

**DRAFT**

INDIVIDUAL AGREEMENT  
ON  
FIRST NATION LAND MANAGEMENT

*BETWEEN*

**XENI GWET'IN FIRST NATIONS GOVERNMENT**

*AND*

**HIS MAJESTY THE KING IN RIGHT OF CANADA**

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**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**INDIVIDUAL AGREEMENT  
ON  
FIRST NATION LAND MANAGEMENT**

***BETWEEN:***

**XENI GWET'IN FIRST NATIONS GOVERNMENT**, as represented by their Chief and Council (hereinafter called the "Xeni Gwet'in First Nations Government" or the "First Nation")

***AND***

**HIS MAJESTY THE KING IN RIGHT OF CANADA**, (hereinafter called "Canada") as represented by the Minister of Indigenous Services (hereinafter called the "Minister")

(the "Parties")

**WHEREAS** Canada and 13 First Nations signed the Framework Agreement on First Nation Land Management (the "Framework Agreement") on February 12, 1996 in relation to the management by those First Nations of their lands, and other First Nations have signed the Framework Agreement after that date;

**AND WHEREAS** the *Framework Agreement on First Nation Land Management Act* (the "Act") provides that the Framework Agreement has the force of law;

**AND WHEREAS** the First Nation has been added as a signatory to the Framework Agreement by an adhesion signed by the First Nation on July 27, 2020.

**AND WHEREAS** the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of Xeni Gwet'in First Nations Government Land in accordance with the Framework Agreement and the Act;

**AND WHEREAS** clause 6.1 of the Framework Agreement requires the First Nation and the Minister to enter into an individual agreement for the purpose of providing for the specifics of the transfer of administration;

**AND WHEREAS** clause 6.1 of the Framework Agreement further requires that the individual agreement settle the actual level of operational funding to be provided to the First Nation;

**NOW THEREFORE**, in consideration of the exchange of promises contained in this

Agreement and subject to its terms and conditions, the Parties agree as follows:

## 1. INTERPRETATION

1.1 In this Agreement,

“Act” means the *Framework Agreement on First Nation Land Management Act*, as amended;

"this Agreement" means this Individual Agreement on First Nation Land Management, including the Annexes attached hereto, and any documents incorporated by reference, all as amended from time to time;

"Xeni Gwet'in First Nations Government Land" means the land to which the Land Code will apply and more specifically means the reserves known as Chilco Lake Indian Reserve No. 1 (08262), Garden Indian Reserve No. 2 (08264), Garden Indian Reserve No. 2A (08265) and Tsunnia Lake Indian Reserve No. 5 (08268) as described in the Land Description Reports referred to in Annex "G" and includes all the interests in and resources of the land that are within the legislative authority of Parliament, but does not include the Excluded Land;

“Excluded Land” means land excluded from the application of the Land Code pursuant to 4.16 of the Framework Agreement and more specifically means the reserves known as Chilco Lake Indian Reserve No. 1A (08263), Lohbiee Indian Reserve No. 3 (08266), Tanakut Indian Reserve No. 4 (08267) and Lezbye Indian Reserve No. 6 (08269) as described in the Land Description Reports referred to in Annex "G";

“Fiscal Year” means Canada’s fiscal year as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended;

"Framework Agreement" has the same meaning as in the Act;

“Funding Arrangement” means an agreement between Canada and the Xeni Gwet'in First Nations Government, for the purpose of providing funding, during the Fiscal Year(s) identified in that agreement, for the programs and services referred to in that agreement;

“*Indian Act*” means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

“Land Code” means the Xeni Gwet'in First Nations Government Land Code, developed in accordance with clause 5 of the Framework Agreement;

“Minister” means the Minister of Indigenous Services and his or her representatives;

“Operational Funding” means the resources to be provided by Canada to the Xeni Gwet’in First Nations Government pursuant to clause 30.1 of the Framework Agreement to manage First Nation lands and make, administer and enforce its laws under a land code, and includes financial resources, as described in clause 27 of the Framework Agreement, to establish and maintain environmental assessment and environmental protection regimes;

“Operational Funding Formula” means the method approved by Canada for allocating to First Nations such Operational Funding as may have been appropriated by Parliament for that purpose.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Framework Agreement, the Act or the *Indian Act* have the same meanings when used in this Agreement.
- 1.3 This Agreement is to be interpreted in a manner that is consistent with the Framework Agreement and the Act.
- 1.4 In the event of any inconsistency or conflict between the wording in any Article set out in the main body of this Agreement and the wording in any Annex attached hereto, the wording set out in the Article shall prevail.

## **2. INFORMATION PROVIDED BY CANADA**

- 2.1 The Minister has, to the best of the Minister’s knowledge, provided the First Nation with the information required by clause 6.3 of the Framework Agreement, namely:
  - (a) a list, attached as Annex “C”, and copies, or access to copies, of all the interests and licences granted by Canada in or in relation to the Xeni Gwet’in First Nations Government Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;
  - (b) a list, attached as Annex “D”, and copies of all existing information in Canada’s possession, respecting any actual or potential environmental problems with the Xeni Gwet’in First Nations Government Land; and
  - (c) a list, attached as Annex “E”, and copies of any other information in Canada’s possession that materially affects the interests and licences mentioned in clause 2.1(a).
- 2.2 The First Nation has, in writing, acknowledged receipt of all the information provided to it by the Minister.

## **3. TRANSFER OF LAND ADMINISTRATION**

- 3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the Xeni Gwet'in First Nations Government Land in accordance with clause 12 of the Framework Agreement.
- 3.2 As provided in section 8 of the Act, all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to Xeni Gwet'in First Nations Government Land that exist on the coming into force of the Land Code shall be transferred to the First Nation on the coming into force of the Land Code.
- 3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement and the Framework Agreement, the following:
- (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a licence in or in relation to Xeni Gwet'in First Nations Government Land; and
  - (b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada's responsibility.
- 3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to clauses 3.1 and 3.2 of the Framework Agreement, which addresses the applicability of the *Indian Oil and Gas Act*.

#### **4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION**

- 4.1 The First Nation hereby accepts the transfer of land administration described in Article 3 of this Agreement, including, without limitation, the transfer of all the rights and obligations of Canada as grantor of the interests and licences referred to in clause 3.2 of this Agreement.
- 4.2 As of the date the Land Code comes into force, and in accordance with the Framework Agreement:
- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement cease to apply and Canada retains no powers and obligations in relation to Xeni Gwet'in First Nations Government Land under these provisions; and
  - (b) the First Nation shall commence administering Xeni Gwet'in First Nations Government Land pursuant to its Land Code.

#### **5. OPERATIONAL FUNDING**

- 5.1 In accordance with clause 30.1 of the Framework Agreement, and subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Canada shall provide Operational Funding to the Xeni Gwet'in First Nations Government as indicated in Annex "A" in accordance with the Operational Funding Formula as amended from time to time.
- 5.2 The Operational Funding referred to in clause 5.1 will be incorporated by the Parties into the Xeni Gwet'in First Nations Government's Funding Arrangement in effect in the year in which the payment is to be made. For greater certainty, payment of Operational Funding will be subject to the terms and conditions of the Funding Arrangement into which it is incorporated.

## **6. TRANSFER OF MONEYS**

- 6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue and capital moneys referred to in clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex "B".
- 6.2 Revenue and capital moneys transferred pursuant to clause 6.1 shall be deposited in the First Nation's account at such financial institution as the First Nation may direct by notice in writing.
- 6.3 For greater certainty, the transfer of the revenue and capital moneys does not release the First Nation from its commitment to reimburse Canada for any amount paid as a result of a default under any loan entered into by the First Nation or any of its members and guaranteed by Canada in accordance with the terms and conditions relating to ministerial loan guarantees.

## **7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION**

- 7.1 Immediately following approval of the Land Code and this Agreement by the members of the First Nation, the First Nation shall give written notice (the "Notice of Transfer of Administration"), by registered mail, to each holder of an interest or a licence in or in relation to Xeni Gwet'in First Nations Government Land that is listed or referred to in Annex "C".
- 7.2 The Notice of Transfer of Administration shall state that:
- (a) the administration of Xeni Gwet'in First Nations Government Land and Canada's rights in Xeni Gwet'in First Nations Government Land, other than title, will be transferred to the First Nation effective the date the Land Code comes into force;

- (b) the holder of the interest or licence shall pay to the First Nation, all amounts owing, payable or due under the interest or licence on or after that date; and
- (c) as of that date, the First Nation shall be responsible for the exercise of the powers and authorities, and the performance of any covenants, terms and conditions, under that instrument which, but for the transfer of administration, would have been Canada's responsibility.

7.3 The Xeni Gwet'in First Nations Government shall deliver to Canada a copy of every Notice of Transfer of Administration and a copy of every acknowledgement of receipt of the Notice of Transfer of Administration received by the First Nation within 30 days of the issuance or receipt of the same.

7.4 The Notice obligations set out in this Article do not apply in respect of a holder of an interest or licence who is a member of the First Nation.

## **8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS**

8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex "F" shall apply to projects on Xeni Gwet'in First Nations Government Land until the First Nation's environmental assessment process is developed.

## **9. AMENDMENTS**

9.1 This Agreement may be amended by agreement of the Parties.

9.2 Any amendment to this Agreement shall be in writing and executed by the duly authorized representatives of the Parties.

## **10. NOTICES BETWEEN THE PARTIES**

10.1 Any notice or other official communication under this Agreement between the Parties shall be in writing addressed to the Party for whom it is intended.

10.2 The notice referred to in clause 10.1 shall be effective using any one of the following methods and shall be deemed to have been given as at the date specified for each method:

- (a) by personal delivery, on the date upon which notice is delivered;
- (b) by registered mail or courier, the date upon which receipt of the notice is acknowledged by the other party; or
- (c) by facsimile or electronic mail, the date upon which the notice is



transmitted and receipt of such transmission by the other party can be confirmed or deemed.

10.3 The addresses of the Parties for the purpose of any notice or other official communication are:

Canada:

Director, Lands and Economic Development  
Indigenous Services Canada, BC Region  
600–1138 Melville Street  
Vancouver, British Columbia V6E 4S3  
Fax: (604) 775-7149

Xeni Gwet'in First Nations Government:

General Delivery  
Nemiah Valley, British Columbia V0L 1X0  
Fax: (250) 394-7043

## **11. DISPUTE RESOLUTION**

- 11.1 For greater certainty, any dispute arising from the implementation, application or administration of this Agreement may be resolved in accordance with the Dispute Resolution provisions set out in Part IX of the Framework Agreement.

## **12. DATE OF COMING INTO FORCE**

- 12.1 The Parties acknowledge that the members of the First Nation have voted to approve the Land Code and this Agreement in accordance with the Framework Agreement.
- 12.2 This Agreement shall be effective as of the date on which the last of the Parties signs this Agreement.
- 12.3 The Parties acknowledge that the signing of this Agreement alone does not bring the Land Code into force, and that the First Nation is not an operational First Nation under First Nation Land Management until the Land Code comes into force in accordance with the provisions of the Land Code and the Framework Agreement.

**IN WITNESS WHEREOF**, the duly authorized representatives of the First Nation have signed this Agreement on behalf of the First Nation on \_\_\_\_\_, 20\_\_\_\_, and the Minister of Indigenous Services has signed this Agreement on behalf of His Majesty the King in right of Canada, on \_\_\_\_\_, 20\_\_\_\_.

His Majesty the King in right of  
Canada, as represented by the  
Minister of Indigenous Services

Xeni Gwet'in First Nations Government

\_\_\_\_\_  
Chief Roger William

\_\_\_\_\_  
Regional Director General, BC Reg  
for the Minister of Indigenous Servi

\_\_\_\_\_  
Councillor James Lulua Jr.

\_\_\_\_\_  
Councillor Stephanie Quilt

## ANNEX "A"

### FUNDING PROVIDED BY CANADA

- (a) The amount of Operational Funding by Fiscal Year is shown in the table below. The amount shall be prorated based on the number of months from the date the Land Code comes into force to the end of the Fiscal Year, and the First Nation shall be paid the prorated amount for that year. Transitional Funding will be provided for the year the Land Code comes into force and for the subsequent Fiscal Year, as shown in the table below.
- (b) Operational Funding will increase 1% annually over the term of the Memorandum of Understanding which ends March 31, 2023.
- (c) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after March 31, 2023, will be calculated and provided in accordance with the Operational Funding Formula as amended from time to time.

OPERATIONAL FUNDING	
2023-2024 Fiscal Year	\$283,313 (This amount shall be prorated in accordance with paragraph (a) above) and <b>\$ 75,000.00</b> - One time Transitional Funding per 1 <sup>st</sup> Fiscal Year
Subsequent Fiscal Year(s)	Subject to paragraph (c) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time.

## ANNEX "B"

### DETAILS FOR THE TRANSFER OF MONEYS

1. As of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, Canada is holding \$ \_\_\_\_\_ of revenue moneys and \$ \_\_\_\_\_ of capital moneys for the use and benefit of the First Nation or its members. This amount is included for information purposes only and is subject to change.
2. **Initial Transfer.** Within thirty (30) days of the Land Code coming into force, Canada shall transfer to the First Nation all revenue and capital moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.
3. **Subsequent Transfers.** Following an initial transfer of moneys, Canada shall, on a semi-annual basis, transfer to the First Nation all revenue and capital moneys that are subsequently collected or received by Canada for the use and benefit of the First Nation or its members. The first such subsequent transfer shall be made in the month of April or October, whichever month comes first after the month of the initial transfer.

Note: This information is confidential to Xeni Gwet'in First Nations Government and its members, and will be provided directly to the Land Code Coordinator. This information will be inserted at a later date, when the Individual Agreement is reviewed by Chief and Council.

## **ANNEX "C"**

### **LIST OF INTERESTS AND LICENCES GRANTED BY CANADA**

All interests and licences granted by Canada in or in relation to the Xeni Gwet'in First Nations Government Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register are listed in reports that are available for review at the Xeni Gwet'in First Nations Government Land Management Office located at General Delivery Nemiah Valley British Columbia V0L 1X0:

#### Reserve General Abstract Reports for:

- Chilco Lake Indian Reserve No. 1 (08262)
- Chilco Lake Indian Reserve No. 1A (08263)
- Garden Indian Reserve No. 2 (08264)
- Garden Indian Reserve No. 2A (08265)
- Lohbiee Indian Reserve No. 3 (08266)
- Tanakut Indian Reserve No. 4 (08267)
- Tsunnia Lake Indian Reserve No. 5 (08268)
- Lezbye Indian Reserve No. 6 (08269)

#### Lawful Possessors Reports for:

- Nil

#### Lease or Permits Reports for:

- Nil

The above reports identify all interests or licences granted by Canada that are registered in the Indian Lands Registry System (ILRS). The following is a list of interests granted by Canada that have not been registered or are pending registration in the ILRS. Copies of these interests shall be provided to the First Nation.

- Nil

## **ANNEX “D”**

### **LIST OF ALL EXISTING INFORMATION IN CANADA’S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE XENI GWET’IN FIRST NATIONS GOVERNMENT LANDS**

Executive Summary – Phase 1 Environmental Site Assessment – Xení Gwet’in First Nations Government, Eight Reserve Lands – prepared by Keystone Environmental Ltd. – August 15, 2023.

The complete Phase 1 Environmental Site Assessment report is available for review at the Xení Gwet’in First Nations Government Land Management Office located at General Delivery Nemiah Valley British Columbia V0L 1X0.

Alternatively, the documents are also available for review online at <https://www.xeni-gwetin.ca/>

## EXECUTIVE SUMMARY

This KEYSTONE ENVIRONMENTAL™ Phase I Environmental Site Assessment (ESA) report was prepared at the request of the Xeni Gwet'in First Nations Government and Indigenous Services Canada (ISC), for eight Indigenous Reserves (I.R.s); Chilco Lake 1, Chilco Lake 1A, Garden 2, Garden 2A, Lezbye 6, Lohbiee 3, Tanakut 4 and Tsunnia Lake 5, located in the Nemaiah Valley and/or on T̓silhqot'in Title Land, in the Cariboo Regional District of BC (the Site).

We understand that the purpose of this Phase I ESA report is to determine the environmental condition of the Site I.R.s prior to the transfer of management of lands from the Government of Canada to the Xeni Gwet'in First Nations, and as such is under federal jurisdiction with respect to environmental regulations.

### ON-SITE

The eight Site I.R.s are located approximately 140 km (approximately 200 km by road) southwest of Williams Lake, BC. The majority of the Site I.R.s have remained undeveloped (primarily forest and grasslands) with portions having been used for residential and agricultural purposes (primarily ranching). With the exception of several small residential, agricultural and institutional buildings constructed in the 1940s or earlier, the majority of development at the Site occurred between circa 1980 and the early 2000s (including the construction of approximately 50 residences and several institutional, commercial and utility buildings, the majority of which are located on Lohbiee 3).

Based on our review of the Federal Contaminated Sites Inventory (FCSI) and Integrated Environment Management System (IEMS) databases and following the review of various other historical records and our 2022 Site reconnaissance, Keystone Environmental identified the following areas of potential environmental concerns (APECs) on the Site I.R.s that warrant further investigation/action at this time. The following APECs are summarized below.

#### **APEC 1A: Xeni Gwet'in Enterprise Storage Yard (Former Band Office Aboveground Storage Tanks/FCSI 05055001 and Former Gas Bar/FCSI 05055002), Lohbiee IR 3:**

- Located on the northwest portion of Lohbiee 3 in the vicinity of the Band Office.
- A diesel aboveground storage tank (AST) was located in the former Band Office powerhouse (constructed in the 1980s), a diesel AST (used to fuel Band-owned heavy equipment) was located outdoors adjacent to the powerhouse, and the former diesel and gasoline ASTs were located approximately 20 m east of the Band Office with an associated Gas Bar located to the southeast of the ASTs. Stained soil was observed outside the powerhouse (approximately 26 m<sup>2</sup>), and minor soil staining was observed (approximately 1 m<sup>2</sup> at each tank) at the gas station.
- These tanks were removed/relocated and contaminated soil was remediated by excavation and on-Site bio-remediation from 1998 to 2000. Confirmatory soil samples indicated that concentrations of light and heavy extractable petroleum hydrocarbons (LEPH/HEPH) were less than the BC Contaminated Sites Regulation (CSR) commercial and industrial land use (CL/IL) standards of the day. Pottinger Gaherty Environmental Consultants Ltd. (PGL) reported that the bioremediated material was landspread "at its current location" (anticipated to be the storage yards/parking lots located behind/north and/or northeast of the Band Office). However, the current applicable guidelines for land and water use are





considered to be the Canadian Council of Ministers of the Environment (CCME) guidelines and Federal Environmental Quality Guidelines (FIQG) for petroleum hydrocarbons (PHCs F1-F4). The BC CSR standards are used for comparison purposes and to provide an indication of the presence of hydrocarbons where federal parameters (PHC F1-F4) were not analysed (when only LEPH and HEPH has been analysed). The BC CSR standards are also considered to be applicable for the comparison of vapour concentrations.

- Copies of the post-remediation soil analytical results are not available to compare to current applicable CCME guidelines and BC CSR standards.
- Minor shallow soil contamination remained in the vicinity of the powerhouse; however, is anticipated to have been removed when the former powerhouse was demolished in the early 2000s.
- The existing Xeni Gwet'in Enterprise (Enterprise) Works Yard (along with the new powerhouse, repair shop and diesel AST) were constructed in the early 2000s over the area of the former Band powerhouse, Gas Bar and associated ASTs.
- The FCSI database indicates the status of the Band Office ASTs (FCSI 05055001) was "Confirmatory sampling completed. No further action required". The IEMS database indicates the files for this site were closed in 2002, and First Nations Emergency Services Society (FNESS) indicated that "Soil treatment in biocell complete, biocell had been decommissioned. No further work required". However, confirmatory, groundwater and/or vapour samples have not been collected for analysis, and copies of the post-remediation soil analytical results of the bio-cell are not available.
- The IEMS database indicates the file for the former Gas Bar (FCSI 05055002) was closed in 2003.
- Heavy equipment has been stored, maintained and refuelled in the Enterprise Works Yard since the early 2000s, and in 2022, over two hundred 20 L containers of waste oil were observed to be stored, without cover, over gravel in the storage yard. Some of the containers did not have lids or were tipped over and associated dark staining was observed (~20 m<sup>2</sup>). Additional soil staining was observed (~5 m<sup>2</sup>) adjacent to the diesel fuel pump.
- Approximately fifty additional 20 L containers of new oil and/or waste oil were observed in the repair shop with underlying staining, including minor staining adjacent to the floor drain.
- Currently there is not a waste oil tank at the Enterprise repair shop, and at the time of the Site reconnaissance the waste oil tank at the adjacent Enterprise Gas Station was full.<sup>1</sup>
- Although, the FCSI and IEMS files for the former Band Office ASTs and Gas Bar were closed, it remains unknown if the landspread soil meets current applicable guidelines, and additional parameters and media (such as dissolved metals, i.e. lead and tetraethyl lead in groundwater) would require analysis to meet current remediation guidelines. Based on current observations in the Enterprise Yard, there is considered to be a potential for contaminants of concern to be present in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines. However, before additional investigation (i.e. Phase II ESA) can occur, the two hundred plus containers of waste oil should be removed to allow access to the underlying grounds.

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<sup>1</sup> Based on interviews and in our opinion, the one tank does not provide enough capacity for both operations, and that a regular disposal program should be arranged to transport waste oil to a disposal facility.



### **APEC 1B Enterprise Gas Station, Lohbiee IR 3:**

- A FCSI number has not been assigned for this site.
- The Enterprise Gas Station has been located approximately 10 m east of the Enterprise Works Yard, on Lohbiee IR 3, since the early 2000s.
- APEC 1A and 1B could be combined together for the purposes of investigations, based on proximity (approximately 10 m east), are both owned and operated by Enterprise, and that these operations reportedly share an oil/water separator.
- In 2022, approximately ten 20 L containers and various smaller containers of waste oil were stored, over a concrete pad with a catch basin adjacent to a full waste oil AST (~3000 L) at the Enterprise Gas Station. Thick oil-like staining was observed over the concrete pad and grate to the catch basin (as identified for APEC 1A).
- The gas station has double-walled Enviro-Safe gasoline and diesel ASTs, approximately 30,000 L each, and according to the gas station manager, the tanks are regularly dipped, and volume audits conducted, and evidence of leaks or volume discrepancies have not been identified. In addition to the storage tanks, the unpaved area around the fuel pad, the catch basins and associated oil/water separator, and waste oil storage area; are considered to be an APEC.
- Based on current observations at the Enterprise Gas Station, there is considered to be a potential for contaminants of concern to be present in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines and BC CSR standards.

### **APEC 2 End-of-Life Vehicles in the area of Glen Lulua's Residence, Garden IR 2A and across the XGFN Lands:**

- A FCSI number has not been assigned for this site.
- Approximately 50 end-of-life cars and small trucks were observed in the pasture in the vicinity of Glen Lulua's residence on the south portion of Garden 2A during the 2022 Site visit.
- In addition, various engine parts, empty gas tanks, and approximately 20 batteries were observed on unpaved ground adjacent to the residence.
- With the exception of minor small drips, staining was not observed.
- Based on current observations, there is considered to be a potential for contaminants of concern to be present in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines and BC CSR standards. We understand that an "End of Life Vehicles" removal program has been proposed (refer to GHD Limited Draft Solid Waste Management System Upgrades Completion Report, dated 2021); while the 2021 GHD letter did account for a \$20,000 expenditure, spent to date and removed end-of-life vehicles. The remaining end-of life vehicles noted should be removed.
- Up to approximately 50 other end of life vehicles were observed across XGFN lands.
- After the vehicles are removed, the grounds should be inspected to observe if significant staining is present to determine if a Phase II ESA is warranted.



**APEC 3 Former Gas Station in area of William Lulua's Residence, Chilco Lake 1A, FCSI 00004653:**

- Previous reports by PGL identified a gas station, 1990s or earlier to circa 2001, consisting of three stand-mounted single-walled ASTs (a 4500 L diesel AST, 9100 L gasoline AST and 2300 L unlabelled AST), in the vicinity of William Lulua's residence on the central portion of Chilco Lake 1A.
- With the exception of minor soil staining and drips, evidence of leaks of spills were not observed during PGL's reconnaissance (circa 1996 to 1998).
- During the 2022 Site visit, the tanks were observed to be empty and not in use, and underlying staining was not observed.
- According to historical aerial photographs, historical photographs, and anecdotal reports, the tanks have been moved at various times (a 1996 photograph shows the tanks were located approximately 20 m south of the existing location).
- The FCSI file for this site has not been closed, and the last update in 2021/2022, indicated "Historical review planned".
- Based on the nature of operations (fuel dispensing and storage over unpaved surfaces), there is considered to be a potential for contaminants of concern to be present in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines and BC CSR standards.

**APEC 4: Former Community Hall UST and Maintenance Shop, Lezbye 6, FCSI 00006191:**

- The existing abandoned dance hall and/or former community hall has been located on the south boundary of Lezbye 6 since the 1970s or earlier. The existing maintenance shop/storage building was constructed adjacent to the community hall in the 1980s.
- In 1996, PGL observed a single-walled 22,500 L diesel/heating oil underground storage tank (UST), a 90 L diesel generator day tank/AST, and a fuel drum storage shed. Soil staining was observed; (~5 m<sup>2</sup>) from apparent over-filling of the day tank, and (~20 m<sup>2</sup>) outside the fuel drum storage shed.
- The UST and stained soils were excavated circa 1998. Confirmatory soil samples were collected from the UST tank nest, boundaries of the storage shed waste oil-stained soils, and from the soil beneath "scraped" day tank soil. The confirmatory samples were analyzed for LEPH/HEPH<sup>2</sup>. The concentrations of LEPH/HEPH for both excavated areas and "scraped" soil area were less than the BC CSR CL/IL standards of the day. However, three of four sidewall confirmatory soil samples for the storage shed waste oil stain excavation exceeded the current equivalent CCME CL guidelines. The former UST was replaced with an existing double-walled AST and generator circa 2000, the generator has not been used and the AST has remained unfilled.
- The maintenance shop has a concrete floor and is currently used to store old generators, building materials and plumbing fixtures, associated with building renovations and repairs across the Site I.R.s.

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<sup>2</sup> Uncorrected for polycyclic aromatic hydrocarbons (PAH)



With the exception of minor drips, staining or other evidence of spills or releases in quantities of concern was not observed on the floor during the 2022 Site visit.

- Based on exceedances in confirmatory samples when compared to the current applicable CCME guidelines, there is considered to be a potential for associated contaminants of concern to remain in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines and BC CSR standards.

## **OFF-SITE**

The lands surrounding the Site have predominantly remained undeveloped, and minor areas have been developed for residential, agricultural and commercial purposes. Off-Site operations/ features of potential environmental concern have been located in the Nemaiah Valley/ on T̓silhqot'in Title Land (such as landfills/dumps, fuel storage and a gas station). However, based primarily on the distances from the Site, there is considered to be a low potential for contaminants of concern from off-Site activities to be present in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines and BC CSR standards.

## **RECOMMENDATIONS**

To assist with the completion of a Phase II ESA, the removal of derelict vehicles (APEC 2) and waste liquids (APEC 1A and APEC 1B) is recommended to be completed prior to undertaking the Phase II ESA.

We recommend improving overall collection of household waste in the community and removing the surficial household waste materials (approximately 1m<sup>3</sup>) located approximately 300 m north of William Lulua's Gas Station observed during the 2022 Site visit.

A Phase II ESA opinion of probable costs will be accurate within an order of magnitude (Class D) and provided under a separate cover.

## **CONCLUSION**

There is considered to be a potential for contaminants of concern to be present in the Site soil, groundwater and/or vapour at concentrations greater than the applicable CCME guidelines and BC CSR standards, and further investigation is warranted.

A breakdown of APECs, related PCOCs and those subject areas or sites where evidence of actual and/or potential contamination exists, and recommended actions are included in the following table:



**Table ES-1 – Phase I ESA Results and Recommended Actions**

Site/Area (APEC# and name)	Location	Likelihood of Contamination	Description of Contamination or Risk	Recommended Action
<b>APEC 1A</b> Enterprise Storage Yard (Former Band Office ASTs & Gas Bar)	Northwest portion of Lohbiee 3	High	Waste oil and diesel spills, and vehicle maintenance over unpaved surfaces and/or to catch basins with an oil/water separator PHC (F2-F4) LEPH/HEPH PAHs, VOCs VPH, TEL, metals glycols, MTBE :	Remove waste oil containers (>250 pails) and provide a waste oil tank with regular disposal program to transport waste oil to disposal facilities. Conduct Phase II ESA Advance 8 boreholes, of which 3 completed as monitoring wells in areas of; 20m <sup>3</sup> of contaminated soils beneath former powerhouse; land spreading area; waste oil containers; and former band office.
<b>APEC 1B</b> Enterprise Gas Station and Waste Oil AST (~3000 L)	Northwest portion of Lohbiee 3	High	Waste oil, gasoline and diesel spills to unpaved surfaces and/or to catch basins with an oil/water separator PHC (F2-F4) LEPH/HEPH PAHs, VOCs VPH, metals, glycols	Remove waste oil containers and provide either a larger waste oil tank and/or a more frequent disposal program to transport waste oil to disposal receiving facilities. Conduct Phase II ESA Advance 3 monitoring wells at Enterprise Gas station
<b>APEC 2</b> End-of-Life Vehicles in the area of Glen Lulua's Residence and across XGFN (~100 End of Life Vehicles)	South portion of Garden 2A	Medium	Drips and spills, of fluids from derelict vehicles, with maintenance & repairs, and battery, fuel tank and parts storage, over unpaved surfaces PHC (F2-F4) LEPH/HEPH PAHs, VOCs VPH, metals glycols, MTBE, TEL	Remove End of Life Vehicles and vehicle parts. Inspect grounds for large areas of staining, excavate stained soil, and conduct Phase II ESA if warranted by staining.
<b>APEC 3</b> Former Gas Station in area of William Lulua's Residence	Central portion of Chilco Lake 1A	Medium	Waste oil and fuel spills, and vehicle maintenance over unpaved surfaces PHC (F2-F4) LEPH/HEPH PAHs, VOCs VPH, metals glycols, MTBE, TEL	Conduct Phase II ESA Advance 3 monitoring wells in current and former areas of the ASTs. Analyze select soil and groundwater samples for the identified PCOCs
<b>APEC 4</b> Former Community Hall UST and Maintenance Shop	Southeast portion of Lezbye 6	High	Confirmatory soil samples exceeding current applicable CCME and BC CSR guidelines/standards. Groundwater and vapour quality was not assessed. PHC (F2-F4) LEPH/HEPH PAHs, VOCs VPH, metals	Conduct Phase II ESA Advance 3 boreholes, plus one monitoring well in area of previous excavation and maintenance shop. Collect additional soil samples at previous sidewall locations. Analyze select soil, groundwater and vapour samples for the identified PCOCs
Well located near Robin Lulua's Residence	West portion of Chilco Lake 1	Low	Potential use of unpotable water for drinking purposes drinking water potability parameters	Advise Robin Lulua and current residents to not use the well for drinking purposes until the well water has been analyzed for potability. Based on our review of the XGFN Water Data (2021-2023) the well water near Robin Lulua's has not been analysed.
Dumpsite ~300m North of Former Gas Station	Central portion of Chilco Lake 1A	Low	Drips and spills, of fluids from derelict vehicle LEPH/HEPH PAHs, VPH, metals glycols	Remove household waste and abandoned vehicle. However, due to trees overgrowing the vehicle, removal of the abandoned truck may not be justifiable. Alternately, remove the vehicle parts that can be moved manually, and scrape the organic materials away from the areas of the engine block and engine bay with a hand shovel, to assess the extent of staining, if any, would warrant further investigation (a Phase II ESA).

APEC – Area of potential environmental concern  
 LEPH – light extractable petroleum hydrocarbons  
 MTBE – Methyl Tertiary Butyl Ether  
 XGFN – Xeni Gwet'in First Nations

COC – contaminants of concern  
 HEPH – heavy extractable petroleum hydrocarbons  
 VPH – volatile petroleum hydrocarbons

PCOC – potential contaminants of concern  
 TEL – tetraethyl lead  
 PHC F1-F4 – petroleum hydrocarbons fractions

AST – aboveground storage tank  
 PAHs – polycyclic aromatic hydrocarbons  
 CCME – Canadian Council of Ministers of the Environment

UST – underground storage tank  
 VOCs – volatile organic compounds  
 CSR – British Columbia Contaminated Sites Regulation

*This Executive Summary is subject to the same general limitations as contained in the report and must be read in conjunction with the report*



## **ANNEX “E”**

### **LIST OF OTHER INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENCES**

- Information regarding upcoming rent reviews – TBC
- Information regarding any outstanding rents – TBC
- Information regarding instruments that have recently expired or will expire imminently – TBC
- Information pertaining to the end of term provisions for any active instruments – TBC
- Information regarding any corrections to individual land holdings – TBC
- Information regarding unregistered Timber, Sand and Gravel Permits – TBC

**NOTE: Annex E will be updated to include information, such as upcoming rent reviews, outstanding rents, instruments that have recently expired or will expire imminently, end of term provisions for any active instruments, corrections to individual land holdings, and timber, sand and gravel permits, if any.**

## ANNEX "F"

### INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

The Framework Agreement specifies that the First Nation and the Minister will address in the Individual Agreement how to conduct environmental assessments on First Nation land on an interim basis until the First Nation's environmental assessment process is developed. This Annex describes that interim environmental assessment process.

The interim process is intended to be broadly consistent with requirements of the federal environmental assessment process but without imposing requirements that are only appropriate to federal organizations and departments.

- 1) The First Nation shall carry out an environmental assessment in circumstances where federal environmental assessment legislation would likely require Canada to carry out an environmental assessment for a project on federal lands.
- 2) When the First Nation must conduct an environmental assessment of a proposed project, the First Nation shall ensure that the environmental assessment is carried out in the early planning stages of the project, before the First Nation makes an irrevocable decision that would allow the project to proceed (i.e. approve, regulate, fund or undertake the project). The environmental assessment shall be conducted at the expense of the First Nation or proponent of the project.
- 3) The First Nation shall not approve, regulate, fund, or undertake the project unless the First Nation has determined that:
  - a. the project is unlikely to cause any significant adverse environmental effects; or
  - b. that those effects are justifiable under the circumstances,taking into consideration:
  - the results of a required environmental assessment;
  - any economically and technically feasible mitigation measures identified as necessary during the assessment; and
  - any public comments received during the assessment.
- 4) If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall conduct project monitoring, review implementation of approved mitigation measures, and follow-up programs as the First Nation considers necessary.
- 5) If a project on First Nation land is also subject to a federal or provincial

environmental assessment process, the First Nation must make its own determination in accordance with Section 3 above, but may:

- a. agree with the Province, Canada, or both on a harmonized environmental assessment process appropriate to that project, taking into account the Framework Agreement's principle that the First Nation's environmental assessment process be used where a federal environmental assessment is required; or
- b. use the environmental assessment completed by the Province, Canada, or both, in substitution for undertaking a First Nation-led environmental assessment process.



## ANNEX "G"

### DESCRIPTION OF XENI GWET'IN FIRST NATIONS GOVERNMENT LAND

The following Land Descriptions prepared by Matthew Mooy of Natural Resources Canada under First Nation Land Management are available for review at the Xeni Gwet'in First Nations Government Land Management Office located at General Delivery Nemiah Valley British Columbia V0L 1X0.

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NOTE: Annex G will be updated to include the Field Book Numbers for the Land Description Reports for each reserve listed below once the reports are approved by ISC and the First Nation and recorded by NRCAN in the Canada Lands Survey Records (CLSR).

- Chilco Lake Indian Reserve No. 1 (08262)
- Chilco Lake Indian Reserve No. 1A (08263)
- Garden Indian Reserve No. 2 (08264)
- Garden Indian Reserve No. 2A (08265)
- Lohbiee Indian Reserve No. 3 (08266)
- Tanakut Indian Reserve No. 4 (08267)
- Tsunnia Lake Indian Reserve No. 5 (08268)
- Lezbye Indian Reserve No. 6 (08269)

The documents are also available for review online using the links below: <https://www.xeni-gwetin.ca>