Land Code Information Summary

**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. As of 2018 there are 81 First Nations who have ratified their own land code. T’ít’q’et is one of 59 First Nations in the process of developing their own code.

**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.

**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 the Framework Agreement affect Treaty rights?**

No! The Framework Agreement is not a treaty and does not affect any treaty rights.

**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.

**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.

**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.

**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.

**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.

**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.

**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

**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.

**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.

**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.

**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.

**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).

**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.

**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.

**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

**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.