



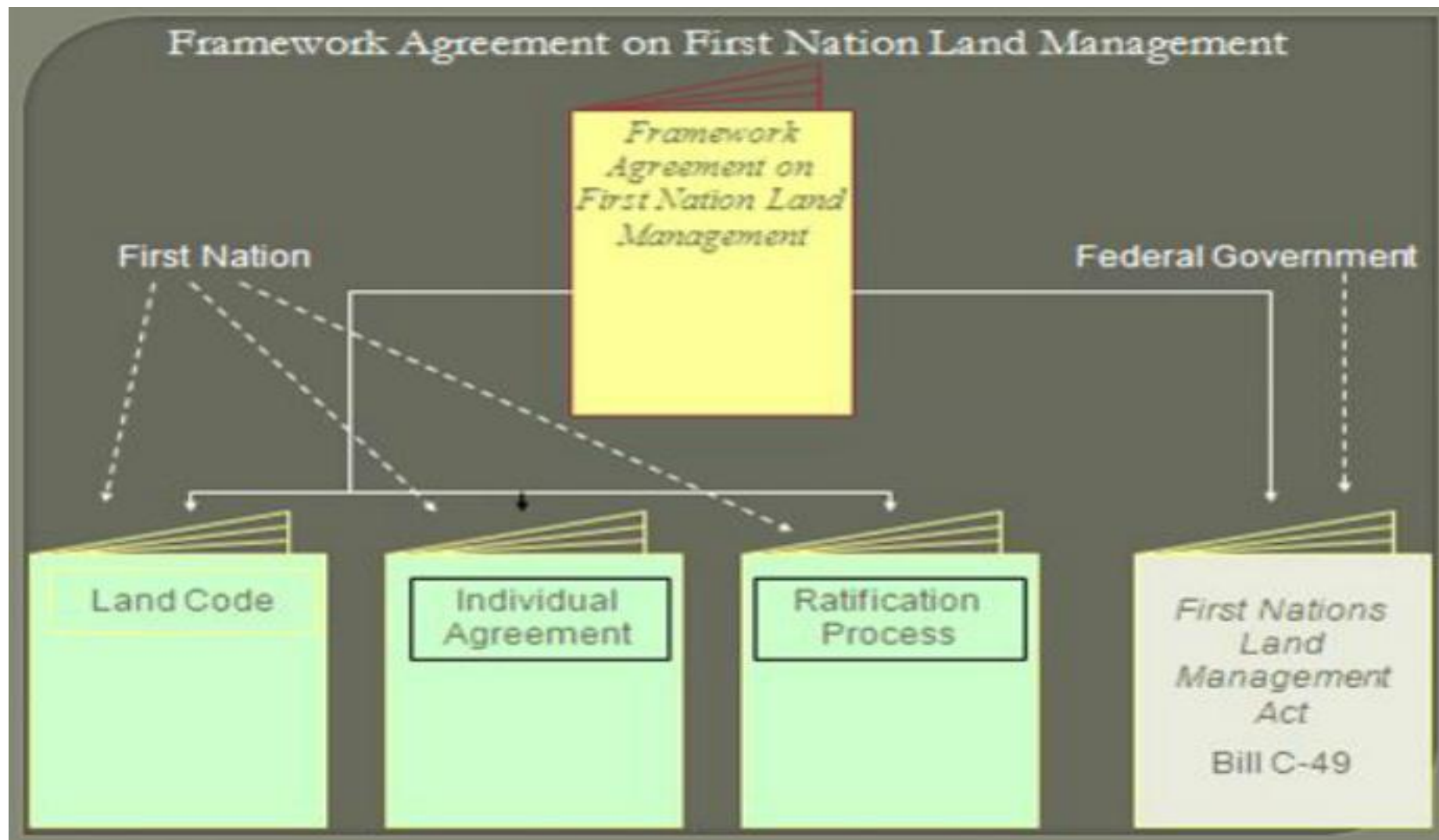
Beausoleil First Nation Presentation on First Nation Land Management

First Nation Land Management: What is it and what does it mean for us?

November 23, 2016 – FNLM Information Session

Framework Agreement

A Brief History



Who initiated this process?



The Framework Agreement was an initiative that was created by 14 First Nations in 1992, who wanted to take over the governance and management control of their First Nation's lands and resources.

These First Nations wanted to re-assert their own law, drawing on customary practice and to build on generations of accumulated knowledge of traditional governance.

They wanted their First Nations to be able to have jurisdiction and governance authorities to put into place laws, land and resources governance initiatives.



The Framework Agreement

- Framework Agreement First Nations have the recognized legal authority to:
 - **Design, administer and enforce laws** for the development, conservation, protection and management and use of their reserve lands and resources;
 - **Govern their reserve lands** with all the powers of an owner, except that the title remains with Canada, protected under section 91.24 of the Canadian Constitution, and therefore any alienation of these lands is prohibited, and;
 - **Collect and manage revenues** derived from their reserve lands and resources in accordance with their Land Codes.



The Framework Agreement

- Governance jurisdiction by First Nations over their reserve lands and resources starts with the Framework Agreement. The Framework Agreement is not just lands management and administration.
- The Framework Agreement is based on 29 fundamental Principles of Governance jurisdiction and responsible land management.

The 29 Fundamental Principles

- | | | |
|------------------------|-------------------------------|--------------------------|
| 1. Purpose | 14. Constitutional Protection | 22. FN Land Registry |
| 2. Approach | 15. Treaty/Aboriginal Rights | 23. Enforcement |
| 3. Application | 16. No Loss – Reserve Land | 24. Dispute Resolution |
| 4. Process | 17. Increase – Reserve Land | 25. Marital Property |
| 5. Optional | 18. Exclude Land | 26. Conflict of Interest |
| 6. Unique | 19. Liability | 27. Federal Funding |
| 7. Paced | 20. Third Party Interest | 28. Environment |
| 8. Involvement | 21. Band Member Interests | 29. Individual Agreement |
| 9. Transparent | | |
| 10. Accountability | | |
| 11. Sectoral | | |
| 12. Legal Status | | |
| 13. Crown Relationship | | |

29 Principles of the Framework Agreement

1. **Purpose**: To enable First Nations to resume and exercise control over their lands and resources for the use and benefit of their members without Government interference
2. **Approach**: First Nations driven; NOT driven by government
3. **Application**: Applies to existing reserve lands including natural resources except for oil and gas, migratory birds, fish and atomic energy
4. **Process**: **A Government to Government Agreement**; can't be changed without First Nation consent
5. **Optional**: to a First Nation which passes a BCR to permit its community to consider developing and voting on their Land Code
6. **Unique**: to each First Nation. Each First Nation develops their **own** Land Code that reflects their own laws, priorities, traditions and ways of doing things
7. **Paced**: each First Nation will develop their Land Code and ways to ratify their Land Code, at their own pace

29 Principles of the Framework Agreement

8. **Involvement:** Community-based; at a minimum, all voting members, both On-Reserve and Off-Reserve
9. **Transparency:** of lands' decisions to the membership through regular meetings and reporting
10. **Accountability:** to the Membership, replacing accountability to the Minister
11. **Sectoral:** Replaces land management provisions of the Indian Act; other sections of the Indian Act are not affected
12. **Legal Status:** A First Nation is unconditionally recognized with all the rights, powers and privileges of an owner of its lands
13. **Special Relationship to the Crown:** is retained and title to the First Nation land is not affected
14. **Constitutional Protections:** are retained. First Nation land continues to be reserve land under Section 91.24 of the Constitution Act, 1867
15. **Treaty and Aboriginal Rights:** ARE NOT AFFECTED, the Agreement is not a Treaty!

29 Principles of the Framework Agreement

- 16. **No Loss of Reserve Land:** surrender for sale excluded; no expropriation by Province; strong restrictions on Federal expropriation
- 17. **Increase in Reserve Land:** may occur due to a land exchange or purchase
- 18. **Provision to Exclude Certain Lands:** from application of the Land Code, if lands are in environmentally unsafe condition
- 19. **First Nation Not Liable:** for any previous acts or omissions of Canada prior to the Land Code coming into effect
- 20. **Protection of a Third Party Interest:** on Reserve, such as existing CPs and other legal interests continue
- 21. **A Separate First Nation Lands Registry:** to be set up and maintained for each First Nation with a Land Code; also National Register

29 Principles of the Framework Agreement

- 23. **Power to Enforce First Nation Laws:** including the appointment of a First Nation's own Justice of the Peace
- 24. **Local Dispute Resolution:** of land issues through out-of-court processes including mediation, arbitration and neutral evaluation
- 25. **Marital Property Disposition:** on the breakdown of a marriage must be provided for in the Land Code
- 26. **Conflict of Interest Provisions:** are mandatory, ensuring fair lands' practices
- 27. **Federal Funding:** including developmental, technical and operational funding
- 28. **Environmental Agreement:** to ensure First Nations lands are environmentally safe
- 29. **Individual Agreement:** transfers administration of First Nation lands and sets out operational funding

Why Is The Framework Agreement So Successful?

- The Framework Agreement, which was developed by First Nations:
 - Continues to be led by First Nations, not Canada;
 - Protects the title to reserve lands and resources for future generations;
 - Demonstrates successful and sustainable economic development; and
 - Demonstrates jurisdiction, decision-making, and control are in the hands of the Community, not Canada

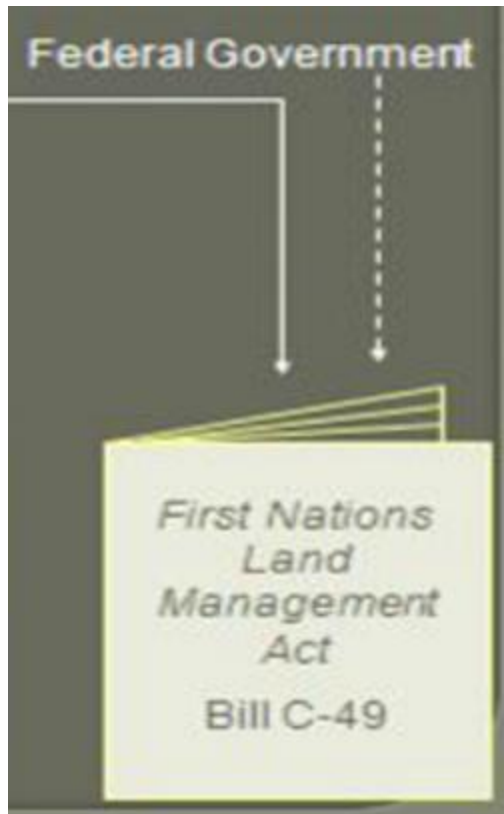
“Historic Accomplishment...”

Chief Joe Matthias

“This may be the single most historic accomplishment for First Nations this century, to have First Nations recognized as governments with their own law-making powers and control over their own lands...”

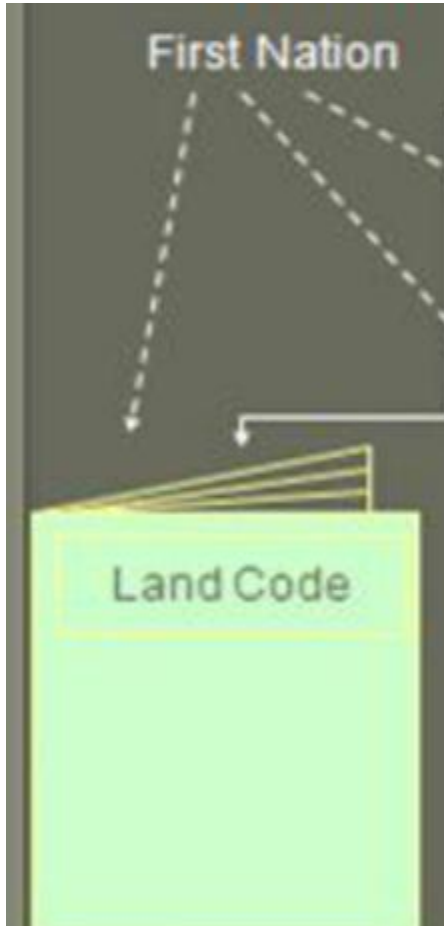
Squamish Nation

First Nations Land Management Act



- The *First Nation Land Management Act* was enacted by Parliament in June, 1999;
- The federal law that **ratifies and brings into effect** the *Framework Agreement*
- The *First Nation Land Management Act* cannot be unilaterally amended by Canada without First Nations first amending the *Framework Agreement*
- Wording must be consistent with the *Framework Agreement*

Community Developed Land Code



- The First Nation law that ratifies the *Framework Agreement* for the First Nation;
- Developed by the First Nation subject to the *Framework Agreement*; and
- Sets out the First Nations powers and obligations for reserve land management

Benefits to a community developed Land Code

- First real recognition of First Nations inherent right to manage their own reserve lands and resources;
- Removal of First Nation reserve lands from the administrative provisions of the *Indian Act*;
- Lands continue to be “reserves” protected under Section 91(24) of the *Constitution Act*;
- Reserve lands cannot diminish in size and are protected for future generations
- Protection against any provincial or federal expropriation of First Nation land except in a national emergency;
- A First Nation developed Registry system that is:
 - Paperless
 - Instant
 - Priority Based
 - Backed by Regulation not policy
 - Developed with the input of Financial institutions (RBC, CBA)
 - Allows for title insurance

Benefits to a community developed Land Code

- Recognition of real law-making powers respecting the First Nation;
- Ability to reflect First Nation Traditions in the Land Code
- Community control over land governance and economic development
- More efficient management of First Nation reserve lands (i.e. a lease arrangement under the *Framework Agreement* takes 1 month as opposed to 12-24 months under the *Indian Act* [KPMG]);
 - Greater ability to take action on business opportunities, GOC approval not required
 - Significantly less transaction costs
 - Supports the establishment of clear, transparent rules for the protection and development of reserve lands
- Ability to create local dispute resolution processes

BFN Land Code: What is in it?

- The Land Code has 9 parts to it.
 - Preamble;

“Whereas the Beausoleil First Nation has a profound relationship with the Land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator and has a deep desire to preserve their relationship with the Land;...”

BFN Land Code Contents

Part 1

Preliminary Matters

1. Title
2. Definitions
3. Interpretation
4. Authority to Govern
5. Purpose
6. Description of BFN Land

BFN Land Code Contents

Part 2

First Nation Legislation

- 7. Law-making Powers
- 8. Law-making Procedure
- 9. Publication of Land Laws
- 10. Enforcement

BFN Land Code Contents

Part 3

Meetings of Members and Approvals

- 11. Participation of Members
- 12. Participation of Eligible Voters
- 13. Meeting of Members
- 14. Procedure at a Meeting of Members
- 15. Community Approval
- 16. Ratification Votes

BFN Land Code Contents

Part 4

Protection of Land

17. Acquisition of Land by Beausoleil First Nation

18. Voluntary Exchange of Beausoleil First Nation Land

BFN Land Code Contents

Part 5

Accountability

- 19. Conflict of Interest or Appearance of Conflict of Interest
- 20. Financial Management
- 21. Annual Report
- 22. Access to Information

BFN Land Code Contents

Part 6

Land and Natural Resources Administration

23. Land Staff

24. Lands Committee

25. Implementation of the Lands Committee

BFN Land Code Contents

Part 7

Interests and Licences in Land

- | | |
|--|--|
| 26. Revenue from Lands and Natural Resources | Interests |
| 27. Registration of Interests and Licences | 34. Allocation of Land to Members |
| 28. Separate BFN Lands Register | 35. Transfer and Assignment of Interests |
| 29. Limits of Interests and Licences | 36. Limits on Mortgages and Seizures |
| 30. Existing Interests | 37. Residency and Access Rights |
| 31. New Interests and Licences | 38. Transfers on Death |
| 32. Interests of Non-Members | 39. Matrimonial Real Property on Reserve Law |
| 33. Certificates of Possession or Member | |

BFN Land Code Contents

Part 8

Dispute Resolution

40. Purpose

41. Disputes

42. Processes

43. Roster Panel Established

44. Impartiality of the Dispute Resolution Panel

45. Arbitration by the Dispute Resolution Panel

46. Powers of the Dispute Resolution Panel

BFN Land Code Contents

Part 9

Other Matters

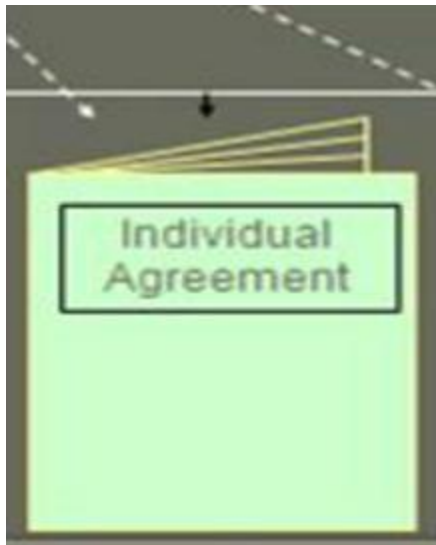
47. Liability

48. Offences

49. Revisions to the Land Code

50. Commencement

The Individual Agreement



- Each First Nation who opts to take back control of their Reserve Lands will enter into an Individual Agreement with Canada.
- This Agreement sets the specific level of operational funding and the transfer of administration between the First Nation and Canada.

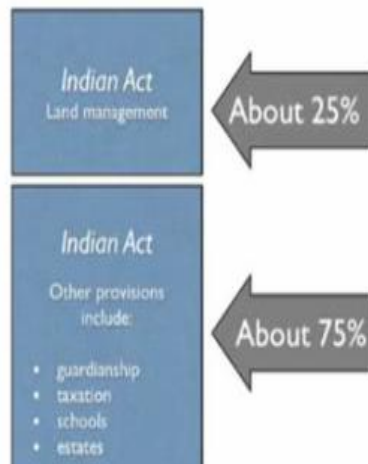
Why is the Individual Agreement Important?

- When a First Nation ratifies an Individual Agreement and Land Code between Canada and the First Nation, an Individual Agreement and Land Code will collectively;
 - Transfer jurisdiction over the FN land
 - Recognize governance authorities (to make, administrate and enforce laws)
 - Land Management Authority
 - Control to the FN of their reserves, resources, related revenue, and the right to legislate in respect of those
 - Identifies the status of the FN lands, environmental condition, external boundaries, outstanding issues and work plan to deal with those issues

*The above mentioned types of responsibilities are similar to those performed by Federal, Provincial and Municipal Governments

What is the Effect of an Approved Individual Agreement?

The *Indian Act* Currently Applies on
Indian Reserves

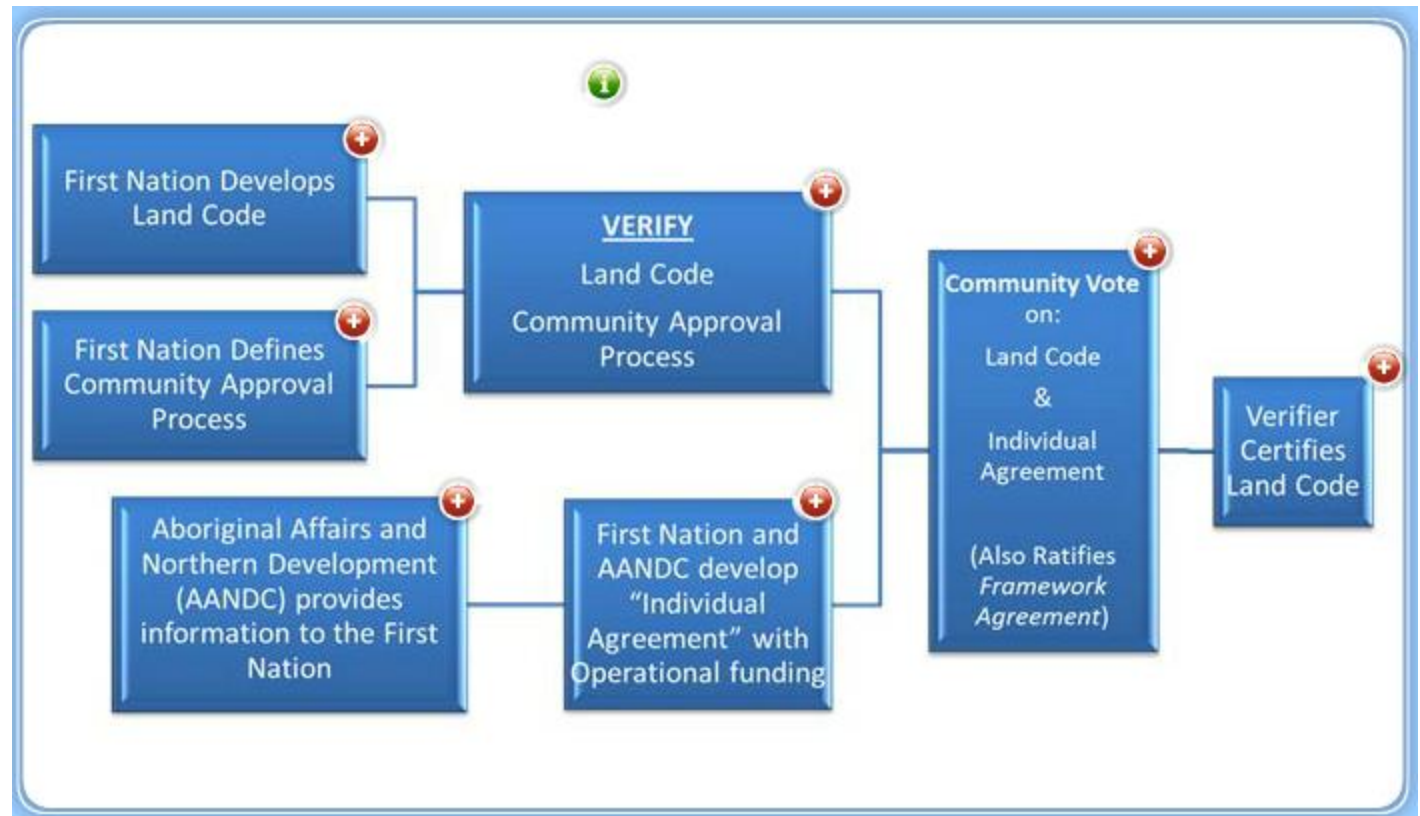


- Once a community ratifies the Land Code and the Individual Agreement and the transfer is complete, a FN manages its reserve land and natural resources under its own Land Code and 34 of 122 sections of the Indian Act no longer apply.
- Canada's federal administration of reserve land ceases under the Indian Act
- Canada's liability ceases, to an extent;
 - They are still liable for outstanding legacy issues;
 - Any other issues that arise that were done under Canada's watch prior to the LC coming into effect.

BFN Individual Agreement Contents

1. Interpretation
2. Information provided by Canada
3. Transfer of Land Administration
4. Acceptance of Transfer of Land Administration
5. Operational Funding
6. Transfer of Revenues
7. Notice to Third Parties
8. Interim Environmental Assessment Process
9. Amendments
10. Notices Between the Parties
11. Dispute Resolution
12. Date of Coming into Force

Community Ratification Process



Community Ratification Process

- The Community Ratification Process is;
 - How the First Nation carries out its transparent process through set procedures and rules. The First Nation chooses which voting options they will use;
 - The approach that the First Nation develops and approves for the ratification of their Land Code and Individual Agreement;
 - Verified by the Verifier to ensure that it is consistent with the Framework Agreement

Once approved by FN C&C and verified by verifier this document becomes the instructions for the Ratification Officer and the Lands Team

CRP: Rules and Procedures

- The rules and procedures of the community approval process are set out in the CRP as follows;
 - The rules of the community approval process;
 - The procedure by which the FN will approve its LC and IA as required by the FA and FNLMA;
 - How the vote is to be conducted and who is eligible to vote;
 - The rules and tasks that the FN, Verifier and RO must follow in the conduct of the LC Vote

CRP: Underlying Requirements

- The CRPs underlying requirement is that each Eligible Voter needs the opportunity to become informed and the opportunity for a free vote. In general this is what the Verifier is required to confirm.
- Informing the Membership is a mandatory and integral part of this process.

BFN Next Steps: Second Vote

- Update CRP
- Confirm Land Code
- Phase 1 ESA – Completion target April '17
- Verifier to confirm documents comply with the FA
- Locate and inform 1883 Eligible Voting Members
- Ratification Vote (E-Voting, Mail-in, Official Vote – Target date is May or June '17

Future Sessions

- We want to ensure that you have the information you require to make an informed decision.
- Our future information sessions will be tailored to what you want to know more about...

Stay informed, ask questions!

Final Words...

- **Chief Austin Bear**

“We know that our people are very capable of making the day-to-day decisions of our reserve lands and resources. After all, we exercised this responsibility for hundreds and hundreds of years before the Indian Act was imposed on us, more than a century ago.”

Muskoday First Nation
Chair, First Nations Land Management Resource
Centre Inc.