

# WHAT IS

## The Lil'wat Land and Resource

### Referral Process

Due to the extent of land and resource use and planning activity within the Lil'wat Nation's traditional territory, and the amount of potential infringement of the Nation's aboriginal title and rights resulting from this use and activity, the referral process has been created to establish a process by which the Lil'wat Nation Council (the "Council") can consult efficiently and effectively with all levels of governments and any third parties who seek to utilize lands and resources subject to the Lil'wat Nation's aboriginal title and rights (the "Referring Agent"). The referral process is guided by the "Lil'wat Nation Land Use Referral Consultation Policy", approved by Chief and Council February 21, 2012.

#### What are Referrals?

Land or resource use or planning including developments and tenured activities of any kind:

#### How do we receive Referrals in Lil'wat Nation Territory?

- A referral is initiated by contacting the Lil'wat Nation Land and Resources Department (the department)
- the Department will guide the Referring Agent through the consultation process.
- Consultation processes are handled internally by the Department, the Lil'wat Land Use Referral Committee (the "Committee") and Chief and Council (if the Committee so determines).
  - The Committee consists of 5 Lil'wat Nation citizens. Committee members and alternates are appointed by Chief and Council consisting of:
    - i. Lil'wat Nation Councillor (Chair of the Committee);
    - ii. a Lil'wat Corporation Board Member;
    - iii. a Lil'wat Nation Land Management Board Member; and
    - iv. 2 Lil'wat Nation citizens at large
- The Committee is mandated by Council to review, assess and respond to any Referral that the Department brings to its attention.
- An Acknowledgment letter is sent to the proponent to acknowledge receipt of their referral.
- a preliminary assessment of each Referral is done; the assessment includes:
  - an assessment by a Lil'wat Cultural Technician to see whether there are any negative impacts on sacred sites, pictographs, petroglyphs, pit house remains, burial sites, traditional use sites, or any other sites that have cultural value to the Lil'wat Nation; *and if,*
  - the Cultural Techs deems that there will be impacts, a Preliminary Field Reconnaissance (PFR) and/or a PFR AIA (Archaeological Impact Assessment) is recommended.

#### What is a PFR?

- A PFR is to identify and assess archaeological resource potential within the study area. Some examples of archaeological sites are cultural depressions, tool-making sites, and culturally modified trees. Archaeological sites are locations with physical evidence of previous use by First Nations people and sometimes historic use. They may also be places of cultural and spiritual significance

#### What is an AIA?

- An AIA is conducted under permit from the Archaeology Branch; and, under a permit from the Lil'wat Nation.

- The impact assessment will also entail:
  - background research
  - a field component that will include a program of sub-surface testing, evaluative testing to establish the depth and significance of the site (if identified),
  - post-field analysis (if required),
  - development of an impact management plan in consultation with the Lil'wat Nation and reporting to government established standards.
  - The report will provide an explanation of all work completed during the assessment, an evaluation of any archaeological sites found, and management recommendation options.

**“It must be noted that, as every Referral is unique, it is difficult to predict the range and type of issues that will be raised. Any Referral will raise a distinct list of issues for consideration; therefore, the list of issues that will need investigation must be developed on a case by case basis.”**

- The Department may provide an initial response to the Referring Agent, for the purposes of responding to the Referral in a timely manner. Each response includes:
  - an assertion of Lil'wat aboriginal title and right to its traditional territory; *and*
  - affirmation of the Tsilhqot'in decision that aboriginal title is real and meaningful, territorial in nature, and that First Nation consent is required for the use of its aboriginal title lands and resources; *and that*
  - The decision also specifically states that aboriginal title confers:
    - ... the right to decide how the land will be used; the right of the enjoyment and occupancy of the land; the right to possess the land; the right to economic benefits of the land; and the right to pro-actively use and manage the land. (at para. 73)
- If the Department feels necessary, for further explanation, the proponent may be asked to make a presentation to the Referral Committee before a decision is made.
- The Referral is then presented at the next scheduled Referral Committee meeting for a decision. (the Referral Committee meets on the 4<sup>th</sup> Wednesday of the month)
- The Committee will review the summaries for each Referral provided by the Department and, based on the level of impacts or benefits that may result from the Referral, determine whether the Referral is high, medium or low priority.
- The Committee will inform Council of all Referrals that it has determined to be high priority, and provide ongoing updates to Council on these Referrals.
- The Department will follow up on the direction provided by the Committee regarding the response to be provided to the Referring Agent and/or the need to update Council on the Referral.

The following are possible responses, depending on the circumstances of the Referral, the interests of the community that are affected by the Referral, and the assessment of the impacts that will result from the Referral, among other things:

- further information and consultation is required;
- mitigation measures and/or economic measures for impacts on aboriginal title and rights interests are required, as part of an accommodation agreement;
- approval, with or without conditions; or
- no approval in its current form due to immitigable impacts on Lil'wat Nation values and interests and/or the inability or refusal of the Referring Agent to adequately accommodate the Lil'wat Nation's interests.