecast, draft provisional target budgets and commission funding applications referred to in paragraph (1)(g), must be prepared in a form that is substantially the same for each owner and is satisfactory to the commission.

### **Commission review of owner inventory, provisional target budgets and applications by January 1**

- 23** On receipt of the documents required to be provided under section 22(1)(g), the commission must, before January 1 of the fiscal year,
- (a) review those documents
    - (i) to identify any reasonably evident means to reduce costs of
      - (A) acquisition or construction projects included in commission funding applications, and
      - (B) major maintenance or replacement projects included in owner draft provisional target budgets referred to in sections 22(1)(d) and (e),
    - (ii) to ensure that the owner has considered the effect that each
      - (A) acquisition or construction project included in its commission funding applications is projected to have on its annual operating costs and maintenance, other than major maintenance, of new capital assets in future years, and
      - (B) major maintenance or replacement project included in its draft provisional target budgets referred to in sections 22(1)(d) and (e) is projected to have on its annual operating costs and maintenance, other than major maintenance, of new capital assets in future years, and
    - (iii) to determine whether any significant savings might be effected by
      - (A) coordinating the conduct of the acquisition and construction, and the major maintenance and replacement, of new capital assets, or new capital assets and ffa listed assets, of one or more owners,
      - (B) deferring any proposed acquisition or construction of new capital assets, until a later time,
      - (C) carrying out major maintenance of an existing new capital asset or an ffa listed asset rather than acquiring or constructing a new capital asset,
      - (D) consolidating new capital assets, ffa listed assets or capital assets and ffa listed assets, or
      - (E) other reasonably evident means,
  - (b) project, separately for each owner, the balance, if any, of the approved project funds in relation to the owner for the current fiscal year that will not have been expended on the funded capital (new asset) project by the end of the current fiscal year,



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- (c) project, separately for each owner, the approved project funds in relation to an owner that would be required to complete each proposed acquisition or construction included in the owner's commission funding applications,
  - (d) taking into account
    - (i) the projected appropriation to the commission fund for the next fiscal year,
    - (ii) the projections referred to in paragraphs (b) and (c),
    - (iii) the consolidated inventory of new capital assets, including the records required to be maintained under sections 26(1)(a)(iv) and (b),
    - (iv) the requirements of section 46(2), and
    - (v) all such other things as the commission considers appropriate, identify for each owner which, if any, commission funding applications the commission may consider including commission funding for in its commission budget for the next fiscal year, the amount of any such funding that may be considered, and the aggregate of all such amounts, and
  - (e) consult with the authorized representative of the owner as reasonably required to enable the owner to comply with section 24(1).

#### **Revised commission funding applications by February 1**

##### **24**

- (1) On the basis of the reviews, projections, estimates and determinations under sections 23(a) to (d) and any consultations under section 23(e), before February 1 of the fiscal year, each owner must
  - (a) revise its commission funding applications referred to in section 22(1)(f) as required to ensure that the aggregate amount identified under section 23(d) for the owner would not be exceeded if the commission approved each commission funding application as a funded capital (new asset) project, and
  - (b) provide the commission with the revised commission funding applications.
- (2) In addition to the requirements under this section and sections 21 and 22, the commission may require or permit an update of any inventory of new capital assets, schedule, memorandum, forecast draft provisional target budgets and commission funding applications referred to in paragraph 22(1)(g), at any time.

#### **May retain engineer**

##### **25**

- (1) An owner may retain a professional engineer, or another consultant acceptable to the commission, to assist the owner in performing any of its responsibilities under sections 21, 22 and 24(1).
- (2) The commission may retain a professional engineer or other consultant acceptable to it, to assist it in performing any of its responsibilities under section 23.

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- (3) Despite subsections (1) and (2), the commission may require that all owners retain a professional engineer or other consultant, acceptable to the commission, to assist each in performing all or any of their respective responsibilities under sections 21, 22 and 24(1), and that engineer or consultant may be the same engineer or consultant as the commission retains under subsection (2).
  - (4) If the commission makes a requirement under subsection (3), each owner will
    - (a) contract separately with the engineer or consultant in respect of services provided by the engineer or other consultant in assisting the owner in performing the owner's responsibilities, and
    - (b) be responsible to pay its costs in respect of the services provided.

### Consolidated inventory of new capital assets

#### 26

- (1) The commission must establish and maintain a consolidated inventory of new capital assets reconciled to the inventories of the owners referred to in section 21(b) that sets out
  - (a) in respect of each new capital asset
    - (i) subject to subparagraph (ii), the owner and, if there is more than one owner, each owner's percentage interest in the new capital asset,
    - (ii) the nature and extent of any estate or interest that each owner has in the new capital asset,
    - (iii) all of the information required to be determined by the owner under section 21, and
    - (iv) to and as at the end of the most recent fiscal year, the amounts and time of payment of commission funds expended under this Act, and the inflation adjusted value, as determined by the director, of each such expenditure, and
  - (b) to and as at the end of the most recent fiscal year and separately for each owner, the aggregate inflation adjusted value, as determined by the director, of all expenditures referred to in paragraph (a)(iv) pertaining to new capital assets of the owner and, if the owner is a Nisga'a Village,
    - (i) the percentage of the aggregate inflation adjusted value, as determined by the director, of all expenditures made on new capital assets of all owners under this Act that the aggregate inflation adjusted value, as determined by the director, of all expenditures referred to in paragraph (a)(iv) comprises, and
    - (ii) the permanent resident Nisga'a citizen population of the Nisga'a Village and the percentage of the permanent population of all Nisga'a citizens resident within Nisga'a Lands that the permanent resident Nisga'a citizen population of the Nisga'a Village comprises.
- (2) All documents received, or produced, by the commission under this Part must be maintained in the commission records.

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**Part Three - Approval and Implementation of funded capital (new asset) projects****Funded capital (new asset) projects****27**

- (1) Taking into account
  - (a) the matters referred to in sections 23(d)(i) to (v),
  - (b) the revised commission funding applications referred to in section 24(1)(b), and
  - (c) all such other things as the commission considers appropriate,

the commission will identify in the draft recommended commission budget required to be prepared by the commission under section 47, each capital asset, and the amount of funding in respect of the acquisition or construction thereof, that the commission recommends commission funding be approved for, for the next fiscal year.

- (2) A commission funding application is not approved unless funding for the proposed acquisition or construction is included in the commission budget approved by the executive under section 48.

**Draw-down principles****28**

An owner must not enter into a contract for, or carry out, the design, acquisition or construction of a funded capital (new asset) project

- (a) without giving 30 days advance notice of its intent to the commission,
- (b) without approval from the commission under this Part, and
- (c) except in compliance with the requirements of this Act and the regulations.

**Draw-down application****29**

- (1) An owner that requires funds for the acquisition or construction of a funded capital (new asset) project in a fiscal year may apply to the commission for approved project funds in relation to the owner, in accordance with this Act.
- (2) An application under subsection (1) must not be made to, or considered by, the commission unless the application
  - (a) reflects matters as of a date no earlier than 120 days, and
  - (b) is submitted to the commission no later than 60 days, before the proposed start of the acquisition or construction.

- (3) An application under subsection (1) must be in writing and must
- (a) identify the funded capital (new asset) project that is the subject of the application,
  - (b) describe the manner in which competitive market prices for the acquisition or construction of the funded capital (new asset) project will be obtained,
  - (c) set out the total funding for acquisition or construction of the funded capital (new asset) project that the owner is applying for under this Act and the time or times at which each projected funding draw will be required to be paid,
  - (d) if the funded capital (new asset) project is a building or other improvement, include
    - (i) a report from a professional engineer, or environmental consultant acceptable to the commission, certifying that
      - (A) all environmental assessments required by law in respect of the acquisition or construction have been completed, and
      - (B) the acquisition or construction, if carried out as planned, will be carried out in accordance with all applicable environmental laws,
    - (ii) a summary of the stipulated price, construction management or other contract form that the owner proposes to use to govern the acquisition or construction,
    - (iii) the purchase draw, construction progress draw, or other, procedures by which the owner will ensure that funding provided under this Act is applied to the cost of the acquisition or construction,
    - (iv) the name of the general contractor responsible for construction of the proposed new capital asset,
    - (v) a summary of the proposed construction schedule,
    - (vi) the name and qualifications of the design consultant, project manager or other person who will be responsible to the owner to monitor the design and progress of the work,
    - (vii) the name of any person, other than one identified in section 31(2), who will provide the requisition for funds to the director under that section,
    - (viii) drawings of the site and location,
    - (ix) construction plans and specifications,
    - (x) a report from a professional engineer or architect certifying that the construction plans and specifications meet all applicable construction standards, and
    - (xi) confirmation that all insurance required under this Act and the regulations is available and will be placed,

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- (e) include all other information that the commission considers necessary to enable it to consider the application in light of the requirements of this Act and the regulations, and
  - (f) be in a form acceptable to the commission.
- (4) The commission may waive a requirement under subsection (3)(d), but a waiver must
- (a) be in writing,
  - (b) be signed by all commissioners,
  - (c) identify with specific reference to the paragraph in which the requirement being waived is set out, the requirement being waived, and
  - (d) set out the reasons why it is considered appropriate to waive the requirement.
- (5) With consent of the commission, an owner may amend its application under this section at any time.
- (6) The executive may make regulations or issue directives respecting the matters set out in subsections (1) to (5).

### **Draw-down approval**

#### **30**

- (1) Within 30 days of receipt of an application under section 29, the commission must review the application, together with its commission budget and the consolidated inventory of new capital assets.
- (2) The commission may approve an application under section 29, if it determines that the acquisition or construction and the funding for it satisfies all requirements of this Act and the regulations,
- (3) An approval under subsection (2)
  - (a) must be in writing,
  - (b) may specify that certain conditions must first be met including, but not limited to,
    - (i) agreements being entered into by the owner by times specified in the approval, and
    - (ii) agreements required of the owner,before the funding will be provided,
  - (c) must set out the timing and amount of funds that will be made available to the owner, and
  - (d) may contain any other term that the commission considers appropriate.

- (4) An approval under subsection (2) lapses if the commission considers that the owner has failed to take substantial steps to carry out the acquisition or construction within
  - (a) 60 days of the date of approval, or
  - (b) a longer period set out in the approval but no more than 120 days of the date of approval.

### **Funding draw down**

#### **31**

- (1) Funds must be made available to an owner from the commission fund at the times and in the amounts set out in an approval given under section 30(2), if
  - (a) approval for funding is given under section 30(2),
  - (b) all terms, conditions and agreements, if any, required under sections 30(3)(b) and(d) have been satisfied, and
  - (c) the approval has not lapsed under section 30(4).
- (2) Despite subsection (1), funds must not be paid under subsection (1) unless a requisition for payment is submitted to the director and has been signed by
  - (a) the finance employee, if the owner is a Nisga'a Village,
  - (b) the Secretary-Treasurer, if the owner is the Nisga'a Nation, or
  - (c) a person named under section 29(3)(d)(vii), if the owner is any of the foregoing.
- (3) A requisition for a payment must be in a form, accompanied by documents and certified in a manner acceptable to the director.
- (4) Despite anything else in this Act
  - (a) the director may require that approved project funds in relation to an owner be applied to the cost of the acquisition or construction of a funded capital (new asset) project
    - (i) by direct payment from the commission fund to a vendor, supplier, contractor, subcontractor or other person, and
    - (ii) after evidence, satisfactory to the director, that the payment is in respect of proven acquisition or construction of the funded capital (new asset) project, and
  - (b) any payment made under paragraph (a) is deemed for all purposes to have been received by the owner and applied to the cost of the acquisition or construction of the funded capital (new asset) project under this Act.

**Application of funding by or on behalf of owner****32**

- (1) The owner must apply all funds received under this Act to the costs of the acquisition or construction of the new capital asset in respect of which the commission funding has been provided for in the commission budget.
- (2) An owner must immediately repay all funds paid to it under this Act if the funds are not, or in the directors opinion provided in writing to the owner are unlikely to be, applied to the cost of the funded capital (new asset) project in respect of which the funds were provided.

**Owner financial statements and audits****33**

The audited financial statements of an owner for any period must separately disclose, in respect of each funded capital (new asset) project of the owner, amounts

- (a) received or applied to the acquisition or construction of a funded capital (new asset) project under this Act in that period,
- (b) expended in that period in relation to the funded capital (new asset) project, and
- (c) repayable, and repaid, in that period under section 32(2).

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## Part Four - Building Standards And Insurance

### Applicable standards

- 34** Each owner must ensure that each new capital asset that they are the owner of is maintained
- (a) in a manner consistent with applicable federal and provincial laws including, but not limited to, building and fire and safety codes,
  - (b) at a level necessary to provide for the delivery of programs or services provided at or made available by the new capital asset,
  - (c) in accordance with all applicable Nisga'a enactments and all other applicable laws, and
  - (d) in a good, well maintained, orderly and safe condition, to the same extent as
    - (i) a prudent owner of the asset would or,
    - (ii) if the asset is a building or other improvement, a prudent owner in occupation of the asset, would.

### Property, and liability, insurance

- 35** The executive may make regulations establishing minimum insurance, banking and risk management, requirements for owners including, but not limited to, property and liability insurance in respect of new capital assets.

### Common agent, and alternative insurance arrangements

- 36** The executive may
- (a) by written directive, require each owner to obtain insurance maintained or required to be maintained under the regulations, or advice in respect of that insurance, from one or more insurance agents or advisors acceptable to the executive, and
  - (b) enter into agreements for or on behalf of the Nisga'a Nation or approve any owner entering into agreements on its own behalf, in respect of insurance or risk management including, but not limited to, agreements that provide insurance required under the regulations whether by purchase from third party insurers or through professionally managed self-insurance arrangements, with
    - (i) the Municipal Insurance Association of British Columbia, or
    - (ii) any other association, group or person that the executive may approve.

### Insurance proceeds

- 37** Despite anything else in this Act, the proceeds of any insurance payment received from property, or course of construction, insurance required under the regulations must, on receipt and endorsement by the Nisga'a Nation,



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- (a) where the insurance is in relation to a new capital asset of an owner be paid to the credit of the commission fund and added to the approved project funds in relation to the owner, or
- (b) in any other case, be applied otherwise for the purposes of this Act as the commission, with the consent of the executive, unanimously approves.

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**Part Five - Capital Finance (New Asset) Commission Fund, and Financial Authorities****Capital finance (new asset) commission fund**

- 38** The commission is responsible for the protection, management and control of the commission fund in accordance with this Act.

**Bank accounts**

**39**

- (1) The director may
- (a) open and operate one or more accounts in the name of the Nisga'a Nation at any bank or other financial institution, and
  - (b) deposit into, and withdraw from, an account or accounts described in paragraph (a) moneys in the commission fund,
- as required, in the director's opinion, to provide for the protection, management or control of the commission fund.
- (2) Despite sections 43 and 44, the director may make arrangements with a bank or other financial institution referred to in subsection (1) for overdraft protection.

**Segregation and transfer of funding**

- 40** The director must segregate and pay into an account opened under section 39(1)(a), all amounts appropriated to the commission fund under the *Nisga'a Financial Administration Act*.

**Deposits and payments**

**41**

- (1) Unless otherwise specifically provided in this Act, all moneys under the management and control of the commission must be deposited to the commission fund, and all payments by the commission must be paid from the commission fund.
- (2) Payments on account of the commission
- (a) may be made by cheque, draft, telegraphic or electronic transfer or similar instrument drawn against an account opened under section 42(a), and
  - (b) must be signed by not less than two persons who are authorized signatories for the account from which the payment is made.

**Investment of commission fund**

- 42 Money in the commission fund may be invested in the name of the Nisga'a Nation
- (a) by the director under Part Seven, Division 4 of the *Nisga'a Financial Administration Act*, or
  - (b) for the Nisga'a Nation by the municipal finance authority in accordance with any written agreement between the Nisga'a Nation and the municipal finance authority approved by the executive.

**Borrowing prohibited**

- 43 Money must not be borrowed by the commission.

**Guarantees prohibited**

- 44 The commission must not give a guarantee.

**Indemnities restricted**

- 45
- (1) The commission must not give an indemnity without the authority of this section.
  - (2) An indemnity may be given by the commission for or in the name of the Nisga'a Nation only if it is necessarily incidental to and included in and ancillary to another agreement to which the commission for or in the name of the Nisga'a Nation is a party, that is permitted under this Act.
  - (3) An indemnity permitted under subsection (1), must
    - (a) have the approval of the executive, or
    - (b) be in compliance with a written directive of the executive.
  - (4) A written directive under subsection (3) may do one or more of the following:
    - (a) specify circumstances in which, before an indemnity is given, approval must be obtained from the executive, the finance committee, the director, or another person;
    - (b) require that in specified circumstances, the maximum amount of the liability in respect of which the commission, the director or other person may approve an indemnity is limited to a prescribed amount; and
    - (c) place the constraints, conditions and limitations on the giving of an indemnity, and on the exercise of the power of approval referred to in paragraph (a) or (b), that it considers appropriate.

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## Part Six - Commission Budgets

### Commission budgets

46

- (1) A commission budget must include
  - (a) a line item in respect of the operations of the commission for the next fiscal year,
  - (b) in respect of each owner, a separate line item
    - (i) subject to subparagraph (ii), for each capital asset included in a commission funding application in respect of which commission funding is approved and the amount of that funding, and
    - (ii) for each funded capital (new asset) project for which approved project funds in relation to the owner have been provided in a previous fiscal year but that is not completed, the amount, if any, of commission funding approved in respect of completion of the funded capital (new asset) project,
  - (c) a line item in respect of any insurance payment referred to in section 37(a) that is in relation to a new capital asset of an owner, and
  - (d) a line item in respect of funds appropriated to the commission fund under the *Nisga'a Financial Administration Act* that are not approved for the operations of the commission for the next fiscal year, for expenditure on new capital projects in the next fiscal year or included in respect of an insurance payment referred to in section 37(a).
- (2) The aggregate of all expenditures allowed under
  - (a) a draft recommended commission budget prepared under section 47, must not exceed the projected appropriation to the commission fund for the next fiscal year, and
  - (b) a commission budget approved by the executive under section 48(b), must not exceed the amount appropriated to the commission fund for the next fiscal year in the provisional budget for the Nisga'a Nation adopted under section 30 of the *Nisga'a Financial Administration Act*.
- (3) The commission budget, by way of note, must disclose, in respect of each funded capital (new asset) project referred to in subsection (1)(b)(ii), the commission budget in which the funded capital (new asset) project was first included, the approved project funds in relation to the owner available, and expended, during each fiscal year to date, and the aggregate of approved project funds in relation to the owner expended and projected to be expended by the end of the current fiscal year.

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- (4) All appropriations to the commission fund under the *Nisga'a Financial Administration Act*,
- (a) despite any commission budget, remain appropriations to the capital finance (new asset) fund established under the *Nisga'a Financial Administration Act* and the property of the Nisga'a Nation, and
  - (b) may be expended under this Act.
- (5) A commission budget must be in a form and have content acceptable to the finance committee.

**Draft recommended commission budget by February 15**

- 47 On or before February 15, the commission must prepare a draft recommended commission budget for the next fiscal year and provide a copy to the executive.

**Executive approved commission budget by March 31**

- 48 The executive must
- (a) include in the draft provisional budget that it recommends to Wilp Si' ayuukhl Nisga'a by March 1 of a fiscal year under section 29 of the *Nisga'a Financial Administration Act*, any appropriation that it recommends be made to the commission fund for the next fiscal year, and
  - (b) taking into account the draft recommended commission budget and the amount appropriated to the commission fund for the next fiscal year in the provisional budget for the Nisga'a Nation adopted under section 30 of the *Nisga'a Financial Administration Act*, approve a commission budget for the commission for the next fiscal year by March 31.

**Approved commission budget to owners by March 31**

- 49 The commission budget must be provided to each owner no later than March 31.

**Commission budget amendment**

- 50
- (1) With the prior approval of the executive and subject to subsection (2), the commission may amend its commission budget, other than the amount appropriated to the commission fund for the fiscal year, during a fiscal year.
  - (2) Despite anything else in this Act
    - (a) Wilp Si' ayuukhl Nisga'a may amend the amount appropriated to the commission fund for a fiscal year, during the fiscal year as part of any budget amendment under section 34 of the *Nisga'a Financial Administration Act*,

- (b) if an amendment referred to in paragraph (a) occurs, the Secretary-Treasurer, after consulting with the commission, must amend the commission budget as the Secretary-Treasurer considers necessary to ensure that the aggregate of all expenditures allowed under the commission budget for the fiscal year will not exceed the amount appropriated to the commission fund for the fiscal year in the budget amendment referred to in paragraph (a), and
- (c) a repayment by an owner under subsection 32(2) is deemed for all purposes to be eliminated from the approved project funds in relation to the owner included in the commission budget for the fiscal year and to be added to line item referred to in section 46(1)(d), and the director must provide a copy of the commission budget, amended accordingly, to the commissioners and the executive as soon as is reasonably possible after the owner becomes obligated under subsection 32(2) to make the repayment.

### **Commission budget inspection**

- 51** A copy of the commission budget must be made available during regular business hours at the principal administration office of the Nisga'a Nation for inspection by a Nisga'a citizen, upon request to the chief executive officer.

**Part Seven - Financial Records and Audit****Quarterly financial statements****52**

- (1) Without limiting section 38(1) of the *Nisga'a Financial Administration Act*, the commission must prepare financial statements for each of the periods ended June 30, September 30, December 31 and March 31, of each fiscal year.
- (2) The financial statements referred to in subsection (1) must
  - (a) be prepared in a form, and contain the information, required by the finance committee, and
  - (b) be provided by the director to the commission and to the executive within 21 days following the end of the period to which they relate.

**Annual financial statements****53**

- (1) Without limiting section 40(1) or 41(1) of the *Nisga'a Financial Administration Act*, the commission must prepare financial statements for each fiscal year.
- (2) The annual financial statements of the commission must
  - (a) be prepared in accordance with generally accepted accounting principles,
  - (b) be prepared in a form directed by the finance committee on recommendation of the director,
  - (c) by way of note, include an analysis of the investments of the commission fund,
  - (d) by way of a note, disclose the approved acquisition or construction funds in relation to each owner at the start of the following fiscal year,
  - (e) be signed by the commissioners, and
  - (f) be provided to the finance committee, the executive and each owner by June 30 next following the end of the fiscal year.

**Financial statements inspection****54**

Without limiting section 42 of the *Nisga'a Financial Administration Act*, the annual financial statements of the commission must be made available during regular business hours at the principal administration office of the Nisga'a Nation for inspection by a Nisga'a citizen, upon request to the chief executive officer of the Nisga'a Nation.

### **Inspection of accounts**

**55**

- (1) If required by the finance committee, the director must render detailed accounts of the receipts and expenditures of the commission for a period or to a date that the finance committee designates.
- (2) All commission records must be made available for inspection by any member of the executive, the finance committee, or any person the executive or the finance committee names.

### **Audit**

**56**

The commission and the commission fund are subject to audit under Part Seven, Division 6, of the *Nisga'a Financial Administration Act*.



## Part Eight - Residential Housing Program

### Housing services provider designation

- 57 With consent of the Nisga'a Village Government of each Nisga'a Village that will be directly affected by the decision, the executive may designate, or remove the designation of, a corporation as an entity approved by it to provide services to Nisga'a citizens, or to Nisga'a citizens in a Nisga'a Village, in respect of the acquisition, construction or financing of residential housing, on Nisga'a Lands, for the benefit of Nisga'a citizens.

### Residential housing

58

- (1) The executive must establish and maintain a program in respect of the acquisition, construction and rehabilitation of residential housing for Nisga'a citizens on Nisga'a Lands, that the Nisga'a Nation must ensure the provision of under a fiscal financing agreement, including, but not limited to
- (a) establishing and publishing a formally defined statement of eligibility criteria,
  - (b) providing equality of access for all eligible Nisga'a citizens,
  - (c) providing an impartial process for the appeal of an administrative decision
    - (i) refusing to provide,
    - (ii) to discontinue, or
    - (iii) to reduce
 services or benefits to any person, and
  - (d) requiring periodic financial and compliance audits of management practices and systems, financial management and control, and evaluation as to economy, efficiency and effectiveness, in respect of the program and persons administering or delivering the program in a Nisga'a Village,
- and, subject to the requirements of this section, may amend or repeal any provision of the program at any time.
- (2) Each Nisga'a Village Government or, if the Nisga'a Village Government under subsection (5) with the consent of the executive designates a housing services provider, the designated housing services provider must
- (a) provide functional control over, and deliver in the Nisga'a Village, all elements of the program that are indicated in the program to be "For Nisga'a Village or Housing Services Provider Administration", and
  - (b) administer and deliver those elements as required in the program,

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- (3) Despite subsection (2), if at any time the chief executive officer, Director of Finance or executive determines or has reasonable grounds to believe, that a Nisga'a Village Government or housing services provider is not properly administering or delivering the elements of the program for which it is responsible under subsection (2)
    - (a) the chief executive officer and Director of Finance may jointly order the suspension of the responsibility of the Nisga'a Village Government or housing services provider under subsection (2), entirely or in part, until the executive next meets, and
    - (b) the executive may order the suspension of the responsibility of the Nisga'a Village Government or housing services provider under subsection (2), entirely or in part, indefinitely or for a limited time.
  - (4) If an order is made under subsection (3), funding provided to the Nisga'a Village or housing services provider for administration or delivery of the suspended responsibility is also suspended.
  - (5) With consent of the executive and in a manner and on terms and conditions acceptable to the executive, a Nisga'a Village Government may designate a housing services provider to act wholly or in part in place of the Nisga'a Village as the program and service provider of the program established under subsection (1), for the Nisga'a Village and may direct the Nisga'a Nation to pay any appropriation that the Nisga'a Village would otherwise receive in respect of or under program to the housing services provider.
  - (6) A Nisga'a Village Government and a housing services provider must administer all monies appropriated to it by the Nisga'a Nation under Part Nine, Division 2, of the *Nisga'a Financial Administration Act* in accordance with the program established under subsection (1).

### Housing loan guarantees

59

- (1) The Nisga'a Nation, a Nisga'a Village, and a housing services provider, must not apply for or obtain a guarantee from Canada for any financing by Canada Mortgage and Housing Corporation without the prior written consent of the executive.
- (2) The executive must not consent to a guarantee under subsection (1) unless
  - (a) it is satisfied that the Nisga'a Nation, Nisga'a Village or housing services provider will be able to meet its financial obligations to Canada Mortgage and Housing Authority as they become due, and
  - (b) the borrower provides an indemnity and security to the Nisga'a Nation that is acceptable to the executive, for any liability that the Nisga'a Nation may incur in respect of the guarantee and financing.

**Part Nine - General****Regulations**

- 60** The executive may make regulations that it considers necessary or advisable for purposes of this Act including, but not limited to,
- (a) the exercise by the commission of its powers or authorities under this Act,
  - (b) prescribing the person that is the owner of a new capital asset for the purpose of this Act and, if there is more than one owner, for the purposes of this Act, each owner's percentage interest in the new capital asset, and
  - (c) requiring the commission to carry out any additional program or project in accordance with specified provisions of this Act, and any other stated requirements.

**Transition — 2001/2002 and 2002/2003 commission budgets**

- 61** *[Spent]*

**Commencement**

- 62**
- (1) Subject to subsection (2), this Act comes into force on February 1, 2002.
  - (2) Part Two of this Act comes into force on April 1, 2002.

### LEGISLATIVE HISTORY

*Nisga'a Capital (New Asset) Finance Commission Act* NLGSR 2002/01, in force February 1, 2002 except for Part Two (ss. 21 – 26) in force April 1, 2002.

#### Amendments

Section	Amending Act	In force Date
1	definition added 2005/07, s.2(1)	July 26, 2005 (2005/09)
6	amended 2005/07, s.2(2)	July 26, 2005 (2005/09)
57	(c) amended 2005/07 2(3); renumbered and new section 57 added under new heading "Part Eight – Residential Housing Program" 2005/07, s.2(3), (4) & (6)	July 26, 2005 (2005/09)
58	renumbered and new section 58 added under new heading "Part Eight – Residential Housing Program" 2005/07, s.2(4) & (6)	July 26, 2005 (2005/09)
59	renumbered and new section 59 added under new heading "Part Eight – Residential Housing Program" 2005/07, s.2(4) & (6)	July 26, 2005 (2005/09)
60	renumbered under new heading "Part Nine – General" 2005/07, s.2(4)	July 26, 2005 (2005/09)
61	renumbered under new heading "Part Nine – General" 2005/07, s.2(4)	July 26, 2005 (2005/09)
62	renumbered under new heading "Part Nine – General" 2005/07, s.2(4)	July 26, 2005 (2005/09)

#### Amending Acts:

NLGSR 2005/07      *Nisga'a Statute Amendment Act # 12*

#### Regulations:

NLGSR 2005/09      *Nisga'a Statute Amendment Act #12 Enactment Regulations*

NLGSR 2005/10      *Residential Housing Programs Regulations*