Introduction to Resource Management & Planning for Water

Course Workbook

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FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Training, Mentorship & Professional Development

Introduction to Resource Management & Planning for Water

Course link: https://labrc.com/public/courselet/Introduction-to-Resource-Management-and-Planning-For-Water/presentation_html5.html

The Introduction to Resource Management and Planning for Water Courselet introduces the following topics:

- Framework Agreement on First Nations Land Management (Framework Agreement) and Land Code (LC) Authority
- Why water is important
- The hydrological (water) cycle
- Definitions of the types of water resources (watershed groundwater, surface water marine water)
- The relationship between land and water
- Benefits Of water management

The material provided in this courselet is current to the date of this courselet. Thank you to the resource management experts and Lands Advisory Board Resource Centre (LABRC), for aiding in the development of this courselet.

Overview

Natural Water Sources

This courselet provides information about the management of fresh water and marine water sources. The courselet is primarily concerned with naturally occurring sources of water:

- Streams
- Lakes
- Wetlands
- Ocean

Extracted Water

Water that has been extracted from natural sources and is "in the pipe" for delivery to homes, industry, or agriculture is typically managed by a Utility (run by a First Nation (FN), an adjacent municipality or another agent).

Although access to water sources may, where applicable, be managed under a LC, the management of water utilities does not change under the Framework Agreement. Therefore, this courselet only discusses the management of drinking water to the extent that relevant laws, policies and regulations can be developed under a LC. Waste water management is addressed in the Sources of Contamination Requiring Management courselet which deals with pollution control.

Big Picture

Water is essential for all living organisms on earth. Water has great importance to FNs culture, whether it is used for spiritual purposes, ritual bathing or providing food sustenance.

Water supports plants and animals and provides important habitat and migration routes for fish, birds and other wildlife. Protecting and managing water resources helps to maintain healthy ecosystems for these organisms.

Water of sufficient quantity and quality is important to ensure a high quality of life for human communities. Canada's water supply not only has limits, it also has many competing uses. The need for drinking, cooking, washing and other domestic uses is obvious, but water is also essential to industrial and agricultural purposes; it is a source of hydroelectric energy; it serves as a medium of transportation and recreational activities.

Framework Agreement and Land Code

Under the Framework Agreement operational FNs with an enacted LC have the governance authority and power to make laws and regulations in respect of the development, conservation. protection, management, use and possession of First Nation Land. Click next for more information.

Management Under a Land Code

Each FN, depending on the physical and social conditions on a reserve, may highlight differing perceptions of their water resource value, conflicts over their use, and concern about the ecological, cultural and social effects.

Where water is included in reserve lands it can be managed by laws enacted under a LC or in some circumstances, bylaws enacted under the *Indian Act*.

Survey Maps

It is very important to understand that a Lands Governance Director (LGD) must review the FN's survey plans and the land description prepared, as part of the developmental phase and found In a FN's Land Description Report (LDR). The LDR identifies the extent of the Reserve Lands (to be managed under a LC), and where there is question as to the status of certain lands, it may be necessary to exclude them from the LC until ownership issue may need to be determined by the Courts. A LGD should be familiar with the lands that form part of the LC and those that do not, for all of the FN's reserves.

Challenges

FNs with an enacted LC face considerable challenges when they deal with their natural water resources. Each FN will be unique in how they manage trade-offs between preservation of their water. economic development and resource extraction. A FN must always consider the spiritual, social, ecological and economic dimensions when dealing with their water resources for their future generations.

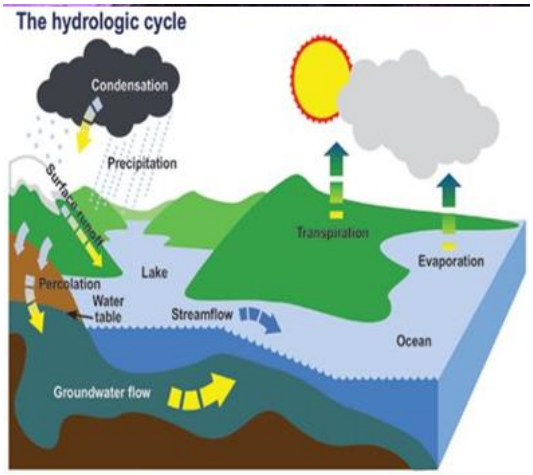
Water Basics

"Water is the most life sustaining gift on Mother Earth and is the interconnection among all living beings. Water sustains us, flows between us, within us, and replenishes us. Water is the blood Of Mother Earth and, as such, cleanses not only herself, but all living things. Water comes in many forms

and all are needed for the health of Mother Earth and for our health. The sacred water element teaches us that we can have great strength to transform even the tallest mountain while being soft, pliable, and flexible. Water gives us the spiritual teaching that we too flow into the Great Ocean at the end of our life journey. Water shapes the land and gives us the great gifts of the rivers, lakes, ice, and oceans. Water is the home of many living things that contribute to the health and well- being of everything not in the water (Assembly of First Nations website).

The Hydrologic Cycle

Water is constant in quantity and continuously in motion. Little water has been added or lost over millions of years. The same water molecules have been transferred repeatedly from the oceans and the land surface into the atmosphere by evaporation, dropped on the land as precipitation and transferred back to the sea by rivers and groundwater. This endless circulation is known as the "hydrologic cycle."



Terminology

Condensation: As water vapour rises, it cools and eventually collects or condenses, usually on tiny particles of dust in the air. When it condenses, water becomes a liquid again or turns directly into ice crystals that coalesce and form clouds.

Evaporation: As water is heated by the sun, surface molecules become sufficiently energized to break free of the attractive force binding them together, and then rise or "evaporate" as invisible vapour in the atmosphere.

Groundwater: Subterranean water is held in cracks in rocks and soil pore spaces. Depending on an area's geology, the groundwater can support stream flow. Groundwater aquifers also can be tapped by wells. Some aquifers hold groundwater that may have been in the ground for thousands of years.

Percolation: Some of the precipitation and snowmelt moves downwards on the earth's surface, and percolates or infiltrates through cracks, joints and pores in soil and rocks until it reaches the water table where it becomes groundwater.

Precipitation is water falling in the form of rain, snow and hail from clouds. Clouds move around the world, propelled by air currents. When clouds rise over mountain ranges, they cool, reducing the moisture-holding capacity of air, resulting in rain, snow or hail, depending on the temperature of the surrounding air.

Runoff: Heavy rain can saturate surface soil, resulting in runoff across the land surface. Runoff also occurs on frozen ground and other impermeable surfaces or during rapid melting of snow. This runoff can produce overland flow to creeks and ditches. Runoff is visible as the flow of water in rivers and creeks into lakes and the ocean. Runoff that exceeds the capacity of the usual watercourses can result in flood events.

Transpiration: Water vapour is emitted from plant leaves by a process called transpiration. Every day an actively growing plant transpires 5 to 10 times as much water as it can hold at one time.

The water table is the level at which the soil is completely saturated with water.

Differing and Conflicting Uses for Water

Introduction

Indigenous people have a special relationship with water, built on their ways of life that extends back thousands of years. FN traditional activities depend on water for transportation, drinking, cleaning, purification, and provides habitat for the plants and animals they gather as medicines and foods.

Picture: Musgamagw Dzawada'enuxw

Hereditary Chiefs Photo Source: CBC News

Traditional and Cultural Considerations

Traditional knowledge should be incorporated in any resource management and water plan. Water plays a role in traditional activities such as basket making and canoe making ceremonies, etc. Many Indigenous people still practice ritual bathing on a regular basis. FNs recognize the sacredness of water, the interconnectedness of all life and the importance of protecting water from pollution, drought and waste. Hence, water laws, policies, regulations and plans need to consider the location and types Of traditional activities that take place on reserves and identify so that water management can ensure that there is sufficient water available to sustain these activities and resources.

Socio-economic Considerations

Economic activities such as power generation, transportation and industry require water to operate. Human water use may conflict with the water needs of fish and wildlife. Competing demand for water is an important consideration in water management planning.

Many FN reserves in Canada do not have access to sufficient quantities of clean

drinking water. Boil water advisories are common on many reserves. Protecting and managing water resources can ensure that water is available for humans and the ecosystem. Drinking water on reserves is discussed further in the Operations and Maintenance of Reserve Lands courselet.

Information on Indigenous water rights is available by clicking on this link: Aboriginal Water Rights Primer.

Water Resources

Four key aspects of water resources are discussed in this section:

1. Watershed
2. Groundwater
3. Surface water
4. Marine water

Watershed

Watershed is an area of land from which water drains or flows on its way to a particular water body, such as a stream, river, wetland or sea. Every area on the terrestrial surface of the Earth is located in a watershed. Watersheds are defined by the natural landscape, and as a result often do not align with political boundaries.

Although jurisdictional boundaries often cross watersheds. the best approach to protecting and preserving water resources is for communities to collaborate on water management issues throughout the watershed. Using watersheds as a planning unit is effective for a variety of reasons. For example, actions in upper parts of the watershed such as dams, water withdrawals, and pollution can affect conditions lower in the system.

Groundwater

Introduction:

In Canada, 8.9 million people, or 30% of the population, rely on groundwater for domestic use [Environment and Climate Change Canada (ECCC)]. Groundwater supplies their water for drinking and washing, for farming and manufacturing.

Groundwater Flow:

In hydrogeology, groundwater flow is defined as the part of streamflow that has infiltrated the ground, has entered the phreatic zone, and has been discharged into a stream channel, via springs or seepage water." (Wikipedia). Groundwater is not confined to channels or depressions in the same way that

surface water is concentrated in streams and lakes. Rather, groundwater exists almost everywhere underground.

Where Groundwater is found?

Groundwater is found underground in the spaces between particles of rock and soil, or in crevices and cracks in rock. The level below which all the spaces are filled with water is called the water table. The entire region below the water table is called the saturated zone, and water in this saturated zone is called groundwater. An aquifer is an underground formation of permeable rock or loose material that can produce useful quantities of water when tapped by a well. Above the water table lies the unsaturated zone. Here, the spaces in the rock and soil contain both air and water. Water in this zone is called soil moisture.

Recharge and Discharge Areas

When precipitation falls on the land surface, some of the water runs off into the lakes and rivers. Some of the water may also seep into the soil and percolate into the saturated zone. This process is called recharge. Places where recharge occurs are referred to as recharge areas. Where groundwater reappears above the ground surface, the phenomenon is called discharge. Groundwater may flow into streams, rivers, marshes, lakes and oceans, or it may discharge in the form of springs and flowing wells. Groundwater discharge can contribute significantly to surface water flow. In dry periods, the flow of some streams may be supplied entirely by groundwater.

Surface Water

Introduction

Surface water flows on the surface of the ground. Surface water includes:

- Water in lakes
- Rivers
- Wetlands

Lakes

A lake is a sizable water body surrounded by land and supplied by rivers, springs or local precipitation. Much of our domestic, agricultural and industrial water requirements come from surface water, and much of this surface water is contained in lakes. Lakes also provide avenues of transportation, recreational opportunities, and are literally reservoirs of biodiversity critical to natural ecosystems.

Rivers

A river is a natural watercourse flowing towards an ocean, a lake, a sea or another river. In rare cases, a river simply flows into the ground or dries up completely before reaching another body Of water. Small rivers may also be called streams, creeks, brooks or tributaries. Ephemeral streams are intermittent and flow only during certain parts of the year.

Water in a river is generally channelized flow from surface runoff, groundwater recharge, springs, and the release of stored water from natural ice and snowpacks or glaciers. Rivers act as drainage channels for surface water; provide habitat, nourishment and means of transport for countless organisms; Offer

travel routes for commerce and recreation; leave valuable deposits of sediments; and provide the power to produce much of the electrical energy we use. Alluvial lands or deltas upon which we build cities, grow crops or harvest wildlife are the products of deposition of sediment carried by flooding rivers.

Wetlands

Wetlands are areas of land that are submerged or permeated by water, either permanently or seasonally, and are characterized by plants adapted to saturated soil conditions. Wetlands include fresh and salt water marshes, wooded swamps, bogs, seasonally flooded forests, sloughs - any land area that can hold water long enough to let wetland plants and soils develop. Some wetlands ecosystems are of such significance that they have been designated for conservation by international convention. Wetlands have been recognized as particularly useful areas because they:

- Absorb the impact of hydrologic events such as large waves or floods
- Filter sediments and toxic substances
- Supply food and essential habitat for many species of fish, shellfish, shorebirds, waterfowl, and furbearing mammals
- Provide products for food (wild rice, cranberries, fish, wildfowl), energy (peat, wood, charcoal), and building material (lumber)
- Are valuable recreational areas for activities such as hunting, fishing and bird watching

Marine Water

Canada claims sovereignty over approximately 7.1 million square kilometres of ocean, equivalent to about 70% Of Canada's land area. The ocean is an important habitat for fish and other wildlife, a major transportation resource, the earth's greatest regulator of climate, and an important component of global ecosystems. As part of the hydrologic cycle, evaporation from oceans provides atmospheric water that forms precipitation, ice, rivers, lakes, wetlands and groundwater. These freshwater flows eventually return to the ocean. How we manage our freshwater resources also affects the marine environment, particularly estuaries and near-shore areas.

More information about the ocean is available at Fisheries and Oceans Canada.

Relationship Between Land and Water

It is important to understand the interaction between land and water in order to manage water resources. In an undisturbed watershed, water is held in soil and taken up by plants. Water is stored in the ground, lakes and ponds, and then released slowly, even during dry spells. Stream flows fluctuate, affected by flood and drought. Impurities and sediment in water are absorbed by plants and soil, purifying water before it enters groundwater, streams and lakes. There are many human activities that affect water.

Human Activity

Introduction

Human activity affects the quality and quantity of water in a watershed in many ways. We will take a look at some of these ways.

Logging

Logging removes trees and other plant cover and requires building of roads and landings. These actions increase the rate and amount of runoff and sediment reaching streams and lakes. Rate of transpiration from plants is reduced, often increasing total amounts of water yield from a watershed.

Agriculture

Agricultural activity often extends to stream banks. Removal of streamside vegetation causes water temperatures to increase during summer. When livestock have direct access to streams, erosion and water quality problems result. Runoff from agricultural land may contain fertilizers, manure and pesticides. As well, irrigation may result in large scale water withdrawals and changes to soil chemistry.

Surface Mining

Mining strips off surface soil and rock layers. Exposed soil may be eroded and carried into Streams or lakes, particularly by placer mining. Tailing runoff can contain toxic materials from mineral processing. Rocks exposed to air can create "acid rock drainage," changing the pH of water and increasing release of certain metals from rocks to toxic levels.

Urban Development

Urban development involves clearing land, replacing natural landscapes with impervious surfaces (buildings, roads, parking lots) and storm drain systems. Runoff increases and groundwater storage decreases, resulting in wide fluctuations in stream flow. Runoff from roads, parking lots, industry, and lawns can transport toxic substances to streams and lakes.

Point Source Pollution

Point source pollution comes from specific locations, such as industrial plants or sewage outfalls.

Non-Point Source Pollution

Non-point source pollution is diffuse and difficult to control and is a major cause of degraded water quality in many communities. Pollutants come from various land uses throughout a watershed. Common pollutants include heavy metals and hydrocarbons from road runoff, domestic chemicals, sediment and animal wastes.

Picture Source: Oceanservice

Systems that Effect Stream Flow

Dams, dikes, levees and engineered stream channels are systems that can seriously affect stream flow patterns, channel morphology and water quality.

Riparian and Floodplain Areas

Introduction

In the relationship between land and water, two of the most important land areas near a waterbody are the riparian area and the floodplain.

Riparian Area

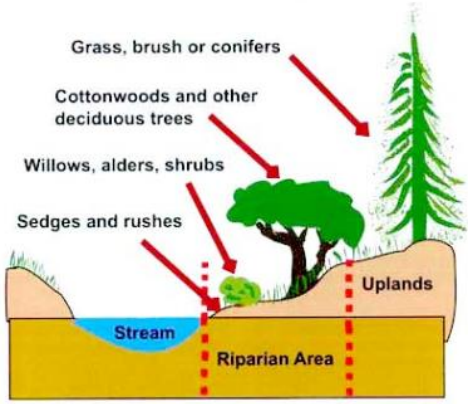
The land bordering lakes, streams, and the ocean is the riparian area. Residential, recreational, industrial and agricultural developments can damage many of the important environmental functions of riparian areas, including the following benefits:

• Bank vegetation filters out more than 50% Of nutrients and pesticides, and more than 75% Of upland sediment: a watershed-based riparian protection program can have significant positive effects on water quality

• Grasses, sedges and deep-rooted woody vegetation anchor soil, preventing bank slumping

• Healthy riparian zones help to decrease stream flow and slow snowmelt; allowing groundwater to be recharged and reducing downstream flooding risks

Picture Source: Province of Manitoba



A riparian area describes the unique land running alongside a water body

Marine Riparian Areas

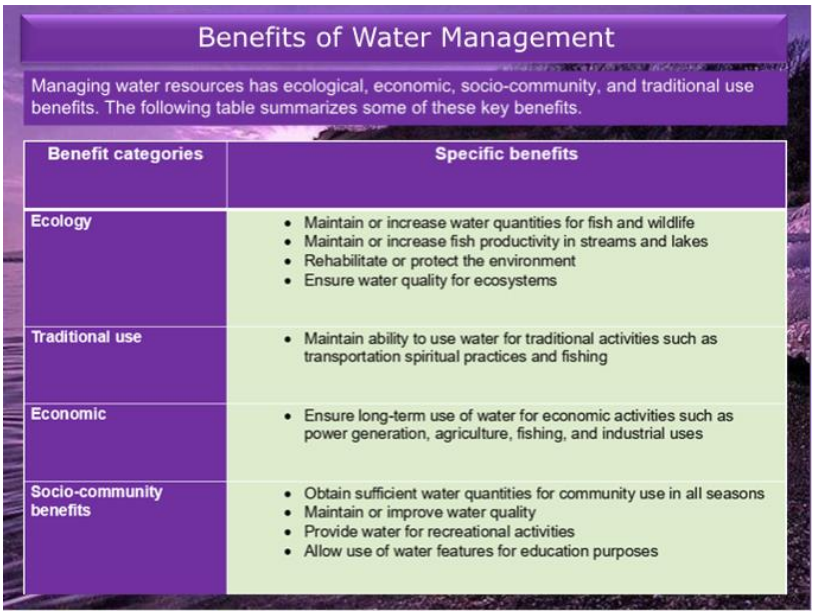
Marine riparian areas can be highly productive. For more information on the ecological value of marine riparian areas, click here. The "Green Shores" initiative is intended to help protect the ecological value of marine shores. One of the greatest threats to marine riparian areas and foreshores is filling of bays and harbours. Regulations have been drafted to control filling (Fisheries and Oceans Canada 2005).

Flood Plain

Flooding is a natural environmental response to storms, rain-on- snow events, spring run-off or extreme high tides. Floodplains are low-gradient lands that are subject to flooding on a regular basis. In Canada, the floodplain is usually divided into two zones: the floodway and the flood fringe and is usually categorized according to the probability of a flood event occurring, as for example, a "one in two

hundred year" flood zone. Property damage and risk to life are greatest in the floodway, where the water depths and velocities are the greatest. Regulations often prohibit building in floodways and restrict building in the flood fringe.

Picture Source: Environment and Climate Change Canada



Benefits of Water Management

Managing water resources has ecological, economic, socio-community, and traditional use benefits. The following table summarizes some of these key benefits.

Benefit categories	Specific benefits
Ecology	• Maintain or increase water quantities for fish and wildlife • Maintain or increase fish productivity in streams and lakes • Rehabilitate or protect the environment • Ensure water quality for ecosystems
Traditional use	• Maintain ability to use water for traditional activities such as transportation spiritual practices and fishing
Economic	• Ensure long-term use of water for economic activities such as power generation, agriculture, fishing, and industrial uses
Socio-community benefits	• Obtain sufficient water quantities for community use in all seasons • Maintain or improve water quality • Provide water for recreational activities • Allow use of water features for education purposes

Summary

Introduction

Water is essential for all living organisms on Earth and is of great importance to FN spirituality and culture. Water is used for domestic, industrial, and agriculture purposes and is a medium for transportation and recreation activities.

Many traditional FN activities require water, such as ritual bathing, medicinal plant gathering and fishing.

Interactions with Water

It is important to understand the interaction between land and water in order to manage water resources. Human activity affects the quality and quantity of water in a watershed through activities such as logging, agriculture, mining, urban development, pollution and dams.

Hydrological Water Cycle

The hydrological (water) cycle demonstrates how the quantity of water on Earth is constant and remains in continuous motion, moving from the oceans to the land through evaporation, transpiration, condensation, precipitation and runoff.

Watershed and Water Management

A watershed is an area of land, across or through which water flows on its way to a particular water body, such as a stream, river, wetland or sea. Dams, water withdrawals, pollution and other actions in the upper parts of a watershed can affect the quality and quantity of water in the lower parts.

For this reason, water management is best undertaken at a watershed scale. A watershed approach requires collaborating with neighbouring jurisdictions, such as other FNs, community groups, and local, provincial and federal agencies. Watershed wide planning helps to address activities occurring in one part of the watershed that may affect another part of the watershed.

Water Resources

There are three main types of water resources: groundwater, surface water and the ocean. Groundwater from wells is an important water source for domestic, agricultural and industrial uses particularly in rural areas. Surface water resources, such as lakes and rivers, have important roles in ecosystem health, as drinking water sources, and for traditional and recreational activities. Wetlands play an important role in slowing the rate of flow to stream, helping to reduce flooding. The ocean is an important habitat for fish and wildlife and a major transportation resource. Water from the ground (aquifers) and surface water sources eventually makes its way to the ocean.

Riparian Area and Flood Plain

Two of the most important land areas in the relationship between land and water are the riparian area and the flood plain. The riparian area is the vegetated land border nearest a water body that acts as a filter of nutrients and pollutants, stabilizes stream banks, helps slow the rate that surface water enters a stream and improves the quality of fish habitat. Floodplains are low-gradient lands near a water body that are subject to flooding on a regular basis.

Water Resources

Stewardship in Canada: Offers programs and tools about water and other stewardship initiatives in Canada

Wetland Network: Access to practical tools and resources to help Canadian better understand and conserve wetlands

Wetkit: Tools for working with wetlands in Canada

Waterbucket: Comprehensive source of water information, publications and resources in British Columbia

Alberta Waterportal: Water news, facts, research and toolkits for Alberta

Conservation Ontario: Resources, publications, news and toolkits for water Conservation Ontario

ACRONYM LIST

DFO	-	Fisheries and Oceans Canada
ECCC	-	Environment and Climate Change Canada
FN	-	First Nation
FRAMEWORK AGREEMENT	-	*Framework Agreement on First Nation Land Management*
LABRC	-	Lands Advisory Board Resource Centre
LC	-	Land Code
LDR	-	Land Description Report
LGD	-	Lands Governance Director

GLOSSARY OF TERMS
RESOURCE MANAGEMENT & PLANNING FOR WATER

AQUIFER

An aquifer is an underground layer of water-bearing permeable rock, rock fractures or unconsolidated materials (gravel, sand, or silt) that can contain or transmit groundwater, and from which groundwater can be extracted using a water well.

BIODIVERSITY

Biodiversity is a compound word derived from “biological diversity”. Biodiversity is the level of diversity among the types of organisms in an ecosystem.

CONDENSATION

As water vapour rises, it cools and eventually collects or *condenses*, usually on tiny particles of dust in the air. When it condenses, water becomes a liquid again or turns directly into ice crystals that coalesce and form clouds.

CONSERVATION

Conservation means “the management or control of human use of resources…in an attempt to restore, enhance, protect, and sustain the quality and quantity of a desired mix of species and ecosystem conditions and processes for present and future generations.

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.

ECOSYSTEMS

Ecosystems are the plants, animals, and non-living components of the environment that function together as a system.

EVAPORATION

As water is heated by the sun, surface molecules become sufficiently energized to break free of the attractive force binding them together, and then rise or “evaporate” as invisible vapour in the atmosphere.

FIRST NATION LAND

"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.

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

The *Framework Agreement on First Nation Land Management (Framework Agreement)* 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.

GROUNDWATER

Groundwater is the water beneath the surface of the ground, found in cracks and spaces in soil, sand and rock, consisting largely of surface water that has seeped down: the source of water in springs and wells.

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.

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 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**.

PERCOLATION

Some of the precipitation and snowmelt moves downwards on the earth's surface, and *percolates* or *infiltrates* through cracks, joints and pores in soil and rocks until it reaches the water table where it becomes groundwater.

PHREATIC ZONE

The phreatic zone, or zone of saturation, is the area in an aquifer, below the water table, in which relatively all pores and fractures are saturated with water.

PRECIPITATION

Precipitation is water falling in the form of rain, snow and hail from clouds. Clouds move around the world, propelled by air currents. When clouds rise over mountain ranges, they cool, reducing the moisture-holding capacity of air, resulting in rain, snow or hail, depending on the temperature of the surrounding air.

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.

RESOURCE MANAGEMENT

Resource management can be defined as the responsibility of governments to ensure that natural resources under their jurisdiction are used wisely or conserved (Canadian Encyclopaedia, 2010).

RUNOFF

Heavy rain can saturate surface soil, resulting in runoff across the land surface. Runoff also occurs on frozen ground and other impermeable surfaces or during rapid melting of snow. This runoff can produce overland flow to creeks and ditches. Runoff is visible as

the flow of water in rivers and creeks into lakes and the ocean. Runoff that exceeds the capacity of the usual watercourses can result in flood events.

SACRED SITES

Sacred Sites are the products of cultural and spiritual beliefs and place of practice.

SURFACE WATER

Surface water flows on the surface of the ground. Surface water includes the water in lakes, rivers and wetlands.

TRADITIONAL KNOWLEDGE

Traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity (WIPO)

TRANSPIRATION

Water vapour is emitted from plant leaves by a process called transpiration. Every day an actively growing plant *transpires* 5 to 10 times as much water as it can hold at one time.

UTILITY

Large firm that owns and/or operates facilities used for generation and transmission or distribution of such things as water and electricity to general public. Water utilities are companies that provide water and/or wastewater services.

WATERSHED

A watershed is an area of land, across or through which water flows on its way to a particular water body, such as a stream, river, wetland or sea.

WATER TABLE

The water table is the level at which the soil is completely saturated with water.

FIRST NATION JURISDICTION UNDER
FRAMEWORK AGREEMENTON FIRST NATION LAND MANAGEMENT

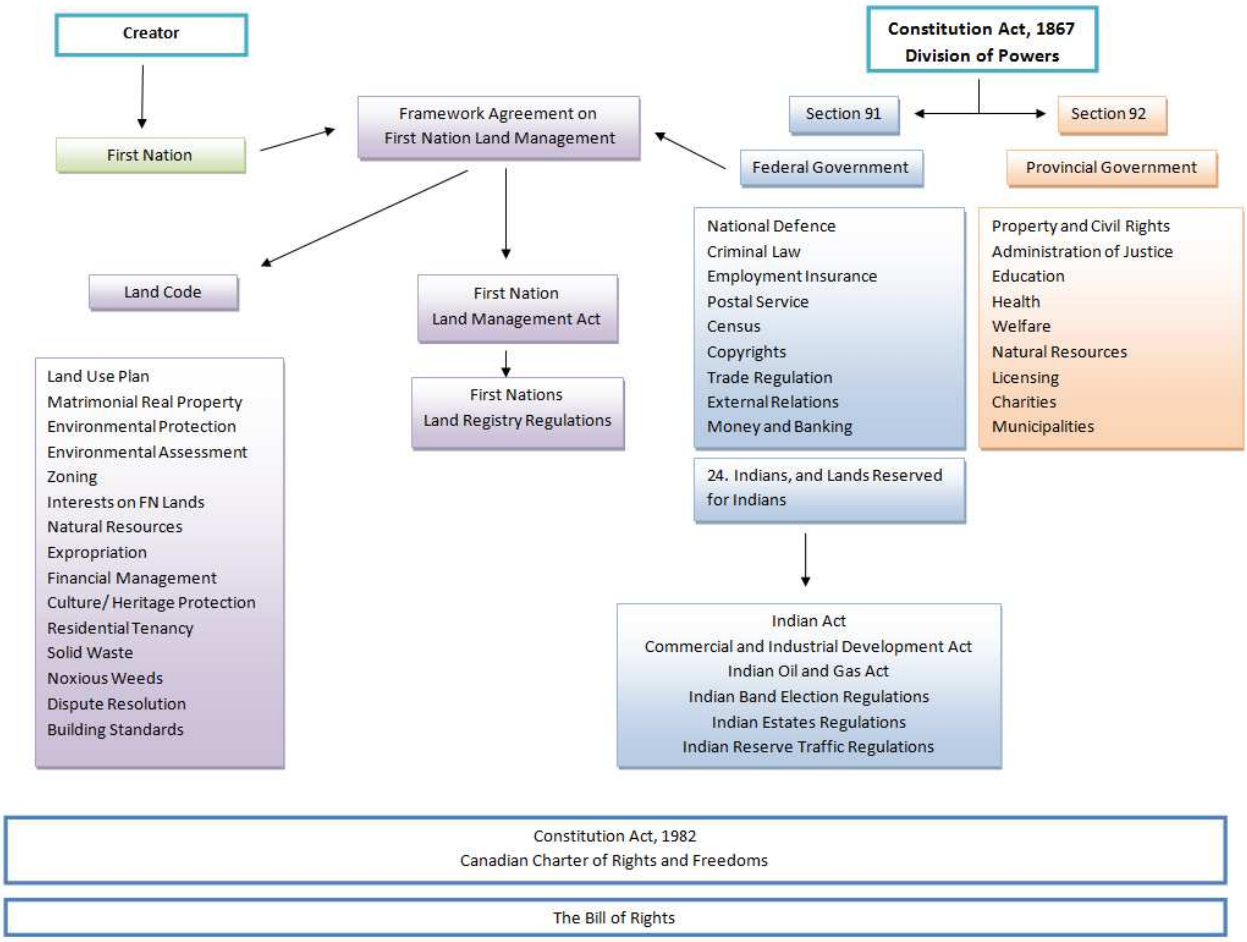


Figure 1 AUTHORITY TO ENACT LAWS

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.

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 who 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

(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 the First Nation 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.

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.

LAND DESCRIPTION REPORT SUMMARY

WHAT IS A LAND DESCRIPTION?

A land description is the textual reference to existing survey plans (or direction and distance measurements), describing the extent of the reserve lands that will be subject to the Land Code (LC) of the First Nation (FN). A land description is a requirement under Section 6.1(a) of the *First Nations Land Management Act (FNLMA)* and fulfills part of Canada's obligation in implementing the *FNLMA* regarding FN reserves. In the situations where a portion of a reserve is to be excluded under Section 7 of the *FNLMA* (and where possible), the land description will reference both the lands that will be subject to the LC, and those lands that will remain under the management of the *Indian Act*.

The reference to the land description contained in the Individual Agreement and the LC should be the same, and should reference the Canada Lands Surveys Records (CLSR) number assigned to the Land Description Report (LDR).

The LDR is a document (certified by a Canada Lands Surveyor) that contains the land description, administrative sketch (a visual aid to understanding the description), a photo overlay of the reserve (where available) and any outstanding issues relating to the exterior boundaries of the reserve (that have not been resolved).

WHY IS A LAND DESCRIPTION REQUIRED IN THE DEVELOPMENTAL PROCESS?

As per Section 6.1(a) of the *FNLMA*, a land description must be included in the LC, and must be suitable to the Surveyor General of Canada.

> a description of the land that is to be subject to the land code that the Surveyor General may prepare or cause to be prepared or any other description that is, in the Surveyor General's opinion, sufficient to identify those lands;

The land description is intended to provide certainty to the boundaries of the FN lands that the LC will be administered over.

WHO CARRIES OUT THE LDR WORK FOR CANADA?

As the Surveyor General is responsible to determine the suitability of a land description for a LC, the Surveyor General Branch of the Department of Natural Resources Canada (NRCan) prepares the LDRs. NRCan has the resources (original plans, field notes, other survey related documents), expertise and experience required to prepare the LDR. Click on Natural Resources Canada website to find more information on NRCan.

HOW ARE THE LDRs PREPARED?

NRCan has developed Guidelines to ensure the land description used for this transfer is based upon solid research of the historical extent of the reserve, the present extent of the reserve, and the transition between the two. The Guidelines also ensure quality and consistency of the land descriptions prepared for FN lands across Canada.

WHAT IS THE FIRST NATION'S ROLE REGARDING THE LDR?

As part of the due diligence required by a FN in the developmental process, the FN must:

- Review the LDR prepared for each of its reserve lands
- Internally discuss the draft LDR and provides comments (where necessary)
- Provide approval for the LDR (enabling the LDR to be finalized and recorded in the CLSR)

WHO TO CONTACT

Any questions on the interpretation/understanding of the LDR can be directed to the Lands Advisory Board Resource Centre, the local NRCan office or the local Indian & Northern Affairs Canada office.

For more information on LDR review the following courselets: Developmental Phase, Individual Agreement, Implementation Document.

LAWS, REGULATIONS AND POLICIES

Laws, regulations and policies are critical components of our society and government. They establish public priorities, help maintain order and safety, and play an important role in shaping the political and social fabric of communities at every level - from towns and cities to provinces and the nation.

LAWS

Laws are enacted by government bodies (First Nation, federal, provincial and municipal). Laws are a set of rules or norms of conduct, in other words, they describe what can or cannot be done and they must be obeyed by everyone including private citizens, groups and companies. Laws have a specific enactment procedure and are administered and enforceable through our system of courts. Laws are not easily changed or amended.

LAWS BY FIRST NATION COUNCILS

Framework Agreement on First Nation Land Management – Pursuant to the *Framework Agreement* First Nations Councils may enact laws respecting the development, conservation, protection, management, use and possession of First Nation reserve land and interests or land rights and licences in relation to those reserve lands. This includes any matter necessary or ancillary to the making of laws in relation to First Nation land.

For example, a First Nation may enact laws respecting zoning, land use, subdivision control and land development, environmental assessment and protection, the provision of local services, provision of services for the resolution of disputes in relation to land decisions. The *Framework Agreement* specifies laws that can be enacted by the Chief and Council acting alone but it also specifies laws that require community support (i.e. matrimonial real property, land use planning).

Indian Act – Even if a First Nation has a land code in effect, a First Nation may choose to enact bylaws under section 81 of the *Indian Act*. Pursuant to that section, a Council may make by-laws in a number of areas including traffic, observance of law and order, prevention of disorderly conduct and nuisances, removal and punishment of persons trespassing upon the reserve, etc.

The laws are enacted by the Chief and Council but must be approved by the Minister of Indian Affairs, even where the First Nation has a land code in effect. An intoxicant by-law can also be passed by Council pursuant to section 85.1 of the *Indian Act*; these laws do not require Ministerial approval but rather need community approval. Lastly, Councils may also pass a taxation by-law, with the consent of the Minister, pursuant to section 83 of the *Indian Act*.

REGULATIONS

Regulations – are a form of law or rule that are authorized under a law and subordinate to that law. Departments and administrators generally write regulations to implement and support the requirements of the law. Regulations deal with the details or technical matters that are not found in a law. Regulations can be easier to change and amend. Regulations are made by federal or provincial Departments of government and approved by Cabinet.

For example there are Regulations under the *Indian Act* concerning Band Council elections, timber, referendums. There are many Regulations under the *Fisheries Act* which set quotas and seasons for different species of fish and which are different in each of the provinces and territories. The *Canada Environmental Protection Act* also has many regulations concerning pollutants, emissions from various industries and similar subjects. Lastly, the First Nations Land Registry Regulations were established pursuant to the *First Nations Land Management Act*.

POLICIES

Policies – are a less stringent set of rules or strategies set in place by a government to improve standards. They are set in place to achieve certain objectives that are within the law or that need to comply with the law. Policies are easier to change and amend.

Summary of Select Sections of the *Fisheries Act*

Additional sections of the *Fisheries Act* that frequently apply to activities that might affect water are sections 20, 22, 30, 32, 35, 36(3) and 37 which are summarized below:

Section 20

Section 20 deals with fish passage around obstructions and contains two subsections dealing with fishways. According to Subsection 20(1) the owner-occupier of a stream must provide for the safe passage of fish around an obstruction. The requirement for a fishway or canal is at the discretion of the Minister. When the Minister determines, it is in the public's interest, the owner-occupier of the obstruction needs to provide a fishway. Fisheries and Oceans Canada (DFO) has the option to include Section 20 requirements in a Section 35(2) Authorization.

Section 22

This section provides for minimum streamflow past obstructions.

Subsection 22(1) requires sufficient flow over the spillway or crest of an obstruction for the safe descent of fish.

Subsection 22(2) requires the owner of an obstruction to provide sufficient flow for free upstream and downstream passage of fish during the construction of an obstruction.

Subsection 22(3) requires sufficient flow downstream of an obstruction to support fish spawning and egg incubation. The requirement for sufficient flow over an obstruction (Subsection 22(1)) is at the Minister's discretion). The Minister also establishes measures to accommodate fish movement during construction of an obstruction and the quantity of water to be maintained downstream of an obstruction for fish spawning and egg incubation.

Section 30

Subsection 30(1) requires that every water intake, ditch, channel or canal constructed for irrigation, manufacturing or power generation must have a fish guard or screen to exclude fish if the Minister believes it is in the public interest.

Furthermore, according to Subsection 30(2), the size of the screen is specified by the Minister, and the screen must be maintained in a way that is satisfactory to the Minister.

Section 32

Section 32 prohibits the unauthorized killing of fish by means other than fishing. This section normally applies to the detonation of explosive in or near water.
DFO's Guidelines for the Use of Explosives In or Near Water (1998) provide information to proponents that are proposing works or undertakings involving the use of explosives in or near Canadian fisheries waters, and to which Sections 32 and 35, in particular, may apply. DFO has the option to include Section 32 requirements in a section 35(2) Authorization.

Section 35

Subsection 35(1) is a general prohibition of harmful alteration, disruption or destruction (HADD) of fish habitat. Any work or undertaking that results in HADD is a contravention of Subsection 35(1). The only relief from this general prohibition is when a Subsection 35(2) Authorization is issued for the HADD.

The 35(2) Authorization authorizes the HADD and not the project resulting in the HADD. A project does not need a 35(2) Authorization to proceed. However, if a project causes a HADD and an Authorization was not issued, the proponent may be guilty of an offence. Many proponents prefer to obtain an Authorization before they proceed, because the penalties for violating Subsection 35(1) include fines of up to $1,000,000, up to 6 months' imprisonment, or both.

Section 36

Subsection 36(3) prohibits the deposit of deleterious substances. Environment Canada is responsible for administering this subsection. Unlike Subsection 35(2), there is no provision to authorize the deposit of deleterious substances except by Regulation or an Order in Council.

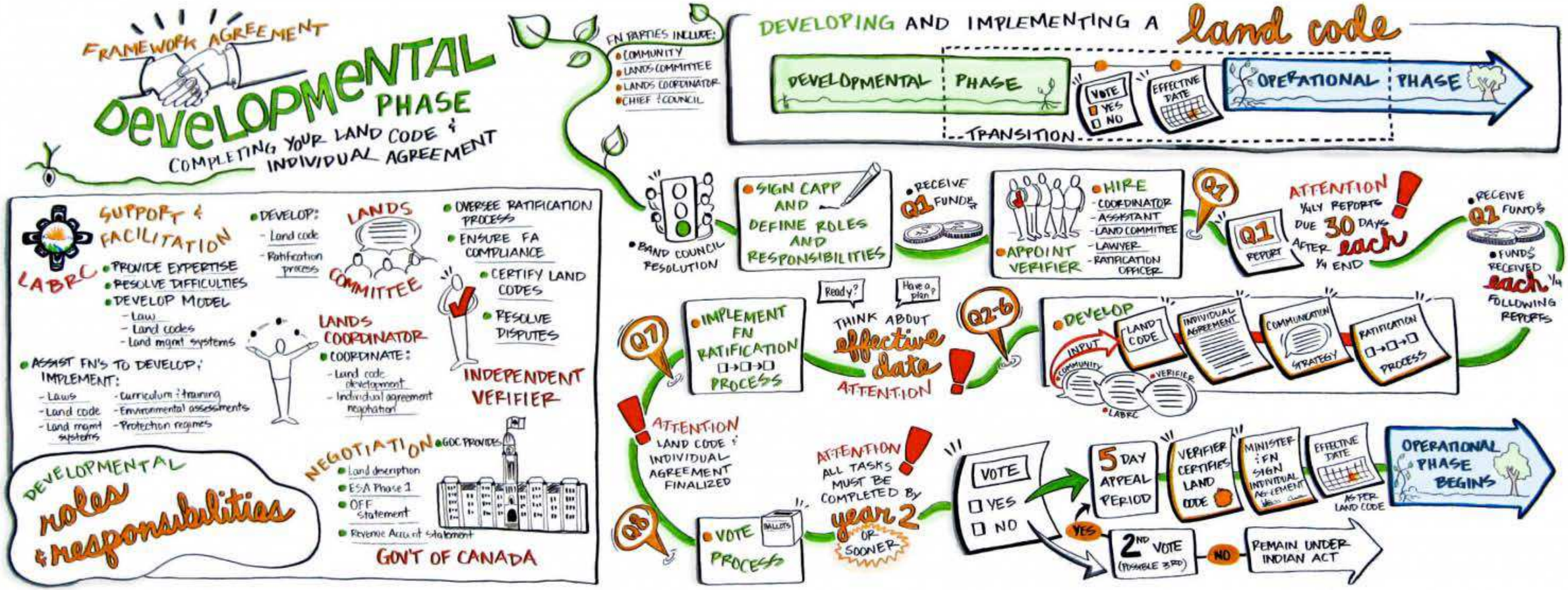
A deleterious substance is defined by the Fisheries Act as any substance that, if added to water, makes the water deleterious to fish or fish habitat or any water containing a substance in such quantity or concentration or has been changed by heat or other means, that if added to water makes that water deleterious to fish or fish habitat. Currently there are regulations that authorize the deposit of pulp and paper liquid effluent, metal mining liquid effluent, petroleum liquid effluent, and effluents from other industrial sectors.

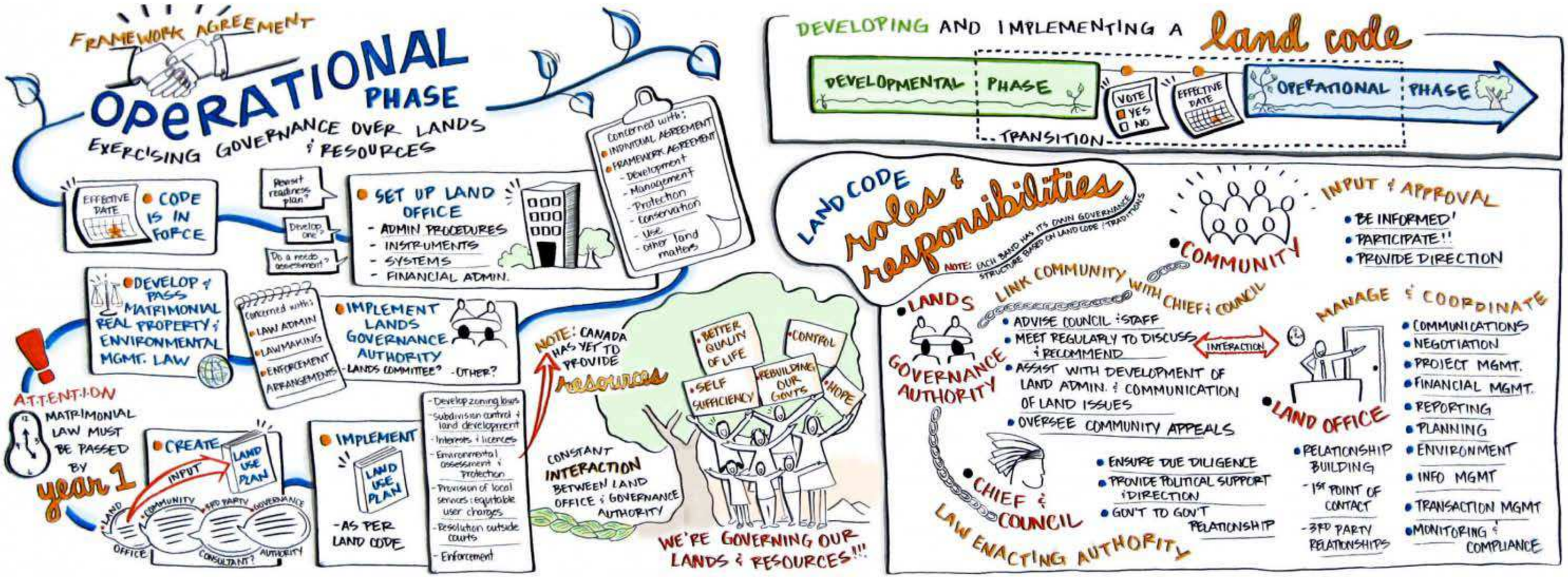
Section 37

Subsection 37(1) allows the Minister to request plans, specifications, studies or any other information that will allow the Minister to determine if the deposit of deleterious substances or a HADD is likely to occur.

Subsection 37(2) empowers the Minister, after reviewing the plans, studies or other information requested under Section 37(1), to modify or add to the work or undertaking to avoid or mitigate the deposit of a deleterious substance or a HADD to fish habitat. Furthermore, the Minister can restrict the operation of the work or undertaking and direct the closing of the work. Ministerial orders can only be made pursuant to a regulation or with the approval of the Governor in Council.

Source: Fisheries and Oceans Canada website


FRAMEWORK AGREEMENT
DEVELOPMENTAL PHASE
COMPLETING YOUR LAND CODE & INDIVIDUAL AGREEMENT
FN PARTIES INCLUDE:
COMMUNITY
LANDS COMMITTEE
LANDS COORDINATOR
CHIEF & COUNCIL
DEVELOPING AND IMPLEMENTING A land code
DEVELOPMENTAL PHASE
VOTE YES NO
EFFECTIVE DATE
OPERATIONAL PHASE
TRANSITION
BAND COUNCIL RESOLUTION
SIGN CAPP AND DEFINE ROLES AND RESPONSIBILITIES
RECEIVE Q1 FUNDS
HIRE
- COORDINATOR
- ASSISTANT
- LAND COMMITTEE
- LAWYER
- RATIFICATION OFFICER
APPOINT VERIFIER
Q1
Q1 REPORT
ATTENTION
YRLY REPORTS DUE 30 DAYS AFTER EACH Y/4 END
RECEIVE Q2 FUNDS
FUNDS RECEIVED EACH Y/4 FOLLOWING REPORTS
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
LANDS COORDINATOR
COORDINATE:
- Land code development
- Individual agreement negotiation
OVERSEE RATIFICATION PROCESS
ENSURE FA COMPLIANCE
CERTIFY LAND CODES
RESOLVE DISPUTES
INDEPENDENT VERIFIER
NEGOTIATION
GOC PROVIDES
Land description
ESA Phase 1
OFF statement
Revenue Account statement
GOV'T OF CANADA
DEVELOPMENTAL roles & responsibilities
Q7
IMPLEMENT FN RATIFICATION PROCESS
Ready?
Have a plan?
THINK ABOUT effective date
ATTENTION
Q2-6
DEVELOP
INPUT
COMMUNITY
VERIFIER
LABRC
LAND CODE
INDIVIDUAL AGREEMENT
COMMUNICATION STRATEGY
RATIFICATION PROCESS
Q8
ATTENTION
LAND CODE & INDIVIDUAL AGREEMENT FINALIZED
VOTE PROCESS
BALLOTS
ATTENTION
ALL TASKS MUST BE COMPLETED BY year 2 OR SOONER
VOTE
YES
NO
5 DAY APPEAL PERIOD
VERIFIER CERTIFIES LAND CODE
MINISTER & FN SIGN INDIVIDUAL AGREEMENT
EFFECTIVE DATE
AFTER LAND CODE
OPERATIONAL PHASE BEGINS
YES
2ND VOTE (POSSIBLE 3RD)
NO
REMAIN UNDER INDIAN ACT


FRAMEWORK AGREEMENT
OPERATIONAL PHASE
EXERCISING GOVERNANCE OVER LANDS & RESOURCES
EFFECTIVE DATE
CODE IS IN FORCE
Revisit readiness plan?
Develop one?
Do a needs assessment?
SET UP LAND OFFICE
- ADMIN PROCEDURES
- INSTRUMENTS
- SYSTEMS
- FINANCIAL ADMIN.
Concerned with:
INDIVIDUAL AGREEMENT
FRAMEWORK AGREEMENT
- Development
- Management
- Protection
- Conservation
- Use
- other land matters
DEVELOP & PASS MATRIMONIAL REAL PROPERTY & ENVIRONMENTAL MGMT. LAW
Concerned with:
LAW ADMIN
LAW MAKING
ENFORCEMENT
ARRANGEMENTS
IMPLEMENT LANDS GOVERNANCE AUTHORITY
- LANDS COMMITTEE?
- OTHER?
ATTENTION
MATRIMONIAL LAW MUST BE PASSED BY year 1
CREATE
INPUT
LAND USE PLAN
LAND
COMMUNITY
3RD PARTY
GOVERNANCE
OFFICE
CONSULTANT?
AUTHORITY
IMPLEMENT
LAND USE PLAN
-AS PER LAND CODE
- Develop zoning laws
- Subdivision control & land development
- Interests & licences
- Environmental assessment & protection
- Provision of local services & equitable user charges
- Resolution outside courts
- Enforcement
NOTE: CANADA HAS YET TO PROVIDE resources
BETTER QUALITY OF LIFE
CONTROL
SELF SUFFICIENCY
REBUILDING OUR GOVTS
HOPE
CONSTANT INTERACTION BETWEEN LAND OFFICE & GOVERNANCE AUTHORITY
WE'RE GOVERNING OUR LANDS & RESOURCES!!!
DEVELOPING AND IMPLEMENTING A land code
DEVELOPMENTAL PHASE
VOTE
YES
NO
EFFECTIVE DATE
OPERATIONAL PHASE
TRANSITION
LAND CODE roles & responsibilities
NOTE: EACH BAND HAS ITS OWN GOVERNANCE STRUCTURE BASED ON LAND CODE & TRADITIONS
COMMUNITY
INPUT & APPROVAL
• BE INFORMED!
• PARTICIPATE!!
• PROVIDE DIRECTION
LINK COMMUNITY WITH CHIEF & COUNCIL
LANDS GOVERNANCE AUTHORITY
• ADVISE COUNCIL & STAFF
• MEET REGULARLY TO DISCUSS & RECOMMEND
• ASSIST WITH DEVELOPMENT OF LAND ADMIN. & COMMUNICATION OF LAND ISSUES
• OVERSEE COMMUNITY APPEALS
INTERACTION
MANAGE & COORDINATE
LAND OFFICE
• RELATIONSHIP BUILDING
- 1ST POINT OF CONTACT
- 3RD PARTY RELATIONSHIPS
• COMMUNICATIONS
• NEGOTIATION
• PROJECT MGMT.
• FINANCIAL MGMT.
• REPORTING
• PLANNING
• ENVIRONMENT
• INFO MGMT
• TRANSACTION MGMT
• MONITORING & COMPLIANCE
CHIEF & COUNCIL
LAW ENACTING AUTHORITY
• ENSURE DUE DILIGENCE
• PROVIDE POLITICAL SUPPORT & DIRECTION
• GOV'T TO GOV'T RELATIONSHIP