Framework Agreement Amendments

Annual General Meeting, Wendake
September, 2017
Framework Agreement Amendments

• The Lands Advisory Board’s strategic plan sets a 2020 target for amendments to make the Framework Agreement even stronger.

• Primary objectives discussed at the May 2017 Special Meeting:
  1. amendments to voting procedures to make it easier for more First Nations to opt out of the Indian Act;
  2. clarifying self government authority of FA Nations; and
  3. updating the FA in light of UNDRIP.
Amendments – Two Phase Approach

• INAC has proposed a two phase approach to the FA amendments.
• Phase 1 subjects within INAC’s authority and Phase 2 for more complex subjects involving other federal departments – (for example environment improvements are Phase 2).
• Phase 1 amendments targeted for end of December 2017 and must be approved by at least 2/3 of FA First Nations.
• Federal ratification of Phase 1 targeted for spring 2018 through the federal First Nations Land Management Act (FNLMA).
• Timeline for Phase 2 roughly two to three years – unclear if before or after next federal election set for 2019.
Federal Review of Laws

• The Prime Minister established a Working Group of Ministers to examine federal laws affecting Indigenous peoples – including the federal First Nations Land Management Act (FNLMA).

• Leah George-Wilson and Bill McCue appeared before the MWG in July to provide recommendations regarding the FA.

• *The Lands Advisory Board has made recommendations which include replacing the FNLMA with one page legislation to just ratify the Framework Agreement.*

• The current FNLMA repeats the provisions of the FA but without correctly tracking the FA.

• The Working Group of Ministers is likely to consider UNDRIP clauses in the context of the FA and beyond.

• Timing of INAC’s Phase 1 FA Amendments relative to MWG unclear.
Splitting up INAC

• The Prime Minister announced that INAC will formally be split into two departments.

• According to news reports, federal legislation to replace the “Department of Indian Affairs and Northern Development Act” and name the two Ministers is targeted for Spring of 2018.

• FA amendments to track the new “Minister” rather than the “Minister of Indian Affairs and Northern Development” will likely be dealt with in the federal legislation establishing new departments.

• News reports suggest there will be consultation regarding the split of Minister’s responsibilities – opportunity for input of the Lands Advisory Board.
Issues of INAC Split for Framework Agreement First Nations

• Canada may seek to divide administration of Framework Agreement into 2 departments:
  • Will developmental and operational First Nations deal with different departments
  • Which department has funding authority for Framework Agreement?

• Framework Agreement First Nations and Lands Advisory Board will be significantly challenged if only because there are 2 Ministers and 2 separate bureaucracies

• Which Minister should be responsible for Framework Agreement?
• What would be in the best interest of Framework Agreement First Nations?
### Complete List of Phase 1 Proposed Amendments by Theme

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<tr>
<th>Theme</th>
<th>Rationale for Change</th>
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<tbody>
<tr>
<td><strong>Administrative</strong></td>
<td>• Improve efficiency &amp; clarity with other legislation, policies &amp; practices</td>
<td>• Move from a single FNLM Schedule to two FNLM Schedules to better clarify FNs who have adhered to Framework Agreement vs fully operational under FNLM</td>
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<td>• Add FNs to FNLM Schedule by Ministerial Order rather than OIC</td>
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<td>• OIC Easement Issue (see email with Rob Leblanc)</td>
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<td>• Update to align with other Federal Acts:</td>
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<td>• With FNFMA on taxation of real/personal property</td>
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<td>• With FHMIRA on death of a spouse</td>
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<td>• With Indian Act to reflect repealed sections</td>
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<td>• With Emergency Act (LAB to clarify change)</td>
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<td>• Remove obsolete, inapplicable and antiquated clauses (e.g., dissolution of LAB, LAB to provide complete list)</td>
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<td><strong>Access to Laws</strong></td>
<td>• Ensure public access to Land Codes</td>
<td>• Include requirement for First Nations to publish their land codes publicly (e.g. FN website plus copy in Band Office)</td>
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<td>• Reduce LAB administrative burden</td>
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<tr>
<td><strong>UNDRIP</strong></td>
<td>• Align with TRC recommendations and broader GoC commitments</td>
<td>• Include neutral statement of fact to acknowledge Canada’s endorsement of the UNDRIP</td>
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DRAFT – FOR DISCUSSION
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| Expansion and Aggregation                  | • Clarify that cooperation and economies of scale are options under FNLM             | • Acknowledge ability of FN(s) to share land and environmental management resources;  
  • Provide a mechanism to delegate certain responsibilities,  
    including law-making authorities, to an aggregate entity  
  • Enable multiple FNLM FNs to manage jointly held reserves under a single Land Code |
| Protection for Band Officials Undertaking FNLM Responsibilities | • Provide a foundation for FNLM First Nations to better manage insurance costs and risks  
  • Facilitate recruitment of land managers and public officials  
  • Align to practices employed by other local governments | • Enhance and clarify protections and limitation periods for Band officials while undertaking FNLM activities |
| Enforcement Powers                         | • Better align with enforcement powers of municipal governments  
  • Enable cooperative enforcement                      | • Establish valid collection remedies for non-tax debts  
  • Enable enforcement of laws and collection remedies generally, through agreements with provinces (e.g., summary conviction collection remedies) |
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<td><strong>Monies</strong></td>
<td>• Reaffirm nation-to-nation nature of FNLM by transferring all Indian Monies (revenue and capital) to operational First Nations</td>
<td>• Add capital monies as part of the transfer of control and authority</td>
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| **Lands Eligible for Management Under FNLM**    | • Broaden scope of FNLM to First Nations without 91(24) reserve lands in the North  
• Respond to interest in the Regime in the North  
• Facilitate capacity development while broader self-determination initiatives unfold                                                                 | • Include federal land categorized as “lands set aside” (in the North) within scope of FNLM |
| **Verifier**                                    | • Protect the integrity of the Regime  
• Maintain an independent oversight role (e.g., land code development; community ratification) while introducing optionality to modernize the role of the verifier and better align to FN ratification and appeals processes. | • Make the role of the verifier optional after the development of the Land Code and Community Ratification Process  
• Ratification Officer may undertake vote and certification stage and ensure that an appeals process is in place |
| **Ratification**                                | • Maintain the integrity of community ratification by balancing informed consent with modernized voting practices and community decision-making  
• Align ratification requirements with priorities of reconciliation and self-determination                                                                 | • Strengthen requirements to inform voters  
• Modify approval threshold to simple majority or a higher voting threshold employed by the Nation  
• Acknowledge electronic voting |
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| **Additions to Reserve**     | • Leverage the sectoral self-governing authority of FNLM Nations to enhance and streamline the ATR policy and minimize excluded lands  
   • Align with *Claims Settlement Implementation Act* | • Eliminate pre-reserve designation requirement for FNLM Nations and use Land Code authorities to achieve similar objectives.  
   • Allow First Nations to use Land Code authorities to manage third-party interests during pre-reserve consultative phase  
   • Streamline administrative processes to bring new ATRs immediately under Land Code authority |
| **First Nations Land Registry** | • Allow for 3rd party management                                                      | • Create legislative frame to enable 3rd party management of the registry |
| **Scope of Law-Making**      | • Greater clarity regarding existing authority to make laws (note: no expansion of authority proposed) | • Add to the current list of law making authority regarding lands, natural resources and environment Examples:  
   • Land use planning, cemeteries, gravesites  
   • Environment, natural resources and land authorities similar to other local governments in Canada. |
Next Steps

• Canada is targeting November for Cabinet approval of drafting instructions for FA amendments.

• October and November targeted for intense drafting – French and English versions of Phase 1 amendments to the FA and FNLMA require our approval.

• An FA amendment package will be sent to FA First Nations for approval – target December 2017.

• Canada cannot unilaterally change the Framework Agreement - amendments must be approved by at least 2/3 of FA First Nations.