



LEMAC
Land and Energy Management Association of Canada



LAW SESSION PRESENTERS

MS. MATTI LEMMENS & MR. ALEC POLLOCK

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LEMAC CONFERENCE 2025 – ENERGY HORIZONS: LAND, PEOPLE, AND INNOVATION

Expropriation? Project Interests Impacted through Changes in Law

- ▶ Defining Expropriation
- ▶ When *de facto* Expropriation Occurs
- ▶ Expropriation, Indigenous Rights and the Environment
- ▶ Examples in Practice
 - *Species at Risk Act* and the LGX Project
 - Indigenous Rights and Energy Developments
 - *Cowichan Tribes* Decision
- ▶ Key Takeaways

Question?

- ▶ Who here has dealt with projects affected by regulatory changes in the area?



Defining Expropriation

de jure Expropriation

- Formal taking of land pursuant to legislation
 - Ex. Construction of highways, transportation systems, and utilities

de facto Expropriation

- A “constructive taking”
 - Ex. Government regulation that “effectively” takes private property for the public interest

Defining Expropriation

▶ *de jure* Expropriation

Formal Process

Guarantees Compensation

***Expropriation Act* governs**

Mineral Rights Compensation Regulation

Defining Expropriation

▶ *De facto* Expropriation

Broad Power to Regulate in “Public Interest”

Extensive Regulation → Loss of Use

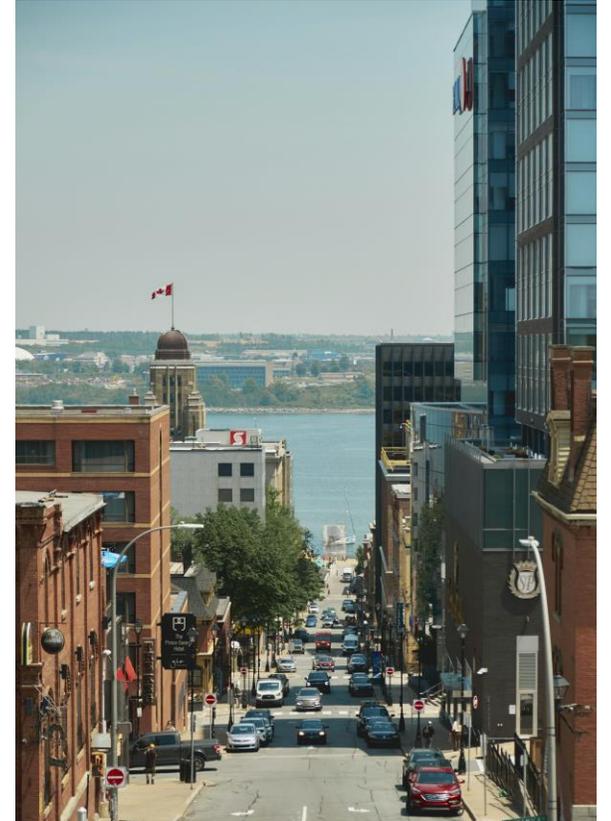
Obligation to Compensate

**Ex. Zoning Laws, Land Use Restrictions,
Environmental Buffer Zones, Indigenous Rights**

When *de facto* Expropriation Occurs

Annapolis Group Inc. v Halifax Regional Municipality

- Annapolis owned 965 acres of land in Halifax
- Intended to develop and sell the land
- Halifax adopted a Regional Municipality Planning Strategy
- Under Strategy → Land use restricted for public park
- Annapolis tries to develop, but refused by Halifax
- Annapolis argued *de facto* expropriation without compensation



When *de facto* Expropriation Occurs

▶ Legal Test to Prove *de facto* Expropriation

1

- Acquire a beneficial interest in the property, or flowing from it

2

- Loss of all reasonable uses of the property

➤ What does this mean?

When *de facto* Expropriation Occurs

► Factors to Consider

Context of Government Action

Kind of action government took

Whether property owner knew about the restrictions when land acquired

Was there a legitimate expectation by the owner that there would not be restrictions?

Historical and Current Use of Property

What are historically permitted uses?

Are the proponents' current proposed uses consistent with historical and permitted uses?

What was it used for, what could it realistically be used for?

Benefit Gained from Property

Public use or access

Environmental conservation

Planning benefit

Indigenous Rights and Environment → Expropriation

Increasing recognition
of Indigenous land
rights and
environmental
concerns

Indigenous Land
Rights or
Environmental
Conservation

Restricted
Development →
Expropriation?

Example in Practice: SARA and LGX Oil and Gas

SARA

- Protect certain wildlife species
- Authority to grant orders
- Restrict activities on private property

Sage Grouse Order

- Government of Canada issues emergency protection order under *SARA*
- Protect Greater Sage-Grouse
- Population <90 in Canada

LGX Project

- Order restricted industrial activities on >1,600km²
- Prohibited new roads, tall structures, loud noises during breeding season
- Significant impact on O&G operations in region
- LGX held interest in area, affecting proposed project

Example in Practice: SARA and LGX Oil and Gas

- ▶ City of Medicine Hat and LGX bring claim for *de facto* expropriation
- ▶ Court Claim Sought \$123.6MM
- ▶ Sage-Grouse Order expropriated existing oil and gas and mineral rights, leases, rights-of-way

Example in Practice: *SARA* and LGX Oil and Gas

- ▶ **Argument:** Order imposed without proper consultation, restrictions threatened vital economic interests
- ▶ City and LGX prior conservation efforts
- ▶ Environmental Organizations intervened to defend Sage-Grouse Order

Example in Practice: SARA and LGX Project

- ▶ Ultimately Settled → No Judicial Determination on LGX Argument
- ▶ Emergency Protections Remained in Effect
- ▶ Highlights How Environmental / Conservation Regulation May Lead to *de facto* Expropriation



Alberta Land-use Framework and Energy Developments

Draft Provincial Woodland Caribou Range Plan

Caribou population declining

Concern that industrial development contributing factors

Alberta Introduced Draft Plan

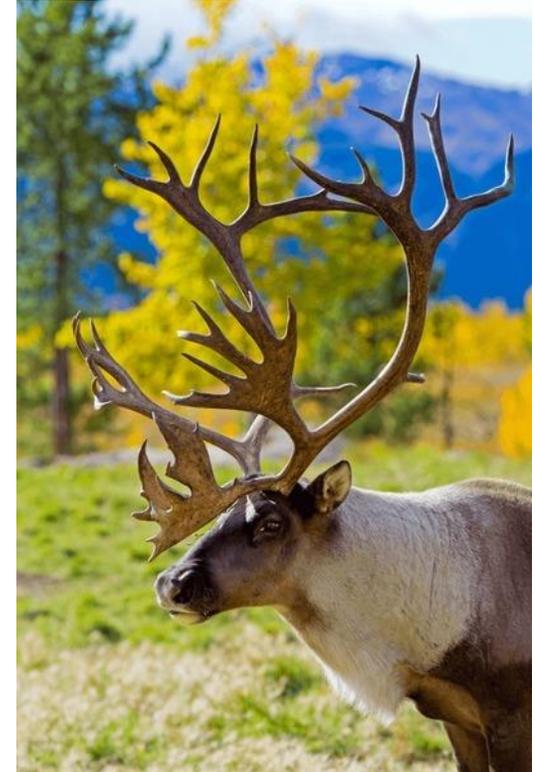
Plan includes “integrated land management” protection tools



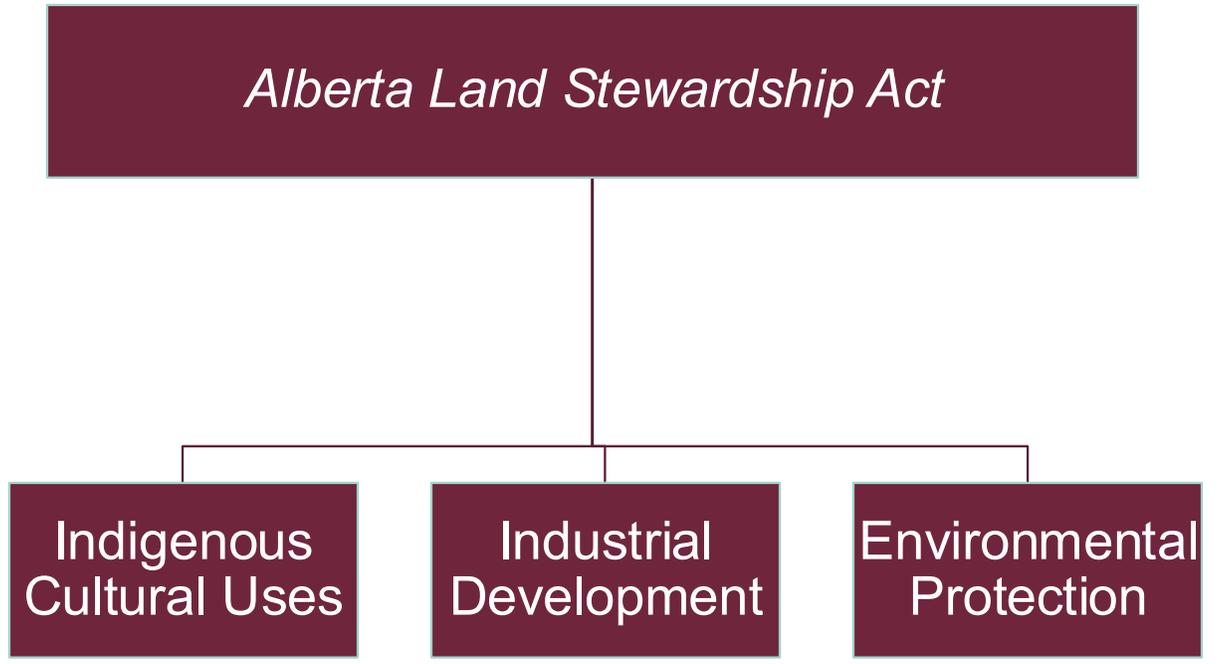
Alberta Land-use Framework and Energy Developments

▶ Draft Provincial Woodland Caribou Range Plan

- ▶ Relates to Provincial / Federal Agreement
- ▶ Agreement Avoids Emergency Order
- ▶ Will Include land-use restriction
- ▶ Habitat restoration mandates



Alberta Land-use Framework and Energy Developments



Alberta Land-use Framework and Energy Developments

Lower Athabasca Regional Plan (LARP)



Approved in 2012

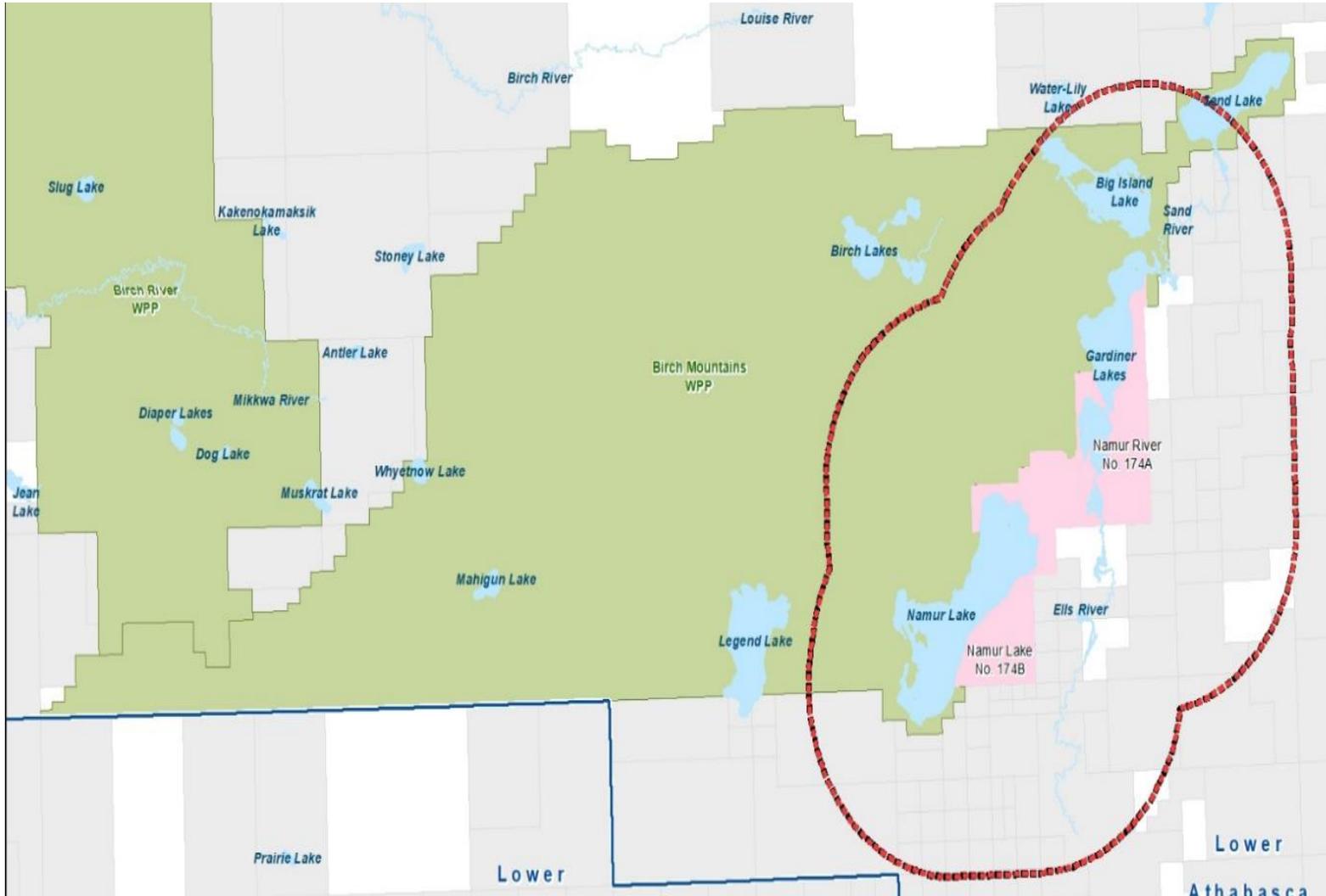
Environmental Thresholds

Conservation Areas

Land-use zoning / restrictions

Alberta Land-use Framework and Energy Developments

LARP and the Moose Lake Access Management Plan (MLAMP)



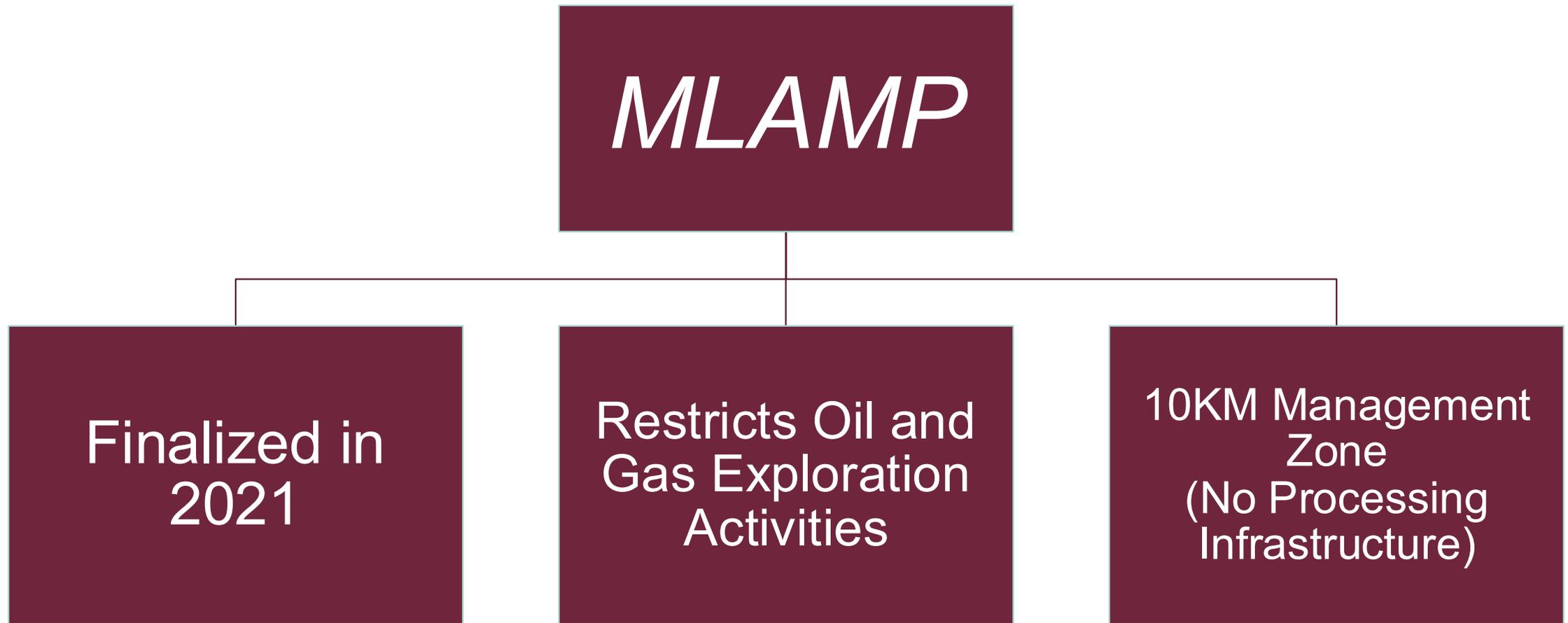
Land management

Preserve Treaty Obligations

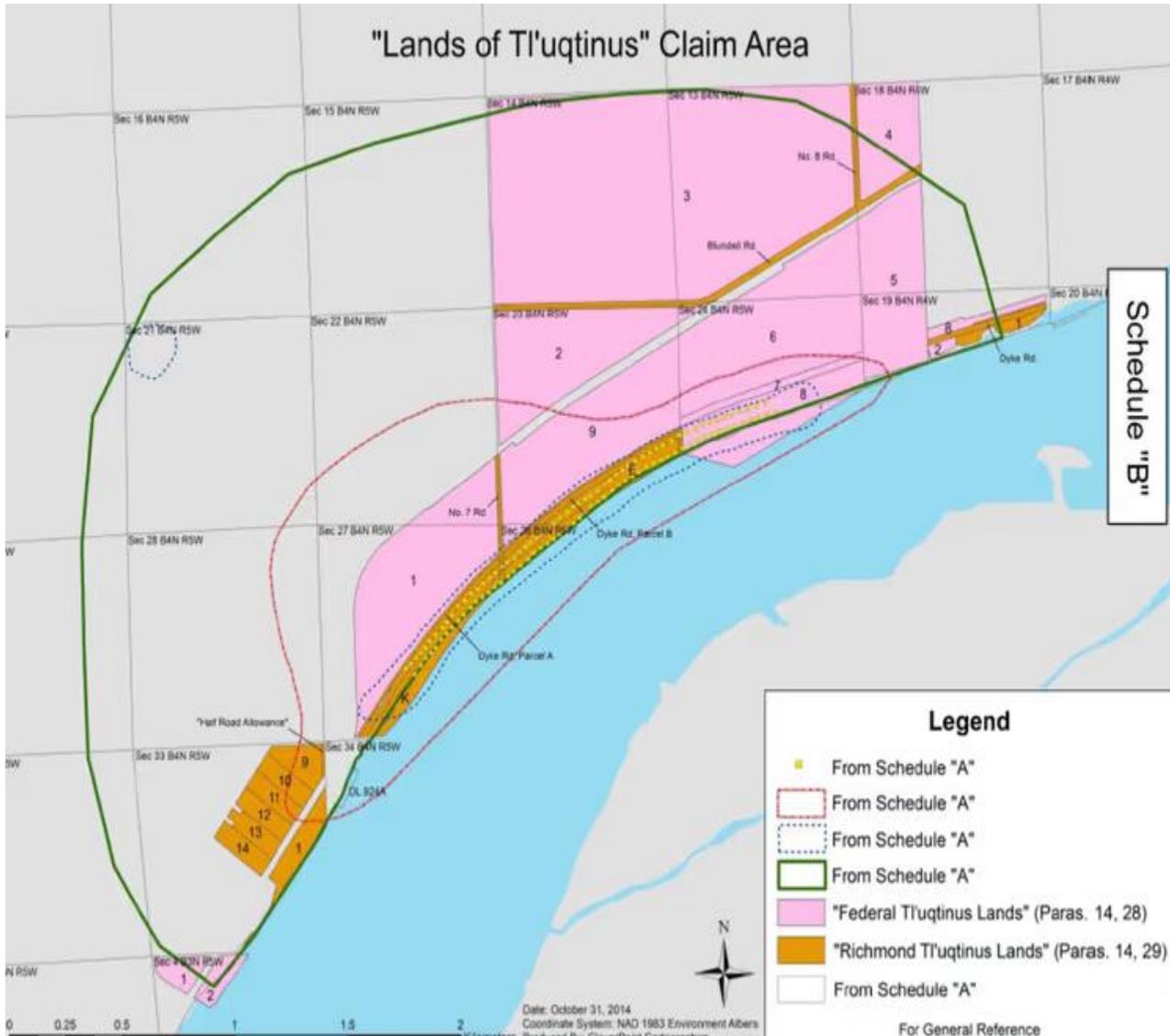
Species at risk concerns

Implications for Industry and First Nations

Alberta Land-use Framework and Energy Developments



Cowichan Tribes v Canada Decision



British Columbia

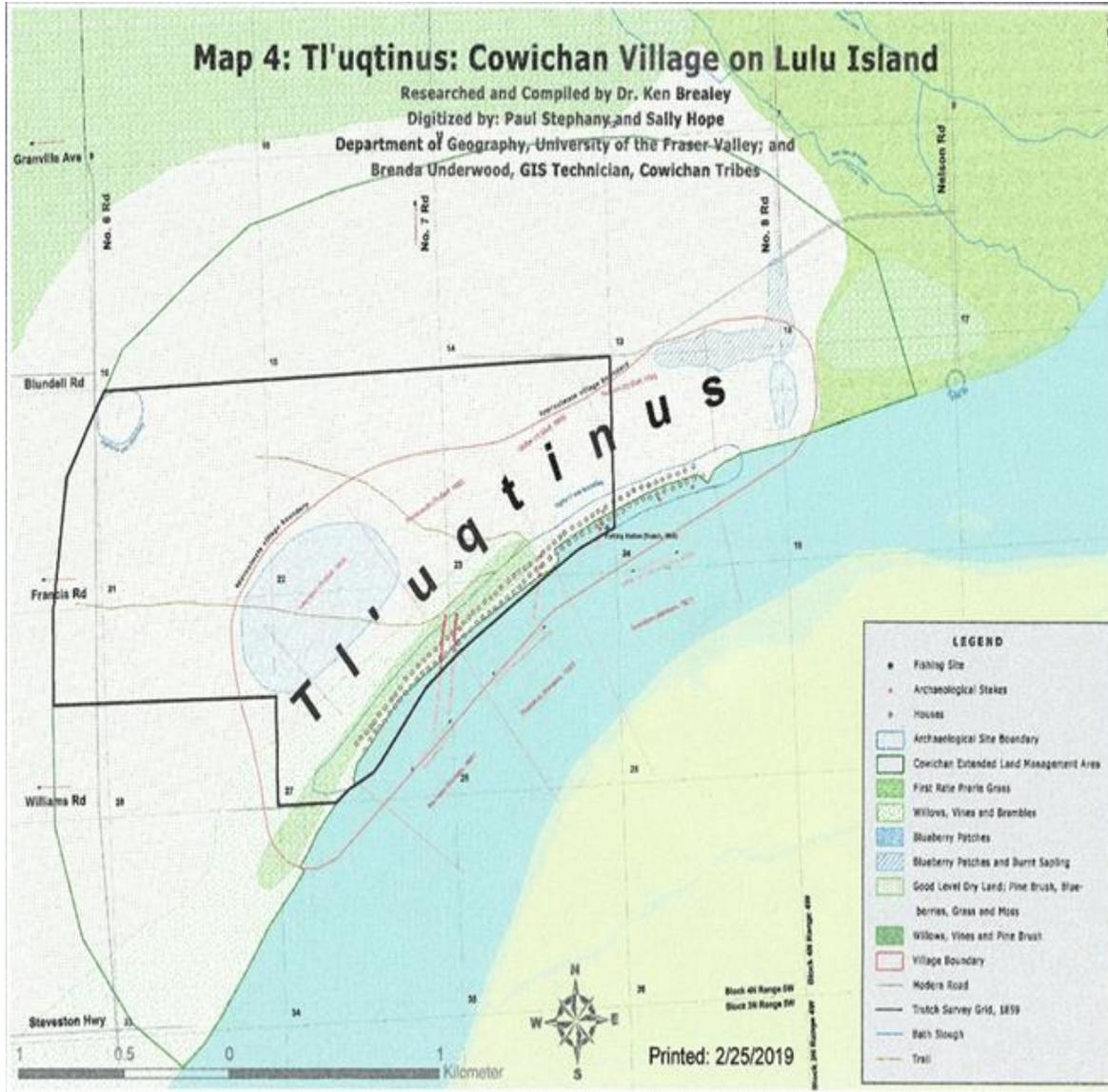
Cowichan Tribes → claim for Aboriginal title on traditional lands

Certain B.C. fee simple grants are "defective and invalid"

Precedent-setting for future cases brought by other Indigenous groups

Potential wave of Aboriginal land claims capturing private property interests

Cowichan Tribes v Canada Decision



Key Outcomes

Governments engage in reconciliation

Paramountcy of Aboriginal title

Future Conflicts where Aboriginal title unresolved

Takeaways



Questions?

**For more
information**

Matti Lemmens

mlemmens@stikeman.com

Alec Pollock

apollock@stikeman.com