



**FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

WEBINAR

Framework Agreement (FA) Amendments

Presented by

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#TMPD-May24



FRAMEWORK AGREEMENT (FA)

Government to Government Agreement



- The Framework Agreement on First Nations Land Management (FA) is a government to government agreement recognizing self-government authority of First Nations (FN) over lands, resources and environment
- The FA provides a flexible approach under which individual FNs decide how to govern their lands:
 - Land codes approved by community members serve as a foundation for lands governance
 - Land codes driven by community members replace the federal Indian Act land system
 - FNs can make decisions regarding land development, conservation, residential and commercial development, and areas protected for traditional purposes
 - FNs can also decide upon land use planning, laws and lands record systems without oversight or approval of the federal government
- The FA by its very nature cannot be altered unilaterally by Canada
- Amendments require at least 2/3rds approval by land code FNs
- Over the years, six formal amendments have been negotiated and agreed upon by Canada and land code FNs



FIRST NATION LAND MANAGEMENT ACT (FNLMA)

Canada's Legislation

- Canada has enacted the *First Nations Lands Management Act* (FNLMA) and has chosen to amend the FNLMA each time the FA is amended
- The FNLMA repeats much of the text of the FA – but not all provisions – and in some cases with slightly different language
- The Lands Advisory Board (LAB) has requested that Canada repeal the FNLMA and instead adopt the shortest possible federal legislation to ratify the FA as well as any amendments that may be agreed on in future
- The LAB has even provided Canada an outline of a proposed *First Nations Land Management and Governance Act* to replace the FNLMA
- The proposed *First Nations Land Management and Governance Act* would not have to be amended if Canada and land code FNs agree on future amendments to the FA



History of FA Amendments

Amendment No. 1

(May 12, 1998 prior to the enactment of the FNLMA in 1999)

- Adding St. Mary's FN (NB) as the 14th signatory party to the FA

Amendment No. 2

(May 12, 1998 prior to the enactment of the FNLMA in 1999)

- This amendment introduced provisions requiring that FNs establish a community process in its land code to develop rules and procedures, and enactment of laws regarding Matrimonial Real Property (MRP)



History of FA Amendments (cont.)

Amendment No. 3 (March 20, 2002)

This amendment provided for the inclusion of new FNs in addition to the original 14 FNs as well as the following:

- Procedure for additional FNs to sign the FA
- Procedure for future amendments to the FA
- The structure of the LAB
- Other administrative matters
(e.g. FN moving on to other self-government arrangements)



History of FA Amendments (cont.)

Amendment No. 4 (2006)

- It is important to note that as far back as 2002, the LAB made a commitment to have a bilingual FA with bijural terminology
- In 2005, the Essipit FN (Quebec) became a FA signatory
- This 2006 amendment formalized the FA as a bilingual document and reflecting bijural terms
- These new bijural provisions reflect Quebec's civil code concepts of land management



History of FA Amendments (cont.)

Amendment No. 5 (2010-11)

- This amendment provided that portions of Reserve could be excluded from Land Codes due to uncertain boundaries (s. 4.3), (portions of a reserve may not be excluded if the exclusion would have the effect of placing that reserve in more than one land management system)
- Certification of a Land Code (s. 10.1), (This ensures the Land Code & Individual Agreement are fully signed and approved when a Land Code comes into force)
- Environmental Management (s. 24):
 - Subject to funding Land Code FNs will develop an environmental protection regime, with assistance of appropriate federal agencies if they agree to participate
 - Harmonization of environmental protection with Provinces if they agree to participate
 - Environmental standards and punishments will have at least the same effect as neighboring Provincial lands
 - Federal Environmental protection laws prevail to the extent of any inconsistency with FN environmental laws



History of FA Amendments (cont.)

Amendment 6 (2018)

- Updating the FA in light of UNDRIP
- Amendments to voting procedures to make it easier for more FNs to opt out of the Indian Act
- Clarifying self-government authority of FA FNs
- New provisions for additions to reserve



Framework Agreement Amendment # 6

UNITED NATIONS DECLARATION

UNDRIP clause

- An introductory clause to acknowledge Canada's commitment to [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#)
- This may help guide the courts on interpretation of the FA



Framework Agreement Amendment # 6

VOTING

Changes to Voting Process

- The new voting provisions provide flexibility
- Option for the majority of participating voters to decide (eliminates the old requirement for a minimum 25% threshold of yes votes)
- Second option to establish a minimum threshold as well as majority vote
- Must be established BEFORE a vote is held – before a community approval process is finalized and posted
- FNs undertaking second or third votes could decide to eliminate or alter a previous threshold – BEFORE the vote is held



Framework Agreement Amendment # 6

VERIFIER

Changes to the Role of the Verifier

In the past, the FA called for the verifier to:

1. Certify that the community approval process meets the FA
 2. Certify that the proposed land code meets the requirements of the FA
 3. Attend and observe the voting process
 4. Consider and decide upon any appeals
 5. Issue final reports to Canada and the FN
- There is now an option to drop the requirement for the verifier to attend and observe the vote (must be decided upon BEFORE the vote)
 - This amendment was made in recognition of the fact that most FNs have experienced ratification officers who conduct and supervise many FN votes with no verifier
 - It is recommended that the role of the verifier be discussed at the all party meeting typically held early in the land code developmental process
 - Individual First Nations can still set a minimum threshold and use the verifier for the whole process if they want



Framework Agreement Amendment # 6

CLARIFYING SELF-GOVERNMENT AUTHORITIES

Expanded list of self-government law making powers

- The FA sets broad powers to make laws regarding lands, natural resources and environment – a new list of examples of environmental law making powers has be added

Publishing land codes

- Eliminate the current requirement for LAB to maintain land code amendments – replace with individual FNs publishing on website or other means their land codes and amendments



Framework Agreement Amendment # 6 CLARIFYING SELF-GOVERNMENT AUTHORITIES (cont.)

Limitation of liability for FN governments

- Provisions to limit liability of employees and volunteers working for FNs
- Must be within the limits typical under provincial law of the province within which a FN is located



Framework Agreement Amendment # 6 CLARIFYING SELF-GOVERNMENT AUTHORITIES (cont.)

Indian Moneys

- Provisions for transfer of all “capital moneys” – in addition to the transfer of “revenue moneys” already provided for in the FA
- Capital moneys - derived from the sale of surrendered lands or capital assets such as royalties and moneys from timber, oil, gas, gravel or other non-renewable resources
- Revenue moneys – are all Indian moneys other than capital moneys such as sale of renewable resources, leasing activities and rights-of-way



Framework Agreement Amendment # 6 CLARIFYING SELF-GOVERNMENT AUTHORITIES (cont.)

Indian Moneys (cont.)

- New FNs opting into the FA will automatically receive both capital and revenue moneys
- Existing operational FNs will have to request a transfer of capital moneys and notify their members of the request (community members are not asked to vote on whether to approve the transfer but must be notified)



Framework Agreement Amendment # 6 CLARIFYING SELF-GOVERNMENT AUTHORITIES (cont.)

First Nations Lands Registry

- Authority for new FN led registry – potentially several years down the road – requires new regulations, informatics systems and cost discussions



Framework Agreement Amendment # 6 CLARIFYING SELF-GOVERNMENT AUTHORITIES (cont.)

Matrimonial Real Property

- Eliminates the current requirement to deal with MRP in land codes (5.4 of FA) – instead a to deal with MRP in land codes and laws
- Eliminates the discretionary 12 month period for FNs to make MRP rules and eliminates dispute resolution with Canada regarding land code provisions
- New law making powers in respect of MRP – expansion beyond “breakdown of marriage” to full range of MRP such as “death of a spouse”
- Land code FNs will be able to deal with all MRP issues under land code governance authority – some previously could only be dealt with under the federal *First Nations Family Homes and Matrimonial Interests on Reserve Act* (FHRMIRA)
- New notice requirement to provinces or territories when proposing to make MRP laws



Framework Agreement Amendment # 6

CLARIFYING SELF-GOVERNMENT AUTHORITIES

(cont.)

Enforcement of laws

- Authority to enter agreements with other governments and bodies to perform duties or exercise powers under FN laws – no obligation to do so
- Potentially useful for policing agreements, appointing experts dealing with building codes
- Expanded list of enforcement measures - authority to establish liens, garnishment or similar remedies to collect debts and authority to add non-tax debts to property taxes

Indian Act designations

- Provision to clarify that protection of existing interests do not block a FN and affected third parties from agreeing to arrangements different from a previous Indian Act designation



Framework Agreement Amendment # 6

ADDITION TO RESERVE

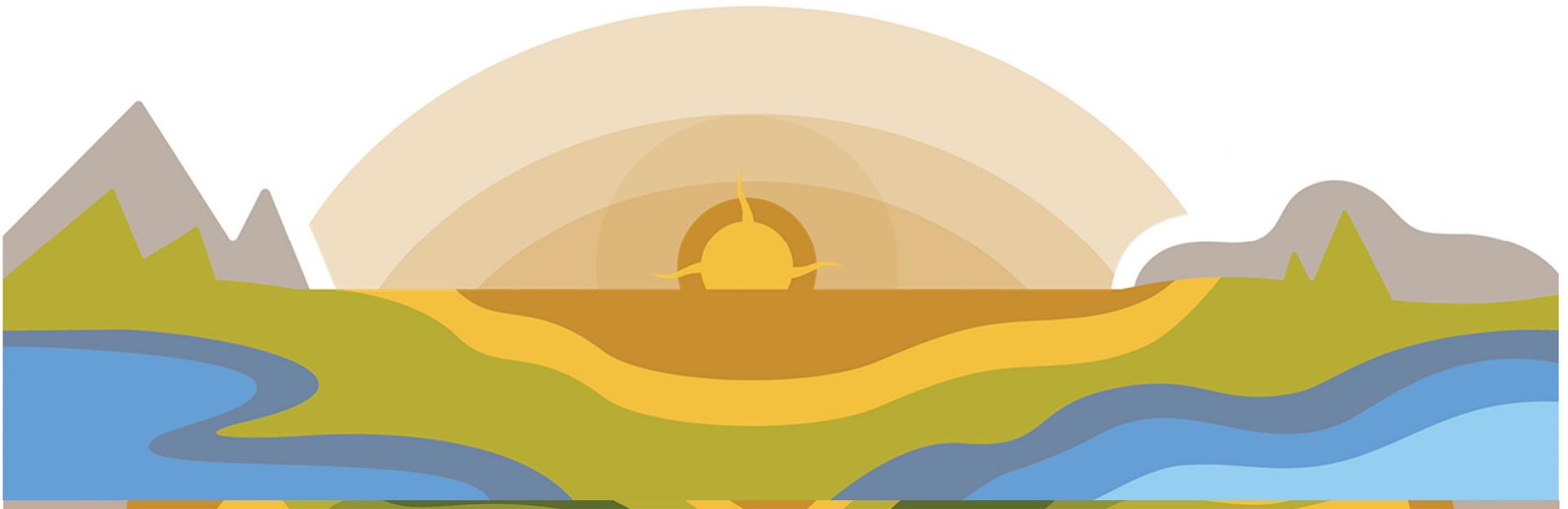
Additions to Reserve

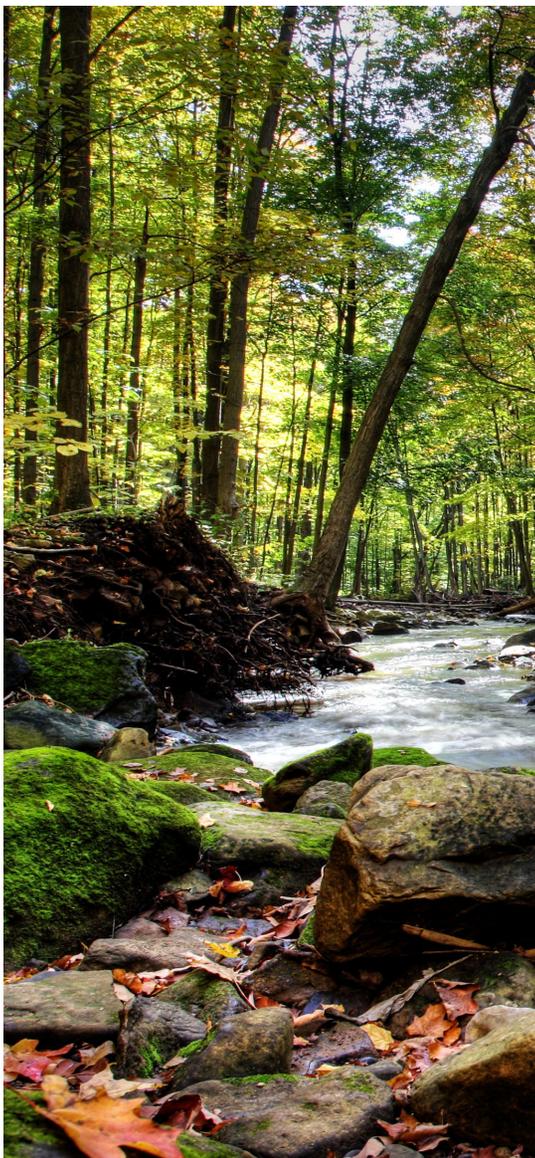
- Additions to reserve by Ministerial order rather than federal Order-in-Council (potential to cut off part of the delay in current process)
- Lands added to reserve automatically become “First Nation land” over which FA FNs have authority
- Discretion for FNs to accept third party interests and provide for replacement interests before reserves are created – FN discretion – no obligation to do so
- Discretion for FNs to impose land use restrictions (e.g. zoning laws) in advance of reserve creation – FN discretion – no obligation to do so

Questions & Discussion



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THANK YOU!

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