

## FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

### EXECUTIVE SUMMARY

#### INTRODUCTION

The *Framework Agreement on First Nation Land Management (Framework Agreement)* is a government-to-government agreement signed by 13 First Nations and Canada on February 12, 1996.

The *Framework Agreement* was initiated by these 13 First Nations to opt out of the land management sections of the *Indian Act* and take over the governance and management control of their First Nation Land and natural resources.

The *Framework Agreement* can only be amended with the approval of 2/3 of the First Nations who have ratified the *Framework Agreement* and Canada.

The *Framework Agreement on First Nation Land Management (Framework Agreement)* required that it be ratified on behalf of Canada by an act of Parliament and that the act be consistent with the Framework Agreement. Parliament enacted the *First Nations Lands Management Act (FNLMA)* in June of 1999.

First Nation signatories ratify the *Framework Agreement* by enacting a Land Code. Until a Land Code is enacted, federal administration of their lands continues under the *Indian Act*. As of October 2019, the *Framework Agreement* has expanded from the original 14 signatories to 165 signatories, of which 91 First Nations have enacted their own Land Codes.

The most recent amendments of December 2018 to the *Framework Agreement* and *FNLMA*, the introductory clauses commit Canada to implementing the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

The *Framework Agreement* is not a treaty and does not affect existing treaty or other constitutional rights of the First Nations.

#### 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, the Land Code becomes the basic land law of the First Nation. When it comes into effect, approximately 44 sections of the *Indian Act* no longer apply, and Canada is no longer involved in the decision making of the First

Nation's land and resources. The Land Code does not have to be approved by the Minister or any federal department.

In accordance with the *Framework Agreement*, the Land Code is drafted by each First Nation and will make provision for the following:

- Identification of the lands to be governed by the First Nation under its Land Code, called First Nation Land (means reserve land or lands set aside in the Yukon that are described in a Land Code);
- 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 the *Indian Oil and Gas Act*);
- Procedures for making and publishing First Nation laws;
- Conflict of interest rules;
- Community process to develop rules and procedures applicable to land on the breakdown of a marriage;
- Dispute resolution process;
- Procedures by which the First Nation can grant interests in land or acquire lands for community purposes;
- Delegation of certain land management responsibilities;
- Procedure for amending the Land Code; and
- Any other matter respecting the governance of First Nation Land and natural resources.

**Individual Agreement:** An Individual Agreement, developed between each First Nation and Canada, will address such matters as:

- The description of the First Nation Land to be governed by the First Nation;
- The specifics of the transfer of the administration of First Nation Land from Canada to the First Nation; and
- 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 re-assume control over First Nation Land, the Land Code and the Individual Agreement must be ratified by the eligible voters of the First Nation. All eligible voters, 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 First Nation in accordance with the *Framework Agreement*. This process will be set out in a document indicating all of the activities and details. The ratification procedure involves a concerted effort to locate all eligible voters and provide them with the opportunity to vote either in person, by mail or electronic voting.

**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*.

**Recognition of Land Governance Authority:** Upon the enactment of the Land Code, jurisdictional control over First Nation Land and natural resources are recognized to be under the governance authority of the First Nation and are no longer subject to the *Indian Act*.

### TITLE TO FIRST NATION LAND

Title to First Nation Land is not affected when a Land Code comes into force. Under the *Indian Act*, reserve lands 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 continue to be Lands reserved for Indians under section 91(24) of the *Constitution Act, 1867*.

In the Yukon, the title of lands set aside by reservation or notation in the property records of Canada will not be affected by the enactment of a Land Code.

### 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 First Nation Land and natural resources. A First Nation power includes all the rights, powers and privileges of an owner and the authority to grant interests or land rights and licenses in relation to its First Nation Land and to manage its natural resources.

**Law-Making Powers:** A First Nation, with 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, land use, interests and licenses, environment assessment and protection, services, dispute resolution, and matrimonial real property.

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*.

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

**Land Management:** In accordance with their respective Land Code and First Nation laws, a First Nation has jurisdiction over decision making in relation to the First Nation Land and natural resources, including leasing, developing, managing revenues and authorizing expenditures. However, First Nation Land cannot be sold or surrendered for sale. In keeping with the principle that First Nation land will not be reduced in area or quality, there is a procedure for exchanging lands if the First Nation regards such an exchange as advantageous.

Land management powers only relate to First Nation Land. The *Framework Agreement* does not affect any lands, or any rights in lands, that are not subject to the 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 licenses may be acquired or granted except in accordance with the Land Code. However, a First Nation and third parties can agree to arrangements that differ from the terms and conditions of a previously issued *Indian Act* interest.

**First Nation Expropriation:** A First Nation will have the power to acquire interests in First Nation Land for community works or other First Nation community purposes. It must pay fair compensation to members or non-members whose interests are affected. The First Nation will provide fair compensation to those whose interests are affected.

**Accountability:** A Land Code will make provision for a First Nation to report to its members and to be accountable for the governance of their First Nation Land, natural resources and revenues.

**Marriage Breakdown:** A First Nation has the power to make First Nation laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner.

**Registration of Interests:** The First Nation Lands Register was established to record documents respecting First Nation Land for First Nations with a Land Code in force. The Lands Advisory Board and the Minister developed the *First Nations Land Registry Regulations* respecting the First Nation Lands Register, unlike the internal departmental policy for the *Indian Act* registry.

Additionally, Land Code First Nations manage registrations and may also develop their own laws regarding registrations.

All documents pertaining to First Nation Land will be recorded in the First Nations Land Registry System (FNLRS). The FNLRS is:

- Electronic
- Provides for Instant Registration
- Priority based
- Paperless
- Backed by Regulations

The FNLRS and regulations are landmark achievements. The regulations provide for greater land certainty, mortgage ability, 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 Land is a fundamental principle of the *Framework Agreement*. Some aspects of this principle are summarized below:

**Description of Land and Addition of Land:** A Land Code will describe the lands that are subject to the Land Code, called First Nation Land. The description of land does not resolve or prejudice any claim of the First Nation to any other lands, or to any proper adjustment to the boundaries, and serves the sole purpose of administrative implementation of the *Framework Agreement*. The Land Code prescribes a process to add other lands to the jurisdiction of the Land Code once those lands become First Nation Land. Canada and the First Nation signatories declare that it is of fundamental importance to maintain the amount and integrity of First Nation Land.

**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*, 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*.

**Environmental Protection:** A First Nation with a Land Code in force will have the power to develop an environmental assessment and environmental protection regime by implementing First Nation laws. To the extent that federal and provincial/territorial agencies agree to participate, First Nations agree to harmonize environmental protection laws with federal and respective provincial/territorial environmental laws. First Nation environmental assessment processes will be consistent with the requirements of the *Canadian Environmental Assessment Act*.

**Voluntary Exchange of Lands:** A First Nation may decide that it is advantageous to exchange some of its First Nation Land for other lands, at least equal in area and quality, that then become First Nation Land. Provisions in the *Framework Agreement* and Land Code strictly outline the procedure to negotiate and approve such exchanges. An exchange of land requires community approval in accordance with the process established in the Land Code.

**No Provincial Expropriation:** First Nation Land is immune from expropriation by provinces, municipalities and corporations.

**Restricted Federal Expropriation:** Canada's power to expropriate First Nation Land is greatly restricted. That power can only be exercised with the approval of the Governor in Council, only when the expropriation is justified and necessary for a federal public purpose that serves the national interest and only if other non-First Nation land is not reasonably available. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished. The land will revert to the First Nation once the land is no longer required by Canada, eventually resulting in a larger land base.

**Enforcement:** A First Nation has full power to enforce its Land Code, First Nation laws and environmental laws. A First Nation may appoint its own Justice of the Peace and special prosecutor and may enter into further agreements with other jurisdictions regarding enforcement. A First Nation has the power to establish comprehensive enforcement procedures including establishing offences that are punishable on summary conviction, and providing for inspections, searches, seizures, fines, imprisonment, restitution, community service and alternative means for achieving compliance with its laws.

## **CONTINUING FEDERAL RESPONSIBILITY**

Canada will continue to hold title to First Nation Land, although Canada will have no decision making authority and will no longer be involved in the management of the First Nation Land.

Canada will remain liable for and will indemnify a First Nation for any losses arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect to First Nation Land that occurred before the Land Code comes into force. After that date, the First Nation is responsible for its own acts or omissions in managing First Nation Land.

## **DISPUTE RESOLUTION**

A First Nation will establish its own processes for dealing with disputes in relations to First Nation Land. These alternative dispute resolution processes may include mediation, facilitated discussions, negotiations, neutral evaluation and arbitration.

If 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.

## **LANDS ADVISORY BOARD AND RESOURCE CENTRE**

Under the *Framework Agreement*, the First Nations have established a Lands Advisory Board whose functions in relation to implementation of the Framework Agreement are set out. The Lands Advisory Board is the political body composed of regionally elected representatives from among the operational First Nations.

The Resource Centre was created by the Lands Advisory Board in 2001 to discharge its technical responsibilities. The Resource Centre is an incorporated body that provides support services to First Nations in the developmental and operational phases of the *Framework Agreement*.

## OPERATIONAL FIRST NATIONS

The following is a list of the 91 First Nations who signed the *Framework Agreement* and who have enacted Land Codes pursuant to the *Framework Agreement*.

### *British Columbia*

1. ?Aq'am (St. Mary's)
2. Aitchelitz
3. Beecher Bay (Scia'new)
4. Chawathil
5. Cheam
6. Cowichan Tribes
7. Ditidaht
8. Haisla
9. Homalco
10. Katzie
11. Kitselas
12. Komoks
13. Kwantlen
14. Kwaw Kwaw Apilt
15. Lake Cowichan
16. Leq'a:mel
17. Lheidli T'enneh
18. Lower Nicola
19. Malahat
20. Matsqui
21. Metlakatla
22. Musqueam
23. Nak'azdli Whut'en
24. Namgis
25. Seabird Island
26. Shuswap
27. Shx'wha:y Village
28. Shxw'ow'hamel
29. Skawahlook
30. Skowkale
31. Sliammon **(a)**
32. Snaw-Na-As(Nanoose)
33. Songhees
34. Soowahlie
35. Squiala

36. Sqwelets (Scowlitz)
37. Sts'ailes
38. Stz'uminus
39. Sumas
40. T'it'q'et
41. Tsawout
42. Tsawwassen **(a)**
43. Tsekani (McLeod Lake)
44. Ts'kw'aylaxw (Pavilion)
45. Tsleil-Waututh
46. T'Sou-ke
47. Tzeachten
48. We Wai Kai (Cape Mudge)
49. We Wai Kum (Campbell River)
50. Westbank **(b)**
51. Williams Lake
52. Yakweakwoose

### *Saskatchewan*

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

### *Manitoba*

1. Brokenhead Ojibway
2. Chemawawin
3. Long Plain
4. Misipawistik (G. Rapids)
5. Nisichawayasihk
6. Opaskwayak Cree

7. Swan Lake

### *Ontario*

1. Algonquins of Pikwaknagan
2. Anishinaabeg of Naongashiing
3. Atikameksheng Anishnawbek
4. Beausoleil
5. Bingwi Neyaashi Anishinaabek
6. Brunswick House
7. Chippewas of Rama
8. Dokis
9. Georgina Island
10. Henvey Inlet
11. Long Lake #58
12. Magnetawan
13. Mississauga
14. Nipissing
15. Scugog Island
16. Shawanaga
17. Sheshegwaning
18. Temagami
19. Wasauksing

### *Quebec*

1. Conseil Des Abenakis Wolinak

### *New Brunswick*

1. Madawaska

### *Nova Scotia*

1. Membertou

### *Newfoundland*

1. Miawpukek
- (a) *Now implementing treaty*
- (b) *Now implementing full self-government*

