

Principles of the Framework Agreement on First Nation Land Management

Course Workbook



 **FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

 **Training, Mentorship &
Professional Development**

Last updated: 2013

Principles of the FA

Course link

<https://labrc.com/public/courselet/PrinciplesoftheFrameworkAgreement/player.html>

Welcome:

Welcome to the Principles of the Framework Agreement on First Nation Land Management (Framework Agreement) course.

This course takes a look at the Framework Agreement's 29 Principles of governance jurisdiction and responsible land management.

The 29 Principles were developed by the original Framework Agreement signatory FN Chiefs. The material provided in this course is current to date of course.

Picture credit: LABRC

Big Picture

The Framework Agreement is based on jurisdiction and authority over reserve lands through a First Nation (FN) Land Code (LC).

The signatory Chiefs to the Framework Agreement did this by negotiating the Framework Agreement which is based on their [Principles](#) of governance jurisdiction and responsible land management.

Land Governance The original First Nation signatories wanted to reclaim their inherent self-government authority to create and maintain sustainable land, resources, and environment governance for the benefit of their members. Power to Make Laws

The inherent right of self-government includes the power to make, administer and enforce its laws.

Governance Jurisdiction

The Chiefs that negotiated the Framework Agreement wanted to take back governance jurisdiction and control of their reserve lands and resources.

Part of FN Jurisdiction is to ensure that its lands, environment and resources are adequately protected and conserved for future generations. The "[First Nation Jurisdiction under the Framework Agreement](#)" chart outlines the FN's jurisdiction and illustrates how FNs are re-establishing their jurisdiction over their lands and resources by signing the Framework Agreement. The chart also outlines the Federal and Provincial Government's jurisdiction.

Governance Jurisdiction

Introduction

Governance jurisdiction by FNs over their reserve lands and resources starts with the Framework Agreement. The Framework Agreement is not just land management and administration. The intent of the Framework Agreement is to recognize the governance authority of First Nations over their reserve lands, resources, and environment. The Framework Agreement is significant because it recognizes the First Nation inherent right to govern its own reserve lands and resources. The Framework Agreement is the first real recognition of this inherent right. The Chiefs wanted to make it clear that the Framework Agreement does not define or prejudice treaty, aboriginal rights or preclude other negotiations.

Governance Jurisdiction

Governance jurisdiction means a FN assumes the governance responsibilities for the FN land and resources listed in their Individual Agreement and LC, in the same way that federal and provincial governments discharge responsibilities for lands and resources.

29 Principles

The Framework Agreement is based on 29 fundamental Principles of Governance and responsible Land Management: Picture: Chief Darcy Bear, Whitecap Dakota FN and their new golf course Picture credit: LABRC



Principles of the Framework Agreement

Introductions

We will take a closer look at all 29 Framework Agreement principles.

Purpose

Approach

Application

The Framework Agreement applies only to existing reserve lands and lands set aside for First Nations in the Yukon. Other lands being dealt with through other processes may be added to a LC when they become reserve lands. These other processes include:

- Traditional lands negotiated through other processes (e.g. B.C. Treaty Process)
- Treaty lands (i.e. Treaty Land Entitlement lands)
- Comprehensive and specific claims lands (e.g. legal errors during the reserve creation process)

Reserve lands continue to be "Lands reserved for the Indians" within the meaning of the Section 91(24) of the *Constitution Act, 1867*.

Even though Canada will continue to hold title to FN land, the Minister of Aboriginal Affairs and Northern Development (ISC) will no longer have management authority over reserve land once a LC is approved and in effect.

Picture credit: Natural Resources Canada



Process

It was very important to the negotiating Chiefs that the Framework Agreement is a government-to-government agreement (based on the 29 Principles) so that the FNs could be seen and treated as an equal party to Canada.

Historically, Canada did not recognize that FNs ever governed their lands and resources, instead they treated them as wards of the government.

This government-to-government agreement would provide FNs with the option of drafting their own LC and land laws to replace the Minister's land-related obligations under the *Indian Act*.

Unlike "legislation", which can be changed by the Crown without FN consent, changes to the Framework Agreement and FNLMA require the consent of both FN signatories and the Crown.

Picture Credit: LABRC



Optional

The original Chiefs wanted to ensure the participation in the Framework Agreement is optional.

When developing the Framework Agreement it was agreed that if FNs wanted to go beyond the delegated authority given to FN's under the *Indian Act* (in regards to reserve lands) and take on more governance authorities, that the Framework Agreement would be an option for any FN wanting to do so. This option protects other FNs who do not want or need such an opportunity.

If a FN chooses this option then that FN must pass a Band Council Resolution (BCR) to be considered as a signatory to the Framework Agreement.

Click on the process chart to see the current process (September 2013) to opt-in to the Framework Agreement. Picture credit: ISC website

- First Nations that express interest to opt into the FNLM regime must submit a Band Council Resolution to the Lands Advisory Board Resource Centre.
- The Lands Advisory Board Resource Centre makes a presentation to the First Nation about the Regime.
- If the First Nation is still interested, they complete an **Assessment Questionnaire** ([HTML](#) | [Fill & Print PDF](#) (153 Kb)) and return it to the applicable AANDC Regional Office.
- Upon a positive assessment, a recommendation is made to the Minister of AANDC to add the First Nation to the Framework Agreement via an adhesion document.
- Once the adhesion document is signed by the Minister and the First Nation, the First Nation is added to the Schedule of the *First Nations Land Management Act*.
- The First Nation is then required to enter into the Community Approval Process Plan and develop a land code and negotiate their individual agreement with AANDC.
- Upon the First Nation community ratification of the land code and Individual Agreement, the administration and control over the First Nation's land and resources is transferred from AANDC to the First Nation.
- At that point, [34 sections under the Indian Act](#) dealing with land, resources and environment no longer apply to the First Nation.
- Following ratification of their land code, the First Nation is required to enact environmental assessment and protection laws.
- Within twelve months after the effective date of the land code, the First Nation is obligated to develop and enact matrimonial real property laws.

Unique

The Framework Agreement is the guiding document. The FNLMA ratifies it. FNs sign the Framework Agreement and only then can they be added to the schedule of the FNLMA.

The Framework Agreement provides for different approaches to land governance, not "one size fits all".

The Chiefs developing the Framework Agreement all agreed that each of their FNs were unique in their traditions and customs and also in how their land and resources would be governed.

The conditions prevailing on reserves and decisions about how to conduct governance over the land, resource and environmental issues faced by a FN, and the capacity to deliver governance functions will be unique to each FN.

The FN Community, Chief and Council and the Land Governance Director, will need to tailor their governance regime to suit the FN's traditions, culture and particular circumstances and capacities and their respect for the Spirit of the Land.



Paced

Paced: each FN will develop their LC and ways to ratify their LC, at their own pace.

- "Currently the Developmental Phase Funding Agreement provides funding for up to 3 years to complete the specific Developmental Milestones which include: Developing a LC
- Developing an Individual Agreement
- Conducting a community approval for the LC and Individual Agreement

If a FN deems it necessary to go longer than three years they will have to extend the CAPP agreement with approval from Canada. This may not include any additional developmental funding.

For more information on the DPFA go the Virtual Resource Centre's (TMPD) course.

Involvement

Insert video

Community Ratification is formalized through the FN's Community Ratification Process (CRP) document. The CRP outlines who can ratify the LC and the Individual Agreement (i.e. Eligible Voter). The CRP is part of the FN's due diligence.

See the 4 CRP courses on the TMPD for further information on the CRP process and tasks.

Transparent

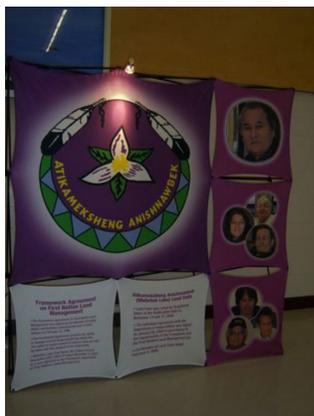
Rules, laws and policies made under a community LC are considered to be freely and publicly accessible.

Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

Transparency is critical to trust building between leadership and community. Community engagement based on meaningful understanding and information sharing by all has made FN governments more transparent which is critical for the success of the FNs.

Picture: Atikameksheng Anishinabek Land Code celebration

Picture Credit: LABRC



Accountability

The Framework Agreement enhances accountability to FN members rather than the Federal Government for land matters.

LCs contain mandatory community approvals for certain decisions as well as annual reporting to members.

Operational First Nations have direct authority over revenue moneys. As such First Nation must report to their members:



- Ensuring books of account and records are available for First Nation member scrutiny
- Having financial statements audited by an independent auditor

Sectoral

44 sections of [the Indian Act will no longer apply](#) (102 other sections of the *Indian Act* are not affected) once a FN ratifies and enacts its LC.

A LC replaces 44 *Indian Act* land related sections with community designed rules and procedures. Other areas such as membership, elections and education remain under the authority of the *Indian Act*.

This is known as and deals only with FN reserve lands and resources.



Legal Status

The Framework Agreement recognizes operational FNs as having all of the authority and legal status necessary to operate as a government over their lands and resources.

The Framework Agreement recognizes a FN legal authority to:

- Be self-governing by granting governance authorities to Chief and council
- Have jurisdiction over their reserve lands with all the powers of an owner
- Make laws, to design, administer and enforce laws for the development, conservation, protection, management and use of their reserve lands and resources
- Manage and administer by collecting and manage revenues derived from their reserve lands and resources, in accordance with their LC

The FN has the legal capacity to:

- Acquire and hold property
- Borrow
- Contract
- Expend and invest money
- Be a party to legal proceedings
- Exercise its powers and to perform its duties

An operational FN is also recognized as having all the rights and privileges of an owner, in relation to its land. This however, does not include the power to sell land.



Crown Relationship video



Constitutional Protection

The Framework Agreement does not affect constitutional rights (i.e. rights under s.35 of the *Constitution Act 1982*) of the FN. Section 35 provides constitutional protection to the aboriginal and treaty rights of Aboriginal peoples in Canada. Constitutional protections are retained for First Nation Land under a LC, as First Nation Land continues to be land reserved for, Indians within the meaning of Section 91 (24) of the *Constitution Act, 1867*.

Picture Credit: LABRC



Treaty/Aboriginal Rights

The Framework Agreement does not affect treaty/aboriginal rights of the FN. The Framework Agreement also does not preclude other negotiations in respect of those rights. The Framework Agreement is not a Treaty.

Picture Credit: Muskrat Magazine



No loss of Reserve Land

Reserve lands are protected for future generations. Click on video.

Increasing Reserve Land

Reserve lands may never reduce in size, however a FN may exchange reserve lands for other reserve lands of equal size or value in addition to other compensation and or considerations.

A FN may decide that it is advantageous to exchange some of its FN land for other lands. Provisions can be made in a FN LC for a procedure to negotiate and approve such exchanges. However, any exchange of land cannot occur without the consent of the FN community.

Picture credit LABRC



Exclude Land

The Chiefs ensured that if a FN wanted to exclude any of its reserve land from the application of the LC that the Framework Agreement included such provisions to do so.

Canada agreed with the FNs that lands could be excluded for the following reasons:

- If those lands are in an environmentally unsafe condition
- In dispute
- Uninhabitable or unusable as a result of natural disaster
- Uncertain whether the land forms part of the reserve
- Where the FN and the Minister agree that exclusion is justifiable

If a FN is excluding land due to uncertainty of whether the land forms part of the reserve and there is a lease, interest or right on that land then the FN must exclude all land that is subject to that lease, interest or right. A FN cannot have a lease, interest or right in more than one land management regime (i.e. *Indian Act* and FN LC).

Picture credit: LABRC



Liability

FNs making laws and/or decisions under a LC are legally responsible for those actions.

FNs are not legally responsible for decisions made by Canada before the enactment of a LC.



Third Party Interests

At the time a LC comes into force, all existing Third Party agreements/arrangements are protected in their terms and conditions until they expire.

The signatory Chiefs wanted to reassure Third Parties that the FN will continue to honor their interest according to their terms and conditions (i.e. leases).

It is mandatory under the CRP that a FN contacts and provides a Third party with information required by the Framework Agreement in advance of a ratification vote on the LC and Individual Agreement.

Band Member Interests

Protection of an individual Band member's interest on Reserve (i.e.. valid Certificate of Possession and other legal interests continue). The signatory Chiefs wanted to reassure their members that any *Indian Act* interest (i.e. Section 20 interest) they may hold will continue.

Picture credit: LABRC



First Nation Land Registry

A separate FN Lands Register to be set up and maintained for each FN with a LC in effect and National registration of land interests as a sub-system of the existing Reserve Land Register by Canada.

The First Nations Land Registry System (FNLRS) is used for the land records of FNs who operate under their own LC. The FNLRS allows all users to perform registrations and enquiries and generate reports on

data in the system. Electronic copies of instruments registered in the FNLRS can also be viewed and printed from the system.

Click on the following link to go to the registry system: FNLRS

The First Nation Land Registry has its own regulations and the LAB has produced an "[Explanatory Version](#)"

Enforcement

FNs have the power to make laws, therefore, they need to have the power to enforce their FN laws (including the appointment of a FN's own Justice of the Peace).

There are two main methods of enforcing laws:

- Verbal and written warnings or discussions are often sufficient to convince people to modify their behavior to conform to the law requirements
- Formal charges bringing offenders before the provincial courts may be required in other situations

For further information on enforcement read the Law Making guide for Framework Agreement First Nations.

Dispute Resolution

The original Chiefs recognized there was a gap in the *Indian Act* to resolve conflicts.

They foresaw the need for local dispute resolution of land issues through out-of-court processes including mediation, arbitration and neutral evaluation. This could save considerable court costs.

Subsequently a governance authority for Dispute Resolution was established within the Framework Agreement under 5.2 (g) which reads:

"5.2 (g) identify or establish a forum for the resolution of disputes in relation to interests or land rights in First Nation lands, including the review of land management decisions where a person, whose interest or land right in First Nation land is affected by a decision, disputes that decision; "

The FN would now have governance authority to enhance its government capabilities by establishing its own forum for resolving conflict and disputes to ensure fairness and due diligence.

For more information go to the TMPD which has a "Introduction to Dispute Resolution " course.

Marital Property

First Nations have the authority to develop laws on the disposition of property upon breakdown of a marriage. First Nations can either develop and implement their own law or choose to utilize the federal "Family Homes on Reserve and Matrimonial Rights and Interests Act" provisional rules.

Conflict of Interest

Conflict of interest provisions are mandatory, ensuring fair lands' practices.

The original FN signatories wanted to ensure that there be conflict of interest rules which would set standards of conduct for officials (i.e. Council) making decisions on behalf of the FN. The general rule is that a public officials should not benefit form his or her position.

Picture Credit: www.bubblenews.com

Funding

When the Chiefs negotiated the Framework Agreement they placed a high priority on adequate developmental, operational and LAB core funding.

The FN leaders were fearful that adequate funding would not be made available for this sectoral self-government initiative and did not want the federal government to see this initiative as an opportunity to cap funding or even cut their expenditures in this field.

Therefore, there is three types of funding from Canada for implementation of the Framework Agreement as follows:

- Developmental Funding will be provided to:
- Develop and approve an Individual Agreement to transfer lands interests from the Crown to the FN
- Develop and approve a LC
- Develop a community approval process
- Communicate with the membership

Operational FNs will be provided resources, which are to be provided by Canada, to manage FN lands and make, administer and enforce its laws under a LC

Governance funding will be provided to sustain a national Lands Advisory Board (LAB) to assist in developing model LC, laws and land management systems; and to establish a Lands Advisory Board Resource Center (LABRC), curricula and training programs for managers and others who perform functions pursuant to a LC.

The Chiefs & ISC Minister signed an historic [Memorandum of Understanding](#) (MOU) on federal funding agreement to improve funding in October 2011

Picture: Chiefs and Minister of ISC signing MOU

Picture credit: LABRC



Shown in the photo are: From left, Dr. R. Graham Powell (Resource Centre), Chief Robert Louise, Andrew Beyson (AANDC), Minister Duncan and Chief Austin Bear.

Environment

Originally the Chiefs negotiated a clause to include an Environmental Management Agreement (EMA) but in October 2011 the Framework Agreement was amended (Section 24) to remove the requirement for an EMA. This amendment was designed to speed up the process and to make the process more effective.

Since the Framework Agreement is a living document the Chiefs ensured that amendments could be made to better fit the needs of the signatory FNs (with agreement by Canada).

Although an EMA will not be required, a FN with a LC in effect will still be required to develop an Environmental Assessment (EA) and Environmental Protection (EP) regime with the assistance of the appropriate government agencies, subject to the provision of adequate resources.

The Chiefs' main purpose was to ensure FNs lands are environmentally safe and any environmental requirements under the Framework Agreement will be funded by ISC and negotiated between Canada and the FN.

Funding will also be provided to make EA and EP laws, implement remediation of issues and implement an environmental management regime to protect First Nation Land in the future.

Go to the TMPD for the "Introduction to Environment" course.

Picture Credit: LABRC



Individual Agreement

The FN and Canada conclude an [Individual Agreement](#) that:

- Transfers control over lands and resources to the FN
- Identifies operational funding
- Identifies the boundaries of the reserve lands
- Identifies the level of revenue and capital account monies to be transferred
- Identifies outstanding issues such as required environmental ESA Phase I follow up



ACRONYM LIST **Framework Agreement Principles**

AANDC	-	Aboriginal Affairs and Northern Development
BCR	-	Band Council Resolution
CAPP	-	Community Approval Process Plan
CRP	-	Community Ratification Process
EMA	-	Environmental Management Agreement
EA	-	Environmental Assessment
EP	-	Environmental Protection
FN	-	First Nation
<i>FNLMA</i>	-	<i>First Nations Land Management Act</i>
FNLRS	-	First Nation Land Registry System
<i>Framework Agreement</i>	-	<i>Framework Agreement on First Nation Land Management</i>
LAB	-	Lands Advisory Board
LABRC	-	Lands Advisory Board Resource Centre
LC	-	Land Code
MOU	-	Memorandum of Understanding
VRC	-	Virtual Resource Centre



GLOSSARY OF TERMS

CERTIFICATE OF POSSESSION

Certificate of Possession is documentary evidence of a First Nation member's lawful possession of Reserve lands pursuant to Section 20 of the Indian Act as follows:

Possession of lands in a reserve

20. (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

Certificate of Possession

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

COMMUNITY APPROVAL PROCESS PLAN

The CAPP is a planning document that identifies the respective activities of each of the First Nation and Canada to facilitate a cooperative and coordinated effort and identifies the steps required to reach a Land Code vote within a 2 year timeframe.

COMMUNITY RATIFICATION PROCESS

The CRP is a document that sets out the procedures and rules of the community approval process for the transfer or jurisdiction of reserve lands from Canada to the First Nation and for the First Nation's Land Code and Individual Agreement. There are three available options to the First Nation, under the *Framework Agreement*, for the community approval voting process. The CRP document will describe in detail the process that the First Nation has chosen to use, how the vote is to be conducted and who is eligible to vote.

DEVELOPMENTAL

When referring to the Framework Agreement "developmental" means those First Nations who are signatories to the Framework Agreement and who are developing a Land Code, an Individual Agreement with Canada, and a community approval process to ratify the Framework Agreement, Land Code and Individual Agreement through a vote of the eligible voters.



DUE DILIGENCE

The *Framework Agreement* requires a vote of membership for both the Land Code and Individual Agreement. A vote is not possible unless membership is making an informed decision. This involves an understanding of the implications of assuming management of the lands by becoming fully informed of their legal obligations, liabilities and responsibilities before making a final decision on whether or not to approve a Land Code and Individual Agreement and also making an informed decision as to which lands to include or exclude from the Land Code.

First Nations, as part of carrying out due diligence will also:

- (1) Make reasonable inquiries to confirm the facts on which the approval decision is to be based (e.g. that leases are valid or that an environmental site assessment is satisfactory)
- (2) Assure itself of the ability of the other party (i.e. Canada) to carry out its responsibilities under the *Framework Agreement* and Individual Agreement, all for the purpose of evaluating the risks to the First Nation of approving a Land Code.

ELIGIBLE VOTER

Eligible Voter means a Member of a First Nation who is 18 years of age or older on Voting Day.

ENVIRONMENTAL ASSESSMENT

According to the International Association of Impact Assessments, an EA is

“the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made.”

An EA examines effects of proposed projects on soil, air quality, water quality and supply, fisheries, wildlife, traffic, noise, community health, economic development, archaeology and a variety of other social, economic and environmental topics. A well-designed EA assesses the “cumulative effects” of a proposed project combined with other past and proposed future human activities. Ways of avoiding or reducing impacts are identified in an EA.

An EA is a planning tool, a means of reviewing the effects of proposed development, a process of community engagement and an instrument for complying with regulatory requirements. After considering federal and provincial environmental assessment



processes, an operational First Nation can design an efficient EA regime that is beneficial to the environment and to the quality of development occurring on reserves.

ENVIRONMENTAL PROTECTION

Environmental protection is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce attendant risks to environmental and human health and safety. The adverse effects of exposure to contaminants may result from direct or indirect contamination of soils, water, and air from hazardous materials and uncontrolled exposure to those contaminants.

FIDUCIARY

A fiduciary relationship is a trust relationship. In the context of the *Framework Agreement*, the Crown continues to hold title to reserve land, as a trustee, for the use and benefit of a First Nation. The special relationship between the Crown and First Nations also may include other matters which are fiduciary in nature.

FIRST NATION LANDS

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code.

FIRST NATIONS LAND MANAGEMENT ACT

Is an Act providing for the ratification and bringing into effect of the Framework Agreement on First Nation Land Management. The Act was required under the *Framework Agreement* for two purposes: to ratify the *Framework Agreement*, and to implement those clauses of the *Framework Agreement* that affect third parties or other federal laws, or that are considered important enough to be repeated in the legislation. The *First Nations Land Management Act* is intended to be consistent with the *Framework Agreement* and to apply to the First Nations that are signatories to the *Framework Agreement*. The Act was enacted and given royal assent on June 7, 1999.

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

The *Framework Agreement on First Nation Land Management* is a government-to-government agreement. The Framework Agreement is an initiative for First Nations to opt out of the land management sections of the *Indian Act* and take over responsibility for the management and control of their reserve lands and resources. The Framework Agreement sets out the principal components of this new land management process.

The *Framework Agreement* provides First Nations with the option to manage their reserve lands under their own Land Codes. Until a First Nation community develops and



approves a Land Code to take control of its reserve lands and resources, federal administration of their reserve lands continues under the Indian Act. The Framework Agreement is not a treaty and does not affect treaty rights or other constitutional rights of the First Nations.

INDIAN ACT

The *Indian Act* is Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian lands and to approve or disallow First Nations by-laws.

INDEMNIFY

Indemnify means to protect against damage, lost or injury; to compensate for loss or damage; and to provide security for financial reimbursement to an individual in case of a specified loss incurred by the person. For example: an insurance company indemnifies their policyholders against damage caused by such things as fire, theft, and flooding, which are specified by the terms of the contract between the company and the insured.

In the context of the *Framework Agreement*, the Crown agrees to reimburse, or indemnify, a First Nation if the First Nation is successfully sued over a matter for which Canada was at fault and which happened before the First Nation's Land Code came into effect. Similarly, the First Nation agrees to reimburse, or indemnify, the Crown if the Crown is successfully sued over a matter for which the First Nation was at fault and which happened after the First Nation's land code came into effect.

INDIVIDUAL AGREEMENT

An Individual Agreement between each community and Canada 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, e.g. the interests in land held by Canada that are to be transferred to the First Nation, the transfer of revenues and an interim environmental assessment process, and the funding to be provided by Canada to the First Nation for land management.

LAND CODE

A Land Code will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Land Code will be drafted by the First Nation and will make provision for the following matters: identifying the reserve lands to be managed by the First Nation (called "First Nation land"), the general rules and



procedures for the use and occupation of these lands by First Nation members and others, financial accountability for revenues from the lands (except oil and gas revenues, which continue under federal law), the making and publishing of First Nation land laws, the conflict of interest rules, a community process to develop rules and procedures applicable to land on the breakdown of a marriage, a dispute resolution process, procedures by which the First Nation can grant interests in land or acquire lands for community purposes, the delegation of land management responsibilities, and the procedure for amending the Land Code.

LANDS ADVISORY BOARD

Under Sections 38, 39, and 40 of the *Framework Agreement*, the First Nations have established a First Nation Land Advisory Board (LAB) to provide:

- Developmental First Nations political, technical, legal, advisory and financial support
- Operational First Nations assistance in implementing the *Framework Agreement* and their own land management regimes.

The LAB is composed of Chiefs regionally elected from the Operational First Nations.

Some of the LAB's functions include:

- Establishing a resource centre
- Providing strategic direction to the Resource Centre
- Proposing to the Minister such amendments to the *Framework Agreement* and the federal legislation, as it considers necessary or advisable in consultation with First Nations
- Negotiating a funding method with the Minister, and performing such other functions or services for a First Nation as are agreed to between the LAB and the First Nation.

The LAB established a resource centre to carry out many of its technical functions and this body is the Lands Advisory Board Resource Centre (LABRC).

LANDS ADVISORY BOARD RESOURCE CENTRE

Under the *Framework Agreement*, the First Nations have established a LABRC to assist the First Nations in implementing their own land management regimes. The LABRC is the technical body intended to support First Nations in the developmental and operational phases implementing the *Framework Agreement*. The LABRC's functions are:

- Developing model land codes, laws and land management systems



- Developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations
- On request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes -assisting a verifier when requested by the verifier
- Establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code
- On request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty
- Proposing regulations for First Nation land registration

OPERATIONAL

When referring to the *Framework Agreement* “operational” means a First Nation which has ratified its Land Code and the Land Code is in **force**.

RESERVE

The *Constitution Act of 1867 Section 91 (24)* - “Indians and lands reserved for Indians”:

- Creates a distinction between Indian reserve lands and other lands in Canada
- Provides that Indians and reserve lands are a federal responsibility
- Gives the federal government exclusive jurisdiction over reserve lands
- Provides that only Parliament can legislate with regard to the use of reserve lands

The basic legal framework underlying reserves is:

- The underlying legal title to reserves belongs to the federal Crown
- How the reserve was created (e.g. before or after Confederation in 1867)
- Pursuant to section 2 of the *Indian Act*, reserves are set aside by the Crown in Right of Canada for the use and benefit of a First Nation

The *Framework Agreement* (see Section 4) clarifies that reserve lands under a Land Code will continue to be reserves within the meaning of the *Indian Act* and that any reserve, title to which is vested in Canada, and managed by a First Nation under a Land Code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

SECTORAL SELF-GOVERNMENT



Self-government is the ability of First Nation peoples to govern themselves according to their values, cultures and traditions in such areas as education, health care, child welfare etc.

The *Framework Agreement* is one sectoral component of self-government by First Nations and deals only with their reserve lands and resources. Matters related to other topics, e.g. elections, governance and education, would be dealt with in the context of other agreements. The provisions of the *Framework Agreement* are sufficiently flexible and progressive that other self-government initiatives are able to fit harmoniously with the First Nation land regimes established under the *Framework Agreement*.

THIRD PARTIES

Under a FN's CRP, a Third Party means a person who holds an Interest in First Nation Land but is not a Member. 3rd party interests, such as a lease or permit, will continue to be in effect according to their terms and conditions under a FN LC until they expire, then new arrangements can be made. The FN would assume the rights and obligations of the federal government under the lease. The FN will need to deal with 3rd party interests in its LC including any rights and disputes regarding 3rd party interests. 3rd party interests will be managed by a FN after its LC is in effect, including any rights and disputes regarding 3rd party interests.

VIRTUAL RESOURCE CENTRE

The VRC is an on line personalized learning environment with Framework Agreement and Land Code relevant content developed by the Land Advisory Board Resource Centre and other relevant resources for the Lands Governance Manager/Director and/or other Lands Governance staff. The VRC technology enables the individual user to create unique personalized learning environments based on the FN needs.

There are hundreds of documents, templates and some useful short courses on the VRC. The VRC Elements are regularly updated with new items.

<Insert First Nation>

COMMUNITY APPROVAL PROCESS PLAN

IN ACCORDANCE WITH THE

***FRAMEWORK AGREEMENT ON
FIRST NATION LAND MANAGEMENT***

AND THE

FIRST NATIONS LAND MANAGEMENT ACT

COMMUNITY APPROVAL PROCESS PLAN

between

< **First Nation** >

As represented by the Chief and Council
(hereinafter referred to as the “First Nation”)

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Aboriginal Affairs and Northern Development
Canada
(hereinafter referred to as the “Minister”)

and

THE FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE INC.
as representing the Lands Advisory Board;
(hereinafter referred to as the “Resource Centre”)

<insert FN>, the Minister and the Resource Centre are collectively referred to as the “Parties”.

In 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement (and, hence, the *Framework Agreement*) through

a vote of the eligible voters (such process incorporated and given effect in this Agreement as the Community Approval Process Plan).

Canada, in June 1999, passed the *First Nations Land Management Act (FNLMA)* to ratify the *Framework Agreement*. In August 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories to the *Framework Agreement*. As required by clause 40.2 of the amended *Framework Agreement*, the Lands Advisory Board developed the procedures required for a First Nation to be added as a signatory to the *Framework Agreement*. <insert FN> has completed these procedures and has been added as a signatory to the *Framework Agreement*.

1. Activities

The Parties agree to implement the relevant First Nation ratification provisions of the *Framework Agreement* (see Annex A for requirements under the *Framework Agreement on FNLMA*) in accordance with this Agreement and will cooperate in the spirit of the *Framework Agreement* to fulfill their respective roles and responsibilities.

2. Developmental Schedule

2.1 The timeframe for completion of developmental activities is a 24 month period. Any proposed voting date at this time is tentative and subject to change as the various phases of the schedule are completed.

3. Developmental Budget

3.1 **Schedule B** identifies the maximum AANDC contribution for the 24 month period associated with the developmental activities. It sets out the financial payment schedule and identifies the maximum allocation to be disbursed to <insert First Nation> on a bi-annual basis.

3.2 The total contribution amount by AANDC will be subject to the timeframe required to complete all necessary developmental activities to ratify the Land Code and Individual Agreement.

- 3.3 Should a First Nation achieve all activities and proceed to a ratification vote in less than the maximum 24 months, funding will only be provided up to, and including, the voting date. (i.e. should a First Nation complete all the required developmental activities and ratify the Land Code and Individual Agreement in 12 months, the maximum contribution by AANDC will be \$75,000).
- 3.4 Should a First Nation receive an advance payment and fail to achieve the activities required, those funds will be recovered.

4. Reporting

- 4.1 The FN shall comply with the reporting requirements set out in **Schedule C**.
- 4.2 The FN will submit quarterly checklist reports within 30 days following the end of Quarters 2, 4, 6 and 8 as outlined in Schedule C as follows:
- First Nation to AANDC Region (copy to the Resource Centre)

5. Extension/Termination

- 5.1 The <insert FN> may request an extension of time for performance of this Agreement by notice in writing to the Executive Director of the Resource Centre and the Director, FNLM Directorate, AANDC. Any such notice must be received not less than 90 days in advance of the termination date. An amendment to extend the term of this Arrangement, if agreed upon, shall be executed by the Director, FNLM Directorate, the Executive Director of the Resource Centre, and <insert FN>.
- 5.2 Any of the Parties may terminate this Agreement by providing sixty (60) days written notice to the other parties, indicating the intent and reasons for such termination.
- 5.3 Any amendment made in accordance with 5.1 or notice of termination in accordance with 5.2 will be attached to this Agreement and form part of it.
- 5.4 Annex B outlines the current FNLM Directive for First Nations who become parked during the developmental phase.

6. Effective Date

This Agreement comes into force effective <insert date> and terminates on <insert date> or the date of the community vote, whichever comes earlier.

7. Signatures

Chief <insert name>
<insert FN> First Nation
signed on the _____ day of _____, 2012

Regional Director General,
Aboriginal Affairs and Northern Development Canada
signed on the _____ day of _____, 2012

Chair, Board of Directors, Resource Centre
<insert name>
signed on the _____ day of _____, 2012

Chair, Lands Advisory Board
<insert name>
signed on the _____ day of _____, 2012

SCHEDULE A

Schedule of developmental activities in the implementation of the CAPP

First Nation Land Management Framework Agreement Community Approval Process Plan Activities Schedule

First Nation: _____

Schedule timeframe: from _____ to _____

Version: _____

No colour = First Nation, Green = AANDC, Orange = NRCan, Pink = Verifier		R = Responsible; A = Assistance; I = Informed I* = Informed at the request of the First Nation						
	Developmental Activities	FN	RC	Verifier	AANDC	NRCan	Contractor	Target Month
Quarter 1								
1	FN identifies Coordinator	R	A		I			
2	FN identifies Assistant (optional)	R	A					
3	FN appointed Lands Committee (optional)	R	A		I			
4	FN 24 month work plan developed (recommended)	R	A		A			
5	AANDC IA work plan developed	A	A		R			
6	NRCan research for legal land description complete	I	I*		I	R		
7	FN Legal advisor in place	R	I		I			
8	FN identifies CAPP contact person	R	I		I			
9	Phase I ESA joint working group established and firm appointed	A	I*		R		I	
10	FN eligible voters list identified	R	A		I			
11	FN community meetings scheduled (optional)	R	A		I			
12	FN recommends Verifier	R	A		I			
13	FN introductory meeting with Verifier	R	A		A			
Quarter 2								
14	FN draft of land code developed	R	A					
15	FN legal review of the draft land code completed (optional)	R	A				R	
16	AANDC current list of Indian Act interests provided and other information as per 6.3 (c) of FA	I			R			
17	AANDC current IA revenue money report provided	I			R			
18	NRCan legal land description action plan approved	A	I*		A	R		
Quarter 3								
19	FN draft of land code continuing	R	A	A				
20	FN legal review of the draft land code completed (optional)	R					R	
21	AANDC draft Phase 1 ESA report submitted	I			R		R	
22	AANDC outstanding land issues list	I	I		R			
Quarter 4								
23	FN legal review of the draft land code completed	R					R	
24	FN draft land code submitted to Verifier	R	A					
25	Verifier review of the draft land code completed	I	I	R				
26	AANDC Phase 1 ESA report accepted by the parties	A	A		R		A	

No colour = First Nation, Green = AANDC, Orange = NRCan, Pink = Verifier		R = Responsible; A = Assistance; I = Informed I* = Informed at the request of the First Nation						
	Developmental Activities	FN	RC	Verifier	AANDC	NRCan	Contractor	Target Month
27	Operational funding level identified	I			R			
28	NRCan draft legal description completed	I	I*		I	R		
29	FN submits outstanding land issues to AANDC region	R	I		I			
30	Verifier completes comparison of draft legal land description	I		R				
Quarter 5								
31	FN legal review of the draft land code completed	R					R	
32	FN draft land code submitted to Verifier	R	A					
33	Verifier review of the draft land code completed	I	I	R				
34	NRCan legal land description complete	I	I*		I	R		
35	AANDC final list of Indian Act interests provided and other information as per 6.3 (c) of FA	I			R			
36	AANDC final revenue account provided	I			R			
37	AANDC draft IA complete	A	A		R			
38	AANDC initial legal review of IA complete				R			
39	FN initial legal review of IA complete	R					R	
40	FN alternate vote procedure proposed (if necessary)	R	A	A	I			
Quarter 6								
41	FN legal review of the final land code completed	R					R	
42	FN Land Code ready for final presentation to Chief and Council & community	R	A					
43	Verifier confirms compliance of the final Land Code with the Framework Agreement	I		R	I			
44	FN final legal review of IA complete	R					R	
45	AANDC final legal review of IA complete				R			
46	Final IA is initialed/signed	A			R			
47	FN list of eligible voters supplied to Verifier	R	A					
48	FN community ratification process document supplied to verifier	R	A					
49	Verifier confirms list of eligible voters & CRP	I		R				
50	FN official vote date set	R	A	A	A			
Quarter 7								
51	FN Ratification Officer in place	R	A					
52	FN finalizes vote package	R	A					
53	Verifier's acceptance of vote package	I		R				
Quarter 8								
54	FN conducts vote on Land Code and IA	R	A	A				
55	Verifier's report on vote and land code	I	I	R	I			
56	IA signed (if community ratifies and if IA only initialed in step 45)	A			R			

SCHEDULE B

Developmental Funding

<INSERT FN>

DEVELOPMENTAL FUNDING

Pursuant to Section 3, the funding identified below is a contribution towards suggested developmental activities for which <insert First Nation> is responsible. AANDC's maximum contribution to <First Nation> under this agreement is \$150,000. Bi-Annual releases to the <insert name> First Nation will be made in advance as follows:

Payment Schedule	Year 1	Year 2
Year 1 – Payment 1 (Advance for Q1, Q2 Activities)	\$37,500	
Year 1 – Payment 2 (Advance for Q3, Q4 Activities)	\$37,500	
Year 2 – Payment 3 (Advance for Q5, and Q6 Activities)		\$37,500
Year 2 – Payment 4 (Advance for Q7 and Q8 Activities)		\$37,500
Maximum contribution to developmental activities	\$75,000	\$75,000

The expenditure categories associated with the developmental activities are as follows:

- Land Code Coordinator
- Lands Committee Meetings
- Community Meetings
- Ratification support
- General Administration costs
- Communications costs
- Vote administration
- Professional and legal services

Payment Schedule

Quarterly Activities		Bi-annual Payment amounts	% of total AANDC Contribution
Payment 1 (Year 1 - Advance for Q1 and Q2 Activities)		\$37,500	25%
Quarter 1			
1	FN identifies Coordinator		
3	FN appointed Lands Committee (Optional)		
4	FN 24 month work plan developed (Recommended)		
7	FN Legal advisor in place		
8	FN identifies CAPP contact person		
10	FN eligible voters list identified		
11	FN community meetings scheduled (Optional)		
12	FN recommends Verifier		
13	FN introductory meeting with Verifier		
Quarter 2			
14	FN draft of land code developed		
15	FN legal review of the draft land code completed (Optional)		
Payment 2 (Year 1 - Advance for Q3 and Q4 Activities)		\$37,500	25%
Quarter 3			
19	FN draft of land code continuing		
20	FN legal review of the draft land code completed (Optional)		
Quarter 4			
23	FN legal review of the draft land code completed		
24	FN draft land code submitted to Verifier		
29	FN submits outstanding lands issues to INAC region		
Payment 3 (Year 2 - Advance for Q5 and Q6 Activities)		\$37,500	25%
Quarter 5			
31	FN legal review of the draft land code completed		
32	FN draft land code submitted to Verifier		
Quarter 6			
39	FN initial legal review of IA completed		
40	FN alternate vote procedure proposed (if necessary)		
41	FN legal review of the final land code completed		
42	FN Land Code ready for final presentation to Chief and Council & community		
44	FN final legal review of IA complete		
47	FN list of eligible voters supplied to Verifier		
48	FN community ratification process document supplied to Verifier		
50	FN official vote date set		
Payment 4 (Year 2 - Advance for Q7 and Q8 Activities)		\$37,500	25%
Quarter 7			
51	FN Ratification Officer in place		
52	FN finalizes vote package		
Quarter 8			
54	FN conducts vote on Land Code and IA		
Maximum AANDC contribution towards developmental activities		\$ 150,000	100%

SCHEDULE C

Quarterly Activities Reporting Checklist Template

First Nation Developmental Phase Quarterly Report on Activities

Date of Report: (DD-MM-YR)

Name of Community:

Name of CAPP Contact:

Date of beginning of development phase (MM-YY)

Current Quarter:

Activity		Completed (?)	Comments
Quarter 1			
1	FN identifies Coordinator		
2	FN identifies Assistant (Optional)		
3	FN appointed Lands Committee (Optional)		
4	FN 24 month work plan developed (Recommended)		
7	FN Legal advisor in place		
8	FN identifies CAPP contact person		
10	FN eligible voters list determined		
11	FN community meetings scheduled (Optional)		
12	FN recommends Verifier		
13	FN introductory meeting with Verifier		
Quarter 2			
14	FN draft of land code developed		
15	FN legal review of the draft land code developed (Optional)		
Quarter 3			
19	FN draft of land code continuing		
20	FN legal review of the draft land code completed (Optional)		
Quarter 4			
23	Legal review of the draft land code completed		
24	FN draft land code submitted to Verifier		
29	FN submits outstanding lands issues to AANDC Region		
Quarter 5			
31	FN legal review of the draft land code completed		
32	FN draft land code submitted to Verifier		

39	FN initial legal review of IA complete		
40	FN alternate vote procedure proposed (if necessary)		
Quarter 6			
41	FN legal review of the final land code completed		
42	FN Land Code ready for final presentation to Chief and Council and Community		
44	FN final legal review of IA completed		
47	FN list of eligible voters supplied to Verifier		
48	FN community ratification Process document supplied to Verifier		
50	FN official vote date set (Verifier meeting)		
Quarter 7			
51	FN Ratification Officer in place		
52	FN Finalizes vote package		
Quarter 8			
54	FN conducts vote on Land Code and IA		

AANDC Regional Developmental Phase Quarterly Report on Activities

Date of Report: (DD-MM-YR)

Name of Community:

Name of CAPP Contact:

Date of beginning of development phase (MM-YY)

Current Quarter:

Activity		Completed (?)	Comments
Quarter 1			
5	AANDC IA work plan developed		
6	NRCan Research for land description report completed		
9	Phase 1 ESA joint working group established and firm appointed		
Quarter 2			
16	AANDC Current list of Indian Act interests provided		
17	AANDC Current IA revenue money report provided		
18	NRCan land description action plan approved		
Quarter 3			
21	AANC draft Phase 1 ESA report submitted		
22	AANDC outstanding lands issues list developed		
Quarter 4			
26	AANDC Phase 1 ESA report accepted by the parties		
27	Operational funding level identified		
28	NRCan draft land description report completed		
Quarter 5			
34	NRCan land description completed		
35	AANDC final list of Indian Act interests provided		
36	AANDC final revenue account provided		
37	AANDC draft IA completed		
38	AANDC initial legal review of IA completed		
Quarter 6			
45	AANDC final legal review of IA complete		
46	Final IA is initiated/signed		
Quarter 8			
56	IA signed (if community ratifies and if IA only initialed in step 45)		

RC Developmental Phase Consolidated Quarterly Reporting

Date of Report (DD-MM-YR):			
Name of community:			
Date of beginning of development phase (MM-YR):			
Current Quarter:			
	Activity	Complete (v)	Comments
Quarter 1			
1	FN identifies Coordinator		
2	FN identifies Assistant (Optional)		
3	FN appointed Lands Committee (Optional)		
4	FN 24 month work plan developed (Recommended)		
5	AANDC IA work plan developed		
6	NRCan research for legal land description complete		
7	FN Legal advisor in place		
8	FN identifies CAPP contact person		
9	Phase I ESA joint working group established and firm appointed		
10	FN eligible voters list identified		
11	FN community meetings scheduled (Optional)		
12	FN recommends Verifier		
13	FN introductory meeting with Verifier		
Quarter 2			
14	FN draft of land code developed		
15	FN legal review of the draft land code completed (Optional)		
16	AANDC current list of Indian Act interests provided		
17	AANDC current IA revenue money report provided		
18	NRCan legal land description action plan approved		
Quarter 3			
19	FN draft of land code continuing		
20	FN legal review of the draft land code completed (Optional)		
21	AANDC draft Phase 1 ESA report submitted		

RC Developmental Phase Consolidated Quarterly Reporting

Date of Report (DD-MM-YR):			
Name of community:			
Date of beginning of development phase (MM-YR):			
Current Quarter:			
	Activity	Complete (v)	Comments
22	AANDC outstanding land issues list.		
Quarter 4			
23	FN legal review of the draft land code completed		
24	FN draft land code submitted to Verifier		
25	Verifier review of the draft land code completed		
26	AANDC Phase 1 ESA report accepted by the parties		
27	Operational funding levels identified		
28	NRCan draft legal description completed		
29	FN submits outstanding land issues to AANDC region		
30	Verifier completes comparison of draft legal land description		
Quarter 5			
31	FN legal review of the draft land code completed		
32	FN draft land code submitted to Verifier		
33	Verifier review of the draft land code completed		
34	NRCan legal land description complete		
35	AANDC final list of Indian Act interests provided and other information as per 6.3 (c) of FA		
36	AANDC final revenue account provided		
37	AANDC draft IA complete		
38	AANDC initial legal review of IA complete		
39	FN initial legal review of IA complete		
40	FN alternate vote procedure proposed (if necessary)		
Quarter 6			
41	FN legal review of the final land code completed		
42	FN Land Code ready for final presentation to Chief and Council & community		
43	Verifier confirms compliance of the final Land Code with the Framework Agreement		

RC Developmental Phase Consolidated Quarterly Reporting

Date of Report (DD-MM-YR): Name of community: Date of beginning of development phase (MM-YR): Current Quarter:					
	Activity	Complete (v)	Comments		
44	FN final legal review of IA complete				
45	AANDC final legal review of IA complete				
46	Final IA is initialed/signed				
47	FN list of eligible voters supplied to Verifier				
48	FN community ratification process document supplied to Verifier				
49	Verifier confirms list of eligible voters & CRP				
50	FN official vote date set (Verifier meeting)				
Quarter 7					
51	FN Ratification Officer in place				
52	FN finalizes vote package				
53	Verifier's acceptance of vote package				
Quarter 8					
54	FN conducts vote on Land Code and IA				
55	Verifier's report on vote and land code				
56	IA signed (if community ratifies and if IA only initialed in step 45)				

FIRST NATIONS' REQUIREMENTS UNDER THE FRAMEWORK AGREEMENT ON FNLMA

- 5.1** A First Nation that wishes to manage one or more of its reserves will first develop a land code.
- 5.2** The land code of a First Nation will
- (a) describe the lands that are subject to the land code;
 - (b) set out the general rules and procedures that apply to the use and occupancy of First Nation land, including use and occupancy under
 - (i) licenses and leases, and
 - (ii) interests in First Nation land held pursuant to allotments under subsection 20(1) of the *Indian Act* or pursuant to the custom of the First Nation;
 - (b.1) set out the procedures that apply to the transfer, by testamentary disposition of succession, of any interest in First Nation land;
 - (c) set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land; granting or expropriating interests in First Nation land, including provisions for notice and the service of notice;
 - (d) set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under the land code;
 - (e) set out the procedures for making and publishing its First Nation laws;
 - (f) set out the conflict of interest rules for land management;
 - (g) identify or establish a forum for the resolution of disputes in relation to interests in First Nation lands, including the review of land management decisions where a person, whose interest in First Nation land is affected by a decision, disputes that decision;
 - (h) set out the general rules and procedures that apply to the First Nation where
 - (i) set out the general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to another person or entity; and
 - (j) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land.
- 5.3** A land code could also contain the following provisions:
- (a) any general conditions or limits on the power of the First Nation council to make First Nation laws;
 - (b) any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;
 - (c) any provisions respecting encumbering, seizing, or executing a right or interest in First Nation land as provided in clause 15; and
 - (d) any other matter respecting the management of First Nation land.

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

- 6.1** The Minister and each First Nation that intends to manage its First Nation land will also enter into an individual agreement to settle the actual level of operational funding for the First Nation and the specifics of the transfer of administration between Canada and the First Nation.
- 6.3** Upon the request of a First Nation that is developing a land code, the Minister will provide it with the following information, as soon as practicable:
- (a) a list of all the interests and licences, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the *Indian Act*;

- (b) all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land; and
- (c) any other information in Canada's possession that materially affects the interests and licences mentioned in clause 6.3(a)."

"7. **COMMUNITY APPROVAL**

- 7.1 Both the First Nation's land code and its individual agreement with the Minister need community approval in accordance with this clause.
- 7.2 Every person who is a First Nation member, whether resident on or off-reserve, who is at least 18 years of age, is eligible to vote on whether to approve their First Nation's proposed land code and its individual agreement with the Minister.
- 7.3 The land code and individual agreement will be considered approved by the community if:
 - (a) a majority of eligible voters participate in the vote and at least a majority of the participating voters vote to approve them;
 - (b) the First Nation registers all eligible voters who signified, in a manner determined by the First Nation, their intention to vote, and a majority of the registered voters vote to approve them; or
 - (c) the community approves them in such other manner as the First Nation and the Minister may agree upon.
- 7.4 The land code and individual agreement will not be considered approved if less than 25% plus one of all eligible voters voted to approve them.
- 7.5 The First Nation council may, by resolution, increase the minimum percentage for community approval otherwise required under this clause.
- 7.6 A First Nation will take reasonable steps to locate its eligible voters and inform them of:
 - (a) their right to participate in the approval process and the manner in which that right can be exercised; and
 - (b) the content of this Agreement, the individual agreement with the Minister, the proposed land code and the federal legislation.
- 7.7 Reasonable steps to locate and inform eligible voters may include the following:
 - (a) mailing out information to eligible voters at their last known addresses;
 - (b) making enquiries of family members and others to locate eligible voters whose addresses are not known or are uncertain;
 - (c) making follow up contact with eligible voters by mail or telephone;
 - (d) placing advertisements in newspapers circulating in the community and in newspapers circulating in other localities where the number of eligible voters warrants;
 - (e) posting notices in the community;
 - (f) holding information meetings in the community and in other places where appropriate; and
 - (g) making copies of the documents referred to in clause 7.6(b) available at the administration office of the First Nation and in other places where appropriate.

8. VERIFICATION PROCESS

- 8.1 Where a First Nation develops a proposed land code and resolves to submit it to the community for approval, an independent person will be appointed as a verifier to monitor and verify the opting in process. The verifier will be chosen in accordance with clause 44.
- 8.2 The representatives of the First Nation and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and provide information and advice to the verifier, after consulting with their respective Parties.
- 8.3 The First Nation will submit the following information to the verifier:
- (a) a copy of the proposed land code;
 - (b) an initial list of the names of every First Nation member who, according to the First Nation's records at that time, would be eligible to vote on whether to approve the proposed land code; and
 - (c) a detailed description of the community approval process that the First Nation proposes to use under clause 7.
- 8.4 The verifier will:
- (a) decide whether the proposed land code conforms with the requirements of clause 5;
 - (b) decide whether the proposed community approval process conforms with the requirements of clause 7;
 - (c) determine whether the community approval process is conducted in accordance with the process that was confirmed; and
 - (d) certify as being valid a First Nation's land code that is properly approved by the First Nation.
- 8.5 The verifier also has the power to make a final decision to resolve:
- (a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and
 - (b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.
- 8.6 A verifier will make decisions that are consistent with clauses 4.4 and 4.5.
- 8.7 A verifier will not deal with disputes over funding.
- 8.8 Within 30 days of receiving the First Nation's information pursuant to clause 8.3, the verifier will issue a written notice to the First Nation and the Minister stating whether the proposed land code and community approval process are consistent with this Agreement.
- 8.9 The verifier will provide written reasons to the First Nation and the Minister in any case where he or she decides that the proposed land code and community approval process are not consistent with this Agreement."

10. CERTIFICATION OF LAND CODE

- 10.1 Where a First Nation approves a land code and its individual agreement with the Minister, the First nation council must, without delay, send a true copy of the land code to the verifier together with a statement from the First Nation council that the land code and the individual agreement were properly approved.
- 10.2 Upon receiving a copy of a First Nation's land code and statement, the verifier will, subject to clause 11, certify the land code as being valid.

11. **DISPUTED VOTE**

- 11.1 The Minister or any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting process to the verifier.
- 11.2 A verifier will not certify a land code if he or she is of the opinion that the following two conditions exist:
- (1) the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and
 - (2) the land code might not have been approved but for the irregularity in the process.
- 11.3 Before making a decision under this clause, the verifier will provide the First Nation and the Minister with a reasonable opportunity to make submissions on the issue.
- 11.4 Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.”

(NAME OF) FIRST NATION
COMMUNITY RATIFICATION PROCESS

- In accordance with -

*The Framework Agreement on
First Nation Land Management*

And

The First Nations Land Management Act

Dated for Reference January 31, 2008

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FORMS

Form 1	Ballot Question
Form 2	First Nation Council Resolution (Information to Verifier)
Form 2A	Confirmation by Verifier (Land Code and Ratification Process)
Form 3	First Nation Council Resolution (Commencement of Vote)
Form 4	Appointment of Ratification Officer
Form 4A	Appointment of an Assistant Ratification Officer
Form 5	Notice of Vote
Form 6	Voter Registration Document
Form 7	Identification Envelope
Form 8	Declaration of Ratification Officer (Mail-in Ballots)
Form 9	Statement of Witness (Deposit of Mail-in Ballots)
Form 9A	Statement of Witness (Opening of Mail-in Ballots)
Form 10	Declaration of Ratification Officer (Regular Polls)
Form 11	Statement of Witness (Regular Polls)
Form 12	Certification of Ratification Officer (Conclusion of Vote)
Form 13	Report by Verifier (Conclusion of Vote)
Form 14	First Nation Council Resolution (Submission to Verifier at Conclusion of Vote)
Form 15	Certification of Land Code

**(NAME OF) FIRST NATION
COMMUNITY RATIFICATION PROCESS**

1. TITLE AND PURPOSE

- 1.1 The title of this document is the (name of) First Nation Community Ratification Process.
- 1.2 The purpose of this document is to set out the procedure by which (name of) First Nation will decide whether to approve its Land Code and the Individual Agreement, as required under the Framework Agreement and the Act.

2. DEFINITIONS

- 2.1 In this Ratification Process:

“Act” means the *First Nations Land Management Act*, S.C. 1999, c. 24;

“Background Documents” means:

- (a) the Framework Agreement;
- (b) the Act;
- (c) a summary of the Framework Agreement;
- (d) a summary of the Act; and
- (e) a summary of the Land Code;

“Ballot Question” means the question asked in the Ratification Vote in Form 1;

“(name of) First Nation” means the (name of) First Nation as named in the Act;

“Council” means the Chief and Councillors of the (name of) First Nation;

“Department” means the Department of Indian Affairs and Northern Development;

“Eligible Voter” means a Member of (name of) First Nation who is 18 years of age or older on Voting Day;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Minister of Indian Affairs and Northern

Development and the Chiefs of fourteen First Nations on February 12, 1996, as amended;

“Individual Agreement” means the Individual First Nation Agreement made between (name of) First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Land Code” means the proposed *(name of) First Nation Land Code*;

“Lands Manager” means the employee responsible for the management of (name of) First Nation reserve lands, and includes a designate;

“List of Registered Voters” means the list of Eligible Voters, prepared in accordance with clause 3.6, who have registered to vote in the Ratification Vote;

“List of Voters” means the list of Eligible Voters prepared in accordance with clause 3.1;

“Member” means a person whose name appears or is entitled to appear on the (name of) First Nation membership list;

“Ratification Documents” means the Land Code and the Individual Agreement;

“Ratification Process” means this (name of) First Nation Community Ratification Process;

“Ratification Officer” means the person appointed by Council under clause 6.1(a);

“Ratification Vote” means a vote by the Registered Voters on the Ballot Question conducted according to the Ratification Process;

“Registered Voter” means an Eligible Voter who has registered to vote in accordance with clause 3.3;

“Verifier” means the person appointed as Verifier under the Framework Agreement and includes any assistant appointed by the Verifier; and

“Voting Day” means the date set for holding the Ratification Vote.

2.2 Unless otherwise provided, words defined in the Framework Agreement have the same meaning in this Ratification Process.

2.3 When calculating time, where anything is to be done within a time after, from, of or before a specified day, or where a time is expressed to begin after or to be from a

specified day, the time does not include that day.

- 2.4 Words in the singular include the plural, words in the plural include the singular, words in the masculine include the feminine and words in the feminine include the masculine, as the context may require.

3. REGISTRATION OF ELIGIBLE VOTERS

- 3.1 The Lands Manager, in consultation with Council, will ensure that a List of Voters is prepared containing the full names, band numbers, birth dates and addresses of the Eligible Voters.

- 3.2 The Ratification Officer will, at least 56 days before Voting Day, send to each Eligible Voter at their last known address a registration package containing a voter registration document in Form 6 and a prepaid return envelope.

- 3.3 An Eligible Voter who wishes to vote in the Ratification Vote must register with the Ratification Officer by:

- (a) completing a voter registration document in Form 6;
- (b) signing the voter registration document;
- (c) having a person witness the Eligible Voter's signature;
- (d) having the witness sign the voter registration document; and
- (e) returning the voter registration document to the Ratification Officer by mail, courier, hand delivery or facsimile.

- 3.4 An Eligible Voter may register prior to the posting of the Notice of Vote.

- 3.5 A voter registration document must be received by the Ratification Officer no later than the close of the polls on Voting Day.

- 3.6 The Ratification Officer will maintain an updated List of Registered Voters setting out the names of all Eligible Voters who have returned a valid voter registration document in accordance with clause 3.3.

- 3.7 Subject to clause 13.3, no Eligible Voter may be provided with a mail-in ballot or vote at a poll in the Ratification Vote unless the Eligible Voter is a Registered Voter.

4. INFORMATION TO VERIFIER

4.1 At least 103 days before the Voting Day and before the Notice of Vote is posted, Council will by resolution in Form 2 send, or cause to be sent in quadruplicate the following documents to the Verifier:

- (a) the Ratification Process;
- (b) the Land Code; and
- (c) the List of Voters.

4.2 As soon as practicable after the Notice of Vote is posted, Council will send, or cause to be sent to the Verifier an addendum to the List of Voters sent in accordance with clause 4.1(c), listing any changes to the List of Voters who will be eligible to vote on Voting Day.

5. CONFIRMATION BY VERIFIER

5.1 Upon receipt of the documents under clause 4.1, the Verifier will review the Land Code and the Ratification Process to determine whether they are consistent with the Framework Agreement and the Act.

5.2 In accordance with clause 8.8 of the Framework Agreement, the Verifier will, within 30 days of receiving the documents, issue a declaration in Form 2A confirming whether the Land Code and the Ratification Process are consistent with the Framework Agreement and the Act.

6. COUNCIL RESOLUTION

6.1 After the Verifier confirms the Land Code and this Ratification Process under clause 5.2, Council will pass a Resolution in Form 3 to:

- (a) appoint the Ratification Officer;
- (b) confirm the List of Voters;
- (c) approve the text of the Land Code and the Ratification Process;

- (d) approve the Individual Agreement;
- (e) order that the Ratification Vote be held to determine if the community approves the Ratification Documents;
- (f) confirm the wording of the Ballot Question; and
- (g) set the Voting Day.

7. DUTY OF RATIFICATION OFFICER AND APPOINTMENT OF ASSISTANT

- 7.1 The Ratification Officer is responsible for overseeing the conduct of the Ratification Vote and has all the powers necessary to carry out that responsibility.
- 7.2 The Ratification Officer may appoint one or more assistant Ratification Officers and may delegate any of the duties set out in the Ratification Process to such an assistant, except:
 - (a) the initialling of ballots;
 - (b) the deposit of the mail-in ballots in the ballot box under clauses 13.10(i) and 17.1(c); and
 - (c) the counting of ballots under clause 18.
- 7.3 Upon the appointment of an assistant Ratification Officer, the Ratification Officer and each such assistant Ratification Officer will execute an Appointment of an Assistant Ratification Officer in Form 4A.
- 7.4 If the Ratification Officer is unable to perform his or her duties, Council may appoint an acting Ratification Officer.

8. NOTICE OF VOTE

- 8.1 The Ratification Officer, in consultation with Council, will post a Notice of Vote in Form 5 at least 56 days prior to the Voting Day in public places where it can be read by the Members.
- 8.2 The Verifier will publish the Notice of Vote in one or more local newspapers at least 28 days prior to Voting Day.

8.3 The Notice of Vote will contain the following information:

- (a) the date, place and time of the Ratification Vote;
- (b) the Ballot Question;
- (c) the procedure for registering as a Registered Voter;
- (d) instructions for obtaining a copy of the Ratification Documents, the Background Documents and the Ratification Process; and
- (e) the name, office address and telephone number of the Ratification Officer.

8.4 Forthwith after posting the Notice of Vote, the Ratification Officer will fax a true copy of the Notice of Vote to the Verifier.

9. COMMUNITY INFORMATION

9.1 Council will send or cause to be sent, in one or more mailings, the following information to each Member on the List of Voters at the Member's last known address:

- (a) a copy of the Notice of Vote;
- (b) a copy of the Land Code;
- (c) a summary of the Land Code;
- (d) a copy of the Individual Agreement;
- (e) a summary of the Individual Agreement;
- (f) a summary of the Framework Agreement; and
- (g) a summary of the Act.

9.2 The information sent in accordance with clause 9.1 will be mailed at least 56 days prior to Voting Day.

9.3 In addition to the information provided under clause 9.1 Council may conduct or cause to be conducted:

- (a) visits at the homes of Eligible Voters;
- (b) telephone contact with Eligible Voters;
- (c) information meetings at (name of) and other appropriate places; and
- (d) such other information activities as may be deemed appropriate.

9.4 Activities conducted in accordance with clause 9.3 may be conducted at any time prior to two days before Voting Day.

9.5 Nothing in clause 9.4 precludes visits to, or telephone contact with, any Eligible Voter on the Voting Day for purposes only of assisting such Eligible Voters to vote.

10. INFORMATION TO THIRD PARTIES

10.1 At least 56 days prior to Voting Day the Lands Manager will provide the following information to each person who holds an Interest in (name of) First Nation Land but is not a Member:

- (a) the date of the Ratification Vote;
- (b) a communiqué from (name of) First Nation explaining the effect of the Ratification Vote;
- (c) a summary of the Act;
- (d) a summary of the Framework Agreement;
- (e) a summary of the Land Code; and
- (f) the name, office address and telephone number of a person who may be contacted for purposes of obtaining copies of the Background Documents or further information about the management of (name of) First Nation Land.

10.2 In addition to information provided in accordance with clause 10.1, (name of) First Nation may meet with, or otherwise provide information directly to, persons who hold an interest in (name of) First Nation land but are not Members.

10.3 Nothing in this Ratification Process precludes (name of) First Nation from providing

information in any form it deems appropriate to a municipal corporation, regional district, first nation or other entity with an interest in land in the vicinity of (name of) First Nation land.

11. AVAILABILITY OF DOCUMENTS

- 11.1 Notwithstanding clause 9, any Member may, on request, obtain a copy of the Ratification Documents and the Background Documents at no cost.
- 11.2 Any Member or the representative of Canada appointed under clause 8.2 of the Framework Agreement may upon request obtain a copy of the Ratification Process in relation to an objection under clause 20.
- 11.3 The Lands Manager will ensure that copies of the Ratification Documents and the Background Documents are available at the administration offices of the (name of) First Nation in sufficient quantities to comply with clause 11.1 and 11.2.

12. PRELIMINARY PROCEDURES

- 12.1 The Ratification Officer, in consultation with Council, will:
- (a) designate the polling places;
 - (b) prepare sufficient copies of regular ballots and mail-in ballots, which will be uniform in size, appearance, quality and weight;
 - (c) prepare sufficient copies of the secrecy envelopes, the identification envelopes, and the return envelopes;
 - (d) prepare sufficient copies of the voting instructions;
 - (e) obtain a sufficient number of ballot boxes;
 - (f) provide for a designated voting area at the polls such that a Registered Voter can mark a ballot free from observation;
 - (g) provide a sufficient number of lead pencils and blue or black ink pens for marking the ballot;
 - (h) ensure that samples of the Ballot Question are posted or available for examination

at the polls; and

- (i) ensure that a Commissioner for Oaths or Notary Public will be available as required.

13. MAIL-IN BALLOTS

13.1 A Registered Voter may cast a mail-in ballot.

13.2 The Ratification Officer will provide a pre-folded and initialled ballot in Form 1, an identification envelope in Form 7, a secrecy envelope, a prepaid return envelope and voting instructions to each Registered Voter who:

- (a) is not a resident on a (name of) First Nation Indian reserve; or
- (b) who otherwise requests of the Ratification Officer to cast a mail-in ballot.

13.3 If an Eligible Voter contacts the Ratification Officer and confirms his or her intention to register, the Ratification Officer will, upon being satisfied as to the Eligible Voter's intention, provide a mail-in ballot to the Eligible Voter.

13.4 To cast a mail-in ballot, a Registered Voter will:

- (a) mark the ballot by placing a cross ("X") in the box marked "YES" or in the box marked "NO";
- (b) enclose and seal the ballot in the secrecy envelope;
- (c) enclose and seal the secrecy envelope in the identification envelope;
- (d) sign the outside of the identification envelope;
- (e) enclose and seal the identification envelope in the prepaid mailing envelope; and
- (f) deliver the sealed mailing envelope to the Ratification Officer.

13.5 A mail-in ballot may be delivered to the Ratification Officer by mail, courier or hand delivery.

13.6 A mail-in ballot must be received by the Ratification Officer no later than the close of the polls on Voting Day.

- 13.7 After the Ratification Officer has received a mail-in ballot, the Ratification Officer will:
- (a) confirm that the sender of the mail-in ballot is a Registered Voter or an Eligible Voter who has confirmed his or her intention to register in accordance with clause 13.3;
 - (b) attach the voter registration document to the mail-in ballot package;
 - (c) record the date when the mail-in ballot package was received;
 - (d) confirm that no other mail-in ballot package has been received from the Registered Voter; and
 - (e) store the mail-in ballot package in a secure location until Voting Day.
- 13.8 The Ratification Officer is personally responsible for the safekeeping of mail-in ballot packages until such time as the packages are opened, verified and deposited in a mail-in ballot box in accordance with clause 13.10.
- 13.9 The Ratification Officer will, after the last mail delivery on Voting Day and prior to the close of the polls on that day, retrieve any mail-in ballot packages from the mail.
- 13.10 After retrieving any mail-in ballot packages in accordance with clause 13.9 and prior to the close of the polls on Voting Day, the Ratification Officer will in the presence of two or more Registered Voters who will act as witnesses:
- (a) open a ballot box to be used only for the mail-in ballots;
 - (b) request the two or more Registered Voters to witness that the ballot box is empty;
 - (c) place his or her signature on the seal;
 - (d) ask the witnesses to place their signatures on the seal;
 - (e) forthwith seal the ballot box;
 - (f) in the presence of the witnesses, open each mail-in ballot package;
 - (g) verify that the signature that appears on the identification envelope is the same as the signature that appears on the voter registration document;

- (h) check the List of Registered Voters to ensure that the Registered Voter has not previously voted by mail-in ballot or in person;
- (i) if the Registered Voter has not already voted, deposit the mail-in ballot in its unopened secrecy envelope into the ballot box; and
- (j) place a line through the name of the Registered Voter on the List of Registered Voters.

13.11 Where:

- (a) a Registered Voter has previously voted in person or by mail-in ballot;
- (b) a voter is not a Registered Voter;
- (c) the signature that appears on the identification envelope is not the same as the signature that appears on the voter registration document; or
- (d) the identification envelope is not signed,

the Ratification Officer will reject the mail-in ballot and note the reason for the rejection on the List of Registered Voters and on the unopened mail-in ballot envelope, and will forthwith place the unopened mail-in ballot envelope into a suitable envelope retained for that purpose.

13.12 The Ratification Officer will:

- (a) execute a Declaration of Ratification Officer in Form 8; and
- (b) ensure that each witness executes a Statement of Witness in Form 9 and Form 9A.

14. VOTING PROCEDURES AT THE POLLS ON VOTING DAY

14.1 The polls will be open from ____ a.m. until ____ p.m. on Voting Day.

14.2 All voting at the polls will be by secret ballot.

14.3 The Ratification Officer is responsible for determining whether a person is an Eligible Voter and a Registered Voter.

- 14.4 At each poll, the Ratification Officer will:
- (a) before the first vote is cast, open the ballot box and request a Registered Voter to witness that the ballot box is empty;
 - (b) thereupon seal the ballot box and place his or her signature on the seal in front of the witness, and ask the witness to place his or her signature on the seal;
 - (c) keep the ballot box in view for reception of ballots;
 - (d) execute a Declaration of Ratification Officer in Form 10; and
 - (e) ensure that each witness executes a Statement of Witness in Form 11.
- 14.5 When a person at a poll requests to vote, the Ratification Officer will:
- (a) ensure that the person is a Registered Voter;
 - (b) check the List of Registered Voters to ensure that the person has not already voted, either in person or by mail-in ballot; and
 - (c) provide the Registered Voter with a ballot, on the back of which are affixed the Ratification Officer's initials so that the initials can be seen when the ballot is folded.
- 14.6 The Ratification Officer will place, on the List of Registered Voters, a line through the name of every Registered Voter receiving a ballot at a poll.
- 14.7 The Ratification Officer will establish a process of ongoing communication by telephone or other effective means between polls so as to ensure that the List of Registered Voters located at each poll is updated and current in accordance with clause 14.6.
- 14.8 Upon request, the Ratification Officer will explain the method of voting.
- 14.9 If the Ratification Officer determines that the name of a Registered Voter has been omitted, incorrectly set out or incorrectly included on the List of Registered Voters, he or she will, in his or her sole discretion, make the necessary revision and such revision will be final.
- 14.10 A Registered Voter may request special assistance from the Ratification Officer at the polls.

- 14.11 The Ratification Officer will, on request and in the presence of a witness acceptable to the Registered Voter and the Ratification Officer, provide special assistance to a Registered Voter at the polls by marking a ballot in secret as directed by the Registered Voter and immediately folding and depositing the ballot into the ballot box.
- 14.12 The Ratification Officer, after providing special assistance to a Registered Voter, will make an entry on the List of Registered Voters opposite the name of the Registered Voter indicating:
- (a) that the ballot was marked by the Ratification Officer at the request of the Registered Voter;
 - (b) the reason for the Registered Voter's request; and
 - (c) the name of the witness.
- 14.13 Except for a Registered Voter requiring special assistance, every Registered Voter receiving a ballot at a poll will:
- (a) proceed immediately to a designated voting area;
 - (b) mark the ballot by placing a cross ("X") in the box marked "YES" or in the box marked "NO";
 - (c) fold the ballot so as to conceal the mark and expose the initials of the Ratification Officer; and
 - (d) immediately give the folded ballot to the Ratification Officer.
- 14.14 Upon receiving a marked ballot, the Ratification Officer, without unfolding it, will:
- (a) verify his or her initials;
 - (b) remove the perforated strip, if any; and
 - (c) deposit the ballot into the ballot box.
- 14.15 A Registered Voter at a poll who receives a spoiled or improperly printed ballot, or who accidentally spoils a ballot when marking it, is entitled to receive another ballot from the Ratification Officer after returning the original ballot to the Ratification Officer.
- 14.16 The Ratification Officer will record a ballot returned in accordance with clause 14.15 as

spoiled.

- 14.17 A Registered Voter at a poll who receives a ballot and does not return it to the Ratification Officer will forfeit the right to vote and the Ratification Officer will make an entry on the List of Registered Voters stating that the Registered Voter left the poll without delivering the ballot and will record the ballot as cancelled.
- 14.18 At the time set for closing the polls, the Ratification Officer will declare the polls closed, and entry will be denied to the polls until all Registered Voters remaining in the polls at that time have voted.
- 14.19 After the close of a poll other than the poll at which the Ratification Officer is presiding, the Assistant Ratification Officer presiding at that poll, with the Verifier or Assistant Verifier who will act as a witness, will:
- (a) seal the ballot box at that poll such that no further ballots may be deposited in that ballot box;
 - (b) initial the seal; and
 - (c) forthwith transport the sealed ballot box to the Ratification Officer at the poll at which he or she is presiding.

15. ORDERLY VOTING

- 15.1 Council, with the assistance of the Ratification Officer, will ensure that peace and good order are maintained at the polls.
- 15.2 The Ratification Officer will allow only one Registered Voter at a time into a designated voting area, except for a Registered Voter receiving special assistance.
- 15.3 A Registered Voter who is present and available to vote at a poll before the closing time will be entitled to vote.
- 15.4 No person will:
- (a) interfere or attempt to interfere with a Registered Voter when the Registered Voter is voting;
 - (b) obtain or attempt to obtain information as to how a Registered Voter is about to vote or has voted;

- (c) mark a ballot in a way that identifies the Registered Voter; or
- (d) mark the secrecy envelope for a mail-in ballot in a way that indicates how the ballot was cast.

16. REJECTED BALLOTS

16.1 A cast ballot will be rejected if that ballot:

- (a) was not supplied by the Ratification Officer or assistant Ratification Officer;
- (b) was not marked as either “YES” or “NO”;
- (c) was marked as both “YES” and “NO”;
- (d) was marked outside a box marked “YES” or “NO” such that the Ratification Officer cannot reasonably discern the intent of the Registered Voter; or
- (e) has any writing or mark which can identify the Registered Voter.

16.2 A ballot marked with anything other than a cross (“X”), or marked with anything other than a lead pencil or blue or black pen, will not be rejected if:

- (a) the mark is in a box;
- (b) the mark does not identify the Registered Voter; and
- (c) in the opinion of the Ratification Officer, the intent of the Registered Voter is clear.

17. OPENING MAIL-IN BALLOTS

17.1 After the close of the polls on Voting Day, the Ratification Officer, in the presence of the Verifier and any Registered Voters who may be present, will:

- (a) open the ballot box for mail-in ballots;
- (b) open the secrecy envelope and confirm the authenticity of the ballot by checking the affixed initials; and

- (c) deposit the ballot, without opening or showing it, in a ballot box used at the polls.

18. COUNTING OF BALLOTS

18.1 After the mail-in ballots have been deposited in a ballot box and after all ballot boxes have been received from the polls, the Ratification Officer, in the presence of the Verifier and any Registered Voter who may be present, will:

- (a) count the number of spoiled ballots;
- (b) examine all ballots contained in the ballot boxes;
- (d) reject any ballots as required under clause 16.1; and
- (e) count the number of ballots marked “YES”, the number of ballots marked “NO” and the number of rejected ballots.

18.2 When the results of the Ratification Vote have been determined the Ratification Officer will execute a Certification by Ratification Officer in Form 12.

18.3 The Ratification Officer will seal in separate envelopes the spoiled ballots, the rejected ballots, the ballots cast in favour and the ballots cast against and will thereupon:

- (a) affix his or her signature to the seals; and
- (b) request the Verifier to affix his signature to the seals.

18.4 The Ratification Officer will retain the separate envelopes for at least 60 days in his or her secure possession, and may unless otherwise instructed by Council thereafter destroy the ballots cast, including the rejected ballots, and the spoiled ballots.

19. PROCEDURAL AMENDMENTS

19.1 In order to give effect to and carry out the objectives and purpose of the Ratification Vote, the Ratification Officer, Council or its designate and the Verifier may agree upon a variation of the procedural requirements of this Ratification Process if they:

- (a) deem it necessary to do so; and

- (b) reasonably believe the variation will not result in any substantive change to those procedural requirements.
- 19.2 The Verifier will state in writing the nature and basis of a variation under clause 19.1 and make a copy of the statement publicly available.
- 19.3 The Ratification Officer or Verifier may modify a form appended to this Ratification Process to add or update, but not remove, material detail.

20. OBJECTIONS

- 20.1 An Eligible Voter or the representative of Canada appointed under clause 8.2 of the Framework Agreement may file an objection with the Verifier if the Eligible Voter or representative has reasonable grounds for believing that:
- (a) there was a violation of, or irregularity in, this Ratification Process; and
 - (b) the final result of the Ratification Vote might have been different but for the violation or irregularity.
- 20.2 An objection must be received by the Verifier within five days of the Voting Day.
- 20.3 An objection must be in writing and must:
- (a) identify the name, address and telephone number of the Eligible Voter or representative of Canada making the objection;
 - (b) summarize the grounds for the objection; and
 - (c) be accompanied by a statutory declaration setting out the grounds for the objection.
- 20.4 The Verifier may, if the material provided under clause 20.3 is insufficient to decide the validity of the objection, conduct such further investigations as he deems necessary.
- 20.5 If an objection is filed under this clause, the Verifier will, within 15 days of Voting Day determine whether the objection is valid.
- 20.6 If the Verifier determines the objection is valid, he may allow the objection and call another Ratification Vote.

20.7 If the Verifier determines that:

- (a) there was neither a violation of, nor an irregularity in, this Ratification Process; or
- (b) there was a violation of, or an irregularity in, this Ratification Process but the final result of the Ratification Vote was not affected thereby,

the Verifier will dismiss the objection.

21. REPORT BY VERIFIER

21.1 Within 15 days of the Voting Day, the Verifier will send a written report in Form 13 on the conduct of the Ratification Vote to the (name of) First Nation and the Minister of the Department.

22. CERTIFICATION OF LAND CODE

22.1 The Land Code and the Individual Agreement will be approved if:

- (a) a majority of the Registered Voters vote to approve them; and
- (b) at least 25 per cent plus one of all Eligible Voters vote to approve them.

22.2 If the Land Code and the Individual Agreement are approved, Council will, as soon as practicable after receiving the report of the Verifier under clause 21.1, pass a resolution in Form 14 and send a copy of the approved Land Code and a declaration of the results of the vote to the Verifier.

22.3 Upon receiving the Land Code and the resolution in Form 14 from Council, the Verifier will certify the Land Code in Form 15 and send a copy of Form 15 together with a copy of the certified Land Code to the (name of) First Nation, the Minister of the Department and the Chair of the Lands Advisory Board.

BALLOT QUESTION

Do you approve:

- **The (name of) First Nation Land Code, dated for reference _____, 200_; and**
- **The Individual Agreement with Her Majesty the Queen in right of Canada?**

EXPLANATION

A “**YES**” vote means that (name of) First Nation will manage its own reserve lands under the (name of) *First Nation Land Code*.

A “**NO**” vote means that (name of) First Nation lands will continue to be managed by the Department of Indian Affairs under the *Indian Act*.

YES

NO

Mark this Ballot by placing a Cross (**×**) in one of the above boxes.

Form 2
Ratification Process

FIRST NATION COUNCIL RESOLUTION
(Information to Verifier)

The Council of (name of) First Nation, in accordance with the clause 8.3 of the Framework Agreement on First Nation Land Management and clause 4 of the (name of) First Nation Community Ratification Process, do hereby resolve to submit the following information to the verifier, in quadruplicate:

1. the proposed (*name of*) *First Nation Land Code* dated for reference _____, 200_;
2. the initial List of Voters who, according to the records of (name of) First Nation, would be eligible to vote on whether to approve the proposed (*name of*) *First Nation Land Code*; and
3. the proposed (name of) First Nation Community Ratification Process, dated for reference _____, 200_.

Dated at (name of), Province of British Columbia on the _____ day of _____ 200_.

Chief (name)

Councillor (name)

(* A quorum for this Band consists of ___ Council members)

Form 2A
Ratification Process

CONFIRMATION BY VERIFIER
(Land Code and Individual Agreement Ratification Process)

CANADA)
)
PROVINCE OF BRITISH COLUMBIA)

I, _____, of _____, in the Province of _____,
DO SOLEMNLY DECLARE THAT:

1. I was appointed as the Verifier for (name of) First Nation by the First Nation on the ____ day of _____ 200_ and by Canada on the ____ day of _____ 200_ for the purpose of verifying the community approval of their Land Code and their Individual Agreement, in accordance with the Framework Agreement on First Nation Land Management and the *First Nations Land Management Act*.
2. In accordance with clause 8.3 of the Framework Agreement, I received the following information from (name of) First Nation on _____, 200_:
 - (a) a copy of *the (name of) First Nation Land Code*;
 - (b) a list of the names of every Member of (name of) First Nation who, according to (name of) First Nation's records at that time, would be eligible to vote on whether to approve the Land Code and the Individual Agreement; and
 - (c) a detailed description of the community approval process that (name of) First Nation proposes to use.
3. A true copy of the Land Code, entitled *the (name of) First Nation Land Code*, dated for reference _____, 200_ is attached hereto as Exhibit "1" to this declaration.
4. A true copy of the community approval process, entitled (name of) First Nation Community Ratification Process, dated for reference _____, 200_ is attached hereto as Exhibit "2" to this declaration.
5. In accordance with clause 8.4 of the Framework Agreement and section 8 of the Act, I reviewed the *(name of) First Nation Land Code* and the (name of) First Nation Community Ratification Process to decide whether:

Form 3
Ratification Process

FIRST NATION COUNCIL RESOLUTION
(Commencement of Vote)

The Council of (name of) First Nation, in accordance with the Framework Agreement on First Nation Land Management and clause 6 of the (name of) First Nation Community Ratification Process, do hereby resolve to:

1. Confirm _____ as the Ratification Officer;
2. Confirm the List of Voters;
3. Approve the text of the (name of) First Nation Community Ratification Process, dated for reference _____, 200_;
4. Approve for community ratification *the (name of) First Nation Land Code*, as confirmed by the Verifier and dated for reference _____, 200_;
5. Approve for community ratification the Individual Agreement, which includes a process for amendment;
6. Hold a Ratification Vote to determine if the community approves the Ratification Documents in accordance with the (name of) First Nation Community Ratification Process as confirmed by the Verifier on _____, 200_;
7. Confirm the Ballot Question in the form attached as Annex #1; and
8. Set the Voting Day to be the ___ day of _____ 200_.

Dated at (name of), Province of British Columbia on the ___ day of _____ 200_.

Chief (name)

Councillor (name)

(* A quorum for this Band consists of __ Council members)

Form 4
Ratification Process

APPOINTMENT OF RATIFICATION OFFICER

Date

I, _____, agree to act as Ratification Officer for the Ratification Vote to determine if the voters of the (name of) First Nation approve the Ratification Documents, and will discharge my duties in accordance with the (name of) First Nation Community Ratification Process and the requirements of confidentiality.

_____, Ratification Officer

Form 4A
Ratification Process

APPOINTMENT OF AN ASSISTANT RATIFICATION OFFICER

Date

I, _____, Ratification Officer, appoint _____ to act as my assistant in carrying out my duties in accordance with the (name of) First Nation Community Ratification Process for the purpose of the Ratification Vote.

_____, Ratification Officer

I, _____ agree to act as an assistant to the Ratification Officer for the purpose of the Ratification Vote and promise to carry out all assigned duties to the best of my abilities and in accordance with the (name of) First Nation Community Ratification Process and the requirements of confidentiality.

Assistant Ratification Officer

Form 5
Ratification Process

NOTICE OF VOTE

TO: MEMBERS OF (NAME OF) FIRST NATION

TAKE NOTICE that a Ratification Vote will be held in accordance with the (name of) First Nation Community Ratification Process on _____, 200_ in order to determine if Registered Voters approve the (name of) First Nation Land Code and the Individual Agreement.

The following question will be asked of the Registered Voters of (name of) First Nation by ballot:

"Do you approve:

- **The (name of) First Nation Land Code, dated _____, 200_ and**
- **The Individual Agreement with Her Majesty the Queen in Right of Canada?**

The Ratification Vote will take place on _____ day, the ___ day of _____, 200_ from ____ a.m. until ____ p.m. at:

The (name of) First Nation Administration Offices and _____
(Street address) _____, British Columbia (Street address), _____, British Columbia

Copies of the Background Documents, the Ratification Documents and the Ratification Process may be obtained from _____, Land Management Coordinator, at the (name of) First Nation Administration Offices, (address) Province of British Columbia, telephone _____.

AND FURTHER TAKE NOTICE that all Members of (name of) First Nation 18 years of age or older as of the date of the Ratification Vote are eligible to vote, **PROVIDED THAT SUCH MEMBERS MUST COMPLETE A VOTER REGISTRATION DOCUMENT TO BE PLACED ON THE LIST OF REGISTERED VOTERS.** Voter registration documents will be sent to all Eligible Voters whose address is on record with the (name of) First Nation. Voter registration documents are also available from _____, Ratification Officer at the address and telephone number appearing below.

DATED at (name of), Province of British Columbia this _____ day of _____ 200_.

_____, Ratification Officer
_____, Province of British Columbia, _____
Telephone: () _____ Facsimile: () _____

NOTE: Any Registered Voter may vote by mail-in ballot. If an Eligible Voter has not received a Voter Registration Document by _____, 200_ please contact the Ratification Officer so that the necessary form can be supplied to you.

Form 6
Ratification Process

VOTER REGISTRATION DOCUMENT
To Vote in the (name of) First Nation Ratification Vote

I, _____, am registering as a Registered Voter and:
(Print full name)

(Check one only)

I will be able to attend a polling station in person

OR

I wish to receive a mail-in ballot package.

My mailing address is: _____

_____ Postal/Zip Code

My phone number is: _____

I confirm that I am at least 18 years of age, or will be 18 years of age by _____, 200_
and I am a Member of the (name of) First Nation, and that:

My Band Number is _____ and my Date of Birth is _____;

And that I have signed this Voter Registration Form, together with a witness to my signature.

Signature of Eligible Voter

Date

Signature of Witness

Print Name of Witness

For Ratification Officer's Use Only

This is to certify that this Eligible Voter has been registered and his or her full name, band number and date of birth have been placed on the List of Registered Voters.

Date

_____, Ratification Officer

**Form 7
Ratification Process**

IDENTIFICATION ENVELOPE

IDENTIFICATION ENVELOPE

**(NAME OF) FIRST NATION
RATIFICATION VOTE**

PLEASE ENCLOSE ONE SECRECY ENVELOPE CONTAINING ONE BALLOT

Full Name of Registered Voter: _____
(Please print you name)

I confirm that this envelope contains only my ballot, which is sealed inside a secrecy envelope.

Signature of Registered Voter

**Form 8
Ratification Process**

**DECLARATION OF RATIFICATION OFFICER
(Mail-in Ballots)**

CANADA)
)
Province of British Columbia)

I, _____, Ratification Officer, of _____, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was personally responsible for receiving all mail-in ballots at (name of) First Nation when Registered Voters of (name of) First Nation voted in a Ratification Vote concerning the Ratification Documents.
2. In preparation for depositing mail-in ballots, I opened ballot box number #__.
3. I saw that the ballot box was empty and I asked Registered Voters who were present to witness that the ballot box was empty.
4. I then properly sealed the ballot box, in front of the Registered Voters who were present, and prepared it for the reception of ballot papers.
5. I personally deposited all of the mail-in ballots received by me into ballot box #__ without opening the secrecy envelope, and kept the ballot box sealed when not in my custody until the ballots were counted.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the _____)
of _____ in the Province of _____)
_____, this _____ day of _____,)
200_.) _____
) _____, Ratification Officer
) _____)

A Commissioner for Oaths in and for the
Province of British Columbia

Form 9
Ratification Process

STATEMENT OF WITNESS
(Deposit of Mail-In Ballots)

Date

I, _____ was personally present at _____ on the __ day of _____, 200_ when the Ratification Officer deposited the secrecy envelopes containing the mail-in ballots in ballot box #__, and:

1. I am a Registered Voter.
2. I witnessed that ballot box #__ was empty before any secrecy envelopes containing mail-in ballots were deposited.
3. I witnessed the Ratification Officer seal the ballot box and sign the seal.
4. I signed the seal, as requested by the Ratification Officer.

Witness

Form 9A
Ratification Process

STATEMENT OF WITNESS
(Opening of Mail-In Ballots)

Date

I, _____ was personally present at _____ on the ___ day of _____, 200_ when the Ratification Officer opened the mail-in ballot packages, and:

1. I am a Registered Voter.
2. The mail-in ballot packages were unopened immediately prior to the time the Ratification Officer opened them.
3. The Ratification Officer confirmed that the signatures that appeared on the identification envelopes were the same as the signatures that appeared on the voter registration documents.
4. The Ratification Officer checked the List of Registered Voters and ensured that the Registered Voter whose name appeared on the mail-in ballot package had not previously voted in person or by mail-in ballot.
5. The Ratification Officer placed a line through the name of each Registered Voter on the List of Registered Voters when she deposited the secrecy envelope of that Registered Voter in the separate ballot box kept for that purpose.

Witness

**Form 10
Ratification Process**

**DECLARATION OF RATIFICATION OFFICER
(Regular Polls)**

CANADA)
)
Province of British Columbia)

I, _____, Ratification Officer, of _____, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was personally present at _____ on the __ day of _____, 200_ when Registered Voters of (name of) First Nation voted in a Ratification Vote concerning the Ratification Documents.
2. Immediately before the Ratification Vote began, I opened ballot box number #__.
3. I saw that the ballot box was empty and I asked Registered Voters who were present to witness that the ballot box was empty.
4. I then properly sealed the ballot box, in front of those persons who were present, and kept it in view for the reception of ballot papers.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the _____)
of _____ in the Province of _____)
_____, this _____ day of _____)
200_.)
_____)
_____) _____, Ratification Officer
A Commissioner for Oaths in and for the)
Province of British Columbia)

Form 11
Ratification Process

STATEMENT OF WITNESS
(Regular Polls)

Date

I, _____, was personally present at the polling place at _____ on the __ day of _____, 200_ when Registered Voters of (name of) First Nation were to vote in a Ratification Vote concerning the Ratification Documents, and

1. I am a Registered Voter.
2. I witnessed that the ballot box #__ was empty before any votes were cast in the Ratification Vote.
3. I witnessed the Ratification Officer seal the ballot box and sign the seal.
4. I signed the seal, as requested by the Ratification Officer.

Witness

Form 12
Ratification Process

CERTIFICATION BY RATIFICATION OFFICER
(Conclusion of Vote)

CANADA)
)
Province of British Columbia)

I, _____, Ratification Officer for (name of) First Nation in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was present at _____ on the __ day of _____, 200_ when Registered Voters of (name of) First Nation voted concerning approval of *the (name of) First Nation Land Code* and Individual Agreement in accordance with the (name of) First Nation Community Ratification Process.
2. A true copy of the Notice of Vote is attached as Exhibit “1” to this Declaration.
3. In accordance with clause 8.1 of the (name of) First Nation Community Ratification Process I posted the Notice of Vote at least 56 days prior to the Voting Day.
4. The voting procedure, including the handling of mail-in ballots and the counting of results, was conducted in accordance with clauses 12 to 19, both inclusive, of the (name of) First Nation Community Ratification Process.
5. The names of _____ Eligible Voters appeared on the List of Voters.
6. The number of Eligible Voters who registered was _____ and their names were entered on the List of Registered Voters.
7. The number of Registered Voters who constituted a majority was _____.
8. The number of Eligible Voters who constituted the minimum percentage required for approval under clause 7.4 of the *Framework Agreement on First Nation Land Management* and section 12(2) of the *First Nations Land Management Act* was _____.
9. The results of the Ratification Vote are as follows:
 - (a) _____ mail-in ballots were cast in the Ratification Vote in accordance with

clause 13 of the (name of) First Nation Community Ratification Process;

- (b) _____ regular ballots were cast in the Ratification Vote in accordance with clauses 14 and 15 of the (name of) First Nation Community Ratification Process;
- (c) _____ ballots were spoiled as provided in clause 14.16 of the (name of) First Nation Community Ratification Process;
- (d) _____ ballots were rejected in accordance with clause 13.11 of the (name of) First Nation Community Ratification Process and not opened or deposited into the ballot box;
- (e) _____ ballots were cancelled in accordance with clause 14.17 of the (name of) First Nation Community Ratification Process;
- (f) _____ ballots were rejected in accordance with clause 16.1 of the (name of) First Nation Community Ratification Process;
- (g) _____ ballots were marked “YES” for the Ballot Question; and
- (h) _____ ballots were marked “NO” for the Ballot Question.

10. Based on the need to meet or exceed the number of Registered Voters in item 7, and the number of Eligible Voters in item 8, above, the Ratification Documents were *approved/not approved* by the Registered Voters.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the _____)
of _____ in the _____)
Province of _____, this _____)
day of _____ 200_ .)
_____)
_____, Ratification Officer)
_____)
A Commissioner for Oaths in and for the)
Province of British Columbia)

**Form 13
Ratification Process**

**REPORT BY VERIFIER
(Conclusion of Vote)**

CANADA)
)
Province of British Columbia)

I, _____ of _____, in the Province of _____,
DO SOLEMNLY DECLARE THAT:

1. I was present at _____ on the ___ day of _____, 200_ when Registered Voters voted concerning approval of *the (name of) First Nation Land Code* and their Individual Agreement in accordance with the (name of) First Nation Community Ratification Process.
2. A copy of the Notice of Vote is attached as Exhibit "1" to this Declaration.
3. In accordance with clause 8.1 of the (name of) First Nation Community Ratification Process, the Ratification Officer posted the Notice of Vote at least 56 days prior to the Voting Day.
4. In accordance with clause 8.2 of the (name of) First Nation Community Ratification Process, I arranged for the Notice of Vote to be published in the _____ at least 28 days prior to the Voting Day.
5. In accordance with clause 9.2 of the (name of) First Nation Community Ratification Process, a copy of the Notice of Vote and the documents listed in clause 9.1 were sent to each person on the List of Voters at their last known address at least 56 days prior to the Voting Day.
6. In accordance with clauses 9.3 and 9.4 of the (name of) First Nation Community Ratification Process, door-to-door visits, community information meetings and telephone contacts were made in the community.
7. In accordance with clause 10.1 of the (name of) First Nation Community Ratification Process, the information package was sent to any persons who are not Members who hold an interest in (name of) First Nation Land at least 56 days prior to the Voting Day.
8. The names of _____ Eligible Voters appeared on the List of Voters.
9. The number of Eligible Voters who registered was _____ and their names were entered on the List of Registered Voters.
10. The number of Registered Voters who constituted a majority was _____.
11. The number of Eligible Voters who constituted the minimum percentage required for approval

**Form 14
Ratification Process**

FIRST NATION COUNCIL RESOLUTION
(Submission to Verifier at Conclusion of Vote)

Whereas the (name of) *First Nation Land Code* and the Individual Agreement were submitted to a Ratification Vote at (name of) First Nation on the ___ day of _____, 200_;

And Whereas the Verifier has reported that the Ratification Vote was conducted in accordance with the (name of) First Nation Community Ratification Process confirmed by the Verifier;

And Whereas the Registered Voters approved these documents at the Ratification Vote held on the ___ day of _____, 200_;

Now therefore the Council of (name of) First Nation, in accordance with the *Framework Agreement on First Nation Land Management* and clause 22.2 of the (name of) First Nation Community Ratification Process, do hereby resolve to send to the Verifier the approved (name of) *First Nation Land Code*, attached hereto as Annex "1", for certification by the Verifier.

Dated at (name of), Province of British Columbia this _____ day of _____, 200_.

Chief (name)

Councillor (name)

(* A quorum for this Band consists of ___ Council members)

Form 15
Ratification Process

CERTIFICATION OF LAND CODE

Whereas the *(name of) First Nation Land Code* and the Individual Agreement were submitted to a Ratification Vote at (name of) First Nation on the __ day of _____, 200_;

And Whereas I have reported that the Ratification Vote was conducted in accordance with the (name of) First Nation Community Ratification Process confirmed by me as the Verifier;

And Whereas the *(name of) First Nation Land Code* and the Individual Agreement were approved by the Registered Voters at the Ratification Vote on the __ day of _____, 200_;

Therefore, I hereby certify the *(name of) First Nation Land Code*, attached as Annex “1” hereto.

Dated at _____ this _____ day of _____, 200_.

_____, Verifier

DISPUTE RESOLUTION GUIDELINES - SAMPLE

Preamble

The *XX First Nation Land Code* establishes the procedure for alternative dispute resolution. These guidelines were developed to establish the procedures for the resolution of disputes and provide parties to a dispute in relation to *XX First Nation Land* with sequential stages for the resolution of disputes by way of negotiation, facilitated discussions, mediation and arbitration.

If there is an inconsistency between these guidelines and the *XX First Nation Land Code* the provisions of *Land Code* **shall** prevail to the extent of the inconsistency.

1. Purpose

Intent

1.1 The intent of this part is to ensure that all persons entitled to reside upon, use or otherwise occupy *XX First Nation Land* do so harmoniously with due respect to the rights of others and of *XX First Nation* and with access to *XX First Nation* procedures to resolve disputes.

Purpose

1.2 The purpose of these guidelines is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matters in dispute, taking into account the values which distinguish dispute resolution from litigation.

2. Processes

Dispute Prevention

2.1 The parties **shall** use best efforts to prevent disputes from arising and **shall** consider the use of dispute resolution processes at the earliest possible stage of any conflict.

Disputes Prior to the Land Code

2.2 Disputes that arose before the *Land Code* takes effect could also be referred to the dispute resolution process.

Settle a Dispute

2.3 Nothing in these guidelines **shall** be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to these guidelines.

Settlement Agreement

2.4 Any settlement reached through dispute resolution **shall** not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

Staged Processes

2.5 XX First Nation intends that a dispute in relation to XX First Nation Land, except as otherwise provided, progress in sequence through the following stages provided for in these guidelines:

- a) negotiation;
- b) facilitated discussions;
- c) mediation; and
- d) final arbitration by the Dispute Resolution Panel.

Termination of Processes

2.6 Negotiations, facilitated discussions and mediations may be suspended upon any of the following occurrences:

- a) the parties reach an agreement;
- b) one of the parties refuses to continue with the negotiation, facilitated discussion or mediation;
- c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- d) upon the request of both parties.

Notice of Termination

2.7 A notice of termination is required when further facilitated discussions or mediation **shall** not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

Dispute Resolution Not Available

2.8 Dispute resolution is not available under these guidelines for disputes in relation to:

- a) the administration or distribution of an estate;
- b) decisions relating to housing allocations;
- c) decisions of Council to grant or refuse to grant an Interest or license in XX First Nation Land to a non-Member;
- d) decisions on expropriation under section xx of the *XX First Nation Land Code*;
- e) prosecution or conviction of an offence under a Land Law or under criminal law; and
- f) challenges to the validity of any Land Law.

Duty of Fairness

2.9 All persons involved in a dispute under these guidelines **shall** be:

- a) treated fairly;
- b) given a full opportunity to present their case; and
- c) given reasons for a decision made under these guidelines.

Rules and Procedures

2.10 Council may prescribe such laws, resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this *Land Code*, as may be necessary to give effect to these guidelines including but not limited to:

- a) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under Part xx of the *XX First Nation Land Code*;
- b) disclosure and confidentiality;
- c) implementing recommendations of the Dispute Resolution Panel made under Part xx of the *XX First Nation Land Code*; and
- d) any other matter necessary to give effect to Part xx of the *XX First Nation Land Code*.

Code of Conduct

2.11 Council **shall** establish a code of conduct for facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under Part xx of the *XX First Nation Land Code*.

Waiver of Liability

2.12 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists **shall** not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

Mandatory Application

2.13 Council may establish a Land Law that sets out the mandatory application of Part xx of the *XX First Nation Land Code* in certain circumstances.

Contractual Agreement

2.14 Subject to any Land Law enacted under section 2.13, a contractual agreement made under the *XX First Nation Land Code* may establish that the dispute resolution outlined in Part xx of the *XX First Nation Land Code* and its Land Laws may be mandatory or may to some degree prescribe for alternate arbitration process if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract **shall** be treated as an agreement independent of the other terms of the contract.

Variation of Rules

2.15 Subject to any Land Law enacted under section 2.13, the parties to a dispute to which any dispute resolution rules apply may to some degree modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

Civil Remedies

- 2.16** Notwithstanding section 2.13 and 2.14, nothing in this Part **shall** be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to Validity of Law

- 2.17** For greater certainty, nothing in these guidelines **shall** be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

3. Roster Panel Established

Appointment to Roster Panel

- 3.1** The Roster Panel **shall** be composed of a maximum of twenty (20) Panelists.

Ineligible

- 3.2** Notwithstanding section xx of the *XX First Nation Land Code*, in order to avoid conflict of interest, no Council member, or employee of XX First Nation or person already serving on another board, body, or committee relating to XX First Nation Land **shall** sit on the Roster Panel.

Representation

- 3.3** The Council **shall** appoint the Roster Panelists, and **shall** ensure that the Roster Panelists represent the various elements of the community.

Term of Office

- 3.4** The Roster Panelists hold office for a term of three (3) years, at which time the term of office may be renewed.

No Remuneration

- 3.5** Unless Council by Resolution or law provides otherwise, the Panelists are to act on a volunteer basis and receive no remuneration for their services.

Rules of Roster Panel

- 3.6** The Roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

4. Negotiation

Informal Discussions

- 4.1** XX First Nation intends that wherever possible, a dispute in relation to XX First Nation Land **shall** be resolved by negotiation through informal discussion by the parties to the dispute prior to entering the dispute resolution process by filing a notice of dispute.

5. Procedure to File a Dispute

Procedure to File a Dispute

- 5.1** A person who wishes to resolve a dispute with another person or XX First Nation in relation to the use or occupation of XX First Nation Land may file a written notice of dispute with the Lands Department setting out:
- a) the nature of the dispute;
 - b) a statement outlining the facts and supporting arguments of the dispute claim; and
 - c) the relief that is sought.

Limitation Period

- 5.2** The limitation period for submitting a notice of dispute and referring a matter or dispute to the Roster Panel is:
- a) 6 months after the day the decision, act or omission being referred was made;
 - b) thirty (30) consecutive days after the breakdown of negotiation; or
 - c) in the case of a breakdown and termination of facilitated discussions or mediation, thirty (30) consecutive days after the notice of termination.

6. Facilitated Discussion

Procedure

- 6.1** Within thirty (30) consecutive days of receiving a notice of dispute under section 5.1, the Lands Department **shall** prepare and deliver a report on the dispute and a copy of the notice of dispute to the Chair of the Roster Panel.

Notice of Dispute

- 6.2** As soon as practicable after receiving a report and notice of dispute under section 6.1 the Chair of the Roster Panel or another person not affected by the dispute and designated by the XX First Nation Land Committee for that purpose, **shall** make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

Set Meeting Date and Time

- 6.3** In setting the date and time of the meeting referred to in section 6.2 the Chair of the Roster Panel or other person appointed for the purposes of section 6.2 may consider any need to:
- a) obtain further information;
 - b) give notice of the dispute to others who have or may have an interest in it; or
 - c) obtain professional advice in relation to the dispute.

Other Mechanisms

- 6.4** Where the Chair of the Roster Panel or other person appointed for the purposes of section 6.2 concludes that the dispute cannot be resolved through facilitated discussions, he or she may in his or her sole discretion direct that the dispute proceed to mediation or to the Dispute Resolution Panel.

7. Mediation

Appointment

7.1 A mediator **shall** be selected jointly by the parties to the dispute and the Roster Panel.

Unable to Agree

7.2 If the parties to the dispute and the Roster Panel are unable to agree on a mediator, the Dispute Resolution Panel **shall** hear the dispute.

Authorities

7.3 The mediator has no authority to decide the dispute without the agreement of the parties to the dispute.

Report

7.4 At the conclusion of mediation, the mediator **shall** submit a written report on the mediation proceedings to the parties to the dispute and the Roster Panel.

8. Arbitration by the Dispute Resolution Panel

Disputes

8.1 Any matter or dispute related to XX First Nation Land shall be submitted to the Lands Department but that such matter or dispute shall then be referred to the Roster Panel for resolution.

Panel of Three Chosen From Roster Panel

8.2 Disputes referred to the Roster Panel are to be heard by three (3) Panelists chosen as follows:

- a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute;
- b) one (1) panelist, who is to be the chairperson, **shall** be chosen by the rest of the Panel; and
- c) in the case of situations not adequately covered by section (a) or (b), all three (3) panelists **shall** to be chosen by the Roster Panel as a whole.

Panel Established

8.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to XX First Nation Land. For greater certainty, disputes outlined in section 2.8 **shall** not be heard by the Panel.

9. Impartiality of the Dispute Resolution Panel

Duty to Act Impartially

9.1 The Panel **shall** act impartially and without bias or favour to any party in a dispute.

Offence

9.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

Rejection of Application

9.3 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

10. Powers of the Dispute Resolution Panel

Power of the Panel

10.1 The Panel may, after hearing a dispute:

- a) confirm or reverse the decision, in whole or in part;
- b) substitute its own decision for the decision in dispute;
- c) direct that an action be taken or ceased;
- d) refer the matter or dispute back for a new decision; or
- e) make an order to give effect to its decision, including any necessary order for the survey of an interest in XX First Nation Land, the registration of an interest in XX First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

Recommendations by Panel

10.2 In addition to making a determination under section 10.1, the Panel may:

- a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this *Land Code*; or
- b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

Interim Decisions

10.3 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an Interest in XX First Nation Land.

Professional Services

10.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it **shall** make best efforts to use professional services available in the community.

Written Decisions

10.5 Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so.

Reasons

10.6 The Panel *shall* give reasons for its decision, and *shall* do so in writing if a party to the proceedings requests them before, or within fourteen (14) consecutive days after, the date of the decision.

Appeal of Decision

10.7 A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the Federal Court (Trial Division).

FIRST NATION JURISDICTION UNDER FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

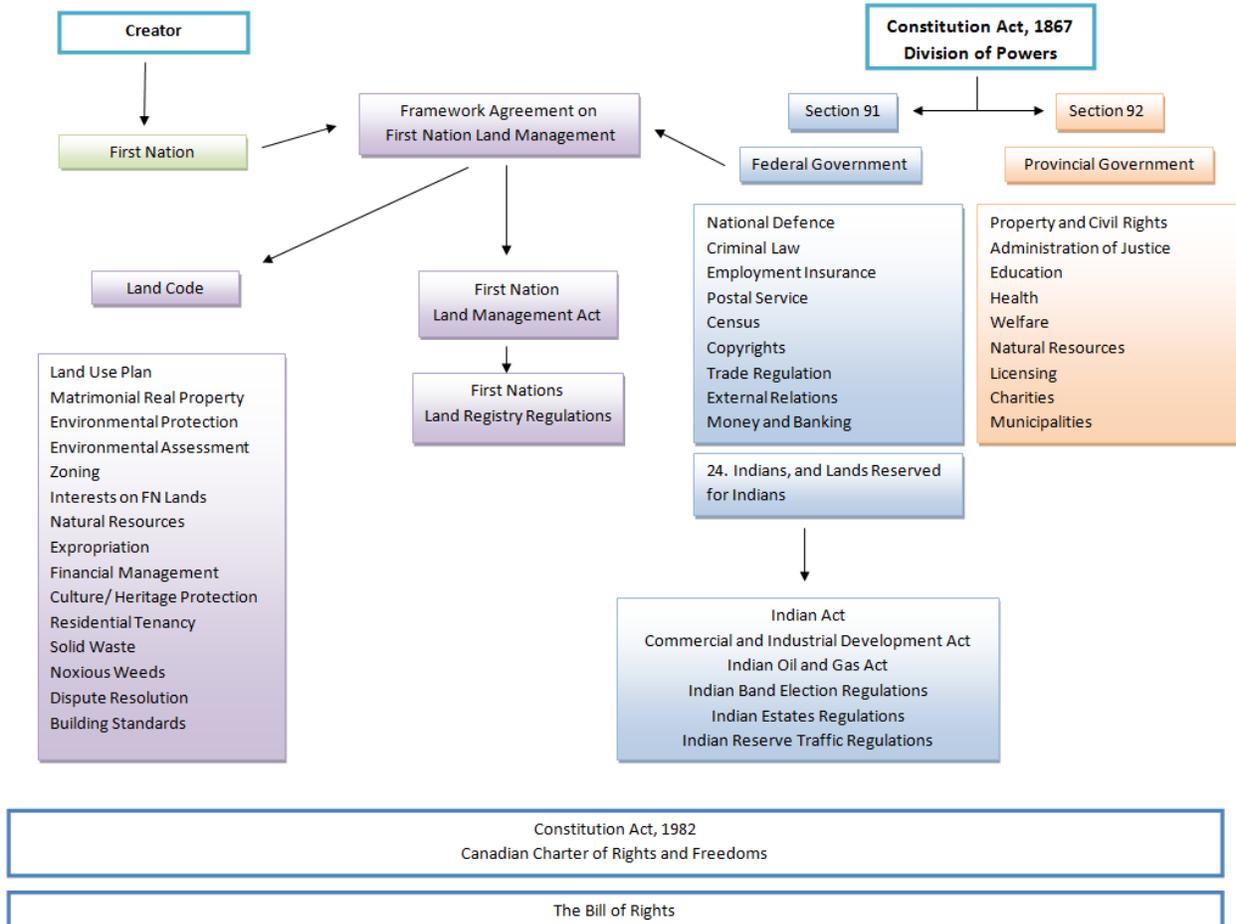


Figure 1 AUTHORITY TO ENACT LAWS

Narrative for the Chart

First Nations say that everything, including their rights, responsibilities and privileges flow from the creator. The chart illustrates how First Nations are re-establishing their jurisdiction over their lands and resources by signing the *Framework Agreement on First Nation Land Management (Framework Agreement)*. A First Nation ratifies the *Framework Agreement* by enacting a community Land Code. The Land Code is enabling and is general in nature. The community exercises its land governance powers by enacting specific land based laws.

The *Constitution Act, 1867* established a federation based on the sharing of powers between the federal and provincial governments. Each government has responsibility over a number of specific areas.

Under Section 91(24), the federal government has exclusive responsibility for Indians, and Lands Reserved for Indians. In exercising its responsibility, the federal government has signed treaties with First Nations, enacted legislation and regulations and established programs.

The federal government used this head of power to undertake negotiations which eventually lead to the development and signing of the *Framework Agreement on First Nation Land Management*. The federal government ratified this *Framework Agreement* by enacting the *First Nation Land Management Act*. The federal government also established the *First Nations Land Registry Regulations*.

All law-making bodies in Canada are constrained in their ability to make laws by the Bill of Rights, the Constitution Act, 1982, and the list of powers they were provided with (their jurisdiction). The courts are the forum for determining whether or not law-making bodies are acting within their powers.



SUMMARY OF THE FIRST NATION LAND MANAGEMENT ACT BILL C-49

“An Act providing for the ratification and bringing into effect of the *Framework Agreement on First Nation Land Management*”

Introduction

The *First Nation Land Management Act (FNLMA)* was required under the *Framework Agreement on First Nation Land Management (Framework Agreement)* for two purposes:

1. to ratify the *Framework Agreement*, and
2. to implement those clauses of the *Framework Agreement* that affect third parties or other federal laws; or that are considered important enough to be repeated in the legislation.

The *FNLMA* is intended to be consistent with the *Framework Agreement* and to apply to the First Nations (FN) that are signatories to the *Framework Agreement* (set out in the schedule to the *FNLMA*). The *FNLMA* was previously introduced in Parliament on December 10, 1996, but the federal election that year prevented it from being enacted. The Bill was reintroduced as Bill C-49 in June of 1998. It was finally enacted and given royal assent on June 7, 1999.

Ratification

The *Framework Agreement* is the document that sets out the terms and conditions under which a FN can establish its own land management regime and remove its reserve lands from the Minister’s control under the *Indian Act*. However, the *Framework Agreement* cannot come into force until it is ratified by both Canada and two FNs. Three FNs have already ratified the *Framework Agreement*, and Canada has fulfilled its obligation by enacting the *FNLMA*.

FIRST NATIONS LAND REGISTRY REGULATIONS EXPLANATORY VERSION

NOTICE: This version of the Regulation contains a basic explanation of the provisions of this Regulation. Readers are cautioned that the explanation does not necessarily reflect the views or opinions of the Department of Indian Affairs and Northern Development, the Lands Advisory Board or the Lands Advisory Board Resource Centre Inc. It is prepared for convenience only and users should obtain legal advice for any interpretation that may be required.

VERSION NO. 2 – May 2010

FIRST NATIONS LAND REGISTRY REGULATIONS

EXPLANATORY VERSION

INTERPRETATION

1. The following definitions apply in these Regulations.

“Act” means the [First Nations Land Management Act](#).

“applicant” means a person who submits an application for registration or recording.

Any person may submit an application to register or record a document including the First Nation land manager or other employee, the individual or developer holding the interest or the lawyer for the individual.

A First Nation may make a law that requires First Nation certification and / or approval of any document to be registered and that a document that is registered without the First Nation certification and / or approval is not valid.

“First Nations Land Registry” means the office referred to in section 2.

“general abstract” in respect of a reserve, means an electronic abstract of registered interests - or, in Quebec, registered rights - and recorded documents that affect all lands on the reserve.

The general abstract contains a listing of documents in chronological order which are the basis of title to the whole reserve and may include: Treaties, Orders in Council and deeds. It may also contain documents such as easements, road allowances, utility permits and surrenders.

“official plan” means a graphical description of boundaries of land prepared from field notes of a survey confirmed under section 29 of the [Canada Lands Surveys Act](#).

Official plans are the surveys most often used to determine the exterior boundaries of First Nation land and the quantity of reserve lands recognized by Canada. See section 18.

“parcel abstract” means an electronic abstract of registered interests - or, in Quebec, registered rights - and recorded documents that affect an individual parcel of first nation lands.

The parcel abstract contains a listing of documents in chronological order concerning the title to a lot of first nation land which may be held as Certificate of Possession, a leasehold interest, leasehold mortgage.

“Register” means the First Nations Land Register established by the Minister under subsection 25(1) of the Act.

The Register is the name of the electronic data base maintained by INAC. It only contains documents from First Nations who have ratified a land code. The First Nations Land Registry is the office in which the Register and the Registrar are located in Gatineau, Quebec at INAC headquarters.

“Registrar” means the officer in the Department of Indian Affairs and Northern Development responsible for the management of the First Nations Land Registry.

“registration plan” means a graphical description of the boundaries of land prepared by the Surveyor General under section 31 of the [Canada Lands Surveys Act](#).

Registration plans are less detailed than official plans and are surveys used to set out the boundaries of parcels or lots of land within First Nation lands which have been leased. .

“textual description” means a metes and bounds description of first nation lands, or any other description of first nation lands that does not refer exclusively to one or more complete parcels on a registration plan or official plan.

A textual description is a written description and not a survey plan. It may only be used if the interest granted is not encumbered (by a mortgage, for example), or for a utility company to provide services to residents of the First Nation.

OPERATION OF REGISTRY

2. The Register shall be maintained in an office located in the National Capital Region and known as the First Nations Land Registry.

The Ottawa – Gatineau area is the National Capital Region.

3. (1) The First Nations Land Registry shall be open to the public from Monday to Friday, except on holidays, from 8:30 a.m. to 4:00 p.m. EST or EDST, as applicable.

The Registry and the Register are open to the public. The basis of any government operated land registry or land titles office is that the records and information the offices contain can be viewed by members of the public. In a land registry system the registration of a document gives notice to the public of the document and the claimed interest. The Registry office is open for longer hours than noted, but not to do business with the public. However, registration or recording of documents in person cannot take place outside these hours.

Holidays are statutory holidays recognized by Canada and on which most, if not all, federal, provincial, first nation and municipal government offices and banks are closed.

(2) Despite subsection (1), a document may be transmitted for registration or recording in accordance with section 12 at any time.

Documents can be recorded or registered electronically under section 12 and for electronic registration the Registry is “open” for business 365 days of the year 24/7. While it is technically possible for a First Nation to use a combination of electronic and mail or courier registration, First Nations are encouraged to make use of one or the other method but not both.

- 4. Neither the Registrar nor any employee of the First Nations Land Registry shall express an opinion about any interest or licence in first nation land, including whether**
- (a) a document submitted for registration or recording is validly made;**
 - (b) a document has been registered, as opposed to having been recorded.**

Registry employees are prohibited from expressing any opinions on the validity or legal effect of a document. The role of the Registrar and staff is to apply these regulations. While they are employees of INAC, they must act independently of INAC, the First Nation or any person claiming to have an interest in First Nation lands. .

5. Any person may, during the hours referred to in subsection 3(1), inspect at the First Nations Land Registry the electronic image of any document that is registered or recorded in the Register.

As noted the Register is open to the public. Since it is also an electronic Register, it may be accessed on the internet at any time, provided the user has a password obtained from the Registry.

6. On request, the Registrar shall provide a certified copy of a document registered or recorded in the Register.

A certified copy has the same legal effect as the original document. Certified copies of documents may be required by lenders, title insurers or the courts as to establish that a document has been registered or recorded.

All documents which are registered or recorded in the Register may be viewed on the internet site and may be printed electronically. However, these documents are not certified by the Registrar.

7. On request, the Registrar shall issue a certificate indicating all the interests registered – or in Quebec, all the rights registered and other documents recorded on the abstract of a specified parcel of first nation land.

The Registrar may also certify copies of the documents for a parcel of land taken from the parcel abstract. Lenders, title insurers may require certified copies of the abstract to review the title to a parcel of land. In a dispute, courts and other tribunals will accept the use of certified copies of documents and abstracts as evidence.

8. The following abstracts shall be included in the Register:

- (a.) for each reserve of a first nation, a general abstract; and,**
- (b.) for each parcel of first nation land, a parcel abstract.**

9. The Registrar shall not create a parcel abstract unless it is based on an official plan or registration plan.

Survey requirements are set out in sections 17, 18 and 19. It is noted that a parcel abstract cannot be based on a textual description. The survey requirements are consistent with survey requirements established by NRCan and INAC which applied prior to these Regulations coming into force .

APPLICATION TO REGISTER OR RECORD DOCUMENTS

10. (1) Any person may apply for the registration or recording in the Register of a document that affects first nation land

- (a.) in person, by submitting the document and a completed application for registration or recording to the Registrar at the address set out in section 11;**
- (b.) by mailing the document and a completed application for registration or recording to the Registrar at the address set out in section 11; or**
- (c.) electronically, in the manner set out in section 12.**

(2) An application for registration or recording shall contain the following information, in relation to the document submitted for registration or recording:

- (a.) the names and addresses of all parties to the document;**
- (b.) the name and address of the person who completed the application;**
- (c.) the type of document;**
- (d.) if applicable, the date the document was executed — or, in Quebec, signed according to all the required formalities for its validity — or, if there is more than one date indicated, the most recent date;**
- (e.) the province where the first nation land is located;**
- (f.) the name of the first nation, the name of the reserve and the lot number, if any, associated with the land;**
- (g.) the land description;**
- (h.) a list of any supporting documents accompanying the document submitted for registration or recording; and**
- (i.) if two or more documents that are to be registered or recorded are submitted together by mail, directions regarding the order to be respected in registering or recording each document relative to each other.**

Only one completed application and the actual document accompanying the application is required.

It is noted that the application to register or record may be completed by any person – a land manager, a lawyer acting for a party to a transaction or a party to a document. The intention is that most documents will be registered by the First Nation concerned with the document.

First Nations have authority to make laws requiring that documents be certified or approved by the First Nation before registration. The First Nation law would provide that the document will have no effect if it is not certified or approved by the First Nation prior to being registered or recorded. However, there are many documents which do not require First Nation certification or approval, particularly those noted in section 15. In some cases these documents do not have any effect on the title, for example, a change of name, while in other cases, such as an Order in Council, the documents will affect title.

See also sections 15 and 23.

11. A document to be registered or recorded and a completed application for registration or recording may be mailed or delivered in person to the Registrar at

Registrar,

First Nations Land Registry,

10 Wellington Street,

Gatineau, Quebec,

K1A 0H4

Mail or courier can be used. Note that registration by mail requires that the documents physically arrive at the Registry before review and registration or recording by Registry staff. Every effort should be made to send all documents concerning a particular grant to the Registrar at the same time to make sure documents are registered in the desired order.

12. (1) A document to be registered or recorded may be submitted electronically to the Registrar

(a.) by completing an application for registration or recording on line at the Registry Internet website at www.ainc-inac.gc.ca; and

(b.) attaching the document as an electronic file in a form referred to in subsection (2).

(2) A document transmitted electronically to the Registrar must be in the form of one or more images contained in a single file, scanned from the original document at a resolution of at least 200 dpi, in Adobe Acrobat (.pdf) format or tagged image file (.tif) format.

13. A document shall not be transmitted for registration or recording by fax.

14. (1) On receipt of an application and document that were transmitted electronically in accordance with section 12, the Registrar shall transmit to the applicant by e-mail an acknowledgment of receipt and a tracking number and provide a copy of the acknowledgement and tracking number to the first nation whose lands are affected.

Electronic registration or recording occurs immediately on transmission of a document. The tracking number becomes the registration number if the document complies with the regulation.

(2) On receipt of an application and document that were submitted for registration or recording by mail, the Registrar shall mail an acknowledgment of receipt and a tracking number to the applicant and provide a copy of the acknowledgement and tracking number to the first nation whose lands are affected.

Documents sent by mail or courier are only recorded on receipt by the Registry.

15. The following documents may be submitted for registration or recording instead of an original document:

- (a.) a copy of a judgment or court order, certified by the court;**
- (b.) a copy of a document registered in a provincial registry or land titles system, certified by the appropriate provincial registrar;**
- (c.) a copy of a birth certificate, marriage certificate, name change certificate, power of attorney, will, approval or probate of will or appointment of administrator, certified by the person who has custody of the original;**
- (d.) a copy of a certificate of amalgamation or change of name of a corporation, certified by the agency responsible for recording the amalgamation or change of name;**
- (e.) a copy of an order in council, certified by the Clerk of the Privy Council;**
- (f.) a copy of a ministerial order; and**
- (g.) a copy of a document issued by a first nation, certified by the person who has custody of the original.**

Some of the documents referred to in this section do not grant or transfer interests in land but are concerned with clarifying some aspect of title. Name changes and amalgamations are examples of these kinds of documents. There are also documents such as Orders in Council or court orders which will generally concern the title to land. With the exception of subsection g., the documents are issued and certified by provincial or federal government departments and institutions or the courts.

Section 23 requires the Registrar to notify the First Nation when a document in section 15 is registered or recorded.

GROUNDS FOR REFUSING REGISTRATION OR RECORDING

16. The Registrar shall not register or record a document if

- (a.) it is not dated;**
- (b.) it is not legible;**
- (c.) it does not identify each party to the document;**
- (d.) the information contained in the application for registration or recording conflicts with the information contained in the document; or,**
- (e.) the land description does not meet the requirements of subsection 17(1) or section 18 or 19.**

The Register will examine each document submitted electronically or by mail to make certain that it complies with the requirements of this Regulation before registering or recording the document. The Registrar has no power to make a change, addition or correction to a document.

17. (1) No document that purports to

- (a.) grant an interest – or, in Quebec, a right – in first nation land or a licence for a term of 10 or more years, other than an interest, right or licence granted to a member of the first nation,**
- (b.) grant a strata title, a condominium interest – or, in Quebec, a divided co-ownership right - or any similar interest or right,**

A strata title is title to a floor, or portion of a floor, in a building of more than one floor.

- (c.) allocate or transfer lawful possession of first nation land to a first nation member, or**
- (d.) expropriate an interest – or, in Quebec, a right – in first nation land for a community work or other first nation community purposes under section 28 of the Act,**

shall be registered or recorded unless the land description contained in the document consists exclusively of a reference to one or more complete parcels on a registration plan or official plan.

(2) The term of a document in paragraph 1(a) includes the period of any right of renewal or extension of the document.

A grant of a lease of land for five (5) years may be registered using a textual description. However, if the grant of a lease is for five (5) years with a right of renewal for an additional five years (i.e. ten years), then a registration plan or official plan is required for registration.

(3) Subsection (1) does not apply to easements or, in Quebec, to servitudes.

An easement is usually a right to use land for utility purposes to service the first nation with hydro power, telephone etc. See section 19.

18. If a document purports to

- (a) exchange first nation land for land that is to become first nation land in accordance with section 27 of the Act, or**
- (b) define the exterior boundaries of first nation land,**

the Registrar shall not register or record the document unless the land description in the document is derived from an official plan or registration plan.

19. The Registrar shall not register or record a document that contains textual description unless the document grants an interest – or, in Quebec, a right - in unencumbered land, or a licence to a utility company in respect of unencumbered land, for the purpose of providing service to residents of a reserve.

REGISTRATION OR RECORDING OF DOCUMENTS

20. (1) Subject to section 21, the Registrar shall register or record each document submitted for registration or recording that meets the requirements of these Regulations in the order that it is received by the First Nation Land Registry.

(2) A document is considered to have been registered or recorded

- (a.) if the document was transmitted electronically, at the time and date indicated on the electronic acknowledgement of receipt; and**
- (b.) If the document was sent by mail, at the time and date of receipt stamped on the document by the Registrar.**

21. If two or more documents affecting the same parcel of first nation land are submitted for registration or recording at the same time by the same person and the documents meet the requirements of these Regulations for registration or recording, the Registrar shall register or record them in the order indicated on the application for registration or recording.

22. (1) If a document submitted for registration or recording meets the requirements of these Regulations, the Registrar shall record the following information in the appropriate abstract:

- (a.) the names of all parties to the document;**
- (b.) the type of document;**
- (c.) the first nation land affected;**
- (d.) if applicable, the date the document was executed - or, in Quebec, signed according to all the required formalities for its validity – or, if there is more than one date indicated, the most recent date;**
- (e.) the tracking number assigned to the document at the time of its receipt; and**
- (f.) the date and time of registration or recording.**

(2) If a document submitted for registration or recording affects a reserve as a whole, the Registrar shall register or record in the general abstract for the reserve the information required under subsection (1).

(3) If a document submitted for registration or recording affects a particular parcel of first nation land, the Registrar shall register or record in the parcel abstract for that parcel the information required under subsection (1).

23. On the registration or recording of a document the Registrar shall notify the applicant and the first nation of the registration or recording without delay.

24. (1) If a document submitted for registration or recording does not meet the requirements of these Regulations, the Registrar shall return to the applicant the application for registration or recording and all supporting documents accompanying it, and provide written reasons for the refusal to register or record the document.

(2) The Registrar shall provide a copy of the reasons for refusal to the first nation.

25. The Registrar shall store in electronic form every document registered or recorded under these Regulations.

26. After a document that was submitted to the Registrar in paper form has been registered or recorded, the Registrar shall return the original document to the applicant.

27. If the Registrar becomes aware of an omission or error in the registration or recording of a document, the Registrar shall immediately make the necessary corrections, add a notation to the Register identifying the corrections and notify all persons who may be adversely affected by the corrections.

EFFECT OF REGISTRATION

28. (1) Subject to section 31, interests – or, in Quebec, rights - registered under these Regulations that effect the same parcel of first nation land have priority according to the time and date of the registration of the documents evidencing those interests or rights and not according to the time and date the documents were executed or, in Quebec, signed according to all the required formalities for its validity.

(2) For greater certainty, subsection (1) does not apply to a document that does not grant an interest – or, in Quebec, a right - in first nation land.

Example: A CP granted on June 30, 2000 and registered on October 15, 2007, has priority over a CP for the same interest granted on October 1, 2007 and registered on October 21, 2007. Note that the priorities concern only documents granting interests in land and not to other kinds of documents such as a change of name.

29. A registered interest – or, in Quebec, a registered right - affecting a parcel of first nation land is entitled to priority over an unregistered interest or right affecting the same parcel.

This section sets out a basic principle – courts will recognize a registered interest in preference to an unregistered interest relating to the same parcel if there is a conflict between the interests claimed.

30. A registered mortgage or hypothec has priority over a subsequently registered interest – or, in Quebec, registered right - that affects the same parcel of first nation land, to the extent of the money actually advanced under the mortgage or hypothec, to a maximum of the amount secured by the mortgage or hypothec, even if all or part of the money was advanced after the registration of the subsequently registered interest or right, unless the mortgagee or hypothecary creditor had actual notice of the registration of the subsequently registered interest or right before making the advance.

Many mortgages are granted for the construction of homes on reserve. These mortgages are registered and funds advanced in 3 or 4 stages or advances as the home reaches certain construction targets. This section is intended to protect the mortgagee – the lender, so that the total amount of the first mortgage is secured, even if a second mortgage is registered before all funds have been advanced on the first registered mortgage.

31. (1) In any province other than Quebec, the holder of a registered interest, or a person applying to register an interest, may apply to record a postponement agreement that gives priority over the registered interest to a specified interest that was, or is to be, subsequently registered.

(2) In Quebec, the holder of a registered right, or a person applying to register a right, may apply to record a postponement agreement that gives priority over the registered right to a specified right that was, or is to be, subsequently registered.

(3) On the recording of a postponement agreement, priority shall be accorded to the interests or rights referred to in the agreement in the manner provided for in the agreement.

Occasionally, there is a desire or need to change priorities, primarily in respect of mortgages. For example, a parent sells the family home to an adult child and takes back a small mortgage. Several years later, the child who now owns the home wishes to build an addition. The bank lender agrees to the mortgage loan, but only if the parent agrees that the bank mortgage will have priority over the parent's mortgage. A postponement agreement is signed by the parent agreeing that the bank mortgage to be registered will have priority over the parent mortgage which is already registered.

PRIORITIES

32. (1) An interest that was registered in the Register before the day on which these Regulations come into force has priority over an interest registered under these regulations on or after that day.

Documents already registered in the Indian Affairs Land Registry system whether the before November 5, 2007 have priority over documents registered after these Regulations come into force.

(2) Subsection (1) shall not be interpreted to confer a priority on one interest that was registered in the Register before the day on which these Regulations come into force over any other interest that was also registered in the Register before that day.

The rule dealing with priorities does not apply to documents that were registered in the ILRS or the FNLMS even after the Regulations come into force. The important point to remember is that priority of registration ONLY applies to documents registered under these Regulations after Nov. 5, 2007

33.(1) In any province other than Quebec, on receipt of notice of the coming into force of the land code of a first nation, the Registrar shall register or record in the Register every document relating to lands of that first nation that was registered in the Reserve Land Register or Surrendered and Designated Lands Register.

(2) An interest registered under subsection (1) has priority over an interest subsequently registered under these Regulations.

(3) Subsection (2) shall not be interpreted to confer a priority on one interest that was registered under subsection (1) over any other interest that was also registered under that subsection.

As soon as a First Nation Land Code comes into effect the documents recorded in the ILRS are registered in the First Nation Lands Register. These documents do have priority over documents subsequently registered in the First Nation Lands Register. However, the rules concerning priorities do not apply to these documents as between these documents.

COMING INTO FORCE

34. (1) In Quebec, on receipt of notice of the coming into force of the land code of a first nation, the Registrar shall register or record in the Register every document relating to lands of that first nation that was registered in the Reserve Land Register or Surrendered and Designated Lands Register.

(2) A right registered under subsection (1) has priority over a right subsequently registered under these Regulations.

(3) Subsection (2) shall not be interpreted to confer a priority on one right that was registered under subsection (1) over any other right that was also registered under that subsection.

These Regulations come into force on the day on which they are registered.

The coming into force date is November 5, 2007.

**Text of the Framework
Agreement on First Nation Land
Management**

(signed in 1996)

Includes modifications resulting from

Amendment #1 1998
Amendment #2 1998
Amendment #3 2002
Amendment #4 2007
Amendment #5 2011

**Texte de l'Accord-Cadre relatif
à la Gestion des Terres de
Premières Nations**

(signé en 1996)

Comprend les changements apportés par
les modifications suivantes

Modification #1 1998
Modification #2 1998
Modification #3 2002
Modification #4 2007
Modification #5 2011

Framework Agreement on First
Nation Land Management

Accord-cadre relatif à la Gestion
des Terres de Premières Nations

FRAMEWORK AGREEMENT ON
FIRST NATION LAND
MANAGEMENT

ACCORD-CADRE RELATIF À LA
GESTION DES TERRES DE
PREMIÈRES NATIONS

BETWEEN:

ENTRE :

THE FOLLOWING FIRST NATIONS:

LES PREMIÈRES NATIONS
SUIVANTES :

WESTBANK, MUSQUEAM, LHEIDLI
T'ENNEH (formerly known as "LHEIT-
LIT'EN"), N'QUATQUA, SQUAMISH,
SIKSIKA, MUSKODAY, COWESSESS,
OPASKWAYAK CREE, NIPISSING,
MISSISSAUGAS OF SCUGOG ISLAND,
CHIPPEWAS OF MNJIKANING,
CHIPPEWAS OF GEORGINA ISLAND,
SAINT MARY'S, as represented by their
Chiefs and all other First Nations that
have adhered to the Agreement

WESTBANK, MUSQUEAM, LHEIDLI
T'ENNEH (autrefois connue sous le
nom de "LHEIT-LIT'EN"),
N'QUATQUA, SQUAMISH, SIKSIKA,
MUSKODAY, COWESSESS,
OPASKWAYAK CREE, NIPISSING,
MISSISSAUGAS OF SCUGOG
ISLAND, CHIPPEWAS OF
MNJIKANING, CHIPPEWAS OF
GEORGINA ISLAND, SAINT
MARY'S, représentées par leurs chefs
et toutes les autres Premières Nations
qui se sont jointes à l'Entente

AND

ET

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA, as represented by
the Minister of Indian Affairs and Northern
Development

SA MAJESTÉ LA REINE DU CHEF
DU CANADA, représentée par le ministre
des Affaires indiennes et du Nord
canadien

WHEREAS:

ATTENDU QUE :

The First Nations have a profound
relationship with the land that is rooted in
respect for the Spiritual value of the Earth
and the gifts of the Creator and have a deep
desire to preserve their relationship with the
land;

Les premières nations entretiennent une
relation profonde avec la terre, basée sur la
valeur spirituelle qu'elles attribuent à la
Terre et aux dons du Créateur et qu'elles
ont le désir de préserver cette relation;

The First Nations should have the option of

Les premières nations devraient avoir la
possibilité de soustraire leurs terres aux

withdrawing their lands from the land management provisions of the Indian Act in order to exercise control over their lands and resources for the use and benefit of their members;

The Parties wish to enter into a government to government agreement, within the framework of the constitution of Canada, to deal with the issues of land management;

The Parties understand that this Agreement must be ratified;

NOW THEREFORE,

In consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree that the First Nations shall have the option of exercising control over their lands and resources.

PART I PRELIMINARY MATTERS

1. INTERPRETATION

1.1 In this Agreement,

"Canada" or "Crown" means Her Majesty the Queen in right of Canada; ("Canada")

"eligible voter" means a member of a First Nation who is eligible, pursuant to clause 7.2, to vote under this Agreement; ("électeurs")

"federal law" means a law enacted by

dispositions de la Loi sur les Indiens concernant la gestion des terres de façon à exercer un contrôle sur leurs terres et sur leurs ressources à l'usage et au profit de leurs membres;

Les parties souhaitent conclure un accord de gouvernement à gouvernement, dans le cadre de la constitution du Canada, concernant des questions touchant la gestion des terres;

Les parties reconnaissent que le présent accord doit être ratifié;

PAR CONSÉQUENT,

En contrepartie de l'échange des promesses figurant dans le présent accord et sous réserve de ses modalités, les Parties conviennent que les premières nations doivent avoir la possibilité d'exercer un contrôle sur leurs terres et sur leurs ressources.

PARTIE I QUESTIONS PRÉLIMINAIRES

1. INTERPRÉTATION

1.1 Les définitions qui suivent s'appliquent au présent accord.

« Canada » ou « Couronne » Sa Majesté la Reine du chef du Canada; (« Canada »)

« code foncier » Code adopté par une première nation conformément au présent accord contenant les dispositions générales relatives à l'exercice des droits et pouvoirs de la première nation sur ses terres de

Canada and does not include a land code or a First Nation law; ("loi fédérale")

"federal legislation" means the legislation to be enacted by Canada under Part X; ("loi de ratification")

"First Nation" means a band that is a Party to this Agreement; ("première nation")

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code; ("terres de première nation")

"First Nation Lands Register" means the register established pursuant to clause 51 to register interests or land rights in First Nation land; ("registre des terres de premières nations")

"First Nation law" means a law enacted by a First Nation in accordance with its land code; ("texte législative de la Première nation")

"interest", in relation to First Nation land in any province or territory other than Québec, means any interest, right or estate of any nature in or to that land, including a lease, easement, right of way, servitude, or profit à prendre, but does not include title to that land; ("intérêt")

"land code" means a code, approved by a First Nation in accordance with this Agreement, that sets out the basic provisions regarding the exercise of the First Nation's rights and powers over its First Nation land (although each First Nation can select its own name for the land code); ("code

première nation (les premières nations peuvent néanmoins donner l'appellation de leur choix à ce code foncier). (« land code »)

« Conseil consultatif des terres » Le conseil visé à l'article 38. (« Land Advisory Board »)

« droit foncier » Relativement aux terres de première nation dans la province de Québec, tout droit de quelque nature qu'il soit portant sur ces terres, à l'exclusion du titre de propriété; y sont assimilés les droits du locataire. (« land right »)

« électeurs » Les membres d'une première nation qui ont le droit de voter en vertu de l'article 7.2 du présent accord. (« eligible voters »)

« intérêt » Relativement aux terres de première nation situées dans toute province ou territoire autre que le Québec, tout intérêt, droit ou domaine de quelque nature qu'il soit portant sur ces terres, notamment un bail, une servitude, un droit de passage, un service foncier ou un profit à prendre, à l'exclusion du titre sur ces terres. (« interest »)

« loi de ratification » La loi adoptée par le Canada aux termes de la Partie X. (« federal legislation »)

« loi fédérale » Loi adoptée par le Canada mais ne comprend pas un code foncier ou un texte législatif d'une première nation. (« federal law »)

« membre » À l'égard d'une première

foncier")

"land right", in relation to First Nation land in the Province of Québec, means any right of any nature in or to that land excluding title, and includes the rights of a lessee; ("droit foncier")

"Lands Advisory Board" means the board referred to in clause 38; ("Conseil consultatif des terres")

"licence", in relation to First Nation land, ("permis")

(a) in a province or territory other than Québec, means any right of use or occupation of First Nation land, other than an interest in that land;

(b) in the Province of Québec, any right to use or occupy First Nation land, other than a land right in that land;

"member", in respect of a First Nation, means ("membre")

(a) a person whose name appears on the Band List, or

(b) a person who is entitled to have his or her name appear on the Band List;

"Minister" means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of this Agreement; ("ministre")

nation : (« member »)

a) personne dont le nom figure sur la liste de bande;

b) personne qui a droit à ce que son nom y figure.

« ministre » Le ministre des Affaires indiennes et du Nord canadien ou un membre du Conseil privé de la Reine désigné par le gouverneur en conseil aux fins du présent accord. (« Minister »)

« permis » Relativement aux terres d'une première nation : (« licence »)

a) dans une province ou un territoire autre que le Québec, tout droit d'usage ou d'occupation des terres de première nation, autre qu'un intérêt sur ces terres;

b) dans la province de Québec, tout droit d'utiliser ou d'occuper les terres de première nation autre qu'un droit foncier sur ces terres.

« première nation » Une bande qui est Partie au présent accord. (« First Nation »)

« registre des terres de premières nations » Le registre créé conformément à l'article 51 pour l'enregistrement des intérêts ou des droits fonciers sur les terres de premières nations. (« First Nation Lands Register »)

« terres de première nation » Dans le cas d'une première nation, tout ou partie d'une réserve décrite dans son code foncier. (« First Nation land »)

"verifier" means the person appointed pursuant to clauses 8 and 44 to monitor and verify the opting in process for a First Nation. ("vérificateur")

1.2 Terms that are defined or used in the Indian Act have the same meaning in this Agreement, unless the context otherwise requires.

1.3 This Agreement is not a treaty and shall not be considered to be a treaty within the meaning of section 35 of the Constitution Act, 1982.

1.4 The Parties acknowledge that the Crown's special relationship with the First Nations will continue.

1.5 This Agreement does not affect any lands, or any rights in lands, that are not subject to this Agreement.

1.6 This Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources or to preclude other negotiations in respect of those rights.

1.7 The parties agree that when a provision of this agreement contains both civil law and common law terminology, or terminology that has different meanings in the civil law and the common law, the civil law

« texte législatif de la première nation »
Une loi ou un autre texte législatif adopté par une première nation conformément à son code foncier. (« First Nation law »)

« vérificateur » La personne chargée, en application des articles 8 et 44, de surveiller et de vérifier le processus d'adhésion d'une première nation.
(« verifier »)

1.2 Sauf indication contraire, les termes du présent accord qui sont définis ou utilisés dans la Loi sur les Indiens s'entendent au sens de cette loi.

1.3 Le présent accord ne constitue pas un traité et n'est pas considéré comme un traité au sens de l'article 35 de la Loi constitutionnelle de 1982.

1.4 Les Parties reconnaissent que la Couronne maintiendra la relation spéciale qu'elle entretient avec les premières nations.

1.5 Le présent accord ne s'applique pas aux terres ou aux droits sur ces terres qui ne sont pas visés par lui.

1.6 Le présent accord n'a pas pour but de définir les droits inhérents ou autres des premières nations d'exercer un contrôle sur leurs terres et leurs ressources ni d'y porter atteinte, ni d'empêcher que ces droits fassent l'objet d'autres négociations.

1.7 Les parties conviennent, que lorsque une disposition du présent accord emploie à la fois des termes propres au droit civil et à la common-law ou des termes qui ont

terminology or meaning is intended to apply to this provision with respect to First Nations in the Province of Quebec and the common law terminology or meaning is intended to apply with respect to First Nations in a province or territory other than Québec.

2. FIRST NATION LAND

2.1 Land that is a reserve of a First Nation is eligible to be managed by that First Nation under a land code as First Nation land.

2.2 First Nation land includes all the interests and rights or all the land rights and other rights, as well as the resources that belong to that land, to the extent that these are under the jurisdiction of Canada and are part of that land.

2.3 The Parties agree that First Nation lands are lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867.

3. INDIAN OIL AND GAS

3.1 The Indian Oil and Gas Act will continue to apply to any First Nation lands, or interests or land rights in First Nation land, that are "Indian lands" within the meaning of that Act.

un sens différent dans l'un et l'autre de ces systèmes, l'intention est, d'appliquer à cette disposition la terminologie de droit civil ou le sens qu'on lui donne dans ce système en ce qui a trait aux Premières nations au Québec et la terminologie de common-law ou le sens qu'on lui donne dans ce système en ce qui a trait aux Premières nations dans toute province ou territoire autre que le Québec.

2. TERRES D'UNE PREMIÈRE NATION

2.1 Les terres qui constituent une réserve d'une première nation sont admissibles à être gérées par celle-ci en vertu d'un code foncier à titre de terres de première nation.

2.2 Les terres de première nation comprennent tous les intérêts et droits ou tous les droits fonciers et autres droits ainsi que les ressources relatifs à ces terres dans la mesure où ils relèvent de la juridiction du Canada et font partie de ces terres.

2.3 Les parties reconnaissent que les terres de premières nations sont des terres réservées aux Indiens au sens du point 24 de l'article 91 de la Loi constitutionnelle de 1867.

3. PÉTROLE ET GAZ DES INDIENS

3.1 La Loi sur le pétrole et le gaz des terres indiennes continuera à s'appliquer aux terres de premières nations et aux intérêts ou droits fonciers sur les terres de premières nations qui sont des « terres indiennes » au sens de cette Loi.

3.2 Any interest or land right in First Nation land that is granted to Canada for the exploitation of oil and gas under a land code will be deemed to be "Indian lands" within the meaning of the Indian Oil and Gas Act.

3.3 Section 4 of the Indian Oil and Gas Act will continue to apply to revenues and royalties from oil or gas on First Nation land, despite anything to the contrary in clause 12.

4. RESERVES

4.1 Any reserve managed by a First Nation under a land code will continue to be a reserve within the meaning of the Indian Act.

4.2 Any reserve, title to which is vested in Canada, and managed by a First Nation under a land code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

4.3 Where a First Nation wishes to manage a reserve, the whole of the reserve will be included as First Nation land to avoid disjointed administration of the reserve, subject to clauses 4.4, 4.5 and 4.5A.

4.4 Subject to clause 4.5A, a portion of a reserve may be excluded from a land code only if:

(a) the portion of the reserve is in an environmentally unsound condition and the condition cannot be remedied

3.2 Les intérêts ou droits fonciers sur les terres de première nation octroyés au Canada pour l'exploitation du pétrole et du gaz en vertu d'un code foncier seront réputés être des « terres indiennes » au sens de la Loi sur le pétrole et le gaz des terres indiennes.

3.3 L'article 4 de la Loi sur le pétrole et le gaz des terres indiennes continuera de s'appliquer aux revenus et aux redevances provenant du pétrole ou du gaz situés sur les terres de première nation, nonobstant toute disposition contraire de l'article 12.

4. RÉSERVES

4.1 Les réserves gérées par une première nation en vertu d'un code foncier demeurent des réserves au sens de la Loi sur les Indiens.

4.2 Toute réserve, dont le titre est détenu par le Canada et qui est gérée par une première nation en vertu d'un code foncier, continuera d'appartenir au Canada à l'usage et au profit de la première nation pour laquelle la réserve fut mise de côté.

4.3 Lorsqu'une première nation souhaite gérer une réserve, l'ensemble de la réserve sera inclus comme terres de première nation de façon à éviter la double administration de la réserve sous réserve des articles 4.4, 4.5 et 4.5A.

4.4 Sous réserve de l'article 4.5A, il est permis de soustraire une partie d'une réserve à l'application du code foncier seulement dans l'un ou l'autre des cas suivants :

a) l'environnement y est si dégradé que

by measures that are technically and financially feasible before the land code is expected to be submitted for community approval;

(b) the portion of the reserve is the subject of ongoing litigation that is unlikely to be resolved before the land code is expected to be submitted for community approval;

(c) the portion of the reserve is uninhabitable or unusable as a result of a natural disaster; or

(d) there exist one or more other reasons which the First Nation and the Minister agree justify excluding a portion of a reserve.

4.5 A portion of a reserve may not be excluded if the exclusion would have the effect of placing the administration of a lease or other interest or right in land in more than one land management regime.

4.5A Land may be excluded from the application of the land code when it is uncertain whether the land forms part of the reserve. An exclusion for this reason shall be without prejudice to the right of the First Nation or Her Majesty to assert that the land forms part of the reserve. If excluding the land would have the effect of placing a lease, other interest or right in land in more than one land management regime, then all land that is subject to that lease, interest or right shall be excluded from the application of the land code.

des mesures réalisables sur les plans technique et économique ne permettront pas de l'assainir avant la présentation prévue du code foncier à l'approbation de la communauté;

b) cette partie de la réserve fait l'objet d'un litige qui ne sera probablement pas résolu avant la présentation prévue du code foncier à l'approbation de la communauté;

c) cette partie de la réserve est inhabitable ou inutilisable en raison d'un sinistre naturel;

d) l'exclusion est justifiée pour une ou plusieurs autres raisons convenues par la première nation et le ministre.

4.5 Une partie de la réserve ne peut être exclue si l'exclusion avait pour effet d'assujettir un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion foncière.

4.5A Une terre peut être exclue de l'application du code foncier lorsqu'il y a incertitude quant à la question de savoir si la terre est située ou non dans la réserve. L'exclusion pour ce motif ne porte pas atteinte au droit de la première nation ou de Sa Majesté de faire valoir que la terre fait partie de la réserve. Si l'exclusion a pour effet d'assujettir un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion foncière, toute la partie de la réserve qui est assujettie au bail ou autre intérêt ou droit foncier doit être exclue de l'application du code foncier.

4.6 The First Nation will make provision to

amend the description of its First Nation land in its land code to include the excluded portion of the reserve when the First Nation and the Minister agree that the condition justifying the exclusion no longer exists and the individual agreement will be amended accordingly.

PART II OPTING IN PROCEDURE

4.6 Lorsque la première nation et le ministre conviennent que la condition justifiant l'exclusion d'une partie d'une réserve n'existe plus, la première nation fera en sorte que la description des terres de première nation contenue dans son code foncier soit modifiée pour y inclure la partie jusqu'à présent exclue et l'accord distinct sera modifié en conséquence.

PARTIE II PROCÉDURE D'ADHÉSION

5. DEVELOPMENT OF A LAND CODE

5.1 A First Nation that wishes to manage one or more of its reserves will first develop a land code.

5.2 The land code of a First Nation will

(a) describe the lands that are subject to the land code;

(b) set out the general rules and procedures that apply to the use and occupancy of First Nation land, including use and occupancy under

(i) licenses and leases, and

(ii) interests or land rights in First Nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the First Nation;

(b.1) set out the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or land rights in First Nation land;

(c) set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land;

(d) set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under

5. ÉLABORATION D'UN CODE FONCIER

5.1 La première nation qui souhaite gérer une ou plusieurs de ses réserves doit préalablement élaborer un code foncier.

5.2 Les éléments suivants figurent dans le code foncier d'une première nation :

a) la description des terres qui y sont assujetties;

b) les règles générales - de procédure et autres - applicables en matière d'utilisation et d'occupation des terres de première nation, notamment :

(i) en vertu d'un permis ou d'un bail,

(ii) en vertu d'un intérêt ou d'un droit foncier sur les terres de première nation découlant soit de l'attribution de cet intérêt ou droit foncier en vertu du paragraphe 20(1) de la Loi sur les Indiens, soit de la coutume de la première nation;

(b.1) les règles de procédure applicables en matière de transfert d'intérêts ou de droits fonciers sur les terres de première nation, par disposition testamentaire ou succession;

c) les règles générales – de procédure et autres - applicables aux revenus tirés des ressources naturelles relatives aux terres de première nation;

d) les exigences touchant l'obligation de rendre compte de la gestion des fonds et des terres de première nation aux termes

the land code;

(e) set out the procedures for making and publishing its First Nation laws;

(f) set out the conflict of interest rules for land management;

(g) identify or establish a forum for the resolution of disputes in relation to interests or land rights in First Nation lands, including the review of land management decisions where a person, whose interest or land right in First Nation land is affected by a decision, disputes that decision;

(h) set out the general rules and procedures that apply to the First Nation when granting or expropriating interests or land rights in First Nation land, including provisions for notice and the service of notice;

(i) set out the general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to another person or entity; and

(j) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land.

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

e) les règles d'édiction et de publication des textes législatifs de la première nation;

f) les règles applicables en matière de conflit d'intérêts dans la gestion des terres;

g) la création ou l'identification d'une instance chargée de résoudre les différends concernant les intérêts ou les droits fonciers sur les terres de première nation, y compris la révision de toute décision en matière de gestion des terres contestée par une personne dont les intérêts ou les droits fonciers sur ces terres sont affectés par cette décision;

h) les règles générales – de procédure et autres - applicables à la première nation en matière d'attribution ou d'expropriation d'intérêts ou de droits fonciers sur des terres de première nation, y compris les dispositions en matière d'avis et de notification;

i) les pouvoirs et procédures généraux applicables en matière de délégation, par le conseil de la première nation à une autre personne ou entité, des pouvoirs de gestion des terres de première nation;

j) la procédure selon laquelle la première nation peut modifier son code foncier ou approuver un échange de ses terres de première nation.

5.3 Peuvent également figurer dans le code foncier :

(a) any general conditions or limits on the power of the First Nation council to make First Nation laws;

(b) in any province or territory other than Quebec, any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;

(b.1) in the province of Quebec, any general exceptions, reservations, conditions or limits to be attached to the land rights or other rights that may be granted in First Nation land;

(c) any provisions respecting encumbering, seizing, or executing a right or an interest or land right in First Nation land as provided in clause 15; and

(d) any other matter respecting the management of First Nation land.

5.4 In order to clarify the intentions of the First Nations and Canada in relation to the breakdown of a marriage as it affects First Nation land:

(a) a First Nation will establish a community process in its land code to develop rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of First Nation land and the division of interests or land rights in that land;

a) les conditions ou limites générales applicables au pouvoir du conseil de la première nation d'édicter des textes législatifs de la première nation;

b) dans une province ou un territoire autre que le Québec, les exclusions, réserves, conditions ou délimitations générales applicables en matière d'attribution des droits et des intérêts sur les terres de première nation;

b.1) dans la province de Québec, les exceptions, réserves, conditions ou limites générales applicables en matière d'attribution des droits fonciers et autres droits sur les terres de première nation;

c) les dispositions, telles que prévues à l'article 15, concernant la saisie ou l'exécution d'un droit ou d'un intérêt ou droit foncier sur les terres de première nation, ou le fait de les gérer;

d) toute autre disposition concernant la gestion des terres de première nation.

5.4 Afin de préciser l'intention des premières nations et du Canada en ce qui a trait à l'échec du mariage et à ses effets sur les terres de premières nations :

a) une première nation établira, dans son code foncier, un processus communautaire pour l'élaboration de règles et de procédures applicables, au moment de l'échec d'un mariage, en matière d'usage, d'occupation et de possession des terres de première nation et en matière de partage des intérêts ou des droits fonciers sur ces terres;

(b) for greater certainty, the rules and procedures referred to in clause (a) shall not discriminate on the basis of sex;

(c) the rules and procedures referred to in clause (a) shall be enacted in the First Nation's land code or First Nation laws;

(d) in order to allow sufficient time for community consultation during the community process referred to in clause (a), the First Nation shall have a period of 12 months from the date the land code takes effect to enact the rules and procedures;

(e) any dispute between the Minister and a First Nation in respect of this clause shall, notwithstanding clause 43.3, be subject to arbitration in accordance with Part IX;

(f) for greater certainty, this clause also applies to any First Nation that has voted to approve a land code before this clause comes into force.

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

6.1 The Minister and each First Nation that intends to manage its First Nation land will also enter into an individual agreement to settle the actual level of operational funding for the First Nation and the specifics of the transfer of administration between Canada and the First Nation.

b) il est entendu que les règles et procédures mentionnées à l'alinéa a) ne peuvent faire aucune distinction fondée sur le sexe;

c) les règles et procédures mentionnées à l'alinéa a) sont prévues soit dans le code foncier de la première nation, soit dans ses textes législatifs;

d) afin qu'il puisse y avoir une période suffisante pour consulter la communauté, tel que mentionné à l'alinéa a), la première nation dispose d'un délai de 12 mois, à compter de la date d'entrée en vigueur de son code foncier, pour adopter ces règles et procédures;

e) tout différend entre le ministre et une première nation au sujet du présent article est, par dérogation à l'article 43.3, porté en arbitrage en conformité avec la Partie IX;

f) il est entendu que le présent article s'applique également à toute première nation qui a voté en faveur de l'adoption d'un code foncier avant que le présent article n'entre en vigueur.

6. ÉLABORATION D'UN ACCORD DISTINCT AVEC CHAQUE PREMIÈRE NATION

6.1 Le ministre et la première nation qui entend gérer ses propres terres concluront également un accord distinct fixant le niveau du financement opérationnel destiné à la première nation ainsi que les modalités du transfert des responsabilités en matière d'administration entre le

6.2 The First Nation and the Minister will each choose a representative to develop the individual agreement and to assist in transferring administration of the First Nation land.

6.3 Upon the request of a First Nation that is developing a land code, the Minister will provide it with the following information, as soon as practicable:

(a) a list of all the interests or land rights and licences, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the Indian Act;

(b) all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land; and

(c) any other information in Canada's possession that materially affects the interests or land rights and licences mentioned in clause 6.3(a).

6.4 An amendment to an individual agreement with the Minister must be made in accordance with the procedure in that agreement.

7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its

Canada et la première nation.

6.2 La première nation et le ministre désignent chacun un représentant chargé de préparer l'accord distinct et de faciliter le transfert de l'administration des terres de première nation.

6.3 À la demande de la première nation qui élabore un code foncier le ministre lui fournit les renseignements suivants, dans les meilleurs délais :

a) une liste de tous les intérêts ou droits fonciers et permis concernant les terres de la première nation proposées, qui sont consignés dans le registre des terres de réserve et le registre des terres désignées et cédées aux termes de la Loi sur les Indiens;

b) tous les renseignements en la possession du Canada concernant les problèmes environnementaux réels ou potentiels concernant les terres de la première nation proposées;

c) tout autre renseignement en la possession du Canada qui touche notamment les intérêts ou droits fonciers et les permis mentionnés à l'alinéa 6.3 a).

6.4 L'accord distinct conclu avec le ministre est modifié selon la procédure prévue dans celui-ci.

7. APPROBATION DE LA COMMUNAUTÉ

7.1 Le code foncier de la première nation

individual agreement with the Minister need community approval in accordance with this clause.

7.2 Every person who is a First Nation member, whether resident on or off-reserve, who is at least 18 years of age, is eligible to vote on whether to approve their First Nation's proposed land code and its individual agreement with the Minister.

7.3 The land code and individual agreement will be considered approved by the community if

(a) a majority of eligible voters participate in the vote and at least a majority of the participating voters vote to approve them;

(b) the First Nation registers all eligible voters who signified, in a manner determined by the First Nation, their intention to vote, and a majority of the registered voters vote to approve them; or

(c) the community approves them in such other manner as the First Nation and the Minister may agree upon.

7.4 The land code and individual agreement will not be considered approved if less than 25% plus one of all eligible voters voted to approve them.

7.5 The First Nation council may, by resolution, increase the minimum percentage for community approval otherwise required under this clause.

et l'accord distinct conclu avec le ministre doivent être approuvés par la communauté conformément au présent article.

7.2 A le droit de voter, dans le cadre de l'approbation du projet de code foncier de la première nation et de l'accord distinct conclu avec le ministre, tout membre de la première nation qui a au moins 18 ans, qu'il réside ou non dans la réserve.

7.3 Le code foncier et l'accord distinct sont réputés valablement approuvés par la communauté dans les cas suivants :

a) la majorité des électeurs participent au scrutin et au moins une majorité des électeurs participants ont exprimé un vote favorable;

b) la première nation inscrit tous les électeurs qui ont fait connaître, selon les modalités fixées par la première nation, leur intention de voter et une majorité des électeurs inscrits ont exprimé un vote favorable;

c) la communauté les approuve selon d'autres modalités fixées conjointement par la première nation et par le ministre.

7.4 Dans tous les cas cependant, le code foncier et l'accord distinct ne sont approuvés que si au moins vingt-cinq pour cent plus un des électeurs ont exprimé un vote favorable.

7.5 Le conseil de la première nation peut, par résolution, augmenter le pourcentage minimum requis en vertu du présent article pour recueillir l'approbation de la communauté.

7.6 A First Nation will take reasonable steps to locate its eligible voters and inform them of

- (a) their right to participate in the approval process and the manner in which that right can be exercised; and
- (b) the content of this Agreement, the individual agreement with the Minister, the proposed land code and the federal legislation.

7.7 Reasonable steps to locate and inform eligible voters may include the following :

- (a) mailing out information to eligible voters at their last known addresses;
- (b) making enquiries of family members and others to locate eligible voters whose addresses are not known or are uncertain;
- (c) making follow up contact with eligible voters by mail or telephone;
- (d) placing advertisements in newspapers circulating in the community and in newspapers circulating in other localities where the number of eligible voters warrants;
- (e) posting notices in the community;
- (f) holding information meetings in the community and in other places where appropriate; and

7.6 Le conseil de la première nation doit prendre des mesures raisonnables pour retrouver les électeurs et les informer :

- a) de leur droit de participer au processus d'approbation et de la manière d'exercer ce droit;
- b) du contenu du présent accord, de l'accord distinct conclu avec le ministre, du projet de code foncier et de la loi de ratification.

7.7 Parmi les mesures raisonnables envisagées pour retrouver les électeurs et les informer, le conseil peut prendre les mesures suivantes :

- a) envoyer par courrier de l'information aux électeurs à leur dernière adresse connue;
- b) s'enquérir auprès des membres de la famille et d'autres personnes afin de retrouver les électeurs dont l'adresse est inconnue ou incertaine;
- c) effectuer un suivi auprès des électeurs par courrier ou par téléphone;
- d) publier des avis dans les journaux distribués dans la communauté et dans toute autre localité où le nombre d'électeurs le justifie;
- e) afficher des avis dans la communauté;
- f) tenir des réunions d'information dans la communauté et à tout autre endroit approprié;

(g) making copies of the documents referred to in clause 7.6(b) available at the administration office of the First Nation and in other places where appropriate.

7.8 A First Nation will, within a reasonable time before the vote, also take appropriate measures to inform other persons having an interest or land right in its lands of the federal legislation, the proposed land code and the date of the vote.

7.9 Where the federal legislation has not yet been enacted when a First Nation proceeds under this clause, Canada will provide the First Nation with a draft copy of its proposed legislation which the First Nation will use to inform its eligible voters and other persons.

7.10 An amendment to a land code must be made in accordance with the procedure in the First Nation's land code.

8. VERIFICATION PROCESS

8.1 Where a First Nation develops a proposed land code and resolves to submit it to the community for approval, an independent person will be appointed as a verifier to monitor and verify the opting in process. The verifier will be chosen in accordance with clause 44.

8.2 The representatives of the First Nation

g) rendre disponible, au bureau d'administration de la première nation et à tout autre endroit approprié, une copie des documents mentionnés à l'alinéa 7.6b).

7.8 La première nation doit prendre dans un délai raisonnable avant le jour du scrutin, des mesures appropriées pour informer les autres personnes ayant un intérêt ou un droit foncier sur ses terres au sujet de la loi de ratification, du projet de code foncier et de la date du scrutin.

7.9 Si la loi de ratification n'a pas encore été adoptée au moment où la première nation met en oeuvre le présent article, le Canada fournira à la première nation une ébauche du projet de loi que la première nation portera à la connaissance des électeurs et des autres personnes concernées.

7.10 Le code foncier d'une première nation est modifié selon la procédure prévue dans celui-ci.

8. PROCESSUS DE VÉRIFICATION

8.1 Lorsqu'une première nation élabore un projet de code foncier et décide de le présenter à la communauté pour approbation, une personne indépendante doit être nommée à titre de vérificateur chargée de surveiller le processus d'adhésion et d'en vérifier la régularité. Le vérificateur est choisi conformément à l'article 44.

8.2 Les représentants de la première nation

and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and provide information and advice to the verifier, after consulting with their respective Parties.

8.3 The First Nation will submit the following information to the verifier:

- (a) a copy of the proposed land code;
- (b) an initial list of the names of every First Nation member who, according to the First Nation's records at that time, would be eligible to vote on whether to approve the proposed land code; and
- (c) a detailed description of the community approval process that the First Nation proposes to use under clause 7.

8.4 The verifier will

- (a) decide whether the proposed land code conforms with the requirements of clause 5;
- (b) decide whether the proposed community approval process conforms with the requirements of clause 7;
- (c) determine whether the community approval process is conducted in accordance with the process that was confirmed; and
- (d) certify as being valid a First

et du ministre, qui ont participé au processus de transfert de la gestion des terres, rencontrent le vérificateur et lui fournissent renseignements et avis, après avoir consulté leurs Parties respectives.

8.3 La première nation communique au vérificateur les documents suivants :

- a) un exemplaire du projet de code foncier;
- b) la liste initiale des membres de la première nation qui, selon les registres de la première nation disponibles à ce moment, auraient le droit de voter aux fins de l'approbation de ce code;
- c) un exposé détaillé du processus d'approbation de la communauté proposé par la première nation aux termes de l'article 7.

8.4 Le vérificateur a pour mandat:

- a) de décider de la conformité du projet de code foncier avec les exigences de l'article 5;
- b) de décider de la conformité du processus d'approbation de la communauté proposé avec les exigences de l'article 7;
- c) de décider de la conformité du déroulement du scrutin avec le processus retenu pour l'approbation de la communauté;
- d) d'attester la validité du code foncier de

Nation's land code that is properly approved by the First Nation.

la première nation dûment approuvé par elle.

8.5 The verifier also has the power to make a final decision to resolve

8.5 Le vérificateur a également le pouvoir de trancher de façon définitive :

(a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and

a) tout différend ayant trait à la question de savoir si une partie d'une réserve peut être soustraite à l'application du code foncier selon l'article 4.4;

(b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.

b) tout différend concernant les modalités du transfert des pouvoirs d'administration entre le Canada et la première nation.

8.6 A verifier will make decisions that are consistent with clauses 4.4 and 4.5.

8.6 Les décisions du vérificateur doivent être conformes aux paragraphes 4.4 et 4.5.

8.7 A verifier will not deal with disputes over funding.

8.7 Le vérificateur ne peut être saisi des différends concernant le financement.

8.8 Within 30 days of receiving the First Nation's information pursuant to clause 8.3, the verifier will issue a written notice to the First Nation and the Minister stating whether the proposed land code and community approval process are consistent with this Agreement.

8.8 Le vérificateur émet à la première nation et au ministre, dans les 30 jours de la réception des documents visés à l'article 8.3, un avis écrit indiquant si le projet de code foncier et le processus d'approbation de la communauté proposé sont conformes au présent accord.

8.9 The verifier will provide written reasons to the First Nation and the Minister in any case where he or she decides that the proposed land code and community approval process are not consistent with this Agreement.

8.9 Dans tous les cas où, à son avis, le projet de code foncier ou le processus proposé pour obtenir l'approbation de la communauté ne sont pas conformes au présent accord, le vérificateur consigne par écrit les motifs de cette décision qu'il transmet à la première nation et au ministre.

9. CONDUCT OF COMMUNITY VOTE

9. TENUE DU SCRUTIN

9.1 Once the verifier confirms that the

9.1 Après que le vérificateur ait décidé que

proposed land code and community approval process are consistent with this Agreement, the First Nation may proceed to submit its proposed land code, and the individual agreement with the Minister, for community approval.

9.2 The verifier will publish one or more notices advising the community of the date, time and place of the First Nation's approval vote.

9.3 The verifier may designate one or more assistants to help observe the conduct of the vote.

9.4 The verifier and any assistant observers will have complete authority to observe the approval process.

9.5 Within 15 days of the conclusion of the vote, the verifier will issue a written report to the First Nation and to the Minister on whether the community approval process was conducted in accordance with the process as previously confirmed.

10. CERTIFICATION OF LAND CODE

10.1 Where a First Nation approves a land code and its individual agreement with the Minister, the First nation council must, without delay, send a true copy of the land code to the verifier together with a true copy of the fully signed individual agreement and a statement from the First Nation council that the land code and the individual agreement were properly approved.

le projet de code et le processus proposé pour obtenir l'approbation de la communauté sont conformes au présent accord, la première nation peut soumettre à l'approbation de la communauté le projet de code foncier et l'accord distinct conclu avec le ministre.

9.2 Le vérificateur fait publier un ou plusieurs avis informant la communauté de la date, de l'heure et du lieu du scrutin.

9.3 Le vérificateur peut s'adjoindre un ou plusieurs assistants pour l'aider à surveiller le déroulement du scrutin.

9.4 Le vérificateur et ses adjoints ont pleins pouvoirs pour surveiller le processus d'approbation de la communauté.

9.5 Le vérificateur remet à la première nation et au ministre, dans les 15 jours suivant la fermeture du scrutin, son rapport écrit au sujet de la conformité du déroulement du scrutin avec le processus d'approbation retenu.

10. CERTIFICATION DU CODE FONCIER

10.1 Lorsque la première nation approuve le code foncier et l'accord distinct avec le ministre, le conseil de la première nation adresse au vérificateur, dans les meilleurs délais, une copie certifiée conforme de l'accord distinct entièrement signé et du code foncier approuvé ainsi qu'une déclaration du conseil de la première nation indiquant que le code foncier et l'accord distinct ont été dûment approuvés.

10.2 Upon receiving a copy of a First Nation's land code, signed individual agreement and statement, the verifier will, subject to clause 11, certify the land code as being valid.

10.3 The verifier will immediately provide the First Nation, the Lands Advisory Board and the Minister with a copy of any certified land code.

10.4 The Lands Advisory Board will, in such manner as it considers advisable, publish a notice announcing the certification of a land code and the date the land code takes effect and advising the public of the means of obtaining copies of it.

10.4.1 Certified copies of the land code will be made available to the public at such places deemed necessary by the First Nation.

10.5 Once a land code is certified by a verifier and takes effect, the land code has the force of law and will be given judicial notice.

10.6 A land code that has been certified pursuant to this Agreement is deemed to have been validly approved by the First Nation.

10.7 A land code takes effect on the day that it is certified by the verifier or on such later date as may be specified in the land code.

11. DISPUTED VOTE

11.1 The Minister or any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting

10.2 Sur réception de la copie du code foncier, de l'accord distinct signée et de la déclaration, le vérificateur atteste la validité du code foncier, sous réserve de l'article 11.

10.3 Le vérificateur adresse immédiatement à la première nation, au Conseil consultatif des terres et au ministre une copie du code foncier dont il a attesté la validité.

10.4 Le Conseil consultatif des terres publie, selon les modalités qu'il estime appropriées, un avis attestant la validité du code foncier, sa date d'entrée en vigueur et faisant connaître au public la façon de s'en procurer des copies.

10.4.1 Des copies certifiées du code foncier seront mises à la disposition du public aux endroits que la première nation estime appropriés.

10.5 Dès que le code foncier reçoit l'attestation du vérificateur et qu'il entre en vigueur, il a dès lors force de loi et est admis d'office dans toute instance.

10.6 Une fois sa validité attestée conformément au présent accord, le code est réputé avoir été dûment approuvé par la première nation.

10.7 Le code foncier entre en vigueur à la date de l'attestation de sa validité par le vérificateur ou à la date postérieure fixée dans le code.

11. CONTESTATION DU VOTE

11.1 Le ministre ou tout électeur peut, dans les cinq jours suivant la clôture du scrutin, informer le vérificateur de toute

process to the verifier.

11.2 A verifier will not certify a land code if he or she is of the opinion that the following two conditions exist:

(1) the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and

(2) the land code might not have been approved but for the irregularity in the process.

11.3 Before making a decision under this clause, the verifier will provide the First Nation and the Minister with a reasonable opportunity to make submissions on the issue.

11.4 Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.

PART III

FIRST NATION LAND MANAGEMENT RIGHTS AND POWER

12. LAND MANAGEMENT POWERS

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

irrégularité dont a été entaché le déroulement du scrutin.

11.2 Le vérificateur ne peut attester la validité du code foncier s'il en vient aux conclusions suivantes :

(1) d'une part, le déroulement du scrutin n'est pas conforme au processus d'approbation qu'il a lui-même confirmé au préalable ou est autrement entaché d'irrégularité;

(2) d'autre part, le code n'aurait peut-être pas été approuvé sans cette irrégularité.

11.3 Avant de prononcer une décision aux termes du présent article, le vérificateur donne à la première nation et au ministre l'occasion de présenter des observations.

11.4 Toute décision du vérificateur en vertu du présent article doit être prise dans un délai de 10 jours suivant la conclusion du vote.

PARTIE III

DROITS ET POUVOIRS DE GESTION DES TERRES DE PREMIÈRE NATION

12. POUVOIRS DE GESTION DES TERRES

12.1 Dès que le code foncier entre en vigueur, la première nation a le pouvoir de gérer ses terres de première nation et d'exercer ses pouvoirs en vertu du présent accord, sous réserve de l'article 13.

12.2 This power includes

(a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and

(b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 In any province or territory other than Quebec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

12.3A In the province of Quebec, a land right or licence granted in relation to First Nation land is subject to any exceptions, reservations, conditions or limits established by the First Nation in its land code.

12.4 For any purpose related to First Nation land, a First Nation will have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.

12.5 First Nation land, revenues, royalties, profits and fees in respect of that land will be managed by the First Nation council or its delegate for the use and benefit of the First Nation.

12.2 Elle peut notamment :

a) exercer tous les droits, pouvoirs et privilèges d'un propriétaire, pour ce qui est de ses terres de première nation;

b) sous réserve des articles 3, 18.5 et 23.6, attribuer des permis et des intérêts ou droits fonciers relatifs à ses terres de première nation et gérer ses ressources naturelles.

12.3 Dans une province ou un territoire autre que le Québec, un intérêt ou un permis relatif aux terres de première nation est assujéti aux exclusions, réserves, conditions ou délimitations énoncées par la première nation dans son code foncier.

12.3A Dans la province de Québec, un droit foncier ou un permis relatif aux terres de première nation est assujéti aux exceptions, réserves, conditions ou limites énoncées par la première nation dans son code foncier.

12.4 À l'égard de ses terres de première nation, la première nation a la capacité juridique d'acquérir et de détenir des biens, de conclure des contrats et d'emprunter, de dépenser des fonds et de faire des investissements, d'ester en justice et d'exercer ses pouvoirs et attributions.

12.5 Le conseil de la première nation ou son délégué administre les terres de première nation ainsi que les revenus, les redevances, les recettes et les droits y afférents à l'usage et au profit de la première nation.

12.6 If a First Nation establishes an entity for the purpose of administering its First Nation land, the entity shall be deemed to be a legal entity with the capacity, rights, powers and privileges of a natural person.

12.7 A First Nation has the right, in accordance with its land code, to receive and use all moneys acquired by or on behalf of the First Nation under its land code.

12.8 Once a First Nation's land code takes effect, all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members before that date, and from time to time thereafter, shall cease to be Indian moneys under the Indian Act, except for the purposes of paragraph 90 (1) (a), and shall be transferred by Canada to the First Nation

13. PROTECTION OF FIRST NATION LAND

13.1 Title to First Nation land is not changed when a First Nation's land code takes effect.

13.2 The Parties declare that it is of fundamental importance to maintain the amount and integrity of First Nation land.

13.3 First Nation land will not be sold, exchanged, conveyed or transferred, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

12.6 Si la première nation met sur pied une entité pour gérer ses terres, l'entité est réputée être une entité juridique ayant la capacité, les pouvoirs, les droits et les privilèges d'une personne physique.

12.7 La première nation a, conformément à son code foncier, le droit de recevoir et d'utiliser les sommes acquises par ou pour le compte de la première nation en vertu de son code foncier.

12.8 À compter de la date d'entrée en vigueur du code foncier d'une première nation, les fonds perçus, reçus et détenus par la Canada à l'usage et au profit de la première nation ou de ses membres avant cette date, ainsi que ceux qui le sont après cette date, cessent d'être de l'argent des Indiens aux fins de la Loi sur les Indiens, sauf aux fins de l'alinéa 90(1)a), et sont transférés par le Canada à la première nation.

13. PROTECTION DES TERRES DE PREMIÈRE NATION

13.1 L'entrée en vigueur du code foncier d'une première nation n'a pas pour effet de modifier le titre des terres de première nation.

13.2 Les Parties déclarent reconnaître l'importance fondamentale que revêt la préservation de la superficie et de l'intégrité des terres de première nation.

13.3 Les terres de première nation ne sont pas susceptibles d'être vendues, échangées ou transférées, si ce n'est dans le cadre d'un échange ou d'une expropriation effectué en conformité avec le présent

14. VOLUNTARY EXCHANGE OF FIRST NATION LAND

14.1 A First Nation has the right to exchange a parcel of First Nation land for another parcel of land, if that other parcel of land becomes First Nation land. An exchange of First Nation land may provide for additional compensation, including land that may not become First Nation land, and may be subject to any other terms and conditions.

14.2 Any exchange of First Nation land will require community approval in accordance with the process established in the land code.

14.3 First Nation land will only be exchanged for land that Canada consents to set apart as a reserve. In addition, the agreement of Canada is required on the technical aspects of the exchange.

14.4 The title to the land to be received in exchange for that First Nation land will be transferred to Canada and will be set apart by Canada as a reserve, as of the date of the land exchange or such later date as the First Nation may specify. This does not apply to land that is received by the First Nation as additional compensation and that is not intended to become First Nation land.

14.5 Where an exchange of First Nation land is approved by a First Nation in accordance with its land code, the First Nation can

accord.

14. ÉCHANGE VOLONTAIRE DE TERRES DE PREMIÈRE NATION

14.1 Une première nation a le droit d'échanger une parcelle des terres de première nation contre une autre parcelle, si cette autre parcelle fait dès lors partie des terres de première nation. L'échange peut également comporter une contrepartie supplémentaire, notamment des terres supplémentaires qui ne sont pas destinées à devenir des terres de première nation, et être assorti d'autres conditions.

14.2 Tout échange de terres de première nation doit être approuvé par les membres de la première nation selon les modalités prévues par le code foncier.

14.3 Des terres de première nation ne peuvent être échangées que contre des terres que le Canada accepte de mettre de côté à titre de réserve. L'accord du Canada est également requis quant aux aspects techniques de l'opération.

14.4 Le titre des terres reçues en échange des terres de première nation sera transféré au Canada, qui mettra ces terres de côté à titre de réserve, à la date de l'échange ou à la date ultérieure fixée par la première nation. Cette disposition ne s'applique pas aux terres remises à une première nation à titre de contrepartie supplémentaire et qui ne sont pas destinées à devenir des terres de première nation.

14.5 Lorsque l'échange des terres de première nation est approuvé par la première nation conformément à son code

execute an authorization to Canada to transfer title to the land.

14.6 Upon the issuance to Canada of an authorization to transfer title to First Nation land under clause 14.5, Canada will transfer title to the land in accordance with the authorization and the applicable terms and conditions of the exchange.

14.7 A copy of the instruments or acts transferring title to First Nation land will be registered in the First Nation Lands Register.

14.8 As of the date of the land exchange, or such later date as the First Nation may specify, the description of First Nation land in the land code will be deemed to be amended to delete the description of the First Nation land that was exchanged and to add the description of the First Nation land received in exchange.

14.9 For greater certainty, the First Nation land that was exchanged will cease to be a reserve.

15. IMMUNITY FROM SEIZURE, ETC.

15.1 The Parties confirm that section 29 and subsections 89(1) and (2) of the Indian Act will continue to apply to any reserve that is First Nation land.

15.2 Subsection 89(1.1) of the Indian Act will continue to apply to all leasehold interests or leases that existed when the land code took effect if the First Nation land was

foncier, la première nation peut délivrer au Canada une autorisation de procéder au transfert du titre sur les terres en question.

14.6 Le Canada procède, sur réception de l'autorisation prévue à l'article 14.5, au transfert du titre sur les terres en question, en conformité avec cette autorisation et avec les conditions de l'échange.

14.7 Une copie des instruments ou actes de transfert du titre sur les terres de première nation sera enregistrée dans le registre des terres de premières nations.

14.8 À partir de la date de l'échange de terres, ou à la date ultérieure fixée par la première nation, la description des terres de première nation dans le code foncier est réputée être modifiée de façon à supprimer la description des terres de première nation qui ont été échangées et à ajouter celle des terres de première nation reçues en échange.

14.9 Il est entendu que les terres de première nation qui ont été échangées cessent de constituer une réserve.

15. INSAISSABILITÉ, ETC.

15.1 Les parties confirment que l'article 29 et les paragraphes 89(1) et (2) de la Loi sur les Indiens continuent de s'appliquer aux réserves faisant partie des terres de première nation.

15.2 Le paragraphe 89(1.1) de la Loi sur les Indiens continue de s'appliquer à tous les baux ou intérêts à bail qui existaient lorsque le code foncier est entré en

designated land at that time.

15.3 A land code may provide that some or all of the provisions of subsection 89(1.1) of the Indian Act are also applicable to other leasehold interests or leases in any First Nation lands.

15.4 The Parties confirm that section 87 of the Indian Act continues to apply to First Nation land, so that

(a) the interest of an Indian or a First Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the Indian Act; and

(b) the personal property or the movables of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.

16. THIRD PARTY INTERESTS

16.1 Interests or land rights or licences held by third parties or Canada in First Nation land, that exist at the time the land code takes effect, continue in force according to their terms and conditions.

16.2 Any rights of locatees in possession of First Nation land, either by custom or by allotment under the Indian Act, to transfer, lease and share in natural resource revenues will be defined in the land code.

vigueur, dans le cas où les terres de première nation étaient des terres désignées à ce moment.

15.3 Le code foncier peut énoncer que les dispositions du paragraphe 89(1.1) de la Loi sur les Indiens sont également applicables, en tout ou en partie, aux autres baux ou intérêts à bail sur les terres de première nation.

15.4 Les parties confirment que l'article 87 de la Loi sur les Indiens continue de s'appliquer aux terres de première nation de façon à ce que:

a) le droit d'un Indien ou d'une première nation sur une réserve faisant partie des terres de première nation demeure exempté de taxation, sous réserve de l'article 83 de la Loi sur les Indiens;

b) les biens personnels ou les meubles d'un Indien ou d'une première nation situés sur une réserve faisant partie des terres de la première nation demeurent exemptés de taxation.

16. INTÉRÊTS DES TIERS

16.1 Les intérêts ou droits fonciers ou les permis que détiennent les tiers ou le Canada sur des terres de première nation lorsque le code foncier entre en vigueur continuent d'avoir effet selon leurs conditions.

16.2 Les droits des occupants en possession de terres de première nation, que ce soit conformément à la coutume ou par attribution aux termes de la Loi sur les Indiens, en matière de transfert, de bail et

16.3 Once a land code takes effect, no interest, land right or licence in relation to First Nation land may be acquired or granted except in accordance with the land code.

16.4 For greater certainty, disputes in relation to third party interests shall be dealt with in the forum identified or established in a land code pursuant to clause 5.2(g).

17. EXPROPRIATION BY FIRST NATIONS

17.1 A First Nation with a land code in effect has the right to expropriate interests or land rights in First Nation lands without consent if deemed by the First Nation council to be necessary for community works or other First Nation purposes.

17.2 A First Nation's power of expropriation will be exercised in accordance with the rules and procedures specified in its land code, its laws and this Agreement.

17.3 In any province or territory other than Québec, an interest in First Nation land that a First Nation expropriates becomes the property of the First Nation free of any previous claim or encumbrance in respect of the interest.

17.3A In the province of Québec, the First Nation that expropriates a land right in its First Nation lands becomes the holder of that

de partage des revenus provenant de ressources naturelles seront définis par le code foncier.

16.3 Après l'entrée en vigueur du code foncier, les permis, les intérêts ou droits fonciers concernant les terres de première nation ne peuvent être acquis ou accordés qu'en conformité avec ce code.

16.4 Il est entendu que les différends relatifs aux intérêts des tiers sont réglés selon ce que prévoit le code foncier conformément à l'alinéa 5.2g).

17. EXPROPRIATION PAR LES PREMIÈRES NATIONS

17.1 La première nation ayant un code foncier en vigueur a le droit d'exproprier sans consentement des intérêts ou droits fonciers sur ses terres de première nation, si le conseil de la première nation estime en avoir besoin pour réaliser des ouvrages communautaires ou à d'autres fins de la première nation.

17.2 La première nation procède à l'expropriation conformément aux règles et procédures établies dans son code foncier, à ses textes législatifs et au présent accord.

17.3 Un intérêt sur les terres de première nation dans une province ou un territoire autre que le Québec exproprié par la première nation devient la propriété de celle-ci, libre de toute réclamation ou tout grèvement antérieurs quant à cet intérêt.

17.3A La première nation qui exproprie un droit foncier sur ses terres de première nation dans la province de Québec devient

right free of any previous right, charge or claim in respect of that land right.

17.4 A First Nation that expropriates an interest or land right in First Nation land will give fair compensation based on the heads of compensation set out in the Expropriation Act (Canada).

17.5 A First Nation will establish a mechanism to resolve disputes over compensation it pays for expropriation.

17.6 Any interest in First Nation land that was obtained pursuant to section 35 of the Indian Act or any interest or land right that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with this Agreement, is not subject to First Nation expropriation.

17.7 A First Nation is not precluded from entering into an agreement with a utility or public body for the purpose of granting it an interest or land right in First Nation land that is exempt from expropriation by the First Nation.

17.8 No expropriation of an interest or land right in First Nation land by a First Nation takes effect earlier than either of the following days:

(a) the date the notice of expropriation is registered in the First Nation Lands Register; or

titulaire de ce droit foncier, libre de tout droit, charge ou réclamation antérieurs.

17.4 La première nation qui exproprie un intérêt ou droit foncier sur ses terres de première nation est tenue de verser une indemnité équitable, calculée selon les règles énoncées dans la Loi sur l'expropriation (Canada).

17.5 La première nation est tenue de mettre sur pied un mécanisme de règlement des différends relatifs à l'indemnisation qu'elle paye pour les expropriations.

17.6 Ne sont toutefois pas susceptibles d'expropriation par la première nation les intérêts ou les droits fonciers sur les terres de première nation obtenus sous le régime de l'article 35 de la Loi sur les Indiens ou qui ont été acquis par le Canada ou encore qui seront acquis par le Canada après l'entrée en vigueur du présent accord conformément à celui-ci.

17.7 Il n'est pas interdit à la première nation de conclure avec un organisme public ou une société de service public un accord lui attribuant un intérêt ou un droit foncier sur les terres de première nation non susceptible d'être exproprié par la première nation.

17.8 L'expropriation par une première nation d'un intérêt ou d'un droit foncier sur les terres de première nation ne prend effet qu'à la première des dates suivantes :

a) la date d'inscription de l'avis d'expropriation dans le registre des terres de la première nation;

(b) the 30th day after the day the last copy of the notice is served.

PART IV FIRST NATION LAW MAKING

18. LAW MAKING POWERS

18.1 The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

18.2 The following examples illustrate some of the First Nation laws contemplated by the Parties:

(a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;

(b) laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;

(c) laws on environmental assessment and protection;

(d) laws on the provision of local

b) le 30^e jour suivant la signification de la dernière copie de cet avis.

PARTIE IV POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

18. POUVOIRS DE LÉGIFÉRER

18.1 Le conseil de la première nation ayant un code foncier en vigueur peut édicter des textes législatifs, conformément à celui-ci, concernant le développement, la conservation, la protection, la gestion, l'utilisation et la possession des terres de première nation et des intérêts ou droits fonciers et permis les concernant. Cela comprend les textes législatifs portant sur des questions nécessaires ou afférentes à l'élaboration des textes législatifs relatifs aux terres de première nation.

18.2 Les exemples qui suivent illustrent certaines des fins pour lesquelles les premières nations peuvent adopter des textes législatifs, comme l'envisagent les Parties :

a) pour réglementer, régir ou interdire le zonage, l'aménagement, l'utilisation, le lotissement ou la mise en valeur des terres;

b) pour créer et réglementer les permis et les intérêts ou les droits fonciers relatifs aux terres de première nation ou prévoir des interdictions à cet égard;

c) pour régir la protection de l'environnement et l'évaluation environnementale;

services in relation to First Nation land and the imposition of equitable user charges; and

(e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

18.3 A land code will not address the taxation of real or personal property or of immovables or movables. Section 83 of the Indian Act will continue to apply.

18.4 In any proceeding, a copy of a First Nation law, appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.

18.5 This Agreement does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries.

19. ENFORCEMENT OF FIRST NATION LAWS

19.1 To enforce its land code and its First Nation laws, a First Nation will have the power to

(a) establish offences that are punishable on summary conviction;

(b) provide for fines, imprisonment,

d) pour régir la prestation de services locaux relatifs aux terres de première nation et l'imposition de frais équitables à leurs usagers;

e) pour régir la prestation de services de règlement extrajudiciaire des différends relatifs aux terres de première nation.

18.3 Le code foncier ne traite pas de l'imposition des biens réels ou personnels ou des immeubles ou meubles. L'article 83 de la Loi sur les Indiens continue de s'appliquer.

18.4 La copie d'un texte législatif de la première nation paraissant certifiée conforme par un fonctionnaire de la première nation fait foi, dans le cadre de toute procédure, de son adoption à la date qui y est inscrite sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

18.5 Le présent accord ne modifie en rien les droits et pouvoirs actuels relatifs aux pêcheries, ni ne crée des droits ou pouvoirs additionnels à cet égard.

19. CONTRÔLE D'APPLICATION DES TEXTES LÉGISLATIFS DE LA PREMIÈRE NATION

19.1 Aux fins de contrôle d'application de son code foncier et de ses textes législatifs, la première nation peut :

a) créer des infractions punissables par procédure sommaire;

b) prévoir des peines, notamment les

restitution, community service, and alternate means for achieving compliance; and

(c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

19.2 First Nation laws may adopt or incorporate by reference the summary conviction procedures of the Criminal Code for the purpose of enforcement.

19.3 Persons may be appointed by the First Nation or the Governor in Council to act as justices of the peace for the purposes of enforcement. If no justice of the peace is appointed, then First Nation laws will be enforced through the provincial courts.

19.4 A person appointed as a justice of the peace under this clause will have jurisdiction to try offences established by or under a land code or a First Nation law.

19.5 Decisions made by a justice of the peace appointed under this clause may be appealed to a court of competent jurisdiction.

19.6 The First Nation will protect the independence of each justice of the peace it appoints in a way similar to that in a province, for example tenure, removal and

amendes, l'emprisonnement, la restitution, les travaux d'intérêt collectif ou toute autre mesure de nature à assurer l'observation de ces textes;

c) établir, conformément aux lois fédérales, des mesures de contrôle d'application de ces textes notamment en matière d'inspection, de perquisition, de saisie, de prise d'échantillons, d'examen et de communication de renseignements.

19.2 Les textes législatifs de la première nation peuvent, à ces fins, reproduire ou incorporer par renvoi la procédure sommaire du Code criminel.

19.3 La première nation ou le gouverneur en conseil peut nommer des juges de paix chargés d'assurer le contrôle d'application des textes législatifs de la première nation. En l'absence de juges de paix, les poursuites relatives aux textes législatifs de la première nation sont instruites devant les tribunaux provinciaux.

19.4 Il relève de la compétence du juge de paix nommé aux termes du présent article d'instruire les poursuites relatives aux infractions créées par un code foncier ou par un texte législatif de la première nation.

19.5 Les décisions du juge de paix nommé aux termes du présent article sont susceptibles d'appel devant un tribunal compétent.

19.6 La première nation est tenue de protéger l'indépendance des juges de paix qu'elle nomme, de façon analogue à ce que font les provinces, par exemple la durée de

remuneration.

19.7 The First Nation and Canada may enter into agreements for the training, supervision and administrative support for justices of the peace appointed by the First Nation. Provinces may also be parties to such agreements with First Nations.

19.8 The First Nation and Canada will enter into an agreement for the appointment, training, supervision and administrative support for any justice of the peace appointed under this clause by the Governor in Council. The affected province will be invited to participate in the development of and be a party to such agreement.

19.9 For the purpose of prosecuting offences, the First Nation will follow one or more of these options:

- (a) retain its own prosecutor;
- (b) enter into an agreement with Canada and the government of the province to arrange for a provincial prosecutor; or
- (c) enter into an agreement with Canada to arrange for a federal agent to prosecute these offenses.

20. APPLICATION OF FEDERAL LAWS

20.1 Federal laws applicable on First Nation land will continue to apply, except to the extent that they are inconsistent with the

leur mandat, leur destitution et leur rémunération.

19.7 La première nation et le Canada peuvent conclure des ententes concernant la formation, la surveillance et le soutien administratif des juges de paix nommés par la première nation. Les provinces peuvent également être parties à ces ententes avec les premières nations.

19.8 La première nation et le Canada sont tenus de conclure une entente relativement à la nomination, la formation, la surveillance et le soutien administratif des juges de paix nommés aux termes du présent article par le gouverneur en conseil. La province concernée sera invitée à participer à l'élaboration de cette entente et à être partie à celle-ci.

19.9 Aux fins des poursuites, la première nation peut se prévaloir d'une ou de plusieurs des mesures suivantes :

- a) embaucher ses propres procureurs;
- b) conclure avec le Canada et le gouvernement provincial concerné une entente prévoyant le recours à un procureur provincial;
- c) conclure avec le Canada une entente prévoyant le recours à un mandataire fédéral.

20. APPLICATION DES LOIS FÉDÉRALES

20.1 Les lois fédérales applicables sur les terres de première nation continuent de s'appliquer à celles-ci sauf dans la mesure

federal legislation.

20.2 Notwithstanding any inconsistency with the federal legislation, the Emergencies Act will apply on First Nation land, but any appropriation of an interest or land right in First Nation land under the Emergencies Act shall be authorized expressly by an order in council.

20.3 For greater certainty, and subject to Part VII, the Atomic Energy Control Act or any successor legislation continue to apply to First Nation lands.

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

21.1 Once a land code takes effect, the First Nation, its members and its First Nation land will not be subject to the following:

- (a) sections 18 to 20 and 22 to 28 of the Indian Act;
- (b) sections 30 to 35 of the Indian Act;
- (c) sections 37 to 41 of the Indian Act;
- (d) sections 49, 50(4) and 53 to 60 of the Indian Act;
- (e) sections 66, 69 and 71 of the Indian Act;

où elles sont incompatibles avec la loi de ratification.

20.2 La Loi sur les mesures d'urgence est applicable sur les terres de première nation, même si elle est incompatible avec la loi de ratification. Cependant, la réquisition d'intérêts ou de droits fonciers sur les terres de première nation aux termes de la Loi sur les mesures d'urgence doit être expressément autorisée par un décret.

20.3 Sous réserve de la partie VII, il est entendu que la Loi sur le contrôle de l'énergie atomique, ou toute loi qui la remplace, continue de s'appliquer sur les terres de première nation.

21. INAPPLICABILITÉ DE CERTAINS ARTICLES DE LA LOI SUR LES INDIENS ET DES RÈGLEMENTS Y AFFÉRENTS

21.1 Dès l'entrée en vigueur de son code foncier, la première nation, ses membres et les terres de première nation, cessent d'être assujettis aux dispositions suivantes :

- a) les articles 18 à 20 et 22 à 28 de la Loi sur les Indiens;
- b) les articles 30 à 35 de la Loi sur les Indiens;
- c) les articles 37 à 41 de la Loi sur les Indiens;
- d) l'article 49, le paragraphe 50(4) et les articles 53 à 60 de la Loi sur les Indiens;
- e) les articles 66, 69 et 71 de la Loi sur les

- (f) section 93 of the Indian Act;
- (g) regulations made under section 57 of the Indian Act; and
- (h) regulations made under sections 42 and 73 of the Indian Act to the extent that they are inconsistent with this Agreement or the land code or the laws of the First Nation.

22. EXISTING FIRST NATION BY-LAWS

22.1 A First Nation will continue to have the authority under the Indian Act to make by-laws.

PART V ENVIRONMENT

23. GENERAL PRINCIPLES

23.1 The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

23.2 The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

23.3 The principles of these regimes are set out below.

Indiens;

f) l'article 93 de la Loi sur les Indiens;

g) les règlements pris en application de l'article 57 de la Loi sur les Indiens;

h) les règlements pris en application des articles 42 et 73 de la Loi sur les Indiens dans la mesure où ils sont incompatibles avec le présent accord, avec le code foncier ou avec les textes législatifs de la première nation.

22. RÈGLEMENTS ADMINISTRATIFS ACTUELS DE LA PREMIÈRE NATION

22.1 La première nation conserve le pouvoir d'adopter des règlements administratifs aux termes de la Loi sur les Indiens.

PARTIE V ENVIRONNEMENT

23. PRINCIPES GÉNÉRAUX

23.1 Le conseil de la première nation ayant un code foncier en vigueur a le pouvoir d'édicter des textes législatifs de nature environnementale concernant les terres de première nation.

23.2 Les Parties s'entendent pour qu'il y ait un régime de protection de l'environnement et un régime d'évaluation environnementale pour chaque première nation.

23.3 Les principes de ces régimes sont énoncés ci-dessous.

23.4 The environmental assessment and protection regimes will be implemented through First Nation laws.

23.5 The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

23.6 This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

24. ENVIRONMENTAL MANAGEMENT

24.1 Subject to clause 27, a First Nation with a land code in effect will develop an environmental protection regime, with the assistance of the appropriate federal agencies to the extent that they agree to participate.

24.2 Each First Nation agrees to

harmonize environmental protection with the province in which the First Nation is situated, where the province agrees to participate

23.4 Les régimes de protection et d'évaluation environnementales seront mis en oeuvre par des textes législatifs de la première nation.

23.5 Les Parties conviennent d'harmoniser leurs régimes et processus environnementaux respectifs, en invitant les provinces à participer à cette opération si celles-ci le souhaitent, dans le but de promouvoir l'uniformité et l'efficacité des régimes et processus environnementaux et d'éviter les incertitudes et le double emploi.

23.6 Le présent accord n'a pas pour effet de modifier les droits et pouvoirs concernant les oiseaux migrateurs et les espèces en voie de disparition. Ces questions pourront faire l'objet d'autres négociations. Le présent accord n'a pas pour objet de déterminer la résolution de ces questions ou d'y porter préjudice.

24. GESTION DE L'ENVIRONNEMENT

24.1 Sous réserve de l'article 27, une première nation qui a un code foncier en vigueur élaborera un régime de protection environnementale, avec l'appui des organismes fédéraux concernés, dans la mesure où la province accepte de participer.

24.2 Chaque première nation accepte d'harmoniser son régime de protection environnementale avec celui de la province où elle est située, dans la mesure où la province accepte de participer.

24.3 The First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.

24.4 For greater certainty, if there is an inconsistency between the provision of a federal law respecting the protection of the environment and a provision in a land code or First Nation law respecting the protection of the environment, the federal provision will prevail to the extent of any inconsistency.

25. ENVIRONMENTAL ASSESSMENT

25.1 Subject to clause 27, a First Nation will, with the assistance of the Lands

24.3 Les normes de protection environnementale et pénalités de la première nation devront avoir au moins l'effet équivalent à celui des lois de la province où se situe la première nation.

24.4 Il est entendu qu'en cas d'incompatibilité entre une disposition d'une loi fédérale en matière de protection de l'environnement et une disposition d'un code foncier ou d'un texte législatif des premières nations en matière de protection de l'environnement, la disposition fédérale l'emporte dans la mesure de l'incompatibilité.

25. ÉVALUATION ENVIRONNEMENTALE

25.1 Sous réserve de l'article 27, la première nation s'efforce, avec l'aide du

Advisory Board and the appropriate federal agencies, make best efforts to develop an environmental assessment process within one year after the First Nation's land code takes effect, or within such longer period as the Minister and the First Nation may agree to.

25.2 The First Nation and the Minister will, in the individual agreement referred to in clause 6, address how to conduct the environmental assessment of projects on First Nation land during the interim period until the First Nation's environmental assessment process is developed.

25.3 The First Nation's environmental assessment process will be consistent with requirements of the Canadian Environmental Assessment Act.

25.4 The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

25.5 The Parties agree that section 10 of the Canadian Environmental Assessment Act will not apply to projects located on First Nation land.

Conseil consultatif des terres et des organismes fédéraux intéressés, d'élaborer un processus d'évaluation environnementale dans l'année suivant l'entrée en vigueur du code foncier de la première nation ou dans un délai plus long convenu entre le ministre et la première nation.

25.2 L'accord distinct conclu entre la première nation et le ministre conformément à l'article 6 doit prévoir les modalités de l'évaluation environnementale des projets devant être réalisés sur les terres de première nation au cours de la période transitoire, jusqu'à ce que la première nation ait élaboré un processus d'évaluation environnementale.

25.3 Le processus d'évaluation environnementale mis sur pied par la première nation doit être compatible avec les exigences de la Loi canadienne sur l'évaluation environnementale.

25.4 Sera un élément déclencheur du processus d'évaluation environnementale dans les cas indiqués, tout projet sur les terres de première nation devant être réalisé, financé, approuvé ou réglementé par celle-ci. Cette évaluation doit s'effectuer le plus tôt possible au cours des premières étapes de la planification du projet avant que des décisions irrévocables ne soient prises.

25.5 Les Parties conviennent que l'article 10 de la Loi canadienne sur l'évaluation environnementale ne s'applique pas aux projets situés sur les terres de première nation.

25.6 The Parties agree to use their best efforts to implement the principle that the First Nation's environmental assessment process be used where an environmental assessment of a project on First Nation land is required by the Canadian Environmental Assessment Act.

25.7 The Parties agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces where they agree to participate.

26. OTHER AGREEMENTS

26.1 The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.

26.2 Where matters being negotiated pursuant to clause 26.1 normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the parties will invite the affected province to be a party to such negotiations and resulting agreements.

27. RESOURCES

27.1 The Parties understand that the obligation of a First Nation to establish

25.6 Les Parties s'efforceront de mettre en œuvre le principe selon lequel le processus d'évaluation environnementale de la première nation sera appliqué lorsque la Loi canadienne sur l'évaluation environnementale exige qu'un projet devant être réalisé sur des terres de première nation fasse l'objet d'une telle évaluation.

25.7 Les Parties conviennent d'élaborer un plan visant à harmoniser leurs processus d'évaluation environnementale respectifs, avec la participation des provinces si celles-ci le souhaitent.

26. AUTRES ENTENTES

26.1 La première nation et le Canada reconnaissent qu'il pourrait être souhaitable de conclure d'autres ententes, entre elles et avec d'autres gouvernements, dans le domaine de l'environnement, notamment au sujet des questions d'harmonisation, de mise en œuvre, de calendrier, de financement et de contrôle d'application.

26.2 Si une question faisant l'objet de négociation en vertu de l'article 26.1 relève normalement de la compétence de la province, ou si de telles questions sont susceptibles d'avoir des effets importants à l'extérieur des terres de première nation, les Parties inviteront la province concernée à être partie à ces négociations et à l'entente qui en résulte.

27. RESSOURCES

27.1 Les Parties reconnaissent qu'une première nation ne peut remplir son

environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

PART VI FUNDING

28. APPROPRIATION

28.1 Any amounts provided by Canada to the First Nations pursuant to funding arrangements in relation to First Nation land shall be paid out of such moneys as may be appropriated by Parliament for this purpose.

29. DEVELOPMENTAL FUNDING

29.1 Canada and the Lands Advisory Board will enter into a funding arrangement to allow the First Nations to develop land codes and community approval processes for their land codes, to negotiate the individual agreements mentioned in clause 6 and to seek community approval under clause 7.

30. OPERATIONAL FUNDING

30.1 An individual agreement between the Minister and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under a land code. The agreement will determine specific funding issues, for example period of time, and terms and

obligation relative à l'établissement de régimes de protection et d'évaluation environnementales que si elle dispose des ressources financières et de l'expertise nécessaires.

PARTIE VI FINANCEMENT

28. CRÉDITS

28.1 Les sommes versées par le Canada aux premières nations conformément aux ententes en matière de financement à l'égard des terres de première nation sont prélevées sur les crédits affectés à cette fin par le Parlement.

29. FINANCEMENT DE DÉMARRAGE

29.1 Le Canada et le Conseil consultatif des terres sont tenus de conclure une entente de financement pour permettre aux premières nations d'élaborer leur code foncier et leur processus d'approbation de la communauté relatif à ce code, de négocier l'accord distinct mentionné à l'article 6 et d'obtenir l'approbation de la communauté prévue à l'article 7.

30. FINANCEMENT DE FONCTIONNEMENT

30.1 L'accord distinct conclu entre le ministre et la première nation fixera les ressources que le Canada s'engage à fournir à la première nation pour que celle-ci gère les terres de première nation et édicte, administre et applique les textes législatifs de la première nation pris en vertu du code foncier. L'accord précisera

conditions.

30.2 A method for allocating such operating funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board.

30.3 Unless a First Nation and Canada agree otherwise, an individual agreement respecting the provision of funding under this clause will have a maximum term of five years and will include provisions for its amendment and renegotiation.

31. LANDS ADVISORY BOARD FUNDING

31.1 Canada will enter into a funding arrangement with the Lands Advisory Board for the five year period following the coming into force of this Agreement.

PART VII EXPROPRIATION OF FIRST NATION LAND BY CANADA

32. RESTRICTIONS

32.1 In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that First Nation lands will not be subject to expropriation.

32.2 Despite the general principle against expropriation, First Nation land may be expropriated by Canada

(a) only with the consent of the

les différents aspects du financement, par exemple sa périodicité et ses modalités.

30.2 Les Parties et le Conseil consultatif des terres sont tenus d'élaborer une méthode d'attribution des fonds de fonctionnement autorisés par le Parlement.

30.3 À défaut d'entente contraire de la première nation et du Canada, l'accord distinct concernant le financement prévu par le présent article sera en vigueur pour une durée maximale de cinq ans et prévoira des dispositions concernant sa modification et sa renégociation.

31. FINANCEMENT DU CONSEIL CONSULTATIF DES TERRES

31.1 Le Canada est tenu de conclure avec le Conseil consultatif des terres une entente de financement qui portera sur une période de cinq ans à partir de l'entrée en vigueur du présent accord.

PARTIE VII EXPROPRIATION DE TERRES DE PREMIÈRES NATIONS PAR LE CANADA

32. RESTRICTIONS

32.1 Conformément au principe énoncé à l'article 13.2, les parties conviennent qu'en règle générale, les terres de première nation ne peuvent faire l'objet d'une expropriation.

32.2 Malgré le principe général voulant que les terres ne puissent faire l'objet d'une expropriation, le Canada peut toutefois exproprier les terres de première nation, si les conditions suivantes sont

Governor in Council; and

(b) only by and for the use of a federal department or agency.

32.3 The Governor in Council will only consent to an expropriation of First Nation land if the expropriation is justifiable and necessary for a federal public purpose that serves the national interest.

32.4 When making a decision to expropriate First Nation land, the Governor in Council, in addition to other steps that may be required before making such a decision, will at a minimum follow these steps:

(a) it will consider using means other than expropriation and will use those other means where reasonably feasible;

(b) it will use non-First Nation land, where such land is reasonably available;

(c) if it must use First Nation land, it will make reasonable efforts to acquire the land through agreement with the First Nation, rather than by expropriation;

(d) if it must expropriate First Nation land, it will expropriate only the smallest interest or land right necessary and for the shortest time required; and

réunies :

a) le gouverneur en conseil y consent;

b) l'expropriation est faite par un ministère ou un organisme fédéral pour ses seuls besoins.

32.3 Le gouverneur en conseil ne consentira à l'expropriation de terres de première nation que si cela est justifiable et nécessaire à des fins d'intérêt public national relevant de la compétence fédérale.

32.4 Avant de donner son consentement à une expropriation de terres de première nation, le gouverneur en conseil, en plus des autres mesures qui peuvent être requises, prendra au moins les mesures suivantes :

a) il envisagera d'autres moyens que l'expropriation et utilisera ces moyens lorsque cela est raisonnablement faisable;

b) il utilisera des terres autres que celles d'une première nation, lorsque de telles terres sont raisonnablement disponibles;

c) s'il faut utiliser des terres de première nation, il s'efforcera de procéder à l'acquisition des terres par convention avec la première nation et non par expropriation;

d) s'il doit exproprier des terres de première nation, il veillera à ce que l'expropriation se limite au strict nécessaire, tant en ce qui touche l'étendue de l'intérêt ou du droit foncier que la

(e) in every case, it will first provide the First Nation with information relevant to the expropriation.

32.5 Prior to the Governor in Council issuing an order consenting to the expropriation of First Nation land, the federal department or agency will make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this clause and will provide a copy of the report to the First Nation.

32.6 Where a First Nation objects to a proposed expropriation it may refer the issue to an independent third party for a neutral evaluation under Part IX, within 60 days of the release of the report referred to in clause 32.5.

32.7 An order of the Governor in Council consenting to the expropriation will not be issued earlier than

(a) the end of the 60 day period referred to in clause 32.6; or

(b) the day the opinion or recommendation of the neutral evaluator is released, where the First Nation referred the proposed expropriation to an independent evaluator under clause 32.6.

33. COMPENSATION BY CANADA

période pour laquelle il est exproprié;

e) dans tous les cas, il communiquera d'abord à la première nation tous les renseignements se rapportant à l'expropriation.

32.5 Avant que le gouverneur en conseil ne prenne un décret consentant à l'expropriation de terres de première nation, le ministère ou l'organisme fédéral est tenu de publier un rapport qui énonce les motifs la justifiant et les mesures prises en application du présent article et de fournir en même temps une copie de ce rapport à la première nation.

32.6 Si une première nation s'oppose à un projet d'expropriation, elle peut, dans les 60 jours de la publication du rapport mentionné à l'article 32.5, renvoyer l'affaire à une tierce partie indépendante pour conciliation aux termes de la Partie IX.

32.7 Un décret du gouverneur en conseil consentant à l'expropriation ne sera pas émis avant :

a) soit l'expiration du délai de 60 jours prévu à l'article 32.6;

b) soit le jour où l'opinion ou la recommandation du conciliateur est publiée, si la première nation renvoie le projet d'expropriation à un conciliateur, en application de l'article 32.6.

33. INDEMNISATION PAR LE CANADA

33.1 In the event of the expropriation of First Nation land by Canada under this Part, Canada will provide compensation to the First Nation in accordance with this clause.

33.2 The compensation will include alternate land of equal or greater size or of comparable value. If the alternate land is of less than comparable value, then additional compensation will be provided. The alternate land may be smaller than the land being expropriated only if that does not result in the First Nation having less land area than when its land code took effect.

33.3 The total value of the compensation provided by Canada under this clause will be based on the following:

- (a) the market value of the land or interest or land right that is acquired;
- (b) the replacement value of any improvement to the land that is acquired;
- (c) the damages attributable to disturbance;
- (d) the value of any special economic advantage arising out of or incidental to the occupation or use of the affected First Nation land to the extent that this value is not otherwise

33.1 Si le Canada exproprie des terres de première nation sous le régime de la présente partie, il est tenu d'indemniser la première nation conformément aux termes du présent article.

33.2 L'indemnité comprendra des terres substitutives ayant une superficie égale ou supérieure ou ayant une valeur comparable à celles qui ont été expropriées. Si les terres substitutives ont une valeur inférieure aux terres expropriées, le Canada est alors tenu d'offrir une indemnité supplémentaire. Les terres substitutives peuvent avoir une superficie moindre que les terres expropriées seulement si, à la suite de l'opération, la première nation dispose d'une superficie de terres qui n'est pas inférieure à celle qu'elle avait lorsque son code foncier est entré en vigueur.

33.3 La valeur totale de l'indemnité versée par le Canada aux termes du présent article doit tenir compte des éléments suivants :

- a) la valeur marchande des terres ou de l'intérêt ou du droit foncier acquis;
- b) la valeur de remplacement des améliorations apportées aux terres acquises;
- c) les dommages attribuables au trouble de jouissance;
- d) la valeur de tout avantage économique particulier découlant ou résultant de l'occupation ou de l'utilisation des terres de première nation concernée, dans la mesure où cette valeur n'a pas déjà donné lieu à

compensated;

(e) damages for any reduction in the value of a remaining interest or land right; and

(f) damages for any adverse effect on any cultural or other special value of the land.

33.4 If the value and nature of the compensation cannot be agreed upon by the federal department or agency and the affected First Nation, either party may refer a dispute on compensation to arbitration under Part IX.

33.5 In any province or territory other than Québec, any claim or encumbrance in respect of the interest, or in Québec any right, charge or claim in respect of the land right, expropriated by Canada may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest or land right is being expropriated.

33.6 Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the superior court of the province in which the First Nation land is located.

34. STATUS OF LANDS

34.1 Where less than the full interest or only part of the land right of the First Nation in

une indemnité;

e) les dommages attribuables à la diminution de la valeur de l'intérêt ou du droit foncier non exproprié;

f) les dommages attribuables aux répercussions négatives sur la valeur culturelle ou toute autre valeur particulière de ces terres.

33.4 En cas de différend relatif à la valeur ou à la nature de l'indemnité, le ministère ou l'organisme fédéral ou la première nation peut saisir un arbitre de tout différend relatif à l'indemnité aux termes de la Partie IX.

33.5 Dans les provinces ou territoires autres que le Québec, le recouvrement de toute réclamation ou tout grèvement concernant l'intérêt exproprié par le Canada, ou dans la province de Québec, le recouvrement de tout droit, charge ou réclamation concernant le droit foncier ainsi exproprié, ne peut être demandé que jusqu'à concurrence de l'indemnité par ailleurs payable à la personne ou à l'entité dont l'intérêt ou le droit foncier est visé par l'expropriation.

33.6 L'indemnité porte intérêt à partir de la prise d'effet de l'expropriation, au taux applicable à l'intérêt avant jugement applicable devant la Cour supérieure de la province où sont situées les terres de première nation.

34. STATUT DES TERRES

34.1 Dans les cas où l'expropriation par le Canada porte sur moins que la totalité de

First Nation land is expropriated by Canada,

(a) the land retains its status as First Nation land;

(b) the land remains subject to the land code and to any law of the First Nation that is otherwise applicable, except to the extent the land code or law is inconsistent with the expropriation; and

(c) the First Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the expropriation.

34.2 Alternate land accepted by the First Nation as part of the compensation will become both a reserve and First Nation land.

35. REVERSION OR RETURN OF INTERESTOR LAND RIGHT IN FIRST NATION LAND

35.1 In any province or territory other than Québec, where an expropriated interest in First Nation land which is less than the full interest of the First Nation in the land is no longer required by Canada for the purpose for which it was expropriated, the interest in land will revert to the First Nation.

35.1A In the province of Québec, where the expropriated land right in First Nation land constitutes only part of the land right of the First Nation in the land, and it is no longer required by Canada for the purpose for

l'intérêt ou seulement sur une partie du droit foncier de la première nation sur les terres en question :

a) les terres conservent leur statut de terres de première nation;

b) les terres demeurent assujetties au code foncier et aux textes législatifs adoptés par la première nation, sauf dans la mesure où le texte ou le code foncier est incompatible avec l'expropriation;

c) la première nation peut continuer à utiliser et à occuper ces terres, sauf dans la mesure où cette utilisation ou cette occupation est incompatible avec l'expropriation.

34.2 Les terres substitutives acceptées par la première nation comme partie de l'indemnité deviennent à la fois une réserve et des terres de première nation.

35. RÉVERSION OU RETOUR D'UN INTÉRÊT OU DROIT FONCIER SUR LES TERRES DE PREMIÈRE NATION

35.1 Dans une province ou territoire autre que le Québec, lorsque l'intérêt exproprié est moindre que la totalité de l'intérêt de la première nation sur les terres en question, cet intérêt est, lorsqu'il n'est plus nécessaire au Canada aux fins de l'expropriation, retourné à la première nation.

35.1A Dans la province de Québec, lorsque l'expropriation porte seulement sur une partie du droit foncier de la première nation sur les terres en question,

which it was expropriated, the land right will return to the First Nation.

35.2 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the interest or the land right is no longer required and determine the disposition of any improvements.

36. RETURN OF FULL INTEREST OR ENTIRE LAND RIGHT IN FIRST NATION LAND

36.1 Where the full interest or the entire land right of a First Nation in First Nation land was expropriated but is no longer required by Canada for the purpose for which it was expropriated, the land will be returned to the First Nation on terms negotiated by the First Nation and the federal department or agency, at the time of the expropriation or at a later date as agreed to by them.

36.2 Where the terms and conditions of the return cannot be agreed upon by the First Nation and the federal department or agency, either party may refer the dispute to arbitration under Part IX.

36.3 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the land is no longer required and determine the disposition of any

le droit foncier est, lorsqu'il n'est plus nécessaire au Canada aux fins de l'expropriation, retourné à la première nation.

35.2 Le ministre responsable du ministère ou de l'organisme à l'origine de l'expropriation peut, sans le consentement du gouverneur en conseil, décider que l'intérêt ou le droit foncier exproprié n'est plus nécessaire et il peut déterminer comment disposer des améliorations.

36. RETOUR DE LA TOTALITÉ DE L'INTÉRÊT OU DU DROIT FONCIER SUR LES TERRES DE PREMIÈRE NATION

36.1 Lorsque la totalité de l'intérêt ou le droit foncier entier de la première nation sur les terres en question a été exproprié et qu'il n'est plus nécessaire au Canada aux fins de l'expropriation, les terres seront retournées à la première nation selon les conditions négociées par la première nation et le ministère ou l'organisme fédéral, soit au moment de l'expropriation, soit à une date ultérieure convenue par eux.

36.2 En cas de différend relatif aux conditions du retour, la première nation ou le ministère ou l'organisme fédéral peut renvoyer l'affaire à un arbitre nommé aux termes de la Partie IX.

36.3 Le ministre responsable du ministère ou de l'organisme à l'origine de l'expropriation peut, sans le consentement du gouverneur en conseil, décider que les terres expropriées ne sont plus nécessaires

improvements.

37. APPLICATION OF EXPROPRIATION ACT

37.1 Any provisions of the Expropriation Act, (Canada) that are applicable to an expropriation of First Nation land by Canada continue to apply, unless inconsistent with this Agreement.

PART VIII LANDS ADVISORY BOARD

38. LANDS ADVISORY BOARD

38.1 The Lands Advisory Board shall consist of at least three members appointed:

(a) Prior to September 1, 2003, by the Councils of the original First Nation parties to this Agreement; and

(b) After September 1, 2003, by the Councils of the First Nations that have ratified this Agreement, whether they ratify the Agreement on, before or after that date.

38.2 The Lands Advisory Board will have all necessary powers and capacity to properly perform its functions under this Agreement.

38.3 The Lands Advisory Board will select a chairperson to preside over the Board and, subject to the direction of the Board, to act

et il peut déterminer comment disposer des améliorations apportées aux terres concernées.

37. APPLICATION DE LA LOI SUR L'EXPROPRIATION

37.1 Les dispositions de la Loi sur l'expropriation (Canada) applicables à l'expropriation de terres de première nation par le Canada continuent de s'appliquer dans la mesure où elles ne sont pas incompatibles avec le présent accord.

PARTIE VIII CONSEIL CONSULTATIF DES TERRES

38. CONSEIL CONSULTATIF DES TERRES

38.1 Le Conseil consultatif des terres sera formé d'au moins trois membres nommés :

a) avant le 1er septembre 2003 par les conseils des premières nations qui étaient parties initiales au présent accord;

b) après le 1er septembre 2003 par les conseils des premières nations qui ont ratifié le présent accord, qu'ils l'aient ratifié à cette date, ou avant ou après cette date.

38.2 Le Conseil consultatif des terres possédera tous les pouvoirs et la capacité nécessaires à l'exercice efficace de ses attributions en vertu du présent accord.

38.3 Le Conseil consultatif des terres est tenu de choisir un président qui peut, sous réserve des instructions du conseil, agir

on its behalf.

39. FUNCTIONS OF THE LANDS ADVISORY BOARD

39.1 In addition to any other functions specifically assigned to it by the Parties, the Lands Advisory Board will be responsible for the following functions:

(a) developing model land codes, laws and land management systems;

(b) developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations;

(c) on request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes;

(d) assisting a verifier when requested by the verifier;

(e) establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code;

(f) on request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty;

pour le compte du conseil.

39. ATTRIBUTIONS DU CONSEIL CONSULTATIF DES TERRES

39.1 Outre les autres attributions que pourraient lui confier les Parties, le Conseil consultatif des terres possédera les attributions suivantes :

a) il élabore des modèles de code foncier, de textes législatifs et de systèmes de gestion des terres;

b) il élabore des modèles d'ententes destinés à être utilisés entre les premières nations et les autres autorités et institutions, notamment les sociétés de service public et les organismes privés;

c) à la demande d'une première nation, il assiste celle-ci dans l'élaboration et la mise en oeuvre de son code foncier, de ses textes législatifs, de ses systèmes de gestion des terres, et de ses régimes de protection et d'évaluation environnementales;

d) il apporte son aide au vérificateur, à la demande de ce dernier;

e) il met sur pied un centre de ressources, des cours et des programmes de formation à l'intention des gestionnaires et des autres personnes qui exercent des attributions aux termes d'un code foncier;

f) à la demande d'une première nation qui éprouve des difficultés dans la gestion des terres de la première nation, il l'aide à obtenir l'expertise dont elle a besoin pour

(g) proposing regulations for First Nation land registration;

(h) proposing to the Minister such amendments to this Agreement and the federal legislation as it considers necessary or advisable;

(i) in consultation with First Nations, negotiating a funding method with the Minister; and

(j) performing such other functions or services for a First Nation as are agreed to between the Board and the First Nation.

39.2 The Lands Advisory Board will have authority to adopt rules for the procedure at its meetings and generally for the conduct of its affairs.

40. RECORD KEEPING

40.1 The Lands Advisory Board will maintain a record containing

(a) the name of each First Nation that approves a land code;

(b) a copy of that land code;

(c) a copy of each amendment to a land code; and

(d) the dates on which each was approved and certified.

résoudre les difficultés;

g) il propose des règlements concernant l'enregistrement des terres de première nation;

h) il propose au ministre les modifications au présent accord et à la loi de ratification qu'il estime souhaitables ou nécessaires;

i) en consultation avec les premières nations, il négocie avec le ministre un mécanisme de financement;

j) il exerce les autres attributions ou fournit à une première nation les services dont le conseil et celle-ci peuvent convenir.

39.2 Le Conseil consultatif des terres a le pouvoir d'adopter des règles de procédure pour la tenue de ses réunions et, d'une façon générale, pour l'exercice de ses activités.

40. TENUE DES DOSSIERS

40.1 Le Conseil consultatif des terres est tenu de maintenir un registre dans lequel figurent :

a) le nom des premières nations ayant adopté un code foncier;

b) une copie de ces codes fonciers;

c) une copie des modifications apportées aux codes fonciers;

d) les dates auxquelles les codes ont été approuvés et celles auxquelles leur validité a été attestée.

40.2.1 The Lands Advisory Board shall, in consultation with the Minister, prescribe procedures for a First Nation to authorize the signing of this Agreement and for the formal signature of the First Nations to this Agreement, and shall advise the Minister when a First Nation has completed the procedures.

40.2.2 Subject to sub-clause 40.2.1, a First Nation may only become a signatory under this section with the consent of Canada, and Canada shall advise the Lands Advisory Board if and when such consent is given.

40.2.3 The Lands Advisory Board shall receive and record the adhesion of a First Nation party to this Agreement, made after January 1, 2001, and advise the Minister that the said First Nation has signed the Framework Agreement.

41. ANNUAL REPORT

41.1 Within 90 days following the end of each year of operation, the Lands Advisory Board will deliver to the Parties an annual report, in both official languages, on the work of the Board for that year.

41.2 The Minister will cause a copy of the Lands Advisory Board's annual report to be laid before each House of Parliament within the first 30 sitting days of that House after the Minister receives it.

42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

40.2.1 Le Conseil consultatif des terres doit, en consultation avec le ministre, prescrire les procédures qu'une première nation doit suivre pour autoriser la signature du présent accord et les procédures régissant la signature formelle de cet accord par les premières nations et il doit aviser le ministre lorsqu'une première nation a complété les procédures.

40.2.2 Sous réserve de l'article 40.2.1, une première nation peut devenir signataire en vertu de cet article seulement avec le consentement du Canada, et ce dernier doit aviser le Conseil consultatif des terres lorsque le consentement a été accordé.

40.2.3 Le Conseil consultatif des terres doit recevoir et inscrire l'adhésion d'une première nation qui est Partie au présent accord, intervenue après le 1^{er} janvier 2001, et aviser le ministre de la signature de l'accord par celle-ci.

41. RAPPORT ANNUEL

41.1 Le Conseil consultatif des terres remet aux Parties, dans les 90 jours suivant la fin de son année de fonctionnement, un rapport annuel, dans les deux langues officielles, concernant les travaux accomplis pendant cette année.

41.2 Le ministre est tenu de présenter le rapport annuel du Conseil consultatif des terres aux deux Chambres du Parlement dans les 30 premiers jours de séance de chaque Chambre suivant sa réception par le ministre.

42. DISPARITION DU CONSEIL CONSULTATIF DES TERRES

42.1 In the event that the Lands Advisory Board is no longer in existence, the functions of the Lands Advisory Board under this Agreement will be performed by the Parties, except as follows:

(a) the functions set out in clauses 29 and 39, except clause 39.1(g), will be performed by the First Nations; and

(b) the functions set out in clauses 10 and 40 will be assumed by the First Nations Lands Register.

PART IX DISPUTE RESOLUTION

43. GENERAL PRINCIPLES

43.1 The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out-of-court processes referred to in this Part to resolve the dispute.

43.2 Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.

43.3 Subject to clause 43.4, any dispute

42.1 En cas de disparition du Conseil consultatif des terres, les attributions de celui-ci en vertu du présent accord seront exercées par les Parties, sous réserve des dispositions suivantes :

a) les attributions énumérées aux articles 29 et 39, sauf pour ce qui est de l'alinéa 39.1g), seront exercées par les premières nations;

b) les attributions prévues aux articles 10 et 40 seront assumées par le bureau du Registre des terres des premières nations.

PARTIE IX RÈGLEMENT DES DIFFÉRENDS

43. PRINCIPES GÉNÉRAUX

43.1 Les Parties s'engagent à résoudre entre elles, à l'amiable et de bonne foi, les différends qui peuvent découler du présent accord. Lorsque les Parties n'arrivent pas à s'entendre pour résoudre un différend par la négociation, elles conviennent de mettre sur pied les processus extrajudiciaires de règlement des différends décrits dans la présente partie et d'y avoir recours.

43.2 Les dispositions du présent accord n'empêchent pas les Parties de recourir à la médiation en vue de régler à l'amiable un différend. Lorsqu'une partie a soumis un différend à un médiateur, l'autre partie est tenue d'assister à une première rencontre avec le médiateur. L'une ou l'autre des Parties peut toutefois mettre fin à la médiation en tout temps après cette première rencontre.

43.3 Sous réserve de l'article 43.4, les

arising from the implementation, application or administration of this Agreement, the federal legislation, an individual agreement or an environmental management agreement may be resolved in either of two ways:

(a) Neutral evaluation - it may be referred to neutral evaluation by one party to the dispute; or

(b) Arbitration - it may be referred to arbitration by both parties to the dispute.

43.4 Any dispute respecting compensation for First Nation land expropriated by Canada or the terms and conditions for the return of the full interest or the entire land right in First Nation land will be referred to arbitration.

43.5 Any objection by a First Nation to a proposed expropriation under Part VII that has been referred to neutral evaluation will be evaluated and a report submitted by the neutral evaluator to the First Nation and Canada within 60 days of the referral to the neutral evaluator.

44. PANELS OF ARBITRATORS, ETC.

44.1 The Parties and the Lands Advisory Board will jointly establish lists of mutually acceptable persons willing to act as mediators, arbitrators, verifiers and neutral evaluators.

différents découlant de la mise en oeuvre, de l'application ou de l'administration du présent accord, de la loi de ratification, d'un accord distinct ou d'un accord en matière de gestion de l'environnement peuvent être résolus selon l'un des deux moyens suivants :

a) la conciliation — le différend peut être renvoyé à un conciliateur par l'une des parties impliquées dans le différend;

b) l'arbitrage — le différend peut être soumis à l'arbitrage par les deux parties impliquées dans le différend.

43.4 Sont soumis à l'arbitrage, les différends portant sur l'indemnité à verser par le Canada en raison de l'expropriation par celui-ci de terres de première nation, ou sur les conditions du retour de la totalité de l'intérêt ou du droit foncier entier sur les terres de première nation.

43.5 Toute opposition, par la première nation, à un projet d'expropriation en vertu de la Partie VII qui aura été porté devant un conciliateur sera évalué par ce dernier. Par la suite, un rapport sera soumis, par ce dernier, à la première nation et au Canada dans un délai de 60 jours suivant le dépôt de l'opposition devant le conciliateur.

44. LISTES D'ARBITRES, ETC.

44.1 Les Parties et le Conseil consultatif des terres sont tenus d'établir conjointement des listes de personnes mutuellement acceptables prêtes à agir en qualité de médiateur, d'arbitre, de vérificateur et de conciliateur.

44.2 Parties who become involved in a dispute may select mediators, arbitrators and neutral evaluators from the appropriate list, or may agree to the appointment of an individual who is not on the list.

44.3 The selection and assignment of verifiers and the procedure to be followed by verifiers will be arranged by the Lands Advisory Board, Canada and the First Nation.

44.4 Individuals appointed to act as mediators, arbitrators, verifiers or neutral evaluators must be unbiased and free from any conflict of interest relative to the matter in issue and have knowledge or experience to act in the appointed capacity.

45. NEUTRAL EVALUATION

45.1 Where a dispute is referred to neutral evaluation, the evaluator will where appropriate,

- (a) identify the issues in the dispute;
- (b) assess the strengths of each party's case;
- (c) structure a plan for the progress of the case;
- (d) encourage settlement of the dispute; and
- (e) provide the parties with a non-binding opinion or recommendation to resolve the dispute.

44.2 Les parties à un différend peuvent choisir, parmi ces listes, un médiateur, un arbitre et un conciliateur ou s'entendre sur la nomination d'une personne qui ne figure pas sur ces listes.

44.3 Le Conseil consultatif des terres, le Canada et la première nation choisiront les vérificateurs, définiront leurs attributions et fixeront la procédure que ces derniers doivent utiliser.

44.4 Les personnes nommées en qualité de médiateur, d'arbitre, de vérificateur ou de conciliateur doivent être impartiales et ne pas se trouver en situation de conflit d'intérêts par rapport aux questions en litige; elles doivent par ailleurs posséder la compétence ou l'expérience nécessaires pour agir en cette qualité.

45. CONCILIATION

45.1 Lorsque la situation l'exige, le conciliateur saisi d'un différend exerce les fonctions suivantes :

- a) il précise les questions sur lesquelles porte le différend;
- b) il évalue le bien-fondé des arguments des parties;
- c) il établit un plan afin de faire progresser la situation;
- d) il encourage le règlement du différend;
- e) il remet aux parties une opinion ou une recommandation non exécutoire visant à mettre fin au différend.

46. ARBITRATION

46.1 Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.

46.2 The procedure will follow the Commercial Arbitration Code, which is a schedule to the Commercial Arbitration Act.

46.3 If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.

46.4 The arbitrator will establish the procedures of the arbitration, subject to this clause.

47. RELATED ISSUES

47.1 The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.

47.2 Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if

(a) all parties to the process consent; and

(b) the person pays the costs of his or her participation, unless otherwise agreed by the other parties to the dispute.

47.3 The decision of a verifier and a

46. ARBITRAGE

46.1 Sauf entente contraire des Parties, l'arbitrage s'effectuera conformément au présent article.

46.2 La procédure qui sera suivie est celle du Code d'arbitrage commercial, figurant à l'annexe de la Loi sur l'arbitrage commercial.

46.3 Si ce Code ne contient pas de disposition procédurale appropriée, les parties au différend peuvent suivre les Règles d'arbitrage commercial établies à l'occasion par le British Columbia International Commercial Arbitration Centre.

46.4 L'arbitre est tenu de déterminer la procédure d'arbitrage à suivre, sous réserve du présent article.

47. QUESTIONS CONNEXES

47.1 Les parties à un différend assument les frais relatifs à sa résolution à parts égales.

47.2 Toute personne dont les intérêts seraient lésés par un différend porté devant l'un des mécanismes de règlement des différends peut participer au mécanisme de règlement si :

a) d'une part, toutes les parties au mécanisme y consentent;

b) d'autre part, cette personne assume les frais de sa participation, sauf entente contraire des autres parties au différend.

47.3 La décision du vérificateur et la

decision or award of an arbitrator will be final and binding on the participating parties.

47.4 No order shall be made, processed, entered or proceeding taken in any court, whether by way of injunction, mandamus, certiorari, prohibition or quo warranto to contest, review, impeach or limit the action of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement.

47.5 Despite clause 47.4, judicial review may be taken under the Federal Court Act within 30 days of a decision of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement in respect of such person exceeding his or her jurisdiction, refusing to exercise his or her jurisdiction or failing to observe a principal of natural justice.

PART X RATIFICATION AND ENACTMENTS BY THE PARTIES

48. RATIFICATION OF AGREEMENT

48.1 The Parties agree that they will seek to ratify this Agreement and implement it in the following manner:

- (a) each First Nation agrees to develop a land code and to seek community approval; and
- (b) following community approval by two First Nations, Canada agrees to recommend to Parliament the

décision ou sentence d'un arbitre sont définitives et lient les parties qui ont participé aux mécanismes de règlement.

47.4 Aucune ordonnance ne peut être rendue, exécutée ou inscrite, et aucune poursuite ne peut être initiée devant une cour par voie d'injonction, de mandamus, de certiorari, de prohibition ou de quo warranto pour contester, réviser, empêcher ou limiter une mesure prise par le vérificateur, l'arbitre ou le conciliateur nommé sous le régime du présent accord.

47.5 Malgré l'article 47.4, une demande de révision judiciaire peut, dans les 30 jours qui suivent la décision prise par toute personne agissant comme vérificateur, arbitre ou conciliateur sous le régime du présent accord, être présentée en vertu de la Loi sur les Cours fédérales au motif que cette personne a outrepassé sa compétence, refusé de l'exercer ou n'a pas respecté un principe de justice naturelle.

PARTIE X RATIFICATION PAR LES PARTIES ET MESURES LÉGISLATIVES

48. RATIFICATION DE L'ACCORD

48.1 Les Parties conviennent de ratifier le présent accord et de le mettre en oeuvre de la façon suivante :

- a) chaque première nation s'engage à élaborer un code foncier et à le soumettre à l'approbation de la communauté;
- b) une fois un code approuvé par deux premières nations, le Canada s'engage à recommander au Parlement l'adoption

enactment of legislation.

48.2 This Agreement will be considered to have been ratified by a First Nation when the First Nation approves a land code, and to have been ratified by Canada when the federal legislation comes into force.

49. ENACTMENTS BY THE PARTIES

49.1 Canada agrees that the federal legislation that it recommends to Parliament will be consistent with and will ratify this Agreement.

49.2 In the event of an inconsistency or conflict between the federal legislation and any other federal enactment, the federal legislation will prevail to the extent of the inconsistency or conflict.

49.3 In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the Indian Act, the land code will prevail to the extent of the inconsistency or conflict.

PART XI OTHER MATTERS

50. LIABILITY

50.1 The First Nation will not be liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to First Nation land that occurred before the First Nation's land code takes effect.

d'une loi de ratification.

48.2 Le présent accord sera réputé avoir été ratifié par une première nation lorsque celle-ci aura approuvé un code foncier, et il sera réputé avoir été ratifié par le Canada au moment de l'entrée en vigueur de la loi de ratification.

49. MESURES LÉGISLATIVES ADOPTÉES PAR LES PARTIES

49.1 Le Canada s'engage à ce que la loi de ratification qu'il présentera au Parlement soit conforme au présent accord et ait pour effet de le ratifier.

49.2 En cas d'incompatibilité ou de conflit entre la loi de ratification et une autre loi fédérale, la loi de ratification l'emporte dans la mesure de l'incompatibilité ou du conflit.

49.3 En cas d'incompatibilité ou de conflit entre le code foncier d'une première nation et des dispositions de ses textes législatifs ou de règlements administratifs pris par son conseil en vertu de l'article 81 de la Loi sur les Indiens, le code foncier l'emporte dans la mesure de l'incompatibilité ou du conflit.

PARTIE XI AUTRES QUESTIONS

50. RESPONSABILITÉ

50.1 La première nation n'est pas responsable des actes ou omissions du Canada ou d'une personne ou entité autorisée par le Canada à agir à l'égard des terres de première nation et qui surviendraient avant l'entrée en vigueur du

50.2 Canada will not be liable for acts or omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation's land code takes effect.

50.3 Canada will indemnify a First Nation for any loss arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect of First Nation land that occurred before the First Nation's land code takes effect.

50.4 The First Nation will indemnify Canada for any loss arising from an act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in respect of First Nation land that occurs after the land code takes effect.

50.5 No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, in good faith, during the course of and for the purposes of carrying out his or her functions under this Agreement.

51. FIRST NATION LANDS REGISTER

51.1 Canada will establish a First Nation

code foncier de la première nation.

50.2 Le Canada n'est pas responsable des actes ou omissions de la première nation ou d'une personne ou entité autorisée par celle-ci à agir à l'égard des terres de première nation et qui surviendraient après l'entrée en vigueur du code foncier de la première nation.

50.3 Le Canada s'engage à indemniser la première nation de toute perte découlant d'un acte ou d'une omission du Canada, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait avant l'entrée en vigueur du code foncier de la première nation.

50.4 La première nation s'engage à indemniser le Canada de toute perte découlant d'un acte ou d'une omission de la première nation, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait après l'entrée en vigueur du code foncier.

50.5 Aucune action ni autre procédure ne peut être intentée contre une personne agissant en qualité de membre du Conseil consultatif des terres, de médiateur, de vérificateur, de conciliateur ou d'arbitre pour avoir, de bonne foi, agi ou omis d'agir dans l'exercice de ses fonctions ou dans le but de les exercer aux termes du présent accord.

51. REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Le Canada est tenu d'établir un

Lands Register to record documents respecting First Nation land or interests or land rights in First Nation land. It will be administered by Canada as a subsystem of the existing Reserve Land Register.

51.2 A separate register will be maintained for each First Nation with a land code in effect.

51.3 The Governor in Council will be authorized in the federal legislation to make regulations respecting the First Nation Lands Register. These regulations will be developed by the Lands Advisory Board and the Minister.

52. STATUS OF DOCUMENTS

52.1 The Statutory Instruments Act, or any successor legislation, will not apply to a land code or to First Nation laws.

53. PROVINCIAL RELATIONS

53.1 Where Canada and a First Nation intend to enter into an agreement that is not referred to in this Agreement but is required to implement this Agreement and where it deals with matters that normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province to be a party to the negotiations and resulting agreement.

registre des terres de premières nations où seront consignés les documents relatifs aux terres de premières nations ou aux intérêts ou aux droits fonciers sur celles-ci. Ce registre sera administré par le Canada à titre de sous-système du registre actuel des terres de réserve.

51.2 Un registre distinct sera créé pour chaque première nation ayant un code foncier en vigueur.

51.3 La loi de ratification autorisera le gouverneur en conseil à prendre un règlement concernant le registre des terres de premières nations. Ce règlement sera élaboré conjointement par le Conseil consultatif des terres et le ministre.

52. STATUT DES DOCUMENTS

52.1 La Loi sur les textes réglementaires ou les lois qui pourraient la remplacer, ne s'appliqueront pas au code foncier, ni aux textes législatifs des premières nations.

53. RAPPORT AVEC LES PROVINCES

53.1 Si le Canada et une première nation entendent conclure une entente qui n'est pas mentionnée dans le présent accord mais qui est nécessaire à la mise en oeuvre du présent accord, et si cette entente traite des questions qui relèvent normalement de la compétence des provinces ou risque d'avoir des effets importants à l'extérieur des terres de première nation, le Canada et la première nation inviteront la province concernée à participer aux négociations de l'entente ainsi qu'à l'entente qui en résulte.

54. TIME LIMITS

54.1 The time limits in this Agreement for the doing of anything may be waived on consent.

55. OTHER REGIMES

55.1 Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.

55.2 Sub-clause 38.1 and clause 57 do not apply to a First Nation to which sub-clause 55.1 applies.

56. REVIEW PROCESS

56.1 The Lands Advisory Board will, on a continuing basis, consult with representatives of the Parties for the purpose of assessing the effectiveness of this Agreement and the federal legislation.

56.2 Within four years of the federal legislation coming into force, the Minister and the Lands Advisory Board or their representatives will jointly conduct a review of this Agreement. It will focus on the following issues, among others:

- (a) the functioning of land management under this Agreement;
- (b) the adequacy and appropriateness of the funding arrangements;

54. DÉLAIS

54.1 Les Parties peuvent, par consentement mutuel, renoncer aux délais prévus par le présent accord.

55. AUTRES RÉGIMES

55.1 Aucune disposition du présent accord n'empêche une première nation, en tout temps, d'adhérer à tout autre régime en matière de prise de décision et de contrôle par la communauté, à la condition que cette première nation soit admissible à adhérer à cet autre régime et y adhère, conformément à la procédure prévue par cet autre régime.

55.2 Le paragraphe 38.1 et l'article 57 ne s'appliquent pas à une première nation à laquelle le paragraphe 55.1 s'applique.

56. MÉCANISME D'EXAMEN

56.1 Le Conseil consultatif des terres est tenu de consulter régulièrement les représentants des Parties dans le but d'évaluer l'efficacité du présent accord et de la loi de ratification.

56.2 Dans les quatre ans de l'entrée en vigueur de la loi de ratification, le ministre et le Conseil consultatif des terres ou leurs représentants procéderont conjointement à un examen du présent accord. Cet examen portera notamment sur les points suivants :

- a) le fonctionnement de la gestion des terres aux termes du présent accord;
- b) le caractère adéquat et approprié des modalités de financement;

(c) the role of the Lands Advisory Board;

(d) whether there is a demand by other First Nations to use this Agreement;

(e) changes that may improve the functioning of First Nation land management;

(f) the dispute resolution processes; and

(g) such other issues as may be agreed to by the Parties.

c) le rôle du Conseil consultatif des terres;

d) l'identification d'autres premières nations désirant se prévaloir du présent accord;

e) les changements qui pourraient améliorer le fonctionnement de la gestion des terres de première nation;

f) les mécanismes de règlement des différends;

g) toute autre question convenue par les Parties.

56.3 Canada and the First Nations will make best efforts to complete this review within one year. Following completion of the review, the Minister will meet with representatives of the First Nations to discuss the results of the review.

56.3 Le Canada et les premières nations sont tenus de s'efforcer d'achever cet examen dans un délai d'un an. À la fin de l'examen, le ministre rencontrera les représentants des premières nations pour en analyser les résultats.

57. AMENDMENTS

57. MODIFICATIONS

57.1 Until September 1, 2003, this Agreement may be amended by agreement of the parties, provided that the amendments to Part VIII may be made with the consent of Canada and 2/3 of the original First Nation parties to this Agreement.

57.1 Le présent accord peut être modifié jusqu'au 1^{er} septembre 2003 avec le consentement des parties, pourvu que les modifications à la Partie VIII soient apportées avec le consentement du Canada et des deux tiers des premières nations qui étaient Parties initiales au présent accord.

57.2 No amendment affecting the powers, authorities, obligations, operations or operational funding of a First Nation that has ratified this agreement is effective with respect to that First Nation without the consent of that First Nation.

57.2 Aucune modification ayant une incidence sur les pouvoirs, les autorités, les obligations, les opérations ou les fonds de fonctionnement d'une première nation qui a ratifié le présent accord ne peut entrer en vigueur à l'égard de cette dernière sans son consentement.

57.3 After September 1, 2003, this Agreement, may, subject to 57.2, be amended with the consent of Canada and 2/3 of the First Nations which have ratified the Agreement, before, on or after that day.

58. RECITALS

58.1 The recitals form part of this Agreement.

59. COMING INTO FORCE

59.1 This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.

59.2 Despite clause 59.1, such provisions of this Agreement as are necessary to allow a First Nation to ratify this Agreement before Canada ratifies this Agreement will have effect as of the day Canada and that First Nation both sign this Agreement.

57.3 Sous réserve du paragraphe 57.2, après le 1er septembre 2003, le présent accord peut être modifié avec le consentement du Canada et des deux tiers des premières nations qui l'ont ratifié que ce soit à cette date, ou avant ou après cette date.

58. PRÉAMBULE

58.1 Les dispositions figurant au préambule font partie du présent accord.

59. ENTRÉE EN VIGUEUR

59.1 Le présent accord entrera en vigueur pour ce qui est du Canada et d'une première nation au moment où le Canada et cette première nation auront tous deux ratifié le présent accord conformément à la Partie X.

59.2 Malgré le paragraphe 59.1, les dispositions du présent accord nécessaires à sa ratification par une première nation avant que le Canada ne l'ait ratifié entrent en vigueur le jour où le Canada et cette première nation auront tous deux signé le présent accord.

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

PRINCIPLES of the Framework Agreement

1. **Purpose:** To enable First Nations to resume and exercise control over their lands and resources for the use and benefit of their members without Government interference by replacing the land provisions of the Indian Act with the First Nation community's own laws through its own Land Code.
2. **Approach:** First Nations driven; not driven by Government or any other outside party.
3. **Application:** Applies to existing reserve lands including natural resources except for oil and gas, migratory birds, fish and atomic energy.
4. **Process:** A **Government-to-Government Agreement** on the *principles of Reserve land management*, Principles developed by the Chiefs. *Unlike* "legislation", which can be changed by the Crown without First Nation consent, changes to the Framework Agreement require the *consent of both* First Nation signatories and the Crown.

Ratification of the Framework Agreement *occurred* when the Crown passed Bill C-49 and occurs when the First Nation (*on and off-Reserve voters*) vote to accept the Land Code and the Transfer Agreement. Ratification of a First Nation Land Code and Transfer Agreement is a completely transparent process and must ensure the community makes an informed decision that is validated by an independent verifier.

5. **Optional** to a First Nation which passes a BCR to *permit its community to consider* developing and voting on their Land Code, thereby *resuming* their land management. This *protects* other First Nations who do not want or need such an opportunity.

6. **Unique** to each First Nation. Each First Nation develops their **own** Land Code that reflects their own laws, priorities, traditions and ways of doing things.
7. **Paced:** each First Nation will develop their Land Code and ways to ratify their Land Code, at their *own pace*.
8. **Involvement:** Community-based; at a minimum, all voting members, both on-Reserve and off-Reserve, are involved in Land Code *development* and *ratification*; nothing is finalized without community ratification.
9. **Transparency** of lands' decisions to the membership through regular meetings and reporting including the public posting of certain documents.
10. **Accountability** to the membership, *replacing* accountability to the Minister. The Land Code is a public document available to all members. Books of account and records are available for band member scrutiny. The financial statements must be audited by an independent auditor.
11. **Sectoral:** The 102 other sections of the Indian Act are not affected.
12. **Legal status:** A First Nation is unconditionally recognized with all the rights, powers and privileges of an owner of its lands. It has the legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.
13. **Special relationship to the Crown** is retained and **title** to First Nation land is not affected by the Framework Agreement or the legislation.
14. **Constitutional protections** are retained. First Nation land continues to be land reserved for Indians within the meaning of Section 91 (24) of the Constitution Act, 1867.

15. **Treaty and Aboriginal Rights** are not affected – the Agreement is not a Treaty.

16. **No loss of Reserve land**
 - Surrender for sale of reserve land is excluded
 - Expropriation of land by the province is excluded
 - Expropriation of land by the Federal Crown is *restricted* to a national public purpose, for as short a time as possible, with a reversion to Reserve status after the use is over. In *addition*, other land of equal size and value is given Reserve status. This would result in a larger Reserve.

17. **Increase in Reserve land** may occur due to a *land exchange* for a piece of Reserve land; the land exchanged will be of equal or greater size and value in addition to other considerations.

18. **Provision to exclude** certain lands from application of the Land Code, if those lands are in environmentally unsafe condition, in dispute, uninhabitable or unusable as a result of natural disaster, or the First Nation and the Minister agree that exclusion is justifiable.

19. **First Nation not liable** for any previous acts or omissions of Canada (or any person or entity authorized by Canada), that occurred before the First Nation's land code takes effect.

20. **Protection of a third party interest** on Reserve, until that interest has expired (e.g. valid leases continue).

21. **Protection of an individual Band member's interest** on Reserve (e.g. valid CP's and other legal interests continue).

22. **A separate First Nation lands Register** to be set up and maintained for each First Nation with a Land Code in effect and **National registration** of land interests as a sub-system of the existing Reserve Land Register by Canada.
23. The **Power to Enforce** First Nation laws including the appointment of a First Nation's own Justice of the Peace.
24. **Local dispute resolution** of land issues through out-of-court processes including mediation, arbitration and neutral evaluation. This could save considerable court costs.
25. **Conflict of interest** provisions are mandatory, ensuring fair lands' practices.

26. Federal Funding

Developmental Funding Contributions will be provided to:
specific activity identified in the Developmental Funding Agreement including to develop and ratify its land code and Finalize an Individual Agreement

Operational Funding is provided to:
"Make, administer, enforce law and to manage reserve lands resources and environment.

Governance Funding will be provided to sustain a *national Lands Advisory Board* to assist in developing model land codes, laws and land management systems; and to establish a resource center, curricula and training programs for managers and others who perform functions pursuant to a land code; etc.

Technical Funding will be provided to support a *technical team* to provide legal, strategic and tactical advice.

27.

PRINCIPLES NEGOTIATED IN THE FIRST NATION/CANADA FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

1. **Purpose:** To enable First Nations to resume and exercise control over their lands and resources for the use and benefit of their members without Government interference by replacing the land provisions of the Indian Act with the First Nation community's own laws through its own Land Code.
2. **Approach:** First Nations driven; not driven by Government or any other outside party.
3. **Application:** Applies to existing reserve lands including natural resources except for oil and gas, migratory birds, fish and atomic energy.
4. **Process:** *A Government to Government Agreement on the principles of Reserve land management*, Principles developed by the Chiefs. *Unlike "legislation", which can be changed by the Crown without First Nation consent, changes to the Framework Agreement require the consent of both First Nation signatories and the Crown.*

Ratification of the Framework Agreement occurred when the Crown passed Bill C-49 and occurs when the First Nation (on and off-Reserve voters) vote to accept the Land Code and the Transfer Agreement. Ratification of a First Nation Land Code and Transfer Agreement is a completely transparent process and must ensure the community makes an informed decision that is validated by an independent verifier.

5. **Optional** to a First Nation which passes a BCR to *permit its community to consider* developing and voting on their Land Code, thereby *resuming* their land management. This *protects* other First Nations who do not want or need such an opportunity.

6. **Unique** to each First Nation. Each First Nation develops their **own** Land Code that reflects their own laws, priorities, traditions and ways of doing things.
7. **Paced:** each First Nation will develop their Land Code and ways to ratify their Land Code, at their *own pace*.
8. **Involvement:** Community-based; at a minimum, all voting members, both on-Reserve and off-Reserve, are involved in Land Code *development* and *ratification*; nothing is finalized without community ratification.
9. **Transparency** of lands' decisions to the membership through regular meetings and reporting including the public posting of certain documents.
10. **Accountability** to the membership, *replacing* accountability to the Minister. The Land Code is a public document available to all members. Books of account and records are available for band member scrutiny. The financial statements must be audited by an independent auditor.
11. **Sectoral:** The 102 other sections of the Indian Act are not affected.
12. **Legal status:** A First Nation is unconditionally recognized with all the rights, powers and privileges of an owner of its lands. It has the legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.
13. **Special relationship to the Crown** is retained and **title** to First Nation land is not affected by the Framework Agreement or the legislation.
14. **Constitutional protections** are retained. First Nation land continues to be land reserved for Indians within the meaning of Section 91 (24) of the Constitution Act, 1867.

15. **Treaty and Aboriginal Rights** are not affected – the Agreement is not a Treaty.

16. **No loss of Reserve land**
 - Surrender for sale of reserve land is excluded
 - Expropriation of land by the province is excluded
 - Expropriation of land by the Federal Crown is *restricted* to a national public purpose, for as short a time as possible, with a reversion to Reserve status after the use is over. In *addition*, other land of equal size and value is given Reserve status. This would result in a larger Reserve.

17. **Increase in Reserve land** may occur due to a *land exchange* for a piece of Reserve land; the land exchanged will be of equal or greater size and value in addition to other considerations.

18. **Provision to exclude** certain lands from application of the Land Code, if those lands are in environmentally unsafe condition, in dispute, uninhabitable or unusable as a result of natural disaster, or the First Nation and the Minister agree that exclusion is justifiable.

19. **First Nation not liable** for any previous acts or omissions of Canada (or any person or entity authorized by Canada), that occurred before the First Nation's land code takes effect.

20. **Protection of a third party interest** on Reserve, until that interest has expired (e.g. valid leases continue).

21. **Protection of an individual Band member's interest** on Reserve (e.g. valid CP's and other legal interests continue).

22. **A separate First Nation lands Register** to be set up and maintained for each First Nation with a Land Code in effect and **National registration** of land interests as a sub-system of the existing Reserve Land Register by Canada.
23. The **Power to Enforce** First Nation laws including the appointment of a First Nation's own Justice of the Peace.
24. **Local dispute resolution** of land issues through out-of-court processes including mediation, arbitration and neutral evaluation. This could save considerable court costs.
25. **Marital property disposition** on the *breakdown* of a marriage must be provided for in the Land Code.
26. **Conflict of interest** provisions are mandatory, ensuring fair lands' practices.

27. **Federal Funding**

Developmental Funding will be provided to:

- Develop the Land Code through a community process;
- Develop an Agreement to transfer lands interests from the Crown to the First Nation;
- Develop a process to ratify the Land Code;
- Develop an environmental agreement; and
- Communicate with the membership.

Operational Funding is provided to:

- Develop the *knowledge and skills* of the lands administrators;
- Develop *lands management* systems (e.g., on-Reserve registry);
- Develop a *land use plan* to be approved by the community; and
- *Administer lands transactions*

Governance Funding will be provided to sustain a *national Lands Advisory Board* to assist in developing model land codes, laws and land management systems; and to establish a resource center, curricula and training programs for managers and others who perform functions pursuant to a land code; etc.

Technical Funding will be provided to support a contract *technical team* to provide legal, strategic and tactical advice.

28. ***Environmental Agreement*** to ensure First Nations lands are environmentally safe will be funded by INAC and negotiated between Canada and the First Nation. Funding will also be provided to implement remediation of issues and an environmental management regime to protect lands in future.

29. ***Transfer Agreement:*** The First Nation and Canada negotiate a Transfer Agreement that identifies and transfers the First Nation lands out of Canada's control to the First Nation and that provides for operational funding to the First Nation for land management.

INAPPLICABLE PROVISIONS OF THE *INDIAN ACT*

“Once a land code takes effect, the First Nation, its members and its First Nation land will not be subject to the following:” (Framework Agreement on First Nation Land Management, clause 21.1)

* * *

Indian Act CHAPTER I-5

Reserves to be held for use and benefit of Indians

18. (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Use of reserves for schools, etc.

(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for any other purpose for the general welfare of the band, and may take any lands in a reserve required for those purposes, but where an individual Indian, immediately prior to the taking, was entitled to the possession of those lands, compensation for that use shall be paid to the Indian, in such amount as may be agreed between the Indian and the Minister, or, failing agreement, as may be determined in such manner as the Minister may direct.

Children of band members

18.1 A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom the member has custody.

Surveys and subdivisions

19. The Minister may

- (a)** authorize surveys of reserves and the preparation of plans and reports with respect thereto;
- (b)** divide the whole or any portion of a reserve into lots or other subdivisions; and
- (c)** determine the location and direct the construction of roads in a reserve.

Possession of lands in a reserve

20. (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

Certificate of Possession

- (2)** The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

Location tickets issued under previous legislation

- (3)** For the purposes of this Act, any person who, on September 4, 1951, held a valid and subsisting Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

Temporary possession

- (4)** Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

Certificate of Occupation

- (5)** Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

Extension and approval

- (6)** The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force
 - (a)** approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or
 - (b)** refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band.

Improvements on lands

- 22.** Where an Indian who is in possession of lands at the time they are included in a reserve made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of those lands at the time they are included.

Compensation for improvements

- 23.** An Indian who is lawfully removed from lands in a reserve on which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.

Transfer of possession

- 24.** An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.

Indian ceasing to reside on reserve

- 25. (1)** An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

When right of possession reverts

- (2)** Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Correction of Certificate or Location Tickets

- 26.** Whenever a Certificate of Possession or Occupation or a Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof.

Cancellation of Certificates or Location Tickets

- 27.** The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error.

Grants, etc., of reserve lands void

- 28. (1)** Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

Minister may issue permits

- (2)** The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.



Penalty for trespass

- 30.** A person who trespasses on a reserve is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month or to both.

Information by Attorney General

- 31. (1)** Without prejudice to section 30, where an Indian or a band alleges that persons other than Indians are or have been
- (a)** unlawfully in occupation or possession of,
 - (b)** claiming adversely the right to occupation or possession of, or
 - (c)** trespassing on a reserve or part of a reserve, the Attorney General of Canada may exhibit an information in the Federal Court claiming, on behalf of the Indian or band, the relief or remedy sought.

Information deemed action by Crown

- (2)** An information exhibited under subsection (1) shall, for all purposes of the *Federal Court Act*, be deemed to be a proceeding by the Crown within the meaning of that Act.

Existing remedies preserved

- (3)** Nothing in this section shall be construed to impair, abridge or otherwise affect any right or remedy that, but for this section, would be available to Her Majesty or to an Indian or a band.

Sale or barter of produce

- 32. (1)** A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan or Alberta, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.

Exemption

- (2)** The Minister may at any time by order exempt a band and the members thereof or any member thereof from the operation of this section, and may revoke any such order.

Offence

- 33.** Every person who enters into a transaction that is void under subsection 32(1) is guilty of an offence.

Roads, bridges, etc.

- 34. (1)** A band shall ensure that the roads, bridges, ditches and fences within the reserve occupied by that band are maintained in accordance with instructions issued from time to time by the superintendent.

Idem

- (2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent issued under subsection (1), the Minister may cause the instructions to be carried out at the expense of the band or any member thereof and may recover the cost thereof from any amounts that are held by Her Majesty and are payable to the band or member.

Taking of lands by local authorities

- 35. (1)** Where by an Act of Parliament or a provincial legislature Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

Procedure

- (2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection (1) are governed by the statute by which the powers are conferred.

Grant in lieu of compulsory taking

- (3) Whenever the Governor in Council has consented to the exercise by a province, a municipal or local authority or a corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of the lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

Payment

- (4) Any amount that is agreed on or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection (1).



Sales

- 37. (1)** Lands in a reserve shall not be sold nor title to them conveyed until they have been absolutely surrendered to Her Majesty pursuant to subsection 38(1) by the band for whose use and benefit in common the reserve was set apart.

Other transactions

- (2) Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until they have been surrendered to Her Majesty pursuant to subsection 38(2) by the band for whose use and benefit in common the reserve was set apart.

Surrender to Her Majesty

38. (1) A band may absolutely surrender to Her Majesty, conditionally or unconditionally, all of the rights and interests of the band and its members in all or part of a reserve.

Designation

(2) A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted.

How lands surrendered or designated

39. (1) An absolute surrender or a designation is void unless

- (a)** it is made to Her Majesty;
- (b)** it is assented to by a majority of the electors of the band
 - (i)** at a general meeting of the band called by the council of the band,
 - (ii)** at a special meeting of the band called by the Minister for the purpose of considering a proposed absolute surrender or designation, or
 - (iii)** by a referendum as provided in the regulations; and
- (c)** it is accepted by the Governor in Council.

Minister may call meeting or referendum

(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1), the Minister may, if the proposed absolute surrender or designation was assented to by a majority of the electors who did vote, call another meeting by giving thirty days notice thereof or another referendum as provided in the regulations.

Assent of band

(3) Where a meeting is called pursuant to subsection (2) and the proposed absolute surrender or designation is assented to at the meeting or referendum by a majority of the electors voting, the surrender or designation shall be deemed, for the purposes of this section, to have been assented to by a majority of the electors of the band.

Secret ballot

(4) The Minister may, at the request of the council of the band or whenever he considers it advisable, order that a vote at any meeting under this section shall be by secret ballot.

Officials required

(5) Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister.

Certification

40. A proposed absolute surrender or designation that is assented to by the band in accordance with section 39 shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band, and then submitted to the Governor in Council for acceptance or refusal.

Effect of surrenders and designations

- 41.** An absolute surrender or a designation shall be deemed to confer all rights that are necessary to enable Her Majesty to carry out the terms of the surrender or designation.



Devisee's entitlement

- 49.** A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of those lands until the possession is approved by the Minister.

Approval required

- 50. (4)** The purchaser of a right to possession or occupation of land under subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

Transactions re surrendered and designated lands

- 53. (1)** The Minister or a person appointed by the Minister for the purpose may, in accordance with this Act and the terms of the absolute surrender or designation, as the case may be,
- (a)** manage or sell absolutely surrendered lands; or
 - (b)** manage, lease or carry out any other transaction affecting designated lands.

Grant where original purchaser dead

- (2)** Where the original purchaser of surrendered lands is dead and the heir, assignee or devisee of the original purchaser applies for a grant of the lands, the Minister may, on receipt of proof in such manner as he directs and requires in support of any claim for the grant and on being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly.

Departmental employees

- (3)** No person who is appointed pursuant to subsection (1) or who is an officer or a servant of Her Majesty employed in the Department may, except with the approval of the Governor in Council, acquire directly or indirectly any interest in absolutely surrendered or designated lands.

Assignments

- 54.** Where absolutely surrendered lands are agreed to be sold and letters patent relating thereto have not issued, or where designated lands are leased or an interest in them granted, the purchaser, lessee or other person who has an interest in the absolutely surrendered or designated lands may, with the approval of the Minister, assign all or part of that interest to any other person.

Surrendered and Designated Lands Register

55. (1) There shall be maintained in the Department a register, to be known as the Surrendered and Designated Lands Register, in which shall be recorded particulars in connection with any transaction affecting absolutely surrendered or designated lands.

Conditional assignment

(2) A conditional assignment shall not be registered.

Proof of execution

(3) Registration of an assignment may be refused until proof of its execution has been furnished.

Effect of registration

(4) An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently registered.

Certificate of registration

56. Where an assignment is registered, there shall be endorsed on the original copy thereof a certificate of registration signed by the Minister or by an officer of the Department authorized by the Minister to sign such certificates.

Regulations

57. The Governor in Council may make regulations

- (a)** authorizing the Minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands;
- (b)** imposing terms, conditions and restrictions with respect to the exercise of rights conferred by licences granted under paragraph (a);
- (c)** providing for the disposition of surrendered mines and minerals underlying lands in a reserve;
- (d)** prescribing the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of any regulation made under this section; and
- (e)** providing for the seizure and forfeiture of any timber or minerals taken in contravention of any regulation made under this section.

Uncultivated or unused lands

58. (1) Where land in a reserve is uncultivated or unused, the Minister may, with the consent of the council of the band,

- (a)** improve or cultivate that land and employ persons therefor, and authorize and direct the expenditure of such amount of the capital funds of the band as he considers necessary for that improvement or cultivation including the purchase of such stock, machinery or material or for the employment of such labour as the Minister considers necessary;

- (b) where the land is in the lawful possession of any individual, grant a lease of that land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession of the land; and
- (c) where the land is not in the lawful possession of any individual, grant for the benefit of the band a lease of that land for agricultural or grazing purposes.

Distribution of proceeds

- (2) Out of the proceeds derived from the improvement or cultivation of lands pursuant to paragraph (1)(b), a reasonable rent shall be paid to the individual in lawful possession of the lands or any part thereof and the remainder of the proceeds shall be placed to the credit of the band, but if improvements are made on the lands occupied by an individual, the Minister may deduct the value of the improvements from the rent payable to the individual under this subsection.

Lease at request of occupant

- (3) The Minister may lease for the benefit of any Indian, on application of that Indian for that purpose, the land of which the Indian is lawfully in possession without the land being designated.

Disposition of grass, timber, non-metallic substances, etc.

- (4) Notwithstanding anything in this Act, the Minister may, without an absolute surrender or a designation
 - (a) dispose of wild grass or dead or fallen timber; and
 - (b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, or, where that consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, renewable only with the consent of the council of the band.

Proceeds

- (5) The proceeds of the transactions referred to in subsection (4) shall be credited to band funds or shall be divided between the band and the individual Indians in lawful possession of the lands in such shares as the Minister may determine.

Adjustment of contracts

- 59.** The Minister may, with the consent of the council of a band,
- (a) reduce or adjust the amount payable to Her Majesty in respect of a transaction affecting absolutely surrendered lands, designated lands or other lands in a reserve or the rate of interest payable thereon; and
 - (b) reduce or adjust the amount payable to the band by an Indian in respect of a loan made to the Indian from band funds.

Control over lands

60. (1) The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

Withdrawal

(2) The Governor in Council may at any time withdraw from a band a right conferred on the band under subsection (1).

.....

Expenditure of revenue moneys with consent of band

66. (1) With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in the opinion of the Minister will promote the general progress and welfare of the band or any member of the band.

Minister may direct expenditure

(2) The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band, to provide for the burial of deceased indigent members of the band and to provide for the payment of contributions under the Employment Insurance Act on behalf of employed persons who are paid in respect of their employment out of moneys of the band.

Idem

(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys.

Expenditure of revenue moneys with authority of Minister

(3) The Minister may authorize the expenditure of revenue moneys of the band for all or any of the following purposes, namely,

- (a)** for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;
- (b)** to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;
- (c)** to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;
- (d)** to prevent overcrowding of premises on reserves used as dwellings;
- (e)** to provide for sanitary conditions in private premises on reserves as well as in public places on reserves; and
- (f)** for the construction and maintenance of boundary fences.

Management of revenue moneys by band

69. (1) The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.

Regulations

(2) The Governor in Council may make regulations to give effect to subsection (1) and may declare therein the extent to which this Act and the Financial Administration Act shall not apply to a band to which an order made under subsection (1) applies.

Minister may operate farms

71. (1) The Minister may operate farms on reserves and may employ such persons as he considers necessary to instruct Indians in farming and may purchase and distribute without charge pure seed to Indian farmers.

Application of profits

(2) The Minister may apply any profits that result from the operation of farms pursuant to subsection (1) on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply those profits in any way that he considers to be desirable to promote the progress and development of the Indians.

.....

Removal of material from reserve

93. A person who, without the written permission of the Minister or his duly authorized representative,

(a) removes or permits anyone to remove from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or

(b) has in his possession anything removed from a reserve contrary to this section, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both.

REGULATIONS UNDER THE *INDIAN ACT*

Clause 21.1(g) of the Framework Agreement on First Nation Land Management provides that the First Nation, its members and its First Nation lands will not be subject to regulations made under section 57 of the *Indian Act*.

Section 57 is reproduced below. Regulations under section 57 include:

- The Indian Timber Regulations
- The Indian Timber Harvesting Regulations
- The Indian Mining Regulations

Regulations

57. The Governor in Council may make regulations

- (a) authorizing the Minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands;
- (b) imposing terms, conditions and restrictions with respect to the exercise of rights conferred by licences granted under paragraph (a);
- (c) providing for the disposition of surrendered mines and minerals underlying lands in a reserve;
- (d) prescribing the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of any regulation made under this section; and
- (e) providing for the seizure and forfeiture of any timber or minerals taken in contravention of any regulation made under this section.

Clause 21.1(f) of the Framework Agreement on First Nation Land Management provides that the First Nation, its members and its First Nation lands will not be subject to regulations made under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with the Framework Agreement or the land code or laws of the First Nation.

Sections 42 and 73 are reproduced below. Regulations enacted under these sections include:

- The Indian Estate Regulations
- The Indian Reserve Waste Disposal Regulations

Powers of Minister with respect to property of deceased Indians

42. (1) Subject to this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister and shall be exercised subject to and in accordance with regulations of the Governor in Council.

Regulations

(2) The Governor in Council may make regulations providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.

Application of regulations

(3) Regulations made under subsection (2) may be made applicable to estates of Indians who died before, on or after September 4, 1951.

Regulations

73. (1) The Governor in Council may make regulations

- (a)** for the protection and preservation of fur-bearing animals, fish and other game on reserves;
- (b)** for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;
- (c)** for the control of the speed, operation and parking of vehicles on roads within reserves;
- (d)** for the taxation, control and destruction of dogs and for the protection of sheep on reserves;
- (e)** for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;
- (f)** to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;
- (g)** to provide medical treatment and health services for Indians;
- (h)** to provide compulsory hospitalization and treatment for infectious diseases among Indians;
- (i)** to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;
- (j)** to prevent overcrowding of premises on reserves used as dwellings;
- (k)** to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;
- (l)** for the construction and maintenance of boundary fences; and
- (m)** for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.

Punishment

- (2)** The Governor in Council may prescribe the punishment, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of a regulation made under subsection (1).

Orders and regulations

- (3)** The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act.

(Insert name of FN) INDIVIDUAL AGREEMENT SUMMARY

(Insert name of FN) is one of a number of First Nations (FN) in Canada who is party to the *Framework Agreement on First Nation Land Management (Framework Agreement)*. The federal government is also a party to the agreement and ratified it through the *First Nation Lands Management Act* on June 17, 1999.

The *Framework Agreement* and legislation enable these FNs to take control over the management and administration of their reserve lands from Aboriginal Affairs and Northern Development Canada (AANDC). In order to do this each FN must enter into an Individual Agreement with AANDC. This Individual Agreement sets out the specifics of the transfer of management of reserve lands from Canada to the **(Insert name of FN)**.

The Individual Agreement for the **(Insert name of FN)** is summarized as follows:

Section 1 – Interpretation

This section defines the terms that are used in the Individual Agreement, including identifying the reserve lands that will be transferred.

Description of (Insert name of FN) Land

This section identifies the lands that are subject to this Individual Agreement:

(Insert Legal Land Descriptions here as recorded in the approved Legal Land Description Report)

Section 2 – Information Provided by Canada

This section confirms that Canada has provided the **(Insert name of FN)** with all of the information in its possession regarding dispositions of reserve lands, environmental issues on reserve lands and any similar information. Land interests and dispositions are set out in “Annex C”.

The information collected during the Phase I Environmental Site Assessment (ESA) that was conducted in **(insert date of Phase I ESA work)** is summarized in “Annex D”. The environmental issues were identified in this report and an action plan for the Phase II Environmental Site Assessment is also included.

(Insert the potential areas of environmental concerns as identified in the Phase I ESA report)

This section also includes any other information in Canada's possession on monies payable, including information on any arrear of rent as the date of transfer as set out in "Annex E".

Section 3 – Transfer of Land Management

This section provides that Canada will transfer the management and control of reserve lands to the **(Insert name of FN)** on the effective date of the Individual Agreement. **(Insert name of FN)** will then begin managing and controlling its reserve lands and natural resources under its Land Code.

Section 4 – Transfer of Rights

This section transfers all of Canada's rights, obligations, powers and authorities in or under all previous interests or licenses affecting reserve lands to the **(Insert name of FN)**.

Section 5 – Operational Funding

This section obligates Canada to provide the **(Insert name of FN)** with funding and resources for managing reserve lands. The amount of funding is set out in "Annex A". The amount of FN operational funding is based upon a variety of factors as outlined in the Memorandum of Understanding on Funding (October 19, 2011) that would give **(Insert name of FN)** **(Insert the operational funding amount)** for the first fiscal year.

Section 6 – Transfer of Revenues

This section obligates Canada to transfer to the **(Insert name of FN)** any monies that it holds in trust for the use and benefit of the **(Insert name of FN)** and any revenues it receives from reserve lands. Canada will transfer to the **(Insert name of FN)** the amount of **(Insert the amount to be transferred)** that is currently held in the **(Insert name of FN)** Revenue Account. The procedures for the transfer of funds are set out in "Annex B".

Section 7 – Notice to Other Persons

This section requires Canada to notify any non-members who hold an interest in reserve land that management of the reserve lands will be transferred to the **(Insert name of FN)** and that the **(Insert name of FN)** will collect the revenues from those interests in the future. This notice must be given within thirty days of the ratification of the Land Code.

Section 8 – Interim Environmental Assessment Process

This section provides that until the **(Insert name of FN)** establishes its own Environmental Assessment process, the *Canadian Environmental Assessment Act* will

apply. The procedure for Environmental Assessments during this period is set out in “Annex F”.

Sections 9 and 10

These are standard formalities regarding this amendment of the Individual Agreement, giving formal notice and documentation.

Section 11 – Dispute Resolution

This section provides that the dispute resolution provisions of the *Framework Agreement* apply to any disputes between Canada and the **(Insert name of FN)** regarding the Individual Agreement.

Section 12 – Date of Coming into Force

This section provides that the Individual Agreement comes into force at the same time as the **(Insert name of FN)** Land Code.

ANNOTATED VERSION
IMPORTANT

DO NOT SEND OUT A DRAFT AGREEMENT WITH ANY FOOTNOTES OR ANNOTATIONS OR COMMENTS IN IT.

EXCEPT WHERE INDICATED IN THE FOOTNOTES, DO NOT CHANGE OR DELETE ANY WORDING OF ANY CLAUSES WITHOUT PRIOR CONSULTATION WITH JUSTICE CANADA.

INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN

_____ **FIRST NATION**

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

_____, 20__

REVISED MAY 7, 2012– FOR USE IN PROVINCES OTHER THAN QUEBEC

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REVISED MAY 7, 2012 – FOR USE IN PROVINCES OTHER THAN QUEBEC

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THIS AGREEMENT made in duplicate this ____ day of _____, 20__.

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

_____ **FIRST NATION**, as represented by their Chief and Council (hereinafter called the “_____ First Nation@ or the “First Nation”)

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (hereinafter called “Canada”) as represented by the Minister of Indian Affairs and Northern Development (hereinafter called “the Minister”)

(@the Parties@)

WHEREAS the Framework Agreement on First Nation Land Management was signed by Canada and fourteen first nations in 1996 (the “Framework Agreement”) and was ratified and brought into effect by the *First Nations Land Management Act*, S.C. 1999, c. 24 (the “Act”);

AND WHEREAS the First Nation has been added as a signatory to the Framework Agreement by an *adhesion* signed by the First Nation and Canada on _____;¹

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of _____ First Nation Land in accordance with the Framework Agreement and the Act;

AND WHEREAS clause 6.1 of the Framework Agreement and subsection 6(3) of the Act require the First Nation to enter into an individual agreement with the Minister for the purpose of providing for the specifics of the transfer of administration;

AND WHEREAS subsection 6(3) of the Act further requires that the individual agreement provide for the date and other terms of the transfer to the First Nation of Canada’s rights and obligations as grantor of interests and licenses in or in relation

1. This whereas clause should be removed if the First Nation is one of the original fourteen First Nations.

to the land, the environmental assessment process that will apply to projects until the enactment of applicable First Nation laws, and any other relevant matter;

AND WHEREAS clause 6.1 of the Framework Agreement further requires that the individual agreement settle the actual level of operational funding to be provided to the First Nation;

NOW THEREFORE, in consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree as follows:

1. INTERPRETATION

1.1 In this Agreement,

“Act” means the *First Nations Land Management Act*, S.C. 1999, c.24, as amended;

“this Agreement” means this Individual Agreement on First Nation Land Management, including the Annexes attached hereto, and any documents incorporated by reference, all as amended from time to time;

“_____ First Nation Land” means the land to which the Land Code will apply and more specifically means the Reserves known as _____ and _____ as described in the Legal Description Report(s) referred to in Annex “G” and includes all the interests in and resources of the land that are within the legislative authority of Parliament, but does not include the Excluded Land;²

“Excluded Land” means a portion of a reserve excluded from application of the Land Code pursuant to section 7 of the Act, the description of which is set out in Legal Description Report(s) referred to in Annex “G”;³

“Fiscal Year” means Canada’s fiscal year as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended;

“Framework Agreement” has the same meaning as in the Act;

“Funding Arrangement” means an agreement between Canada and the _____ First Nation, or between Canada and a Tribal Council of

2. The reference to “Excluded Land” should only be used if the First Nations requests that land be excluded and if the Minister agrees to the request.

3. Do not include this definition if there is no Excluded Land.

which the First Nation is a member, for the purpose of providing funding, during the Fiscal Year(s) identified in that agreement, for the programs and services referred to in that agreement;⁴

“*Indian Act*” means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

“*Land Code*” means the _____ First Nation Land Code, developed in accordance with clause 5 of the Framework Agreement and section 6 of the Act;

“Minister” means the Minister of Indian Affairs and Northern Development and his or her duly authorized representatives;

“Operational Funding” means the resources to be provided by Canada to the _____ First Nation pursuant to clause 30.1 of the Framework Agreement to manage First Nation lands and make, administer and enforce its laws under a land code, and includes financial resources, as described in clause 27 of the Framework Agreement, to establish and maintain environmental assessment and environmental protection regimes;

“Operational Funding Formula” means the method approved by Canada for allocating to First Nations such Operational Funding as may have been appropriated by Parliament for that purpose.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Framework Agreement, the Act or the *Indian Act* have the same meanings when used in this Agreement.
- 1.3 This Agreement is to be interpreted in a manner that is consistent with the Framework Agreement and the Act.
- 1.4 In the event of any inconsistency or conflict between the wording in any Article set out in the main body of this Agreement and the wording in any Annex attached hereto, the wording set out in the Article shall prevail.

2. INFORMATION PROVIDED BY CANADA

- 2.1 In accordance with clause 6.3 of the Framework Agreement, the Minister has provided the First Nation with the following information:
 - (a) a list, attached as Annex “C”, and copies, or access to copies, of all the interests and licences granted by Canada in or in relation to the

4. The definition of “Funding Agreement” may need to be amended to adapt it to regional circumstances and/or changes in government funding policies.

_____ First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;

- (b) a list, attached as Annex A D @, and copies of all existing information in Canada=s possession, respecting any actual or potential environmental problems with the _____ First Nation Land; and
- (c) a list, attached as Annex A E @, and copies of any other information in Canada=s possession that materially affects the interests and licences mentioned in clause 2.1(a).

2.2 The First Nation hereby acknowledges that it has received or been provided access to all the documents referred to in clause 2.1.

3. TRANSFER OF LAND ADMINISTRATION

3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the _____ First Nation Land in accordance with section 18 of the Act and clause 12 of the Framework Agreement.

3.2 As provided in subsection 16(3) of the Act, Canada hereby transfers to the First Nation all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to _____ First Nation Land that exist on the coming into force of the Land Code.

3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement, the Framework Agreement and the Act, the following:

- (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a license in or in relation to _____ First Nation Land; and
- (b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada=s responsibility.

3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to section 39 of the Act, which provides for the continuation of the application of the *Indian Oil and Gas Act*.

4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION

- 4.1 The First Nation hereby accepts the transfer of land administration described in Article 3 of this Agreement, including, without limitation, the transfer of all the rights and obligations of Canada as grantor of the interests and licenses referred to in clause 3.2 of this Agreement.
- 4.2 As of the date the Land Code comes into force, and in accordance with the Framework Agreement and section 18 of the Act:
- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement and section 38 of the Act, cease to apply and Canada retains no powers and obligations in relation to _____ First Nation Land under these provisions;
 - (b) the First Nation shall commence administering _____ First Nation Land pursuant to its Land Code.

5. OPERATIONAL FUNDING

- 5.1 In accordance with clause 30.1 of the Framework Agreement, and subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Canada shall provide Operational Funding to the _____ First Nation as indicated in Annex "A" in accordance with the Operational Funding Formula as amended from time to time.
- 5.2 The Operational Funding referred to in clauses 5.1 will be incorporated by the Parties into the _____ First Nation's Funding Arrangement in effect in the year in which the payment is to be made. For greater certainty, payment of Operational Funding will be subject to the terms and conditions of the Funding Arrangement into which it is incorporated.
- 5.3 The _____ First Nation acknowledges that all obligations of Canada to fund the _____ First Nation, as required by Part V (Environment) and Part VI (Funding) of the Framework Agreement, have been addressed by the Operational Funding Formula.

6. TRANSFER OF REVENUES

- 6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue moneys referred to in section 19 of the Act and clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex "B".

- 6.2 Revenue moneys transferred pursuant to clause 6.1 shall be deposited in the First Nation=s account at such financial institution as the First Nation may direct by notice in writing.
- 6.3 For greater certainty, the transfer of the revenue moneys does not release the First Nation from its commitment to reimburse Canada for any amount paid as a result of a default under any loan entered into by the First Nation or any of its members and guaranteed by Canada in accordance with the terms and conditions relating to ministerial loan guarantees.
- 6.4 For greater certainty, all Indian moneys deemed to be capital moneys pursuant to section 62 of the *Indian Act* are not to be transferred to the First Nation pursuant to this Agreement.

7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION

- 7.1 Immediately following approval of the Land Code and this Agreement by the members of the First Nation, the First Nation shall give written notice (the “Notice of Transfer of Administration”), by registered mail, to each holder of an interest or a licence in or in relation to _____ First Nation Land that is listed or referred to in Annex “C”.
- 7.2 The Notice of Transfer of Administration shall state that
 - (a) the administration of _____ First Nation Land and Canada=s rights in _____ First Nation Land, other than title, have been transferred to the First Nation effective the date the Land Code comes into force;
 - (b) the holder of the interest or license shall pay to the First Nation, all amounts owing, payable or due under the interest or licence on or after that date; and
 - (c) as of that date, the First Nation shall be responsible for the exercise of the powers and authorities, and the performance of any covenants, terms and conditions, under that instrument which, but for the transfer of administration, would have been Canada’s responsibility.
- 7.3 The _____ First Nation shall deliver to Canada a copy of every Notice of Transfer of Administration and a copy of every acknowledgement of receipt of the Notice of Transfer of Administration received by the First Nation within 30 days of the issuance or receipt of the same.

7.4 The Notice obligations set out in this Article do not apply in respect of a holder of an interest or license who is a member of the First Nation.

8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex “F” shall apply to projects on _____ First Nation land until the coming into force of First Nation laws enacted in relation to that subject.

9. AMENDMENTS

- 9.1 This Agreement may be amended by agreement of the Parties.
- 9.2 Any amendment to this Agreement shall be in writing and executed by the duly authorized representatives of the Parties.

10. NOTICES BETWEEN THE PARTIES

- 10.1 Any notice or other official communication under this Agreement between the Parties shall be in writing addressed to the Party for whom it is intended.
- 10.2 The notice referred to in clause 10.1 shall be effective using any one of the following methods and shall be deemed to have been given as at the date specified for each method:
 - (a) by personal delivery, on the date upon which notice is delivered;
 - (b) by registered mail or courier, the date upon which receipt of the notice is acknowledged by the other party; or
 - (c) by facsimile or electronic mail, the date upon which the notice is transmitted and receipt of such transmission by the other party can be confirmed or deemed.
- 10.3 The addresses of the Parties for the purpose of any notice or other official communication are:

Canada:

Director, Lands and Trust Services
Department of Indian Affairs and Northern Development
_____ Region

[insert address of regional office]

[insert fax number for regional office]

_____ First Nation

[Insert title of recipient]

[insert address of First Nation]

[insert fax number for First Nation]

11. DISPUTE RESOLUTION

11.1 For greater certainty, any dispute arising from the implementation, application or administration of this Agreement may be resolved in accordance with the Dispute Resolution provisions set out in Part IX of the Framework Agreement.

12. DATE OF COMING INTO FORCE

12.1 The Parties acknowledge that, in order to be effective, the Land Code and this Agreement must be approved by the members of the First Nation in accordance with the Framework Agreement and the Act.

12.2 Articles 7, 9 and 10 of this Agreement shall come into force as of the day the First Nation and the Minister sign this Agreement.

12.3 The remainder of this Agreement shall come into full force and effect on the date the Land Code comes into force.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Her Majesty the Queen in right of Canada,
as represented by the Minister of Indian
Affairs and Northern Development

[Name of First Nation]

Minister of Indian Affairs and Northern
Development

[Name of Chief]

Councillor

Councillor

Councillor

ANNEX “A”

FUNDING PROVIDED BY CANADA⁵

- (a) The Operational Funding Formula in effect for Fiscal Years 2012-2013, 2013-2014, 2014-2015, and 2015-2016 is described in the Memorandum of Understanding on Funding dated for reference the 19th day of October, 2011, between the Operational First Nation signatories to the Framework Agreement and Canada (the “MOU”).
- (b) The MOU sets out three tiers of funding levels. The _____ First Nation has been identified under a Tier _____ funding level. The amount for that Tier for Fiscal Year 2012-2013 is shown in the table below. That amount shall be prorated based on the number of months from the date that the Land Code comes into force to the end of the Fiscal Year, and the _____ First Nation shall be paid the prorated amount for that year.
- (c) As part of the Operational Funding, Transitional and Environmental Funding will be provided for the year the Land Code comes into force and for the subsequent Fiscal Year, as shown in the Table below.
- (d) The amount of Operational Funding to be paid during each of Fiscal Years 2013-2014, 2014-2015, and 2015-2016 are shown in the table below.
- (e) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after March 31, 2016 will be calculated and provided in accordance with the Operational Funding Formula as amended from time to time.

OPERATIONAL FUNDING	
2012-2013 Fiscal Year	\$ [Insert Tier funding level] (This amount shall be prorated in accordance with para. (b) above.)
2012-2013 Fiscal Year	\$75,000.00 - One Time Transitional and Environmental Funding per 1 st Fiscal Year
2013-2014 Fiscal Year	\$75,000.00 - One Time Transitional and Environmental Funding per 2 nd

5. This Annex is referred to in clause 5 of the Individual Agreement. The authority for funding is Clause 30 of the *Framework Agreement*.

OPERATIONAL FUNDING	
	Fiscal Year
FISCAL years from April 1, 2013 to March 31, 2016	[\$insert Tier funding level] per Fiscal Year
Subsequent FISCAL Years	Subject to paragraph (e) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time.

ANNEX “B”

DETAILS FOR THE REVENUE MONEYS TRANSFER⁶

1. As of the ___ day of _____, _____, Canada is holding \$_____ of revenue moneys for the use and benefit of the First Nation or its members. This amount is included for information purposes only and is subject to change.
2. **Initial Transfer.** Within thirty (30) days of the Land Code coming into force, Canada shall transfer to the First Nation all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.
3. **Subsequent Transfers.** Canada shall, on a semi-annual basis, transfer to the First Nation any interest that is paid into the First Nation’s revenue moneys account thereafter pursuant to subsection 61(2) of the *Indian Act*. This includes any interest paid on capital moneys of the First Nation while these moneys, if any, are being held in Canada’s Consolidated Revenue Fund. The first such subsequent transfer shall be made in the month of April or October, whichever month comes first after the month of the initial transfer.

6. The authority for this Annex is section 19 of the Act and clause 12.8 of the *Framework Agreement*. This Annex is referred to in clause 6 of the Individual Agreement. Clause 6.1 of the Individual Agreement and this Annex are designed for a situation where the First Nation has included all of its reserves in the land code. Clause 6.1 and this Annex do not deal with the situation where the First Nation has excluded a portion of the reserve or where the First Nation has more than one reserve and has excluded one or more of those reserves from the land code. Clause 6.1 and this Annex will need to be revised to deal with those special situations.

ANNEX “C”

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA⁷

All interests and licenses granted by Canada in or in relation to the _____
First Nation Land that are recorded in the Reserve Land Register and the Surrendered and
Designated Lands Register are listed in the attached reports.⁸

OR

All interests and licenses granted by Canada in or in relation to the _____
First Nation Land that are recorded in the Reserve Land Register and the Surrendered and
Designated Lands Register are listed in reports that are available for review at the
_____ First Nation Land Management Office located at **[enter location of
FN office]**:

- § Reserve General Abstract Reports for:
 - § Enter name and Number of reserve(s)

- § Lawful Possessors Reports for:
 - § Enter name and Number of reserve(s)

- § Lease or Permits Reports for:
 - § Enter name and Number of reserve(s)

The above reports identify all interests or licenses granted by Canada that are registered in the Indian Lands Registry System (ILRS).⁹ The following is a list of interests granted by Canada that have not been registered or are pending registration in the ILRS. Copies of these interests shall be provided to the First Nation.¹⁰

[List interests]

7. As per clause 6.3 of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, “a list of all the interests and licenses, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the *Indian Act*.” This Annex is referred to in clauses 2 of the Individual Agreement.

8. Use this clause if you are attaching the ILRS reports to the IA.

10. Use this clause if you are not attaching the ILRS reports to the IA. Please note that not all reserves contain lawful possessors, leases, or permits. Therefore, these reports are limited to reserves where these interests are present.

10. Add this clause if there are interests that have not been registered in the ILRS. The words “granted by Canada” are included so that FNs do not assume that this refers to un-regularized interests.

ANNEX “D”

**LIST OF ALL EXISTING INFORMATION IN CANADA’S POSSESSION RESPECTING
ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST
NATION LANDS¹¹**

11. As per clause 6.3 of the Framework Agreement, Canada must provide to the First Nation, as soon as practicable, “all existing information, in Canada’s possession, respecting any actual or potential environmental problems with the proposed First Nation land.” Accordingly, the title, date and author of any Environmental Site Assessment Report must be set out in this Annex, such as Phase I and Phase 2 reports. Any other information on actual or potential contamination contained in INAC’s files should be provided to the First Nation, and listed in this Annex by title, date, and author. This Annex is referred to in clause 2 of the Individual Agreement.

ANNEX “E”

LIST OF OTHER INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENSES¹²

12. As per clause 6.3(c) of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, “any other information in Canada’s possession that materially affects the interests and licenses mentioned in clause 6.3(a).” Accordingly, INAC must identify information in Canada’s possession regarding outstanding issues that materially affects the interests and licenses. This information could be compiled into an outstanding issues report (it will be compiled as part of the Community Approval Process Plan (CAPP)). INAC should consult with its Regional Legal Counsel prior to assigning responsibility for any issue to Canada (only if it is an issue that requires legal advice). This Annex is referred to in clause 2 of the Individual Agreement.

ANNEX “F”

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

- (1) In this Annex,
- a. “CEAA 1992” means the *Canadian Environmental Assessment Act, S.C. 1992, c. 37* [repealed, 2012, c. 19, s. 66], as it read immediately prior to its repeal;
 - b. “CEAA 2012” means the *Canadian Environmental Assessment Act, 2012, S.C. 2012, c. 19, s. 52*, as amended from time to time.
- (2) The Parties agree that the provisions on environmental assessment in this Annex are without prejudice to any subsequent environmental assessment process they may agree upon in accordance with Clause 25.1 of the Framework Agreement for incorporation in First Nation laws respecting environmental assessment. The provisions in this Annex apply until replaced by First Nation laws respecting environmental assessment.
- (3) During the interim period prior to the enactment and coming into force of First Nations Laws with respect to environmental assessment of projects on _____ First Nation Land, the First Nation shall conduct environmental assessments of projects on _____ First Nation Land in a manner that is consistent either with the requirements of CEAA 1992 and clause (4) below or with the requirements of CEAA 2012 (or any federal environmental assessment legislation that may replace CEAA 2012 in the future). All assessments shall be conducted at the expense of the First Nation or of the proponent of the project.
- (4) The following provisions apply to an environmental assessment process conducted in a manner that is consistent with CEAA 1992:
- a. When the First Nation is considering the approval, regulation, funding or undertaking of a project on _____ First Nation Land that is not described in the exclusion list as defined in CEAA 1992, the Council of the First Nation shall ensure that an environmental assessment of the project is carried out, at the expense of the First Nation or the proponent, in accordance with a process that is consistent with that of CEAA 1992. Such assessment shall be carried out as early as practicable in the planning stages of the project before an irrevocable decision is made.
 - b. The First Nation shall not approve, regulate, fund, or undertake the project unless the Council has concluded, taking into consideration the results of the environmental assessment, any economically and technically feasible mitigation measures identified as necessary during

the assessment, and any public comments received during the assessment, that the project is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.

- c. If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall ensure that all mitigation measures referred to in paragraph b. are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Council shall also consider whether a follow-up program, as defined in CEEA 1992, is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

ANNEX “G”

LEGAL DESCRIPTION OF _____ FIRST NATION LAND¹³

13. According to subsection 6(3) of the Act, the Individual Agreement must describe the land that is subject to the Land Code. This Annex is referred to in the definition of First Nation land in clause 1.1 of the Individual Agreement. The Legal Description of the First Nation Land is contained in the First Nations Land Management Legal Description Report prepared by Natural Resources Canada. The final Report can be set out in this Annex or it can be incorporated by reference to the date, title, and author.



LAND CODE SUMMARY

There are 9 Sections in this Land Code:

Part 1: Preliminary Matters

This introduces the Land Code to the reader and defines how the document should be read. There is a description of the terms that will be used in the document, an explanation of where the authority to govern comes from, what the purpose of the Land Code is and what lands the Land Code applies to (the reserve land description).

Part 2: First Nations Legislation

This section outlines what law making power the First Nation will have out of the Land Code and the procedure for how new land laws will be created and implemented (including where they will be published and when they take effect) under the Land Code.

Part 3: Community Consultation and Approvals

This section defines how and what the process is for implementing various elements of the Land Code. For example, approving a land use plan or enacting land laws requires community approval under the conditions defined in this section. Furthermore, this section touches on the procedures for a “meeting of members”, and the ratification process and approval thresholds are for passing laws or other matters such as: i.e. development of a heritage site, amendment to the Land Code, or any other matter.

Part 4: Protection of Land

This section outlines some of the key protections the Land Code offers- and the special conditions by which the First Nation could expropriate land (only by community approval through ratification vote) and the conditions for calculating compensation, but also the rights that may not be expropriated. This section also defines the necessity for a law on heritage sites, and ensures no development or amendment can be made to the land use plan to get rid of a heritage site created under this law. Finally this section states that an agreement is necessary for the First Nation to exchange land with another party (i.e. First Nation, Province, and Federal Government) and there are conditions to be met for lands to be received (such as the need for an appointed negotiator, freedom of receiving additional compensation or land in trust, and federal commitment to add any lands to the existing reserve base).

Part 5: Accountability

This section really has to do with how the Land Code is administered by First Nation including the rules for a “conflict of interest” and the duty to report and abstain from participation in land matters where there is a conflict. Also in the context of conflict of interest this section defines the non-application of these rules for common interests, dealing with disputes and penalties.

This section also applies to how financial management, audit and financial reporting will be conducted – establishing separate lands bank accounts, signing officers, bonding, signing



authorities, and the adoption of the fiscal year for operations and reporting. This section also goes into detail about the specific rules for a year to year lands budget and financial policy. The final part of this section is about financial records and the member's right to access information on year to year financial statements, audit report, the annual report on lands, and the penalties for interference or obstructing the inspection of these records by another member- and the coordination and roles responsible for creating and making these documents public (i.e. auditor and council).

Part 6: Land Administration

This section starts off by establishing the Lands Committee - it defines the composition, eligibility requirements, selection method, term of office and dealing with vacancies. This section also defines how revenue monies from lands will be handled (from fees, leases etc.), how the registration of land interests (leases, permits, licences) will be conducted and how it is captured through First Nations Land Registry System (FNLRs) and a duplicate register if directed.

Part 7: Interests in Land

This section relates more to the operation of the First Nation's lands administration and how it will address existing interests (e.g. CPs) and new land related interests (e.g. CPs or allocations). This section defines that there will need to be written documents, standards created, and that consent will be necessary to process any granting or disposing of assignments of land. This section defines the rights of CP holders and the procedure for cancelling a CP, the transfer and use of a CP, and the situation when a CP holder ceases to be a member. This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law (to be made into a Matrimonial Real Property law)

Part 8: Dispute Resolution

This section is created to address how possible disputes that could arise by any benefactor (e.g. First Nation member) of the Land Code and how the process for addressing disputes will be conducted. For example, an adjudicator would be established to resolve disputes in relation to lands unless members could come to some resolve by way of an informal resolution of disputes. The section sets out the powers for the adjudicator, adjudication procedures and decisions and the member's ability to appeal these decisions and expectations around costs.

Part 9: Other Matters

This section defines four (or more) items to address common issues such as:

1. Liability- the need for director and officers insurance for Lands Committee members,
2. Offences and enforcement- what are offences and what is the penalty,
3. Amendments to Land Code- specifically the process for amending this Land Code,
4. Commencement- defines when the actual start date will be.

Law Making Guide: ***Framework Agreement First*** **Nations**



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INTRODUCTION

The purpose of this workshop is to provide some guidance to First Nations in developing and drafting laws. The power to make laws is limited to governmental authorities and, in general, the overall approach to the development of laws is similar in all forms of democratic government whether First Nation, provincial, federal or municipal.

The workshop is divided in four parts: Part 1 begins with an outline of the legal system in Canada, followed by a discussion in Part 2 of the authority of governments to make laws with particular emphasis on First Nation government law-making authorities. Part 3 discusses the need for laws, alternatives to laws, the factors to be considered in developing laws and the limits to making a law. Finally, Part 4 of the workshop is concerned with some of the technical aspects of organizing and writing laws. Participants will also develop and draft an outline of a short law during the course of the workshop based on these materials.

What is a Law?

Legislation or statutes are laws made by governments. A law is a rule or rules of conduct which are approved and enforced by governments over a certain territory. Laws are administered by the government and the courts interpret and apply these laws. In addition, courts have developed the “common law”, which consist of rules of conduct based on precedents developed over many centuries by the courts. For example, the law of contracts and negligence are rooted in the common law. Similarly the legal nature of aboriginal and treaty rights is of common law origin.

PART 1: OUTLINE OF THE CANADIAN LEGAL SYSTEM

“If we desire respect for the law, we must first make the law respectable.”

- Louis D. Brandeis

Canada is governed by a constitution which is composed of many documents and laws – the Royal Proclamation of 1763 for example. Generally, the structure and authority of government in Canada is found in the *Constitution Act, 1867*. The *Act* distributes the legislative powers of Canada between the Parliament of Canada and the legislatures of the provinces (Part VI, sections 91 to 95). The legislatures of the territories exercise legislative authority through delegation from the Parliament of Canada.

Canada's system of responsible parliamentary government is based on the rule of law. This means that laws must be made in conformity with the Constitution. The Crown retains very few regulatory powers that are not subject to the legislative or law-making process. For example, regulations governing the issuance of passports or medals and honours are still made under the royal prerogative.

Law-making authority in Canada is subject to a number of constraints. Firstly, Parliament and the provincial legislatures are limited by the constitutional distribution of powers under the *Constitution Act, 1867*. Section 91 of the *Act* identifies specific areas over which the federal government has exclusive legislative power (i.e. criminal law and procedure, trade and commerce, copyrights, and national defence etc.). It also provides for federal responsibility over any other areas not exclusively given to the provinces. Section 92 of the *Act* identifies specific areas over which the provincial governments in Canada have legislative power (i.e. property and civil rights, administration of justice, education, health, and welfare, etc.).

These governments are also constrained in their law-making powers by the existing Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and by certain other constitutional provisions. Particularly important to Aboriginal peoples is subsection 91(24) of the *Constitution Act, 1867*, which gave the federal government jurisdiction over "Indians, and Lands reserved for the Indians". The federal government used this authority in the early years of Confederation to conclude a series of numbered treaties in western Canada. This continued the British policy, set out in the Royal Proclamation of 1763, of making treaties with the Indians occupying the land which settlers wished to develop.

Lastly, governmental law making powers can be limited by the *Canadian Charter of Rights and Freedoms* (the Charter). The constitution has been amended several times, most recently by the *Constitution Act, 1982*. Section 25 of the Charter guarantees that its rights and freedoms shall "not be construed so as to abrogate or derogate from any

Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada".

The 1982 amendment also included section 35 which recognizes and affirms "existing Aboriginal and treaty rights". The Supreme Court of Canada has interpreted "existing" as meaning "existing in 1982".

A. A law must conform to the Charter & the Bill of Rights and must not be inconsistent with the Principles of Natural Justice

All legislation in Canada, whether federal, provincial or local, and whether statute, regulation or by-law, must conform to the *Canadian Charter of Rights and Freedoms (The Charter)*. In addition, all federal legislation enacted after 1971 must conform to the *Canadian Bill Of Rights (the Bill of Rights)*. Thus, First Nation Council laws must also conform to both the *Charter* and the *Bill of Rights*.

When considering laws, it is useful to be aware of the following rights created by the *Charter* and the *Bill of Rights*.

B. It is unlawful for a law to authorize discriminatory treatment of any individual, particularly on grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

The *Charter* and the *Bill of Rights* limit the authority of all legislatures, including First Nation Councils, to prescribe special treatment for particular groups unless there is a strong justification for doing so.

Section 15 of the *Charter* provides that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law without discrimination. In particular, it states that there must not be discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

A law cannot, on the grounds set out in the *Charter*, or on "analogous" grounds that relate to the "personal characteristics" of an individual, impose a burden, obligation or disadvantage on one individual or group that is not imposed on others. Nor can it withhold from a particular group or individual access to opportunities, benefits or advantages that are available to others.

With respect to infringements of section 15 of the *Charter*, a First Nations Council may enact a law that imposes a limitation of rights so long as it meets certain requirements. A Council may draw distinctions among various situations or groups of people (virtually all laws do), but not where that would amount to "discrimination". Even where discrimination occurs, a Council may sometimes be able to justify it under section 1 of the *Charter* as a reasonable limitation prescribed by law in a free and democratic society. Any such limitation should be set out in the law as clearly as possible and the

Charter right should be limited only as much as is necessary to accomplish the objectives of the law.

For example, a Council may extend broader rights to band members than to visitors or other residents who are not band members to reside, hunt or fish on a reserve. If this were contested in a court, a prosecutor would submit that the different treatment is based on aboriginal or treaty rights; or, based on constitutional and legislative policy rooted firmly in Canadian history to set aside reserves for the benefit of Indian Bands and their members. As such, the prosecutor would argue, it does not "discriminate" or, alternatively, it is reasonably justified under section 1 of the *Charter*.

On the other hand, it is inappropriate in many other instances to draft laws which distinguish between band members and those who are not members. For example, laws made for the observance of law and order or for the prevention of disorderly conduct and nuisances should treat band members and all others on reserve in a similar manner.

The Bill of Rights

The *Bill of Rights* also recognizes the right of an individual to equality before the law and to the protection of the law without discrimination. This legislation provides a more limited equality protection than does the *Charter*; it identifies only the following grounds of prohibited discrimination: race, national origin, colour, religion and sex. Moreover, it applies only to federal legislation made after 1971 - the date the *Bill of Rights* was passed.

C. A law must respect a person's freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly, and association

These fundamental freedoms are guaranteed by section 2 of the *Charter* and section 1 of the *Bill of Rights*. Courts have clarified the nature of some of these freedoms, while others still require clarification.

As with the equality rights discussed above, these fundamental freedoms are subject to the reasonable limitations of section 1 of the *Charter*.

i. Religion, Thought and Belief

The essence of the concept of freedom of religion is the right for a person:

- to entertain chosen religious beliefs;
- to declare them openly; and

- to demonstrate religious belief by worship and practice or by teaching and dissemination.

If either the purpose or effect of a law is to limit this freedom unreasonably, a court could declare the law null and void.

Laws regulating the sale of wares and merchandise or other commercial activities or prohibiting games or amusements on Sundays could give rise to infringements of the freedom of religion of those who recognize another day as their day of worship.

ii. Expression

Freedom of expression extends to all forms of expression. It includes "political expression", in other words, the right to express one's opinion on public issues. It also includes "commercial expression", such as the right of vendors to advertise their wares.

Restricting access to public institutions, such as band government meetings or administrative hearings, or restricting access to certain gatherings on a reserve, are examples of regulatory action by a First Nation Council in which freedom of expression could become an issue if it were to inhibit comment on the band political process. Laws excluding from the reserve as trespassers, persons who represent a particular point of view on a political issue, or prohibiting as disorderly conduct the making of speeches on political issues, could potentially give rise to infringements of freedom of expression.

Laws controlling how hawkers and peddlers communicate information, or prohibiting certain forms of artistic expression in public games and amusements, may also give rise to infringements of freedom of expression.

Depending on the wording and impact of the provision, courts might consider such laws to unreasonably limit the freedom to communicate thoughts and opinions.

iii. Peaceful Assembly and Association

Freedom of peaceful assembly and freedom of association are related concepts. They permit individuals to join together in a collective purpose, whether it be attendance at a political meeting, or an agreement to belong to and to participate in a political organization or a business or social relationship. Subject to reasonable limits, groups of individuals are free to join together in the pursuit of objectives and activities that any individual may lawfully pursue alone.

First Nation Councils must take these freedoms into consideration when making laws for:

- the observance of law and order;
- preventing disorderly conduct;

- controlling and prohibiting games and public amusements; and
- regulating commercial activities.

Courts could require councils to justify as reasonable any restrictions in their laws that are placed on individuals joining together. Justifications may include public health or safety, public order or some other important public interest.

D. A law must respect people’s rights to life, liberty and security of the person, and their rights to the enjoyment of property, and may only deprive people of these in accordance with the Principles of Fundamental Justice

Both section 7 of the *Charter* and section 1 of the *Bill of Rights* protect the right to life, liberty and security of the person. Only the *Bill of Rights* protects the right to enjoyment of property.

i. Life, Liberty and Security of the Person

The protection in section 7 of the *Charter* goes beyond the protection of liberty and security from physical restraint. It can extend to health or even economic interests, as long as the restriction involves a threat to physical or mental integrity.

For example, an affected individual could challenge a zoning or building restriction that has the effect of preventing individuals from adequately securing their own safety or that of their children. In this regard, one court has struck down the manner in which a municipal by-law regulated the height of fences. Similarly, a court might view a by-law that authorizes the use of a dangerous chemical to control noxious weeds as infringing upon a section 7 right.

ii. Property

Although the *Charter* does not protect property interests, section 1(a) of the *Bill of Rights* does. Therefore, it is suggested that a law giving authority to use, confiscate, detain or destroy private property in order to protect the band from a contagious or infectious disease should contain a provision requiring payment of adequate compensation to an affected person for depriving that person of the enjoyment of the property that he or she was lawfully using at the time.

iii. Natural Justice

Finally, laws cannot abolish the **procedural** protections that the law extends to ensure that any decisions depriving people of life, liberty or security of the person, or of property rights, are made in accordance with fundamental justice. The main rules of natural justice to be followed are:

- to act fairly;

- to act in good faith;
- to act without bias;
- to objectively review all facts and circumstances (to use sound judgment);
- to give all parties opportunities to adequately state their cases;
- right to receive notice;
- right to know case against the party; and
- right to be represented by counsel.

Normally, a law should only give a band official the power to refuse or revoke a commercial licence or destroy or damage someone's property (for example, in order to eradicate disease or noxious weeds) if the person affected is given a reasonable opportunity to object, either orally or in writing, before the decision is carried out.

This principle, sometimes referred to as the right to "fundamental justice", "natural justice", or "due process", also requires that the circumstances of a decision must not give rise to a "reasonable apprehension of bias", such as the appearance of conflict of interest. For example, a law should not authorize a person with a financial stake in the matter, or with a family tie to one of the parties, to decide a zoning application or appeal.

Courts will apply these principles even where a law is silent as to procedure. Nevertheless, First Nation Councils should strive as much as possible to make procedural safeguards explicit in their laws for the guidance of those subject to them as well as those who apply or enforce them.

E. A First Nation Council must respect people's rights to be secure against unreasonable search or seizure

When making laws, First Nation Councils must be cautious about matters such as authorizing searches of premises or vehicles, requiring the mandatory inspection or production of documents and authorizing the seizure or removal of any form of property or documentation. This is because section 8 of the Charter gives everyone "the right to be secure against unreasonable search or seizure."

Generally speaking, an entry onto the private property of an individual in order to conduct a search or seizure requires greater procedural protection than when merely demanding that a person produce business records. A warrant issued by a justice of the peace or judge is almost always required. Only in exceptional circumstances, such as for the urgent protection of health or public safety, would an intrusion into a private home be lawful without a warrant.

A First Nation Council law can, to some extent, regulate search or seizure as an aspect of the process of gathering evidence to be used in a prosecution under the law. Evidence gathering is a procedural matter to which the summary conviction provisions of the *Criminal Code* apply exclusively. Under those provisions, an enforcement officer requires a search warrant. There are a few exceptions to this rule, but before any by-law enforcement officer seizes goods or evidence they should check with the First Nation

legal advisor to determine the legality of their actions and to minimize their personal liability for wrongful seizure or detention.

F. A law must respect people's rights not to be arbitrarily detained or imprisoned

Section 9 of the *Charter* protects individuals from arbitrary detention and imprisonment. Detentions for specific reasons, for example, to check drivers' licences, driver sobriety or the mechanical fitness of a vehicle, are not arbitrary detentions as long as persons are not detained for questioning on unrelated matters.

While courts have decided that random checks of motor vehicles infringe upon section 9 rights, courts have also said that they are justified under section 1 of the *Charter* as reasonable measures to achieve safety on highways.

Importance of these legal principles

Respect for the preceding principles becomes particularly important if a law is challenged in court. A law that does not conform to these rules may be vulnerable to such a challenge and may be struck down. This being the case, First Nation Councils will want to keep in mind all of the principles discussed in this session when drafting laws, the subject of the next session.

PART 2: FIRST NATION LAW-MAKING AUTHORITY

“Common sense often makes good law.”
– William O. Douglas

As previously mentioned, Section 91 of the Constitution Act identifies specific areas over which the federal government has exclusive legislative power. Under its constitutional authority in section 91(24) of the *Constitution Act, 1867*, the federal government enacted the first *Indian Act* in 1876. It has been revised a number of times since then.

A. Indian Act

Today, the *Indian Act* is the main legislation dealing with the federal government's responsibility to, and jurisdiction over, Indians and lands reserved for Indians. It contains many provisions which are specific to Indians, including:

- a scheme for the holding of land on reserves;
- a Band membership system;
- a succession law system (wills and estates);
- an electoral system for Band Councils;
- an outline of the authority of these councils, including the right to make by-laws in certain areas;
- provisions regarding schools for Indians; and
- many other matters.

Regulations

In addition, the Governor in Council (the federal Cabinet) may make regulations concerning a number of subjects. The primary source of authority for these regulations is found in section 73 of the *Indian Act*.

Examples of regulations you may be familiar with are the *Indian Reserve Traffic Regulations*, the *Indian Band Election Regulations*, the *Indian Reserve Waste Disposal Regulations*, the *Indian Band Council Procedure Regulations* and the *Indian Estates Regulations*.

B. Framework Agreement on First Nation Land Management

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. The *Framework Agreement* sets out the principal components of this new land management process, but it is not a treaty and does not affect treaty or other constitutional rights of the First Nations. The Agreement has been ratified and

implemented by Canada in the *First Nations Land Management Act*, assented to June 17, 1999.

The *Framework Agreement* provides that First Nations who are listed in the Schedule to the federal Act have the option to manage their reserve lands outside the *Indian Act*. The option to regain control of their land can only be taken with the consent of the community. Federal administration of its reserve lands cease under the *Indian Act* when each of these First Nations takes control of its lands and resources under the Agreement by community approval of a land code.

A First Nation signatory to the *Framework Agreement* exercises its land management option by creating its own Land Code, drafting a community ratification process and entering into a further Individual Transfer Agreement with Canada. The specific steps are set out in the *Framework Agreement* and include the following:

The Land Code

A Land Code, drafted by the community, is the basic land law of the First Nation and replaces the land management provisions of the *Indian Act*. The Minister of Indian Affairs and Northern Development will no longer be involved in the management of the First Nation's reserve lands. The Land Code does not have to be approved by the Minister.

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

- identifies the reserve lands to be managed by the First Nation (called "First Nation land");
- 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 federal law);
- 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 land management responsibilities; and
- sets out the procedure for amending the Land Code.

The Land Code is the main document that must be referred to before developing and drafting a First Nation land law, as it provides for the authority and procedure to make the law.

Individual Transfer Agreement

An Individual Transfer 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; and
- the operational funding to be provided by Canada to the First Nation for land management.

Community Ratification Process

In order for the First Nation to assume control over its lands, the Land Code and the Individual Transfer Agreement must be ratified by the adult 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 Transfer Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

A Brief Note on How Provincial Laws May Apply to Reserve Lands

Recall, as well that Section 92 of the *Constitution Act, 1867* identifies specific areas over which the provincial governments in Canada have legislative power. The extent to which provincial laws apply on reserves is also the subject of much legal and judicial debate. The following attempts to summarize the present state of the law, but is not intended to be a complete or conclusive statement.

General Rule

Generally speaking, a provincial law will apply on reserve if the province had the constitutional authority to pass it and if the law is otherwise valid and applicable throughout the province. Examples of provincial constitutional authority are child welfare, labour relations, insurance, contracts, corporations, most aspects of family law and the regulation of professions and trades.

At one time, some judges thought that provincial laws did not apply on reserves. In 1974, the Supreme Court of Canada, in the *Cardinal v. A.G. Alberta* case, changed this view. It declared that, while a province may not legislate on a subject matter given **exclusively** to the federal government, provincial legislation enacted under a heading of section 92 of the *Constitution Act, 1867* does not become invalid just because it affects something which is subject to federal legislation.

In 1986, the Supreme Court of Canada, in the case *Dick v. R.*, stated that provincial laws of general application apply to Indians if they do not affect or touch on their "Indianness". Traffic and family laws are examples of provincial laws which do not touch on "Indianness" in their application.

Extension of the General Rule – Section 88

Even where a provincial law may single out Indians, affect their status or capacity as Indians, or directly affect matters that are "inherently Indian" or "closely related to the Indian way of life", that law may apply on reserve. *Dick v. R.* held that such provincial laws may apply because of section 88 of the *Indian Act*.

Section 88 provides that these provincial laws apply except to the extent that they are inconsistent with the *Indian Act* or any order, rule, regulation or Band by-law made under the authority of the Act and subject to the terms of any treaty and any other Act of Parliament.

Exceptions to the General Rule and its Extensions

(a) Indian Lands:

While *Dick v. R.* held that provincial laws may apply to **Indians on reserves**, it confirmed that they cannot apply to "**lands reserved for Indians**". Thus, courts will not recognize a provincial law which directly affects Aboriginal title, or the use, disposition or manner of holding Indian lands.

Examples of provincial laws of general application that do not touch on Indianness, but that affect reserve lands are landlord and tenant laws, laws regarding the registration of lands and provisions of family laws relating to the possession or sale of the matrimonial home. These laws do not apply on reserve.

(b) S. 35(1) of the *Constitution Act, 1982*:

A provincial (or federal) law may, through the operation of section 35(1) of the *Constitution Act, 1982*, be of no force and effect to the extent that it interferes, without justification, with an existing Aboriginal or treaty right.

The scope of this constitutional protection is still being defined by the courts.

Overlap of Provincial and Federal Jurisdiction

Because many provincial laws apply on reserve, there will be situations where both federal and provincial laws might apply to the same set of circumstances. These laws are said to "co-exist". A good example of this type of overlap is in the regulation of highway traffic.

PART 3: DECIDING IF A LAW IS REQUIRED

“In law, nothing is certain but the expense.”
– Samuel Butler

Making a new law is just one of several ways of achieving governmental policy objectives. Alternatives include agreements and guidelines, policies and directives or, more generally, programs for providing services, benefits, or information. In addition, a law may include many different kinds of provisions, ranging from simple prohibitions through a wide variety of regulatory requirements such as licensing or compliance monitoring. Law should be used only when it is the most appropriate. It is up to the First Nation to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

The decision to address a matter through a bill or regulation is made by the First Nation Council on the basis of information usually developed by First Nation officials. The information must be accurate, timely and complete. As a beginning point to determine if a law is required or if another option is available and appropriate, it is important to:

- analyze the matter and its alternative solutions;
- analyze the land code to determine the authorities and processes which permit the First nation to make the law;
- engage in consultation with those who have an interest in the matter, including other First Nation departments, programs or services that may be affected by the proposed solution;
- analyze the impact of the proposed solution; and
- analyze the resources, both human and financial, that the proposed solution would require, including those needed to implement or enforce it.

Related Matters should be in One Bill

When a legislative initiative is being considered, and where it is appropriate and consistent with legislative drafting principles, related matters should be combined in one bill, rather than being divided among several bills on similar subjects. A single bill allows legislators to make the most effective and efficient use of their time for discussion and study by the Council, a First Nation Land Committee and community members and other stakeholders.

Review and Expiration Clauses

Finally, caution should be taken when considering whether to include a "sunset" or expiration provision in a law, or a provision for mandatory review of the Law within a particular time or by a particular committee such as the Lands Committee or Board.

Alternatives to these provisions should be fully explored before proposing to include them in a bill.

Choose the Right Tools to Meet the Policy Objectives

Law should be used only when it is most appropriate. When a legislative proposal is made, it is up to the sponsor – be it Council, a Land Committee or Board, a member or stakeholder, to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

This discussion provides guidance on meeting this requirement by providing an analytical framework that covers:

- the range of instruments (techniques) available for accomplishing policy objectives;
- how to determine which ones are the most appropriate; and
- how to decide whether a First Nation land law is required.

First Nations are encouraged to adopt a comprehensive approach to developing proposals to accomplish policy objectives. They should focus on achieving a desired outcome, rather than assuming that a particular instrument, particularly a Law or regulation, will be effective. In this discussion some of the factors to consider in law development are reviewed.

Overview

- Instrument-choice should be considered early in the policy development process.
- First Nation governments cannot deal with every situation. Its involvement must be assessed in light of its responsibilities, its resources and the likely effectiveness of its involvement relative to the involvement of other governments or the private sector.
- The range of possible instruments available to accomplish policy objectives is very broad, allowing the First Nation to choose the type and degree of its intervention, if any.
- A law should only be chosen after assessing the full range of possible instruments.
- Instrument-choice has wide-ranging effects and is an important element of many governmental activities.
- Consultation on instrument-choice, both within and outside the First Nation, is essential to making good choices.

Assessment

If a situation may require the First Nation's attention, it should be assessed to determine what, if anything, should be done to address it. This involves determining the

objectives in addressing it and how these objectives can best be accomplished. This determination should be done as early as possible in the policy development process.

The following questions may help you do this:

- What is the situation?
- What are the objectives in addressing the situation and what particular results are desired?
- Is there a role for the First Nation or Council?
- What instruments are available to accomplish the desired results?
- What is involved in putting the instruments in place?
- What effect would the instruments have?
- How will their success be measured?
- Which (if any) instrument(s) should be chosen?

The assessment process does not necessarily follow the order of these questions. Answers reached at one point in the process may have to be re-evaluated in light of answers to other questions.

In order to obtain sound answers, it is also important to conduct appropriate consultations with those affected.

A. Examine the Situation

This step involves defining the key features of a situation that may require the First Nation Council's attention. A situation may present itself in the form of a problem, in which case you should try to get to its source and not define it in terms of its symptoms.

The situation may also be an opportunity for the First Nation Council to do something creative or positive, for example celebrating a First Nation event – Aboriginal Day or a treaty, as opposed to responding to a problem.

A description of the situation is often framed in terms of how people are behaving or how they may behave in future. Their behaviour may be active (doing something) or passive (not doing something). A behavioural approach involves identifying the following elements:

- the behaviour that is, or may be, creating or contributing to the situation;
- who is engaging in the behaviour;
- who is affected by the behaviour and what these effects are;
- whether some behaviour, or behaviour by some persons, is more serious than others;
- what external factors are influencing the behaviour;
- what behavioural changes are desired to address the situation.

B. What Are the Objectives and Desired Results?

This question is intended to help define the objectives as concretely as possible in terms of particular results to be achieved. Objectives and the desired results go hand in hand, but they are not quite the same.

For example, an objective might be to make a particular activity safer – build fences around swimming pools to protect children from drowning in backyard swimming pools, while the desired result might be a 30 percent reduction in the rate of drowning.

Another example is an objective of reducing graffiti on public buildings in the First Nation by the prohibition of the defacing of First Nation public buildings, here again the desired result might be 25 percent reduction in graffiti.

C. The Role of the First Nation

Consider whether the First Nation can or should do something. The *Constitution*, the *Framework Agreement* and the First Nation Land Code limit the authority of the Council through:

- the legislative powers of the First Nation
- limits on the exercise of legislative powers, for example the Canadian Charter of Rights and Freedoms;
- obligations relating to such things as the provision of services to all residents, not only members; or to all members whether resident on or off First Nation lands.

Practical considerations should be addressed as well. Governments have limited resources and they can't deal with every situation: perhaps others are better placed to achieve a desired outcome.

Finally, if the First Nation does become involved, what role should it play? Possible roles include taking the lead, acting in partnership with others or stimulating or facilitating action.

D. Instruments Available to Accomplish the Desired Result

This question looks at the full range of available policy instruments, which can be grouped into five categories:

- information;
- capacity building;
- economic instruments, including taxes, fees and public expenditure;
- rules; and
- organizational structure.

i. Information

Information can be a powerful tool. People act on the basis of the information available to them. By giving them specific information, it may be possible to influence their behaviour. Some examples are:

- consumer information about the quality or safety of products;
- occupational health and safety information;
- anti-drinking and driving advertising and education campaigns;
- "buy-Canadian" promotional campaigns;
- environmental awareness programs (e.g. littering; hazardous substances);
- information about how programs are operated or about administrative practices;
- symbolic gestures (e.g. an apology).

ii. Capacity Building

Capacity-building increases the ability of people or organizations to do things that advance policy objectives. It goes beyond providing information to include transferring to them the means for developing their ability. Some examples are:

- employment skills training programs;
- programs to support scientific research and public education about the results of the research;
- information gathering through consultation or monitoring; and
- working with industry or business to help them develop voluntary codes governing their practices.

iii. Economic Instruments

Many instruments have a mainly economic focus. They affect how people behave in the marketplace or in other economic transactions. These instruments include taxes, fees and First Nation expenditure, which are considered separately below. They also include the creation of exclusive or limited rights, such as marketable permits, licences or marketing quotas that acquire value because they can be bought and sold. Insurance requirements are another example of economic instruments because they can, for example, force businesses to assess and reduce risks and ensure that their products are priced to cover the costs of insurance or preventive measures.

a) Taxes and Fees

The basic purpose of taxes and fees is to raise revenue. However, they are also capable of influencing how people make choices about the activities to which the taxes or fees apply. In this sense, they can be powerful tools for accomplishing policy objectives. Examples include:

- taxes on income, property or sales;
- fees or charges for licences or services; and
- tax exemptions, reductions, credits or remissions.

b) First Nation Expenditure

The First Nation can act by transferring or spending money in a particular area in order to accomplish policy objectives involving those who receive the money. This makes it a potentially effective instrument for encouraging particular activities that support the policy objectives. Some examples of public expenditure are:

- monetary benefits, grants or subsidies;
- loans or loan guarantees;
- vouchers redeemable for goods or services;
- transfers to other governments or agencies for education or health programs.

iv. Rules

Rules, in the broadest sense, guide behaviour by telling people how things are to be done. However, there are many different types of rules. For example, they differ in terms of how they influence behaviour:

- laws, regulations or directives tend to apply to groups of people and have legal force in that they can be enforced by the courts;
- contracts or agreements also have legal force, but they generally apply only to those who are parties to them; and
- guidelines, voluntary codes or standards and self-imposed rules usually apply to groups of people, but they do not have legal force, relying instead on their persuasive or moral value.

Rules having legal force are generally cast in terms of requirements, prohibitions or rights. A combination of these elements can be seen in rules that create:

- rights that entitle people to do things on an equal footing, such as obtaining goods, services or employment, and corresponding requirements to provide these things to those entitled to them; and
- prohibitions against doing something without a licence that confers a right to do it, for example, exclusive or limited rights, such as marketable permits, licences or marketing quotas that acquire value because they can be bought and sold.

Rules may also be formulated in different levels of detail, for example:

- as precise requirements that tell people exactly what to do; or
- as performance standards that set objectives that people are responsible for meeting.

Incorporation by Reference

Finally, it is worth noting the drafting technique of incorporation by reference. Rules of one type (for example, Laws or regulations) can sometimes be drafted so that they incorporate rules of the same or another type (for example, other Laws or regulations as well as industry codes or standards) simply by referring to them, rather than restating them. This avoids duplication of the incorporated rules and can be a way of harmonizing the laws of several jurisdictions if they each incorporate the same set of rules.

v. Organizational Structure

Organizational structure is often critical in accomplishing policy objectives. It generally supports the use of other instruments by providing for their administration. Examples of organizational instruments include:

- First Nation structures to deliver programs;
- framework agreements and partnerships with other governments or organizations;
- privatization or commercialization of First Nation government services (e.g. garbage collection); and
- First Nation investment in private enterprises.

vi. Combination and Timing of Instruments

These instruments are not necessarily stand-alone alternatives to one another. In fact, many of them are mutually supportive or otherwise interrelated. For example, information enables organizations to work effectively and organizations are often needed to administer legal rules, such as Laws or regulations, which may, in turn, be needed to support the creation of organizations.

Another important dimension of the range of available instruments is timing. Some instruments are better used in the initial stages of policy implementation while others may only be needed later if circumstances warrant. For example, information campaigns often precede the imposition of legal rules and, if they are effective enough, they may avoid the need for such rules.

E. Putting the Instruments in Place

This question involves the legal, procedural and organizational implications of using each instrument as well as the process requirements for making them operational. It also involves considering in greater detail the role that the First Nation council may play, whether acting alone or as a partner with other levels of government or the private sector.

You should assess:

- whether the use of the instrument is within the general mandate or authority of the First Nation;
- whether some specific legal authority is needed, for example, authority to impose taxes or penal sanctions, and, if so,
 - whether it requires new Laws to be made,
 - whether there is legal authority for the First Nation to make the new laws

It is particularly important to consult legal advisers when considering this legal aspect of the question.

- what the short- and long-term operational requirements, both organizational and financial, of the instruments are, including:
 - organizations and personnel needed to administer the instruments, for example, officials needed to assess benefit claims or conduct inspections,
 - additional resources for court costs;
- who should be consulted before the instruments are put in place (other First Nation departments, other governments, stakeholders);
- what processes are required to put the instruments in place, including processes required for any new laws (e.g. do guides and forms for the process to register documents in the First Nation Law Register need to be developed?);
- what, if any, monitoring or enforcement measures will be needed, such as penalties, inspections and court action (this is closely connected to the next question of what effect the instruments would have).

F. What Effect Would the Law Have?

This question involves assessing how the Law (or other instrument) would work, including:

- whether the Law will bring about the desired results, including whether people will voluntarily do what the instruments encourage or require, or whether some are likely to try to avoid compliance or find loopholes;
- whether the Law will cause any unintended results or impose costs or additional constraints on those affected by them;
- what the scope and nature of any likely environmental effects will be, particularly any adverse environmental effects and how they can be reduced or eliminated;
- what effect the instruments may have on inter-governmental relations, particularly in light of the First Nations' obligations under provincial or federal agreements;
- how the general public will react to the Law and, in particular, whether it will be perceived as being enough (or too much) to deal with the situation.

When deciding whether to choose Laws, you should also keep in mind their strengths and weaknesses. They can often be used to overcome resistance in achieving the desired results because they are binding and enforceable in the courts. However, they may also give rise to confrontational, rights-based attitudes or stifle innovative approaches to accomplishing the policy objectives. It should not be assumed that a legal prohibition or requirement will, by itself, stop people from doing something or make them do it.

G. Measuring the Effectiveness of the Law or Other Instrument?

It is not enough to choose various instruments and use them. Clear and measurable objectives must also be established as well as a means for monitoring and assessing whether they are being achieved. This assessment should be ongoing and include looking at how other governments are addressing the same situation. This is necessary both for determining whether the chosen instruments should continue to be used as well as for providing a better basis on which to make instrument-choice decisions in future.

H. Is a Law the Only Choice?

The final step is to choose the instruments that would be most effective in achieving the policy objective. It is important to realize that a single Law is seldom enough. Usually a combination of instruments is required, often in stages with different combinations at each stage. They should be chosen through a comparative analysis of their costs and benefits, taking into account the answers to the preceding questions.

This is also a good time to consider again whether there is a role for the First Nation Council. It may be that none of the instruments should be chosen if:

- the situation does not justify the First Nation's attention, for example, because there is no problem or the situation is beyond the First Nation's jurisdiction or is not a priority for it;
- the situation will take care of itself or will be addressed by others;
- the First Nation does not have the resources to address the situation;
- the First Nation becoming involved in the situation would lead to unmanageable demands to become involved in similar situations.

Sources of First Nation Legislative Proposals

There are basically five sources of legislative policy:

- the members;
- the Chief and Council;
- First Nation administration or Land Committee;
- courts and administrative agencies; and

- federal legislation (e.g. membership and election codes; matrimonial real property).

I. Guidelines / Checklists for Policy Development of Law (or other Instrument)

These Guidelines or checklists are a set of analytical criteria for use in the assessment and development of policy to propose a law. While the focus of this discussion is on making a law, a similar analysis or approach can be used to develop other instrument such as guidelines, policies, programs etc. These guidelines were originally developed as part of a broader exercise designed to improve policy-making in the federal government and to improve the quality of policy discussions in Departments and Cabinet Committees. The Guidelines have been modified for use by First Nations.

POLICY BASICS TEST

- ✓ Has the problem been adequately identified and are the goals and objectives clearly defined?
- ✓ Are there horizontal considerations and interdependencies with other priorities or issues (e.g. environment, etc.)?
- ✓ Are they in member-focused terms?
- ✓ Does this initiative build on and fill gaps in existing policy and programs (federal, provincial)?
- ✓ Does the proposal replace or overlap any existing program?
- ✓ Will this initiative be sustainable (social, economic, environmental) in the longer term?
- ✓ Have a range of options for the achievement of goals/objectives been considered? The full range and choice of instruments (e.g. legislative, regulatory, expenditures)?
- ✓ Has a feedback mechanism been incorporated into policy and program design to allow for evaluation, fine-tuning, and updating?
- ✓ Is the policy based on sound science advice?

PUBLIC OR COMMUNITY INTEREST TEST

- ✓ How would the proposal meet the needs of community members and other stakeholders?
- ✓ How do the overall societal benefits compare to its costs? Have the full range of risks been assessed?
- ✓ Does the proposal respect the rights of community members and other stakeholders and take into account their diverse needs (e.g. non-member, off reserve members, etc.)?
- ✓ Have community members and other stakeholders been given an opportunity for meaningful input?

FIRST NATION INVOLVEMENT TEST

- ✓ What is the rationale for First Nation involvement in this area (e.g. constitutional, legal, scope of issue)?
- ✓ Have the particular First Nation interests been adequately identified?

QUESTION OF ACCOUNTABILITY TEST

- ✓ Has an adequate accountability framework been developed? (in particular for multi-stakeholder arrangements)
- ✓ Have mechanisms been established for ongoing monitoring, measuring, and reporting to members on outcomes and performance?
- ✓ Have eligibility criteria and First Nation administration commitments been made publicly available?

URGING PARTNERSHIPS

- ✓ Can this initiative benefit from joint planning and collaboration?
- ✓ Has it been designed in a way that complements existing programming and services provided by the First Nation or another level of government?
- ✓ Are the relative roles and contributions of partners clear? How will they be publicly recognized?
- ✓ Have opportunities for partnerships with communities, voluntary sector and private sector been considered?
- ✓ Have mechanisms been established to consult with other governments?

EFFICIENCY AND AFFORDABILITY TEST

- ✓ Will the proposed option be cost-effective?
- ✓ Does the proposal assess non-spending options?
- ✓ Does it consider reallocation options?
- ✓ Would a partnership based effort result in a more efficient or effective program or service?
- ✓ What are the longer term funding issues associated with this proposal - for the First Nation, and for its partners?
- ✓ Are there program integrity issues related to this initiative (e.g. non-discretionary/legal commitments, risks, strategic investments)?
- ✓ Has the initiative considered downstream litigation risks?

PART 4: DRAFTING LAW

*“The best way to get a bad law repealed is to enforce it strictly.”
- Abraham Lincoln*

When drafting laws, First Nation Councils should be aware that laws enacted under the authority of the Framework Agreement on First Nation Land Management and the Land Code ratified by the First Nation will apply only upon the territory over which the Council has jurisdiction, that being the actual reserve or First Nation land territory.

First Nation Councils must also bear in mind the fact that laws are a type of legislation, and, as such can come under the scrutiny of the courts. Accordingly, it is highly recommended that Councils retain the services of a lawyer to be of substantial assistance in the law development process.

When drafting a law it is critical to be logical and organized. A good suggestion for a guideline is to write the law in as simple and straight-forward a manner as the subject area allows.

For organizational purposes the law should be arranged in such a manner that the subject area of the law is divided into major groupings (i.e. administrative setup, administrative procedures, offences and penalties, appeal procedures...), or into whatever groupings are required to be addressed in the law. Then, within each general grouping there is a breakdown of related information pertaining to that specific grouping. Each piece of information that is included should be described separately. What results is a system of parts, sections, subsections and other subdivisions similar to the organization of federal and provincial laws. This will ensure readability and facilitate interpretation. Any law that is vague or ambiguous could be held invalid by a court.

Whether the First Nation Council drafts the law itself or takes the matter to a lawyer, certain basic drafting requirements must be met. There is a structure to every law and each part is important for different reasons.

A law consists of the following parts:

- title and numbering;
- recital;
- enacting clause;
- definition section (optional but strongly suggested);
- main body of the law;
- land code law procedural requirements; and
- schedules and appendices (optional).

A. Title and Numbering

A law should have a title which sufficiently describes its purpose. If the title is lengthy, the law may designate a "short title" for common usage. Using a short title is optional but quite common, and is used for easier reference purposes - for written or oral description.

It is critical to accurately identify laws. Any logical, clear, consistent system to identify laws may be used, however, it is suggested that a consecutive numerical system be used when numbering laws. For example, the year of enactment can form part of the number, i.e. " XX First Nation Law No. 1996.15" would mean the fifteenth law enacted in 1996. For each new year, the numbers would start again at number 1. The identification system is to ensure that when the law is being cited or used by the courts, First Nation Council, or any affected person there will be no reference to, or confusion with anything other than that particular law.

B. Recitals

A recital is not necessary, but may be important because a recital allows the Council to describe the reasons why the law is required. The recital gives the context in which the law can be interpreted. Courts, when interpreting laws may use the recital section to understand the context of the law and this may assist the courts in determining the reasonableness of the provisions.

The recitals to the law are a brief statement of its purpose and reasons why the law is required, and a listing of the authorities in the Land Code upon which the law is based. [Re Caldwell and Galt (1899) 30 O.R. 378]

C. Enacting Clause

An enacting clause is a formality that states that the First Nation Council has enacted the law, and that the law is in fact a law and not simply a Band Council resolution.

D. Definition Section

There is a particular purpose to every law. As laws are a method of addressing your community's needs it is extremely important for the law to be clearly written and understandable, yet precise enough that the law does what you intend it to do, when interpreted by a court.

One of the methods that may be used to ensure that a law is interpreted in a fashion you want it to be interpreted is to use a definition section wherein you define the key words in the law. If this is done then the courts, if they review your law, will use the definition you have assigned to the word and not some other definition which may or may not reflect what you want the law to do.

There are different sources of definitions for key words or concepts;

1. Definitions should be used to define words in a law which might require interpretation in the context of the law. Many words and phrases are defined in the Interpretation Act, R.S.C. 1985, c. I-2, and this Act should be referred to when developing a law.
2. Words used in a law, if defined in the First Nation Land Management Act (FNLMA), have the meaning given to them in the FNLMA unless a contrary intention appears in the law (see: sections 3 and 16, Interpretation Act, R.S.C. 1985, c. I-21). Although it may be possible in some circumstances to define a word in a law more broadly than it is defined in the FNLMA, in most cases to do so could affect the legality of the law. It is especially important not to expand in a law the meaning of any word used in the FNLMA, if that word is defined in there. Although it is usually permissible to define a word in a law more narrowly than it is defined in the FNLMA, the legality of this may also be questioned in some instances.
3. If the words or phrases are not defined in the law, or in other legislation, the courts will look to the generally accepted or established meanings of the words or phrases (i.e. dictionary meaning).

Accordingly, as a matter of practice it is advisable not to define words and phrases differently than they are defined in the FNLMA, unless it is absolutely necessary. If such a situation occurs it is suggested that the First Nation Council seek legal advice on the question.

Once the word, or phrase, is defined then the same word or phrase should be used in the body of the law to ensure the proper interpretation. For example, if one term is defined in the definition section but another term is used in the body the courts may assign a definition to the used word that is different from the word defined in the law.

When you are defining words and phrases, there are some general rules of construction which may be of assistance;

The definition of a word may be introduced by the verb "means" if it is intended to restrict the meaning of the word to the definition that is given. If, however, the intention is to expand the normal meaning of the word to other meanings that the word might not ordinarily bear, or to give examples of the intended meaning, it should be introduced by the verb "includes". For example, "boat" means a motor boat, or "boat" includes a motor boat - the first example using "means" indicates that only a motor boat is considered when the term "boat" is used, whereas in the second example any type of boat (i.e. sail boat, row boat, canoe, sailboard and any other device used to transport persons by water) also includes motor boats.

Words to be defined should be listed in alphabetical order and may be numbered or lettered. If the law is enacted in two or more languages then the words or phrases

should not be numbered or lettered because the alphabetical order would be different between the different languages.

E. Main Body of Law

The main body of a law will include substantive rules of procedure or conduct as well as measures for administering and enforcing the law.

Any format that is clear and understandable is satisfactory, but it is generally accepted that administrative provisions precede the operative or substantive rules.

It is also generally understood that the section or part pertaining to offenses and penalties come towards the end of the law. Offenses and penalties should include the following;

- the law should include a general provision that a person who violates any provision of the law, or a specified provision of the law, commits an offence. A specific offence may be cited wherein a specific penalty for that section may be used, however any penalty must comply with those set out below; and
- the penalties for violation of a First Nation law cannot differ in nature from those set out in Section 22 of the FNLMA. The law may also limit the fines to less than \$5,000.00.

F. Law Making Procedures

It is very important to adhere to the procedural requirements of laws pursuant to the Land Code because laws can be successfully challenged in broad general ways in one, or a combination of the following ways, which could result in the law being ruled invalid;

- factually; examples such as "I was not the person who committed the offence" or "the facts as alleged by the law enforcement officer are not correct, and the real facts do not disclose an offence", (losing a case on factual grounds does not mean the law is invalid)
- on substantive or jurisdictional grounds; examples such as "the subject area in the law is beyond the jurisdiction of the First Nation Council to enact under Clause 18 of the Framework Agreement on First Nation Land Management", or "the law infringes the Charter of Rights and Freedoms", and/or,
- procedural deficiencies; examples such as "not holding a special meeting of the band for purposes of considering the law under the Land Code, but enacting the law anyway".

It is essential to comply with the provisions of the Land Code regarding enactment.

A statement to the effect that a law was made by a Council or community at a duly convened meeting on a particular date must be included. As well, the signatures of the

members of the First Nation Council who voted in favour of the law should appear at the end of the law with a statement informing the reader what constitutes a quorum of the band and the number of members of the Council present at the meeting.

G. Schedules and Appendices

There may be attached to the law schedules and appendices that are referred to in the law. These attachments to the law would be used for required forms necessary for application of the law (i.e. application forms to be used when applying to the band, i.e. residency, licenses), or schedules outlining the categories pertaining to the law (i.e. different zones described, or qualifying lists established in zoning laws; traffic zone designations, traffic offence fines, signing...). Reference to the schedules or appendices must be included within the body of the law as being part of the law.

Power to Make Certain Laws

Laws are enacted pursuant to the First Nation's Land Code. The Land Code outlines the power of First Nations to make land laws. The Framework Agreement, section 18.1 provides that:

The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

To be valid, the subject-matter of the enacted laws must fall within the scope of the areas indicated in the Land Code. If the enacted laws do not fall within the scope of the authority given by the section of the Code then a reviewing court will overturn the laws, or delete from the law the improper portions, as they would be in excess of jurisdiction given to the Bands under the Framework Agreement.

Enforcement of First Nation Laws

First Nation Councils enact laws to encourage or require members/residents/visitors of the community to conduct themselves in particular ways or to avoid certain types of prohibited conduct.

Often the mere existence of a law with a small penalty is enough of a deterrent to stop or prevent undesirable behavior or practices. An example of this is a garbage law where a warning to someone to clean up garbage usually achieves the desired result.

Many people obey laws because they represent the community's collective view of how one should conduct oneself. Others obey laws to avoid the penalties which follow

failures to comply. Nevertheless, some laws may require significant penalties and strict enforcement to bring about the desired conditions in a community.

As First Nations laws are primarily a band's concern, in order to be effective there has to be a penalty and a method of enforcement. It is the obligation of band councils to enforce their own laws. The Department of Indian Affairs does not take responsibility for doing so.

The discussion in this session mainly concerns the enforcement options available to First Nations and the procedures involved in enforcing laws.

Identifying Offenses and Setting Penalties in the Law

Defining what conduct constitutes offenses under the law and setting the maximum amount of penalties for them is a matter of policy for the Council to determine. Above, we discussed the legal principles affecting penalties and the factors a Council might consider in setting maximum penalties, we also discussed the drafting requirements related to penalties and enforcement.

The key points to keep in mind in this session are:

- the by-law must set maximum penalties within the maximums set in the Framework Agreement;
- the law cannot establish minimum penalties; and
- the judge determines the actual sentence, based on input from the prosecutor (who may also include band council or community views or wishes) and from the offender

The Main Methods of Enforcing Laws

There are two main methods of enforcing laws:

- verbal and written warnings or discussions are often sufficient to convince people to modify their behavior to conform to the law requirements; and
- formal charges bringing offenders before the provincial courts may be required in other situations

Some communities have also developed Alternative Justice Mechanisms. These are discussed at the end of this session.

Two Kinds of First Nation Laws

There are generally two kinds of laws:

- those that are **administrative** in nature, such as building code or a zoning law; and

- those that are **quasi-criminal** in nature (dealing with law and order), such as traffic and environmental infractions.

SUMMARY - CHECKLIST FOR PREPARING BILL-DRAFTING INSTRUCTIONS

Getting Started

- Main objectives of the proposal
- Time needed to prepare drafting instructions
- Public commitments

General Legal and Policy Matters

- Legal context
- Policy context
- Resources
- Legal instruments for accomplishing policy objectives

Legal Structure of the Proposal

- Combining matters in a single bill
- Types of legal instruments
- Provisions that should be in the Law
- Provisions that should be in regulations
- Incorporation by reference
- Administrative instruments
- Recipients of powers

Drafting and Organization of a Law

- Titles
- Preambles and purpose clauses
- General application provisions
- Application to the Crown
- Financial provisions
- Information provisions
- Monitoring compliance
- Sanctions for noncompliance
- Enforcement powers
- Appeals and review mechanisms
- Dispute resolution mechanisms
- Extraordinary provisions

Technical legislative matters

- Sunset and review provisions
- Repeals
- Consequential and conditional amendments
- Transitional provisions
- Coming into force

GETTING STARTED

MAIN OBJECTIVES OF THE PROPOSAL

- ✓ What are the main objectives of the proposal?

It is essential to clearly articulate the precise purpose of proposed legislation, so that decision makers and the drafters properly understand what the legislation is supposed to achieve.

For amending bills that are intended to accomplish a number of different purposes, the instructions should explain these purposes separately in relation to the provisions that are to be amended. They should also include a general instruction to make consequential amendments to other provisions.

TIME NEEDED TO PREPARE DRAFTING INSTRUCTIONS

- ✓ Is there enough time to prepare the drafting instructions?

Thinking through the detail of drafting instructions will raise policy issues that were not identified when ideas were expressed in general terms in the policy development stage. Time will be needed to address and resolve these issues. The First Nation must be prepared to spend the time necessary to produce a coherent set of provisions to implement the proposal. Unresolved issues haunt a legislative project until they are resolved and it is wiser and more efficient in the long run to resolve as much as possible before the actual drafting begins.

The time spent in thinking through drafting instructions is well worth it. Good drafting instructions will avoid:

- delays in drafting the bill because of unresolved policy questions;
- having to go back to Council or the community to clarify policy issues that were not adequately resolved in the original proposal;
- having to propose amendments once the draft law has been prepared because the policy was still in flux after the draft law was introduced;
- being left without the necessary legal authority after the Law is passed to draft the regulations required to complete the legislative scheme.

Before establishing the time frames for the proposed law make sure that the legislative drafter has been consulted. The time needed to prepare the draft may be much greater than the expected.

PUBLIC COMMITMENTS

- ✓ Has the Chief and Council made any public commitments, either generally or about the specific legislative proposal, that will affect its contents or timing?
These public commitments could affect the timing of the Law or require it to be framed in a certain way

Stakeholders or other governments are sometimes consulted on the draft proposals. When the aim of consultations is a negotiated agreement on wording that is to be proposed in the legislation, drafters should be consulted before specific wording is agreed on

GENERAL LEGAL AND POLICY MATTERS

LEGAL CONTEXT

- ✓ What legal considerations affect the proposal?

This portion of the drafting instructions should be completed by the legal adviser. It involves an assessment of the law related to the proposal in order to ensure that the resulting legislation will operate effectively.

Some areas of particular concern are:

- Does the First Nation have constitutional authority to make the Law?
- Will it affect matters within provincial or federal jurisdiction?
- Is it consistent with the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights?
- Does the proposal distinguish between members and non-members; on-reserve members and off-reserve members?
- Does the proposal raise any gender or other equality issues?
- Is it consistent with the Framework Agreement, the land code and other First Nation Laws?
- Any conflicting legislation should be specifically identified and the conflict should not be resolved by a general "notwithstanding" provision.
- Does the proposal respond effectively to any court decisions or legal opinions that gave rise to the legislation or any of its elements?
- Are there any agreements which the First Nation has signed that relate to the proposal?
- Does the proposal rely on provincial private law (for example, contracts or property) to supplement it? (e.g. Quebec civil law or common law.

POLICY CONTEXT

- ✓ Do any First Nation policies affect the proposal?

RESOURCES

- ✓ Who will incur costs as a result of the new Law?

If the First Nation will incur costs as a result of the legislation, a strategy must be identified for managing their reaction or obtaining their support.

- ✓ Will the proposed law require additional First Nation staff and / or staff training; new facilities or equipment?

If there are new First Nation costs associated with implementing or complying with the proposed legislation, a source of funding will be needed before approval.

LEGAL INSTRUMENTS FOR ACCOMPLISHING POLICY OBJECTIVES

- ✓ How will the policy objectives of the proposal be accomplished?

There are many legal mechanisms available for implementing policy objectives. These include:

- the creation of public bodies and offices;
- the conferral of powers and duties on public officials;
- rules that regulate, prohibit, require or authorize particular activities;
- the creation of sanctions for non-compliance with the rules.

Some particular mechanisms that are often adopted include:

- licensing schemes directed toward controlling particular activities;
- monitoring and enforcement provisions.

As far as possible, the drafting instructions should provide a picture of how the legislation will actually work, describing the type of machinery envisaged and the necessary powers and duties, including how the legislation will be enforced.

LEGAL STRUCTURE OF THE PROPOSAL

COMBINING MATTERS IN A SINGLE BILL

- ✓ What should be included in a single bill?

Related matters should be combined in one bill, rather than being divided among several bills on similar subjects. A single bill allows the Council to make the most effective and efficient use of their time for debate and study. However, matters should only be combined if it is appropriate and consistent with legislative drafting principles. Titles to Laws are among the most important tools people use to find the law. If very different matters are combined in one Law, it becomes more difficult for people to find the law relating to the matters that concern them.

TYPES OF LEGAL INSTRUMENTS

- ✓ What types of legal instruments should be used?

There are many legal instruments and other related documents available to implement policy. They fall into three categories:

- Laws
- Regulations
- Administrative documents (for example, contracts, internal directives, bulletins, decision documents).

Both Laws and regulations are forms of law, with the same legal effect. Administrative documents do not necessarily have legal effect.

Additional differences among these categories involve the procedures used to make them. First Nation Land Codes provide the process for making Laws. There are no general legislative requirements for other subordinate documents, although they are sometimes subject to particular requirements such as those relating to natural justice.

The provisions of any Law must fit together in a coherent scheme with the administrative documents that it authorizes. This means that the authority to make administrative documents must be established by the Law, either expressly or impliedly.

PROVISIONS THAT SHOULD BE IN THE LAW

- ✓ What should be in the Law?

Generally speaking, the Law contains the fundamental policy or underlying principles of legislation that are unlikely to change. The following additional matters are usually dealt with in the Law:

- provisions that might substantially affect personal rights (search and seizure powers, penalties for serious offences, expropriation);
- provisions establishing the structure of public bodies or providing for appointments;
- controversial matters that should be addressed by the Council;
- amendments to Laws, including the definition of terms used in Laws.

PROVISIONS THAT SHOULD BE IN REGULATIONS

- ✓ What should be in regulations or administrative documents?

Regulations should deal with matters of an administrative (as opposed to legislative) nature that are subordinate to the main principles stated in the Law. As an alternative to regulations, consider delegating authority to Council to pass a resolution(s) to deal with:

- procedural matters, for example, how to apply for a licence;
- matters that are likely to need adjusting often, for example, prescribing interest rates, setting annual fishing quotas;
- technical matters involving scientific or other expertise;
- rules that can only be made after the department gains some experience in administering the new Law, for example, prescribing the time within which certain steps should be taken;
- fees to be paid for services or programs established in a Law.

OTHER MATTERS

The drafting instructions should specifically provide authority to do any of the following things and provide reasons for requesting this authority:

- substantially affect personal rights and liberties;
- determine important matters of policy or principle;
- amend or add to the enabling Law or other Laws;
- exclude the ordinary jurisdiction of the Courts;
- apply retroactively;
- sub-delegate decision-making authority from the First Nation Council;
- impose a charge on public revenue or a tax on the public;

- set the penalties for offences

INCORPORATION BY REFERENCE

- ✓ Should some matters be dealt with through documents or laws incorporated by reference?

Legislation does not have to spell out all the details of what it requires or provides. It can instead refer to other laws or documents and incorporate their contents without reproducing them. If this is to be done, consideration should be given to whether particular authorizing provisions are needed. Incorporation by reference is also subject to the law-making limits of the First Nation and as well as requirements relating to the accessibility and comprehension of incorporated documents. Legal advisers can provide guidance on these questions.

ADMINISTRATIVE INSTRUMENTS

- ✓ What should be dealt with through administrative instruments?

Many of the elements of a regulatory scheme should be dealt with in administrative instruments, such as permits, licenses, directives or contracts. These include:

- legal requirements that are to be imposed individually on a case-by-case basis;
- fees non-binding guidelines;
- internal directives on administrative matters.

RECIPIENTS OF POWERS

- ✓ Who should decision-making powers be given to?

- Chief and Council
- First Nation manager or program head
- Land Committee
- Other?

Judicial and quasi-judicial powers

- Judicial and quasi-judicial powers must be exercised with impartiality and the delegates who exercise them should have the qualifications and security of tenure to ensure their impartiality (dispute resolution rules).

Administrative powers

- Most administrative powers are given to Chief and Council who, in turn, have implied authority to authorize officials in the First Nation administration to exercise them.
- Law registries or other public registries can be given to specific officials – a Registrar
- Inspection and enforcement powers are usually given to classes of officials created to exercise these powers.

DRAFTING AND ORGANIZATION OF A LAW

TITLES

- ✓ What will be the title of the Law?

Each bill has a long title, which sets out the scope of the bill and gives a brief description of its purpose. The wording of this title should be left to the bill-drafting stage.

A bill to enact a new Law also has a short title, which is used to identify the Law when discussing it or referring to it in other legislation. A short title is also sometimes included in an amending Law that is likely to be referred to in other Laws. A short title should succinctly indicate the Law's subject matter. The following are examples of the long and short titles of an Law:

- An Law to provide for the regulation of traffic and vehicles on roads on First Nation lands;
- The Road Traffic Law.

Finalizing the short title should also be left to the bill-drafting stage. However, a working title is needed from an early stage and care should be taken to establish an appropriate title since it often becomes more difficult to change as the proposal moves forward.

Try to avoid words such as "First Nation", "Canadian," "National," "Federal" and "Government" because they make it harder to find the Law by its subject matter in a table of statutes.

PREAMBLES AND PURPOSE CLAUSES

- ✓ Should there be a preamble or purpose clause?

Preambles and purpose clauses should not be included in a Law without carefully thinking about what they would add to the Law and what they would contain. They should not be used to make political statements. They can have a significant impact on how the legislation is interpreted by the courts.

Preambles and purpose clauses perform different, but overlapping functions.

Preambles:

- often provide important background information needed for a clear understanding of the Law, or to explain matters that support its constitutionality;

- are placed at the front of the Law;
- should be drafted sparingly to avoid creating confusion about the meaning of the legislation.

Purpose clauses:

- indicate what the intended results of the legislation are;
- should highlight only the principal purposes;
- are included in the body of the legislation; and
- generally have a greater effect on the interpretation of legislation than preambles.

When a bill amends an existing Law, only the amendments themselves are added to the text of the Law when it is reprinted in a consolidated form. The preamble is not included. In order to ensure public awareness of, and access to, background information for an amending bill, a purpose clause may be considered as an alternative because it can be integrated into the consolidated legislation. Both preambles and purpose clauses must be carefully reviewed by legal advisors for appropriate language and content.

GENERAL APPLICATION PROVISIONS

- ✓ Should the application of the Law be confined or expanded in any way?

You should consider whether the Law should be applied to the First Nation itself, taking into account the following:

- binding the First Nation may entail additional legal liability for government activities;
- not binding the First Nation may render the legislation less effective if it governs an activity that the First Nation carries on to a significant degree;
- agents of the First Nation (for example, First Nation corporations) generally benefit from First Nation immunity, which may give them an advantage over private sector competitors.

An example is a building law. Does the First Nation have to comply with its own Building Law – obtain a permit, abide by building restrictions, zoning etc.?

FINANCIAL PROVISIONS

- ✓ Will there be provisions involving the collection or disposition of First Nation money?

A law may require that the First Nation pay from its own funds money to support a program or service. Once the money is allocated by Law, the First Nation has a legal obligation to spend that money and must amend the law to avoid non-compliance.

INFORMATION PROVISIONS

- ✓ Will the legislation restrict or require the disclosure of information?

The disclosure of information is affected by legal concepts of confidentiality and privilege. Provisions affecting the disclosure of information should be reviewed in light of these requirements and discussed with legal advisors.

The laws of other governments may also restrict the release or disclosure of personal or confidential information such as a Social Insurance Numbers.

SANCTIONS FOR NON-COMPLIANCE

- ✓ Will penalties or other sanctions be needed to ensure compliance with the legislation?

Most legislation is enforced by the imposition of sanctions for non-compliance. They range from penal sanctions, such as fines and imprisonment, to administrative sanctions, such as licence suspensions or disqualifications.

There are three basic methods of imposing sanctions:

- through the prosecution of offences in the courts;
- through offence ticketing schemes, such as the Contraventions Act;
- through the imposition of administrative monetary penalties or other administrative sanctions.

Provisions for the imposition of penal sanctions should reflect the principles set out in (sections 718 to 718.2 of) the Criminal Code. They should be reviewed to ensure that:

- they will be effective in obtaining compliance;
- there will be effective enforcement mechanisms, such as powers to conduct inspections or searches;
- the sanctions are appropriate for the seriousness of the noncompliant behaviour;
- the sanctions are variable enough to reflect the circumstances of the accused person in order to ensure that they receive equal treatment under the Law.

If administrative sanctions are to be imposed, a mechanism will be needed for their imposition. The creation of this mechanism raises many legal and policy choices to be considered, including choices about

- strict or absolute liability;
- the processes by which liability for and the amount of a sanction will be determined;

- the relationship of the administrative sanctions to criminal prosecution;
- the institutional structure of required impartial review.

It is essential that legal advisors be consulted in the development of sanctions and penalties to make certain the Law can be adequately enforced.

ENFORCEMENT POWERS

- ✓ Should the Law authorize searches, seizures and other action to support the prosecution of offences?

The Criminal Code provides a basic set of powers for the enforcement of legislation, including powers to make arrests, conduct searches and seize things. However, these powers may not be sufficient or they may have to be supplemented.

APPEALS AND REVIEW MECHANISMS

- ✓ Should there be procedures for appealing or reviewing decisions of administrative bodies created or authorized to make decisions under the Law?

Judicial Review

The Federal Court Act provides that the Federal Court may review the decisions of any "federal board, commission or tribunal." A First Nation decision can be reviewed as a result of this definition. This review concerns the legality of the decisions, as opposed to their merits. In most cases, applications for review are heard by the Trial Division of the Court. However, section 28 of that Act specifies bodies whose decisions are reviewed by the Court of Appeal.

Appeals

Appeals generally concern the merits as well as the legality of decisions. A right of appeal (or judicial review) exists only if it is granted expressly by the Act. Appeals may be taken to the courts (usually the Federal Court) or to an administrative tribunal created by the Act. A decision is not generally subject to judicial review if it is subject to appeal.

Review

It may also be appropriate to create other review mechanisms (in addition to judicial review and appeal). A decision-making body may be authorized to review its own decisions. Another body may be created to review the decision or an existing body (for example, the Chief and Council) may be authorized to review them.

DISPUTE RESOLUTION MECHANISMS

- ✓ Should there be mechanisms for the resolution of disputes arising under the legislation?

Consideration should be given to including provisions for the resolution of disputes instead of relying on the courts, whose procedures are usually costly and involved. Some examples of dispute resolution mechanisms are negotiation, mediation and neutral evaluation.

Alternative Dispute Resolution is provided for under the Framework Agreement.

EXTRAORDINARY PROVISIONS

- ✓ Does the proposal include any extraordinary provisions requiring specific Council attention and consideration?

Certain types of provisions should be specifically identified because they may be controversial. These sorts of provisions involve:

- the retroactive application of legislation;
- broad powers to grant exemptions from the legislation;
- power to sub delegate regulation-making powers;
- excluding the jurisdiction of the courts;
- expropriation of property;
- emergency powers;
- substantial restrictions on fundamental rights or freedoms; and
- regulation-making powers dealing with matters that are usually provided for in Laws

These matters are technical in nature and require that legal counsel provide opinions on the use of any of these matters having regard to the object of the proposed Law and compliance with laws of general application. For example, criminal legislation cannot be made retroactive.

TECHNICAL LEGISLATIVE MATTERS

SUNSET AND REVIEW PROVISIONS

- ✓ Should provisions be included for the expiry or review of the Law?

Caution should be taken when considering whether to include a "sunset" or expiration provision in a bill, since these provisions may result in a gap of legal authority if the new legislative regime cannot be brought into force in time. Similarly caution should be taken when considering inclusion of a provision for mandatory review of the Law within a particular time or by a particular committee given that this limits flexibility. Alternatives to these provisions should be fully explored before proposing to include them.

REPEAL

- ✓ Are there any Laws or regulations that have to be repealed as a result of the legislation?

If a new Law is proposed to replace an existing Law, the existing Law will have to be repealed. It may also be necessary to repeal particular provisions of related Laws as well as regulations.

CONSEQUENTIAL AND COORDINATING AMENDMENTS

- ✓ Are there any Laws or regulations that will have to be amended as the result of the legislation?

New legislation often affects provisions in other Laws. One of the most common examples of this occurs when the name of an Law is changed. References to the Law in other legislation must be amended to reflect the change.

You should also determine whether any other legislation amends the same provisions. If so, amendments will be needed to co-ordinate the amendments so that one does not undo the other.

TRANSITIONAL PROVISIONS

- ✓ Will any transitional provisions be needed to deal with matters arising before the Law comes into force?

Whenever changes are made to the law, consideration should be given to matters that arose under the previous law, but which are still ongoing after the new law comes into force. These matters include:

- regulations made under the previous law;
- rights or benefits granted under the previous law;
- appointments to offices;
- offences committed under the previous law; and
- judicial or administrative proceedings involving the application of the previous law.

COMING INTO FORCE

- ✓ When should the Law come into force?

When a Law comes into force, it begins to operate as law. A First Nation Law must include a provision concerning when it comes into force. There are a number of options. It may come into force:

- on a specified day;
- on a day dependent on a specific event (for example, the coming-into-force of another Law).

A Law may also provide that different provisions may come into force on different days.

CONCLUSION

Over the course of this workshop we have covered numerous law-making principles and practices. Through our brief dissemination of the Canadian Legal System, First Nation Law-Making Authorities, and the new abilities granted to First Nations under the *Framework Agreement on First Nation Land Management*, as well as our discussions on the need for, and drafting of, laws on reserve land, it is our hope that we have helped in that first step towards the creation of your individual laws.

Please note that at the end of this Law Making Guide, we have provided a summary of important points that you may want to consider when contemplating the creation of a new law. This summary includes a list of general legal and policy concerns, the process of drafting and organizing a proposed law, and technical points to consider prior to a law coming in to force. It reiterates that a law is not always the only instrument at your disposal. There are other legal instruments that you may find work better in varying situations, with the same legal effect.

It is important to remember that you are not alone when going through the process of developing new laws. The First Nations Land Management Resource Centre is available to help if you have any questions or concerns. We are here to assist you. Please feel free to contact us at:

First Nations Land Management Resource Centre

Address:
350 Terry Fox Drive, Suite 106
Kanata, Ontario
K2K 2W5

Telephone: (613) 591-6649
Facsimile: (613) 591-8373
E-mail: webadmin@labrc.com

You may also contact your workshop administrator, Chris Angeconeb, directly at:

Telephone: (613) 591-6649 ext. 210
Facsimile: (613) 591-8373
E-mail: chris.angeconeb@labrc.com

MEMORANDUM OF UNDERSTANDING ON FUNDING

This Memorandum of Understanding dated for reference the 19 day of October, 2011:

BETWEEN: Operational First Nation signatories to the *Framework Agreement on First Nation Land Management* (“*Framework Agreement*”), as represented by the Chair of the Lands Advisory Board (“LAB”) and the Chair of the First Nations Land Management Resource Centre Inc. (“Resource Centre”)

AND: Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development (“Canada”)

WHEREAS:

The *Framework Agreement*, Part VI Funding, clause 30 OPERATIONAL FUNDING, sub-clause 30.2 states that:

- “A method for allocating such operational funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board”;

The *Framework Agreement*, Part V ENVIRONMENT, clause 27 RESOURCES, sub-clause 27.1 states that:

- “The Parties understand that the obligation of a First Nation to establish an environmental assessment and environmental protection regime depends on adequate financial resources and expertise being available to the First Nation”;

This Memorandum of Understanding (“MOU”) is the result of the LAB negotiations with Canada and sets out a new operational funding formula (“NOFF”) consistent with sub-clauses 27.1 and 30.2 of the *Framework Agreement*; and

This MOU has been presented by the LAB to the *Framework Agreement* Operational First Nations at the 2011 LAB Annual General Meeting held in Ottawa on October 19 and 20, 2011 and has been approved by resolution.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS

In this MOU,

“Funding Agreement” means an agreement between Canada and an Operational First Nation, or between Canada and a Tribal Council of which the Operational First Nation is a member, for the purpose of providing funding, during the fiscal

year(s) identified in that agreement, for the programs and services referred to in that agreement;

“Individual Agreement” means the individual agreement referred to in subsection 6(3) of the *First Nations Land Management Act*, S.C. 1999, c. 24 and clause 6 of the *Framework Agreement*;

“Operational First Nations” means First Nations who have ratified the *Framework Agreement* pursuant to clause 48.2 of the *Framework Agreement*, and who have a land code that has come into force.

PURPOSE

1. This MOU addresses the requirements under the *Framework Agreement*, Part VI Funding, clause 30 OPERATIONAL FUNDING, sub-clause 30.2.
2. This MOU also addresses the requirements under the *Framework Agreement*, Part V ENVIRONMENT, clause 27 RESOURCES, sub-clause 27.1 for financial resources to establish and maintain an environmental protection regime, which were not included in the previous operational funding formula but were specifically contemplated by the *Framework Agreement*.
3. The NOFF will be effective April 1, 2012.

TERM

1. The NOFF will begin on April 1st of fiscal year 2012-2013 and will continue through fiscal years 2013-2014, 2014-2015 and 2015-2016.
2. Prior to March 31, 2016, the Parties may agree to extend the term of this MOU and the NOFF.

LAND AND ENVIRONMENTAL FUNDING

1. The NOFF provides funding to assist with land and environmental governance and management, which include the following activities:
 - i. establishing and maintaining the legislative, regulatory, and policy framework, including an environmental protection regime;

- ii. enforcement which includes enforcing First Nation laws (both environmental laws and other laws) and the prosecution of individuals contravening First Nation laws; and
 - iii. undertaking periodic evaluations of the land governance regime, similar to the reviews undertaken by other governments performing similar functions, to ensure First Nation members have access to information they need to assess the performance of the First Nation in administering its land governance responsibilities.
2. Annex A sets out three tiers of funding levels and identifies under which tier each of the current Operational First Nations will be funded.
 - i. Operational First Nations listed in Tier I will be provided funding of \$204,536 each year for 4 years starting April 1, 2012;
 - ii. Operational First Nations listed in Tier II will be provided funding of \$251,636 each year for 4 years starting April 1, 2012; and
 - iii. Operational First Nations listed in Tier III will be provided funding of \$317,386 each year for 4 years starting April 1, 2012.
3. The annual funding provided to each of the current Operational First Nations, as well as to those First Nations approving their Land Code and Individual Agreement and the *Framework Agreement* by March 31, 2012 shall remain fixed at the levels described in section 2 above, and set out in Annex A, for the four year term of this MOU.
4. First Nations which approve their Land Code and Individual Agreement and the *Framework Agreement* and become operational after March 31, 2012 will be identified under a Tier I, Tier II or Tier III funding level in their Individual Agreement with Canada.

TWO YEAR TRANSITION AND ENVIRONMENTAL FUNDING

1. A second component of the NOFF is a contribution towards transitional activities including, but not limited to, the following matters:
 - i. development and passage of a core body of land laws (including environmental protection);
 - ii. training and development, including environmental training and development; and

- iii. communicating the impact of the regime to members, non-members on-reserve and other interested parties.
2. All Operational First Nations as of March 31, 2012, and new Operational First Nations after that date, will be eligible for the two year transition and environmental funding.
3. Canada will contribute transition and environmental funding in the following manner, and as listed in Annex B:
 - i. current Operational First Nations will receive a payment of \$75,000 in fiscal year 2012-2013 and a second payment of \$75,000 in fiscal year 2013-2014;
 - ii. First Nations that approve their Land Code and Individual Agreement and the *Framework Agreement* and become operational in the future will receive a payment of \$75,000 in the year their land code comes into effect and a second payment of \$75,000 the year thereafter. If a First Nation becomes operational after March 31, 2015 the second payment will be in accordance with the terms of the operational funding formula applicable at that time.

TWO YEAR ADJUSTMENT PERIOD

1. A third component of the NOFF is two year adjustment funding, which will be provided to four First Nations¹ that will experience a decrease in operational funding, as a result of the implementation of the NOFF. The amounts of the adjustment funding are set out in Annex C.

FIRST NATION DISCRETION

1. A fourth component of the NOFF is that Operational First Nations will have the sole discretion to determine how to use the funding provided to meet their land and environmental governance and management responsibilities, subject to the terms and conditions of the *Framework Agreement*, the Individual Agreement and the First Nation's Funding Agreement.

¹ Chippewas of Georgina Island, Opaskwayak Cree Nation, Tseil-Waututh Nation (Burrard), and Tzeachten

PAYMENTS TO FIRST NATIONS

1. Funding provided under the NOFF will be paid through Funding Agreements, and payments will be subject to the terms and conditions of the Funding Agreements.

NEW OPERATIONAL FIRST NATIONS

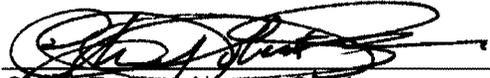
1. The amount of Canada's funding contribution (excluding the Two Year Transitional and Environmental Funding) to new Operational First Nations for the first fiscal year that their Land Code comes into effect shall be prorated based on the number of months from the date the Land Code comes into effect to the end of the first fiscal year.

GENERAL PROVISIONS

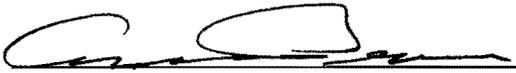
1. Funding provided by Canada to Operational First Nations is subject to the appropriation of funds by the Parliament of Canada for the fiscal year in which the funding is to be provided.
2. All obligations of Canada to fund Operational First Nations, as required under Parts V and VI of the *Framework Agreement*, have been addressed by the NOFF.
3. Any amendments to this MOU shall be in writing and executed by both parties to this MOU.

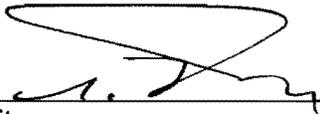
Signed in Ottawa, on 19 day of October, 2011

FOR THE OPERATIONAL FIRST NATION SIGNATORIES:


Chief Robert Louie, Chair
Lands Advisory Board


Witness


Chief Austin Bear, Chair
First Nations Land Management
Resource Centre Inc.


Witness

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA:


The Honourable John Duncan,
Minister of Indian Affairs and Northern
Development


Witness

ANNEX A - NEW OPERATIONAL FUNDING FORMULA (2012/2013 to 2015/2016)

	First Nation	Amount
Tier I	Anishnaabeg of Naongashiing (Big Island)	\$204,536
	Atikameksheng Anishnawbek (Whitefish Lake)	\$204,536
	Beecher Bay	\$204,536
	Chemawawin Cree Nation	\$204,536
	Henvey Inlet	\$204,536
	Kinistin Saulteaux Nation	\$204,536
	Kitselas	\$204,536
	Leq'a:mel	\$204,536
	Lheidli T'enneh	\$204,536
	Matsqui	\$204,536
	McLeod Lake	\$204,536
	Mississauga	\$204,536
	Mississauga's of Scugog Island	\$204,536
	Muskeg Lake	\$204,536
	Seabird Island	\$204,536
	Shxwha:y Village	\$204,536
	Skawahlook	\$204,536
	Sliammon	\$204,536
	Snaw'Naw'As (Nanoose)	\$204,536
	Songhees	\$204,536
	Squiala	\$204,536
	Sumas	\$204,536
	Swan Lake	\$204,536
	T'Sou-ke	\$204,536
Ts'kw'aylaxw	\$204,536	
We Wai Kai (Cape Mudge)	\$204,536	
Tier II	Muskoday	\$251,636
	Whitecap Dakota	\$251,636
Tier III	Chippewas of Georgina Island	\$317,386
	Nipissing	\$317,386
	Opaskwayak Cree Nation	\$317,386
	Tsawout	\$317,386
	Tsleil-Waututh Nation (Burrard)	\$317,386
	Tzeachten	\$317,386

ANNEX B – TWO YEAR TRANSITION AND ENVIRONMENTAL FUNDING

	First Nation	2012/2013	2013/2014	Total
Tier I	Anishnaabeg of Naongashiing (Big Island)	\$75,000	\$75,000	\$150,000
	Atikameksheng Anishnawbek (Whitefish Lake)	\$75,000	\$75,000	\$150,000
	Beecher Bay	\$75,000	\$75,000	\$150,000
	Chemawawin Cree Nation	\$75,000	\$75,000	\$150,000
	Henvey Inlet	\$75,000	\$75,000	\$150,000
	Kinistin Saulteaux Nation	\$75,000	\$75,000	\$150,000
	Kitselas	\$75,000	\$75,000	\$150,000
	Leq'a:mel	\$75,000	\$75,000	\$150,000
	Lheidli T'enneh	\$75,000	\$75,000	\$150,000
	Matsqui	\$75,000	\$75,000	\$150,000
	McLeod Lake	\$75,000	\$75,000	\$150,000
	Mississauga	\$75,000	\$75,000	\$150,000
	Mississauga's of Scugog Island	\$75,000	\$75,000	\$150,000
	Muskeg Lake	\$75,000	\$75,000	\$150,000
	Seabird Island	\$75,000	\$75,000	\$150,000
	Shxwha:y Village	\$75,000	\$75,000	\$150,000
	Skawahlook	\$75,000	\$75,000	\$150,000
	Sliammon	\$75,000	\$75,000	\$150,000
	Snaw'Naw'As (Nanoose)	\$75,000	\$75,000	\$150,000
	Songhees	\$75,000	\$75,000	\$150,000
	Squiala	\$75,000	\$75,000	\$150,000
	Sumas	\$75,000	\$75,000	\$150,000
	Swan Lake	\$75,000	\$75,000	\$150,000
	T'Sou-ke	\$75,000	\$75,000	\$150,000
Ts'kw'aylaxw	\$75,000	\$75,000	\$150,000	
We Wai Kai (Cape Mudge)	\$75,000	\$75,000	\$150,000	
Tier II	Muskoday	\$75,000	\$75,000	\$150,000
	Whitecap Dakota	\$75,000	\$75,000	\$150,000
Tier III	Chippewas of Georgina Island	\$75,000	\$75,000	\$150,000
	Nipissing	\$75,000	\$75,000	\$150,000
	Opaskwayak Cree Nation	\$75,000	\$75,000	\$150,000
	Tsawout	\$75,000	\$75,000	\$150,000
	Tsleil-Waututh Nation (Burrard)	\$75,000	\$75,000	\$150,000
	Tzeachten	\$75,000	\$75,000	\$150,000

ANNEX C – TWO YEAR ADJUSTMENT PERIOD FUNDING

This table identifies the annual allocations for those First Nations affected by the adjustment period:

First Nation	2012/2013	2013/2014	2014/2015	2015/2016
Chippewas of Georgina Island	\$341,160	\$341,160	\$317,386	\$317,386
Opaskwayak Cree Nation	\$370,924	\$370,924	\$317,386	\$317,386
Tsleil-Waututh Nation (Burrard)	\$379,030	\$379,030	\$317,386	\$317,386
Tzeachten	\$375,587	\$375,587	\$317,386	\$317,386

FRAMEWORK AGREEMENT

DEVELOPMENTAL PHASE

COMPLETING YOUR LAND CODE & INDIVIDUAL AGREEMENT

SUPPORT & FACILITATION

LABRC

- PROVIDE EXPERTISE
- RESOLVE DIFFICULTIES
- DEVELOP MODEL
 - Law
 - Land codes
 - Land mgmt systems

• ASSIST FN'S TO DEVELOP & IMPLEMENT:

- Laws
- Land code
- Land mgmt systems
- Curriculum & training
- Environmental assessments
- Protection regimes

LANDS COMMITTEE

- DEVELOP:
 - Land code
 - Ratification process
- OVERSEE RATIFICATION PROCESS
- ENSURE FA COMPLIANCE
- CERTIFY LAND CODES
- RESOLVE DISPUTES

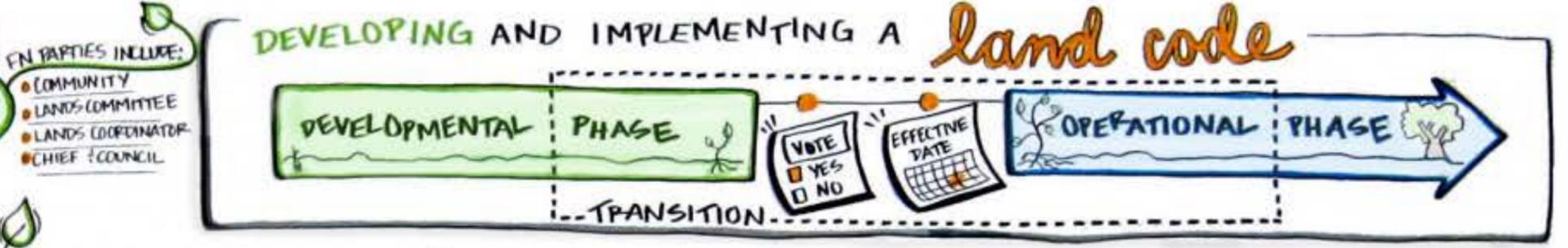
LANDS COORDINATOR

- COORDINATE:
 - Land code development
 - Individual agreement negotiation

NEGOTIATION • GOC PROVIDES

- Land description
- ESA Phase 1
- OFF Statement
- Revenue Account Statement

GOVT OF CANADA



DEVELOPMENTAL roles & responsibilities