

Haida Gwaii Management Council
Land Use Objectives Order Amendment
Decision-Making Process

September 10, 2014

Section 5.0 of the **Haida Gwaii Management Council Policy and Procedures Manual** covers *areas of authority* and *procedures for decision making* for the Haida Gwaii Strategic Land Use Agreement, Land Use Objectives, allowable annual cut, management plans for protected areas, and heritage sites. The steps below are based on section 5.2 of the Policy and Procedures Manual and apply broadly to the establishment of new land use objectives and the amendment of existing objectives:

Identification of Need

- The Parties may notify the Haida Gwaii Management Council (HGMC) of a proposed need for development of a new objective for the use and management of land and resources, or an amendment to an existing objective. All proposals must come to the HGMC through the parties (as represented by the Solutions Table). The HGMC will consider the rationale for developing or amending a Land Use Objective (LUO), and will determine initially or at any point in the process whether or not to proceed based on the justification for the proposal. The HGMC may independently identify the need for the development of a new LUO or the amendment of an existing LUO.
- Variances to default objectives allowed by flexibility provisions in land use orders are considered operational in nature and do not require the initiation of an LUO amendment process.

Establishment of a Joint Technical Team

- After the process of developing or amending a LUO is initiated, the HGMC will request that the Parties assign the necessary resources for a joint technical team (JTT)¹, with representatives from both CHN and BC, to review and make recommendations to develop or amend the LUO. A JTT will be formed for this purpose, and will work with and under the direction of the HGMC during the drafting process. The JTT will disband after the HGMC discharges the team.

Development

- To develop or amend a LUO, the JTT will follow any requirements set out in the Haida Stewardship Law and the provincial Land Use Objectives Regulation.

Review by HGMC

- The draft version of the new or amended LUO package will be presented by the JTT to the HGMC for review.

¹ The JTT is referred to as a Technical Working Group (TWG) in the process documents.

Engagement with the Public and Interested Parties

- The HGMC will be responsible for providing opportunities for review and comment of proposed new or significantly amended LUOs to Haida Gwaii communities, and relevant industry stakeholders. Holders of forest stewardship plans, woodlot license plans, range plans or range stewardship plans, on which the proposed LUO order would have an impact, will be engaged at this time.
- The period for review and comment by the public is 60 days. However, the HGMC is able to shorten or lengthen this period at their discretion if adequate review and comment can be completed during a different length of time.
- Proposed amendments that are not significant in nature (see Appendix 2) do not require public review and comment, but will be published according to the requirements outlined in this document.

Feedback Review and Adjustment

- The HGMC may instruct the JTT to revise the draft LUO based on public feedback.

Final Approval by HGMC

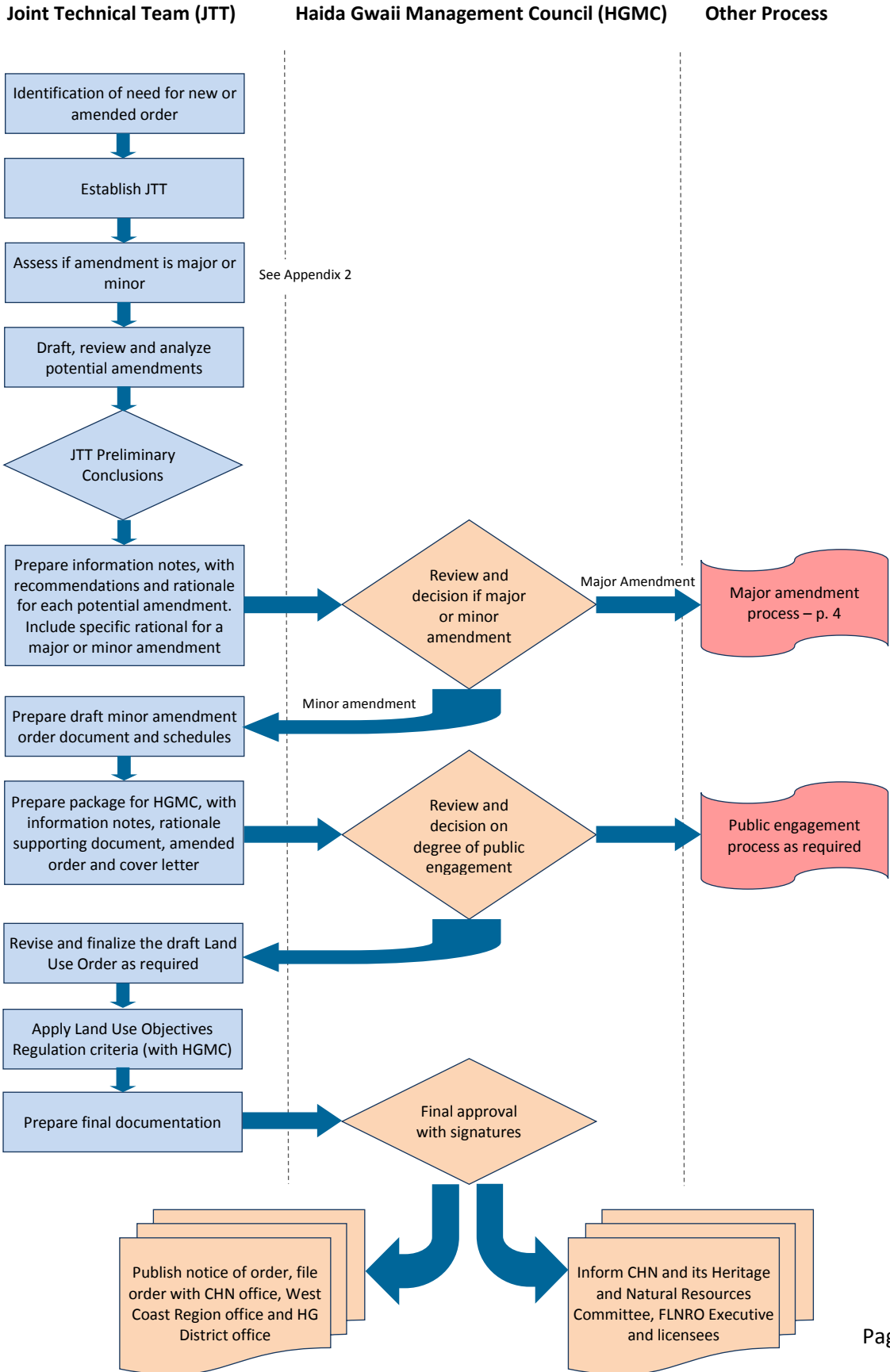
- The HGMC will decide whether or not to approve the final LUO or make additional amendments.

Publication

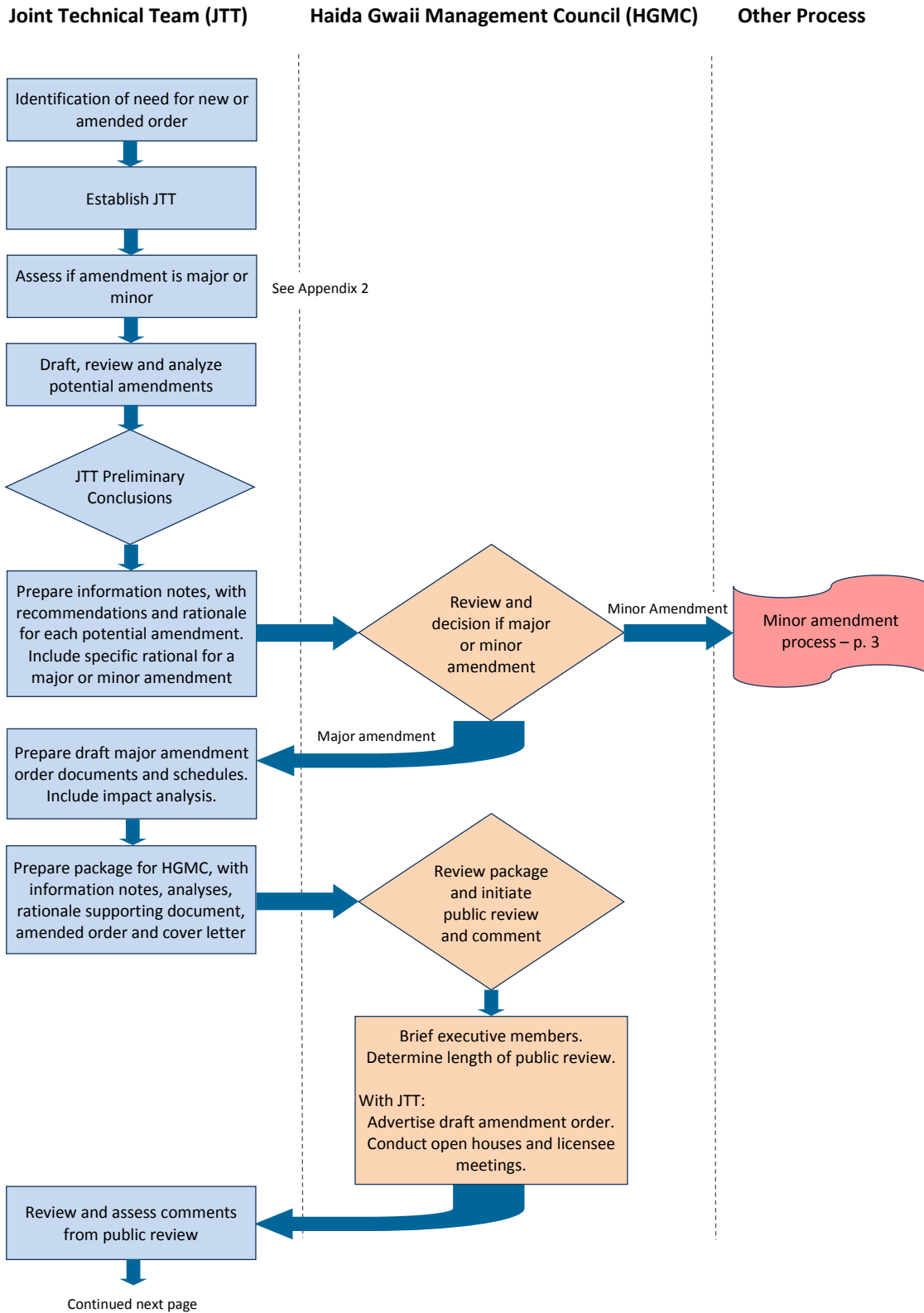
- The HGMC will publish the Notice of Order on a publicly accessible website, in the Haida Laas, in the BC Gazette, and file the order at the relevant CHN office as well as the regional office of the Ministry of Forests, Lands, and Natural Resource Operations. A summary of the revisions resulting from engagement processes outlined in this document will be made available by the HGMC.

The decision making process presented in Section 5.2 of the Haida Gwaii Management Council Policy and Procedures Manual provides the framework upon which a set of detailed procedural steps and HGMC decision processes are applied to amend the Haida Gwaii Land Use Objectives Order. The complete set of procedural steps is presented on the next page. Blue boxes represent the technical steps from section 5.2. The orange boxes are HGMC decision points and actions. Red boxes are other processes not yet defined.

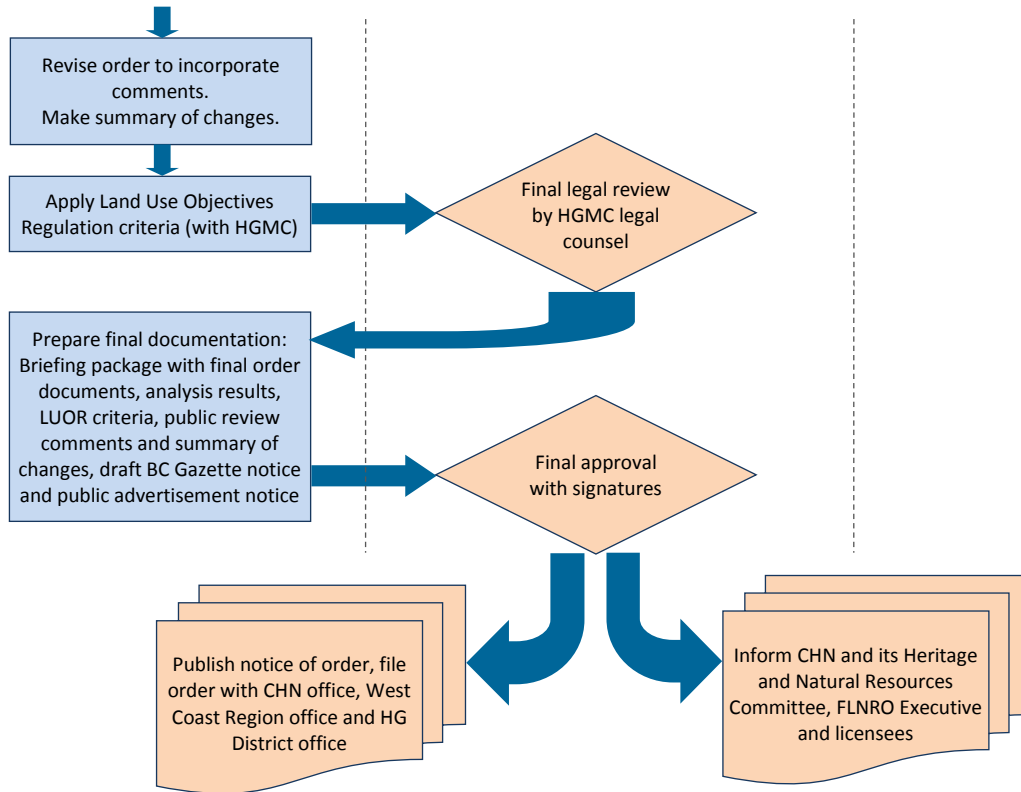
HGMC decision-making process for minor amendments to land use orders



HGMC decision-making process for major amendments to land use orders



Continued from previous page



Appendix 1

Haida Gwaii Management Council Policy and Procedures Manual - 4.3 Process for Decision Making

The decisions of the HGMC members and the Chair must be consistent with the authorities delegated to them by the Haida *Stewardship Law* and the provincial *Haida Gwaii Reconciliation Act*.

In making their decisions, the four HGMC members and the Chair will take into account all relevant considerations, as well as the following:

- Haida, provincial, federal, constitutional and the common (i.e., case) law, including aboriginal and administrative law.

Relevant considerations include, among other things the Principles outlined in the *Haida Gwaii Management Council Terms of Reference*:

- HGMC members must adhere to the principles of administrative law, including natural justice and procedural fairness, and make decisions free from bias.
- Members of the HGMC are accountable to the Parties to act in accordance with the *Haida Gwaii Management Council Terms of Reference* and the *Haida Gwaii Management Council Policies and Procedures Manual*.
- The four HGMC members will make best efforts to achieve consensus on the responsibilities of the HGMC as set out in the Protocol. Consensus occurs when all four members agree to a decision.
- Members of the HGMC will seek to make the best decisions regarding the management of lands and natural resources on Haida Gwaii.
- Each member of the HGMC has the responsibility to make best efforts to consider and reasonably accommodate the interest of both Parties.
- The HGMC will make best efforts to consider the interests of stakeholders.
- The Parties expect that statutory decisions will be made in a timely manner.

The HGMC members will make best efforts to make decisions by consensus. However, where consensus cannot be reached, a vote will take place and a majority vote will determine the decision of the HGMC.

- Prior to a vote, the HGMC members may request the assistance of an agreed-upon neutral third party in an attempt to reach consensus on a decision, subject to the availability of equal funding from both Parties;
- the members of the HGMC will prepare options for voting;
- A vote of the HGMC must be structured in a way that the HGMC members must vote for one of the proposed options;
- Where a decision is complex and there are several points of disagreement, a separate vote will be held on each point.

If a vote of the HGMC results in a majority of members selecting the same option, this will be the decision of the HGMC.

In the event that a vote of the HGMC members results in a tie, where each option receives an equal number of votes, the Chair of the HGMC will break the tie by casting the deciding vote. Where a decision is complex and there were several points of disagreement that resulted in separate tying votes by the HGMC members, a vote will be referred to the Chair on each point. Reasons explaining each point of disagreement must also be presented to the Chair. The Chair may ask questions for clarification before taking the written reasons and options away to make a decision.

Appendix 2

Conditions for identifying major LUO amendments and minor amendments

The HGMC has reviewed Haida Stewardship Law and the Ministry of Forests, Lands and Natural Resource Operations' Land Use Objectives Regulation Policy and Procedures document which provide compatible criteria for determining if changes to a land use order require a major amendment or a minor amendment, and has adopted its use for Haida Gwaii. The Land Use Objectives Regulation (LUOR) treats a major amendment similar to the establishment of a new a new land use objectives order. For the purposes of the HGMC, major amendments are governed by regulatory provisions in the LUOR that require consideration of certain criteria, a public review and comment period and a notice of the order in the Haida Laas and in the BC Gazette. Minor amendments are not governed by regulatory provisions and do not require the same consideration, public review and formal notice.

The relevant conditions for identifying a major amendment, any of which would apply, include:

- an amendment that is a 'significant' one, that results in a consequential or important variation to the order
- changes that have significant *cultural*, socio-economic or environmental implications
- changes that could have additional material adverse effects on forest tenure holders
- a major change to the boundary of the area covered by the LUO
- changes in wording that substantially change the management direction (intent) of the LUO

Conditions identifying minor amendments, on the other hand, include:

- wording changes to refine (but not change) the intent of the original order
- minor shifts of the boundary of the area covered by the LUO
- improving the wording of an objective without significantly affecting the original intent
- changes that do not materially affect the original order and imposes no material additional adverse impacts on forest tenure holders
- changes that do not have significant *cultural*, socio-economic or environmental implications