

Frequently Asked? QUESTIONS

Answers to common questions about the
***FRAMEWORK AGREEMENT ON
FIRST NATION LAND MANAGEMENT***

JULY 2020

FREQUENTLY ASKED QUESTIONS

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FRAMEWORK AGREEMENT

What is the *Framework Agreement*?

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

The *Framework Agreement* is an initiative by these 13 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.

Initially the Framework Agreement was intended to only apply to the original First Nation signatories. However following interest from other First Nations the Framework Agreement was amended in 2003 to support additional signatories.

The *Framework Agreement* provides all its signatory First Nations with the option to govern their reserve lands under their own Land Codes. Until each of these First Nation communities 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.

How is the *Framework Agreement* ratified?

The *Framework Agreement* historically enacted a new approach in government-to- government convention, requiring ratification by each of the First Nations and by Canada.

Canada enacted the First Nation Land Management Act, as part of its obligation to ratify the *Framework Agreement*. It was given royal assent on June 17, 1999.

A First Nation ratifies the *Framework Agreement* by enacting a Land Code. Over 95 First Nations have developed and ratified their own land codes to date.

What is land governance?

Land governance involves the day-to-day administration of reserve lands and resources and the right to legislate laws in respect of those lands and resources.

Oil and gas, fisheries and migratory birds are not included in the resources to be managed under the *Framework Agreement*. Otherwise, the First Nation's right to govern reserve lands and resources is comprehensive.

Can the *Framework Agreement* be amended?

Yes. The *Framework Agreement* can only be amended with the approval of 2/3 of the *Framework Agreement's* Operational First Nation signatories and Canada.

Is this part of aboriginal self-government?

Yes. This 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.

Will there be any impact on other self-government arrangements?

No. There is no direct impact on other self-government arrangements. 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 codes established under the *Framework Agreement*.

The *Framework Agreement* is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources, e.g. rights under s. 35 of the Constitution. The *Framework Agreement* also does not preclude other negotiations in respect of those rights.

ABORIGINAL AND TREATY RIGHTS

Does the *Framework Agreement* affect Treaty rights?

No! The *Framework Agreement* is not a treaty and does not affect any treaty rights.

Does the *Framework Agreement* affect other Aboriginal rights?

No! The *Framework 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.

Does it affect other First Nations?

No. It applies only to the First Nation signatories to the *Framework Agreement*. Other First Nations are not affected. The Agreement does not affect any lands, or any rights in lands, that do not belong to these signatory First Nations.

Will the fiduciary relationship between the federal Crown and the First Nations continue?

Yes. The *Framework Agreement* explicitly states that the Parties acknowledge that the federal Crown's "special relationship" with the First Nations will continue. As a practical matter, because under its Land Code the First Nation will be making the day-to-day decisions regarding its own lands, the Minister's responsibility as a fiduciary is less than it would be under the *Indian Act*, where the Minister is responsible for these day-to-day decisions.

PROTECTION OF FIRST NATION LAND

Will First Nation lands be protected under the *Framework Agreement*?

Yes. The land base of a First Nation is protected for future generations.

Once a reserve becomes First Nation land under a Land Code, it cannot be sold or surrendered for sale. First Nation land is immune from expropriation for any provincial purpose and no provincial government or agency can have First Nation land expropriated by Canada.

The power of Canada to expropriate First Nation land is restricted to cases where it is "justified and necessary for a federal public purpose that serves the national interest". If such a case did occur, the First Nation must receive an equivalent amount of land as compensation, in addition to financial compensation for other damages.

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

FEDERAL LEGISLATION

Is federal legislation required?

Yes. The First Nations Land Management Act is required under the *Framework Agreement* for two purposes:

- as Canada's method to ratify the *Framework Agreement*, and
- to implement those clauses of the *Framework Agreement* that affect third parties, that affect other federal laws.

Can the federal legislation change the *Framework Agreement*?

No. The First Nations Land Management Act must be consistent with the Framework Agreement. The Act repeats many of the provisions of the *Framework Agreement* and will only apply to the First Nations that are signatories to it.

Was there a previous Bill in Parliament on this subject?

Yes. The Act was previously introduced in Parliament on December 10, 1996, as Bill C_75 and received second reading in April of 1997. However, the federal election prevented that Bill from being enacted in 1997.

The Bill was re-introduced in Parliament as Bill C-49 on June 11, 1998.

Is this Bill an amendment to the *Indian Act*?

No. There is no amendment of the *Indian Act*. The original 13 First Nations were opting out of the land management sections of the *Indian Act*.

FEDERAL RESPONSIBILITY

Is there any continuing federal responsibility for First Nations lands?

Canada will continue to hold title to First Nation land, although Canada will have no management authority over the land.

The Minister of Indian Affairs and Northern Development will no longer be involved in the management of the First Nation's reserve lands.

Who is liable for damages related to First Nation land?

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.

Once a Land Code takes effect, the First Nation is responsible for its acts or omissions in managing its lands.

What happens to Canada's fiduciary obligation?

The fiduciary obligation of Canada continues under the *Framework Agreement*. The scope of Canada's obligation is reduced, however, because the First Nation is making the day-to-day decisions regarding its lands. Canada would continue to be involved in any land exchange that might take place and for maintaining the First Nations Land Register.

FIRST NATIONS INVOLVED

What First Nations are involved?

To date over 95 First Nation communities have voted to ratify the *Framework Agreement* through their respective community land code. Equally, more than 35 Developmental First Nations are in the process of creating their own lands codes in preparation for a community vote.

Are other First Nations interested in joining this initiative?

Yes. There is a list.

TAKING RESPONSIBILITY FOR LAND MANAGEMENT

How does a First Nation take control of its lands?

A First Nation signatory to the *Framework Agreement* may exercise its land management option by:

- creating its own Land Code,
- entering into a further Individual Transfer Agreement with Canada;
- drafting a community ratification process; and
- conducting a community vote.

During this time the First Nation continues to operate under the *Indian Act*.

When is land management authority transferred to the First Nation?

Once the members of the First Nation approve the Land Code and the Individual Transfer Agreement, control over First Nation land and resources is transferred from under the *Indian Act* to the First Nation's land laws and administration or according to their effective date as outlined in the First Nation's Land Code.

The Individual Agreement must be signed by both the First Nation and Canada before a land code can be fully operational; many First Nations choose to wait until after a land code vote to sign this document.

What is a Land Code?

A Land Code will be the basic land law of the First Nation and will replace the lands related 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 governed 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.

Is the *Indian Act* still relevant to a First Nation that has ratified a Land Code?

Yes. Approximately two-thirds of the provisions of the *Indian Act*, which do not deal with land matters, continue to apply to a First Nation that has a Land Code. For example, the sections dealing with elections, membership, Indian Status, education and taxation continue to apply to the First Nation.

What is an Individual Agreement?

An Individual Agreement between each community and Canada will be finalized to deal with such matters as:

- The reserve lands to be governed 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 capital and revenue monies and an interim environmental assessment process, and the funding to be provided by Canada to the First Nation for land code implementation.

COMMUNITY PARTICIPATION AND APPROVALS

Are First Nation members involved in developing a Land Code?

Yes. The contents of the Land Code are developed by the membership of the First Nation. Typically, a lands committee is formed to be responsible for developing the draft Land Code for

the First Nation. The committee has officers of the First Nation knowledgeable about lands and other members of the community.

The lands committee holds community meetings with the members to develop the policy upon which the Land Code is based. Once the draft Land Code begins to take shape, drafts are circulated in the community for comment. Door to door meetings with members are often arranged to allow the lands committee and members an opportunity for more in-depth discussion of the draft Land Code.

As a fundamental principle, the development of a Land Code is an exercise in community self-government at a “grass-roots” level.

Does the Land Code need community approval?

Yes. In order for the First Nation to assume control over its lands, the Land Code and the Individual Agreement must be ratified by the members of the First Nation.

The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*. This process will be set out in a document that will contain all the details of the process. The ratification procedure involves a thorough process to locate all eligible voting members and provide them with the opportunity to vote in person or by mail.

Are off-reserve members involved?

Yes. 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.

Is there a verification process?

Yes. An independent person selected jointly by the First Nation and Canada, called a Verifier, will monitor and confirm that the community ratification process and Land Code are consistent with the Framework Agreement. Once that is confirmed, the First Nation has the option to have the ratification vote also be monitored by the Verifier in accordance with the community ratification process.

LANDS

What lands are involved?

A First Nation will be able to take responsibility for all of its reserve lands. Each reserve to be subject to the Land Code will be described in the Land Code. These lands are called “First Nation lands”. Only reserve lands are included.

Lands received under treaty land entitlement, specific claims settlement, etc. could become First Nation land only if first they are made reserve lands.

Will the land governance powers extend beyond the reserve boundaries to traditional First Nation territories?

No. The land governance powers only relate to reserves of the First Nation. The *Framework Agreement* does not affect any lands, or any rights in lands, that are not subject to the Agreement.

Is First Nation land considered to be fee simple land?

No. First Nation land will continue to be reserve lands. Title to land will continue to be held by Her Majesty in right of Canada and the land remains set apart for the use and benefit of a First Nation. First Nation lands remain a federal responsibility under section 91(24) of the Constitution Act, 1867. However, jurisdiction over the land and decision making in relation to the land will be in the hands of the First Nation. The First Nation will, for all practical purposes, act as if it were the owner of the land, except for control over title or the power to sell the land.

What resources are covered by the *Framework Agreement*?

The *Framework Agreement* covers reserve lands and resources. Included are all the interests, rights and resources that belong to that land, to the extent that these are under the jurisdiction of Canada and are part of that land.

What resources are not included?

Fishing, migratory birds and endangered species are not included. The *Framework Agreement* does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries and is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may or may not be dealt with in the context of other negotiations.

Oil and gas resources are not included. The Indian Oil and Gas Act will continue to apply to any First Nation lands, or interests in First Nation land, that are "Indian lands" within the meaning of that Act.

Uranium and radioactive minerals are also not included. The Atomic Energy Control Act, or any successor legislation will continue to apply to First Nation land.

FIRST NATION POWERS

What is the legal status of a First Nation?

First Nations with a Land Code will have all the legal status and powers needed to manage and govern their lands and resources. The First Nation will have the same legal status as a natural person for purposes related to land.

Can a First Nation make laws?

Yes. A First Nation council, 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. This includes laws on zoning, environment, services and dispute resolution.

The First Nation council can continue to make by-laws under sections 81 and 85.1 of the *Indian Act*. For the most part, these by-laws relate to matters other than land.

How will First Nation laws be enforced?

A First Nation will have full power to enforce its land and environmental laws. A First Nation may incorporate the summary conviction procedures of the Criminal Code for offences under First Nation laws. Those procedures are the ones used for minor criminal offences. They are also used in some provinces for offences under provincial laws, e.g. offences under provincial environmental legislation.

A First Nation can appoint its own justice of the peace to try offences created under First Nation laws and can appoint its own prosecutor. First Nation laws may make provision for search and seizure, fines, imprisonment, restitution, community service or alternate means for achieving compliance.

The provincial court system will also be available to enforce First Nation laws.

What other powers will a First Nation have?

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 govern land and resources, as well as revenues from the land and resources, in accordance with its Land Code.

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 laws and Land Codes.

THIRD PARTY INTERESTS

What happens to existing third-party interests under a Land Code?

Under a land code, the interests in First Nation land lawfully held by third parties will continue in effect according to their terms and conditions.

No new interests or licenses may be acquired or granted except in accordance with the Land Code.

How will interests in First Nation land be recorded?

The *Framework Agreement* and the federal legislation authorize Canada to setup a separate register to record interests granted by First Nations under their Land Codes. Regulations were developed in 2007 by the Lands Advisory Board and INAC to govern the First Nations Lands Register.

A First Nation may also establish its own duplicate registry system to record interests in its First Nation lands.

ACCOUNTABILITY

Is a First Nation council accountable to the members?

Yes. Besides being politically accountable, a First Nation council under the Land Code is responsible for governing the lands and resources for the benefit of the members of the First Nation.

How will accountability to the members be ensured?

A Land Code will make provision for a First Nation to report annually to its members on its land governance activities. The Land Code will also set out rules on financial accountability for its governance of lands, resources and revenues.

Land Codes may provide that certain laws or policies must be ratified by the community before they take effect. Examples of what might require community approval before taking effect could include:

- a land use plan,
- a grant of any interest in First Nation land for a term exceeding 25 years,
- any grant or disposition of any natural resources for a term exceeding 5 years, or - a charge or mortgage of a leasehold interest.

REVENUES

Can a First Nation generate its own revenues?

Yes. Revenues can be generated by leasing and granting rights and licenses in First Nation land. A First Nation can also develop its own land directly and generate profit.

Taxation powers are not included in the *Framework Agreement*.

What happens to Indian Monies previously collected by Canada?

The *Framework Agreement* provides that revenue and capital monies of the First Nation previously collected and held by Canada will be transferred to the First Nation when its Land Code comes into effect. Revenue funds include accumulated interest on capital accounts and funds collected by Canada such as lease revenue or proceeds from the sale of timber, gravel or other non-renewable resource.

TAXATION

Will First Nation land be subject to taxation?

No. The current exemption of reserve lands and property situated on-reserve, will continue under the relevant provisions of the *Indian Act*, s. 29 & s. 89(1) & (2).

The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws may be made separately pursuant to section 83 of the *Indian Act*.

Can a First Nation tax land under the *Framework Agreement*?

No. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must continue to be made separately pursuant to section 83 of the *Indian Act*.

FUNDING

Is developmental funding available to a First Nation?

Yes. Canada will provide funding to a First Nation to develop its Land Code, its community ratification process and the individual Agreement. This funding is channeled through the Lands Advisory Board Resource Centre to the First Nation.

Is funding available to a First Nation to operate under a Land Code?

Yes. Canada provides operational funding to First Nations - to manage its First Nation land, and to make, administer and enforce its laws under a land code.

The amount of the funding will be agreed upon between the First Nation and Canada. The amount will be set out in the Individual Agreement with Canada and is subject to the approval of the members of the First Nation as part of the ratification process.

GENDER EQUITY

Do all genders have equal rights in relation to First Nation land?

Yes. The Canadian Charter of Rights and Freedoms applies to First Nation lands and First Nation laws.

The *Framework Agreement* ensures that 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 whether to approve the Land Code and the Individual Agreement with Canada.

What are the rules on possession of land if a marriage breaks down?

Under the *Indian Act* there are no rules on possession of the matrimonial home or division of interests in land.

Under a Land Code, a First Nation will finally be able to deal with the rights of spouses to interests in First Nation land if their marriage breaks down. First Nations have a choice to create their own MRP laws under their own land code authority or to utilize the Federal Family Homes on Reserves and Matrimonial Interest or Rights Act.

The *Framework Agreement* specifically states that these new rules and procedures will apply equally.

LAND DEVELOPMENT

Will First Nations be able to develop their land?

Yes. First Nations will be able to create land development policies and laws to promote economic development. The First Nation may also become directly involved in economic development activities to create revenue and job opportunities for its members.

Can First Nation land be mortgaged?

No. Title to First Nation land remains with the federal Crown and cannot be mortgaged. Title to First Nation land cannot be lost through legal process.

Can interests in First Nation land be mortgaged?

Yes. Leasehold interests are capable of being mortgaged. In its Land Code, a First Nation may allow leasehold interests on First Nation land to be subject to mortgages and seizure by third parties.

A First Nation may also allow any certificates of possession held by members to be mortgaged to the First Nation itself or to other members.

Will personal property be subject to seizure under legal process?

No. The current exemption of personal property situated on-reserve will continue under the relevant provisions of the *Indian Act*, s. 89(1).

Can First Nation land be sold?

No. Surrender for sale is prohibited in order to protect the land base of the First Nation for future generations.

Can First Nation land be exchanged?

Yes. A First Nation may decide that it is advantageous to exchange some of its First Nation land 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.

ENVIRONMENT

How will the environment be protected?

A First Nation will have the power to make environmental laws. These laws will deal with environmental assessment and protection.

What happens to existing environmental problems under the *Indian Act*?

If there is an existing environmental problem on a reserve before the Land Code takes effect, the federal government continues to be responsible for the problem and liable for any of its actions that may have caused the problem.

Before bringing a reserve under its Land Code, a First Nation is entitled to full disclosure on any environmental problem from Canada.

EXPROPRIATION

Can First Nation land be expropriated by Canada?

Yes, to a limited extent. Canada's power to expropriate First Nation land is constrained. That power can only be exercised 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.

Can First Nation land be expropriated by a Province?

No. Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Can a First Nation expropriate interests in First Nation lands?

Yes. A First Nation will have the power to acquire interests in lands for community works or other First Nation community purposes. It must pay fair compensation to members or non-members whose interests are affected.

Some First Nations have voluntarily waived or restricted their expropriation power in their Land Code in accordance with the wishes of their members.

Can a Province or Municipality be exempt from First Nation expropriation?

Yes. It would be possible for a province or municipality to negotiate with a First Nation to limit expropriation. This might be useful in negotiating services from provincial or municipal utilities or other authorities.

DISPUTE RESOLUTION

How will community land disputes be resolved?

The First Nations will establish their own processes for dealing with disputes in relation to their lands and resources. These are alternative dispute resolution processes.

How will disputes between a First Nation and Canada be resolved?

If the First Nations and Canada disagree on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside the courts. These include mediation, neutral evaluation and arbitration.

Is the court system still available to resolve disputes?

Yes. Judicial review of certain decisions under the dispute resolution process between the First Nations and Canada is available on limited grounds

Members of the First Nations and third parties may use the courts to appeal any decision of a Justice of the Peace made under the First Nation's laws.

A First Nation in its Land Code will specify how decisions made under its dispute resolution process are to be appealed.

LANDS ADVISORY BOARD and RESOURCE CENTRE

Who are the Lands Advisory Board?

Under the *Framework Agreement*, the First Nations have established a Lands Advisory Board to assist them in implementing their own land governance regimes. The LAB is the political body composed of Chiefs regionally elected from among the First Nations involved.

The Resource Centre is the technical body intended to support First Nations in the developmental and operational phases implementing the *Framework Agreement*.

What does the Lands Advisory Board and Resource Centre do?

The Land Advisory Board's functions include;

- Provide 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;
- Performing such other functions or services for a First Nation as are agreed to between the Board and the First Nation.

The Resource Centre'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;

PROVINCIAL RELATIONS

Do Provincial Governments support this initiative?

Yes. The government of each province in which the original 13 First Nations are located have given written support for this initiative.

SUMMARY OF BENEFITS TO FIRST NATIONS

What are the major benefits of the *Framework Agreement* to First Nations?

- First real recognition of First Nation right to manage its reserve lands and resources,
- Removal of reserve lands from the *Indian Act*,
- Community control over First Nation land management and development,
- Inclusion of both off-reserve and on-reserve members in important decisions,
- Increased accountability to members of the First Nation,
- More efficient management of First Nation land,
- Recognition of First Nation 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,
- Transfer by Canada of previous land revenues to First Nation,
- Recognition of the right to receive revenue from interests in First Nation land,
- Protection against arbitrary expropriation of First Nation land,
- Protection against loss of First Nation land through surrender for sale,
- Ability of First Nation to protect the environment,
- Ability of First Nation to address the current vacuum on rules related to land during marriage breakdown,
- Recognition of significant law-making powers respecting First Nation land,
- Removal of the need to obtain Ministerial approval for First Nation laws,
- Recognition in Canadian courts of First Nation laws,
- Recognition of right to create modern offences for breach of First Nation laws,
- Ability to appoint Justices of the Peace,
- Ability to create a local dispute resolution process,
- Establishment of a legal registry system,
- Establishment of a First Nation run Lands Board and Resource Centre to provide technical assistance to First Nations...