
BRIEFING NOTE

To: LMTAC Board Members
From: LMTAC Staff
Report Date: May 30th, 2011
Subject: The First Nations Land Management Act and First Nation Land Codes

ISSUE

Members' Rejection of Squamish Nation Land Code

- On April 13th, LMTAC Staff distributed a newspaper article titled *Squamish Nation land-use measure rejected*. The article indicated that nearly 60% of Squamish Nation membership had rejected the land code proposed by the Band Council in a vote that took place on April 7th and 8th.
- At the April 13th LMTAC Executive Committee meeting, the article was further discussed and staff were directed to prepare a briefing note on First Nation land codes and the *First Nations Land Management Act* (FNLMA).

BACKGROUND

The First Nations Land Management Act (FNLMA)

- The *First Nations Land Management Act* (FNLMA) was signed into federal law in **1999**. The Act ratified the *Framework Agreement on First Nations Land Management*, providing the 14 signatory First Nations with the ability to make laws with regard to reserve lands, resources, and the environment.
- Of the original 14 signatory First Nations, five were in British Columbia, including: Lheidli T'enneh; Musqueam; Squamish; N'Quatqua; and Westbank.
- In 2003, an additional 19 First Nations signed onto the agreement including 10 in British Columbia.
- Currently there are 58 First Nations signed onto the agreement, with 28 being in British Columbia.¹
- Being signed onto the agreement does not make it immediately take effect.

The FNLMA Process and Land Code

- Signatory First Nations must develop their own land codes, enter into an *Individual Transfer Agreement* (ITA) with Canada, draft a community ratification process, and hold a community vote on both the land code and the funding agreement. The average time to draft and ratify a land code is 1,068 days.
- The FNLMA allows First Nations to develop more locally sensitive and efficient land codes that mitigate the economic drag associated with the *Indian Act*, which imposes significant transaction costs upon on-reserve economic development and investment.

¹ While the Tsawwassen First Nation is counted in this total, as a treaty nation its land administration authorities fall under its treaty.

- The land code is the First Nation's land law that will replace the land management practices as defined in the *Indian Act*. While First Nations can enter into an ITA prior to ratifying a land code, the agreement would not take effect until the land code has been ratified. The land code does not require approval from the *Minister of Indian and Northern Affairs*.
- **The land code identifies the following:**
 - Reserve lands to be managed;
 - Rules and procedures for use and occupation of the lands;
 - Financial accountability for revenues from the lands;
 - Process to develop rules and procedures with regard to Matrimonial Property issues;
 - Dispute resolution process;
 - Delegation of land management responsibilities; and
 - Amendment procedures.
- The FNLMA does not become effective until a land code has been ratified by the community and an ITA has been signed. Thirty-three First Nations currently have a land code implemented in Canada, with 20 being in BC.² In the Lower Mainland, the *Tsleil-Waututh First Nation* and *Matsqui First Nation* have land codes in place.

OVERVIEW

What Does the FNLMA Do?

- The FNLMA is designed to allow First Nations to opt out of the land management provisions of the *Indian Act* to develop their own land codes for administering their lands according to their own rules.
- The FNLMA effectively removes participating First Nations from the *Indian Act* with regard to land management activities. The participating First Nation is given the ability to control the day-to-day administration of reserve lands and resources, including the right to legislate with regard to those lands and resources. First Nations become the sole administrators of lands on their reserves.
- The authority of First Nations over land and resources is comprehensive, with the exception of oil and gas, fisheries, and migratory birds which do not fall under the resources to be managed.
- The Act also addresses the issue of *Matrimonial Real Property*. Under the *Indian Act*, there were no mechanisms with regard to dividing property upon the breakdown of marriage. The Act requires that First Nations undertaking implementation develop procedures to deal with these issues.
- Under the Act, participating First Nations are also given expropriation powers regarding their land. The specific expropriation powers vary by individual land code, however, in general First Nations are allowed to expropriate interests on their land in order to use it for community purposes.
- The main advantage of operating under the FNLMA is that it provides more convenience, efficiency, and independence for First Nations as they can make land administration decisions themselves. Reducing the transaction costs and time involved in operating via INAC can attract potential developers.
- The FNLMA was designed as an interim measure designed to increase the decision making capacity of First Nations as they move towards self-government.

IMPLICATIONS

- First Nations do not require the FNLMA to pursue projects under FNCIDA/FNCLTA.
- First Nations operating under the *Indian Act* can pursue any development project, including those under FNCIDA & FNCLTA. However, First Nations operating outside of the FNLMA require INAC to sign off on any land management issues.
- As First Nations under the FNLMA have direct control over their land administration, the Act does bring up the need to strengthen communication between First Nations and local governments on land activities, especially in an urban context.
- First Nations may decide not to pursue the FNLMA, or reject a proposed land code, for many reasons. Band Councils that do not have on-reserve development aspirations may not believe the

² www.fafnlm.com

FNLMA is worthwhile, or they may not believe they have sufficient financial and staff capacity as well as technical knowledge to properly manage land administration on their own.

- Members may reject proposed land codes because they prefer that INAC maintains control over land matters, rather than giving the expanded authority to the Band Council.

Further Reading

- For further information on the FNLMA, Land Codes and Land Management options for First Nations, the following document is available from LMTAC staff upon request.
 - *Information on the First Nations Land Management Initiative for Local Governments*, UBCM, January 2004.

BC First Nations Signed on to FNLMA

First Nation	Operational Land Code
Tsawout	Y
Lheidli T'enneh	Y
Westbank ¹	Y
Beecher Bay	Y
Tsekani (Mcleod Lake)	Y
Ts'kw'aylaxw (Pavilion)	Y
Sliammon	Y
Tsawwassen ²	Y
Kitselas	Y
T'sou-ke	Y
Shxwha:y Village	Y
Squiala	Y
Tsliel-Waututh	Y
Matsqui	Y
Tzeachten	Y
Leq' a: mel	Y
Seabird Island	Y
We Wai Kai (Cape Mudge)	Y
Skawahlook	Y
Sumas	Y
Musqueam	N
We Wai Kum (Campbell River)	N
Snaw Naw As (Nanoose)	N
Songhees	N
Skeetchestn	N
Osoyoos	N
Cowichan	N
N'Quatqua	N
Squamish	N

Recent First Nation Legislation

Year	Legislation	Powers	Property Right	Participating First Nations
2003	FN GST Act	First Nations have the authority to collect GST from goods sold on reserves	Payment and administration of GST on FN lands same as rest of Canada	37 First Nations
1999	FNLMA (FN Land Management Act)	Land management and processes; land use; possession of land; conservation and protection of lands; land registry Land Codes	Clear land-use laws and procedures similar to local governments. Creates a deeds type land registry system similar to some provinces. Facilitators long-term tenure but does not create indefeasible title	58 First Nations
2005	FSMA (FN Fiscal and Statistical Management Act)	Property tax; local improvement taxes; tax for provision of services; development cost charges; taxes on business activities; long term borrowing; financial management; local services; taxpayer representation	Similar revenue laws and standards to local governments. Local services comparative to relevant regional standard. Tools and rules for financing infrastructure similar to local governments in BC	54 First Nations
2006	FNCIDA (FN Commercial & Industrial Development Act)	Property transfer tax; strata title act	Identical to BC power and rules	3 First Nations

Source: *Beyond the Indian Act: Restoring Aboriginal Property Rights* by Tom Flanagan, Christopher Alcantara, & Andre Le Dressay (2010)