

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY

INTRODUCTION

The *Framework Agreement on First Nation Land Management (Framework Agreement)* is a government-to-government agreement signed by 13 First Nations and Canada on February 12, 1996. One other First Nation was added on December 10, 1996.

The *Framework Agreement* was initiated by these 14 First Nations to opt out of the land management sections of the *Indian Act* and take over the governance and management control of their First Nation Land and natural resources.

The *Framework Agreement* represented an historical new approach in government-to-government conventions. Today, it can only be amended with the approval of 2/3 of the First Nations who have ratified the *Framework Agreement* and Canada.

Canada ratified its commitment to implement the *Framework Agreement* by enacting federal legislation. The *First Nations Land Management Act (Act)* was given royal assent on June 17, 1999. The *Act*, which must be consistent with the *Framework Agreement*, formally ratifies it on behalf of Canada together with all subsequent amendments made according to its terms.

First Nation signatories ratify the *Framework Agreement* by enacting a Land Code. Until a Land Code is enacted, federal administration of their lands continues under the *Indian Act*. As of April 2019, the *Framework Agreement* has expanded from the original 14 signatories to 165 signatories, of which 82 First Nations have enacted their own Land Codes.

In a first for Canada, in the most recent December 13, 2018 amendments to the *Framework Agreement* and *Act*, the introductory clauses commit Canada to implementing the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

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, the Land Code becomes the basic land law of the First Nation. When it comes into effect, approximately 30 sections of the *Indian Act* no longer apply and Canada is no longer involved in the land governance of the First Nation's land and resources. The Land Code does not have to be approved by the Minister or any federal department.

Individual Agreement: An Individual Agreement, developed between each First Nation and Canada.

Community Ratification Process: In order for the First Nation to re-assume control over First Nation Land, the Land Code and the Individual Agreement must be ratified by the eligible voters of the First Nation. All eligible voters, 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.

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*.

Recognition of Land Governance Authority: Upon the enactment of the Land Code, jurisdictional control over First Nation Land and natural resources are recognized to be under the governance authority of the First Nation and are no longer subject to the *Indian Act*.

TITLE TO FIRST NATION LAND

Title to First Nation Land is not affected when a Land Code comes into force. Under the *Indian Act*, reserve lands 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 continue to be Lands reserved for Indians under section 91(24) of the *Constitution Act, 1867*.

In the Yukon, the title of lands set aside by reservation or notation in the property records of Canada will not be affected by the enactment of a Land Code.

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 First Nation Land and natural resources. A First Nation power includes all the rights, powers and privileges of an owner and the authority to grant interests or land rights and licences in relation to its First Nation Land and to manage its natural resources.

Law-Making Powers: A First Nation, with 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. This includes laws on zoning, land use, interests and licences, environment assessment and protection, services, dispute resolution, and matrimonial real property.

Land Management: In accordance with their respective Land Code and First Nation laws, a First Nation has jurisdiction over decision making in relation to the First Nation Land and natural resources, including leasing, developing, managing revenues and authorizing expenditures. However, First Nation Land cannot be sold or surrendered for sale. In keeping with the principle that First Nation land will not be reduced in area or quality, there is a procedure for exchanging lands if the First Nation regards such an exchange as advantageous.

Land management powers only relate to First Nation Land. The *Framework Agreement* does not affect any lands, or any rights in lands, that are not subject to the Land Code.

First Nation Expropriation: A First Nation will have the power to acquire interests in First Nation Land for community works or other First Nation community purposes. It must pay fair compensation to members or non-members whose interests are affected. The First Nation will provide 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 First Nation Land, natural resources and revenues.

Marriage Breakdown: A First Nation has the power to make First Nation laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner.

Registration of Interests: The First Nation Lands Register was established to record documents respecting First Nation Land for First Nations with a Land Code in force.

PROTECTION OF FIRST NATION LAND

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

Description of Land and Addition of Land: A Land Code will describe the lands that are subject to the Land Code, called First Nation Land. The description of land does not resolve or prejudice any claim of the First Nation to any other lands, or to any proper adjustment to the boundaries, and serves the sole purpose of administrative implementation of the *Framework Agreement*. The Land Code prescribes a process to add other lands to the jurisdiction of the Land Code once those lands become First Nation Land. Canada and the First Nation signatories declare that it is of fundamental importance to maintain the amount and integrity of First Nation Land.

Environmental Protection: A First Nation with a Land Code in force will have the power to develop an environmental assessment and environmental protection regime by implementing First Nation laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation Land for other lands, at least equal in area and quality, that then become First Nation Land.

No Provincial Expropriation: First Nation Land is immune from expropriation by provinces, municipalities and corporations.

Restricted Federal Expropriation: Canada's power to expropriate First Nation Land is greatly restricted. That power can only be exercised with the approval of the Governor in Council, only when the expropriation is justified and necessary for a federal public purpose that serves the national interest and only if other non-First Nation land is not reasonably available. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished. The land will revert to the First Nation once the land is no longer required by Canada, eventually resulting in a larger land base.

Enforcement: A First Nation has full power to enforce its Land Code, First Nation laws and environmental laws. A First Nation may appoint its own Justice of the Peace and special prosecutor, and may enter into further agreements with other jurisdictions regarding enforcement. A First Nation has the power to establish comprehensive enforcement procedures including establishing offences that are punishable on summary conviction, and providing for inspections, searches, seizures, fines, imprisonment, restitution, community service and alternative means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will continue to hold title to First Nation Land, although Canada will have no decision making authority and will no longer be involved in the management of the First Nation Land.

Canada will remain liable for and will indemnify a First Nation for any losses arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect to First Nation Land that occurred before the Land Code comes into force. After that date, the First Nation is responsible for its own acts or omissions in managing First Nation Land.

DISPUTE RESOLUTION

A First Nation will establish its own processes for dealing with disputes in relations to First Nation Land. These alternative dispute resolution processes may include mediation, facilitated discussions, negotiations, neutral evaluation and arbitration.

LANDS ADVISORY BOARD AND RESOURCE CENTRE

Under the *Framework Agreement*, the First Nations have established a Lands Advisory Board whose functions in relation to implementation of the Framework Agreement are set out. In turn, the Lands Advisory Board incorporated the First Nations Land Management Resource Centre Inc. to assist First Nations in developing and implementing their own land governance regimes.