



Framework Agreement on First Nation Land Management

Presentation by:

First Nation Land Management Resource Centre Inc.

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What is The Framework Agreement (FA)?

The purpose of the FA was to enable First Nations to resume control over their lands and resources for the use and benefit of their members, without Government interference, by replacing the land provisions of the *Indian Act* with First Nation made laws.

- Negotiated between 14 First Nations and the Department of Indian Affairs
- This government-to-government agreement signed Feb 12, 1996
- Provides First Nations the option of exercise control over their lands and resources outside of the *Indian Act*
- Sets out the scope of First Nation powers and governance authority

One of the FA's most important features is that it is entirely community driven and can only be undertaken with the consent of the community.

Land Code

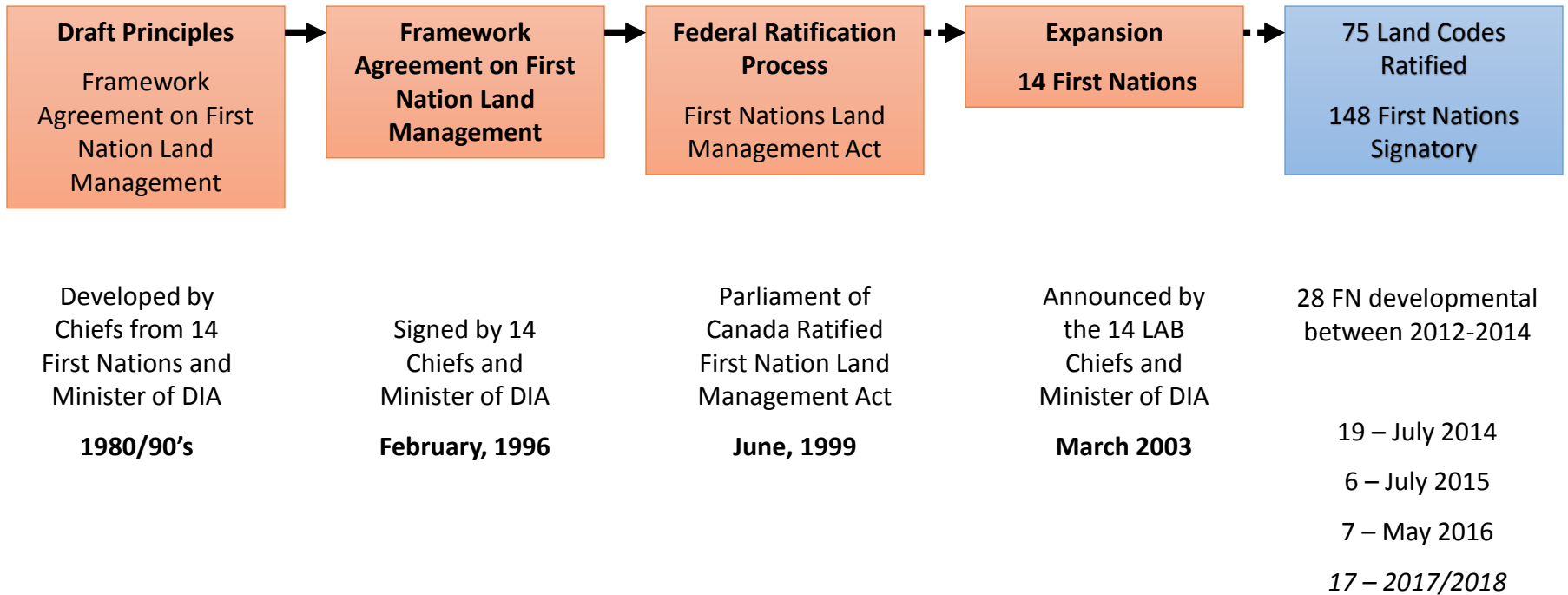
- A Land Code will be the legal framework for land management powers and authorities and will replace the land management provisions of the Indian Act

Benefits of a Land Code

- A step forward for recognition and to govern our reserve lands
- Will recognize our inherent right to manage our own reserve lands. This process provides an opportunity to merge traditional values with modern practices
- INAC no longer manage lands and resources according to the Indian Act
- More community involvement on land management matters

Framework Agreement on First Nations Land Management

TIMELINE



The original 14 First Nations Signatories

British Columbia

- Westbank
- Musqueam
- Lheidli T'enneh
- N'Quatqua
- Squamish

Alberta

- Siksika

Saskatchewan

- Muskoday
- Cowessess

Manitoba

- Opaskwayak Cree Nation

Ontario

- Nipissing
- Mississaugas of Scugog Island
- Chippewas of Mnjikaning
- Chippewas of Georgina Island

New Brunswick

- Saint Mary's

76 First Nation communities have ratified a Land Code

British Columbia

1. Lheidli T'enneh
2. McLeod Lake
3. Beecher Bay
4. Ts'kw'aylaxw
5. T'Sou-ke
6. Kitselas
7. Shxwha:y Village
8. Tsawout
9. Tsleil-Waututh
10. Squiala
11. Matsqui
12. Tzeachten
13. Leq'a:mel
14. Seabird Island
15. We Wai Kai
16. Skawahlook
17. Sumas
18. Nanoose
19. Songhees
20. Musqueam
21. Campbell River
22. Stz'uminus
23. Skowkale
24. Aitchelitz
25. Yakweakwioose
26. St. Mary's
27. Williams Lake
28. Haisla

29. Shuswap
30. Shxwowhamel
31. Malahat
32. Kwantlen
33. Soowahlie
34. Chawathil
35. Scowlitz
36. Cheam
37. Lower Nicola
38. Komoks
39. Metlakatla
40. Nak'azdli Whut'en
41. Katzie
42. Lake Cowichan
Westbank ^(a)
Tsawwassen ^(b)
Sliammon ^(b)

Saskatchewan

1. Muskoday
2. Whitecap Dakota
3. Kinistin
4. Muskeg Lake
5. Kahkewistahaw
6. Flying Dust
7. One Arrow
8. Yellow Quill
9. Mistawasis

Manitoba

1. Opaskwayak Cree
2. Chemawawin
3. Swan Lake
4. Brokenhead Ojibway
5. Misipawistik Cree
6. Long Plain
7. Nisichawayasihk Cree

Ontario

1. Georgina Island
2. Scugog Island
3. Nipissing
4. Whitefish Lake
5. Henvey Inlet
6. Mississauga
7. Anishnaabeg of Naongashiing
8. Dokis
9. Bingwi Neyaashi Anishinaabek
10. Shawanaga
11. Magnetawan
12. Long Lake #58
13. Wasauksing
14. Temagami

Quebec

1. Abénakis de Wôlinak

^(a) Now implementing full self-government

^(b) Now implementing treaty

As of Aug 28, 2017



75 Operational, 3 SGA

57 Wait List

57 Developmental

205 TOTAL

16 Inactive

148 signatories to FA

1:3 First Nations across Canada

Framework Agreement Success

- In 2013/2014, KPMG conducted a number of case studies to evaluate the economic and social impacts of the Framework Agreement on First Nations who are operating under their own Land Codes
- The case studies built on previous work that was conducted in 2009 and helps to further explain why First Nations are experiencing a range of successes in a number of areas under the Framework Agreement and a First Nation's own Land Code

FNLM BENEFITS REPORT:

[FNLM Benefits Review 2010](#)

[FNLM Benefits Review 2014](#)

<http://labrc.com/reports/>

Framework Agreement Success (cont.)

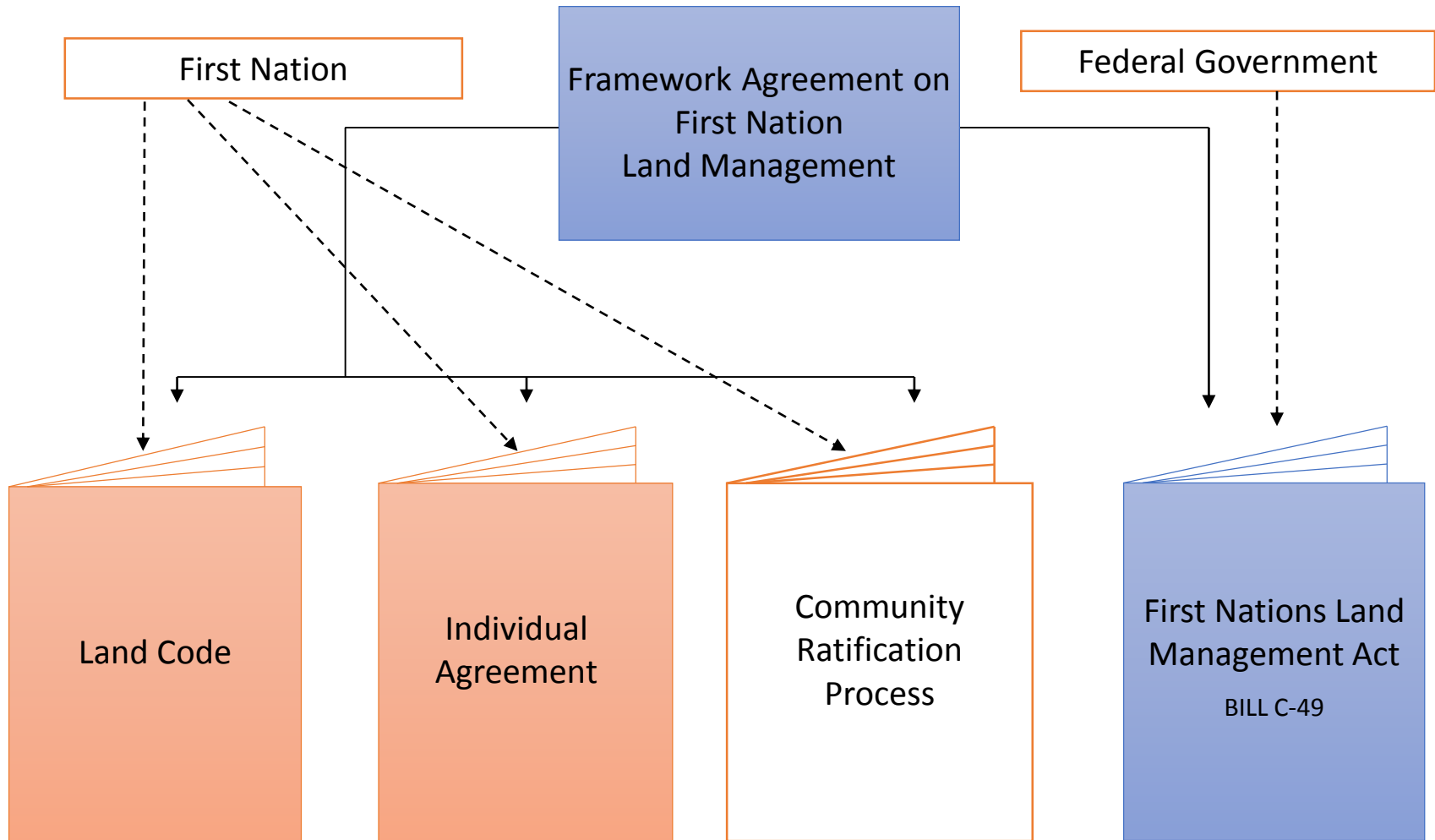
Examples of the initiatives in each of the focus areas that were examined include:

- **Economic Development** projects in wind, solar and hydroelectric power generation, commercial food farming and property transfer tax and individual member rights
- **Cultural and heritage** implications related to traditional activity protection, strengthening of knowledge, traditions and behavior and belief characteristics within First Nation Communities; and,
- **Environmental impacts** in areas such as water protection and conservation, species at risk, climate change efforts and solid waste management.

Highlights of Land Code Successes

- Timely business and administrative decisions
- Increased accountability and transparency
- Political and financial stability
- Security of land tenure (individual and collective)
- Increased property values
- Sustainable economic and community development opportunities
- Increased opportunities for members (employment, business, education, etc.)
- Improved standard of living and social web of community
- Increased capital investment (infrastructure and associated land development)
- Increased cultural awareness and cultural programming
- Community pride in being self-determining and not governed by Canada
- Significant contribution to local economy (fiscal & economic)

Framework Agreement on First Nation Land Management



Principles of the FA

- Inclusion of on and off reserve First Nations members
- Once a Land Code is ratified by the community, the 33 land management provisions of the *Indian Act* (approx. 25%) no longer apply
- First Nation lands continue to be lands reserved for Indians within the meaning of section 91(24) of the *Constitution Act, 1867* (not fee simple lands)
- Law making power over lands and resources
- Legal status and capacity clearly defined
- No expropriation of reserve lands by government
- Protection of treaty rights or aboriginal rights

Principles of the FA (cont'd)

- Canada continues to be liable for previous acts and omissions (e.g. environmental issues/ lands issues)
- A third party interest on reserve is protected – until that interest has expired (e.g. valid leases continue)
- An individual band member's interest is protected on reserve (e.g. valid CP and other legal interests continue)
- Local dispute resolution mechanisms are to be developed to the satisfaction of the First Nation community
- Matrimonial Real Property provisions are to be developed by the community
- Conflict of Interest provisions are mandatory, ensuring fair land practices

TAKING CONTROL OF LAND GOVERNANCE

Any First Nation, if it wishes, should have the opportunity to participate in this land management initiative.

A First Nation signatory to the Framework Agreement will:

1. develop a land governance system by creating its own **Land Code (LC)**; replaces the 33 land management sections under the Indian Act
2. enter into an **Individual Agreement (IA)** with Canada; identifies what will be transferred into FN control
3. develop a **Community Ratification Process (CRP)**; the process to be followed for membership's vote on the above two documents

The specific steps are set out in the *Framework Agreement*.

Overview of Land Code

Development of the jurisdictional structure for the management of the FN's reserve land base:



Part 1 – Preliminary Matters

Part 2 – First Nation Legislation

Part 3 – Community Meetings & Approvals

Part 4 – Protection of Lands

Part 5 – Accountability

Part 6 – Land & Natural Resources Administration

Part 7 – Interests & Licences in Land


Part 8 – Dispute Resolution

Part 9 – Other Matters

To be ratified by the FN membership

Overview of Individual Agreement

An Individual Agreement between the First Nation and the Minister will be negotiated to deal with such matters as:



Individual Agreement

Between
FN and INAC

Annex A – Funding

Annex B – Revenue Monies

Annex C – Interest & Licences

Annex D – Environmental Issues, ESA-Phase 1

Annex E – List of Other Info


Annex F – Interim Env. Process

Annex G – Description of Lands

To be ratified by the FN membership

Overview of Community Ratification Process

The LC & IA must be successfully ratified by FN's voting members, the CRP will outline the requirements of the voting process including:



Community Ratification Process

Developed by FN

- Registration of Eligible Voters
- Duty of Ratification Officer
- Notice of Vote
- Community Information
- Methods of Voting (Polls, Mail-in, Electronic)
- Voting Day
- Counting of Ballots
- Objections
- Report by Verifier

Include established community voting procedures

Roles in the Developmental Process

Lands Advisory Board

- Elected political body comprised of 10 Board Members + the Chairman
- 3 regions in Canada (BC, Prairies, East)
- Supports First Nations in accordance with the Framework Agreement

FNLM Resource Centre

- Technical Body established by the Lands Advisory Board
- Day-to-day operations including support for LAB activities, financial administration, and technical advice
- Support to developmental and operational communities

Verifier

- Independent person recommended by LAB and jointly appointed by the FN and Canada to monitor and confirm that the Community Ratification Process (CRP) and Land Code (LC) are consistent with the Framework Agreement

Other Roles

Natural Resources Canada (NRCan)

- Research and compilation of info for the Land Description Report (*which includes the creation of the boundary description, the accompanying administrative sketches, Land Management Transfer plans, research documentation and the analysis of the documentation)

Indigenous and Northern Affairs Canada (INAC)

- Is primarily responsible for the negotiation and completion of the Individual Agreement and the various appendices
- Assists First Nations cooperatively on completing Environmental Site Assessment work
- The finalization of the land description with NRCan

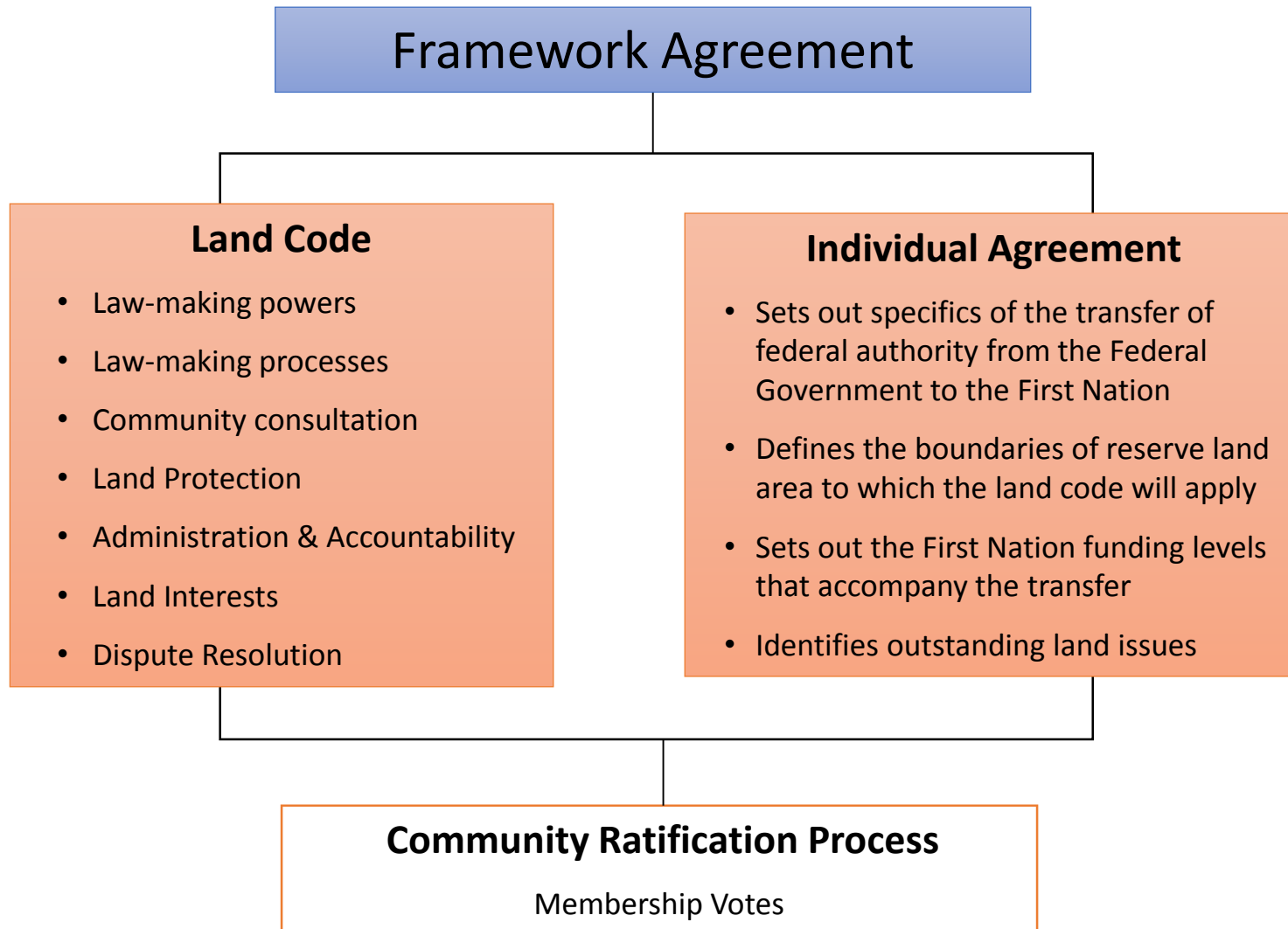
Developmental Funding

Canada provides funding to FN for completion of Parts I & II of the *Framework Agreement*:

- \$75,000 per First Nation (Year One) for milestones completed during Quarters 1, 2, 3 & 4
- \$75,000 per First Nation (Year Two) for milestones completed during Quarters 5, 6, 7 & 8
- \$150,000 per First Nation is the maximum amount available for activities required under Parts I & II of the Framework Agreement

The full amount of \$150,000 is available if the First Nation completes all of the activities in less than 24 months

Overview of the Developmental Process



Operational Funding

- A new Operational Funding Formula (OFF) took effect on April 1st 2012 and will be continue through until new MOU 2017/2018
- The new funding formula moved away from the previous transaction-based funding approach to a more stable one
- Under the new OFF each FN will receive an annual fixed level of funding (referred to as “core funding”) for establishing and maintaining their lands authority, law-making, and policies
- First Nations are assigned at one of three tiers (1, 2, 3)
 - Tier 1 = \$ 204, 536
 - Tier 2 = \$ 251,636
 - Tier 3 = \$ 317,386

Transitional Funding – Operational

- The second type of operational funding is a contribution towards transitional and environmental activities
- This funding is in place to assist a First Nation with activities such as start-up of the lands office and Environmental Management
- Each operational community would receive \$75K per year for two years
- This transitional funding provides financial resources for the purpose of training and the development of a core body of laws including environmental protection

Process for New Entrants

Band Council Resolution

- the FN must submit a BCR to INAC/RC expressing interest in joining First Nations Land Management

Assessment Questionnaire

- the FN must also complete the Questionnaire and send it to the INAC Regional Office

INAC First Nations Land Management Readiness Guide:

A Guide for First Nations Interested in the First Nations Land Management

<http://www.aadnc-INAC.gc.ca/eng/1367432545445/1367432634043#chp1>



Indian Act vs Land Code



Overview of First Nation Land Regimes in Canada

| Indian Act | FNLMA – Framework Agreement | Self-Government | Modern Treaty |
|---|---|----------------------|-----------------------------------|
| s.91.24 Fed Lands | s.91.24 Fed Lands | s.91.24 Fed Lands | s. 92 Prov Lands |
| ILRS – INAC approval | FNLRS – FN approval | SGLRS – FN approval | LTO – FN approval |
| No Registry Regulations | Registry Regulations | Registry Regulations | Prov Reg. Regulation |
| Minister approval & delegates authority | 67 approved Land Codes across Canada, 3 moved forward SGA | Westbank | Nisga’a Tsawwassen Sliammon |

33 section of *Indian Act* no longer apply

| | | | |
|---|--|--|---|
| <p><u>Reserves</u></p> <p>18 Reserve land will be held by Band and not Canada. Minister no longer authorizes use of reserve lands for community purposes</p> <p>19 Minister no longer authorizes road construction and location, surveys and subdivisions within reserve boundaries</p> <p><u>Possession of Land</u></p> <p>20 Ministerial approval not required for Certificates of Possession, Allotments, etc.</p> <p>22-27 Ministerial approval and rules regarding individual holdings no longer required</p> <p>28 Minister no longer issues permits</p> <p><u>Trespass on Reserves</u></p> <p>30-31 Canada no longer involved in prosecution and enforcement of penalty against trespassers</p> | <p><u>Roads and Bridges</u></p> <p>34 Superintendent no longer has the power to instruct band to maintain band roads, bridges ditches & fences. Minister can no longer remedy such neglect and recoup the cost from fundsheld by Canada</p> <p><u>Lands Taken for Public Purposes</u></p> <p>35 Minister no longer has the power to authorize the taking of reserve land by provincial, local or other expropriating authority</p> <p><u>Surrenders and Designations</u></p> <p>37-41 provisions no longer apply.</p> <p><u>Distribution of Property on Intestacy</u></p> <p>49, 50(4) Approval of Minister not required for estate transfers and sales of individual holdings</p> | <p><u>Management of Reserves and Surrendered and Designated Lands</u></p> <p>53-56 Provisions dealing with Minister's authority to sell surrendered lands and lease designated lands will no longer be needed</p> <p>57 Governor General's authority to make regulations in respect of timber surrenders and mineral surrenders will be no longer be required</p> <p>58 Uncultivated or unused lands provisions</p> <p>59 Adjustment of contracts</p> <p>60 Authority of Governor in Council to grant right to Band to exercise control & management of reserve lands no longer required</p> | <p><u>Management of Indian Moneys</u></p> <p>66 Minister no longer empowered to spend band funds for purposes related to general progress & welfare of band or any member</p> <p>69 Governor in Council's authority to permit a band to control , manage & expend band revenues will not be needed</p> <p><u>Farms</u></p> <p>71 Minister no longer empowered to operate reserve farms</p> <p><u>Removal of Materials from Reserves</u></p> <p>93 Ministerial permit for extraction of sand & gravel, hay & timber no longer required</p> <p><u>Indian Timber Regulations</u></p> <p>57 Regulations will no longer apply</p> |
|---|--|--|---|

Indian Act vs Land Code

| Issues | Indian Act | Land Code |
|------------------|--|--|
| Land Laws | Council has the power to introduce land Bylaws and there is no process to ensure that membership have input or consent | <p>Under a Land Code, Council is limited to the kind of laws it can pass on its own. Land laws such as laws on granting new lands interests, land use planning, trespassing, deposit of soils, should be subject to community input and approval.</p> <p>The Land Code will need to be ratified by the community</p> <p>Once the Land Code is ratified and in operation, any member can propose a land law to council.</p> |

Indian Act vs Land Code

| Issues | Indian Act | Land Code |
|-------------------------------|--|--|
| Leases | <p>Council with the approval from the Ministry can negotiate leases up to 99 years in duration.</p> <p>It takes 6 months to 1 year, or longer to complete a lease.</p> | <p>The land code can implement a policy mechanism for a quick response to lease applications and approvals.</p> <p>Will take 1-2 months to complete a lease.</p> |
| Land Use | <p>INAC can approve land development without the consent of membership.</p> | <p>With input from the community, the land use plan can be created without INAC involvement.</p> |
| Grant / Land Interests | <p>No process on how Council may grant land interests/uses in fair and transparent manner.</p> | <p>The process for granting land interests or uses can be designed and implemented to meet the needs of the nation.</p> |

Indian Act vs Land Code

| Issues | Indian Act | Land Code |
|----------------------------|--|--|
| Accountability | Under the Indian Act, Council is only accountable to INAC | With a Land Code the Council is accountable to the membership There will be financial rules, dispute resolution and conflict of interest rules to accompany lands decision making |
| Dispute Resolutions | The Indian Act provides no provisions for membership to appeal a decision of the Council | There will be a dispute resolution process in place to address appeals to decision made by Council. Decisions may be overturned by the dispute resolution process |

Land Code will not Affect

- This agreement is not a treaty and does not affect our treaty rights or other constitutional right
- A Land Code will not affect existing registered interests in lands, including CP lands if applicable
- Reserve land will remain to be held by Her Majesty and are set apart for the use of and benefit of the Nation. The lands are still protected and federal responsibility under section 91(24) of the Constitutional Act, 1867. Reserve lands will remain protected against future surrender for sale
- Tax exemption status will not be affected

A Land Code DOES NOT apply to

- Oil and natural gas
- Atomic energy
- Migratory birds
- Endangered species
- Fisheries
- Taxation exemptions and powers
- Any lands except reserve lands
- Wills and Estates



Frequently Asked Questions / Concerns:



Q&A: What do you feel are the PROs of FNLM?

- First Nation (FN) recognized as the Government and real decision maker over their lands and resources
- Removal of reserve lands from the Indian Act
- Community control over FN land management and development
- Inclusion of both off-reserve and on-reserve members in important decisions
- Increased accountability to members of the FN
- More efficient management of FN land
- Recognition of FN 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 prev. land revenues to FN
- Recognition of the right to receive revenue from interests in FN land
- Protection against arbitrary expropriation of FN land
- Protection against loss of FN land through surrender for sale
- Ability of FN to protect the environment
- Ability of FN to address the current vacuum on rules related to land during marriage breakdown
- Recognition of significant law-making powers respecting FN land
- Removal of the need to obtain Ministerial approval for FN laws
- Recognition in Canadian courts of FN laws
- Recognition of right to create modern offences for breach of FN laws
- Ability to appoint Justices of the Peace
- Ability to create a local dispute resolution processes
- Establishment of a legal registry system
- Establishment of a FN run Lands Board to provide technical assistance to FNs

Q&A: What do you feel are the CONs of FNLM?

- FN will take full responsibility for all future decision making and if wrong decisions are made, could be liable
- Cannot blame anyone else if make future mistakes
- Training – will be a priority, thus staff and financial resources will have to be made available
- There is no turning back to the *Indian Act* to get INAC to take over land decision making
- Community readiness – Is the community ready for its own FN decision making?
- Council/Staff experience – Does Council and staff feel up to the task to be full decision makers?
- Typical growing pains of any government
 - Sufficient resources
 - Staff
 - Space
 - Policy and procedural development
 - Law making
- Lots of hard work will be required

Q&A: How will a successful FNLM vote affect FN's relationship with INAC?

- Successful FNLM votes have historically helped to redefine FN relationships with INAC. It places the FN on a level playing field with municipal, provincial, and Federal departments
- The fiduciary obligation of Canada continues under the Framework Agreement. The scope of Canada's obligation is reduced, however, because the FN 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
- INAC has been, and continues to be supportive of communities choosing to ratify their Land Codes and proceed under the FA
- Over time, there will be less contact with INAC over land matters
- Lands management funding will be separate and guaranteed annually
- There will be less reporting to INAC over FN's lands activities. As a result of less reporting to INAC, FN will have more time to go after other funding in other areas
- INAC will look to FN as a government and decision maker. INAC's decision making over FN's lands activities will disappear
- With FN being the decision maker, INAC typically will extend more respect to FN

Q&A: What is the process in the event the FNLM vote is unsuccessful?

- Some FNs go completely off the radar and INAC remains the decision maker over its affairs
- If the first vote is reasonably close, the FN will have to convince INAC that a second vote will likely be successful
- If INAC is persuaded to allow a second vote, the FN will have to cover almost 100% of the costs to get a second vote. In some cases, INAC will agree to cover the Verifier and Ratification vote costs. This is dependent on funding being made available
- Extensive lobbying to get to a second vote will be required by the FN and the Lands Advisory Board/Resource Centre. There is no guarantee a second vote will be approved
- The process could take several years

Q&A: Why develop a land code if the membership does not want to develop their lands?

The Land Code process isn't just about development, it's also about:

- Becoming self sufficient in the governance and management of First Nation Lands and Resources
- Protecting Reserve lands for future generations as the FN sees fit
- Reclaiming the responsibility that the Indian Act took away over your Reserve Lands and Resources
- Enhancing the FN Government structure, including a Lands Department
- Putting important decisions about Lands and Resources in the hands of community members instead of the Minister of Aboriginal Affairs and the Bureaucrats of the Government of Canada

Q&A: Is there a benefit of going through the FNLM process on the way to either self government, treaty or other negotiations?

- Absolutely! Perhaps the most crucial part of any Self Government agreement or Treaty is control and decision making over the lands and resources
- A framework of the Law making process has to be developed
- Community input into the laws making process has to be obtained and what better way than the FNLM process
- Time and extensive energies will be spent developing a framework of law making process. All that is valuable and necessary and will help in self-government and treaty
- The experience of other FNs has proven that the benefits of going through the FNLM process have been not only helpful but beneficially necessary to advancing self-government and treaty negotiations dramatically

Q&A: Is Land Code a treaty and will FN cede its territorial rights and title by voting in favour of the Land Code?

- The Framework Agreement and/or Land Code are not treaties and do not affect any treaty rights or negotiations currently underway
- Other services (Education, Health etc.) would continue to be administered by INAC, until such time as another Agreement is in place for your Nation

*Your Treaty and Aboriginal Rights or Title will **NOT** be affected as a result of Land Code*

Q&A: Does Chief & Council have the right to expropriate lands from a Member at any time and for any purpose? How is this any different than lands being expropriated from Indian Affairs?

Prior to any community expropriation, Council must enact a law that sets out the process for the community expropriation. There are specific parameters around when and why Council would expropriate community lands;

- It must be in accordance with the Framework Agreement and any Law for the purpose of expropriation
- Must be necessary for a community wide purpose (ie. Fire hall, Sewage or Water treatment facility, community centre, public works, roads, schools, daycare facility, hospital, health care or retirement facility)
- Make an effort in good faith to negotiate a fair deal with the interest holder
- Must pay fair and reasonable compensation (market value) to the interest holder
- No other similar or suitable lands is available for the community purpose
- Complete the agreement in a reasonable period of time to meet the need for which the interest, building or structure is required by FN

The Minister of Indian Affairs has always had the ability to expropriate lands from the Community or from an interest holder and has not been obligated to pay fair market price. If an agreement on the compensation could not be reached between the interest holder and the Minister, the Minister may determine the compensation as per section 18.2 of the *Indian Act*.

Q&A: What is a legal interest in FN lands for a member and how does that compare to traditional holdings?

- Traditional Holdings are portions of reserve lands that the Minister of Indian Affairs allowed members to use and occupy if they demonstrated an interest in clearing and farming the land. These traditional holdings would be recognized only while the land was being farmed; however there was no formal agreement between the Minister and the First Nation or the Member
- Traditional Holdings could be converted into a legal interest under a process under an Allotment Law, the completion of a formal survey and the interest being registered in the First Nation Lands Registry System
- A Certificate of Possession (CP) is a legal interest of land for a Member under the Indian Act. A CP is as close to “ownership or title” of reserve land as possible
- The Land Code may allow for the granting of an individual interest in Community Lands to a Member. This process would be defined by the FN through an Allotment Law (could include CP, Right of Occupancy, Lease, etc.)

Q&A: What benefits are there for a CP holder under Land Code? i.e. Can CP land be sold to a non-citizen?

Land Code is a form of 'sectoral' Self Governance and is the first real recognition by Canada of the inherent right of FNs to reclaim and have full authority over their reserve lands and resources. FN Lands will retain the "Reserve" status and therefore cannot be "sold" to a non-citizen; however the lands can be leased to a non-citizen. Only another FN Member could purchase CP land.

Some benefits as stated by CP Holders have been:

- Permanent possession of the land
- You no longer have to go to the Minister of Aboriginal Affairs requesting permission for any activity or development on your CP lands
- CP is protected from the Minister expropriating your CP land and determining the value of your land in an expropriation situation
- Benefit from the resources arising from the land
- May grant subsidiary (controlling) interests in the land (i.e leases, permits, easements and rights-of-ways)
- May transfer, devise (leave to someone in terms of a will) or otherwise dispose of the land to another Member
- Work with developers at the speed of business
- Use your CP as equity in the case of borrowing finances from a bank

Any First Nation, if it wishes, should have the opportunity to participate in this land management initiative.

The LABRC is committed to assisting all First Nations in achieving their desired goal of exercising their inherent right to control their reserve lands and resources.

If you require further information please contact:

First Nations Land Management Resource Centre Inc.

www.labrc.com

THANK YOU !!!



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