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# Frequently Asked Questions

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## First Nations Land Management Initiative

### What are the benefits of the First Nations Land Management Initiative for First Nations?

The main benefit is that the First Nation has the authority over reserve lands, natural resources and revenues on its reserve land base. The Initiative removes the barriers to economic development that the First Nation faced under the *Indian Act*.

Based on the experiences of the five First Nations to come under the Initiative so far, the short-term benefits we have seen are:

- filling legislative gaps in the *Indian Act* in areas such as environmental laws, matrimonial real property laws and enforcement of laws on reserve;
- cleaning up and correcting historical deficiencies in the reserve land regime, thereby reducing the potential federal liabilities;
- developing sound land use and land management plans; and
- improving the designation and leasing processes.

The long-term benefits for First Nations operating under this Initiative will be improvements for the community in the areas of economic and social development. These improvements will become more apparent over time. For example, the Chippewas of Georgina Island have completed the renegotiation of long-term cottage leases with improved environmental standards.

### Who are the signatory First Nations and where are they located?

- Westbank, British Columbia
- Lhiedli T'enneh, British Columbia
- N'quatqua, British Columbia
- Squamish, British Columbia
- Musqueam, British Columbia



Canada

- Siksika, Alberta
- Muskoday, Saskatchewan
- Cowessess, Saskatchewan
- Opaskwayak Cree, Manitoba
- Chippewas of Georgina Island, Ontario
- Mississaugas of Scugog, Ontario
- Chippewas of Mnjikaning, Ontario
- Nipissing, Ontario
- Saint Mary's, New Brunswick

**How does this new land management regime differ from the existing land administration regime under the *Indian Act*?**

This Initiative differs from the *Indian Act* by:

- providing First Nations with a wide range of land related law-making powers and ensuring proper enforcement mechanisms are available;
- allowing land related decisions to be made at the community level without the involvement of the Minister;
- allowing First Nations to receive, retain and manage revenue money flowing from reserve land transactions;
- withdrawing the opportunity for provincial or municipal governments to expropriate reserve land through the expropriation provisions in s. 35 of the *Indian Act*;
- limiting federal expropriation powers;
- ensuring that there will be no loss of reserve land through sale or expropriation;
- requiring accountability to the membership and conflict of interest rules;
- providing for alternate dispute resolution mechanism;
- enabling First Nations to develop environmental assessment and protection regimes; and
- providing for rules and procedures relating to matrimonial real property.

**What sections of the *Indian Act* are affected by the Initiative, and will the remainder of the *Indian Act* continue to apply?**

This Initiative enables participating First Nations to move out from under the following land related provisions of the *Indian Act*:

1. Reserves (ss. 18-19)
2. Possession of Lands in Reserves (ss. 20, 22 -28)
3. Trespass on Reserve (ss. 30-31)

4. Sale or Barter of Produce (ss. 32-33)
5. Roads and Bridges (s. 34)
6. Lands Taken for Public Purposes (s. 35)
7. Surrenders and Designations (ss. 37-41)
8. Distribution of Real Property but not personal property on intestacy (ss. 49 and 50(4))
9. Management of Reserves and Surrendered and Designated Lands (ss. 53-60)
10. Management of Indian Moneys (ss. 66, 69)
11. Farms (s. 71)
12. Removal of Materials from Reserves (s. 93)
13. Regulations made under section 57 of the *Indian Act*; and
14. Regulations under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with the Framework Agreement or the Land Code or the laws of the First Nation

The remainder of the *Indian Act* will continue to apply for all other purposes.

#### **Will all First Nations come under this Initiative?**

This process is optional to any First Nation and they are not bound to enter unless the community decides to opt in. This is a community driven process, which involves the eligible voters both on and off reserve. All participating First Nation communities, due to the requirements of the ratification process, make a community based informed decision about their participation in the Initiative at every step of the way.

#### **What is the scope of the jurisdiction for a First Nation operating under the Initiative?**

The First Nation has the authority over reserve lands, natural resources and revenues on its reserve land base. The Initiative empowers the First Nation to enact its own laws, in areas such as environment and matrimonial real property, and to enforce those laws. In addition, the Initiative removes the land management barriers to economic development that the First Nation faced under the *Indian Act*.

#### **Does the legislation affect non-reserve lands owned by the First Nations?**

No. This agreement is limited to reserve lands currently held under the *Indian Act*, or lands that the parties agree will become reserve lands in the future.

### **How does a community opt into the Initiative?**

In order to come under this Initiative, the eligible community members must approve the proposed land code and the individual agreement through a community vote by one of three processes agreed upon by the First Nation and the Government of Canada, which are:

1. A majority of the eligible voters participate in the vote and at least a majority of the participating voters vote to approve the land code and agreement;
2. The First Nation registers all eligible voters who signified their intention to vote, in a manner determined by the First Nation, and a majority of the registered voters vote to approve the land codes and agreement; or
3. The community approves them in such a manner as the First Nation and the Government of Canada may agree upon.

A minimum approval level of 25 percent of all eligible voters is required irrespective of the method chosen and the First Nation must ensure every member is apprised of the opting in procedure. Every person who is a First Nation member, whether on or off-reserve, who is at least 18 years of age, is eligible to vote on whether to approve their First Nation's proposed land code and individual agreement with the Government of Canada. The First Nation must take reasonable steps to ensure its membership is notified of their rights to vote and has access to all necessary documentation and information on the new regime. An independent verifier is appointed by the Government of Canada and the First Nation to ensure the vote is conducted in accordance with the *Framework Agreement*.

### **How will the participating First Nations land base be protected for future generations?**

The First Nations land base is better protected under this regime than under the *Indian Act*. First Nations will NOT have the authority to sell reserve land. However, land exchanges are possible, but only for:

- compensation which must include land that Her Majesty has agreed will be set apart as a reserve and that will become First Nation land managed under this regime; and
- the exchange must be approved by First Nation members in accordance with the process established in their land code.

Further, no federal expropriation will be permitted on behalf of a province or municipality as is currently allowed under s. 35 of the *Indian Act*. Where federal expropriation is necessary, it may only be for a federal public purpose that serves the national interest. It is expected that such situations will rarely

occur. Compensation will include land and the expropriation cannot result in the First Nation having less land than on the date they entered into this regime. Lands expropriated are to be returned to the affected First Nation when they are no longer needed for the purpose they were expropriated.

### **Can a First Nation opt out of the FNLMA once they are under?**

No, a First Nation cannot opt out of the FNLMA and return to the land management system under the *Indian Act*. Administrative problems could arise if the First Nation has leases or other land transactions that cannot be managed under the regime of the *Indian Act*.

However, a First Nation under the new regime could choose to move into a broader form of self-government under the inherent right policy or other federally negotiated arrangements. Such agreements would likely encompass land management and other governance issues such as taxation and education.

### **Will federal laws continue to apply to First Nation lands under this legislation?**

Yes, federal laws continue to apply, however, in the event of an inconsistency or conflict, the FNLMA prevails. For greater certainty, the FNLMA specifically mentions that the following federal laws continue to apply:

- The *Emergencies Act* continues to apply, but appropriations must be authorized by an order of the Governor in Council;
- Federal laws that relate to environmental protection prevail to the extent of inconsistency over a First Nation law or a First Nation land code;
- For health and safety reasons, the *Atomic Energy Control Act* and its successor legislation continue to apply, but expropriations are subject to the restrictions of the FNLMA;
- The *Indian Oil and Gas Act* continues to apply; and
- The *Expropriation Act* continues to apply, but in the event of conflict the FNLMA prevails.

### **What powers of expropriation does a First Nation have under the Initiative?**

Currently, First Nations have the authority, through the Minister of Indian Affairs and Northern Development, to expropriate Indian lands under section 18(2) of the *Indian Act*.

The expropriation powers established under the Initiative further clarify and expand on that provision

and are similar to those of any province or municipality. The power of expropriation is a key land management power of any government; to date no First Nation has exercised this power. Under the Initiative, a First Nation with a land code in effect has the right to expropriate interests in First Nation lands, without consent, if deemed by the First Nation community to be necessary for community works or other First Nation purposes. This power of expropriation will be exercised according to the rules and procedures specified in the First Nations land code, laws, and the *Framework Agreement*, including providing fair compensation based on the heads of compensation set out in the *Expropriation Act* (Canada).

Any interest in First Nation land is subject to expropriation, with the exception of interest obtained pursuant to section 35 of the *Indian Act* or any interest that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with the *Framework Agreement*.

Although, the Initiative has provisions respecting the powers of expropriation, the decision to implement these provisions in their land code rests with the community, as in the case of Chippewas of Georgina Island and the Mississaugas of Scugog Island who have both chosen not to include the expropriation provisions in their land codes.

**How does this Initiative affect the Government of Canada's fiduciary obligations with respect to participating First Nations Indian lands?**

The new regime will not alter the fiduciary relationship that exists between the Crown and these First Nations. However, once the new regime is in place, the Government of Canada is no longer responsible for land decision made by a First Nation.

Once the First Nations have enacted a land code and come under the new regime, the obligations and liabilities of the Crown to these First Nations will be reduced since the Government of Canada will no longer be involved in the decision making process regarding reserve land transactions.

**Will the *Canadian Charter of Rights and Freedoms* (the *Charter*) apply to participating First Nations?**

The *Framework Agreement* was negotiated within the context of the framework of the constitution of Canada, therefore the *Charter* applies to the *Framework Agreement*, the land code and First Nation laws.

**How does this Act address the matter of matrimonial real property?**

While the *Indian Act* currently provides no protection for women with respect to the division of the matrimonial home upon marriage breakdown, the Initiative enables participating First Nations to enact laws with respect to matrimonial real property.

Participating First Nations establish a community process to develop rules and procedures to deal with matrimonial property within 12 months from the date the land code takes effect. Under the Initiative, First Nations develop laws that are applicable on the breakdown of a marriage with respect to the use, occupancy and possession of First Nation land, the division of interests in that land.

**What are the impacts of opening up the Initiative on provinces, municipalities or other third parties?**

The impacts are currently limited to the First Nations, but this has not meant that there hasn't been some reaction. The First Nations in BC under the Initiative and the Union of BC Municipalities have entered into bilateral accords in light of the positive environment created by the FNLMA.

The FNLMA provides to the municipalities, provinces and third parties the assurance that they are dealing with a band that has legal authority. They will not have to worry that agreements or ventures may be changed or altered by Canada because the First Nation has to go back to INAC for approval. The third-party can now be sure they are dealing with an authoritative decision maker with respect to those reserve lands.

**What is the role of the provinces in this new land management regime?**

The provinces are not signatory to the *Framework Agreement* because the issues addressed in the *Framework Agreement* are within the federal jurisdiction. The new regime provides for the participation of the provinces in matters that normally fall within or could affect their jurisdiction, such as the administration of justice and environmental protection and assessment. One of the intentions of the new regime is to foster partnerships between interested parties, such as provincial governments, municipalities and private industries, who deal with First Nations on a daily basis, hoping relationships of mutual respect and co-operation will develop.

**Will existing third-party interests in reserve lands be protected?**

Yes, the First Nations and the Government of Canada have ensured that the *Framework Agreement* and the legislation provide for the protection of third-party interests. Both stipulate that any existing third-party interests will continue in force according to their terms and conditions. As is the case today, upon expiration of the existing terms and conditions, the disposition of those interests will be subject to

new negotiations between the First Nation and the third-party. The First Nation would replace the Government of Canada as grantor in lease agreements and third-parties would be subject to new First Nation land laws covering such areas as environment.

The First Nation land code will identify an existing forum or establish a forum for the resolution of any disputes relating to interests in First Nation lands that will be accessible to third-parties. In addition, all decisions of band councils are subject to judicial review under the *Federal Court Act*.

Under this regime, third-parties will not have any land or proprietary rights to the land beyond the existing lease, license or permit. This is similar to existing provisions of the *Indian Act*. The only substantive change resulting from the new agreements will be a change in grantor through the assignment of the existing leases, licenses and permits from the Government of Canada to the First Nation.