THE FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

LAND CODE FAQs

Lac Seul First Nation

"It's astounding, and I don't know if people realize the magnitude of this and how much control [First Nation] communities have. It's a very proud moment, I do believe, not only for First Nations but for Canada, to make sure that the First Peoples can move forward and be part of everything, as we should and should have been for a long time."

Chief Gerry Duquette Jr., Dokis First Nation, Ontario

WHAT ARE THE PROS (Opportunities) AND CONS (Considerations) OF THIS PROCESS AND OF BEING UNDER LAND CODE?

OPPORTUNITIES

- Real recognition of our right to manage our reserve lands and resources.
- More efficient management of our lands and resources.
- Removal of our reserve lands from the land management provisions of the Indian Act.
- Community control of our reserve land management and development.
- Ability to make business and administrative decisions (like granting a lease) without needing the approval of Canada.
- Inclusion of Members in important decisions.
- Increased accountability to Members.
- Protection against arbitrary expropriation of our reserve lands.
- Protection against loss of our reserve lands through sale or surrender.
- Ability to better protect the environment.
- Recognition of significant lawmaking powers respecting our reserve lands.
- Ability to create a local dispute resolution process.
- Recognition of the right to create modern offences for breach of our laws.

CONSIDERATIONS

- Implementing a Land Code could be expensive. This means that even though we would be receiving annual funding, we don't know at this time how much it will actually cost to develop our laws and policies that will be created after the Land Code takes effect.
- Capacity building. This means that people will need to be hired and trained to take on the land management roles.
- There will be "kinks" as we build capacity to implement our Land Code. This means that laws and policies will not be developed overnight and it is expected there will be a learning curve for staff and Members.
- Our community would be taking full responsibility for all future decision making on our reserve lands. This means that we will be responsible for any potential environmental issues or contamination that takes place AFTER the Land Code takes effect.
- There is no going back to the Indian Act. This means that Canada cannot be involved in the day-to-day management of our reserve lands and resources after the Land Code takes effect.

IS THE FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT (FAFNLM) PART OF "TRUDEAU'S WHITE PAPER 2.0"?

No, the FAFNLM is a sectoral self-government agreement that was sought, developed and negotiated by First Nations. It was signed by 13 First Nations and Canada in 1996. Despite the insistence of some, there is no connection to Canada's Treaty Policy, Inherent Right Policy or proposed Framework for Indigenous rights.

- This agreement eliminates the colonial Indian Act lands system and blocks interference from federal and provincial governments and does not affect Aboriginal or treaty rights. (See section 1.3 and 1.6 of the FAFNLM.)
- First Nations decide how to exercise self-government over their reserve lands with no "termination", "extinguishment", "municipalization" or "fee simple" creation of reserve lands.

 (See section 4.1.1 of the FAFNLM.)
- Unlike the Indian Act, First Nation developed, and approved Land Codes are not subject to Federal approval or veto. (See section 7.3 of the FAFNLM.)

IS THIS PART OF INDIGENOUS SELF-GOVERNMENT?

Yes. This is one sectoral component of self-government by First Nations and deals only with the management of reserve lands and natural resources. Matters related to other topics (ie: Membership, elections, education, etc) would have to go through their own processes for the First Nation to assume control over.

DOES THIS IMPACT OTHER THE FIRST NATION'S 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 Codes 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.

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.

LANDS & RESOURCES

What lands are involved?

Land governance powers outlined in the Land Code relate only to the reserve land of the First Nation. Reserve land subject to the Land Code is explicitly described within the document. Any additional land that the First Nation acquires in the future (ie: through Treaty Land Entitlement, specific claims negotiations, voluntary land exchange, etc.) would fall under the jurisdiction of the Land Code once it receives reserve status.

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.

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.

TAXATION POWERS ARE NOT INCLUDED IN THE FRAMEWORK AGREEMENT

The current exemption of reserve lands, and personal property situated onreserve, will continue under the relevant provisions of the Indian Act, s. 29 & s. 89(1) & (2).

Will First Nation land be subject to taxation?

No. 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. Taxation powers are not included in the *Framework Agreement*.

Will Land Code impact my personal income tax benefits or exemptions (ie: GST, Trillium, Child Tax benefit, etc)?

No. Land Code will not impact any benefits or exemptions allowed for personal income tax. The Land Code does require Lac Seul land to retain reserve status, so all benefits/exemptions pertaining to citizens living and working on-reserve will continue without any changes.

DO FIRST NATIONS BECOME "MUNICIPALITIES" UNDER THE FRAMEWORK AGREEMENT?

No. Municipalities are creations of provincial law and subject to Provincial legislation. First Nations do not gain provincial status as municipalities under the *Framework Agreement*.

First Nations that have approved and implemented their land codes enjoy the ability to pass laws according to their own rules. Municipalities can only pass bylaws according to provincial statutes.

Unlike a Municipality, First Nation Land Codes specify that the authority to govern flows from the Creator to the people and from the people to the Chief & Council.

See section the WHEREAS clause on page 2 and section 18.1 of the Framework Agreement.

Do provinces gain any authority over First Nations through the *Framework Agreement*?

No. Provinces are not party to the *Framework Agreement* and do not gain or assume any rights, obligations or authority as a result. There is no change to the title or status of Reserve Lands, they remain under section 91(24) of the Constitution Act of 1867. See section 4.1.1 and 4.1.2 of the *Framework Agreement*.

FIRST NATION POWERS

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 govern 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.

Can the First Nation make its own laws?

Yes. A First Nation council, governing 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?

The First Nation will have full power to enforce its land and environmental laws. This would be done in conjunction with existing law enforcement agencies, and could also require additional resource enforcement positions to be created (ie: First Nation conservation officers).

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.

ACCOUNTABILITY

Is the First Nation Council accountable to its Members?

Yes. Besides being politically accountable, a First Nation council under the Land Code is responsible for governing 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 governance activities. The Land Code will also set out rules on financial accountability for its governance of lands, resources and revenues.

The Land Code provides that certain laws or policies must be brought to the community for community engagement and some must be approved by the community before they take effect. Examples of what might require community approval before taking effect 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,
- Any deletion of a heritage site,
- Any voluntary exchange of Lac Seul First Nation land, or
- a charge or mortgage of a leasehold interest.

ENVIRONMENT

How will the environment be protected?

Under its Land Code, the 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 that occurred prior to the Land Code being approved?

If there are existing environmental problems on 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 problems from Canada. These issues/sites were inventoried through a Phase I Environmental Site Assessment and are detailed in the Individual Agreement with Canada.

Any new environmental issues that arise after the Land Code comes into force will fall under the responsibility of the First Nation and will be managed through the development and enforcement of environmental laws created by the First Nation.

FUNDING

Canada's fiduciary obligation continues under the Framework Agreement.

Developmental Funding

Canada provides 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.

Operational Funding

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 is 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.

The current base Operation funding amount that Lac Seul will receive if the Land Code is approved is \$283,313. The Lands Advisory Board is in current negotiations with Canada for a renewed Operational funding agreement for the next 5 years, which will see the base amount increased (announcement on new funding is expected in late 2023).

Transitional Funding

For the first 2 years, Operational First Nations receive \$75,000 each year for a total of \$150,000 to assist in transitional activities.

LAND CODE VERSUS THE INDIAN ACT

Once a First Nation votes to approve their Land Code and it comes into force, 44 provisions in the Indian Act pertaining to land and resource management and administration will no longer apply to the First Nation and the First Nation will govern according to their Land Code instead.



44 Sections of the Indian Act which no longer apply with a Land Code:

RESERVES

Section 18

Minister no longer authorizes use of reserve lands for community purposes

Section 18.1

The land code sets out the general rules applicable to the occupancy of First Nation land

Section 19

Minister no longer directs road construction and determines road location, authorizes surveys, or creates lots or subdivisions, within reserve boundaries

POSSESSION OF LANDS IN RESERVES

Section 20

Ministerial approval not required for allotment, possession, or occupation of First Nation land. Minister no longer issues Certificates of Possession or Occupation, etc

Sections 22, 23, 24, 25, 26, 27

Ministerial approval and rules regarding individual holdings no longer required as the land code sets out the general rules applicable to the use and occupancy of First Nation land, including the granting or expropriation of interests or rights in First Nation land

Section 28

Minister no longer issues permits, and the land code sets out the general rules applicable to the use and occupancy of First Nation land

TRESPASS ON RESERVES

Sections 30, 31

This statutory offence and penalty for trespass no longer applies as the First Nation now has the discretion to create such an offence

ROADS & BRIDGES

Section 34

Superintendent no longer has the power to instruct band to maintain roads, bridges, ditches and fences on land. Minister can no longer remedy such neglect and recoup the cost from funds held by Canada

LANDS TAKEN FOR PUBLIC PURPOSE

Section 35

The Governor in Council no longer has the authority to consent to the taking or use of reserve land by a province, a municipal or local authority, or a corporation, that has the power to expropriate, take or use land without the consent of the owner

LAND CODE VERSUS THE INDIAN ACT

44 Sections of the Indian Act replaced by Land Code (cont'd):

SURRENDERS & DESIGNATIONS

Sections 37, 38, 39, 39.1, 40, 40.1, 41

Surrenders and designations provisions no longer apply. Alienation of First Nation land is restricted except where exchanged for other land in accordance with the Framework Agreement. The rules and procedures respecting occupancy of First Nation land, land use, zoning, etc. are set out in the land code

DISTRIBUTION OF PROPERTY ON INTESTACY

Sections 49, 50(4)

Approval of Minister no longer required for estate transfers and section 50 sales of individual holdings

MANAGEMENT OF RESERVES & SURRENDERED DESIGNATED LANDS

Sections 53, 54, 55, 56

Minister no longer has authority to manage or sell surrendered lands or lease designated lands. Particulars of surrendered and designated lands no longer entered in the Surrendered and Designated Lands Register

Section 57

Governor General's authority to make regulations in respect of timber surrenders and mineral surrenders no longer required

Section 58

Uncultivated or unused lands provisions no longer apply

Section 59

Adjustment of contracts provisions no longer apply

Section 60

Authority of Governor in Council to grant right to Band to exercise control and management of reserve lands no longer required

MANAGEMENT OF INDIAN MONEYS

Sections 61, 62, 63, 64, 65, 66, 67, 68, 69

Capital and revenue moneys collected, received or held for the use and benefit of a band are transferred to operational First Nations and no longer managed by Canada under the Indian Act

FARMS

Section 71

Minister no longer empowered to operate reserve farms

REMOVAL OF MATERIALS FROM RESERVES

Section 93

Restrictions and other rules and procedures (including any potential offences and penalties) respecting the removal of sand and gravel, hay and timber, etc. to be set out in the land code as opposed to the *Indian Act*

Regulations

Regulations made under section 57 of the Indian Act; and

Regulations under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with the *Framework Agreement on First Nation Land Management*, a First Nation's land code, or its First Nation laws.

VIDEOS AND OTHER RESOURCES

Please visit the Lac Seul First Nation Land Code Development website to access the Lac Seul Land Code, Individual Agreement between Lac Seul and Canada, and all other relevant background information. You can also view the Lac Seul First Nation Land Code video.



VISIT OUR WEBSITE

https://www.lacseullandcode.com/



Land Decolonized is a podcast series launched in November 2020 that explores the practical side of The Framework Agreement on First Nation Land Management. The unscripted conversations cover various topics on the challenges overcome and benefits achieved by First Nations that sought to re-established governance over their reserve lands. A great resource to hear perspectives from other signatory First Nations!



LISTEN TO LAND DECOLONIZED

https://www.buzzsprout.com/1515202

Please enjoy exploring the editions of **The Land Advisor newsletter**. In them, the RC shares exciting news, experiences, and useful resources that relate to the signatories of the Framework Agreement on First Nation Land Management.



READ THE RC NEWSLETTER

https://labrc.com/lands-advisor-newsletter/

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