

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

QUESTIONS AND ANSWERS

TABLE OF CONTENTS

FRAMEWORK AGREEMENT.....	Page 5
What is the <i>Framework Agreement</i> ?	Page 5
How is the <i>Framework Agreement</i> ratified?	Page 5
What is land management?	Page 5
Can the <i>Framework Agreement</i> be amended?.....	Page 5
Is this part of aboriginal self-government?	Page 6
Will there be any impact on other self-government arrangements?	Page 6
ABORIGINAL AND TREATY RIGHTS.....	Page 6
Does the <i>Framework Agreement</i> affect Treaty rights?	Page 6
Does the <i>Framework Agreement</i> affect other Aboriginal rights?	Page 7
Does it affect other First Nations?.....	Page 7
Will the fiduciary relationship between the federal Crown and the First Nations	Page 7
PROTECTION OF FIRST NATION LAND.....	Page 7
Will First Nation lands be protected under the <i>Framework Agreement</i> ?	Page 7
FEDERAL LEGISLATION	Page 7
Was federal legislation required?.....	Page 7
Can the federal legislation change the <i>Framework Agreement</i> ?	Page 8
Was there a previous Bill in Parliament on this subject?	Page 8
Is this Bill an amendment to the Indian Act?.....	Page 8
FEDERAL RESPONSIBILITY	Page 8
Is there any continuing federal responsibility for First Nations lands?.....	Page 8
Who is liable for damages related to First Nation land?	Page 8
What happens to Canada's fiduciary obligation?.....	Page 9
FIRST NATIONS INVOLVED.....	Page 9
What First Nations are involved?	Page 9
Are other First Nations interested in joining this initiative?	Page 10
THE LAND MANAGEMENT PROCESS.....	Page 10
How does a First Nation take control of its lands?.....	Page 10
When is land management authority transferred to the First Nation?	Page 10
What is a Land Code?.....	Page 11
Is the <i>Indian Act</i> still relevant to a First Nation that has adopted a Land Code?	Page 11
What is an Individual Transfer Agreement?.....	Page 11
COMMUNITY PARTICIPATION AND APPROVALS.....	Page 11
Are First Nation members involved in developing a Land Code?.....	Page 12
Does the Land Code need community approval?.....	Page 12
Are off-reserve members involved?	Page 12
Is there a verification process?	Page 12
LANDS	Page 12
What lands are involved?.....	Page 12
Will the land management powers extend beyond the reserve boundaries to traditional First Nation territories?	Page 13
Is First Nation land considered to be fee simple land?	Page 13
What resources are covered by the <i>Framework Agreement</i> ?	Page 13
What resources are not included?	Page 13

FIRST NATION POWERS	Page 14
What is the legal status of a First Nation?	Page 14
Can a First Nation make laws?	Page 14
How will First Nation laws be enforced?	Page 15
What other powers will a First Nation have?.....	Page 15
 THIRD PARTY INTERESTS	 Page 15
What happens to existing third party interests under a Land Code?	Page 15
How will interests in First Nation land be recorded?	Page 15
 ACCOUNTABILITY	 Page 15
Is a First Nation council accountable to the members?	Page 15
How will accountability to the members be ensured?	Page 15
 REVENUES.....	 Page 16
Can a First Nation generate its own revenues?.....	Page 16
What happens to revenues previously collected by Canada?	Page 16
 TAXATION	 Page 16
Will First Nation land be subject to taxation?	Page 16
Can a First Nation tax land under the <i>Framework Agreement</i> ?	Page 16
 FUNDING	 Page 17
Is developmental funding available to a First Nation?	Page 17
Is funding available to a First Nation to operate under a Land Code?	Page 17
 GENDER EQUITY	 Page 17
Do men and women have equal rights in relation to First Nation land?	Page 17
What are the rules on possession of land if a marriage breaks down?	Page 18
 LAND DEVELOPMENT	 Page 18
Will First Nations be able to develop their land?.....	Page 18
Can First Nation land be mortgaged?	Page 18
Can interests in First Nation land be mortgaged?	Page 18
Will real and personal property be subject to seizure under legal process?	Page 18
Can First Nation land be sold?.....	Page 18
Can First Nation land be exchanged?.....	Page 18
 ENVIRONMENT.....	 Page 19
How will the environment be protected?	Page 19
What happens to existing environmental problems under the Indian Act?.....	Page 19
 EXPROPRIATION.....	 Page 19
Can First Nation land be expropriated by Canada?.....	Page 19
Can First Nation land be expropriated by a Province?	Page 20
Can a First Nation expropriate interests in First Nation lands?	Page 20
Can a Province or Municipality be exempt from First Nation expropriation?	Page 20
 DISPUTE RESOLUTION	 Page 20
How will community land disputes be resolved?.....	Page 20
How will disputes between a First Nation and Canada be resolved?	Page 20
Is the court system still available to resolve disputes?	Page 20
 LANDS ADVISORY BOARD.....	 Page 21

Who is the Lands Advisory Board?	Page 21
What does the Lands Advisory Board do?.....	Page 21
PROVINCIAL RELATIONS	Page 21
Do Provincial Governments support this initiative?	Page 21
SUMMARY OF BENEFITS TO FIRST NATIONS.....	Page 22
What are the major benefits of the <i>Framework Agreement</i> to First Nations?	Page 22

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 14 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.

In March of 2003 the Framework Agreement was amended to allow for additional signatories or a "rolling 30" (30 First Nations actively developing land codes at any given time) to participate. A total of 52 First Nations have signed on to the Framework Agreement as of October 2007

The Framework Agreement provides these 52 First Nations with the option to manage 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?

These First Nations and Canada are presently taking steps to ratify and implement the Framework Agreement. The Agreement is a new approach based upon a government-to-government contract and requires ratification by each of the First Nations and by Canada.

Canada enacted Bill C_49, 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. Twenty First Nations have developed and ratified their own land codes to date (October 2007).

What is land management?

Land management involves the day-to-day administration of reserve lands and resources and the right to legislate 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 manage reserve lands and resources is comprehensive.

Can the Framework Agreement be amended?

Yes. The Framework Agreement can only be amended with the approval of 3/4 of the FN 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 regimes 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 52 First Nation signatories. Other First Nations are not affected. The Agreement does not affect any lands, or any rights in lands, that do not belong to the 52 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, or that are considered important enough to be repeated in the legislation.

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 52 First Nations that are signatories to it (listed in the schedule to the Act).

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 14 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?

Fifty two First Nations are involved (as of October 2007). The following is a list of the First Nations that signed the Framework Agreement and can take up the option of land management under the Framework Agreement: (Should these be listed alphabetically for each Province)

British Columbia

- Beecher Bay
- Cowichan
- Kitselas
- Leq'a:mel
- Lheidli T'enneh
- Matsqui
- Mcleod Lake
- Musqueam
- N'Quatqua
- Osoyoos
- Pavillion
- Seabird
- Shxwa;y
- Skeetchesn
- Sliammon
- Songhees
- Squamish
- Squiala
- T-sou'ke
- Tsawout
- Tsawwassen
- T'sleil Waututh
- Tzeachten
- Westbank
- We Wai Kai

Alberta

- Fort McKay
- Siksika

Saskatchewan

- Cowessess
- Flying Dust
- Kahkewistahaw
- Kinistin
- Muskeg Lake
- Muskoday
- Pasqua
- Whitecap Dakota Sioux

Manitoba

- Opaskwayak Cree
- Chemawawin
- Swan Lake

Ontario

- Alderville
- Chippewas of Georgina Island
- Chippewas of Kettle and Stoney
- Chippewas of Mnjikaning
- Chippewas of the Thames
- Dokis
- Garden River
- Mississauga
- Mississaugas of Scugog Island
- Moose Deer Point
- Nipissing
- Whitefish Lake

Quebec

- Innue Essipit

New Brunswick

- Saint Mary's
- Kingsclear

Are other First Nations interested in joining this initiative?

Yes. There is a waiting 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 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,
- 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 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.

What is an Individual Agreement?

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

- the reserve lands to be managed 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 revenues and an interim environmental assessment process, and
- the funding to be provided by Canada to the First Nation for land management.

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 also 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 process of monitoring the ratification is conducted 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. If a First Nation has more than one reserve, it would be able to choose which reserves are to be managed. 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 they are made reserve lands.

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

No. The land management 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.

Forestry resources are included within the scope of the agreement. Crops, livestock and other matters related to agriculture are included.

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?

FA First Nation 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, 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.

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 manage 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. For example, a lease that expires in the year 2010 would continue in effect with the same rights and obligations as before. If the landlord in an existing lease made under the Indian Act were the federal government, the First Nation would assume the rights and obligations of the federal government under the lease, so that the tenant would pay the rent directly to the First Nation.

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 will be developed 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 legally responsible for managing 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 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 accountable for 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 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 revenues previously collected by Canada?

The Framework Agreement provides that revenue moneys 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.

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,
- 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 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 men and women 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 male and female 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. If necessary, the community has up to 12 months after the Land Code takes effect to develop and enact rules and procedures on this subject.

The Framework Agreement specifically states that these new rules and procedures will apply equally to women and men.

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.

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 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.

Environmental management and assessment agreements will be negotiated between each First Nation and Canada for funding these laws and for harmonization of First Nation, provincial and federal environmental laws.

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. The First Nation may decide to exclude the land from its Land Code until the problem is fixed by 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 is the Lands Advisory Board?

Under the Framework Agreement, the First Nations have established a Lands Advisory Board and a Resource Centre to assist them in implementing their own land management 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
- proposing regulations for First Nation land registration

PROVINCIAL RELATIONS

Do Provincial Governments support this initiative?

Yes. The government of each province in which the original 14 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 processes
- Establishment of a legal registry system
- Establishment of a First Nation run Lands Board to provide technical assistance to First Nations