

**FRAMEWORK AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY**

INTRODUCTION

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. One other First Nation was added as of December 1997 and 17 more on March 31, 2003. The Agreement is an initiative by these 31 First Nations to take over the management and control of their lands and resources. It applies only to these 31 First Nations.

The *Framework Agreement* sets out the principle components of this new land management process, but it is not a treaty and does not affect treaty or other constitutional rights of the First nations. The Agreement has been ratified and implemented by Canada in the *First Nations Land Management Act*, assented to June 17, 1999.

The *Framework Agreement* provides the option to manage reserve lands outside the *Indian Act*. The option to regain control of reserve land can only be taken with the consent of the community. Only when a First Nation takes control of its lands and resources under the Agreement, shall federal administration of its reserve lands cease under the *Indian Act*.

TAKING CONTROL OF LAND MANAGEMENT

A First Nation signatory to the *Framework Agreement* exercises its land management option by creating its own Land Code, drafting a community ratification process and entering into a further individual Transfer Agreement with Canada. The specific steps are set out in the *Framework Agreement* and include the following:

The Land Code: A Land Code, drafted by the community, will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Minister of Indian Affairs and Northern Development will no longer be involved in the management of the First Nation's reserve lands. The Land Code does not have to be approved by the Minister.

The Land Code is drafted by each First Nation and provides for the following matters:

- Identifies the reserve lands to be managed by the First Nation (called "First Nation land"),
- Sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others,
- Provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under the Indian Oil and Gas Act),
- Provides the procedures for making and publishing First Nation land laws,
- Provides conflict of interest rules,
- Provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage,
- Identifies a dispute resolution process,
- Sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes,
- Allows the delegation of land management responsibilities,

- Sets out the procedure for amending the Land Code,
- Deals with any other matter respecting the management of First Nation land.

Individual Transfer Agreement: An Individual Transfer Agreement between each community and the Minister 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,
- The development and operational funding to be provided by Canada to the First Nation for land management.

Community Ratification Process: In order for the First Nation to assume control over its lands, the Land Code and the Individual Transfer Agreement must be ratified by the adult members of the First Nation. 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. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

Federal Legislation: Canada agreed to ratify the *Framework Agreement* by enacting federal legislation consistent with the *Framework Agreement*. An Act for this purpose was previously introduced in Parliament on December 10, 1996, but the federal election that year prevented it from being enacted. The Bill was re-introduced as Bill C-49 in June of 1998. The *First Nations Land Management Act* was enacted and given royal assent on June 17, 1999.

Verification: An independent person selected jointly by the First Nation and Canada, called a Verifier, will confirm that the community ratification process and Land Code are consistent with the *Framework Agreement*. The Verifier will monitor the community ratification process to ensure that the rules are followed.

Transfer of Land Management: If the community ratifies 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.

TITLE TO FIRST NATIONS

Reserve lands under the *Indian Act* 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 remain a federal responsibility under section 91(24) of the *Constitution Act, 1867*. In addition, the First Nation's land will be protected against surrender for sale.

LEGAL STATUS AND POWERS OF FIRST NATIONS

The *Framework Agreement* provides these First Nations with all the legal status and powers needed to manage and govern their lands and resources. 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 community in laws and Land Codes.

Law-Making Powers: A First Nation 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. 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*. The First Nation's Council can continue to make by-laws under section 81 of the *Indian Act*.

Land Management: 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 powers 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.

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 licences may be acquired or granted except in accordance with the Land Code.

First Nation Expropriation: The First Nation will have the power to acquire lands for community purposes upon payment of 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 its management of lands, resources and revenues.

Marriage Breakdown: 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. This is not currently addressed under the *Indian Act*. The community must, within 12 months of passage of its Land Code, develop and enact rules and procedures on this topic. The new rules and procedures will ensure the equality of women and men.

Registration of Interests: The main registrar will be that of the First Nation. All documents pertaining to land matters of a reserve will be recorded there. Canada will maintain a duplicate First Nations Land Register to record all documents respecting interests in the reserve lands of these 14 First Nations and other interests in First Nation reserve lands who eventually join the process.

PROTECTION OF FIRST NATION LAND

The preserving of the quantity and quality of existing First Nations lands is a fundamental principle of the *Framework Agreement*. Some aspects of this principle are summarized below:

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*.

Environmental Protection: A First Nation will have the power to make environmental laws. Further agreements are expected between First Nations and Canada for funding these laws and for harmonization with other provincial and federal environmental laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation lands 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.

No Provincial Expropriation: Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Restricted Federal Expropriation: Canada's power to expropriate First Nation land is restricted. That power can only be exercised with Cabinet approval and only 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.

Enforcement: The First Nation will have full power to enforce its land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own Justice of the Peace to try offences created under a Land Code or a First Nation law, 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 with its laws.

CONTINUING FEDERAL RESPONSIBILITY

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. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own processes for dealing with disputes in relations to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between the First Nations and Canada 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 RESOURCE CENTRE

The First Nations established a Lands Advisory Board Resource Centre to assist them in implementing their own land management regimes, including developing model land codes, laws, documents, agreements and management systems.