

**WESTBANK FIRST NATION
ARCHAEOLOGY DIRECTIVE**

December 10, 2018

Confidential as Approved by Council

WHEREAS since time immemorial, the *Syilx* Peoples have lived in the Okanagan and adjoining valleys and have exercised jurisdiction and ownership of *Syilx* Territory;

WHEREAS the *Syilx* Peoples are a historical community of Peoples sharing language, customs, traditions, experience, territory and resources at the time of first contact and the Crown's assertion of sovereignty, and presently;

WHEREAS the *Syilx* Peoples hold *Syilx* Title and Rights throughout *Syilx* Territory, which are recognized and affirmed by section 35 of the *Constitution Act, 1982*, and which have never been ceded, surrendered or relinquished by the *Syilx* Peoples;

WHEREAS the *Syilx* Peoples exercise rights as recognized in UNDRIP;

WHEREAS as part of the *Syilx* Peoples, Westbank and Westbank Members have and exercise *Syilx* Title and Rights, and rights under UNDRIP, within *Syilx* Territory;

WHEREAS the *Syilx* Peoples have and continue to utilize and benefit from the natural resources within *Syilx* Territory;

WHEREAS within *Syilx* Territory, Westbank shares in the responsibility to take care of *Syilx* Territory and, in accordance with the *Syilx* Decision-Making Protocol, Westbank is the caretaker of the lands in and about the area depicted as the Westbank Area of Responsibility;

WHEREAS throughout the Westbank Area of Responsibility there are significant Archaeological Resources;

WHEREAS within the Westbank Area of Responsibility, Westbank has jurisdiction over Westbank Lands pursuant to the Westbank First Nation Self-Government Agreement;

WHEREAS under Part XV of the Westbank First Nation Self-Government Agreement, Westbank has jurisdiction over culture and language which includes law- and policy-making authority concerning the management, preservation and protection of Archaeological Sites on Westbank Lands including the issuance of permits and licenses for excavation of Archaeological Sites;

WHEREAS Westbank affirms its sacred obligations and duties to their *səsfaws* and are solely responsible for the care and protection of the *səsfaws*;

WHEREAS when the *səsfaws* are found, Westbank takes immediate steps to exercise their right to protect them, so Westbank must have immediate access to the *səsfaws* and they must not be disturbed until *Syilx* Okanagan Nation elders, knowledge-keepers, or their designated representatives have ensured that proper protocols have been observed and carried out; and

WHEREAS on lands within the Westbank Area of Responsibility that are not subject to the Westbank First Nation Self-Government Agreement there are Archaeological Resources that need to be managed, preserved and protected by Westbank First Nation.

NOW THEREFORE, the Council of Westbank First Nation adopts the following:

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PART I: DEFINITIONS AND INTERPRETATION

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Directive:

"Aboriginal Interests and Use Study" means a study that involves but is not limited to examination of past, present and anticipated future use of an area by Westbank or Westbank Members and the collection of information and knowledge about the area including but not limited to traditional use, traditional and modern environmental knowledge, cultural use, wildlife and plant habitat, and proposed future use;

“Activity” means any legislation, regulation, policy, procedure, plan, tenure, grant, license, permit, restriction, amendment, approval, authorization, transfer, transaction, operation, development, ground alteration or other action or proposed action which may have an impact on an Archaeological Resource;

“Ancestral Remains” means human remains that are likely of Aboriginal ancestry and are not the subject of a police or coroner investigation, and includes *sēsƿaws*;

"Applicant" means the Crown, Westbank, other band, First Nation or Indigenous group, or Third Party proposing an Activity on Crown Lands within the Westbank Area of Responsibility that is the subject of an Application;

"Application" means a written request received from an Applicant under the Westbank Crown Lands Referral Directive regarding an Activity on Crown Lands, including a request for a Westbank Heritage Investigation Permit and, for the purposes of Part V, includes a direction from the Manager of Title and Rights under section 7.3;

“Archaeological Artifact” means any portable, physical evidence used, made or modified by humans, including tools, beads, and pottery;

“Archaeological Feature” means any non-portable element of an Archaeological Site, including but not limited to cultural depressions, roasting platforms, and culturally modified trees;

“Archaeological Impact Assessment” means a comprehensive archaeological study, involving full scale archaeological excavation;

“Archaeological Overview Assessment” means an office review of all relevant documents related to the proposed Activity to determine the potential impact on Archaeological Resources within the proposed Activity area;

“Archaeology Project Coordinator” means the person directed by the Archaeology Supervisor to carry out the duties and responsibilities set out in this Directive;

“Archaeological Resource” means an Archaeological Site, Archaeological Artifacts, Archaeological Features, Ancestral Remains, Burial Site, or Cultural Heritage Material;

“Archaeological Site” means a geographical location where there are or may be Archaeological Artifacts or Archaeological Features;

“Archaeology” means the sub-discipline of anthropology involving the study of the human past through its material remains;

“Archaeology Supervisor” means the person directed by the Westbank Manager of Title and Rights to carry out the duties and responsibilities set out in this Directive;

“Burial Site” means a geographical location where Ancestral Remains or Funerary Objects are found, or where Ancestral Remains or Funerary Objects are suspected to have been located, but does not include a cemetery as defined under provincial legislation;

“Crown” means the Crown in right of Canada or British Columbia, their cabinets, ministries, Crown corporations, agencies, employees and contracted agents, representatives and delegates for the purpose of the duties of consultation and accommodation;

“Crown Lands” means lands within the Westbank Area of Responsibility where title is registered in the name of the Crown, whether or not it is covered by water and, for greater certainty, does not include Westbank Lands as defined in the Westbank First Nation Self-Government Agreement;

“Cultural Advisor” means a Westbank Member of good character, credibility and reputation with knowledge of *Syilx* culture and traditions;

“Cultural Heritage Material” means and includes cultural materials, areas of historical significance, cultural gathering sites, sacred and spiritual sites, medicinal plants, traditional foods, and traditional use areas;

“Elder” means a Westbank Member aged 55 or over of good character, credibility and reputation with knowledge of *Syilx* culture and traditions;

“Funerary Objects” means items that, as a part of a death rite or ceremony, are reasonably believed to have been placed with Ancestral Remains either at or after the time of death;

“*Heritage Conservation Act*” means the *Heritage Conservation Act*, R.S.B.C. 1996, c. 187;

“Heritage Investigation Permit” means a permit issued by the Archaeology Supervisor, in accordance with Part V, and in the form as set out at Appendix “2”;

“Okanagan Nation” means and includes the Okanagan Indian Band, Westbank, the Upper Nicola Band, the Penticton Indian Band, the Osoyoos Indian Band, the Upper Similkameen Indian Band and the Lower Similkameen Indian Band;

“Preliminary Field Reconnaissance” means an initial field inspection of the area of the proposed Activity;

“səsfaws” means, in the *Syilx* language, ancient ancestors;

“*Syilx*” or “*Syilx* Peoples” means the community of Okanagan Nation peoples, including Westbank, sharing language, customs, traditions, experience, territory and resources at the time of first contact and presently;

“*Syilx* Territory” means the territory held by the *Syilx* Peoples, as depicted on the map attached as Schedule “A”;

“*Syilx* Title and Rights” means the Aboriginal title and rights held collectively by the *Syilx* Peoples;

“Third Party” means any individual, corporation, firm, municipality, regional district, industry, society or non-governmental organization carrying on or proposing to carry on an Activity within the Westbank Area of Responsibility;

“UNDRIP” means the *United Nations Declaration on the Rights of Indigenous Peoples*;

“Westbank” means Westbank First Nation;

“Westbank Area of Responsibility” means the geographic area within *Syilx* Territory as shown on the map attached as Schedule “B” to this Directive;

“Westbank First Nation Repository” means the location where *Syilx* Archaeological Artifacts are collected, preserved and restored according to best museum practices; and

“Westbank Member” means a person who is a member of Westbank in accordance with Part III of the *Westbank First Nation Constitution*.

- 1.2 Unless otherwise provided in this Directive, words, expressions and rules of construction used in this Directive have the same meaning as in the *Westbank First Nation Constitution* or the Westbank Crown Lands Referrals Directive, as applicable.
- 1.3 Words in the singular include the plural and words in the plural include the singular.
- 1.4 The Schedules and Appendices attached to this Directive form part of and are integral to this Directive.
- 1.5 This Directive shall be consistent with and exercised in accordance with any relevant protocols or archaeological policies of the *Syilx* Peoples.

- 1.6 The Archaeology Supervisor may delegate any of their duties in this Directive to the Archaeology Project Coordinator.

PART II: PURPOSE AND SCOPE

2.0 PURPOSE

- 2.1 The purpose of this Directive is to ensure the protection and conservation of Archaeological Resources on Crown Lands.
- 2.2 This Directive is an exercise of and is consistent with the rights of Westbank and the *Syilx* Peoples under UNDRIP and section 35 of the *Constitution Act, 1982*.

3.0 APPLICATION AND SCOPE

- 3.1 This Directive applies to all Crown Lands.
- 3.2 This Directive establishes
- (a) a process with respect to the consideration of any proposed Activity on Crown Lands that may impact an Archaeological Resource; and
 - (b) guidelines for mitigating the potential impact on Archaeological Resources of any proposed Activity.
- 3.3 No person may carry out an Activity on Crown Lands except through compliance with this Directive and the Westbank Crown Lands Referral Directive.

PART III: MONITORING AND DISCOVERIES

4.0 MONITORING AND INVESTIGATIONS

- 4.1 The Archaeology Supervisor is authorized and directed to, on an ongoing basis:
- (a) monitor known and suspected Archaeological Resources on Crown Lands;
 - (b) investigate suspected Archaeological Resources and report their findings, as appropriate, to the Manager of Title and Rights, to the Referrals Officer, or to Council;
 - (c) oversee the work of other archaeological personnel working on Crown Lands;
 - (d) prevent, mitigate, investigate and document any damage to Archaeological Resources; and

(e) amend or replace the Appendices to this Directive.

4.2 In addition to their duties and authorities set out at section 4.1, the Manager of Title and Rights may direct the Archaeology Supervisor to conduct any other activities related to Archaeological Resources.

5.0 DISCOVERIES

5.1 Where any person discovers a known or suspected Archaeological Artifact or Archaeological Feature on Crown Lands,

(a) the person shall immediately notify the Archaeology Supervisor;

(b) all work and activity in the area shall immediately cease; and

(c) no items shall be disturbed, or removed from the site.

5.2 Upon receiving a notification under paragraph 5.1(a), the Archaeology Supervisor shall, as soon as practicable,

(a) visit the site;

(b) make a record of the location of the site and all Archaeological Resources within or near the site;

(c) assess the potential significance of the site and any Archaeological Resources within or near the site;

(d) determine any mitigative steps required to protect the site and any Archaeological Resources within or near the site;

(e) determine whether to notify the provincial Archaeology Branch; and

(f) report their activities, findings and recommendations to the Manager of Title and Rights and, as the Archaeology Supervisor deems appropriate, to the Third Party.

5.3 Westbank has the right of first refusal to acquire an Archaeological Artifact found on or originating from the Area of Responsibility.

PART IV: ANCESTRAL REMAINS AND BURIAL SITES

6.0 ANCESTRAL REMAINS AND BURIAL SITES

6.1 The following general principles apply to Ancestral Remains or Burial Sites found on Crown Lands:

- (a) the Ancestral Remains and Burial Site shall not be moved or disturbed, subject to paragraph (c);
- (b) the Archaeology Supervisor may consult with an Elder or Cultural Advisor, as Archaeology Supervisor deems appropriate;
- (c) if the Archaeology Supervisor determines that the Ancestral Remains or Burial Site are at greater risk by remaining where they were found, they shall be moved by a Elder or Cultural Advisor, or other person as determined by the Archaeology Supervisor to a location within the Area of Responsibility as close as possible to where they were discovered, also as determined by the Archaeology Supervisor;
- (d) Funerary Objects shall remain in or with or be reburied in or with the Burial Site or Ancestral Remains, as appropriate;
- (e) the Archaeology Supervisor shall determine an appropriate buffer around the location of the Ancestral Remains or Burial Site; and
- (f) the Archaeology Supervisor shall implement other protective measures as required.

6.2 Where any person discovers known or suspected human remains, Ancestral Remains or a Burial Site,

- (a) the person shall immediately notify the Archaeology Supervisor and the RCMP;
- (b) all work and activity in the area shall immediately cease;
- (c) no items shall be disturbed, or removed from the site; and
- (d) if the discovery is made in the course of an Application or Activity, the person responsible shall take immediate measures to protect the area.

6.3 Upon receiving a notification under paragraph 6.2(a), the Archaeology Supervisor shall immediately

- (a) visit the site;

- (b) commence an investigation to determine whether Ancestral Remains or a Burial Site have been discovered;
- (c) determine any mitigative steps required to protect the site and any Archaeological Resources within or near the site;
- (d) make a record of the location of the site and all Archaeological Resources within or near the site;
- (e) determine whether to notify the provincial Archaeology Branch; and
- (f) report their activities, findings and recommendations to the Manager of Title and Rights and, as the Archaeology Supervisor deems appropriate, to the Third Party.

6.4 Where, after concluding an investigation under paragraph 6.3(b), the Archaeology Supervisor determines that Ancestral Remains or a Burial Site have been discovered on Crown Lands, the Archaeology Supervisor shall include in their report to pursuant to paragraph 6.3(f) recommendations regarding the following:

- (a) whether the Ancestral Remains or Burial Site can remain where they were discovered, or whether they need to be relocated for their protection;
- (b) where and how the Ancestral Remains or Burial Site shall be relocated, if relocation is recommended under paragraph (a);
- (c) the size of the buffer to be created around the area in which the Ancestral Remains or Burial Site are located; and
- (d) any other required mitigative or protective measures.

6.5 As soon as practicable after reviewing the report under section 6.3, the Manager of Title and Rights shall consider the Archaeology Supervisor's recommendations and shall decide on appropriate actions, and shall report to Council as appropriate.

PART V: APPLICATIONS

7.0 REVIEW BY ARCHAEOLOGY SUPERVISOR

7.1 Upon receipt of an Application, the Archaeology Supervisor shall

- (a) determine if a previous Archaeological Overview Assessment, Archaeological Impact Assessment or Aboriginal Interests and Use Study

has been conducted in the area where the Activity has been proposed;
and

- (b) review any other relevant information.
- 7.2 If there has been no previous Archaeological Overview Assessment, Archaeological Impact Assessment or Aboriginal Interests and Use Study carried out in that area, or if the Archaeology Supervisor determines a new evaluation is required, the Archaeology Supervisor shall
- (a) ensure that an Archaeological Overview Assessment, Archaeological Impact Assessment or Aboriginal Interests and Use Study is conducted;
and
 - (b) approve the issuance of a Heritage Investigation Permit, as appropriate.
- 7.3 The Manager of Title and Rights may, as they deem necessary, direct the Archaeology Supervisor to conduct a review, or additional investigations in support of a review, and, for clarity, such a direction from the Manager of Title and Rights is considered to be an Application for the purposes of this Directive.
- 7.4 In reviewing any Archaeological Overview Assessment, Archaeological Impact Assessment or Aboriginal Interests and Use Study or conducting a new Archaeological Overview Assessment, Archaeological Impact Assessment or Aboriginal Interests and Use Study, the Archaeology Supervisor may request or review any other information relevant to the Activity proposed in the Application.
- 7.5 As part of the Archaeological Overview Assessment, Archaeological Impact Assessment or Aboriginal Interests and Use Study, the Archaeology Supervisor shall examine the Application and may consult with Elders, Cultural Advisors or Westbank officials and may carry out a Preliminary Field Reconnaissance.
- 7.6 As part of the Archaeological Overview Assessment, Archaeological Impact Assessment, Aboriginal Interests and Use Study or Preliminary Field Reconnaissance, the Archaeology Supervisor shall, among other investigations, assess the impact of the proposed Activity on the exercise of *Syilx* Title and Rights and whether there are any Archaeological Resources that would be adversely affected by the proposed Activity.
- 7.7 Where the proposed Activity involves significant altering of the land or excavation of the soil, or where the Archaeological Overview Assessment or Preliminary Field Reconnaissance suggest the presence of Archaeological Resources, the Archaeology Supervisor shall coordinate the conduct of an Archaeological Impact Assessment.

8.0 WESTBANK HERITAGE INVESTIGATION PERMIT

- 8.1 A person who wishes to conduct an Activity or study on Crown Lands shall include in their Application a request to the Archaeology Supervisor for a Westbank Heritage Investigation Permit.
- 8.2 The holder of a Heritage Investigation Permit shall ensure that all persons engaged in the project are familiar with the Archaeology Directive and the Westbank Crown Lands Referral Directive.
- 8.3 The holder of a Heritage Investigation Permit shall at the outset of the project develop a communication plan with the Archaeology Office.
- 8.4 The holder of a Heritage Investigation Permit shall hire at least one qualified Westbank representative approved by the Archaeology Supervisor with an appropriate level of experience and training to assist in conducting the project.
- 8.5 Prior to the production of any report under a Heritage Investigation Permit, the holder of that permit shall provide the Westbank Title and Rights Department an opportunity to review and comment on proposed management recommendations relating to any Archaeological Resources identified during the course of the project.
- 8.6 Implementation and inclusion of editorial comments made by the Archaeology Supervisor with regard to management recommendations or any other portion of the project report shall be negotiated between the holder of a Heritage Investigation Permit and the Archaeology Supervisor, prior to report finalization.
- 8.7 Prior to the expiration of a Heritage Investigation Permit, the holder of that permit shall provide the Westbank Title and Rights Department with
 - (a) hard or electronic copies of all interim reports;
 - (b) a hard or electronic copy of the final report;
 - (c) electronic copies of all field notes, pictures and maps; and
 - (d) hard or electronic copy of a Heritage Investigation Project Summary Form, in a format approved by the Archaeology Supervisor.
- 8.8 Any application for extension of a Heritage Investigation Permit shall be made at least 30 days prior to the expiry date of that permit.

8.9 A representative appointed by the Westbank Title and Rights Department may at any time inspect any project being conducted under a Heritage Investigation Permit.

8.10 Upon completion of a project, the holder of a Heritage Investigation permit shall return the project site to the state as required under that permit.

9.0 REPORT BY ARCHAEOLOGY SUPERVISOR

9.1 Upon completion of an Archaeological Overview Assessment, Preliminary Field Reconnaissance, Archaeological Impact Assessment or Aboriginal Interests and Use Study, the Archaeology Supervisor shall prepare a report summarizing:

- (a) any known or potential Archaeological Resources that may be subject to adverse impacts as a result of the proposed Activity;
- (b) whether there have been any previous archaeological reports, overviews or investigations, and their conclusions;
- (c) any other relevant information in relation to the proposed Activity which the Archaeology Supervisor deems prudent or necessary to include; and
- (d) recommendations to the Westbank department or official responsible for consideration of the Application in relation to the Activity.

9.2 The Archaeology Supervisor shall attach to the report prepared under section 9.1 all reports received in the course of the review.

9.3 The report prepared under section 9.1 shall be forwarded to:

- (a) the reviewing officer under the Westbank Crown Lands Referral Directive;
- (b) the Manager of Title and Rights; and
- (c) Council, where appropriate.

9.4 All information, research and reports created as a result of an Archaeological Overview Assessment, Preliminary Field Reconnaissance, Archaeological Impact Assessment and any Aboriginal Interests and Use Study, unless otherwise specified, shall be the property of Westbank.

PART VI: PERMITS, LICENSES AND ASSESSMENTS

10.0 HERITAGE CONSERVATION ACT PERMITS

- 10.1 Where a proposed Activity on Crown Lands requires a permit under the *Heritage Conservation Act*, nothing in this Directive exempts a party from the application of that Act.
- 10.2 For greater certainty, nothing in the *Heritage Conservation Act* prevents or precludes the application of this Directive.

11.0 OTHER PERMITS, LICENSES AND ASSESSMENTS

- 11.1 Where a proposed Activity on Crown Lands requires a permit, license or assessment under federal or provincial legislation, nothing in this Directive exempts a party from the application of that legislation.
- 11.2 For greater certainty, nothing in any federal or provincial legislation prevents or precludes the application of this Directive.

PART VII: FEES AND CHARGES

12.0 SETTING OF FEES AND CHARGES

- 12.1 The Archaeology Supervisor shall ensure that the fees and charges in effect from time to time are set out in Appendix “1”.
- 12.2 Upon completion by Westbank of an Archaeological Overview Assessment, Preliminary Field Reconnaissance, Archaeological Impact Assessment or Aboriginal Interests and Use Study, the Westbank Finance Department shall forward to the Applicant an invoice for the costs incurred.
- 12.3 All costs in relation to an Application, including costs of an Archaeological Overview Assessment, Preliminary Field Reconnaissance, Archaeological Impact Assessment and Aboriginal Interests and Use Study, and review by the Archaeological Supervisor, shall be paid by the Applicant within 30 days of a request by Westbank.

PART VIII: SECURING ARCHAEOLOGICAL RESOURCES

13.0 SECURING ARCHAEOLOGICAL RESOURCES

- 13.1 Unless otherwise recommended by the Archaeology Supervisor, any Archaeological Artifacts discovered by or returned to Westbank shall be held in a Westbank First Nation Repository.

- 13.2 Westbank shall keep and maintain a database of all
- (a) Archaeological Resources;
 - (b) reports prepared for or provided to Westbank that are related to Archaeological Resources; and
 - (c) reports prepared under this Directive.
- 13.3 Where appropriate, the Archaeology Supervisor shall notify the Province of an Archaeological Site.

PART IX: CONFIDENTIALITY

14.0 CONFIDENTIALITY

- 14.1 An Applicant may, from time to time, provide confidential information to the Archaeology Supervisor in relation to an Application.
- 14.2 Subject to section 14.3, Westbank shall not disclose or use for any purpose other than the purposes set out in this Directive any confidential information relating to an Application which it acquires from the Applicant without the written consent of the Applicant.
- 14.3 Westbank may, without the written consent of the Applicant, discuss confidential information relating to an Application which it acquires from the Applicant with the *Syilx* Peoples or other member First Nations of the Okanagan Nation or its consultants and legal advisors, provided that Westbank shall describe it as confidential information and stipulate that they shall treat it as confidential information.
- 14.4 An Applicant shall treat as confidential all information concerning *Syilx* Title and Rights which it acquires from Westbank pursuant to this Directive and shall not disclose or use any such information for any purpose other than the purposes set out in this Directive except with the written consent of Westbank.

PART X: INDEMNIFICATION

15.0 INDEMNITY

- 15.1 Westbank shall indemnify any member of Council, officer or employee of Westbank against any claim for damages against them arising out of the performance of their duties or responsibilities under this Directive, and in addition shall pay legal costs incurred in a court proceeding arising out of the claim, provided such claim is not a result of dishonesty, gross negligence, or malicious or willful misconduct on the part of the member of Council, officer or employee.

- 15.2 Where indemnity under this Directive is or may be claimed by a member of Council, officer or employee of Westbank, that member of Council, officer or employee must immediately upon receipt thereof, forward to the Director of Operations of Westbank every Writ, Statement of Claim, letter or other document or advice and advise of any communication both verbal and written relating to a claim against them in respect of which indemnity is or may be claimed under this Directive.
- 15.3 Where indemnity under this Directive is, or may be, claimed by an officer or employee of Westbank, that member of Council, officer or employee must not:
- (a) voluntarily assume any liability or settle any claim except at their own cost and in such case no indemnification shall be paid in relation thereof; or
 - (b) interfere with Westbank in any negotiation, settlement or in any legal proceedings with respect to such claim;
- and whenever requested by Westbank, that member of Council, officer or employee must:
- (c) aid in the securing of information and evidence and the attendance of witnesses and shall themselves, where required by Westbank, give evidence; and
 - (d) cooperate with Westbank in the defense of any action or proceedings or in the prosecution of any appeal taken by Westbank on their behalf.
- 15.4 Compliance by members of Council, officers or employees of Westbank with the provisions of section 15.3 of this Directive constitutes a condition precedent to Westbank's responsibility to indemnify them as provided in this Directive
- 15.5 This Part applies to any existing claim for damages against a member of Council, officer or employee of Westbank arising, initiated or outstanding prior to the adoption of this Directive.

PART XI: GENERAL

16.0 GENERAL PROVISIONS

- 16.1 Westbank shall not be deemed to have ceded or relinquished *Syilx* Title and Rights nor abrogated or derogated from any of its Aboriginal rights or those of the *Syilx* Peoples or any rights under UNDRIP by receiving or responding to any request by an Applicant.
- 16.2 Nothing in this Directive obligates Westbank to consent to any Activity on, or the disposal of, Crown Lands within *Syilx* Territory.

- 16.3 Consent by Westbank to any Activity on Crown Lands, including consent granted following review of an Application, does not alter, reduce or in any way diminish any legal claim made by Westbank or the *Syilx* Peoples to Crown Lands or to prejudice, limit or restrict any legal or other positions taken or that may be taken by Westbank in any court, tribunal or administrative proceedings, treaty negotiations or otherwise.
- 16.4 Nothing in this Directive shall limit or take away from the Crown's legal obligations to consult with and accommodate Westbank.
- 16.5 Nothing in this Directive restricts or limits the right of Westbank to establish a process for consideration and evaluation under this Directive or other policy or Westbank law of a proposed Activity on lands within the Westbank Area of Responsibility that are not Crown Lands or Westbank Lands.
- 16.6 Nothing in this Directive shall be construed so as to justify any infringement, or prevent the exercise, of *Syilx* Title and Rights or the rights of Westbank or the *Syilx* Peoples under UNDRIP.
- 16.7 Failure to comply with this Directive may result in some or all of the following consequences, as applicable:
- (a) Westbank may immediately revoke a permit and require all work to cease;
 - (b) Westbank may impose a fine;
 - (c) the Applicant's eligibility for future permits may be affected; and
 - (d) the breach may be reported to Council.

Schedule A – *Syilx* Territory

Schedule B – Westbank Area of Responsibility

Appendix 1 – Fees and Charges

Appendix 2 – Heritage Investigation Permit