



Framework Agreement  
Lands Advisory Board

## LAND CODE: FREQUENTLY ASKED QUESTIONS

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### TAKING RESPONSIBILITY FOR LAND MANAGEMENT

#### What is a 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, such as the Land Use Planning law and set out conflict of interest rules for land management,
- the 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, and
- 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 adopted 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 and governance continue to apply to the First Nation.

#### 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 Land Code Development Committee is formed to be responsible for developing the draft Land Code for the First Nation. The Land Code Development Committee is usually comprised of members knowledgeable about lands and resources.

The Land Code Development Committee holds community meetings with the members ..to develop 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 may also be arranged to allow the Land Code Development 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 Community Ratification Process document that will contain the details of the entire process. The ratification procedure involves a thorough process to locate all eligible voting members and thus providing 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 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 the First Nation's Land Code are consistent with the *Framework Agreement*. Once that is confirmed, the process of monitoring the ratification is conducted by the Verifier in accordance with the Community Ratification Process.

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## **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.19 & 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*.

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## **FUNDING**

### **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,
- to make, administer and enforce its laws under a Land Code, and
- to administer an environmental assessment and management processes on First Nation land.

The amount of 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 Community Ratification Process.

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## **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.

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## **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.
- 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.

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## **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 no longer have management authority over the land.

The Minister of Aboriginal Affairs and Northern Development Canada (AANDC) 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 First Nation’s Land Code comes into effect.

A First Nation becomes liable for the acts and omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation’s Land Code comes into effect.



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## **LAW MAKING**

### **Can a First Nation make laws?**

**YES.** A First Nation council, managing 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.

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## **ACCOUNTABILITY**

### **Is a First Nation Council accountable to the members?**

**YES.** Besides being politically accountable, a First Nation Council under the Land Code is legally responsible for managing the lands and resources for the benefit of the members of a 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 management activities. The Land Code will also set out rules on financial accountability for its management of lands, resources and revenues. The First Nation Council is politically and legally accountable for the laws that it enacts.

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 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.

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## **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 for 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.

In the event of the default on a leasehold mortgage, the First Nation has first right to redeem the mortgage.



### **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 members.

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## **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*?**

Canada may be liable for any environmental damages to First Nation Land before the Land Code comes into effect. This will depend on the facts or circumstances of each case. Canada's liability for such "legacy" contamination does not end when a First Nation adopts a Land Code.

Before bringing a reserve under its Land Code, a First Nation is entitled to full disclosure on any environmental problem from Canada. The First Nation may decide to exclude the land from its Land Code until the problem is fixed by Canada.