



# Fort Nelson First Nation Land Code FAQ's

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### **Q1 - What is the Framework Agreement?**

The Framework Agreement is the initiative that started with 13 First Nations wanting 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 the new land management process. It was signed in 1996 and it is **not** a treaty and does **not** affect treaty rights or other constitutional rights of the First Nations. To date there are 110 nations that have voted yes on Land Code, 230 are interested to develop and vote on their own Land Code and 50 more nations will be allowed to become a signatory to the Framework Agreement over the next 5 years.

### **Q2 - Is this an amendment to the Indian Act?**

No. There is no amendment to the Indian Act. The original 13 First Nations created the Framework Agreement to opt out of the Reserve land management sections of the Indian Act. To date 110 nations have opted out of the lands related sections of the Indian Act by voting yes for Land Code - including Treaty 8 Nations like McLeod Lake and Doig River First Nation. Sauteau is currently getting ready for their own vote as well.

### **Q3 - Is there any continuing federal responsibility for Reserve Lands?**

YES. The Minister will no longer be involved in the management of the First Nation's Reserve Lands but Canada will continue to hold title to Reserve Land. Federal funding for environmental remediation purposes is still available as well. It's important to note that voting yes for Land code does not reduce any core funding. In fact there's additional funding for the Nation to manage its own Reserve Lands under the Land Code.

### **Q4 - How does a First Nation take control of its Reserve Lands?**

A First Nation becomes a signatory to the Framework Agreement and may exercise its land management option by:

- creating its own Land Code,
- entering into an Individual Transfer Agreement with Canada;
- drafting a community ratification process; and
- conducting a community vote. FNFN is at the stage to conduct the Vote.

### **Q5 - What is a Land Code?**

A Land Code will be the basic land law of the Reserve Lands and will replace the lands related sections of the Indian Act. The Land Code was drafted by the Fort Nelson First Nation and included input from community members, staff, legal counsel and the Lands Advisory Board and Resource Centre. Among other things, the Land Code makes provisions for the following matters:

- Identifying the Reserve Lands to be governed by the Nation and its Members,
- The general rules and procedures for the use and occupation of Reserve Lands by First Nation Members and others,
- Financial accountability for revenues from the Reserve Lands (except oil and gas revenues, which continue under federal law),

- The making and publishing of Reserve Land laws,
- The conflict of interest rules,
- A process to resolve Reserve land related disputes outside of the courts,
- Procedures by which the First Nation can grant interests in Reserve Land or acquire lands for community purposes,
- The delegation of Reserve Land management responsibilities, and
- The procedure for amending the Land Code through a community Vote.

**Q6 - What is an Individual Agreement?**

An Individual Agreement between FNFN and Canada has been finalized to address:

- The Reserve Lands to be governed by the Nation and the specifics of the transfer of the administration of Reserve Land from Canada to the Nation, e.g. the interests in land held by Canada that are to be transferred to the Fort Nelson First Nation,
- The transfer of capital and revenue monies and an interim environmental assessment process, and the funding to be provided by Canada to the Nation for Land Code implementation.

**Q7 - Is the Indian Act still relevant to a First Nation that has ratified a Land Code?**

Yes. Approximately two-thirds of the provisions of the Indian Act, which do not deal with Reserve Land matters, continue to apply to a First Nation that has a Land Code. For example, the sections dealing with elections, membership, Indian Status, education and taxation continue to apply to the First Nation who manages its own Reserve Lands under a Land Code.

**Q8 - What lands are involved?**

A First Nation will be able to have authority to manage all of its Reserve Lands. Each Reserve to be subject to the Land Code is described in the Land Code and Individual Agreement. Only Reserve Lands are included - a Land Code does **not** apply to traditional territories. This means a Land Code does **not** affect any activity or rights off-Reserve (hunting, fishing, traplines etc) This is specifically addressed in Part 1 of the Land Code document.

**Q9 - Will the land governance extend beyond the Reserve boundaries to traditional First Nation territories?**

No. The Framework Agreement only allows the authority for a Nation to manage its own Reserve Lands and Resources and does not affect any lands, or any rights in lands outside the Reserve boundaries.

**Q10 - Can a First Nation make its own land related laws?**

Yes. First Nations with a Land Code have all the legal status and powers needed to manage and govern their Reserve Lands and Resources. 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 Reserve Land. This includes laws on zoning, environment, services and dispute resolution. All proposed Land Laws must be published and meetings must be held and Member input is strongly encouraged. Some proposed Land Laws

must go to the Membership for a Vote. 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.

**Q11 - 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 Reserve Lands, except for control over title or the power to sell it. Council and Administration, guided by the Land Code, can govern Reserve Lands and Resources, as well as manage revenues from the Lands and Resources. While Fort Nelson First Nation will not be able to sell their Reserve Land, they will be able to lease or develop their Reserve Lands and Resources within the parameters of the Land Code.

**Q12 - Is a First Nation Council accountable to the Members?**

Yes. Besides being politically accountable, the Council under the Land Code is responsible for governing the Lands and Resources for the benefit of the Members of the Fort Nelson First Nation. There are Conflict of Interest rules that mean if Council is deliberating on something where they have a conflict of interest, that matter must be referred to the Members for a vote. There are also a number of Laws that can only be created through a Membership vote.

**Q13 - How will accountability to the Members be ensured?**

The Land Code makes provisions for Fort Nelson First Nation to report annually to its Members on its Reserve Land governance activities. The Land Code also sets out rules on financial accountability for its governance of Reserve Lands, Resources and Revenues. The Land Code provides that certain laws or policies must be ratified by the community before they take effect. Examples of what requires community approval before taking effect includes:

- amending the land use plan,
- granting of any interest in Reserve Community Land for a term exceeding 25 years,
- granting of any interest in Reserve Members Only land for a term exceeding 75 years,
- any grant or disposition of any natural resources for a term exceeding 5 years,
- enacting Land Laws regarding expropriation or Member Only interests
- amendments to the Land Code

**Q14 - Can a First Nation generate its own revenues?**

Yes. Revenues can be generated by leasing and granting rights and licenses in Reserve Land. A First Nation can also develop its own Reserve Land directly and generate profit. Taxation powers are **not** included in the Framework Agreement.

**Q15 - What happens to Indian Monies previously collected by Canada?**

The Framework Agreement provides that revenue and capital monies 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 or profits from the sale of timber, gravel or other non-renewable resources.

**Q16 - Can a First Nation tax land under the Framework Agreement?**

No. The current tax exemptions 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.

**Q17 - Is developmental funding available to a First Nation?**

Yes. Canada provided funding to Fort Nelson 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 Nation.

**Q18 - Is funding available to a First Nation to operate under a Land Code?**

Yes. Canada has to provide operational funding to Fort Nelson First Nation to manage its Reserve Lands, and to make, administer and enforce its Reserve Land and environment laws under the Land Code. The amount is set out in the Individual Agreement with Canada. The funding is currently \$283,313 per year but will increase in 2024 to \$341,905 per year. In addition to the operational funding received from Canada, Canada has to provide \$150-200,000 to transition into being an operational Nation. This will go toward staffing, training and implementation of this expanded branch of the Fort Nelson First Nation governance.

**Q19 - Will First Nations be able to develop their Reserve Land?**

Yes. First Nations will be able to create Reserve 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.

**Q20 - Can Interests in Reserve 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.

**Q21 - Can Reserve Land be sold?**

No. Surrender for sale is prohibited in order to protect the land base of the Reserve for future generations but a First Nation may decide that it is advantageous to exchange some of its Reserve Land for other lands. Provisions are made in the Land Code for a procedure to negotiate and approve such exchanges. An exchange of land cannot occur without the consent of the Membership.

**Q22 - How will the environment be protected?**

A First Nation operating under Land Code will have the power to make their own environmental laws. These laws will deal with environmental assessment and protection on Reserve Lands.

**Q23 - How will Land disputes be resolved?**

The First Nations will establish their own processes for dealing with disputes in relation to their Reserve Lands and Resources. These are alternative dispute resolution processes intended to resolve issues outside of the court systems and are found in Section 26 of the Land Code.

**Q24 - 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.

**Q25 - 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 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.

**Q26 - Who are the Lands Advisory Board and Resource Centre?**

Under the Framework Agreement, the operational First Nations have established a Lands Advisory Board (LAB) to assist them in implementing their own land governance regimes. The LAB is the political body composed of Chiefs regionally elected from among the First Nations operating under a Land Code. The Resource Centre is the technical body intended to support First Nations in the developmental and operational phases of implementing the Framework Agreement through the Land Code.

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 Reserve Lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty.

## **Q27 - What are the major benefits of the Framework Agreement to First Nations?**

- First real recognition of First Nations rights to manage its Reserve Lands and Resources,
- Removal of Reserve Lands from the Indian Act and Ministerial control,
- Community control over Reserve 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 Reserve Land,
- Recognition of First Nations 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 in regards to Reserve Lands and Resources,
- Transfer by Canada of previous Reserve Land revenues to the First Nation,
- Recognition of the right to receive revenue from interests in Reserve land,
- Protection against Canada reducing the size of Reserve Land,
- Protection against loss of Reserve Land through surrender or sale,
- Ability of the First Nation to protect the environment on Reserve Lands,
- Recognition of law-making powers respecting Reserve Lands and Resources,
- 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 offenses for breach of First Nation laws,
- Ability to appoint Justices of the Peace,
- Ability to create a local dispute resolution process to keep matters out of the courts,
- Establishment of a legal Reserve Lands registry system,
- Establishment of a First Nation run Lands Board and Resource Centre to provide technical assistance to First Nations

## **KEY TAKEAWAYS**

1. This isn't an option that is offered FROM Canada. The Land Code option was created by a group of First Nations that created the Framework Agreement and negotiated with Canada to provide the Nations with jurisdiction of their own Reserve lands, under their own land laws, through their own Land Code. This is a First Nations led initiative.
2. Because the Framework Agreement and Land Code ONLY applies to the management of Reserve Lands - that means ALL rights to traditional territories remain as they are. There's ZERO affect to hunting, fishing, traplines, rights or freedoms in the traditional territory. Your inherent rights are protected under Treaty 8.
3. Removing the Reserve Lands from under the Indian Act also removes Canada's control over the Reserve Lands. Managing the Reserve Lands under the Framework Agreement and Land Code effectively gives the Members a voice in many areas where they don't have one under the Indian Act. The Nation having authority over Reserve Land is strongly aligned with the Reaching for Our Vision mandate.
4. Don't confuse Land Code with the Lands Department - the Lands Department only manages the traditional territory - Land Code only deals with the Reserve Lands.
5. Core funding from Canada is not affected. Neither is funding from other programs. As per the agreements Canada actually has to give separate, additional funding for the Nation to manage its own Reserve Lands - which creates more jobs.