

# SIMGIGYET'M GITANYOW

## Gitanyow Ayookxw for Wilp Sustainability Assessment

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**ADOPTED FOR PILOT PHASE, EFFECTIVE JANUARY 1, 2021 TO DECEMBER 31, 2021**

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***Pilot phase:** Following review by the Simgigyet'm Gitanyow on March 4, 2020, and the ensuing exceptional circumstances of the COVID-19 pandemic, the Simgigyet'm Gitanyow determined on October 15, 2020, to finalize and bring into effect this Gitanyow Ayookxw for Wilp Sustainability Assessment for a pilot phase from January 1, 2021 until December 31, 2021.*

*During the pilot phase the Simgigyet'm Gitanyow, supported by the GHC Office, will evaluate the experience with the Wilp Sustainability Assessment Process, and any further input from Wilp members, to consider whether any changes are warranted prior to bringing this Ayookxw into permanent effect.*

## THIS IS OUR HOMELAND

We have existed on Gitanyow Territory for thousands of years, this land is our food table and it provides sustainability to all who exist here.

We are here to stay, this is our Homeland. This land provides food and sustenance to all wilp.

Our Ayookx (law) is the foundation we stand on and we will uphold and respect the land. We are to protect these lands for future generations.

This document sets out our responsibilities, as rights and title owners and those who wish to do business on these lands are to uphold the Ayookx and adhere to the Land Use Plan as it refers to the overall management and protection of these lands.

Edii'gwil nii gokx nuum ehl Lax Yip. Nit win sa bekxw'hl win'yee'x and am wil ho'yim ga'ne'g'x'y ga' nii go'k'im ehl lax yip.

Naa dim kis'wil'gok'xw'im lii' gin de, Dim ed'ii gwil nii wil nuum ehl lax yip'im.

Ayookx'hl he'nii'litxw'im gan wilhl dim dip ed'ii'gwil ama ga'edhl lax yip ehl ga' bii'hl atsii'ksit ga'len'im.

Ta'mtxw lax sa'winsx tuun dim dip willa ama gya'adehl lax yip gan wilhl skid'im dip luu yuxhl Sa'go'txw'im Dii'di'imxw'im Lax Yip win't go'n gya'adihl dim willa amma gya'txwhl amma lax yip'im.

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## PART 1 – INTERPRETATION

### Definitions

1 (1) In this Ayookxw:

**“activity”** means

- (a) any physical activity that may have adverse effects and any strategic or operational plan, licence or approval related to those activities; or
- (b) any construction, operation, modification, dismantling of a physical work;

**“alternatives”** means alternatives to the Project, including the option of not proceeding, and alternative means of carrying out the Project;

**“Amma gan’da’dilst”** or **“health”** is understood inclusively as the physical, emotional, mental, and spiritual dimensions of well-being, taking into account social, economic, ecological and cultural determinants of health;

**“Ayookxw”** means Gitanyow laws, which are founded on thousands of years of Gitanyow knowledge, experience and practice, including laws recounted in the Adawaak and Ayuuks and new Ayookxw adopted in accordance with the Gitanyow Constitution;

**“Compliance and Monitoring Agreement”** means an agreement entered into under section 38 by, at minimum, the Impacted Wilp and the Proponent, if Nidinsxw has been granted for a Project, in order to ensure the Proponent meets the conditions of the Nidinsxw and pays applicable fees and bonds, as well as to address any other compliance and monitoring matters;

**“cumulative effects”** means the combined effects from past, present and reasonably foreseeable human activities on the environment and human well-being, including the effects of malfunctions or accidents that may occur, and the synergistic and interactive effects of multiple land-use practices, development, and climate change that aggregate over time and space;

**“Di’dii’mxw’m Lax’yip”** or **“ecological integrity”** means the biological richness and the ecosystem services provided by natural terrestrial and marine processes, sustained at all scales through time (e.g., species richness, vegetation diversity, soil productivity, water quality, predator–prey interactions, nutrient cycling, hydrology, disturbance regimes, succession, carbon storage), including the structure, function, and composition of natural ecosystems and the Gitanyow caretaking of the land and resources within;

**“Economic Agreement”** means an agreement entered into under section 28 by, at minimum, the Impacted Wilp and the Proponent, in order to set out the benefits the Proponent will provide to Gitanyow and address any other relevant matters;

**“Emergency Wilp Protection Decision”** means a decision by one or more Wilp under section 46 to respond in circumstances where past or ongoing activity has caused, or has immediate potential to cause, harm to Gitanyow Lax’yip, Gitanyow Huwilp or Wilp Sustainability;

**“federal or provincial governments”** means the Queen in right Canada or British Columbia and includes any federal or provincial authority, body or agency that asserts powers over project, regional or strategic assessment under federal or British Columbia legislation;

**“GHC Office”** means the Gitanyow Hereditary Chiefs Office, acting under the authority of the Simigiyet’ m Gitanyow, and includes its technical, administrative and scientific staff, as well as contractors or consultants employed or retained by the GHC Office to carry out technical support roles for the Wilp Sustainability Assessment Process;

**“Gitanyow Cultural Heritage Resource Management Policy”** means the policy developed under the authority of the Simigiyet’ m Gitanyow and brought into effect in the Ayookxw in 2009, which guides all activity on the Lax’yip that may impact Gitanyow cultural heritage resources and sites;

**“Gitanyow cultural heritage resources”** means resources that provide a connection between past, present and future Gitanyow and includes any structure, geographic area, resource or thing of cultural value to Gitanyow as set out in the Gitanyow Cultural Heritage Resource Management Policy and reflected in the principle of Gwelx ye’ enst;

**“Gitanyow Huwilp”** means the Gitanyow peoples, comprised of two pdeek, the Lax Gibuu and the Lax Ganeda, organized into eight Wilp, which are the Huwilp Lax Gibuu of Gwaas Hla’am, Malii, Haitsimsxw and Wii’ Litsxw and the Huwilp Lax Ganeda of Gamlakyeltxw, Gwinuu, Luuxhon and Watakhayetsxw;

**“Gitanyow Lax’yip”** means the territory shown on the map in Schedule 1 and is comprised of eight individual Wilp territories, upon which the Gitanyow have relied and continued to rely for sustenance, culture, wealth, and Gwelx ye’ enst for thousands of years. The Lax’yip incorporates everything, including lands, waters, land forms and life forms within the boundaries of a specific Wilp Lax’yip including plants, animals, birds, and fish resources which make the Wilp Lax’yip home permanently or periodically;

**“Gitanyow Lax’yip Land Use Plan”** means the plan signed and brought into legal effect in the Gitanyow Ayookxw and British Columbia laws in 2012, and renewed in 2016, which guides all land and resource management on the Gitanyow Lax’yip;

**“Gitanyow Strategic Direction”** means the standards and processes established through Gitanyow policies, plans or Higher Level Assessments listed in Schedule 2, including the Gitanyow Lax’yip Land Use Plan;

**“Gitanyow Title and Rights”** means the existing, inherent title and rights of the Gitanyow Huwilp as set out in the Ayookxw and recounted in the Adawaak and Ayuuks, which title and rights are recognized and affirmed by the United Nations Declaration on the Rights of Indigenous Peoples and subsection 35(1) of the Canadian Constitution;

**“Higher Level Assessment”** means a Wilp Risk Assessment, Regional Assessment, Regional Strategic Assessment, or Strategic Assessment;

**“Impacted Wilp”** means, for the purposes of the Wilp Sustainability Assessment Process, the individual Wilp, or the Simigiyet’ m Gitanyow as a whole for projects that have the potential to affect all eight Wilp, identified in an Initial Project Assessment Decision pursuant to section 14;

**“Initial Description of Activities”** means an initial description of activities that may impact Gitanyow Lax’yip or Gitanyow Huwilp, as required under section 10;

**“Initial Engagement Agreement”** means an agreement entered into under section 9 by a Proponent and the Impacted Wilp or, if the Impacted Wilp have not been identified, the Wilp who consider that they may be impacted, in order to address any preliminary matters relevant to the relationship between the parties and to ensure the Proponent pays applicable fees;

**“Initial Project Assessment Decision”** means a decision issued by the Impacted Wilp under section 11, which must provide a notice identifying the Impacted Wilp with respect to a Project and may do one or more of the following

- (a) designate activities as a Project that requires a Project Assessment,
- (b) use the early off-ramp provision in subsection 13(1) to
  - (i) refuse Nidinsxw for a Project, or
  - (ii) defer a Project Assessment,
- (c) address other initial matters regarding a Project Assessment at the discretion of the Impacted Wilp;

**“intragenerational equity”** means enhancement of fairness in the distribution of benefits, effects, risks and uncertainties, as well as choice availability, among potentially affected individuals and communities, including gender equity;

**“intergenerational equity”** means the equal preservation or enhancement of the ability of current and future generations of Gitanyow to benefit from Wilp Sustainability as reflected in the principle of Gwelx ye’enst;

**“Lig’il’sxw”** or review means, in the context of the Wilp Sustainability Assessment Process, a process conducted by the GHC Office and the Impacted Wilp under section 41 to consider whether to amend the Nidinsxw for a Project;

**“Lii’hl’sim Lax’yip”** means Gitanyow Lax’yip Guardians or other individuals appointed pursuant to section 39 to carry out compliance activities with respect to the Wilp Sustainability Assessment Process;

**“Matters for Assessment”** means the matters that must be assessed in every Project Assessment as set out in section 19 and any additional matters for assessment set out in a Project Assessment Agreement;

**“Multi-Party Assessment Agreement”** means an agreement entered into by the Impacted Wilp or the Simgigyet’ m Gitanyow, as applicable, and one or more other parties pursuant to one or more of subsection 7(1), subsection 34(1) or subsection 34(4);

**“Nidinsxw”** means confirmation of consent or consent;

**“precautionary principle”** means that

- (a) actions that may lead to irreversible changes to ecosystem function, resilience or socio-cultural well-being are avoided,
- (b) alternatives are developed and evaluated, including the alternative of not proceeding, to identify alternatives that are least likely to impair Wilp Sustainability,
- (c) the onus is on the Proponent to demonstrate that proposed activities are not likely to result in cultural loss or impair ecosystem function or resilience,
- (d) a decision may be made not to proceed with, or to discontinue an activity where effects are uncertain or information about potential impacts is incomplete,

(e) where previously unanticipated threats to ecosystem or cultural integrity are identified or knowledge of ecosystem processes increases, timely, efficient and effective corrective actions are taken, and,

(f) assessment decisions are consistent with Gwelx ye'enst and mindful to the needs of future generations;

**"Project"** means an activity or project that requires a Project Assessment under section 12;

**"Project Assessment"** means a Wilp sustainability assessment for a Project pursuant to this Ayookxw, as required under section 12;

**"Project Assessment Agreement"** means an agreement entered into under section 17 by the Impacted Wilp and the Proponent in order to address requirements and guidance for the process of conducting a Project Assessment, as well as to provide for the payment of applicable fees by the Proponent, and includes any amendments made to the Project Assessment Agreement under section 18;

**"Project Decision Statement"** means a decision issued by the Impacted Wilp under section 24 regarding whether to grant or refuse Nidinsxw, or direct further assessment, for a Project;

**"Proponent"** means a person who proposes to initiate or continue an activity that may impact the Gitanyow Lax'yip or Gitanyow Huwilp and that requires an Initial Description of Activities under subsection 10(1);

**"Regional Assessment"** means an assessment of how different scenarios for development, protection and restoration in a region will cumulatively affect values and rights compared to historic and current conditions, in order to identify management standards based on best available scientific and Indigenous and local knowledge, which can be directly applied in project level assessments and regulatory decision-making, and serve as an input to land use planning;

**"Regional Strategic Assessment"** means a targeted Regional Assessment focused on a particular type of development or particular value or group of values in a defined geographic area larger than the Gitanyow Lax'yip;

**"Responsible Party"** means a person or persons

(a) responsible for an activity, or related actual or potential harm, to which an Emergency Wilp Protection Decision applies, and

(b) identified as a Responsible Party in an Emergency Wilp Protection Decision;

**"Simgigyet'm Gitanyow"** means the Wilp Chiefs, including Head Chiefs and Wing Chiefs, acting in common in accordance with the Gitanyow Constitution on matters common to all Wilp, matters which concern the peace, order and good government of the collectivity or which address common regional, national or international issues;

**"Skid'm up gid'm Simogyet or Sid'm gap'hxo'etxwhl"** means the law relating to the share that must be paid to the Simogyet of the Wilp and shared with the entire Wilp for any resources harvested from the Wilp Lax'yip;

**"standard"** means a target, management objective, threshold, limit or other minimum level of performance specified in a document setting out Gitanyow Strategic Direction for the Lax'yip;

**“Strategic Assessment”** means an assessment of proposed policies, plans or programs that potentially impact Wilp Sustainability;

**“Wilp”** means the primary social, cultural, economic, and spiritual entity of the Gitanyow peoples, with exclusive rights and responsibilities over their respective territories;

**“Wilp Sustainability”** means the conditions under which ecosystem function, socio-cultural and economic well-being are maintained, and risk to Di’dii’mxw’m Lax’yip (ecological integrity) is low, thus providing the ecological foundation for the long-term socio-cultural and economic well-being of each Wilp;

**“Wilp Sustainability Assessment Direction”** means a direction given by the Impacted Wilp under section 16 that sets out key matters to be addressed in a Project Assessment Agreement and provides a draft budget for the conduct of the Project Assessment;

**“Wilp Sustainability Assessment Principles”** means principles of the Ayookxw that must be upheld and protected in the administration of the Wilp Sustainability Assessment Process as set out in subsection 3(1);

**“Wilp Sustainability Assessment Process”** means any assessment conducted by the Gitanyow pursuant to this Ayookxw as a matter of inherent Gitanyow jurisdiction and laws, including all related processes, decisions, requirements, agreements, monitoring and compliance activities;

**“Wilp Sustainability Assessment Purposes”** means the purposes of the Wilp Sustainability Assessment Process set out in section 2;

**“Wilp Sustainability Assessment Report”** means a report prepared by the GHC Office and submitted to the Impacted Wilp under section 21 in order to inform a decision of the Impacted Wilp regarding the Project Decision Statement;

**“Wilp Sustainability Criteria”** means the environmental, socio-cultural, economic and other aspects of Wilp Sustainability set out in subsection 23(2);

**“Wilp Sustainability Test”** means the test set out in subsection 23(1), and based on the Wilp Sustainability Criteria, regarding which option from among alternatives, including the option of not proceeding with a Project, will make the greatest, mutually reinforcing, cumulative and lasting positive contribution to Wilp Sustainability.

(2) In this Ayookxw, terms in Simalgyax have the same meaning as set out in the Gitanyow Constitution, with additional detail provided in this Ayookxw as applicable.

## **Purpose**

- 2 The purposes of the Wilp Sustainability Assessment Process are to:
  - (a) recognize the existing, inherent jurisdiction of the Gitanyow Huwilp and the decision-making authority of each of the eight Wilp in their respective Wilp Lax’yip,
  - (b) uphold the Ayookxw in decision-making about activities or projects affecting the Gitanyow Lax’yip,
  - (c) support reconciliation by ensuring activities or projects affecting the Lax’yip do not proceed in the absence of Wilp Nidinsxw as per decision-making provisions of the Gitanyow Constitution,
  - (d) ensure that sufficient information is available to allow informed Wilp decision-making about proposed activities or projects affecting the Lax’yip,

- (e) maintain, restore and enhance Wilp Sustainability for present and future generations, including assessment and management of cumulative effects to achieve this purpose,
- (f) ensure that projects whose greenhouse gas emissions are inconsistent with achieving British Columbia’s legislated greenhouse gas emissions reduction targets or Canada’s Paris Agreement commitment to do its share to limit global temperature rise to well below 2 degrees Celsius do not proceed, taking into account upstream and downstream impacts of all stages of the project, including products made that may be consumed outside BC or Canada,
- (g) to provide for the meaningful participation of Wilp members in assessments and environmental and cultural work relating to all stages of a project,
- (h) to uphold Gitanyow’s constitutionally protected rights and inherent human rights, including as set out in the United Nations Declaration on the Rights of Indigenous People, and
- (i) to prepare for transition back to full Gitanyow authority in the Lax’yip, including redress for past harms.

## Principles

- 3 (1) The Ayookwx must be upheld and protected in the administration of the Wilp Sustainability Assessment Process, including the following legal principles and institutions:
- (a) **Daxgyet:** Honour Wilp authority by getting consent from the Wilp Simogyet before Wilp territories or resources are used; unauthorized use is prohibited,
  - (b) **Skid’m up gid’m Simogyet or Sid’m gap’hxo’etxwhl:** A share that must be paid to the Wilp Simogyet as a condition of the consent granted to use the Wilp territory or resources, to be distributed to Wilp members according to the Ayookwx,
  - (c) **Gwelx ye’erst:** The ultimate responsibility of the Simogyet to protect land and resources for present and future generations, providing the foundation for the integrated social, ecological, economic, legal and cultural system of the Gitanyow; the right and responsibility of the Simogyet to possess, manage, protect, and pass on the land and water of the territories in a sustainable manner from generation to generation, including:
    - (i) **Ha’nii tokxw:** The interconnected land, water, air and resources of the Lax’yip that provide food security, medicines and clean, abundant water for the Wilp and the exclusive right of Wilp members to access Wilp territories and resources to get what they need to live (“our food table”) and
    - (ii) **Hla’ Am Wil:** The wealth of the land, air and waters of the Lax’yip that is sustained by healthy, functioning ecosystems and allows the Wilp to uphold the Ayookwx relating to land ownership;
  - (d) **Li’ligit:** The feast system, which is a complex institution through which the Gitanyow/Gitxsan formalize much of our social, political and legal affairs.
- (2) No person or body other than those with jurisdiction pursuant to the Gitanyow Constitution may make a determination regarding interpretation of, or adherence to, this Ayookwx.

## **Prohibition**

- 4** (1) Despite any other enactment, in the absence of Nidinsxw from each Impacted Wilp no person may do any act or thing in connection with the carrying out of a Project, in whole or in part, if that act or thing may affect Wilp Sustainability.
- (2) Despite any other enactment, if Nidinsxw has been granted for a Project, a person must not do any act or thing in connection with the Project except in accordance with any conditions of the Nidinsxw.
- (3) For certainty, nothing in this section abrogates or derogates from the application of Gitanyow Ayookxw to activities that do not undergo a Project Assessment.

## PART 2 – STRATEGIC DIRECTION AND STANDARDS

### Application of Gitanyow Strategic Direction

- 5 (1) The Simgigyet'm Gitanyow may establish or update Gitanyow Strategic Direction by listing in Schedule 2 relevant Gitanyow policies, plans, or standards adopted as a result of Higher Level Assessments or other studies or agreements.
- (2) No activity may proceed, and no person may do any act or thing in relation to an activity, that is inconsistent with applicable Gitanyow Strategic Direction.
- (3) Gitanyow Strategic Direction must be followed in any Project Assessment and any related operational approvals or permitting processes.

### Wilp Risk Assessments

- 6 (1) A Wilp or the Simgigyet'm Gitanyow, as applicable, may periodically undertake, or cause to be undertaken Wilp Risk Assessments, to:
  - (a) identify and describe historic baseline conditions for key values;
  - (b) identify low risk ecological standards based on best available science and Gitanyow law and knowledge with reference to historic baseline conditions;
  - (c) identify and describe Wilp-specific socio-cultural standards;
  - (d) identify and describe current condition of key values, including level of current risk as compared to identified standards;
  - (e) prescribe actions required to maintain or restore the condition of the value to low risk at the Wilp level, and how these will be spatially applied in the Lax'yip;
  - (f) update existing Wilp Risk Assessments to take into account the results of monitoring and any change in the condition of key values.
- (2) The Simgigyet'm Gitanyow may establish all or part of a Wilp Risk Assessment as Gitanyow Strategic Direction by including it in Schedule 2.
- (3) The Simgigyet'm Gitanyow may amend or consolidate Gitanyow Strategic Direction over time with the objective of establishing an overall Gwelx ye'enst Plan (Wilp Sustainability Master Plan) that sets out standards that must be adhered to in the Lax'yip to maintain or restore Wilp Sustainability, and to ensure redress is made for past harms.
- (4) A Wilp Risk Assessment may be undertaken or updated concurrently with a Project Assessment.
- (5) The Impacted Wilp may establish, amend or extend the timelines according to which a Project Assessment is to be conducted in order to allow a relevant Wilp Risk Assessment to be completed and to establish Gitanyow Strategic Direction for one or more values potentially impacted by the Project.

## **Regional Assessment**

- 7 (1) Subject to section 34 and 36, the Simgigyet'm Gitanyow may enter into a Multi-Party Assessment Agreement with other Indigenous nations, the federal or provincial governments or any other body in order to conduct a Regional Assessment or Regional Strategic Assessment.
- (2) A Regional Assessment or Regional Strategic Assessment under this Part must:
  - (a) include an assessment of how different scenarios for development, protection and restoration in the region over time will cumulatively affect values and rights compared to historic and current conditions with reference to the Wilp Sustainability Criteria; and
  - (b) result in a Regional Assessment or Regional Strategic Assessment report.
- (3) Upon receipt of a Regional Assessment or Regional Strategic Assessment report, the Simgigyet'm Gitanyow may
  - (a) determine which scenario assessed will make the greatest, mutually reinforcing, cumulative and lasting contribution to Wilp Sustainability, applying the Wilp Sustainability Criteria and the Wilp Sustainability Assessment Principles, and
  - (b) establish Gitanyow Strategic Direction consistent with (a).
- (4) The Impacted Wilp may amend or extend the timelines according to which a Project Assessment is to be conducted in order to allow a relevant Regional Assessment or Regional Strategic Assessment to be completed and to establish Gitanyow Strategic Direction.

## **Strategic Assessment**

- 8 Any government or agency proposing a policy, plan or program that could potentially impact Wilp Sustainability must, at the request of the Simgigyet'm Gitanyow, consult and cooperate with the Simgigyet'm Gitanyow in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples and the Gitanyow Ayookxw in the development and implementation of the policy, plan or program.

## PART 3 – EARLY ENGAGEMENT AND INITIAL ASSESSMENT DECISION

### Initial Engagement Agreement

- 9 (1) The Impacted Wilp or, if the Impacted Wilp have not been identified, the Wilp who consider that they may be impacted, may enter into an Initial Engagement Agreement with a Proponent.
- (2) Where a Project requires a Project Assessment, no person may access Gitanyow Lax'yip for the purposes of undertaking preliminary physical study, exploration or work of any kind regarding the Project, except in accordance with the terms of an Initial Engagement Agreement.
- (3) An Initial Engagement Agreement may address, without limitation,
- (a) appropriate recognition of Gitanyow Title and Rights, Ayookxw and inherent jurisdiction,
  - (b) means to establish and maintain a good relationship between the parties,
  - (c) methods for meaningful engagement beginning at the earliest stages of project conception and development,
  - (d) collaboration between the Proponent and Gitanyow to develop a detailed project description for the project,
  - (e) terms according to which access to Gitanyow Lax'yip may be permitted for the purposes of a Project Assessment, and
  - (f) initial measures to be taken by a Proponent to support the environmental, socio-cultural and economic aspects of Wilp Sustainability.
- (4) An Initial Engagement Agreement must provide for the payment of fees pursuant to section 31.

### Initial Description of Activities

- 10 (1) A person who
- (a) proposes a project listed or designated as reviewable under the assessment legislation of the federal or provincial government that
    - (i) is located within Gitanyow Lax'yip, in whole or in part, or
    - (ii) may impact Gitanyow Lax'yip or Gitanyow Huwilp, or
  - (b) proposes or continues activities that may impact Gitanyow Lax'yip or Gitanyow Huwilp, for which the GHC Office requests an Initial Description of Activities,
- must submit an Initial Description of Activities to the GHC Office and potentially Impacted Wilp.
- (2) A person who proposes activities that may impact Gitanyow Lax'yip or Gitanyow Huwilp must notify the GHC Office at the earliest stage, in order for the GHC Office to consider whether to request an Initial Description of Activities.
- (3) A Proponent must include in an Initial Description of Activities
- (a) a description of how the activities are consistent with Gitanyow Strategic Direction,

- (b) any information set out in policy by the Simgigyet'm Gitanyow, and
- (c) any information specified by the GHC Office in a written request to the Proponent.

### **Initial Project Assessment Decision**

- 11** (1) Following receipt of an Initial Description of Activities, the Impacted Wilp may issue an Initial Project Assessment Decision.
- (2) Before making an Initial Project Assessment Decision, the Impacted Wilp may direct the GHC Office to refer an Initial Description of Activities back to the Proponent with a request that the Proponent provide further information.
- (3) The Impacted Wilp must, in an Initial Project Assessment Decision, provide reasons with regard to any of the following decisions that are applicable, including any required considerations:
- (a) a decision to designate activities as a Project that requires a Project Assessment;
  - (b) a decision to refuse Nidinsxw for a Project under subsection 13(1)(a);
  - (c) a decision to defer a Project Assessment under subsection 13(1)(b); and
  - (d) a notice of Impacted Wilp or any change thereto.
- (4) The Impacted Wilp may, in an Initial Project Assessment Decision, indicate their intention to pursue a Multi-Party Assessment Agreement regarding the Project.

### **Project Assessment requirement**

- 12** (1) The Impacted Wilp may, in an Initial Project Assessment Decision, designate activities as a Project that requires a Project Assessment.
- (2) In making a designation decision under subsection (1), the Impacted Wilp must consider the Wilp Sustainability Assessment Purposes.
- (3) Subject to section 13, a Project Assessment is required for
- (a) a proposed activity that is listed or designated as reviewable under the assessment legislation of the federal or provincial government and located within Gitanyow Lax'yip, in whole or in part, or
  - (b) an activity designated under subsection (1).

### **Early off-ramp**

- 13** (1) The Impacted Wilp may, in an Initial Project Assessment Decision,
- (a) refuse Nidinsxw for the Project and determine that a Project Assessment is terminated, or
  - (b) defer a Project Assessment until a Wilp or the Simgigyet'm Gitanyow, as applicable, have
    - (i) conducted one or more Wilp Risk Assessments,
    - (ii) conducted or participated in a Regional Assessment or Regional Strategic Assessment and made a determination under subsection 7(3), or

- (iii) completed other plans or policies required to provide Gitanyow Strategic Direction applicable to the Project.
- (2) For certainty, the Impacted Wilp may make a decision under subsection (1) for a Project designated by the Impacted Wilp under subsection 12(1).
- (3) Where the Impacted Wilp have deferred a Project Assessment under subsection (1)(b), the Impacted Wilp may, on their own initiative or on request by the Proponent, reinstate a Project Assessment after a Wilp or the Simigiyet'm Gitanyow, as applicable, have completed the relevant processes specified under subsection (1)(b) and established related Gitanyow Strategic Direction.
- (4) The Impacted Wilp may refuse Nidinsxw under subsection (1)(a) on any grounds, including the following:
  - (a) the Project is inconsistent with any Gitanyow Strategic Direction or other Gitanyow Ayookxw;
  - (b) the Project would significantly impair British Columbia's ability to meet its legislated greenhouse gas reduction targets, or Canada's ability to do its share to meet the Paris Agreement commitment to limit global temperature rise to well below 2 degrees Celsius above pre-industrial levels;
  - (c) the Project would require the bulk transport of oil through Gitanyow Lax'yip;
  - (d) the Proponent has demonstrated disregard for Gitanyow Title and Rights or Gitanyow jurisdiction; or
  - (e) the Project would likely result in unacceptable risks to Wilp Sustainability, considering the Wilp Sustainability Criteria.
- (5) In making a decision to defer a Project Assessment under subsection (1)(b)(ii), the Impacted Wilp must consider the criteria under section 36.

### **Impacted Wilp**

- 14** (1) Where a Project requires a Project Assessment, those Wilp that, based on consideration of the factors in subsection (2), issue an Initial Project Assessment Decision and intend to conduct the Project Assessment, subject to section 13, must provide a notice in the Initial Project Assessment Decision identifying themselves as the Impacted Wilp with respect to the Project.
- (2) A Wilp may identify itself as an Impacted Wilp if the Wilp
- (a) wishes to participate in the Initial Project Assessment Decision and, subject to section 13, the Project Assessment, and
  - (b) stands to be impacted by the Project, based on consideration of
    - (i) whether the Project is located within the boundaries of a Wilp, in whole or in part,
    - (ii) potential impacts to Wilp Sustainability, including impacts on
      - A. wildlife present in a Wilp on a seasonal or permanent basis,
      - B. fish present in a Wilp on a seasonal or permanent basis,
      - C. water in or upstream of a Wilp,

- (iii) potential impacts that may be experienced in a unique or disproportionate manner by members of a Wilp, and
- (iv) other factors considered relevant to the Wilp.

(3) A notice identifying Impacted Wilp may set out different types or levels of participation in the Project Assessment by different Impacted Wilp.

(4) A Wilp may join or withdraw from the Impacted Wilp at any time, based on consideration of the factors in subsection (2), by providing an amended notice of Impacted Wilp to the Proponent.

(5) Unless the Initial Project Assessment Decision provides otherwise, the Proponent must deal with the Impacted Wilp jointly.

## PART 4 – ASSESSMENT

### Gitanyow participation in field work

**15** Except as otherwise set out in an Initial Engagement Agreement or a Project Assessment Agreement, a Proponent must ensure that Gitanyow members are included in the crews for all field work carried out in Gitanyow Lax'yip with respect to a Project.

### Wilp Sustainability Assessment Direction

**16** (1) After

- (a) the conclusion of an Initial Engagement Agreement, and
- (b) the issuance of an Initial Project Assessment Decision, unless the Initial Project Assessment Decision terminates or defers the Project Assessment under section 13,

the Impacted Wilp must issue a Wilp Sustainability Assessment Direction that

- (c) establishes key matters to be addressed in a Project Assessment Agreement, including any specific direction on the matters set out in section 17, and
- (d) provides a draft budget for the conduct of the Project Assessment, for the period between the issuance of the Wilp Sustainability Assessment Direction and the issuance of a Project Decision Statement.

(2) A Project Assessment Agreement must be consistent with the Wilp Sustainability Assessment Direction, unless agreed otherwise in the Project Assessment Agreement or in an amendment to the Project Assessment Agreement.

(3) If

- (a) a Project Assessment Agreement has not been concluded within 45 days from the issuance of a Wilp Sustainability Assessment Direction, and
- (b) the Impacted Wilp are of the opinion that the Proponent and the Impacted Wilp are unlikely to reach a Project Assessment Agreement that is consistent with the Wilp Sustainability Assessment Direction,

then the Impacted Wilp may issue a notice that

- (c) terminates the Project Assessment and denies Nidinsxw for the Project, or
- (d) indicates that the Impacted Wilp will proceed with a Project Assessment unilaterally in a manner consistent with the Wilp Sustainability Assessment Direction, in which case subsection 17(2) does not apply.

### Project Assessment Agreement

**17** (1) After the Impacted Wilp have issued a Wilp Sustainability Assessment Direction, the Impacted Wilp and the Proponent may enter into a Project Assessment Agreement.

(2) A Project Assessment may not be carried out unless the Proponent and the Impacted Wilp have entered into a Project Assessment Agreement that does all of the following:

- (a) identifies the scope of the Matters for Assessment;
- (b) identifies the studies and analysis to be carried out by
  - (i) the GHC Office, and
  - (ii) if applicable, persons other than the GHC Office
 with regard to the Matters for Assessment;
- (c) specifies the information to be provided by the Proponent with regard to the studies and analysis identified under subsection (b);
- (d) sets out timelines with respect to the Project Assessment;
- (e) provides for the payment of fees pursuant to section 31;
- (f) addresses any other requirements in the Wilp Sustainability Assessment Direction; and
- (g) sets out other guidance, if applicable, with respect to the Project Assessment.

#### **Alteration of Project Assessment process**

**18** (1) The Impacted Wilp and the Proponent may amend a Project Assessment Agreement by written agreement.

(2) Where the Impacted Wilp and the Proponent are unable to reach agreement regarding amendment of a Project Assessment Agreement, the Impacted Wilp may unilaterally amend a Project Assessment Agreement in order to

- (a) alter specified timelines in a circumstance described in subsection 6(3) or 7(4), or because in the opinion of the Impacted Wilp it is not reasonable to meet the specified timelines as a result of changed circumstances, or
- (b) require specified additional studies or analysis because, in the opinion of the Impacted Wilp, there is a deficiency in information that may prevent the Impacted Wilp from making an informed decision in the Project Decision Statement

by providing a written notice to the Proponent specifying the amendments.

(3) If, at any point following the issuance of an Initial Project Assessment Decision and prior to issuance of a Project Decision Statement, a Proponent provides notice to the Impacted Wilp that it is suspending or canceling the Project, then notwithstanding any other provision of this Ayookxw the Impacted Wilp may

- (a) suspend the Project Assessment in whole or in part, for a specified or indefinite period,
- (b) terminate the Project Assessment, or
- (c) continue the Project Assessment, with any amendments under this section as appropriate.

(4) In suspending a Project Assessment under subsection (3)(a), the Impacted Wilp may establish conditions regarding the re-initiation of the Project Assessment.

## Matters for Assessment

**19** (1) In this section, “impacts” means, except as otherwise set out in a Project Assessment Agreement, impacts in relation to the Gitanyow Lax’yip or Gitanyow Huwilp, and includes lifecycle and lifespan direct, indirect and cumulative impacts as applicable.

(2) The following matters must be assessed in every Project Assessment:

- (a) impacts on Gitanyow Title and Rights;
- (b) compliance with Gitanyow Strategic Direction;
- (c) the potential impacts of the Project on Wilp Sustainability in relation to each of the environmental, socio-cultural, economic and other Wilp Sustainability Criteria, as well as synergies and interactions between these;
- (d) risks of malfunctions or accidents and related impacts, including
  - (i) impacts from low probability yet high-consequence malfunctions or accidents, and
  - (ii) the potential costs of environmental, socio-cultural and economic losses related to possible impacts;
- (e) changes in access to the Gitanyow Lax’yip that may result from the Project and any related impacts;
- (f) alternatives to the Project and the impacts, risks and uncertainties of those alternatives; and
- (g) alternative means of carrying out the Project that are technically feasible using best available technology and the impacts, risks and uncertainties of those alternatives.

(3) The assessment of the Matters for Assessment must be based on best available scientific, Gitanyow and local knowledge, and include consideration of:

- (a) the purpose of and need for the Project from a societal and community perspective;
- (b) the precautionary principle;
- (c) to the extent applicable, potential measures to
  - (i) avoid, mitigate, restore from, or ecologically compensate for potential impacts, and
  - (ii) conduct monitoring related to potential impactsduring the construction, operation and closure phases of the Project;
- (d) conditions that may be imposed to avoid adverse impacts and contribute to Wilp Sustainability;
- (e) the outcomes from Wilp member engagement;
- (f) to the extent that information is made available, whether other Indigenous nations impacted by the Project have made a decision to grant, withhold or deny their free, prior and informed consent for the Project; and

(g) where provided for in the Project Assessment Agreement, comments received from other governments and the public.

(4) For clarity, and except as otherwise set out in a Project Assessment Agreement, the Matters for Assessment include activities or measures outside Gitanyow Lax'yip that relate to potential impacts on Gitanyow Lax'yip or Gitanyow Huwilp.

#### **Assessments conducted by Gitanyow**

**20** (1) Except as otherwise set out in a Project Assessment Agreement, the GHC Office is responsible for carrying out all studies and analysis related to the Matters for Assessment.

(2) The Proponent must furnish the information necessary to facilitate studies and analyses related to the Matters for Assessment, in the manner set out in a Project Assessment Agreement.

#### **Assessment report**

**21** The GHC Office must prepare and submit to the Impacted Wilp a Wilp Sustainability Assessment Report that does the following:

- (a) describes the process and outcomes of the assessment undertaken with respect to the Matters for Assessment,
- (b) recommends, with reference to the Wilp Sustainability Test, whether the Impacted Wilp should grant Nidinsxw for the Project in the Project Decision Statement,
- (c) recommends conditions that should be imposed if Nidinsxw is granted; and
- (d) recommends, if applicable, further information that should be obtained before the Impacted Wilp issue the Project Decision Statement.

## PART 5 – DECISION-MAKING

### Decision-making consistent with Gitanyow Constitution

22 The fundamental Gitanyow institutions, governance structures and governance system set out in Gitanyow Constitution are applicable to Wilp Sustainability Assessment Process decision-making.

### Wilp Sustainability Test

23 (1) The Impacted Wilp must review a Wilp Sustainability Assessment Report and make a determination regarding which option from among alternatives, including the option of not proceeding with a Project, will make the greatest, mutually reinforcing, cumulative and lasting positive contribution to Wilp Sustainability.

(2) For the purposes of the Wilp Sustainability Test, contribution to Wilp Sustainability includes protecting, restoring or enhancing the following:

#### *Environmental*

- (a) Di'dii'mxw'm Lax'yip; the ecological integrity of healthy, fully functioning ecosystems, including the ecological basis for the meaningful exercise of Gitanyow Title and Rights, community health and cultural transmission between generations;
- (b) BC's ability to meet its legislated greenhouse gas reduction targets and Canada's ability to do its share to meet the Paris Agreement commitment to limit global temperature rise to well below 2 degrees Celsius above pre-industrial levels;
- (c) the efficient and non-wasteful use of resources, including minimizing carbon pollution and other forms of pollution;

#### *Socio-cultural*

- (d) Gitanyow food security;
- (e) community cohesion and social well-being;
- (f) intragenerational equity and intergenerational equity;
- (g) Amma gan'da'dilst (health) of Wilp members;
- (h) Gitanyow cultural heritage resources, including traditional medicines;
- (i) education needs and priorities for Wilp members;

#### *Economic*

- (j) livelihood sufficiency and opportunity for Wilp and community members over the short and long-term;
- (k) long-term economic wellbeing, including economic diversification and the ability to avoid boom and bust cycles; and

#### *Other criteria*

- (l) other Wilp Sustainability Criteria established by the Simgigyet'm Gitanyow or by the Impacted Wilp and communicated to the Proponent in a Wilp Sustainability Assessment Direction.
- (3) In accordance with the Gitanyow Ayookxw, the Wilp Sustainability Criteria must be interpreted
- (a) synergistically, considering sustainability of the whole system of land, air, water, fish, wildlife and other living beings and Gitanyow people, laws and culture through time, and
  - (b) in a manner that, at a minimum, ensures compliance with Gitanyow Strategic Direction including the Gitanyow Lax'yip Land Use Plan.

### **Project Decision Statement**

- 24** (1) After receiving the Wilp sustainability assessment report, the Impacted Wilp must issue a Project Decision Statement within the timeline set out in the Project Assessment Agreement.
- (2) A Project Decision Statement may
- (a) grant Nidinsxw for the Project and specify the conditions on which the Nidinsxw is granted,
  - (b) refuse Nidinsxw for the Project, or
  - (c) direct the GHC Office to conduct further assessment relevant to the Project.
- (3) A Project Decision Statement issued pursuant to subsection (2)(a) or (b) must contain reasons for the decision with reference to the Wilp Sustainability Assessment Report, the Wilp Sustainability Assessment Purposes, the Wilp Sustainability Assessment Principles, and the Wilp Sustainability Test.
- (4) A Project Decision Statement issued pursuant to subsection (2)(c) may provide direction with respect to the process or content of further assessment, including any further information required from the Proponent or other parties to complete the assessment.
- (5) A decision referred to in subsection (2)(a) may not be made if
- (a) one or more of the circumstances set out in subsection 13(4) are present, or
  - (b) the Impacted Wilp are not satisfied that there is sufficient information to determine the impacts of the Project on Wilp Sustainability, Gitanyow Title and Rights or Gitanyow interests.

## PART 6 – ENGAGEMENT

### **Simigyet responsibility for Wilp member engagement**

**25** Wilp Simigyets are responsible for ensuring that Wilp members have the opportunity to participate in the Wilp Sustainability Assessment Process in a manner consistent with the Gitanyow Constitution, taking into account the preferences of Wilp members, the nature of the Project, and the capacity of the Wilp.

### **GHC Office technical support**

**26** (1) The GHC Office may, if requested by a Wilp Simogyet, provide support in carrying out Wilp member engagement under section 25.

(2) GHC Office support for Wilp member engagement may, at the direction of the Simogyet and capacity permitting, include:

- (a) providing notice to Wilp members of an Initial Description of Activities, and at other key stages of the Wilp Sustainability Assessment Process, so that they may participate in decision-making if desired,
- (b) attending a Wilp assessment meeting or forum to answer technical questions about the Wilp Sustainability Assessment Process, the potential impacts of a proposed Project or assessment recommendations,
- (c) hosting a Huwilp Assembly regarding the draft Wilp Sustainability assessment report or other key Wilp Sustainability Assessment Process decisions as determined by the Simigyets' Gitanyow, or
- (d) assisting the Simogyet in drafting a Wilp Consensus Record regarding the assessment decision or other record of Wilp participation in the Wilp Sustainability Assessment Process.

### **Access to information**

**27** The GHC Office must maintain an on-line record of agreements and decisions under the Wilp Sustainability Assessment Process, including Gitanyow Strategic Direction.

## PART 7 – PROPONENT ECONOMIC AGREEMENTS AND FEES

### Economic Agreement with Proponent

- 28** (1) The Impacted Wilp and a Proponent may enter into an Economic Agreement that sets out the benefits the Proponent will provide to Gitanyow.
- (2) Regardless of whether the Impacted Wilp have granted Nidinsxw for a Project, no person may undertake any activity in Gitanyow Lax'yip to construct or operate a Project unless the Impacted Wilp and the Proponent have entered into an Economic Agreement regarding the Project.
- (3) An Economic Agreement does not constitute the granting of Nidinsxw, nor otherwise indicate approval of a Project by the Impacted Wilp.
- (4) An Economic Agreement may address any matters agreed to by the Impacted Wilp and the Proponent, provided the matters agreed to are consistent with
- (a) this Ayookxw, and
  - (b) the conditions of the Nidinsxw, if granted.
- (5) An Economic Agreement may include parties in addition to the Impacted Wilp and the Proponent.

### Economic Agreement considerations

- 29** In deciding to enter into an Economic Agreement, the Impacted Wilp must be satisfied that:
- (a) the Proponent has provided sufficient, accurate and transparent information regarding its economic planning with respect to the Project, including anticipated revenue; and
  - (b) the terms of the Economic Agreement are consistent with the legal principle of Skid'm up gid'm Simogyet or Sid'm gap'hxo'etxwhl.

### Revocation of Nidinsxw in absence of Economic Agreement

- 30** (1) If, after the Impacted Wilp have granted Nidinsxw for a Project,
- (a) an Economic Agreement has not been concluded within the time frame specified in the conditions of the Nidinsxw; and
  - (b) the Impacted Wilp are of the opinion that the Proponent and the Impacted Wilp are unlikely to reach an Economic Agreement,
- then the Impacted Wilp may revoke the Nidinsxw granted for a Project.
- (2) The revocation of Nidinsxw under subsection (1) has the same effect as a decision to refuse Nidinsxw in a Project Decision Statement.

### Fees

- 31** (1) A Proponent must pay fees to the Impacted Wilp to compensate, in advance, for Gitanyow's costs in administering the Wilp Sustainability Assessment Process, including compensation for the time and resources expended by Gitanyow with respect to the following matters under this Ayookxw:

- (a) engagement with the Proponent;
- (b) fulfilling requirements and undertaking processes provided for in this Ayookxw with respect to a Project Assessment;
- (c) carrying out studies and analysis for a Project Assessment; and
- (d) conducting monitoring and compliance activities.

(2) The payment of fees must be addressed in:

- (a) an Initial Engagement Agreement;
- (b) a Project Assessment Agreement;
- (c) a Compliance and Monitoring Agreement; and
- (d) a request by the Proponent to amend the conditions of Nidinskxw, based on direction from the GHC Office.

(3) Before entering into any of the agreements listed in subsection (2)(a) to (c), the Impacted Wilp must be satisfied that the Proponent's payment of fees would cover the costs borne by Gitanyow as required under subsection (1), in light of the circumstances of the Project including consideration of the size of the Project, the complexity of the Project Assessment, and the potential impacts on Gitanyow Lax'yip and Gitanyow Huwilp.

(4) The Simgigyet'm Gitanyow may set and update base fees that apply to

- (a) all Project Assessments,
- (b) specified stages of all Project Assessments, and
- (c) any other specified aspect of administering the Wilp Sustainability Assessment Process

by posting notice of the base fees on the Gitanyow Hereditary Chiefs website.

(5) The Impacted Wilp may provide guidance with respect to the fees applicable to a Project, including fees in addition to base fees, in any of the following:

- (a) Initial Project Assessment Decision;
- (b) Wilp Sustainability Assessment Direction;
- (c) Project Decision Statement.

(6) The Simgigyet'm Gitanyow may delegate to the GHC Office:

- (a) the collection and administration of fees; and
- (b) the determination of base fees under subsection (4).

(7) Nothing in this section may be construed to limit the ability of the Impacted Wilp and the Proponent to enter into funding arrangements additional to the requirements in this section.

## PART 8 – OTHER GOVERNMENTS

### Paramountcy

**32** (1) A law of a federal or provincial government that is inconsistent or in conflict with this Ayookxw is of no force or effect with respect to Gitanyow Lax'yip and Gitanyow Huwilp to the extent of the inconsistency or conflict.

(2) A decision made or an agreement entered into pursuant to this Ayookxw prevails to the extent of an inconsistency or conflict with any decision, certificate, licence, permit or other authorization of a federal or provincial government.

### Communication to other governments

**33** (1) The Impacted Wilp, or the GHC Office where directed by the Impacted Wilp, may provide notice of the following to the federal or provincial government:

- (a) an Initial Description of Activities;
- (b) an Initial Project Assessment Decision;
- (c) a Wilp Sustainability Assessment Direction;
- (d) a Project Assessment Agreement;
- (e) a Wilp Sustainability Assessment Report;
- (f) a Project Decision Statement;
- (g) a Compliance and Monitoring Agreement; or
- (h) any amendments to the above.

(2) The Impacted Wilp, or the GHC Office where directed by the Impacted Wilp, may provide notice of some or all of the matters set out in subsection (1) to another Indigenous nation or body.

(3) Upon receiving notice under subsection (1), any government or body that is in possession of specialist or expert information or knowledge with respect to an Initial Description of Activities or a Project that requires a Project Assessment, must on the request of the GHC Office, and within the period that it specifies, make that information or knowledge available to the GHC Office.

### Multi-Party Assessment Agreements

**34** (1) Subject to subsections (4) and (5), and section 35 or 36, the Impacted Wilp or the Simgigyet'm Gitanyow, as applicable, may enter into a Multi-Party Assessment Agreement with the federal or provincial government with respect to any matter addressed in this Ayookxw, either generally, or in relation to a specific assessment.

(2) Matters to be addressed in a Multi-Party Assessment Agreement with the federal or provincial government may include:

- (a) recognition of Gitanyow Title and Rights and inherent jurisdiction over the Lax'yip;
- (b) recognition of the inescapable economic component of Gitanyow title;

- (c) recognition of the Wilp Sustainability Assessment Process and related decisions;
- (d) any matters specific to the conduct of a multi-party assessment;
- (e) revenue-sharing;
- (f) monitoring, compliance and enforcement; and
- (g) reclamation and restoration following project closure and decommissioning.

(3) If a Multi-Party Assessment Agreement provides for substitution of the Wilp Sustainability Assessment Process for a provincial or federal assessment, then a Wilp Sustainability Assessment Direction may provide for participation by the federal or provincial governments, other Indigenous nations, or the public in a Project Assessment, to the extent set out in the direction.

(4) Subject to subsections (5) and (6), and section 35 or 36, the Impacted Wilp or the Simigiyet'm Gitanyow, as applicable, may enter into a Multi-Party Assessment Agreement with one or more Indigenous nations with respect to the conduct of an assessment, or related monitoring, compliance and enforcement.

(5) The Impacted Wilp or the Simigiyet'm Gitanyow, as applicable, may not enter into a Multi-Party Assessment Agreement unless satisfied that any assessment conducted pursuant to the agreement would be consistent with the Wilp Sustainability Assessment Purposes and apply the Wilp Sustainability Assessment Principles, Gitanyow Strategic Direction and the Wilp Sustainability Criteria.

(6) For certainty, the authority of each Wilp to make decisions with respect to activities or Projects in their Wilp Lax'yip may not be delegated through a Multi-Party Assessment Agreement.

(7) Subject to subsections (5) and (6), the Wilp Sustainability Assessment Process may be modified in the manner and to the extent provided for in a Multi-Party Assessment Agreement.

#### **Criteria for consideration – Multi-party Project Assessment**

**35** (1) When one or more of the following circumstances are present, the Impacted Wilp may enter into a Multi-Party Assessment Agreement with respect to assessment of a Project:

- (a) the Project is a linear project such as a pipeline or transmission line that has the potential to impact several Indigenous nations;
- (b) in the opinion of the Impacted Wilp, information and analysis required for Wilp decision-making about a Project may be more efficiently or effectively obtained through cooperation with other governments or bodies; or
- (c) any other circumstances deemed by the Impacted Wilp to be relevant to upholding Gitanyow Ayookxw and Wilp Sustainability.

(2) A Multi-Party Assessment Agreement with respect to assessment of a Project may provide for assessment by

- (a) a panel, or
- (b) any other process set out in the Multi-Party Assessment Agreement, and

may apply to all or part of a Project Assessment.

### **Criteria for consideration – Regional Assessment**

**36** When, in the opinion of the Simigiyet'm Gitanyow, one or more of the following circumstances are present, then the Simigiyet'm Gitanyow may enter into a Multi-Party Assessment Agreement to conduct a Regional Assessment or Regional Strategic Assessment:

- (a) there is a need to assess risk to or establish strategic direction for wide-ranging or interconnected values that cannot be sustained at the territorial or Wilp level alone;
- (b) there are multiple proposals at the same time for activities that may impact Gitanyow Lax'yip or Gitanyow Huwilp, or concerns about pace and scale of development in the region;
- (c) a proposed activity in a relatively undisturbed area would likely induce further development in the region that has the potential to affect the Gitanyow Lax'yip or Gitanyow Huwilp;
- (d) assessment of cumulative effects related to a proposed activity would be better addressed through Regional Assessment or Regional Strategic Assessment;
- (e) benchmarks of regional ecological or socio-cultural well-being are demonstrably in decline or approaching thresholds identified in Gitanyow Strategic Direction; or
- (f) any other circumstances deemed by the Simigiyet'm Gitanyow to be relevant to upholding Gitanyow Ayookxw and Wilp Sustainability.

## PART 9 – MONITORING AND COMPLIANCE

### Monitoring of Gitanyow Lax'yip

**37** (1) The Simgigyet'm Gitanyow may implement, or cause to be implemented, a monitoring program to monitor

- (a) compliance with, and effectiveness of, Gitanyow Strategic Direction, including standards established through the Gitanyow Lax'yip Land Use Plan, Wilp Risk Assessments, or Regional Assessments or Regional Strategic Assessments, or
- (b) the condition of any other value or right in the Lax'yip, according to indicators established by Simgigyet'm Gitanyow.

(2) A monitoring program under subsection (1) must provide for information specific to the Wilp level, to the extent feasible and applicable in the circumstances.

(3) Where the GHC Office carries out monitoring under subsection (1), then the GHC Office must share any relevant information with the Wilp potentially affected by the results of the monitoring.

(4) Where a Wilp carries out monitoring under subsection (1), then the Wilp must share any relevant information with the GHC Office.

### Compliance and Monitoring Agreement

**38** (1) Where Nidinsxw has been granted for a Project, the Impacted Wilp and the Proponent may enter into a Compliance and Monitoring Agreement.

(2) No person may undertake any activity in Gitanyow Lax'yip to construct or operate a Project unless the Impacted Wilp and the Proponent have entered into a Compliance and Monitoring Agreement with respect to the Project.

(3) A Compliance and Monitoring Agreement must

- (a) provide measures to meet the conditions of the Nidinsxw,
- (b) provide for the payment of fees pursuant to section 31, and
- (c) establish a bond to be paid by the Proponent to ensure sufficient funds are available with respect to the following matters
  - (i) fulfilment of the conditions of the Nidinsxw,
  - (ii) response, clean-up and restoration with respect to potential accidents or malfunctions,
  - (iii) restoration of the Lax'yip upon abandonment or closure of the Project, and
  - (iv) any other matters agreed to by the parties.

(4) A Compliance and Monitoring Agreement may

- (a) establish a project monitoring committee, including representatives chosen by the Impacted Wilp and the Proponent, to coordinate monitoring with respect to the Project, including coordination

of project monitoring with other aspects of a Gitanyow monitoring program under section 37 and inspection by Lii'hl'sim Lax'yip under section 39, and

(b) address any other matters related to monitoring and compliance with respect to the Project.

(5) Unless stated otherwise in the Nidinsxw or in a Compliance and Monitoring Agreement, monitoring provided for in a Compliance and Monitoring Agreement must be

(a) led by the Impacted Wilp,

(b) supported by the GHC Office, and

(c) funded by the Proponent.

(6) A Compliance and Monitoring Agreement may include parties in addition to the Impacted Wilp and the Proponent.

### **Inspection by Lii'hl'sim Lax'yip**

**39** (1) The Simgigyet'm Gitanyow may appoint Gitanyow Lax'yip Guardians or other individuals, by name or by title, as Lii'hl'sim Lax'yip responsible for carrying out compliance activities with respect to the Wilp Sustainability Assessment Process.

(2) In the appointment of Lii'hl'sim Lax'yip, the Simgigyet'm Gitanyow may specify or restrict the responsibilities of Lii'hl'sim Lax'yip.

(3) For any purpose related to Lii'hl'sim Lax'yip compliance responsibilities, Lii'hl'sim Lax'yip may enter at any reasonable time on property in Gitanyow Lax'yip that is the site of a Project, or on property in Gitanyow Lax'yip that is the site of facilities that are ancillary to the Project, and may do any or all of the following:

(a) inspect any works or activity connected with the Project;

(b) take away samples;

(c) examine and take away copies of records related to the Project;

(d) take photographs or make audio or video records.

(4) An individual who enters on property under subsection (3) must, on request of a person present on the property, provide information regarding the individual's authority to enter on the property as Lii'hl'sim Lax'yip.

(5) A person must, on request of the Lii'hl'sim Lax'yip,

(a) produce for examination, without charge or unreasonable delay, any document related to the Project as requested by the Lii'hl'sim Lax'yip,

(b) provide the Lii'hl'sim Lax'yip with information relevant to the purposes of the inspection, and

(c) operate a thing, carry out a procedure or demonstrate a relevant skill, as requested by the Lii'hl'sim Lax'yip.

(6) A person must not

- (a) obstruct or interfere with the Lii'hl'sim Lax'yip in carrying out responsibilities under this section, or
- (b) withhold, destroy, tamper with, alter, conceal or refuse to produce anything requested under subsection (5).

(7) In entering on property under subsection (3), the Lii'hl'sim Lax'yip may take with them any other persons or equipment that may be necessary for the purposes of the inspection.

(8) The Simgyet'm Gitanyow must ensure that the Lii'hl'sim Lax'yip they appoint receive appropriate safety preparedness and other training .

(9) Nothing in this section restricts the Impacted Wilp, in the conditions of Nidinsxw or the terms of a Compliance and Monitoring Agreement, from

- (a) setting out requirements or guidance for compliance activities, or
- (b) providing for additional or alternative Lii'hl'sim Lax'yip

with respect to a Project.

#### **Request to amend conditions of Nidinsxw**

**40** (1) A Proponent of a Project that has been granted Nidinsxw may apply in writing to amend the conditions of the Nidinsxw by providing a written request to the GHC Office, together with a rationale for the request.

(2) After receiving a request to amend the conditions of the Nidinsxw, the GHC Office must provide to the Impacted Wilp

- (a) the Proponent's amendment request and rationale, and
- (b) a recommendation regarding a decision by the Impacted Wilp under subsection (4).

(3) Prior to, or simultaneously with, providing a recommendation under subsection (2)(b), the GHC Office may conduct a Lig'il'sxw (review) of the Nidinsxw and provide a recommendation to the Impacted Wilp under section 41.

(4) After receiving materials regarding an amendment request under subsection (2), the Impacted Wilp must do one or more of the following:

- (a) grant the requested amendment;
- (b) refuse the requested amendment;
- (c) amend, revoke or suspend any condition of the Nidinsxw; or
- (d) impose additional conditions on the Nidinsxw.

#### **Nidinsxw Lig'il'sxw**

**41** (1) The GHC Office may conduct a Lig'il'sxw (review) to consider whether it is appropriate to amend the Nidinsxw for a Project in light of

- (a) the results of any monitoring,

- (b) an inspection or other compliance and enforcement activities with respect to the Project,
- (c) any change in

- (i) control of a Proponent caused by a change in its shareholdings, or
- (ii) a Proponent's contractual interests or obligations

that, in the opinion of the Impacted Wilp or the GHC Office, may have a material impact on the Proponent's activities with respect to the Project or the discharge of any obligations pursuant to this Ayookxw, or

- (d) any other changed circumstances that, in the opinion of the Impacted Wilp or the GHC Office, are relevant to the Project.

(2) The GHC Office must offer the Proponent an opportunity to provide input into a Lig'il'sxw.

(3) After completing its considerations during the Lig'il'sxw, the GHC Office must provide the Impacted Wilp with a recommendation regarding whether any changes to the Nidinsxw are warranted.

(4) After receiving a recommendation under subsection (3), the Impacted Wilp must conclude the Lig'il'sxw by issuing a decision that does one or more of the following:

- (a) maintains the Nidinsxw with no changes;
- (b) amends, revokes or suspends any condition of the Nidinsxw;
- (c) imposes additional conditions on the Nidinsxw; or
- (d) revokes the Nidinsxw if, in the opinion of the Impacted Wilp, the results of the Lig'il'sxw indicate that the Project cannot continue without irreparably harming Wilp Sustainability or otherwise failing to comply with the Wilp Sustainability Assessment Principles.

#### **Non-compliance during Project Assessment**

**42** (1) Where, at any time prior to or during a Project Assessment, a Proponent fails or refuses to comply with

- (a) an agreement entered into by the Proponent pursuant to this Ayookxw, or
- (b) any provision of this Ayookxw, including the requirement to comply with Gitanyow Strategic Direction.

then the Impacted Wilp or, if the Impacted Wilp have not yet been identified, the Simgigyet'm Gitanyow, may provide notice of non-compliance to the Proponent.

(2) If, after receiving notice of non-compliance under subsection (1), a Proponent does not resolve the non-compliance within 30 days, then the Impacted Wilp or the Simgigyet'm Gitanyow, as applicable, may refuse Nidinsxw for the Project.

#### **Non-compliance where Nidinsxw granted**

**43** (1) Where, following the granting of Nidinsxw, a Proponent fails or refuses to comply with

- (a) any condition of the Nidinsxw,

- (b) an agreement entered into by the Proponent pursuant to this Ayookxw, or
- (c) any provision of this Ayookxw, including the requirement to comply with Gitanyow Strategic Direction.

then the Impacted Wilp may provide notice of non-compliance to the Proponent.

(2) If, after receiving notice of non-compliance under subsection (1), a Proponent does not resolve the non-compliance within 30 days, then the Impacted Wilp may do one or more of the following:

- (a) revoke the Nidinsxw;
- (b) suspend the Nidinsxw;
- (c) amend, revoke or suspend any condition of the Nidinsxw; or
- (d) impose additional conditions on the Nidinsxw.

#### **Response in urgent circumstances**

##### **44 Where**

- (a) in the opinion of the Impacted Wilp, urgent circumstances are present, including the immediate risk of harm to Gitanyow Lax'yip or Gitanyow Huwilp, or
- (b) Gitanyow cultural heritage resources are discovered that may be affected in any way by a Project

then the Impacted Wilp may, pending a decision under one or more of sections 40 to 43, immediately do one or more of the following with respect to a Project:

- (c) suspend the Nidinsxw;
- (d) suspend any condition of the Nidinsxw;
- (e) temporarily amend any condition of the Nidinsxw; or
- (f) temporarily impose additional conditions on the Nidinsxw.

#### **No transfer without approval**

**45** (1) A Proponent that has been granted Nidinsxw through a Project Assessment may not transfer the Nidinsxw to another person, except with the approval of the Impacted Wilp.

(2) A Proponent may not assign to another person their interest or obligations in an agreement entered into pursuant to this Ayookxw, unless

- (a) such assignment is provided for in the agreement and the assignment is conducted in compliance with the agreement, or
- (b) the Impacted Wilp approve the assignment.

(3) The Impacted Wilp may make an approval under subsection (1) or (2)(b) on any conditions the Impacted Wilp consider appropriate.

(4) A transfer referred to in subsection (1) includes a transfer by virtue of a change in control of the Proponent caused by a change in its shareholdings.

## Emergency Wilp protection

- 46 (1) Where, in the opinion of one or more Wilp, past or ongoing activity has caused, or has immediate potential to cause, harm to Gitanyow Lax'yip or Gitanyow Huwilp, then the Wilp may issue an Emergency Wilp Protection Decision.
- (2) An Emergency Wilp Protection Decision must identify
- (a) the Wilp issuing the Emergency Wilp Protection Decision, and
  - (b) in summary terms and to the extent information is available, the matters to which the Emergency Wilp Protection Decision applies.
- (3) An Emergency Wilp Protection Decision may do one or more of the following:
- (a) provide for assessments, including assessment of actual or potential harm to Gitanyow Lax'yip, Gitanyow Huwilp or Wilp Sustainability and any related costs;
  - (b) provide for response or cleanup measures;
  - (c) provide for monitoring;
  - (d) identify one or more persons as a Responsible Party;
  - (e) require a Responsible Party to conduct, at its own cost, any assessment, response, cleanup or monitoring specified under subsections (a) to (c);
  - (f) require a Responsible Party to pay the Wilp or the GHC Office specified amounts in order to enable the Wilp or the GHC Office to carry out any assessment, response, cleanup or monitoring specified under subsections (a) to (c);
  - (g) require a Responsible Party to pay the Wilp or the GHC Office specified amounts to compensate for costs already incurred by the Relevant Wilp or the GHC Office for assessment, response, cleanup or monitoring in relation to matters to which the Emergency Wilp Protection Decision applies.
- (4) The Wilp may issue updates to an Emergency Wilp Protection Decision.
- (5) The Simgigyet'm Gitanyow may establish, through Gitanyow Strategic Direction, requirements for an emergency response contingency fund supported by payments from those conducting activities that pose a risk to Gitanyow Lax'yip or Gitanyow Huwilp.
- (6) If the Simgigyet'm Gitanyow have established, an emergency response contingency fund, then the Wilp may, in an Emergency Wilp Protection Decision, provide for the use of contingency funds in a manner consistent with Gitanyow Strategic Direction.

SCHEDULE 1 – GITANYOW LAX'YIP

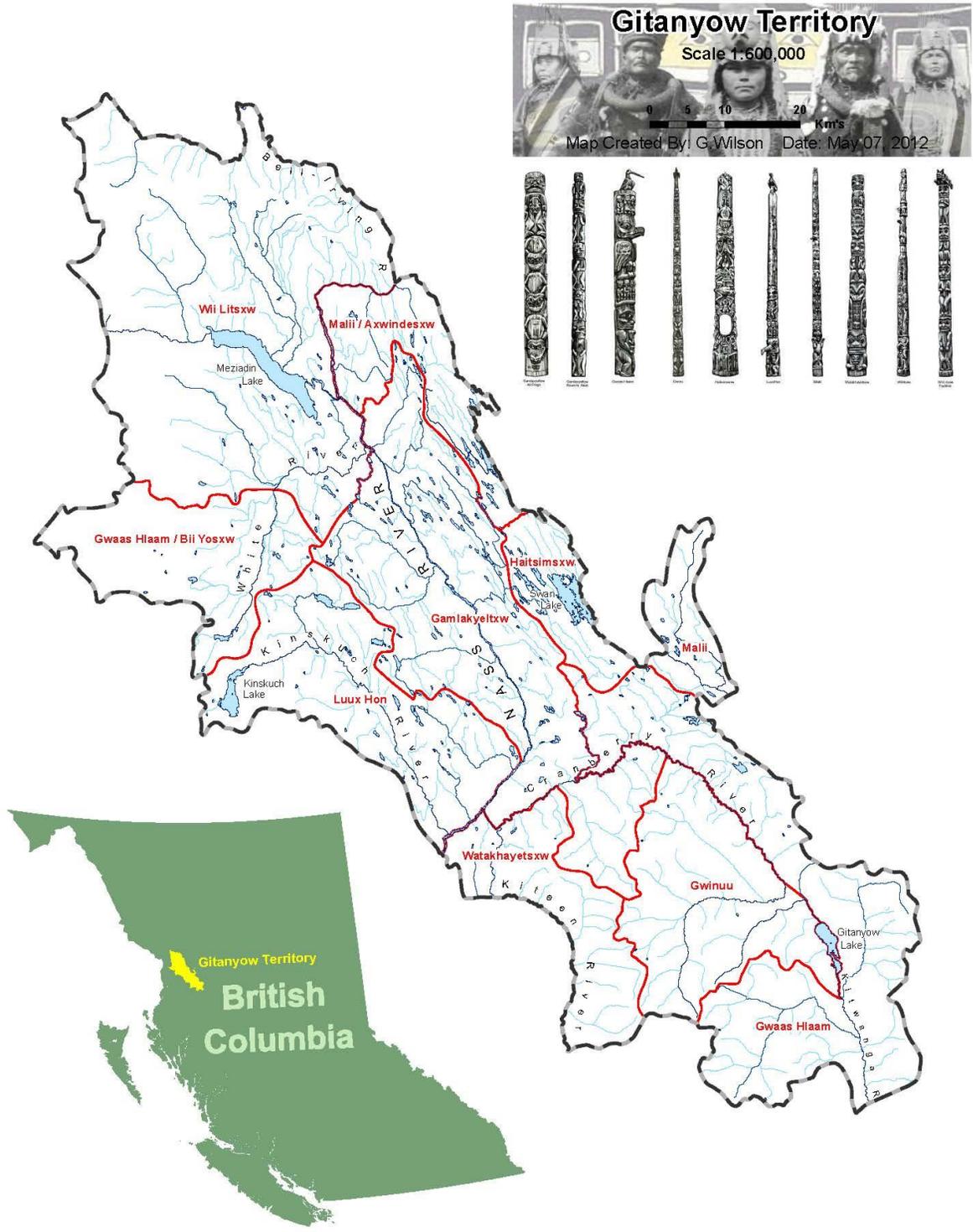


Figure: 1

## **SCHEDULE 2 – GITANYOW STRATEGIC DIRECTION**

The following Gitanyow policies, plans or Higher Level Assessments are designated as Gitanyow Strategic Direction for the purposes of the Wilp Sustainability Assessment Process:

Gitanyow Cultural Heritage Resource Management Policy

Gitanyow Lax'yip Land Use Plan

Gitanyow Huwilp Socio-cultural Needs Assessment

Kitwanga River Sockeye Recovery Strategy

Gitanyow Wildlife Strategy

Gitanyow Lax'yip Guardians Environmental Monitoring and Compliance Framework

Ecosystem Representation in Gitanyow Territory: Assessment of Current and Future Risk, 2010 and 2015