

INDIGENOUS SERVICES CANADA

NOTICE OF REFERENDUM

TAKE NOTICE THAT a referendum vote will be held by secret ballot to determine if a majority of the participating voters of the Esquimalt (“Esquimalt Nation”) are in favour of, and approve of:

a Designation of all of Lot 62 of Esquimalt Indian Reserve as shown on Plan of Survey 109166 CLSR BC, deposited in the Canada Lands Surveys Records in Ottawa, Ontario, containing approximately 0.481 hectares (1.188 acres), as described in Annex “A” attached to this Notice of Referendum.

AND FURTHER TAKE NOTICE THAT the question to be submitted to the voters is:

Are you in favour of, and do you approve of, the Designation of Lot 62 for the purposes set out in Annex “A” to the Notice of Referendum signed by the Electoral Officer and dated June 8, 2021?

AND FURTHER TAKE NOTICE THAT the referendum will be held on July 21, 2021, and the voters may vote between the hours of 9:00 am and 8:00 pm, local time, at a polling station located at:

1201 Kosapsum Crescent, Victoria, British Columbia

AND FURTHER TAKE NOTICE THAT:

1. Voters may vote either by a mail-in ballot or in person at a polling station, but not both.
2. A mail-in ballot package (including a Notice of Referendum, a mail-in ballot, and an information package) will be mailed or delivered to voters who reside on and off the reserve and for whom an address has been provided by Esquimalt Nation to the electoral officer.
3. If a voter was mailed, delivered or provided a mail-in ballot, the voter may only vote in person at a polling station if:
 - a) the voter returns the mail-in ballot to the electoral officer or deputy electoral officer; **or**

- b) where the voter has lost the mail-in ballot, the voter provides the electoral officer or deputy electoral officer with a written affirmation that the voter has lost the mail-in ballot, signed by the voter in the presence of the electoral officer, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.

AND FURTHER TAKE NOTICE THAT an information meeting will be held at the date, time, and location shown below:

1201 Kosapsum Crescent, Victoria, British Columbia, on July 20, 2021, from 5:00 p.m. to 7:00 p.m.

AND FURTHER TAKE NOTICE THAT a list of voters is being posted at the same time and at the same locations as this Notice of Referendum. Upon request, the electoral officer or deputy electoral officer will confirm whether or not the name of a person is on the voters list.

An application for a change to the voters list may be made to the electoral officer at the address noted below. For further information, please see the document entitled "Voting and the List of Voters" attached to the voters list.

DATED at Vancouver, British Columbia, on June 8, 2021.



Chelsea H. Cameron, Electoral Officer
Indigenous Services Canada
600 - 1138 Melville Street
VANCOUVER BC V6E 4S3
Telephone: (604) 364-8026
Fax: (604) 775-7149

DESIGNATION FOR LEASING

BACKGROUND:

- A. Esquimalt Indian Reserve (the “Reserve”) in the Province of British Columbia is a reserve within the meaning of the *Indian Act* and has been set apart for the use and benefit of Esquimalt (“Esquimalt Nation”), a band within the meaning of the *Indian Act*.
- B. Esquimalt Nation wants to designate certain lands in the Reserve to Her Majesty in right of Canada (“Canada”) for the purposes set out in this document (the “Designation”).
- C. By Resolution, dated October 14, 2020, Esquimalt Nation’s Band Council (“Council”) requested that the Minister of Indigenous Services order a referendum to determine if the majority of Esquimalt Nation’s electors voting at the referendum are in favour of the proposed Designation.
- D. The Minister of Indigenous Services ordered a referendum under section 3(1) of the *Indian Referendum Regulations* on October 30, 2020, to determine if the majority of Esquimalt Nation’s electors voting at the referendum are in favour of the proposed Designation.
- E. The First Nation wishes to develop affordable Indigenous housing on the Reserve through a British Columbia government affordable housing program, which requires that the entity managing the housing have at least a leasehold interest in the land for housing purposes.
- F. On _____, a majority of Esquimalt Nation’s electors voting at the referendum assented to this Designation in accordance with the *Indian Act* and the *Indian Referendum Regulations*.

TERMS OF THE DESIGNATION:

Lands Being Designated

1. Under Subsection 38(2) of the *Indian Act*, Esquimalt Nation hereby designates by way of surrender that is not absolute, to Canada, all of the rights and interests of Esquimalt Nation and its members required to carry out the purposes of this Designation in those parts of the Reserve described as follows:

In the Province of British Columbia
In Esquimalt District
In Esquimalt Indian Reserve

All of Lot 62 shown on Plan 109166, recorded in the Canada Lands Surveys Records in Ottawa, containing about 0.481 hectares (1.188 acres),

(the “Designated Lands”).

2. The Designated Lands exclude all mines and minerals, whether precious or base, solid, liquid or gaseous.
3. The Designated Lands are subject to all third party encumbrances on them at the date of this Designation, which include:
 - a. a permit in favour of British Columbia Hydro and Power Authority and Telus Communications Inc., registered in the Indian Land Registry System under registration number 6105579.

Duration of Designation and Leases

4. This Designation will start on the date that the Minister of Indigenous Services accepts it and will continue for a term of 99 years.
5. The term of any lease or other interest granted or issued under this Designation will end at least one day before the end of the Designation and will be for no more than 99 years.

Projects on the Designated Lands

6. The Designated Lands may be leased by Canada for the purpose of providing below market rental housing for Indigenous households and their families (the “Affordable Housing Project”) and on terms consistent with this Designation.
7. Any such lease may allow assignments, subleases, and mortgages and may be used as security to obtain financing and to secure other obligations related to the Designated Lands or otherwise.
8. Canada may grant or issue easements, permits, rights-of-way, licences of occupation, or other interests that may be necessary for, or in aid of, the primary purposes of any lease or of any uses of the Reserve adjacent to the Designated Lands.
9. Canada may enter into any reasonable agreements in aid of the primary purposes of any lease.
10. The terms and conditions of any lease, interest, or agreement granted, issued, entered into, or amended by Canada under this Designation require the consent of Council by way of resolution.
11. Any resolution given to Canada from Council under this Designation constitutes conclusive evidence to Canada that the resolution is valid and the information contained in it is true.

Rent

12. An appraisal of the Designated Lands was prepared by D.R. Coell & Associates and dated June 10, 2020. It appraised the fair market rent of the highest and best use of the Designated Lands at \$3,343,000.00 for the entire term of the designation (the “Appraised Value”).
13. As the purpose of the Affordable Housing Project is to provide social benefits to Indigenous households and their families, rent for any lease granted in accordance with paragraph 6 must be nominal, regardless of whether the lessee is an Esquimalt Nation entity or not, and fees for any ancillary interests issued in accordance with paragraph 8 may be nominal, in the sole discretion of Council.

Acknowledgments of the First Nation

14. Esquimalt Nation acknowledges that a lease for the Affordable Housing Project will not provide any rental income to Esquimalt Nation. As such, Esquimalt Nation may be foregoing approximately the Appraised Value of the Designated Lands for the term of any lease for the Affordable Housing Project if the lands were to be used for commercial purposes instead. Esquimalt Nation accepts this potential loss of rental income because the Affordable Housing Project is intended to facilitate a non-profit lessee providing affordable housing of benefit to Indigenous households and their families.
15. Other benefits for Esquimalt Nation include: that any lease for the Affordable Housing Project will give priority to Esquimalt Nation member households; access to funding options that would not otherwise be available; cultural, social and economic vitality on the Reserve; operation by an independent, non-profit housing operator for all or a portion of the Designation term, which may improve impartiality in decision-making with respect to the Project, actual or perceived; and at the end of any lease for the Affordable Housing Project, Esquimalt Nation or an Esquimalt Nation entity may take over operation of the Project.
16. Esquimalt Nation further acknowledges that if the lessee providing affordable housing uses the lease as security for financing, such as by granting a mortgage, and the lessee subsequently does not make the required payments or otherwise meet its obligations required under the financing agreement, then the lender could cause the lease to be assigned to another entity to manage the Affordable Housing Project. The lease will however, remain restricted to the purposes of the Affordable Housing Project.

Revocation of Designation

17. Council may, by way of resolution, request that Canada’s Minister responsible for accepting designations under the *Indian Act* revoke this Designation over the whole or any part of the Designated Lands, as long as there are no existing rights or interests issued under this Designation on the affected Designated Lands.

issued under this Designation on the affected Designated Lands.

Amendment of Designation

- 18. Council may, by way of resolution, request that Canada’s Minister responsible for accepting designations under the *Indian Act* amend this Designation to correct a typographical or manifest error, but, if there are any rights or interests existing under this Designation, then, either the rights or interests must not be affected by the amendment, or the holders of the rights or interests must have agreed to the amendment.

Recommendation of Designation

- 19. Under section 39.1 of the *Indian Act*, Council hereby recommends to the Minister of Indigenous Services the acceptance of this Designation.

This Designation is executed on ,
20.

SIGNED AND DELIVERED BY
Esquimalt Nation’s Chief and Council
at a duly convened meeting in the
presence of:

Chief Councillor Robert Thomas

(Signature of Witness as to all
signatures)

Councillor Barbara Lecoy

(Name of Witness)

Councillor John Thomas

(Position / title)

Councillor Millie Modeste

Councillor Rene Thomas

INFORMATION DOCUMENT

Designation for Affordable Housing Lease

Chief and Council (the “Council”) of the Esquimalt (“Esquimalt Nation”) are providing this information document as an overview of the proposed designation of lands in Esquimalt Indian Reserve (“Reserve”). This document explains the designation process and provides information about the proposed project.

WHAT IS A DESIGNATION?

Canada holds legal title to the Reserve for Esquimalt Nation. Designating lands in the Reserve allows Canada to lease them to non-members (usually a company, including a company owned by Esquimalt Nation) for Esquimalt Nation’s benefit.

A designation is technically a “non-absolute surrender” under a process set up by the *Indian Act* and the *Indian Referendum Regulations*. **Designated lands do not lose their reserve status.** They remain part of the Reserve and are only available to be used for the purposes authorized by the designation and only for the limited period established by the designation. Valid Esquimalt Nation by-laws apply to designated lands and income earned by Esquimalt Nation or its members on designated lands is usually not taxable.

Council, with the assistance of its lawyers and advisors, will do most of the negotiating of legal documents for projects to be developed on the designated lands, though any documents that need to be signed by the legal title holder (Canada) will need to be on terms acceptable to both Canada and the Council.

DETAILS OF THIS DESIGNATION

The proposed Designation Document is attached to the Referendum Notice and is included in the mail-out package to eligible on-reserve and off-reserve electors. It has more detail than this Information Document as this is meant to be more of an overview.

Which Lands are Being Designated?

The proposed designated lands are shown on the map attached to this Information Document and the legal description for the lands is included in the Designation Document.

How Long will the Designation Last?

The lands will be designated for 99 years, starting on the date that the Minister of Indigenous Services accepts the designation. It can end earlier on some or all the designated lands if there are no non-members using the designated lands, Council requests that the designation be revoked over those lands, and Canada’s responsible Minister accepts such revocation.

What can the Lands be used for?

Lot 62 may be leased for the purpose of providing below market rental housing for Indigenous households and their families. (the “Affordable Housing Project”).

What Money will Esquimalt Nation Receive?

By an appraisal dated June 10, 2020, fair market rent for a 99 year pre-paid lease of Lot 62 was determined to be \$3,343,000.

Canada may issue leases for the Affordable Housing Project for less than fair market rent.

Council proposes that leases for the Affordable Housing Project will not be for fair market rent, but will instead be a “nominal” rent, which means that Canada will not collect any rent or credit any rental amount to Esquimalt’s revenue account. Council anticipates that, instead, Esquimalt Nation will receive social benefits. Any of the designated lands leased for the Affordable Housing Project comes with some risk that Esquimalt will ultimately not receive as much money for the designated lands as it would have received had there been a lease for fair market value. Canada requires Esquimalt to acknowledge this risk and other risks around leases for less than fair market rent. These acknowledgements are set out in the Designation Document.

What are the General Benefits of the Designation?

Council expects that Esquimalt Nation will benefit from the proposed designation by the development of affordable housing infrastructure to meet the growing housing needs of the community, and all the social benefits that flow from affordable housing.

Will there be an Environmental Review of Projects on the Designated Lands?

A Stage 1 Preliminary Site Investigation Report was prepared for Lot 62 by Northwest Environmental Group Ltd and dated April 29, 2020.

A Copy of this report is available at the Band Office.

THE DESIGNATION PROCESS

A designation vote is conducted under the rules set out in Sections 37 to 41 of the *Indian Act* and under the process and requirements set out in the *Indian Referendum Regulations*, which includes setting out who is entitled to vote at the designation. You may contact the Electoral Officer listed below to determine if you are on the Electors’ List and the Electoral Officer can add or remove electors from the list in compliance with the legislation.

Electors who live off-reserve are entitled to vote. Information packages (containing information about the designation and a mail-in ballot) are sent to each eligible on-reserve and off-reserve elector for whom an address is known.

Information Meeting

An information meeting for members will be held at the Big House, located at 1201 Kosapsum Crescent, Victoria, British Columbia, on July 20, 2021, 5:00 p.m. to 7:00p.m., as set out in the Notice of Referendum, to assist the electors in making an informed decision on the designation.

Please note electors may access the information meeting on the Zoom platform using the following meeting details:

Meeting ID: 830 6424 2822 **Password:** 556434

OR

Dial-in option available for electors located in Canada

Telephone: (778) 907-2071 or (647) 558-0588

Meeting ID: 830 6424 2822

Date of Vote

The designation vote will be held on July 21, 2021, at the Big House, located at 1201 Kosapsum Crescent, Victoria, British Columbia from 9:00a.m. to 8:00p.m.

A Successful Vote

For a designation to succeed, a majority of those eligible electors who participate in the designation vote must vote in favour of it.

Further Information

For further information on the proposed designation contact:

Esquimalt Nation contact:

Katie Hooper, Executive Director
Band Administration office
Phone (250) 381 7861 Ext 114

Electoral Officer:

Chelsea H. Cameron
Indigenous Services Canada
600 – 1138 Melville Street, Vancouver, BC V6E 4S3
Phone (604) 364-8026

Survey of the Proposed Scenupin Road Lot 62 Designation

