

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 resume governance and management control of their reserve lands 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 *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.

Individual Agreement: An Individual Agreement, developed between each First Nation and Canada and will address matters such as operational funding, reserve boundary description etc.

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.

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.

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.

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. 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.

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.

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 and guiding regulations were established to record documents respecting First Nation Land for First Nations with a Land Code in force.

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).

Land Codes do not authorize laws relating to the taxation of real or personal property.

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.

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.

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.

Enforcement: A First Nation has full power to enforce its Land Code, First Nation laws and environmental 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*.