



huu ay aht

ANCIENT SPIRIT, MODERN MIND

ECONOMIC DEVELOPMENT ACT

OFFICIAL CONSOLIDATION
Current to March 22, 2019

The Huu-ay-aht Legislature enacts this law to establish the governance framework for the oversight and management of Huu-ay-aht First Nations economic development.

REGISTRY OF LAWS CERTIFICATION

Certified True Copy

I certify that the *Economic Development Act* passed Third Reading in the Legislature on:

_____ *M/L 28/2013* _____

_____ *JRCook* _____

Chief Councillor Jeff Cook

I certify that the *Economic Development Act* is enacted as law on:

_____ *M/L 28/2013* _____

_____ *Derek Peters* _____

Ta'yii Hawilth Derek Peters

The *Economic Development Act* came into force as set out below:

Sections of <i>Economic Development Act</i>	Date sections came into force (and regulation number if by regulation)	Signature of Law Clerk, Connie Waddell, certifying the date in force:
1 – 47, 49 – 54, 56	<i>March 28/2013</i>	<i>Debra Waddell</i>
48		
55		

REGISTRY OF LAWS CERTIFICATION

I certify that the *Economic Development Act Amendment Act, 2015* was passed by Executive Council on:

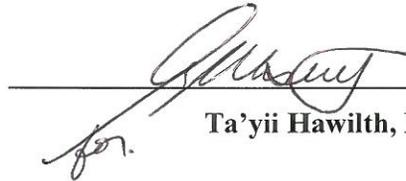
March 30, 2015



Chief Councillor, Jeff Cook

I certify that the *Economic Development Act Amendment Act, 2015* is enacted as law on:

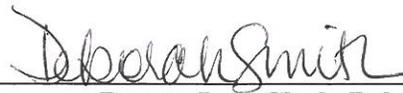
March 30, 2015



Ta'yii Hawilth, Derek Peters

I certify that the *Economic Development Act Amendment Act, 2015* came into force on:

March 30, 2015



Deputy Law Clerk, Deborah Smith

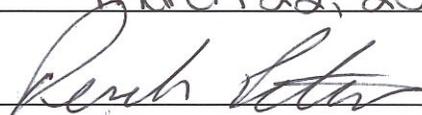
REGISTRY OF LAWS CERTIFICATION

I certify that the *Economic Development Act Amendment Act, 2019* was passed by Executive Council on:

March 22, 2019

Chief Councillor, Robert Dennis

I certify that the *Economic Development Act Amendment Act, 2019* is enacted as law on:

March 22, 2019

Ta'yii Hawilth, Derek Peters

I certify that the *Economic Development Act Amendment Act, 2019* came into force on:

March 22, 2019

Coraleah Bauer, Law Clerk

ECONOMIC DEVELOPMENT ACT

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Note to Reader

The *Economic Development Act* sets out the framework for government to oversee HUU-ay-aht economic development in a manner similar to other Maa-nulth First Nations. The HUU-ay-aht interest in business enterprises is arranged through a governance and fiscal agreement (“agreement”) between HUU-ay-aht First Nations, the HUU-ay-aht Development Corporation representing the HFN Development Limited Partnership, and each operating limited partnership as set out in the schedule to the Act.

The terms of the agreement include quarterly reporting to Executive Council and monthly reporting to the HFN Development Limited Partnership. Executive Council may only direct a HUU-ay-aht business enterprise (“business”) on a major decision if it is defined in the agreement as one requiring Executive Council approval. Senior government members, including Executive Council and senior government staff, must not interfere with the operational decisions (defined in the Act) of a business, or the decisions made by officers, managers or employees of a business.

The Economic Development Committee, which provided advice to Executive Council under the *Financial Administration Act*, is continued under this Act. In addition, an economic development officer role is established. The Ec Dev Committee may direct the officer to prepare a feasibility study for new business opportunities, or a business plan for an approved business, among other officer duties.

Under the Act, the Ec Dev Committee must recommend a HUU-ay-aht economic development plan after consulting with committees and the Ha’wiih Council. The plan must be reviewed by Executive Council and submitted to the Legislature for approval on March 31, 2016 and every 4 years afterwards. The plan requires, among other provisions,

- reports from operating limited partnerships on the results under their business plans ,
- overviews of new business opportunities, and
- a communication plan for HUU-ay-aht citizens on the state of economic development.

Executive Council may recommend new business opportunities to the Legislature to add to an economic development plan after considering the recommendation of the Ec Dev Committee. The Finance Committee must be consulted before Executive Council makes specified decisions.

A new business opportunity approved in principle by the Legislature and included in the economic development plan may become part of an existing or new operating limited partnership, or a business owned and operated by a HUU-ay-aht citizen, as determined by Executive Council.

Officers and directors of a business are no longer subject to the *Code of Conduct and Conflict of Interest Act* but are governed by the duty of care and conflict of interest provisions in the Act as well as policies established by the business.

The HUU-ay-aht Tribunal may resolve disputes arising under the agreement. Executive Council may terminate the agreement after 3 months’ notice if, after a referendum, 60 % of eligible voters vote to terminate the agreement.

Offences in the Act for a business include: operating outside its business mandate, conducting activities outside its stated annual plan, not complying with the agreement or applicable laws. A director or officer who authorizes the prohibited action of a business is also liable for an offence. In addition, directors and officers may be subject to offences for breaching their duty of care and failing to disclose conflicts of interest.

A senior government member may be liable for an offence for interfering with an operational decision of a business or a decision made by an officer, manager or employee of a business.

The Legislature enacts as follows:

PART 1 –INTRODUCTORY PROVISIONS

Definitions

1 In this Act:

- “**annual plan**” has the meaning given to that expression in the governance and fiscal agreement;
- “**business mandate**” means the nature of business the Huu-ay-aht business enterprise is mandated to engage in under section 15;
- “**business plan**” means a business plan prepared in accordance with section 18;
- “**Economic Development Committee**” means the economic development committee as continued by section 8;
- “**economic development**” means the activities set out in section 2;
- “**economic development officer**” means the individual appointed under section 12;
- “**economic development plan**” means the plan and any updates to that plan approved by the Legislature in accordance with section 5;
- “**feasibility study**” means a feasibility study under section 17;
- “**governance and fiscal agreement**” means the agreement entered into by Executive Council, the HFN Development Limited Partnership and each operating limited partnership in accordance with section 22;
- “**Ha’wiih Councillor**” has the same meaning given that expression in section 2 of the *Government Act*, HFNA 3/2011;
- “**HFN DC board**” means the board of directors of the Huu-ay-aht Development Corporation;
- “**HFN Development Limited Partnership**” means the Huu-ay-aht Development Limited Partnership registered under the *Partnership Act* (British Columbia) under registration number 553527-11;
- “**Huu-ay-aht business enterprise**” means the HFN Development Limited Partnership, Huu-ay-aht Development Corporation, each operating limited partnership, the general partner of each operating limited partnership and any other Huu-ay-aht corporation or limited partnership which becomes a party to the governance and fiscal agreement and the applicable business mandate for each of them;
- “**Huu-ay-aht corporation**” means a corporation incorporated under federal or provincial law, all the shares or interests of which are owned legally and beneficially by the Huu-ay-aht First Nations, a Huu-ay-aht settlement trust, another Huu-ay-aht corporation or any combination of those entities;
- “**Huu-ay-aht Development Corporation**” means the general partner of the HFN Development Limited Partnership;

“Huu-ay-aht special investment body” means a Huu-ay-aht body prescribed by Executive Council under section 62.1(1) of the *Financial Administration Act*, HFNA 7/2011;

“operating board” means the board of directors of an operating general partner;

“operating general partner” means the general partner of an operating limited partnership;

“operating limited partnership” means a limited partnership registered under the *Partnership Act* (British Columbia),

(a) the interest of which is 51% or more owned legally and beneficially by the HFN Development Limited Partnership, and

(b) which is identified in Column 1 of the table in the official Schedule of Huu-ay-aht business enterprises as a limited partnership, other than the HFN Development Limited Partnership;

“Treaty” means Treaty as defined in the *Interpretation Act*.

HFNA 3/2015, s. 1(a); HFNA 4/2019, s. 1 (a)(i), (ii), (iii), (iv), (v).

Economic development mission

- 2** The mission of Huu-ay-aht First Nations economic development is to
- (a) develop diverse, sustainable and profitable businesses for Huu-ay-aht First Nations and Huu-ay-aht citizens that respect the history, culture and traditions of the Huu-ay-aht First Nations and the environment in which we live,
 - (b) actively seek, secure and promote economic initiatives that will enhance the prosperity of Huu-ay-aht First Nations and the quality of life and employment of Huu-ay-aht citizens,
 - (c) create the environment and develop the infrastructure that is necessary or desirable for successful business development, and
 - (d) assist in building the capacity of Huu-ay-aht citizens to be successful entrepreneurs.

HFNA 4/2019, s. 1(b).

Economic development values

- 3** To fulfill its purpose, this Act is intended to uphold the following values in relation to economic development:
- (a) Huu-ay-aht business enterprises will, to the greatest extent possible, be self-sufficient and independent of the financial resources of the Huu-ay-aht First Nations in their operation;
 - (b) Huu-ay-aht business enterprises will, to the greatest extent possible having regard to the values stated in this section, operate profitably and in a manner that provides a reasonable return on the investment the Huu-ay-aht First Nations has made in those Huu-ay-aht business enterprises;
 - (c) Huu-ay-aht business enterprises will be allowed to operate free from political interference;

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- (d) HUU-AY-AHT business enterprises will operate transparently and be held accountable to their owners, the HUU-AY-AHT First Nations;
 - (e) HUU-AY-AHT business enterprises will operate within and comply with the governance and fiscal agreement, the applicable annual plan and all applicable laws;
 - (f) HUU-AY-AHT business enterprises will engage in economic development that is socially, economically and environmentally sustainable and that respects our history and the heritage, culture and traditions of our people, our Ha'houlthee (traditional territory) and the environment within which we live;
 - (g) HUU-AY-AHT business enterprises will use commercially reasonable efforts
 - (i) to maximize the employment and contracting opportunities of other HUU-AY-AHT business enterprises, businesses owned or operated by HUU-AY-AHT citizens and HUU-AY-AHT citizens, and
 - (ii) to access training opportunities for HUU-AY-AHT citizens in order that they be qualified to accept such employment and obtain practical economic benefits for the HUU-AY-AHT First Nations and HUU-AY-AHT citizens;
 - (h) HUU-AY-AHT business enterprises will institute and maintain an employment policy governed by the principle of preferential hiring of HUU-AY-AHT citizens, subject to demonstrable levels of adequate skills and capabilities, to the greatest extent reasonably possible, but consistent with all applicable laws and with optimum efficiency in the operation of those HUU-AY-AHT business enterprises;
 - (i) without limiting paragraphs (g) and (h), each HUU-AY-AHT business enterprise will
 - (i) if the HUU-AY-AHT business enterprise is contracting for work or services, engage other HUU-AY-AHT business enterprises or other businesses owned or operated by HUU-AY-AHT citizens, to provide such work or services, subject to demonstrable levels of adequate skills and capabilities and the provision of that work or those services on commercially reasonable terms,
 - (ii) work closely with its clients, contractors and suppliers to maximize employment and economic opportunities for HUU-AY-AHT business enterprises, businesses owned or operated by HUU-AY-AHT citizens and HUU-AY-AHT citizens who are tradespersons and contractors with demonstrable levels of adequate skills and capabilities, and
 - (iii) to the extent that there are training programs sponsored directly or indirectly by a HUU-AY-AHT business enterprise or in which the HUU-AY-AHT business enterprise is participating in some manner and which might be of benefit to other HUU-AY-AHT business enterprises, businesses owned or operated by HUU-AY-AHT citizens or HUU-AY-AHT citizens, attempt to secure such trainee spaces for suitably qualified HUU-AY-AHT citizens as may be available.

Application

- 4** This Act is enacted under sections 13.11.1, 13.12.1 and 13.12.2 of Chapter 13 *Governance* of the Treaty and the *Government Act*, and applies to all Huu-ay-aht corporations and Huu-ay-aht business enterprises.

PART 2 –ECONOMIC DEVELOPMENT ADMINISTRATION**Overseeing Huu-ay-aht economic development**

- 5** (1) Subject to subsection (2), Executive Council is responsible for overseeing Huu-ay-aht economic development.
- (2) By March 31, 2016, and every following 4th year, the Legislature must
- (a) consider an economic development plan recommended by Executive Council under section 6 (d), and
 - (b) approve an economic development plan.

HFNA 4/2019, s. 1(d).

Role of Executive Council

- 6** Without limiting section 5 (1) and in accordance with this Act, Executive Council's oversight responsibility for economic development includes the following:
- (a) recommending to the Legislature which new business opportunities should be approved in principle and included in an economic development plan, after considering the recommendation of the Economic Development Committee made under section 10 (d);
 - (b) determining which new business opportunities
 - (i) should be implemented and owned or operated by an existing or new operating limited partnership on behalf of Huu-ay-aht First Nations,
 - (ii) should be left to be developed and owned or operated by a Huu-ay-aht citizen and, if applicable, which Huu-ay-aht citizen should be offered the opportunity, or
 - (iii) should not be implemented or pursued,after considering the recommendation of the Economic Development Committee made under section 10 (e);
 - (c) negotiating
 - (i) rights under the Treaty, and
 - (ii) other agreements for the Huu-ay-aht,that may impact economic development for the Huu-ay-aht First Nations or Huu-ay-aht citizens;
 - (d) reviewing and, if acceptable, recommending for approval by the Legislature the proposed economic development plan prepared in accordance with section 10 (b);
 - (e) reviewing and, if acceptable, approving the annual financial statements of the HFN Development Limited Partnership, after considering the

recommendations of the Economic Development Committee made under section 10 (h);

- (f) approving the negotiating mandate for, the terms of, and entering into, any agreements on behalf of the Huu-ay-aht First Nations that are necessary or desirable to establish new business relationships with other persons in order to pursue new business opportunities to be owned or operated by an existing or new operating limited partnership;
- (g) establishing, by regulation, minimum financial performance requirements that Huu-ay-aht business enterprises are expected to meet for their business sustainability.

HFNA 4/2019, s. 1(e)

Finance Committee consultation

- 7** (1) Before making a decision requiring the approval of Executive Council under the governance and fiscal agreement or before making any other economic development decision with financial implications for the Huu-ay-aht, Executive Council must
- (a) refer the matter to Finance Committee for its review, and
 - (b) must consider any comments or recommendations provided by Finance Committee in respect of any financial implications for Huu-ay-aht.
- (2) The Finance Committee may engage independent consultants, technical experts or other persons to advise the committee under subsection (1).

Economic Development Committee mandate

- 8** (1) The mandate of the Economic Development Committee is to provide information to assist Executive Council in fulfilling its oversight responsibilities for economic development and reporting to Executive Council on economic development activities of the Huu-ay-aht First Nations.

HFNA 4/2019, s. 1(f).

Composition and operations

- 9** (1) The Economic Development Committee is composed of
- (a) a chair appointed by the Chief Councillor,
 - (b) the Ha'wiih Councillor or another member of Executive Council designated by the Ha'wiih Council,
 - (c) the economic development officer, and
 - (d) at least 2 and not more than 5 other individuals appointed by Executive Council who
 - (i) are not members of Executive Council, and
 - (ii) bring particular expertise or other considerations to the Economic Development Committee.

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- (2) The members appointed under subsection (1) (d) may include individuals who are not HUU-AY-AHT citizens, provided that a majority of the Economic Development Committee members are HUU-AY-AHT citizens.
 - (3) For certainty, the Economic Development Committee must include a majority of individuals who are not members of the Executive Council.
 - (4) The Economic Development Committee must meet at least six times each year.
 - (5) The Executive Director must provide the Economic Development Committee with the administrative support and the resources for engaging consultants, technical experts and other persons the Economic Development Committee reasonably requires to fulfill its responsibilities under this Act.
 - (6) Subject to this Act and regulations, Part 6 of the *Government Act* applies to the Economic Development Committee.

HFNA 3/2015, s. 1(b).

Duties and powers

- 10** Without limiting section 8, the powers, duties and functions of the Economic Development Committee include the following:
- (a) providing advice to Executive Council on Executive Council negotiations involving
 - (i) rights under the Treaty, and
 - (ii) other agreements for the HUU-AY-AHT, that may impact on economic development for the HUU-AY-AHT First Nations or HUU-AY-AHT citizens;
 - (b) developing, with the assistance of the economic development officer, a proposed economic development plan in accordance with section 16 for review by Executive Council and approval by the Legislature;
 - (c) providing direction to the economic development officer concerning the research and development of new business opportunities to be owned or operated by an existing or new operating limited partnership or by a HUU-AY-AHT citizen;
 - (d) reviewing feasibility studies and recommending to Executive Council which new business opportunities should be approved in principle by Executive Council and included in an economic development plan;
 - (e) reviewing business plans and recommending to Executive Council which new business opportunities
 - (i) should be implemented and owned or operated by an existing or a new operating limited partnership on behalf of the HUU-AY-AHT First Nations,
 - (ii) should be left to be developed and owned or operated by a HUU-AY-AHT citizen and, if applicable, which HUU-AY-AHT citizen should be offered the opportunity, or
 - (iii) should not be implemented or pursued;

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- (f) providing direction to the economic development officer, if applicable, regarding negotiating new business relationships with other persons as may be necessary or desirable in order to pursue new business opportunities approved by Executive Council under section 6 (b) to be owned or operated by an existing or new operating limited partnership and the terms of any agreements that are necessary or desirable to establish those new business relationships for approval by Executive Council under section 6 (f);
 - (g) directing administrative staff and any consultants, technical experts or other persons engaged to assist the Economic Development Committee to carry out its duties and responsibilities under this Act;
 - (h) communicating with and providing appropriate information to HUU-ay-aht citizens concerning the economic development of the HUU-ay-aht First Nations, HUU-ay-aht business enterprises and the economic development plan in accordance with the approved communications plan;
 - (i) reviewing and providing recommendations to Executive Council on the annual financial statements of the HFN Development Limited Partnership and the operating limited partnerships;
 - (j) other duties assigned by Executive Council.

HFNA 4/2019, s. 1(g).

Accountability

- 11** The Economic Development Committee must report to Executive Council by written report at meetings of Executive Council when requested by the Chief Councillor or the chair of the Economic Development Committee.

Economic development officer

- 12**
- (1) The position of economic development officer is established.
 - (2) Subject to spending authority, the Executive Director must appoint an economic development officer.
 - (3) If the position of economic development officer is vacant, the Executive Director must assign a director or manager to carry out the powers, duties and functions of the economic development officer.
 - (4) The powers, duties and functions of an economic development officer under subsection (3) are in addition to the existing powers, duties and functions of the director or manager.

Duties of economic development officer

- 13** The economic development officer has the following powers, duties and functions:
- (a) manage economic development activities of the HUU-ay-aht;
 - (b) at the request of the chair of the Economic Development Committee and consistent with the approved communications plan, report on economic development activities by written report at meetings of the
 - (i) People's Assembly,
 - (ii) Legislature, and

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- (iii) Executive Council;
 - (c) provide the Economic Development Committee with information and technical or logistical support that may be necessary or desirable for the Economic Development Committee to advise Executive Council on negotiations involving rights under the Treaty, and other agreements for the Huu-ay-aht, that may impact economic development for the Huu-ay-aht First Nations or Huu-ay-aht citizens;
 - (d) assist the operating limited partnerships in developing business relationships with other persons on behalf of the Huu-ay-aht First Nations;
 - (e) identify, research and report to the Economic Development Committee on any new business opportunities to be developed and owned or operated by an existing or new operating limited partnership or by a Huu-ay-aht citizen;
 - (f) prepare feasibility studies and business plans, or review feasibility studies and business plans prepared by a Huu-ay-aht business enterprise, as directed by the Economic Development Committee;
 - (g) negotiate, as directed by the Economic Development Committee, new business relationships with other persons as may be necessary or desirable in order to pursue new business opportunities approved by Executive Council under section 6 (b) to be owned or operated by an existing or new operating limited partnership and the terms of any agreements that are necessary or desirable to establish those new business relationships for approval by Executive Council under section 6 (f);
 - (h) identify and apply for grants or funding available from Canada, British Columbia or other persons for First Nations economic development, for other types of economic development or for developing business opportunities;
 - (i) assist the Economic Development Committee and the HDC board in developing a proposed economic development plan for review by Executive Council and approval by the Legislature;
 - (j) provide an updated copy of the board of directors' operational manual to the Law Clerk each year for deposit in the Registry of Laws and Official Records;
 - (k) consistent with the approved communications plan, provide Huu-ay-aht citizens with information concerning any new business opportunities identified under paragraph (e) that Executive Council has
 - (i) determined will not be implemented and owned or operated by an existing or new operating limited partnership, and
 - (ii) decided under section 19 (1) (c) that the new business opportunity is better suited to be owned or operated by a Huu-ay-aht citizen;
 - (l) consistent with the approved communications plan, provide Huu-ay-aht citizens with business development and entrepreneurship information;
 - (m) consistent with the approved communications plan, provide Huu-ay-aht citizens with information concerning business planning and financing strategies for businesses to be developed, owned or operated by Huu-ay-aht citizens;

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- (n) perform any additional duties or exercise any additional powers assigned to the economic development officer
 - (i) under this or any other HUU-AY-AHT legislation, or
 - (ii) by the Executive Director.

Delegation authority

- 14** (1) On approval of the Executive Director, the economic development officer may, in writing, delegate, with or without conditions, any of his or her powers, duties or functions but that delegation does not relieve the economic development officer from the responsibility of ensuring the delegated powers, duties and functions are properly carried out.
- (2) The economic development officer must not delegate the power to delegate under this section.

PART 3 – HUU-AY-AHT BUSINESS ENTERPRISE PLANNING**Business mandates**

- 15** (1) The business mandate for each HUU-AY-AHT business enterprise named in Column 1 of the table in the official Schedule of HUU-AY-AHT business enterprises is set out in Column 3 of that table next to its name and registration number.
- (2) A HUU-AY-AHT business enterprise must only engage in activities that
- (a) reasonably fall within its business mandate or that are necessarily ancillary or incidental to that business mandate,
 - (b) are set out in its annual plan or are necessarily ancillary or incidental to those activities,
 - (c) are in compliance with the governance and fiscal agreement, and
 - (d) are in compliance with all applicable laws.

HFNA 4/2019, s. 1(h).

Economic development plan

- 16** (1) The economic development plan approved by the Legislature under section 5 must contain the following:
- (a) a comprehensive plan for all communications regarding economic development for the following 4 years including how the Economic Development Committee will inform HUU-AY-AHT citizens regarding the current status of economic development for the HUU-AY-AHT First Nations and its HUU-AY-AHT business enterprises and the strategic plan for economic development;
 - (b) a statement concerning the strategic plan for economic development for the HUU-AY-AHT First Nations for the following 4 years;
 - (c) a statement of the goals, objectives and employment targets hoped to be achieved by the HUU-AY-AHT First Nations and HUU-AY-AHT business enterprises for the following 4 years;

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- (d) a report from each operating limited partnership setting out the current status of
 - (i) how that operating limited partnership is fulfilling its business mandate,
 - (ii) the financial results of that operating limited partnership's operations for the preceding 2 fiscal years,
 - (iii) the number of HUU-AY-AHT citizens employed by that operating limited partnership and the full time equivalent of their positions during the reporting period,
 - (iv) the number of contracting and training opportunities provided by that limited partnership to other HUU-AY-AHT business enterprises, businesses owned or operated by HUU-AY-AHT citizens and to HUU-AY-AHT citizens during the reporting period, and
 - (v) how the information provided under subparagraphs (i) to (iv) compares to the information reported for those subparagraphs in the previous economic development plan for that operating limited partnership;
 - (e) the plan, including financial performance and employment targets, of each operating limited partnership for the following 4 years on how it intends to
 - (i) fulfill its business mandate,
 - (ii) increase its revenues and profitability,
 - (iii) increase the number of HUU-AY-AHT citizens employed by that operating limited partnership and increase the full time equivalent of those positions, and
 - (iv) increase the number of contracting and training opportunities provided by that limited partnership to other HUU-AY-AHT business enterprises, to businesses owned or operated by HUU-AY-AHT citizens and to HUU-AY-AHT citizens;
 - (f) a brief overview of each new business opportunity
 - (i) for which a feasibility study has been prepared, and
 - (ii) which the Legislature, after considering the recommendation of Executive Council made under section 6 (a), approves in principle;
 - (g) the priority of each new business opportunity referred to in paragraph (f);
 - (h) a brief overview of each new business opportunity currently being researched, or which should be researched, by the economic development officer.

(2)The economic development officer must update the economic development plan on at least an annual basis to include any new business opportunities approved by the Legislature. (3) Despite the requirement of approval by the Legislature for an economic development plan under section 5, a new business opportunity is deemed to be included in the economic development plan if

- (a) Executive Council reasonably believes it is not in the best interests of the HUU-AY-AHT to delay the pursuit of the new business opportunity until a session of the Legislature considers Executive Council's recommendation under section 6 (a), and

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- (b) Executive Council, by unanimous resolution, includes the new business opportunity in the economic development plan after considering
 - (i) the recommendation of the Economic Development Committee made under section 10 (d), and
 - (ii) any comments and recommendations provided in accordance with section 21.
 - (4) The unanimous resolution by Executive Council under subsection (3) is deemed to be approval in principle of the new business opportunity by the Legislature.

HFNA 4/2019, s. 1(i).

Feasibility study

- 17** (1) The Economic Development Committee may, by resolution, direct the economic development officer to
- (a) prepare a feasibility study for a new business opportunity, or
 - (b) review a feasibility study prepared by or for a Huu-ay-aht business enterprise.
- (2) A feasibility study must include the following:
- (a) an assessment of the new business opportunity as compared to other new business opportunities in terms of likely return on investment, risks and sustainability;
 - (b) a description of the purpose of the new business opportunity, the goods or services to be offered and the potential location of the new business opportunity;
 - (c) an overview of the market for the goods or services to be offered, including target consumers, competitors and estimated market share;
 - (d) an estimate of the capital required to establish and maintain the sustainability of the new business opportunity and the planned source of that capital, including, where appropriate, potential business partners;
 - (e) an overview of the possible risks facing the new business opportunity and possible action that could be taken to mitigate those risks;
 - (f) an overview of employment and training opportunities for Huu-ay-aht citizens;
 - (g) a recommendation regarding the viability of the new business opportunity.
- (3) A direction under subsection (1) may include a requirement to consult with one or more operating boards when preparing the feasibility study.

Business plan

- 18** (1) If a new business opportunity has been approved in principle by the Legislature and included in the economic development plan, the Economic Development Committee may, by resolution, direct the economic development officer to
- (a) prepare a business plan for that new business opportunity, or
 - (b) review a business plan prepared by or for a Huu-ay-aht business enterprise.

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- (2) A business plan must include the following:
- (a) an assessment of the new business opportunity as compared to other new business opportunities in terms of likely return on investment, risks and sustainability;
 - (b) a description of the purpose of the new business opportunity, the goods or services to be offered and the potential location of the new business opportunity;
 - (c) a comprehensive analysis of the market for the goods and services to be offered, including target consumers, competitors and estimated market share;
 - (d) the capital required to establish and maintain the sustainability of the new business opportunity and the planned source of that capital, including, where applicable, the business partners that have expressed interest in participating in the new business opportunity and the capital they will contribute;
 - (e) a description of the corporate structure for the new business opportunity;
 - (f) an estimate of the profit or loss of the new business opportunity for the first 5 years, including projected financial statements and estimates of return on investment;
 - (g) an assessment of the possible risks facing the new business opportunity and possible action that should be taken to mitigate those risks;
 - (h) an outline of financial performance, employment and training targets for the first 5 years;
 - (i) a description of any other requirements necessary to begin or complete the new business opportunity such as the purchase, leasing, surveying, registration or rezoning of land or other approvals required from the Huu-ay-aht or another government.
- (3) A direction under subsection (1) may include a requirement to consult with one or more operating boards when preparing the business plan.

Approval of new Huu-ay-aht business enterprises

- 19** (1) If a new business opportunity has been approved in principle by the Legislature and included in the economic development plan and a business plan has been prepared in relation to that new business opportunity, after considering that business plan, including the estimated return on investment, and the recommendation of the Economic Development Committee made under section 10 (e), Executive Council may, by resolution, direct that the new business opportunity
- (a) be implemented, owned and operated by a new operating limited partnership and, if so directed, that resolution must include the business mandate of that new operating limited partnership,
 - (b) be implemented, owned and operated by an existing operating limited partnership and, if so directed, that resolution amends the business mandate of that existing operating limited partnership by adding a brief description of the nature of the new business opportunity to the existing business mandate of that operating limited partnership, or

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- (c) be left to be developed and owned or operated by a HUU-ay-aht citizen and may, if applicable, indicate which HUU-ay-aht citizen should be offered the opportunity.

HFNA 4/2019, s. 1(j).

Implementation of business plans

- 20**
- (1) The applicable operating limited partnership must, to the greatest extent possible, implement any new business opportunity approved by Executive Council under section 19 to be owned or operated by that operating limited partnership in accordance with the business plan for that new business opportunity.
 - (2) The annual plan for each operating limited partnership must include a description of any anticipated material variations to any applicable business plan for that operating limited partnership as it relates to the period covered by that annual plan.
 - (3) The reporting requirements under section 23 (h) must also include a requirement that each operating limited partnership report to the HFN Development Limited Partnership on any material variations to any applicable business plan for that operating limited partnership as it relates to the period covered by the report.

Huu-ay-aht consultation

- 21**
- (1) In this section “plan” means a new or updated economic development plan, feasibility study or business plan.
 - (2) Before recommending a plan under this Part, the Economic Development Committee must consult with
 - (a) the Finance Committee on the financial implications for the HUU-ay-aht,
 - (b) the Lands and Natural Resources Committee on land and natural resource implications for the HUU-ay-aht,
 - (c) other persons, organizations and authorities as directed by Executive Council, and
 - (d) the Ha’wiih Council.
 - (3) The Finance Committee and Lands and Natural Resources Committee may engage independent consultants, technical experts or other persons to advise the committee under subsection (2).
 - (4) The Economic Development Committee must include any recommendations of the Ha’wiih Council or committees provided under subsection (2) in an appendix to its recommendation on a plan.

HFNA 4/2019, s. 1(k).

PART 4 – GOVERNANCE AND FISCAL AGREEMENT

Executive Council authority

- 22** (1) Subject to this section and section 23, Executive Council must, by regulation, enter into a governance and fiscal agreement on behalf of the HUU-AY-AHT First Nations, as represented by government, with the HFN Development Limited Partnership, as represented by the HUU-AY-AHT Development Corporation, and each operating limited partnership, as represented by each applicable operating general partner.
- (2) Any amendment to the governance and fiscal agreement requiring the approval of the HUU-AY-AHT First Nations may be approved by resolution of Executive Council.
- (3) Executive Council may, by resolution, establish conditions precedent that must be fulfilled by one or more HUU-AY-AHT business enterprises before Executive Council enters into the governance and fiscal agreement under subsection (1).

Terms of agreement

- 23** The governance and fiscal agreement must contain terms addressing the following matters:
- (a) the process by which new operating limited partnerships are added as a party to, and will be bound by the terms of, the governance and fiscal agreement;
 - (b) the composition of, criteria for appointment and term of each member of each operating board;
 - (c) the circumstances under which a member of an operating board may be removed from office;
 - (d) major business decisions of HUU-AY-AHT business enterprises that must not be made without the approval of Executive Council;
 - (e) major business decisions of the operating limited partnerships that must not be made without the approval of the HFN DC board;
 - (f) annual planning requirements for HUU-AY-AHT business enterprises;
 - (g) reporting requirements that require the HFN Development Limited Partnership to report at least quarterly to Executive Council on its financial and operational circumstances;
 - (h) reporting requirements that require each operating limited partnership to report at least monthly to the HFN Development Limited Partnership on its financial and operational circumstances;
 - (i) written operational policies and procedures that must be developed, adopted and implemented by each operating board.

HFNA 4/2019, s. 1(l).

PART 5 – DIRECTION BY RESOLUTION

Direction by Executive Council

- 24** Subject to section 28, Executive Council may, by resolution, direct a HUU-AY-AHT business enterprise in respect of the following matters that relate to that HUU-AY-AHT

business enterprise if Executive Council is of the opinion that it is in the best interests of the Huu-ay-aht to do so:

- (a) a major decision, as that term is defined in the governance and fiscal agreement, of the HFN Development Limited Partnership or the Huu-ay-aht Development Corporation that is stated in that agreement to require approval of Executive Council;
- (b) a major decision, as that term is defined in the governance and fiscal agreement, of an operating limited partnership or an operating general partner that is stated in that agreement to require approval of Executive Council;
- (c) any other responsibilities of Executive Council set out in this Act, the constating documents of the HFN Development Limited Partnership or the Huu-ay-aht Development Corporation as it relates to a Huu-ay-aht business enterprise.

Consultation

- 25** Before giving a direction under section 24, Executive Council must consult with, and consider any recommendation from, the Economic Development Committee with respect to the content and effect of the direction.

Repealed

- 26** [Section repealed.]

HFNA 4/2019, s. 1(m).

Notification of implementation

- 27** On implementing a direction in accordance with this Part and completing all actions required by the direction to be taken, the Huu-ay-aht Development Corporation or operating general partner, as applicable, must notify Executive Council in writing that the direction has been implemented.

Restriction

- 28** No direction may be issued under section 24 that is
- (a) intended or likely to interfere with an operational decision, as that term is defined in section 41, or
 - (b) contrary to the annual plan or business mandate of the HFN Development Limited Partnership.

Implementation

- 29** The applicable HFN DC board or operating board must ensure that a direction given in accordance with this Part is implemented in a prompt and efficient manner and, if in so doing, the applicable HFN DC board or operating board acts in accordance with section 32, no member of the HFN DC board or operating board is liable for any consequences arising from the implementation of that direction.

HFNA 4/2019, s. 1(n).

Best interests

- 30** Compliance by the applicable HFN DC board or operating board with a direction given in accordance with this Part is deemed for all purposes to be in the best interests of the HFN Development Limited Partnership, the Huu-ay-aht Development Corporation, the operating limited partnership or operating general partner, as applicable.

HFNA 4/2019, s. 1(o).

PART 6 – DIRECTORS AND OFFICERS**Definitions**

- 31** In this Part, unless the context requires otherwise:
- “**board**” means an operating board or the HFN DC board, as applicable;
 - “**director**” means a member of an operating board or the HFN DC board, as applicable;
 - “**officer**” means an officer of the Huu-ay-aht Development Corporation or an operating general partner, as applicable.

HFNA 4/2019, s. 1(p).

Duty of care of directors and officers

- 32** Every director and officer, in exercising his or her powers or performing his or her duties, must
- (a) act honestly and in good faith with a view to the best interests of the applicable Huu-ay-aht business enterprise, and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply

- 33** Every director and officer must comply with this Act, the regulations, the constating documents and policies of the applicable Huu-ay-aht business enterprise or any subsidiary and any direction given to the applicable Huu-ay-aht business enterprise by Executive Council in accordance with Part 5.

Reliance on statements

- 34** A director or an officer is not liable for a breach of his or her duty under section 32 or 33 if he or she relies in good faith on
- (a) financial statements of the applicable Huu-ay-aht business enterprise represented to him or her by an officer of that Huu-ay-aht business enterprise or in a written report of the auditor of that Huu-ay-aht business enterprise as fairly reflecting the financial condition of that Huu-ay-aht business enterprise, or
 - (b) a report of a lawyer, accountant, engineer, appraiser or other person whose position or profession lends credibility to the statement that person has made.

Disclosure of interest in contract

- 35** A director or an officer who is
- (a) a party to a material contract or proposed material contract with the applicable Huu-ay-aht business enterprise, or
 - (b) a director or an officer of, or has a material interest in, any person who is a party to a material contract or proposed material contract with that business,
- must disclose in writing to that Huu-ay-aht business enterprise, or request to have entered in the minutes of a meeting of the board of that Huu-ay-aht business enterprise, the nature and extent of his or her interest in the material contract or proposed material contract.

Time for disclosure

- 36** (1) The disclosure required by section 35 must be made,
- (a) in the case of a director, including a director who is also an officer,
 - (i) at the meeting of the board of the applicable Huu-ay-aht business enterprise at which the contract is first considered,
 - (ii) if the director was not then interested in the contract, at the first meeting of the board of that Huu-ay-aht business enterprise after he or she becomes interested in the contract,
 - (iii) if the director becomes interested after the contract is made, at the first meeting of the board of that Huu-ay-aht business enterprise after he or she becomes interested in the contract, or
 - (iv) if the director was interested in the contract before becoming a director, at the first meeting of the board of that Huu-ay-aht business enterprise after he or she becomes a director, or
 - (b) in the case of an officer who is not a director,
 - (i) immediately after he or she becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the board of the applicable Huu-ay-aht business enterprise,
 - (ii) if the officer becomes interested after the contract is made, immediately after he or she becomes interested in the contract, or
 - (iii) if the officer was interested in the contract before becoming an officer, immediately after he or she becomes an officer of that Huu-ay-aht business enterprise.
- (2) If a material contract or proposed material contract is one that, in the ordinary course of business for the applicable Huu-ay-aht business enterprise carrying out its business mandate, would not require approval by the board of that Huu-ay-aht business enterprise, a director or an officer
- (a) must disclose in writing to that Huu-ay-aht business enterprise, or
 - (b) request to have entered in the minutes of a meeting of the board of that Huu-ay-aht business enterprise,
- the nature and extent of his or her interest in a material contract or proposed material contract immediately after the director or officer becomes aware of the contract or proposed contract.

Continuing disclosure

- 37** For the purposes of this Part, a general notice to a board by a director or an officer declaring that he or she is a director or an officer of, or has a material interest in, a person and is to be regarded as interested in any contract made with that person, is a sufficient declaration of interest in relation to any contract made with that person.

Obligation to assist auditor

- 38** (1) On demand of the auditor of a Huu-ay-aht business enterprise, the present or former directors, officers, employees or agents of that Huu-ay-aht business enterprise must provide
- (a) information and explanations, and
 - (b) access to records, documents, books, accounts and vouchers of the Huu-ay-aht business enterprise or any of its subsidiaries
- that the auditor reasonably considers necessary or advisable to enable him or her to prepare any report required under this Act, under the governance and fiscal agreement or by a board.
- (2) On demand of the auditor of a Huu-ay-aht business enterprise, the directors of the Huu-ay-aht business enterprise must
- (a) obtain from the present or former directors, officers, employees or agents of any subsidiary of that Huu-ay-aht business enterprise the information and explanations the auditor reasonably considers necessary or advisable to enable him or her to prepare any report required
 - (i) under this Act,
 - (ii) under the governance and fiscal agreement, or
 - (iii) by a board.
 - (b) provide the auditor with the information and explanations obtained under paragraph (a).
- (3) The auditor of a Huu-ay-aht business enterprise may reasonably rely on any report of any other auditor of a Huu-ay-aht business enterprise.

Obligation to indemnify

- 39** The Huu-ay-aht First Nations may, in accordance with any regulations, and subject to the extent of indemnification permitted by the laws governing the applicable Huu-ay-aht business enterprise, indemnify a present or former director or officer and his or her heirs and legal representatives against all costs, charges and expenses, including an amount paid to settle any action or satisfy any judgment, that are reasonably incurred by him or her in respect of any civil, criminal, administrative or investigative action or proceeding to which he or she is a party because of being or having been a director or an officer if he or she
- (a) acted honestly and in good faith with a view to the best interests of the applicable Huu-ay-aht business enterprise, and
 - (b) in the case of any criminal or administrative action or proceeding that is enforced by a monetary penalty, believed on reasonable grounds that the director's or officer's conduct was lawful.

Regulations under this Part

- 40** Executive Council may make regulations under this Part
- (a) respecting indemnification and advances under this Part, including terms and conditions governing them,
 - (b) defining, for the purposes of this Part, the meaning of any word or expression used in it but not defined in this Act,
 - (c) prescribing circumstances in which a director or an officer is presumed not to have fulfilled his or her duties to a Huu-ay-aht business enterprise, and
 - (d) respecting the determination of the amounts to be paid as indemnification or advances under this Part.

PART 7 –PROHIBITIONS**Definitions**

- 41** (1) In this Part:
- “interfere with”** means interfere with or attempt to influence, directly or indirectly, by promises, threats or by any other means, including
- (a) offer to pay, give, lend or procure an inducement, or give a reward or other benefit, to or for any person to have an operational decision made, not made, or be made in a certain manner, or
 - (b) intimidate, impede, attempt to persuade, punish or attempt to compel by threats, abduction, duress or fraudulent means, an operational decision to be made, not made, or made in a certain manner;
- “operational decision”** means a day-to-day management or administrative decision typically made by management of a trade or business engaged in primarily for the purposes of profit including
- (a) hiring, promotion, demotion, remuneration, discipline or termination of employment of personnel,
 - (b) assignment of duties or powers to personnel,
 - (c) acquisition of products or services in an amount that does not exceed the limits set out in the governance and fiscal agreement for the acquisition of products or services by a Huu-ay-aht business enterprise,
 - (d) acquisition of capital assets in an amount that does not exceed the limits set out in the governance and fiscal agreement for the acquisition of capital assets by a Huu-ay-aht business enterprise,
 - (e) disposition of capital assets or sale of products in the normal course of business in an amount that does not exceed the limits set out in the governance and fiscal agreement for the disposition of capital assets or sale of products in the normal course of business by a Huu-ay-aht business enterprise,
 - (f) the provision of services in the normal course of business that are within the business mandate of the Huu-ay-aht business enterprise,

- (g) the acquisition of credit facilities or loans in an amount that does not exceed the limits set out in the governance and fiscal agreement for the acquisition of credit facilities or loans by a Huu-ay-aht business enterprise,
- (h) the opening of accounts at a bank or credit union in accordance with the governance and fiscal agreement, and
- (i) the preparation of an annual plan;

“senior member of government” means a government member, the Executive Director, a director of a department or similar division of Huu-ay-aht administration and, for certainty, includes the economic development officer.

- (2) For certainty, “interfere with” and “operational decision” do not include
 - (a) a decision or the making of a decision,
 - (b) advice or the giving of advice,
 - (c) approve or giving approval,
 - (d) not approving or withholding approval, or
 - (e) a recommendation or the making of a recommendation,

that forms part of, or is necessarily ancillary or incidental to, any power, duty or function of a senior member of government given under this Act, any other Huu-ay-aht legislation or the governance and fiscal agreement, provided that duty or function is performed or power is exercised in good faith and for a purpose other than to interfere with an operational decision.

Separation of politics and business

- 42** A senior member of government must not interfere with
- (a) an operational decision of a Huu-ay-aht business enterprise, or
 - (b) a decision made by an officer, manager or employee of a Huu-ay-aht business enterprise made within the scope of their authority in the normal course of business.

Prohibited and permitted businesses

- 43** (1) Except as otherwise provided in this Act or a regulation under this Act, a Huu-ay-aht body other than a Huu-ay-aht special investment body must not
- (a) carry on a business as a proprietor or trustee,
 - (b) acquire any interest in a partnership as a general partner, or
 - (c) act in the capacity of trustee in respect of any property used or held in the course of carrying on a business.
- (2) If approved by Executive Council by resolution a Huu-ay-aht body may engage in a business that
- (a) is necessarily ancillary or incidental to the provision of programs, services or other functions of government,
 - (b) is not a trade or business engaged in primarily for the purposes of profit and, in the opinion of Executive Council at any time, cannot result in any material liability or otherwise expose the property or resources of the Huu-ay-aht First Nations to any material risk, or

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- (c) derives income solely because of granting a lease or licence in, or in respect of
- (i) an interest in, or licence in relation to, Huu-ay-aht Lands or resources on or under Huu-ay-aht Lands,
 - (ii) any right of the Huu-ay-aht First Nations referred to in Chapter 10 *Fisheries* of the Treaty, or
 - (iii) any other property of the Huu-ay-aht First Nations.

HFNA 4/2019, s. 1(q).

PART 8 – GENERAL

Power to make regulations

- 44** (1) Executive Council may make regulations referred to in section 39 of the *Interpretation Act*.
- (2) Without limiting subsection (1), Executive Council
- (a) must make regulations under section 22 to enter into a governance and fiscal agreement on behalf of the Huu-ay-aht First Nations with the HFN Development Limited Partnership and each operating limited partnership, and
 - (b) may make regulations
 - (i) amending or repealing regulations made under the *Financial Administration Act* to give effect to this Act and regulations, and
 - (ii) in respect of the tribunal's jurisdiction and powers to resolve disputes arising under the governance and fiscal agreement.

Termination of agreement after referendum

- 45** (1) Executive Council may hold a referendum under section 4 of the *Referendum and Recall Act* to determine the opinion of Huu-ay-aht citizens on whether to terminate the governance and fiscal agreement.
- (2) If at least 60% of eligible voters vote for termination of the agreement under subsection (1), Executive Council on behalf of Huu-ay-aht First Nations may terminate the agreement after
- (a) delivering written notice of the referendum result to the other signatories to the agreement, and
 - (b) 3 months have elapsed since the last day of delivery of the notice under paragraph (a).

Offences

- 46** (1) A Huu-ay-aht business enterprise that contravenes section 15 (2) commits an offence and is subject to proceedings under Division 4 of Part 3 of the *Offence and Law Enforcement Act* and liable to a fine not exceeding \$10 000.

- (2) A director or an officer of a Huv-ay-aht business enterprise that knowingly authorizes an action of the Huv-ay-aht business enterprise that contravenes section 15 (2) commits an offence and is subject to proceedings under Division 4 of Part 3 of the *Offence and Law Enforcement Act* and liable to a fine not exceeding \$10 000.
- (3) An individual who contravenes section 32, 33, 35, 38 (1) or (2) or 42 commits an offence is subject to proceedings under Division 4 of Part 3 of the *Offence and Law Enforcement Act* and liable to a fine not exceeding \$10 000.

PART 9 – [Repealed]

HFNA 4/2019, s. 1(r).

SCHEDULE

[Repealed]

HFNA 4/2019, s. 1(s).