

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY

INTRODUCTION

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. One other First Nation was added as of December 1997. The Agreement was ratified by Canada through the *First Nations Land Management Act*, assented to June 17, 1999

The Agreement is an initiative by these 14 First Nations to take over the governance and management control of their lands and resources. This First Nation designed and driven *Framework Agreement* with Canada has expanded from the original 14 First Nation signatories to 84 First Nation Signatories in 2013. The *Framework Agreement* applies only to those First Nations who choose to ratify it.

The *Framework Agreement* is not a treaty and does not affect existing treaty or other constitutional rights of the First Nations.

The *Framework Agreement* provides the option to govern and manage reserve lands outside the *Indian Act*. The option to regain control of reserve land through a land code can only be undertaken with the consent of the community. A land code replaces approximately 30 sections of the *Indian Act*.

TAKING CONTROL OF LAND GOVERNANCE

A First Nation signatory to the *Framework Agreement* develops its land governance system by creating its own Land Code, drafting a community ratification process and entering into an individual Agreement with Canada. The specific steps are set out in the *Framework Agreement*:

The Land Code: Drafted and approved by the community, will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Minister of Indian Affairs and Northern Development will no longer be involved in the management and decision making of a First Nation's reserve lands. The Land Code does not have to be approved by the Minister or AANDC.

The Land Code is drafted by each First Nation and provides for the following matters:

- Identifies the reserve lands to be governed by the First Nation under its Land Code,
- Sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others,
- Provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under the Indian Oil and Gas Act),
- Provides the procedures for making and publishing First Nation land laws,
- Provides conflict of interest rules,
- Provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage,
- Identifies a dispute resolution process,
- Sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes,
- Allows the delegation of certain land management responsibilities,
- Sets out the procedure for amending the Land Code,
- Deals with any other matter respecting the governance of First Nation reserve land and resources.

Individual Transfer Agreement: An Individual Agreement between each community and the Minister will be negotiated to deal with such matters as:

- The reserve lands to be managed by the First Nation,
- The specifics of the transfer of the administration of land from Canada to the First Nation,
- The transitional and operational funding to be provided by Canada to the First Nation for land governance.

Community Ratification Process: In order for the First Nation to assume control over its lands, the Land Code and the Individual Agreement must be ratified by the voting age members of the First Nation. All members of the First Nation who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the Land Code and the Individual Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

Federal Legislation: Canada agreed to ratify the *Framework Agreement* by enacting federal legislation that is consistent with the *Framework Agreement*. The *First Nations Land Management Act* was enacted and given royal assent on June 17, 1999.

Verification: An independent person selected jointly by the First Nation and Canada, called a Verifier, confirms that the community ratification process and Land Code are consistent with the *Framework Agreement*. The Verifier monitors the community ratification process to ensure that the rules are followed.

Recognition of Land Governance Authority: If the community ratifies their own Land Code and the Individual Agreement, control over First Nation lands and resources are no longer be subject to the *Indian Act*, but recognized to be under the governance authority of the First Nation.

TITLE TO FIRST NATIONS

Reserve lands under the *Indian Act* are held by Her Majesty and are set apart for the use and benefit of a First Nation. This will not change under the *Framework Agreement*. These lands remain a federal responsibility under section 91(24) of the *Constitution Act, 1867*. In addition, the First Nation's land will be protected against future surrender for sale.

LEGAL STATUS AND POWERS OF FIRST NATIONS

The *Framework Agreement* provides First Nations with all the legal status and powers needed to govern and manage their lands and resources. While First Nations will not be able to sell their land, they will be able to lease or develop their lands and resources, subject to any limits imposed by their own community Land Code.

Law-Making Powers: A First Nation governing its lands under a Land Code will have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation land. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must be made separately pursuant to section 83 of the *Indian Act*. The First Nation's Council can also continue to make by-laws under section 81 of the *Indian Act*.

Land Management: The *Framework Agreement* provides the First Nation with all the powers of an owner in relation to its First Nation Land, except for control over title or the power to sell it. The First Nation's Council can manage land and resources, as well as revenues from the land and resources, in accordance with its Land Code.

Third Party Interests: Interests in First Nation land held by third parties, or by Canada, will continue in effect according to their terms and conditions under a Land Code. No new interests or licences may be acquired or granted except in accordance with the Land Code.

First Nation Expropriation: The First Nation will have the option to acquire lands for community purposes upon payment of fair compensation to those whose interests are affected.

Accountability: A Land Code will make provision for a First Nation to report to its members and to be accountable for the governance of their lands, resources and revenues.

Marriage Breakdown: A First Nation will be able make rules on the rights of spouses to interests in First Nation land if their marriage breaks down. The community must, within 12 months of passage of its Land Code, develop and enact rules and procedures on this topic. The new rules and procedures will ensure the equality of women and men.

Registration of Interests: All documents pertaining to land interests of a reserve will be recorded in the First Nation Land Registry System (FNLRS).

The FNLRS is:

- Electronic
- Provides for Instant Registration
- Priority based
- Paperless
- Backed by Regulation (Unlike the *Indian Act* registry system)

The FNLRS system and regulations are landmark achievements. These regulations made it possible for reserve to have greater land certainty, mortgageability, title insurance and drastically reduced or eliminated land transaction costs

PROTECTION OF FIRST NATION LAND

The preserving of the quantity and quality of existing First Nations lands is a fundamental principle of the *Framework Agreement*. Some aspects of this principle are summarized below:

Taxation and Seizure under Legal Process: The current exemption of reserve lands, and personal property situated on-reserve, will continue under the relevant provisions of the *Indian Act*.

Environmental Protection: A First Nation with a land code in effect will be required to develop an environmental protection regime. A First Nation will have the power to make environmental assessment and protection laws and will harmonize these laws with federal and respective provincial environmental laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation lands for other lands. Provision can be made in its Land Code for a procedure to negotiate and approve such exchanges. An exchange of land cannot occur without the consent of the First Nation community.

No Provincial Expropriation: Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Restricted Federal Expropriation: Canada's power to expropriate First Nation land is greatly restricted. That power can only be exercised with Cabinet approval and only when the expropriation is justified and necessary for a federal public purpose that serves

the national interest. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished.

Enforcement: The First Nation will have full power to enforce its land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own Justice of the Peace or special prosecutor to try offences created under a Land Code or a First Nation law. First Nation laws may make provision for search and seizure, fines, imprisonment, restitution, community service or alternate means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will remain liable for and will indemnify a First Nation for losses suffered as a result of any act or omission by Canada, or its agents, that occurred before the Land Code comes into effect. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own processes for dealing with disputes in relations to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between the First Nations and Canada on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside the courts.

LANDS ADVISORY BOARD AND RESOURCE CENTRE

The First Nations party to the *Framework Agreement* established a Lands Advisory Board and Resource Centre to assist them in implementing their own land governance regimes, including developing model land codes, laws, documents, agreements and management systems.

FIRST NATIONS INVOLVED

The following is a list of the 40 First Nations who signed the *Framework Agreement* and who have enacted Land Codes pursuant to the *Framework Agreement*.

BC

1. Beecher Bay
2. Kitselas
3. Leq' a: mel
4. Lheidli T'enneh
5. Matsqui
6. Musqueam
7. Seabird Island
8. Shx'wha:y Village
9. Skawahlook
10. Sliammon
11. Snaw Naw As (Nanoose)
12. Songhees
13. Squiala
14. Sumas
15. Tsawout
16. Tsawwassen^(a)

MB

1. Chemawawin
2. Opaskwayak
3. Swan Lake

17. Tsekani (McLeod Lake)
18. Ts'kw'aylaxw (Pavilion)
19. T'sou-ke
20. Tsleil-Waututh
21. Tzeachten
22. Westbank^(b)
23. We Wai Kai (Cape Mudge)
24. We Wai Kum (Campbell River)

SK

1. Kahkewistahaw
2. Kinistin
3. Muskeg Lake
4. Muskoday
5. Whitecap Dakota
6. Flying Dust

ON

1. Anishinaabeg of Naongashiing
2. Georgina Island
3. Henvey Inlet
4. Mississauga
5. Nipissing
6. Scugog Island
7. Whitefish Lake

(a) Now implementing treaty

(b) Now implementing full self-government