



1. WHAT IS THE *FIRST NATIONS LAND MANAGEMENT INITIATIVE*?

In 1999, the federal government passed the *First Nations Land Management Act* (FNLMA). This Act is the formal legislation which ratifies and brings into effect the 1996 *Framework Agreement on First Nations Land Management*. This document enables certain First Nations in Canada to be directly responsible for management of their Indian Reserve lands and resources. The participating First Nations do this by developing their own community “land code” and once it is ratified, they are no longer subject to the land administration sections in the *Indian Act*.

The shared objectives of the Department of Indian Affairs and First Nations in relation to this initiative are stated as follows:

- To provide an opportunity to implement First Nation self-government on a sectoral basis;
- To recognize the rights and capacity of First Nations to govern and manage their lands;
- To provide and improved statutory basis to govern and manage First Nations lands; and
- To expedite economic development, by First Nations, of their lands.

The initiative has been described as First-Nation driven. The chiefs Lands Advisory Board (LAB) continues to play a central role in the development of this “government to government” initiative on land management and are fully involved with the Department of Indian Affairs in the development, implementation and continuing expansion of the legislation.

UBCM has been active in representing the interests of our affected members in this initiative since 1995. For UBCM contact information, see page 5 of this paper.

2. WHICH FIRST NATIONS ARE INVOLVED?

When the legislation was passed in 1999, fourteen Indian Bands were included, **five of which are in BC:**

1. Lheidli T'enneh
2. Musqueam
3. Squamish
4. N'Quatqua
5. Westbank

In March 2003, nineteen more First Nations signed on to the *Framework Agreement on Land Management*, **ten of which are in BC:**

- | | | |
|----------------|---------------|----------------|
| 1. Beecher Bay | 5. Pavilion | 8. Songhees |
| 2. Burrard | 6. Skeetchesn | 9. Tsawout |
| 3. Kitselas | 7. Sliammon | 10. Tsawwassen |
| 4. Osooyos | | |

See [Appendix A](#) for a list of Participating First Nations and neighbouring local governments.

In 2002, the federal government announced its intention to expand the initiative by opening up the legislation every two years to interested First Nations. This will be essentially on a “first come first served” basis where those First Nations who actively express interest on behalf of their communities are considered for addition. In this way, individual Indian Bands assess their own “readiness” to take on land management powers independent of the *Indian Act*.

3. WHY IS THIS INITIATIVE OF INTEREST TO LOCAL GOVERNMENTS?

Fifteen Indian Bands in BC are now or will be under a different land management regime, one over which they have more direct control and autonomous decision making powers. More will follow. First Nations who develop and ratify their own “land codes” under this legislation are often those who are interested in increasing development and other activities on their lands with a view to creating more economic opportunity for their communities.

UBCM members with First Nations neighbours participating in this legislation have consistently expressed interest in improving communication and consultation with participating First Nations, in an effort to coordinate future land development and related servicing needs. Many local governments in BC see this initiative as an opportunity to improve the way they work together as neighbours on land use planning, servicing and other issues for the mutual benefit of their communities.

The Lheidli T'enneh First Nation and Regional District of Fraser Fort George are one example of neighbours who have worked successfully to enhance their communication and cooperation on land management issues. A copy of their Memorandum of Understanding is found in [Appendix B](#).

4. UNDERSTANDING THE FIRST NATIONS LAND MANAGEMENT ACT AND THE “LAND CODE”

A First Nation signatory to the *Framework Agreement* exercises its land management option by creating its own Land Code, drafting a community ratification process and entering into a further Individual Transfer Agreement with Canada. These steps are described in this section.

What is a Land Code?

A land code sets out the basic principles, rules and structures by which a First Nation (FN) will exercise control and management over its lands and resources. Once ratified, it replaces the related provisions of the *Indian Act* and the Minister of Indian Affairs no longer is involved in the management of the First Nations' reserve lands. The Land Code does not have to be approved by the Minister. Details of the land management system would be provided by specific land laws enacted by the FN once the land code is in place. A land code can apply to any or all of a FN's reserves.

Section 6 of the *First Nations Land Management Act* describes what the land code must include. A land code must provide for the following matters:

- **Identifies 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),
- procedures for making and **publishing First Nation land laws**,
- **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,
- Allows the **delegation** of land management responsibilities,
- the procedure for Land Code **amendment**

After coming into force of the land code, the FN has authority to manage its land and can exercise the powers, rights and privileges of an owner in relation to the land.

Process to Adopt a Land Code

Step 1 - Developing a Land Code

It is important to note that the legislation is enabling and does not require any of the FNs involved to implement it. Therefore, the first step in this process is for the FN to decide whether to develop a land code for later approval by the community. In this respect, Chief Bill Williams of the Squamish FN is reported as stating:

"Now that the FNLMA has received royal assent, the Squamish Nation will begin a two-year period to determine if the community wishes to assume responsibility for land management. With the full active participation of all our members, we will develop a Squamish Land Code based on fairness, equality and accountability and then conduct a community vote".
(Department of Indian Affairs - press release – June 18, 1999)

In B.C. Lheidli T'enneh First Nation was the first to ratify a land code and since then Beecher Bay, Tsawwassen and Westbank First Nations have all ratified land codes.

Step 2 - Individual Agreements with Federal Government

In addition to a land code, each First Nation must also enter into "individual agreements" with the federal government to determine the level of operational funding for land management and to set out the specifics of transition to the new regime. These specifics include:

- the terms of the transfer of the administration of the land;
- a description and terms of the interests and licences that have been granted by the Crown in or in relation to the land (interests in and licences in relation to FN land that exist on the coming into force of a land code, continue in accordance with their terms and conditions);
- the environmental assessment process that applies to projects until such time as the FN enacts its own laws in relation to that subject; and
- any other relevant matter.

Step 3 - The Verifier

The FNLMA provides for an independent verifier to ensure that the land code is consistent with the Act. For example, a verifier would confirm that the land code only deals with matters related to land and land resources. The verifier also oversees the FN's community approval process.

Step 4 - Community Ratification

Once the verifier determines that the land code and a proposed community approval process of a FN are in accordance with the Act, the land code and individual agreements can be voted on by FN members.

Step 5 - Coming into Effect

If the land code and the individual agreement are adopted by the FN membership and are in effect, then the land management provisions of the *Indian Act* no longer apply to that community.

Other notable aspects of First Nations Land Management are found in [Appendix C](#).

5. ADDRESSING LOCAL GOVERNMENT INTERESTS

As stated above, UBCM members with First Nations neighbours participating in this legislation have consistently expressed interest in improving communication and consultation with participating First Nations in an effort to coordinate future land development and related servicing needs.

Reciprocal Consultation Agreement

In 1999, as the result of discussions with the chiefs Lands Advisory Board, UBCM developed a model "reciprocal consultation agreement" (see [Appendix D](#)). The model reciprocal consultation agreement can act as a starting point for local governments and FNs to use in developing their own individual consultation and/or notification procedures. It contains suggested wording and topics; the details of when and how local governments and FNs would consult or notify one another in relation to land use and related matters would need to be developed to meet the particular needs of the parties.

In 2002, the Regional District of Fraser Fort George and Lheidli T'enneh First Nation signed a Protocol and Memorandum of Understanding ([Appendix B](#)). Through this they make the commitment to work together to promote cooperative relationship building, referencing in particular, "exchange, development and distribution of information that is relevant to on-going projects of mutual benefit". An increasing number of local governments and First Nations in BC have developed political agreements, signaling their intention of working together in new, more proactive ways.

Land Management Project

The Centre for Municipal Aboriginal Relations recently launched a Land Management project with the following partners:

- ü Federation of Canadian Municipalities
- ü First Nations Land Advisory Board
- ü National Aboriginal Lands Managers Association

- ü Indian Taxation Advisory Board
- ü Indian and Northern Affairs Canada

The project goal is to enhance communication between First Nations and municipal governments on the Additions to Reserve and the First Nations Land Management Act, and through enhanced communications, to build community capacity. Among the resources they hope to produce over the next two years are a Land Management Tool kit and Land Management Best Practices Guide.

Canadian Institute of Planning

In July 2003, the Canadian Institute of Planners entered into a five-year Protocol Agreement with the First Nations Land Management Resource Centre on the joint promotion of progress in First Nations planning. The Resource Centre is a national First Nations organization that has been mandated by First Nations and Canada, pursuant to the Framework Agreement on First Nations Land Management, to support First Nation control of reserve land and resource management. As part of its role, the Resource Centre has undertaken the development of greater planning capacity and systems for effective community-based planning and First Nations land management.

In discussions initiated last year, the Resource Centre expressed interest in partnering with CIP and other organizations. It was mutually agreed by CIP and Resource Centre representatives that CIP participation in helping First Nations to develop their planning capacity would also be closely aligned with many aspects of CIP's mandate, especially to:

- champion and lead progress and change in planning practice;
- act as the authoritative voice and the primary information and knowledge sharing network for planners; and
- address issues of importance to the planning profession and/or the public interest.

More Information

This bulletin is available on the web at www.civicnet.bc.ca

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Other websites of interest: www.fnлма.com www.cip-icu.ca www.rdffg.bc.ca
www.ainc-inac.gc.ca/nr/prs

APPENDIX A

**First Nations Land Management
First Nations Participants and Neighbouring Local Governments**

Added 2003

Indian Band (BC only)	Area	Local Government
1. Beecher Bay <i>Scia'new</i>	Vancouver Island - Sooke/Metchosin	District of Metchosin
2. Burrard <i>Tsleil-Waututh</i>	Lower Mainland – North Vancouver	District of North Vancouver
3. Kitselas	Northwest - Terrace	City of Terrace Kitimat Stikine RD
4. Osoyoos	Lower Okanagan	Town of Osoyoos Town of Oliver
5. Pavilion <i>Ts'kw'aylaxw</i> (Lillooet Tribal Council)	South Interior - Cache Creek/Lillooet	Village of Cache Creek Squamish Lillooet RD
6. Skeetchestn	North Okanagan - Shuswap	Thompson Nicola RD
7. Sliammon	Sunshine Coast	District of Powell River Powell River RD
8. Songhees	Vancouver Island - Victoria	City of Victoria?
9. Tsawout	Vancouver Island - Saanich	District of Central Saanich
10. Tsawwassen	Lower Mainland - Delta	Corp. of Delta

Original Participants

Indian Band (BC only)	Area	Local Government
1. Lheidli T'enneh	Central Interior – Prince George	Fraser-Fort George RD City of Prince George Bulkley Nechako RD
2. Musqueam	Lower Mainland – Vancouver	City of Vancouver
3. N'Quatqua	South Interior – D'Arcy	Squamish Lillooet RD Village of Pemberton District of Lillooet
4. Squamish	Lower Mainland – North Vancouver	Districts of West Vancouver North Vancouver & Squamish City of North Vancouver Greater Vancouver RD
5. Westbank	Central Okanagan - Kelowna	Central Okanagan RD City of Kelowna

APPENDIX B

**Memorandum of Understanding on
Cooperation and Communication
Between the *Regional District of Fraser – Fort George*
and the *Lheidli T'enneh First Nation***

WHEREAS:

1. The Regional District of Fraser-Fort George and the Lheidli T'enneh First Nation have a common interest in the successful and timely conclusion of treaties, which will benefit all BC communities; and
2. The Parties also have shared interests in cooperative Intergovernmental relationships, including those between First Nation and local governments, before and after treaties are signed; and
3. Cooperative working relationships between governments build effective communication and trust. Collaborative action in areas such as economic development and natural resource management contribute directly to the health and well being of all communities.

THEREFORE:

This Memorandum of Understanding represents a commitment by the Regional District of Fraser-Fort George and the Lheidli T'enneh First Nation to work together to promote cooperative relationship building.

PRINCIPLES:

The Regional District of Fraser-Fort George and Lheidli T'enneh First Nation will recognize the following principles in dealing with one another:

- Mutual respect for each Party's mandates, policies and areas of jurisdiction and that the Protocol on Cooperation and Communication does not fetter the individual mandates of the parties;
- Cooperation in the exchange, development and distribution of information that is relevant to on-going projects of mutual benefit; and
- Collaborative action in the development and implementation of projects of mutual interest; and
- Acknowledgement that good relations between neighbours are required for all citizens to benefit.

GENERAL OBJECTIVES:

The Lheidli T'enneh and the Regional District of Fraser-Fort George have the following mutual objectives:

- Promote understanding of the interests of First Nations and local governments in a province-wide context, including participation in each other's events wherever appropriate; and
- Provide opportunities for relationship building between First Nations and local governments, such as through annual Community to Community Forums, which allow dialogue between community leaders on areas of common interest. This includes economic development, natural resource management, efficient and affordable service delivery and cooperative land use planning; and
- Encourage and promote effective methods of dispute resolution between First Nations and local governments.

IMPLEMENTATION:

The Lheidli T'enneh First Nation and the Regional District of Fraser – Fort George agree to continue to support the existing Joint Action Committee to further the objectives stated in this agreement. This group will meet to review joint initiatives and projects as well as the general progress on goals and objectives.

APPENDIX B (cont'd)

SIGNED on behalf of the LHEIDLI T'ENNEH FIRST NATION on this 16th Day of July 2002 by:
SIGNED on behalf of the REGIONAL DISTRICT OF FRASER-FORT GEORGE on this 16th Day
of July 2002 by:

Chief Barry Seymour, Lheidli T'enneh First Nation Mayor Colin Kinsley, Chairperson, Regional
District of Fraser-Fort George

Councillor Vanessa West, Lheidli T'enneh First Nation, Witness Anne Hogan, Administrator,
Regional District of Fraser-Fort George, Witness

APPENDIX C

First Nations Land Management – Background Information

(Excerpted from Lands Advisory Board Website: www.fafnlm.com)

Law-Making Powers A First Nation managing 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. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must be made separately pursuant to section 83 of the *Indian Act*. The First Nation's Council can continue to make by-laws under section 81 of the *Indian Act*.

Land Management 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 manage land and resources, as well as revenues from the land and resources, in accordance with its Land Code.

Third Party Interests Interests in First Nation land held by third parties, or by Canada, will continue in effect according to their terms and conditions under a Land Code. No new interests or licences may be acquired or granted except in accordance with the Land Code.

First Nation Expropriation The First Nation will have the power to acquire lands for community purposes upon payment of fair compensation to those whose interests are affected.

Accountability A Land Code will make provision for a First Nation to report to its members and to be accountable for its management of lands, resources and revenues.

Marriage Breakdown 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. This is not currently addressed under the *Indian Act*. The community will, within 12 months, develop and enact rules and procedures on this topic. The new rules and procedures will ensure the equality of women and men.

Registration of Interests Canada will maintain a First Nations Land Register to record all documents respecting interests in the reserve lands of these 14 First Nations.

PROTECTION OF FIRST NATION LAND

The preserving the quantity and quality of existing First Nation lands is a fundamental principle of the *Framework Agreement*. Some aspects of this principle are summarized below.

Taxation and Seizure under Legal Process The current exemption of reserve lands, and personal property situated on-reserve, will continue under the relevant provisions of the *Indian Act*.

Environmental Protection A First Nation will have the power to make environmental laws. Further agreements are expected between First Nations and Canada for funding these laws and for harmonization with other provincial and federal environmental laws.

Voluntary Exchange of Lands 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. An exchange of land cannot occur without the consent of the First Nation community.

No Provincial Expropriation Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Restricted Federal Expropriation Canada's power to expropriate First Nation land is restricted. That power can only be exercised with Cabinet approval and only when the expropriation is justified and necessary for a federal public purpose that serves the national interest. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished.

Enforcement The First Nation will have full power to enforce its land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own Justice of the Peace to try offences created under a Land Code or a First Nation law, 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 with its laws.

CONTINUING FEDERAL RESPONSIBILITY

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. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own processes for dealing with disputes in relation to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between the First Nations and Canada on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside the courts.

APPENDIX D

[MODEL]

RECIPROCAL CONSULTATION AGREEMENT**BETWEEN**_____ **FIRST NATION AND** _____ **LOCAL GOVERNMENT****ON****LAND USE PLANNING AND RELATED ISSUES**

The First Nation and the local government named in this document agree to the following:

1. They will consult with one another regarding the following issues of mutual concern:
 - their land use plans in existence at the time of this agreement and in the future;
 - environmental impacts from development on their lands;
 - the provision of local infrastructure and services to their residents;
 - cross-boundary land use issues; and
 - other matters of concern regarding land development and its effect on their respective adjoining lands.

2. Consultations will occur in a round table format and on a regular basis as described below *(to be specified by the parties)*.