

First Nation Land Management (FNLM)

Framework Agreement
on First Nation Land
Management



First Nations can have management control over its Reserve* lands by successful ratification vote of:

1. Land Code developed by the First Nation
2. Individual Agreement between Canada and FNFN

* The lands remain as Reserve lands as defined in the Indian Act and under Section 91 (24) of the Constitution Act of 1867. The tax exemption on reserve remains in place.

REALITIES OF THE INDIAN ACT:

There is nothing that says Council must be accountable to the members:

- nothing about Conflict of Interest
- Financial management and transparency to members not required
- Difficult to dispute a Council decision

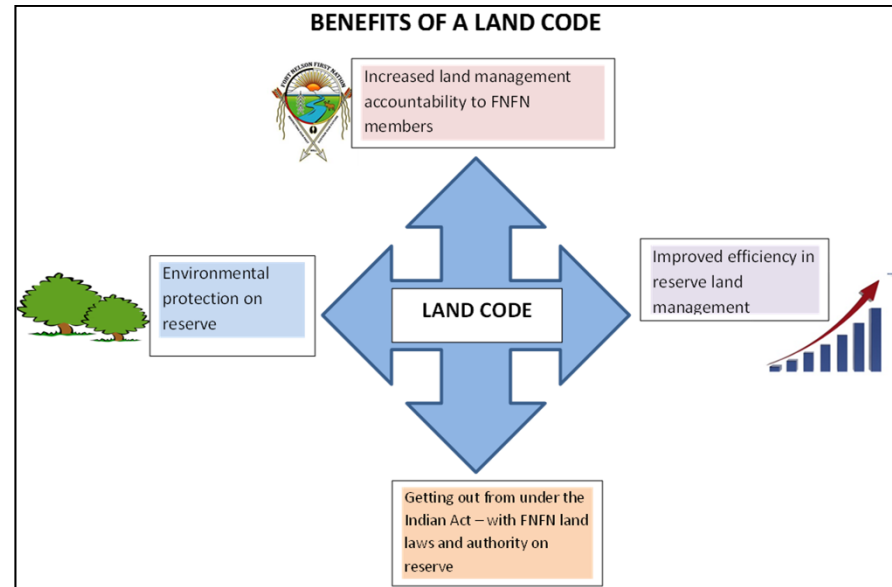
There are no rules on environmental management and standards on reserve lands; no specific provisions for environmental protection:

- First Nations can't make bylaws for environmental protection.
- No comprehensive legislation for identifying and remediating contaminated sites.

Multi-year process to get businesses located on reserve lands:

- Land has to go through Designation process (multi-year)
- Then a Leasing process (multi-year)
- Both require formal ratification votes with mandatory minimum threshold of votes
- nothing can go forward legally without INAC's approval

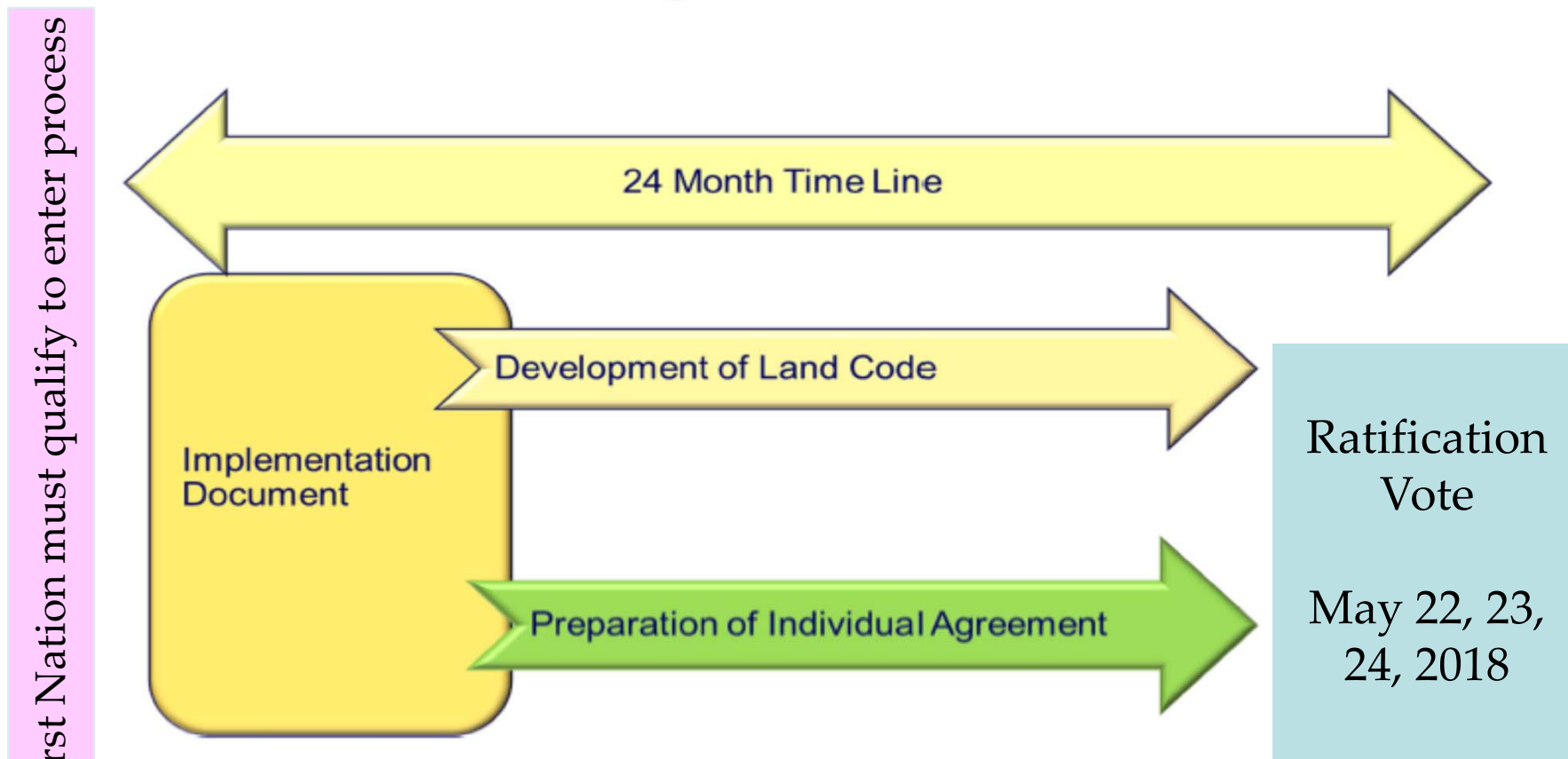
Difficulty enforcing bylaws



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|---|--|
| ✓ First Nation right to manage reserve lands and resources | ✓ Protection against further land expropriation by Governments |
| ✓ Removal of reserve lands from the Indian Act | ✓ Right to receive revenue from interest in Reserve lands |
| ✓ Community control over reserve land management and development | ✓ Ability of First Nation to protect the environment |
| ✓ Improves economic development, able to operate at the speed of business | ✓ Recognition of significant law-making powers respecting First Nations laws |
| ✓ both on-and off-reserve members included in decision-making | ✓ Recognition of First Nation laws in Canadian courts |
| ✓ More efficient management of reserve lands | ✓ Ability to create local dispute resolution process |
| ✓ Transfer of previous land revenues from Canada to First Nation | ✓ Establishment of a legal registry system |
| | ✓ Increased accountability for members |

First Nation Land Management (FNLM)

FNLM Process – Developmental



First Nation becomes Operational if vote is successful.

Community Ratification



Fort Nelson First Nation Land Code and Individual Agreement Ratification vote May 22, 23, 24, 2018

All FNFN Electors can vote by registering to vote.

Registering and Voting can be done:

- in person at FNFN administration office; or
 - By mail; or
 - Electronically (www.onefeather.ca)



The Land Code defines:

- ✓ Rules, procedures for use of reserve lands
- ✓ Financial accountability
- ✓ Lawmaking process
- ✓ Conflict of Interest and Procedures
- ✓ Process to create Matrimonial Law
- ✓ Procedure to grant interests in reserve lands
- ✓ Dispute resolution process

Part One: Preliminary Matters



Preamble

1. Title
2. Interpretation (Definitions)
3. Authority to Govern
4. Purpose
5. Description of FNFN reserve lands



Part 2: Land Management Committee

LMC Oversight Responsibilities	LMC Terms of Reference within 1 year	Land Mgmt. Committee Established	LMC ensure lands laws made in following areas:	LMC Vacancy
• Reserve land mgmt. system • Advisory on reserve land matters • Recommend land laws, regulations, policies • Consult with members, non-members • Oversee meetings and ratification votes • Implementation of land code, land laws • Communication between Council and members on land matters	Drafted by Sr. Admin. Officer and Lands Director for Council approval: • Composition of LMC • Quorum • Terms • Process to select Chair • Duties of Chair • remuneration	Council shall establish within 1 year: 5 – 7 members: • 1 Council member • 1 Council appointee • Others elected LCDC is transitional LMC until established	• Land use plan • Environmental protection and assessment • Protection of heritage / cultural sites • Allotment system for members • Monitoring and enforcement system • Other matters delegated by Council	Vacancy occurs when Member: • resigns • becomes ineligible to hold office • transfers to another First Nation • Misses 3 consecutive meetings without cause

Part 3: First Nations Legislation



The Land Code will set out the procedures for making and publishing its First Nation laws.*

The First Nation may make laws respecting:

(a) development, conservation, protection, management, use, possession of *FNFN reserve lands*.

(b) Interests and licences on *FNFN reserve lands*.

c) any other matters related to *FNFN reserve lands*.

Land Laws may be made in the following areas:

- | | | |
|---|--|--|
| 1. Archeological assessment & protection | 9. Environmental assessment & protection | 18. Heritage – cultural – traditional sites, wildlife refuges |
| 2. Regulating subdivisions | 10. Expropriation of interests & licences | 19. Building construction |
| 3. Conduct of surveys | 11. Hunting, fishing, protection of fish, wildlife & habitat | 20. Regulation of roads, traffic |
| 4. Construction, installation, maintenance of any utilities | 12. Local services, fees | 21. Sanitary services, standards |
| 5. Landscaping, boundaries, fencing | 13. Public & private nuisance | 22. Setting of fees, rents, royalties |
| 6. Creation of administrative bodies | 14. Purchase or acquisition, in accordance with Indian Act | 23. Use & storage of firearms, fireworks, weapons, hazardous materials |
| 7. Regulation of interests and licences | 15. Reserve residency, occupation, & development | 24. Zoning, land use planning & development |
| 8. Economic development | 16. Trespassing | |

Process to enact FNFN Laws:

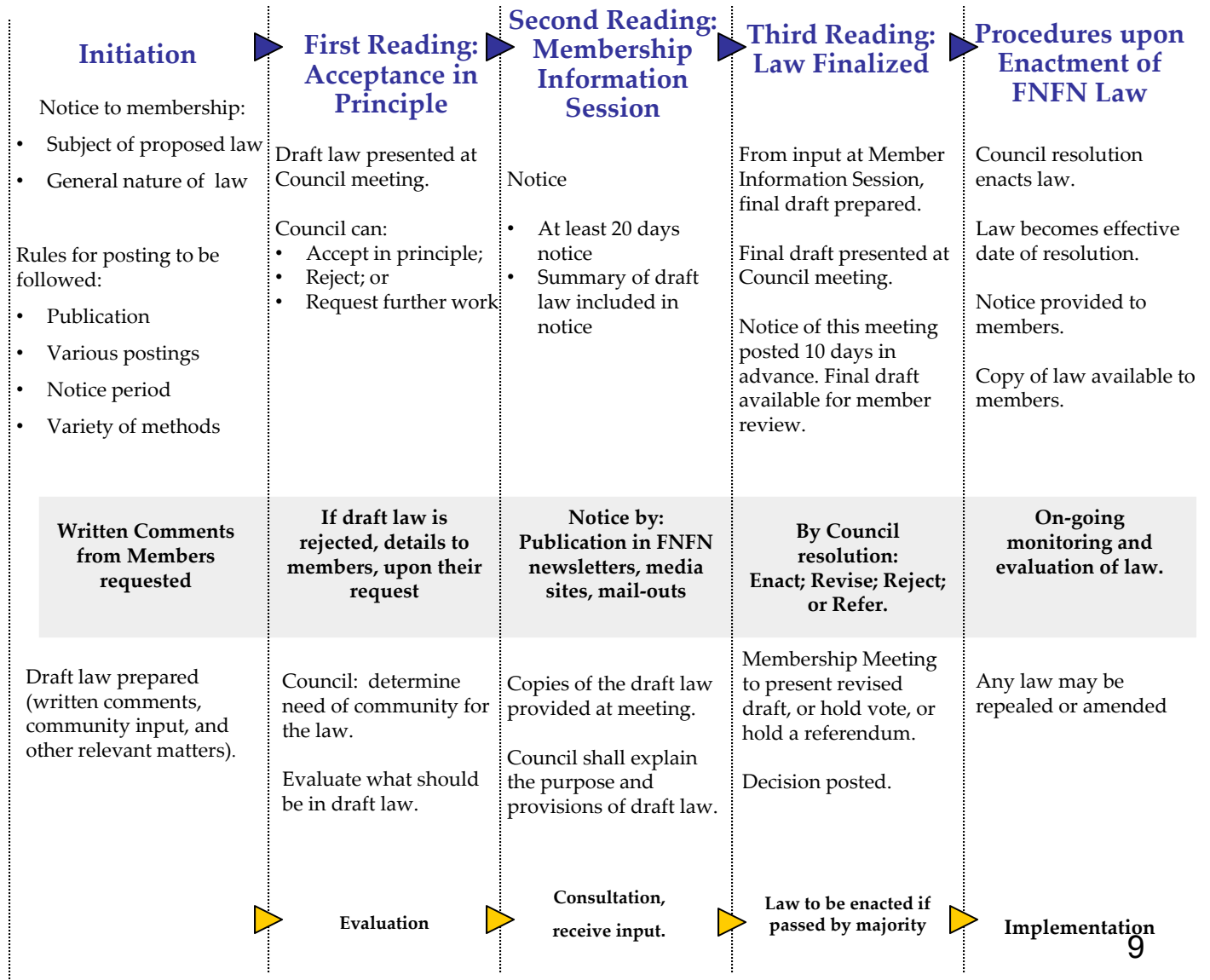


Introduction of FNFN Law

The development of a Law may be proposed at a duly convened meeting of Council by:

1. A Council member, or
2. A representative of the Lands Management Committee, or
3. Any Member or FNFN employee may propose a law to the Land Management Committee. Land Management Committee may choose to propose the law to Council.

Allowance for emergency law-making



Part 4: Community Meetings and Approvals



Every FNFN member entitled to attend meetings.

Every FNFN elector can vote.

Ratification vote on the following:

- Community plan
- Subdivision plan
- Land Use plan
- Land allotment
- Matrimonial real property
- Transfer / assignment of rights & interests in reserve lands
- Rate/criteria for fees
- Environmental assessment and protection
- Expropriation
- Heritage / cultural sites
- Any interest that exceeds 35 years
- Voluntary exchange
- Any other matter directed by Council

Meeting Procedures

- Mandatory Notice specific # of days in advance
- Information to be provided in advance
- Mandated forms of notice (mail, posting, social media sites)

Voting Threshold

- 10% of electors for Special Members Meeting
- 25% of electors for referendum
- 50% plus 1 must be in favour
- If threshold not met, 2nd vote held with simple majority as decision

Part 5: Interests and Licences in Land



1. Revenue from Land and Natural Resources:
 - Lands Management Committee (with Council approval) will establish process and related policy/law/rules for rents, service fees, royalty rates on reserve
2. Registration of Interests and Licences:
 - Interests, licences must be registered in the to-be-created FNFN Land Register
 - Land Register will include: any interest, licence, land use plan, subdivision plan, resource use plan, land laws, Land Code
3. Limits on Interests and Licences:
 - Any interest can only be created, granted, disposed of, assigned, transferred in writing as per the Land Code
 - Council may establish mandatory standards, criteria and forms for any interest
4. Existing Interests:
 - Any interest prior to Land Code remains in effect
 - Upon effective date of Land Code, Canada transfers grantor status to First Nation

Part 5: Interests and Licences in Land (Continued)



5. New Interests and Licences:
 - Council may, on behalf of FNFN, grant interests, licences, member allocations, leases, permits, easements, and rights-of-way as per the Land Code processes
 - Licences include natural resources (timber, minerals, stone, sand, gravel, clay, soil or other substances)
6. Interests of Non-Members:
 - Any transfer, licence, interest to a non-member requires Council resolution
 - Non-Members cannot hold an allotment
7. Members Interests:
 - Any member interest prior to the Land Code remains in effect
8. Allocation of Land to Members:
 - Council, in consultation with Lands Committee, shall establish land laws, policies, procedures for land allocation for members
 - A non-member is not entitled to land allocation or permanent interest in land
9. Transfer and Assignment of Interest:
 - Council resolution is required for any transfer of interest except Member's interests to another member, a matter determined by law (estate), or by the Matrimonial real property on reserve land

Part 5: Interests and Licences in Land (Continued)



10. Limits on Mortgages and Seizures:

- Indian Act sections 29, 87, 89(1), 89 (2) continue to apply

Section 29: Exemption from seizure

Reserve lands are not subject to seizure under legal process.

Section 87: Property exempt from taxation

87 (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the *First Nations Fiscal Management Act*, the following property is exempt from taxation:

- (a) the interest of an Indian or a band in reserve lands or surrendered lands; and
- (b) the personal property of an Indian or a band situated on a reserve.

(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.

(3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(a) or (b) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession* on or in respect of other property passing to an Indian.

Sections 89 (1) (2): Restriction on mortgage, seizure, etc., of property on reserve

89 (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

Exception (1.1) Notwithstanding subsection (1), a leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.

Conditional sales (2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

Part 5: Interests and Licences in Land (Continued)



11. Residency and Access Rights:

- Members, their families have right to reside on reserve
- Access is allowed to lessees, person granted right to access, authorised person for construction, operating, or surveying
- Persons can access for social purpose as long as do not trespass and there is no resolution barring their presence on reserve
- Any person may access public roads, subject to Land Code and Land laws
- Any person who doesn't abide by Land Code is guilty of offense of trespassing

12. Transfers on Death:

- Indian Act sections on wills and estates continue in effect until First Nation gains jurisdiction on wills and estates
- A transferee has right to have the transferred interest registered in the First Nation Land register

Part 5 (Cont.)

Section 5.4 (a) Framework Agreement

“a First Nation will establish a community process in its land code to develop rules and procedures, applicable on the breakdown of a Marriage...”

MATRIMONIAL PROPERTY LAW

Council shall enact a matrimonial real property on reserve law within 12 months from the Land Code's effective date.

The law will define rules and procedures on the breakdown of a marriage, on:

- a. The use, occupancy, possession of FNFN reserve lands;
- b. division of interests in that land
- c. division of the value of improvements in that Land.

The rules and procedures contained in the matrimonial real property on reserve lands:

- a) Is developed by the Lands Management Committee
- b) in consultation with the Members and approved by the FNFN Electors.
- c) shall not discriminate on the basis of sex; and
- d) Only Members are entitled to hold an Allotment in FNFN reserve lands

A formal ratification vote on the Matrimonial Law will be held.

Part 6: Protection of Land



Expropriation:

- Can only be done for necessary community works or purposes
- Must adhere to Law on Expropriation

Voluntary Exchange of Reserve Lands:

- First Nation may agree to exchange parcel of land
- Community approval required
- Land received must be equal or greater in area, comparable in value, and become reserve land
- Land cleared through environmental audit and remedied if required at no cost to the First Nation
- Negotiator appointed by resolution
- Canada must agree to set the new land aside as reserve land
- Adequate notice and information must be provided to electors ____ days in advance of the vote

Part 7: Accountability



The Framework Agreement on First Nation Land Management specifies:

5.2 The land code of a First Nation will

(f) Set out the **conflict of interest rules** for land management

Conflict of Interest Situation

Applies to Council, employee, Committee member, contractor

For decisions that could involve Individual's private interest.

Private interest means the personal or business interests of the Individual and the immediate family.

Definition of Immediate Family Member

Individual's partner / spouse, individual's or partner's parent, child, grandparent, sibling, aunt, uncle, niece, nephew, legal guardian.

Potential Conflict of Interest Situations:

- Gifts and Benefits
- Confidential Information
- Competition with FNFN owned businesses
- Use of FNFN property or information
- Business Opportunities

No Conflict of Interest

A Conflict of Interest does not exist if:

- The interests are the same for all FNFN members (if Individual is a FNFN member)

Disclosure

An Individual will have opportunity to discuss if there is a potential conflict of interest situation with a Senior FNFN administration employee.

A FNFN member could also bring concerns that an Individual may have a Conflict of Interest.

Where Conflict of Interest arises:

Meeting held to review possible conflict. The Individual shall not participate.

If quorum can't be established, a Special Meeting of the members will be held.

Proper notice will be provided 20 days in advance of meeting.

All information presented. Individual can be present to answer questions.

A vote will be held by secret ballot.

The decision will be binding.

Outcome of Conflict of Interest

Possible consequences if an Individual or immediate family member has benefited from COI:

- Disciplined, possible dismissal
- Contract terminated
- Appointment to Committee, Board revoked
- Possible future involvement with other FNFN committees curtailed

Appeals

Appeals can be made to Tribunal made up of FNFN elder, council member, a FNFN youth. (if necessary, also a BC Treaty 8 member).

Part (Cont.): Financial Management & Accountability

Framework Agreement Section 5.2

The Land Code of a First Nation will:

(c) Set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation Land;

(d) Set out the requirements for accountability to First Nations members for the management of moneys and First Nation lands under the land code.

Sections:

Adoption of Annual Budget:

- Budget presented to members
- Expenditures can only be made if included in approved budget

Financial Management:

- Bank accounts, signing officers

Financial Records Requirements

- Cndn. Accounting Principles followed
- Must be accurate and thorough

Audit requirement:

- Qualified, unbiased auditor
- Audit presented to members

Annual Report:

- Provided to Lands Advisory Committee and members
- Includes activities, audit report, other matters

Access to Financial Information:

- Available for viewing by members

Part 8: Dispute Resolution



Purpose:

- To provide opportunity to resolve disputes related to FNFN reserve land matters

Disputes:

- best efforts of parties to seek resolution early

Processes: Procedure defined to request Dispute Resolution; Duty of Fairness to all Parties.

- Step 1 Facilitation
- Step 2 Negotiation
- Step 3 Mediation
- Step 4 Final Arbitration

Roster Panel Established by Council:

- 20 members appointed to Roster

Impartiality of the Dispute Resolution Panel:

- Panel shall be unbiased, impartial

Arbitration by the Dispute Resolution Panel:

- 3 Panelists from Roster Panel: one chosen by each Party, third one chosen by Roster Panel

Powers of Dispute Resolution Panel:

- can confirm / overturn decision, determine action to be taken, next steps

Part 9: Other Sections



Liability:

- Insurance coverage; indemnification

Offences:

- summary conviction procedures under Criminal Code will apply (unless the FNFN has defined another procedure).

Revisions / Amendments to Land Code:

- ratification vote only for amendments that change the substance of the Land Code (not for minor corrections like punctuation, grammar, spelling; reference to an Act or document that has a name change; change in description of land).

Commencement:

- Land Code comes in effect after successful ratification vote and certification by Verifier.

* Funding provided:

- Transitional \$75k for years 1 and 2
- Operating \$200k per yr. for 5 yrs.

