

General Note: *Some reference to the BC Treaty Process needed. Of the 82 treaty negotiations across Canada involving aboriginal self-government, 52 are in B.C. This includes all five B.C. First Nation signatories to the Framework Agreement. When treaties are finalized first nation land will lose its reserve status and therefore land codes made under this proposed legislation would no longer have any force and effect. In this sense land codes under this legislation, at least in B.C., can be viewed as interim measures. Links to the treaty process must therefore be clarified.*

1st Session, 36th Parliament,
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The House of Commons of Canada

BILL C-49

**PROPOSED
AMENDMENTS
(this column only)**

Preamble	<p>An Act providing for the ratification and the bringing into effect of the Framework Agreement on First Nation Land Management</p> <p>WHEREAS Her Majesty in right of Canada and a specific group of first nations concluded the Framework Agreement on First Nation Land Management on February 12, 1996 in relation to the management by those first nations of their lands; AND WHEREAS the ratification of the Agreement by Her Majesty requires the enactment of an Act of Parliament;</p> <p>NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>
Short title	<p>1. This Act may be cited as the <i>First Nations Land Management Act</i>.</p>
Definitions	<p>2. (1) The definitions in this subsection apply in this Act.</p>
``council" « conseil »	<p>``council", in relation to a first nation, has the same meaning as the expression ``council of the band" in subsection 2(1) of the <i>Indian Act</i>.</p>
``eligible voter" « électeur »	<p>``eligible voter" means a first nation member who is eligible to vote under subsection 10(2).</p>
``first nation" « première nation »	<p>``first nation" means a band named in the schedule.</p>
``first nation land"	<p>``first nation land" means reserve land to which a land code applies and includes all the interests in and</p>

« terres de la première nation »	resources of the land that are within the legislative authority of Parliament.
``first nation law" « texte législatif »	``first nation law" means a law referred to in section 20.
``first nation member" « membre de la première nation »	``first nation member" means a person whose name appears on the band list of a first nation or who is entitled to have their name appear on that list.
``Framework Agreement" « accord-cadre »	``Framework Agreement" means the Framework Agreement on First Nation Land Management concluded between Her Majesty in right of Canada and the first nations on February 12, 1996, and includes any amendments to the Agreement made pursuant to its provisions.
``individual agreement" « accord spécifique »	``individual agreement" means an agreement with a first nation entered into under subsection 6(3).
``interest" « intérêts »	``interest", in relation to first nation land, means any estate, right or interest of any nature in or to the land but does not include title to the land.
``land code" « code foncier »	``land code" means a land code of a first nation referred to in subsection 6(1).
``licence" « permis »	``licence", in relation to first nation land, means any right of use or occupation of the land other than an interest in that land.
``Minister" « ministre »	``Minister" means the Minister of Indian Affairs and Northern Development.
``project" « projet d'exploitation »	``project" has the same meaning as in subsection 2(1) of the <i>Canadian Environmental Assessment Act</i> .
Words and expressions in <i>Indian Act</i>	(2) Unless the context otherwise requires, words and expressions used in this Act have the same meaning as in the <i>Indian Act</i> .
Not land claims agreement	(3) For greater certainty, neither the Framework Agreement nor this Act is a land claims agreement referred to in section 35 of the <i>Constitution Act, 1982</i> .
Binding on Her Majesty	3. This Act is binding on Her Majesty in right of

Majesty	Canada and any reference in this Act to Her Majesty means Her Majesty in right of Canada.
Ratification and effect	4. (1) The Framework Agreement is hereby ratified and brought into effect in accordance with its provisions.
Deposit of copies	(2) The Minister shall cause a copy of the Framework Agreement and of any amendment made to the Agreement, certified by the Minister to be a true copy, to be deposited in the library of the Department of Indian Affairs and Northern Development situated in the National Capital Region and in such regional offices of that Department and other places as the Minister considers advisable.
Title to first nation land	5. For greater certainty, except for first nation land exchanged in accordance with section 27, (a) title to first nation land is not affected by the Framework Agreement or this Act; (b) first nation land continues to be set apart for the use and benefit of the first nation for which it was set apart; and (c) first nation land continues to be land reserved for the Indians within the meaning of Class 24 of section 91 of the <i>Constitution Act, 1867</i> .
Adoption of land code	6. (1) A first nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the first nation, which land code must include the following matters: (a) a legal description of the land that will be subject to the land code; (b) the general rules and procedures applicable to the use and occupancy of first nation land, including use and occupancy under (i) licences and leases, and (ii) interests in first nation land held pursuant to allotments under subsection 20(1) of the <i>Indian Act</i> or pursuant to the custom of the first nation; (c) the procedures that apply to the transfer, by testamentary disposition or succession, of any interest in first nation land; (d) the general rules and procedures respecting revenues from natural resources obtained from first nation land;

(e) the requirements for accountability to first nation members for the management of first nation land and moneys derived from first nation land;

(f) a community consultation process for the development of general rules and procedures respecting, in cases of breakdown of marriage, the use, occupation and possession of first nation land and the division of interests in first nation land;

(g) the rules that apply to the enactment and publication of first nation laws;

(h) the rules that apply to conflicts of interest in the management of first nation land;

(i) the establishment or identification of a forum for the resolution of disputes in relation to interests in first nation land;

(j) the general rules and procedures that apply in respect of the granting or expropriation by the first nation of interests in first nation land;

Comments:

1. See comments under s. 36(2).

2. The Bill contains no requirement for mechanisms to address and resolve disputes between adjacent jurisdictions in respect of land use and in respect of the servicing, infrastructure, fiscal, and planning issues that are connected to land use.

The Framework Agreement requires a mechanism to resolve disputes over compensation paid by a first nation when it expropriates an interest in the first nation's land. The obvious place for such a mechanism to be established is in s. 6(1)(j). We would therefore suggest the following amendment to more fully implement the Framework Agreement:

Suggested Amendment

	<p>(j) the general rules and procedures that apply in respect of the granting or expropriation by the first nation of interests in first nation land, including the establishment of a mechanism to resolve disputes over compensation for expropriation;</p> <p>See also our comments under section 28.</p>
	<p>(k) the general rules and procedures for the delegation, by the council of the first nation, of its authority to manage first nation land;</p> <p>(l) the procedures that apply to an approval of an exchange of first nation land; and</p> <p>(m) the procedures for amending the land code.</p>
	<p>See our suggested additional s. 20(5) relating to a consultation process with respect to land use and subdivision approvals. In our opinion this addition is not inconsistent with the Framework Agreement.</p> <p><u>Suggested Amendment:</u> 6(1)(n) mechanism for dealing with disputes between adjacent jurisdictions in respect of land use and in respect of the servicing, infrastructure, fiscal, and planning issues that are connected to land use.</p>
Land management regime	<p>(2) For greater certainty, if more than one reserve has been set apart for the use and benefit of a first nation, the first nation may establish a land management regime for any or all of its reserves.</p>
Individual agreement	<p>(3) A first nation that wishes to establish a land management regime shall, in accordance with the</p>

	<p>Framework Agreement, enter into an individual agreement with the Minister describing the land that will be subject to the land code and providing for</p> <ul style="list-style-type: none">(a) the terms of the transfer of administration of that land;(b) a description of the interests and licences that have been granted by Her Majesty in or in relation to that land, and the date and other terms of the transfer to the first nation of Her Majesty's rights and obligations as grantor of those interests and licences;(c) the environmental assessment process that will apply to projects on that land until the enactment of first nation laws in relation to that subject; and(d) any other relevant matter.
Excluded land	<p>7. (1) Notwithstanding subsection 6(1), a portion of a reserve may be excluded from the application of a land code if it has been surveyed under Part II of the <i>Canada Lands Surveys Act</i> and if</p> <ul style="list-style-type: none">(a) it is in an environmentally unsound condition that cannot be remedied by measures that are technically and financially feasible before the date that the land code is to be submitted for community approval under subsection 10(1);(b) it is the subject of litigation that is unlikely to be resolved before the date referred to in paragraph (a);(c) it is uninhabitable or unusable as a result of a natural disaster; or(d) the first nation and the Minister agree that, for any other reason, its exclusion is justifiable.
Condition	<p>(2) A portion of a reserve may not be excluded from a land code if the exclusion would have the effect of placing the administration of a lease or other interest in land in more than one land management regime.</p>
Exclusion no longer valid	<p>(3) A first nation shall amend the legal description of first nation land in its land code to include a portion excluded under subsection (1) if the first nation and the Minister agree that the condition that justified the exclusion no longer exists, and the individual agreement shall be amended accordingly.</p>
Appointment of verifier	<p>8. (1) The Minister and a first nation shall jointly appoint a verifier, to be chosen from a list established</p>

in accordance with the Framework Agreement, who shall

- (a) determine whether a proposed land code and the proposed process for the approval of the land code and an individual agreement are in accordance with the Framework Agreement and this Act and, if they are in accordance, confirm them;
- (b) determine whether the conduct of a community approval process is in accordance with the process confirmed under paragraph (a); and
- (c) certify the validity of a land code that has been approved in accordance with the Framework Agreement and this Act.

Suggested Amendment:
8(d) determine that the adjacent local and regional governments have been notified of the band's intention to establish a land management regime in accordance with section 10(5).

Disputes (2) The verifier shall determine any dispute arising between a first nation and the Minister before a land code comes into force regarding the terms of the transfer of administration of land or the exclusion of a portion of a reserve from the application of a land code.

Notice of determination **9.** (1) The verifier shall, within thirty days after receiving a first nation's documents, as required by the Framework Agreement, make a determination under paragraph 8(1)(a) and give notice of the determination to the first nation and the Minister.

Reasons (2) If the verifier determines that a proposed land code or a proposed community approval process is not in accordance with the Framework Agreement or this Act, the verifier shall give written reasons to the first nation and the Minister.

Community Approval and Certification

Submission to members **10.** (1) If the verifier determines that a proposed land code and a proposed community approval process of a first nation are in accordance with the Framework

Eligibility to vote	Agreement and this Act, the council of the first nation may submit the proposed land code and the individual agreement to the first nation members for their approval. (2) Every person who is eighteen years of age or over and a first nation member, whether or not resident on the reserve of the first nation, is eligible to vote in the community approval process.	<u>Suggested Amendments:</u> 10(4) If other persons have an interest in the land that is to be subject to the proposed land code, the council shall, within at least 20 days before the vote, notify in writing those persons of the proposed land code, this Act and the date of the vote, and shall deliver to those persons to whom notification is given, a copy of the proposed land code. 10(5) The council shall, within at least 20 days before the vote, take appropriate measures to inform, in writing, the adjacent local and regional governments of the date of the vote.
Information to be provided	(3) The council shall, before proceeding to obtain community approval, take reasonable measures, such as those described in the Framework Agreement, to locate voters and inform them of their right to vote, the means of exercising that right and the content of the Framework Agreement, this Act, the proposed land code and the individual agreement.	In our opinion these additions to section 10 are not inconsistent with the Framework Agreement.
Third parties	(4) If other persons have an interest in the land that is to be subject to the proposed land code, the council shall, within a reasonable time before the vote, take appropriate measures to inform those persons of the proposed land code, this Act and the date of the vote.	

Publication of notice	11. (1) The verifier shall publish a notice of the date, time and place of a vote. (2) The verifier, and any assistants that the verifier may appoint, shall observe the conduct of a vote. (3) Within fifteen days after the conclusion of a vote, the verifier shall send to the first nation and the Minister the verifier's report on the conduct of the vote.
Role of the verifier	
Report	
Approval by members	12. (1) A proposed land code and an individual agreement that have been submitted for community approval are approved if (a) a majority of eligible voters participated in the vote and a majority of those voters voted to approve them; (b) all those eligible voters who signified, in a manner determined by the first nation, their intention to vote have been registered and a majority of the registered voters voted to approve them; or (c) they are approved by the community in any other manner agreed on by the first nation and the Minister. (2) Notwithstanding subsection (1), a proposed land code and an individual agreement are not approved unless more than twenty-five per cent of the eligible voters voted to approve them. (3) A council may, by resolution, increase the percentage of votes required under subsection (2).
Minimum participation	
Increased percentage	
Copy and declaration	13. (1) If a first nation votes to approve a land code and an individual agreement, its council shall, after the conclusion of the vote and without delay, send to the verifier a copy of the approved code and a declaration that the code and agreement were approved in accordance with section 12.
Report of irregularity	(2) The Minister or an eligible voter may, within five days after the conclusion of a vote, report any irregularity in the voting process to the verifier.
Certification	14. (1) The verifier shall, after receiving a copy of the land code and the declaration, certify the validity of the land code unless the verifier, after giving the first nation and the Minister a reasonable opportunity to make submissions on the matter but within ten days after the conclusion of the vote, is of the opinion that (a) the community approval process confirmed under paragraph 8(1)(a) was not followed or the

	community approval was otherwise irregular; and (b) the land code might not have been approved but for that irregularity.
Transmittal	(2) The verifier shall, without delay, send a copy of the certified land code to the first nation and the Minister.
Presumption	(3) A certified land code is deemed to have been validly approved by the first nation.
Coming into force	15. (1) A land code comes into force and has the force of law on the day it is certified or on any other later date that may be specified in or under the land code and judicial notice shall thereafter be taken of the land code in any proceedings.
Access to land code	(2) A copy of the land code of a first nation shall be maintained by the council for public inspection at a place designated by the council.
Effect	16. (1) After the coming into force of a land code, no interest in or licence in relation to first nation land may be acquired or granted except in accordance with the land code of the first nation.
Interests of third parties	(2) Subject to subsections (3) and (4), interests in and licences in relation to first nation land that exist on the coming into force of a land code continue in accordance with their terms and conditions.
Transfer of rights of Her Majesty	(3) On the coming into force of the land code of a first nation, the rights and obligations of Her Majesty as grantor in respect of the interests and licences described in the first nation's individual agreement are transferred to the first nation in accordance with that agreement.
Interests of first nation members	(4) Interests in first nation land held on the coming into force of a land code by first nation members pursuant to allotments under subsection 20(1) of the <i>Indian Act</i> or pursuant to the custom of the first nation are subject to the provisions of the land code governing the transfer and lease of interests in first nation land and sharing in natural resource revenues.
Obligation of first nation	17. (1) A first nation shall, in accordance with the Framework Agreement and following the community consultation process provided for in its land code, establish general rules and procedures, in cases of breakdown of marriage, respecting the use, occupation and possession of first nation land and the division of interests in first nation land.
Establish-	(2) The first nation shall, within twelve months after

ment of rules and procedures	its land code comes into force, incorporate the general rules and procedures into its land code or enact a first nation law containing the general rules and procedures.
Disputes	(3) The first nation or the Minister may refer any dispute relating to the establishment of the general rules and procedures to an arbitrator in accordance with the Framework Agreement.
Power to manage	18. (1) A first nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage first nation land and, in particular, may <ul style="list-style-type: none"> (a) exercise the powers, rights and privileges of an owner in relation to that land; (b) grant interests in and licences in relation to that land; (c) manage the natural resources of that land; and (d) receive and use all moneys acquired by or on behalf of the first nation under its land code.
Legal capacity	(2) For any purpose related to first nation land, a first nation has the legal capacity necessary to exercise its powers and perform its duties and functions and, in particular, may <ul style="list-style-type: none"> (a) acquire and hold real and personal property; (b) enter into contracts; (c) borrow money; (d) expend and invest money; and (e) be a party to legal proceedings.
Exercise of power	(3) The power of a first nation to manage first nation land shall be exercised by the council of a first nation, or by any person or body to whom a power is delegated by the council in accordance with the first nation's land code, and that power shall be exercised for the use and benefit of the first nation.
Management body	(4) A body established to manage first nation land is a legal entity having the capacity, rights, powers and privileges of a natural person.
Transfer of moneys	19. On the coming into force of the land code of a first nation, all revenue moneys collected, received or held by Her Majesty for the use and benefit of the first nation or its first nation members cease to be Indian moneys and shall be transferred to the first nation.
Power to enact laws	20. (1) The council of a first nation has, in accordance with its land code, the power to enact

	<p>laws respecting</p> <ul style="list-style-type: none">(a) interests in and licences in relation to first nation land;(b) the development, conservation, protection, management, use and possession of first nation land; and(c) any matter arising out of or ancillary to the exercise of that power.	<p>There should be a requirement here that first nations zoning laws afford to existing users of reserve land non-conformity protection equivalent to that provided by the laws of the province in which the first nation is situated. Otherwise, first nations wishing to terminate uses of their land by third parties that were authorized by Canada prior to transfer of land management to the first nation, would not have to expropriate them and pay compensation; they could simply prohibit them with zoning laws.</p> <p>This could not have been the intention of the parties to the Framework Agreement.</p>
Particular powers	<p>(2) Without restricting the generality of subsection (1), first nation laws may include laws respecting</p> <ul style="list-style-type: none">(a) the regulation, control or prohibition of land use and development including zoning and subdivision control;(b) subject to section 5, the creation, acquisition and granting of interests in and licences in relation to first nation land and prohibitions in relation thereto;(c) environmental assessment and environmental protection;(d) the provision of local services in relation to first nation land and the imposition of equitable user charges for those services; and	

	(e) the provision of services for the resolution of disputes in relation to first nation land.
Enforcement measures	(3) A first nation law may provide for enforcement measures, consistent with federal laws, such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.
Inconsistency	(4) In the event of any inconsistency or conflict between the land code of a first nation and the provisions of a first nation law or of a by-law made by its council under section 81 of the <i>Indian Act</i> , the land code prevails to the extent of the inconsistency or conflict.
Environmental protection	21. (1) Before enacting any first nation law respecting environmental protection, a first nation shall enter into an agreement with the Minister and the Minister of the Environment in relation to environmental protection in accordance with the Framework

Suggested Amendment:

20(5) A first nation law respecting the use or development of first nation land that provides for the granting by a first nation of authorizations to use or subdivide land, must provide for the notification of the governing body of any adjacent municipality and regional government of any proposed land use or subdivision authorization and an opportunity for that municipality or regional government to comment on the proposed authorization, if the laws of the province governing land use or subdivision authorizations by that adjoining municipality or regional government require notification of the first nation in equivalent circumstances.

Minimum standards	<p>Agreement.</p> <p>(2) For the purposes of an agreement entered into under subsection (1), the standards of environmental protection established by first nation laws and the punishments imposed for failure to meet those standards must be at least equivalent in their effect to any standards established and punishments imposed by the laws of the province in which the first nation land is situated.</p>
Environmental assessment	<p>(3) First nation laws respecting environmental assessment must provide for the establishment, in accordance with the Framework Agreement, of an environmental assessment process applicable to all projects carried out on first nation land that are approved, regulated, funded or undertaken by the first nation.</p>
Offences and punishment	<p>22. (1) A first nation law may create offences punishable on summary conviction and provide for the imposition of fines, imprisonment, restitution, community service and any other means for achieving compliance.</p>
Incorporation by reference	<p>(2) A first nation law may adopt or incorporate by reference the summary conviction procedures of Part XXVII of the <i>Criminal Code</i>, as amended from time to time.</p>
Prosecution	<p>(3) A first nation may, in relation to prosecutions of contraventions of first nation laws,</p> <ul style="list-style-type: none"> (a) retain its own prosecutors; (b) enter into an agreement with Her Majesty and a provincial government for the use of provincial prosecutors; or (c) enter into an agreement with Her Majesty for the use of agents engaged by Her Majesty.
Evidence	<p>23. In any proceedings, a copy of a first nation law appearing to be certified as a true copy by an officer of the first nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.</p>
Appointment of justices of the peace	<p>24. (1) A first nation or, if Her Majesty and the first nation have entered into an agreement for that purpose in accordance with the Framework Agreement, the Governor in Council, may appoint justices of the peace to ensure the enforcement of first nation laws including the adjudication of offences for contraventions of first nation laws.</p>

Judicial independence	(2) A justice of the peace appointed for a first nation shall have tenure and remuneration, and be subject to conditions of removal, that reflect the independence of the office of justice of the peace in the province in which the first nation land is situated.
Powers	(3) Justices of the peace have all the powers necessary for the performance of their duties and functions.
Appeals	(4) An appeal lies from a decision of a justice of the peace in the manner in which an appeal lies in summary conviction proceedings under Part XXVII of the <i>Criminal Code</i> and the provisions of that Part relating to appeals apply to appeals under this section.
Courts of a province	(5) If no justices of the peace are appointed for a first nation, its first nation laws shall be enforced through a court of competent jurisdiction of the province in which its first nation land is situated.
<u>First Nation Land Register</u>	
Establishment	25. (1) The Minister shall establish a register to be known as the First Nation Land Register.
Administration of Register	(2) The First Nation Land Register is to be administered, subject to this section, in the same manner as the Reserve Land Register established under the <i>Indian Act</i> .
Regulations	(3) The Governor in Council may, on the recommendation of the Minister and in accordance with the Framework Agreement, make regulations respecting the administration of the First Nation Land Register, the registration of interests in it and the recording of any other matter, including but not limited to regulations respecting <ul style="list-style-type: none">(a) the effects of registering interests, including priorities;(b) the payment of fees for the registration of interests and for any other service in relation to the Register;(c) the appointment, remuneration, powers, functions and duties of officers and employees who administer the Register; and(d) the keeping, by officers and employees, of documents that are not registrable.
Alienation of land	26. (1) First nation land may not be alienated except where it is exchanged for other land in accordance with the Framework Agreement and this Act.

Expropriation	(2) Interests in first nation land may not be expropriated except by Her Majesty or a first nation in accordance with the Framework Agreement and this Act.	
Restrictions on exchange	<p>27. (1) A first nation may exchange first nation land only if</p> <p>(a) compensation for the first nation land includes land that Her Majesty has agreed will be set apart as a reserve and that is to become first nation land; and</p> <p>(b) the Minister has approved the form of the exchange.</p>	
Additional compensation	(2) In addition to land referred to in subsection (1), other compensation may be provided including land that will not become first nation land.	
Terms and conditions	(3) An exchange of first nation land may be made subject to other terms and conditions.	
Community approval	(4) The exchange of first nation land must be approved by first nation members in accordance with the land code of the first nation and must be completed in accordance with the Framework Agreement.	
Expropriation by a first nation	28. (1) A first nation may, in accordance with the general rules and procedures contained in its land code, expropriate any interest in its first nation land that, in the opinion of its council, is necessary for community works or other first nation purposes.	It would not be inconsistent with the Framework Agreement for Bill C-49 to list "other first nation purposes" exhaustively, rather than expressing this category in exactly the same way it is expressed in the Framework Agreement.
Exception	(2) An interest in first nation land obtained under section 35 of the <i>Indian Act</i> or held by Her Majesty is not subject to expropriation by a first nation.	<p><u>Suggested Amendment:</u></p> <p>28(2) An interest in first nation land obtained under section 35 of the <i>Indian Act</i> or held by Her Majesty or by local or regional governments, is not subject to expropriation by a first nation.</p>
Effective date	(3) An expropriation takes effect from the day on which a notice of expropriation is registered in the First Nation Land Register or the thirtieth day after	

Effect of expropriation	<p>the day on which the notice is served on the person whose interest is expropriated, whichever is the earlier.</p> <p>(4) An expropriated interest becomes the property of the first nation free of any previous claim or encumbrance.</p>	<p>We suggest that the wording of section 28(5) be amended to more accurately reflect s. 17(4) of the Framework Agreement:</p>
Compensation	<p>(5) A first nation shall pay fair compensation to the holder of an expropriated interest and, in determining that compensation, the first nation shall take into account the rules set out in the <i>Expropriation Act</i>.</p>	<p><u>Suggested Amendment:</u> 28(5) A first nation shall pay fair compensation to the holder of an expropriated interest and, in determining that compensation, the rules for determining compensation set out in the <i>Expropriation Act</i> shall apply.</p>
Resolution of disputes	<p>(6) Any dispute concerning compensation shall be determined according to the system for the resolution of such disputes established by a first nation in accordance with the Framework Agreement.</p>	<p>We have suggested that land codes be required to contain the procedure for resolving disputes over compensation for expropriation, and we have suggested amending section 6(1)(j) to reflect this requirement. This would not be inconsistent with the Framework Agreement. However, it would be preferable from our perspective if Bill C-49 itself established the procedure.</p>
Expropriation by Her Majesty	<p>29. (1) An interest in first nation land may be expropriated by Her Majesty for the use of a federal department or agency and with the consent and by order of the Governor in Council.</p>	
Consent of	<p>(2) The Governor in Council may consent to an</p>	

Governor in Council	expropriation only if it is justifiable and necessary for a federal public purpose that serves the national interest.
Matters to be considered	<p>(3) The Governor in Council may consent to an expropriation only if the Governor in Council is satisfied that, in addition to any other legal requirements that may apply, the following requirements have been met:</p> <ul style="list-style-type: none"> (a) there is no other reasonably feasible alternative to the expropriation, such as the use of land that is not first nation land; (b) reasonable efforts have been made to acquire the interest through agreement with the first nation; (c) the most limited interest necessary is expropriated for the shortest time possible; and (d) information relevant to the expropriation is provided to the first nation.
Report to be made public	<p>(4) Before the Governor in Council consents to the expropriation, the department or agency referred to in subsection (1) shall provide to the first nation, and make available to the public, a report stating the justifications for the expropriation and describing the steps taken to satisfy the requirements of subsection (3).</p>
Disputes	<p>(5) If a first nation objects to a proposed expropriation, it may, within sixty days after the report has been made public, refer the matter to a neutral evaluator in accordance with the Framework Agreement.</p>
Time of consent	<p>(6) The Governor in Council may not consent to the expropriation before the expiration of the period referred to in subsection (5) or, if the first nation has referred the matter to a neutral evaluator, before the neutral evaluator has reported on the matter.</p>
Partial expropriation	<p>30. If less than the full interest of a first nation in first nation land is expropriated by Her Majesty,</p> <ul style="list-style-type: none"> (a) the land in which an interest is expropriated continues to be first nation land and subject to the provisions of the land code and first nation laws that are not inconsistent with the expropriation; and (b) the first nation continues to have the right to use and occupy that land except to the extent that the use and occupation is inconsistent with the

Compensation	<p>expropriation.</p> <p>31. (1) Where an interest in first nation land is expropriated by Her Majesty, compensation shall be provided to the first nation consisting of</p> <ul style="list-style-type: none">(a) land that, when accepted by that first nation, will become first nation land; and(b) any additional compensation required to achieve the total compensation determined under subsection (3).
Land of a lesser area	<p>(2) Land provided to a first nation as compensation may be of an area that is less than the area of the land in which an interest has been expropriated if the total area of the land comprised in a reserve of the first nation is not less following the expropriation than at the coming into force of its land code.</p>
Determination of compensation	<p>(3) The total compensation shall be determined taking into account the following factors:</p> <ul style="list-style-type: none">(a) the market value of the expropriated interest or of the land in which an interest has been expropriated;(b) the replacement value of any improvement to the land;(c) any expenses or losses resulting from a disturbance attributable to the expropriation;(d) any reduction in the value of any interest in first nation land that is not expropriated;(e) any adverse effect on any cultural or other special value of the land to the first nation; and(f) the value of any special economic advantage arising out of or incidental to the occupation or use of the land to the extent that that value is not otherwise compensated.
Interest	<p>(4) Interest is payable on compensation from the effective date of an expropriation at the prejudgment interest rate that is paid in civil proceedings in the superior court of the province in which the land is situated.</p>
Dispute	<p>(5) If an agreement on compensation cannot be reached, the first nation or the expropriating department or agency may refer the matter to an arbitrator in accordance with the Framework Agreement.</p>
Limit	<p>(6) Any claim or encumbrance in respect of an interest expropriated by Her Majesty may only be</p>

	made or discharged against the compensation paid under this section.
Restitution	32. (1) An interest in first nation land expropriated by Her Majesty that is no longer required for the purpose for which it was expropriated shall revert to the first nation and, if the full interest of the first nation was expropriated, it shall be returned to the first nation in accordance with terms and conditions negotiated by the first nation and the expropriating department or agency.
Improvements	(2) When an interest reverts or is returned to a first nation, the minister responsible for the expropriating department or agency shall determine the disposition of any improvements made to the land.
Dispute	(3) If the first nation and the expropriating department or agency cannot agree on the terms and conditions of the return of the full interest, the first nation or the department or agency may, in accordance with the Framework Agreement, refer the matter to an arbitrator.
<i>Expropriation Act</i>	33. Without limiting the generality of section 37, in the event of any inconsistency or conflict between this Act and the <i>Expropriation Act</i> in relation to the expropriation of interests in first nation land by Her Majesty, this Act prevails to the extent of the inconsistency or conflict.
First nation not liable	34. (1) A first nation is not liable in respect of anything done or omitted to be done before the coming into force of its land code by Her Majesty or any person or body authorized by Her Majesty to act in relation to first nation land.
Indemnification of first nation	(2) Her Majesty shall indemnify a first nation for any loss suffered by the first nation as a result of an act or omission described in subsection (1).
Her Majesty not liable	(3) Her Majesty is not liable in respect of anything done or omitted to be done after the coming into force of the land code of a first nation by the first nation or any person or body authorized by the first nation to act in relation to first nation land.
Indemnification of Her Majesty	(4) The first nation shall indemnify Her Majesty for any loss suffered by Her Majesty as a result of an act or omission described in subsection (3).
Immunity	35. No criminal or civil proceedings lie against an arbitrator, mediator, neutral evaluator or verifier appointed under the Framework Agreement or this

Determinations final	<p>Act or any member of a board established by section 38 of the Framework Agreement who is, in good faith, exercising a power or performing a duty or function in accordance with the Framework Agreement or this Act for anything done or omitted to be done during the course of the exercise or purported exercise of any power or the performance or purported performance of any duty or function of that person in accordance with the Framework Agreement or this Act.</p> <p>36. (1) Every determination under this Act or the Framework Agreement by a verifier or arbitrator is final, and no order shall be made, process entered or proceedings taken in any court, whether by way of injunction, <i>certiorari</i>, prohibition, <i>mandamus</i>, <i>quo warranto</i> or otherwise, to question, review or prohibit such a determination.</p>	
Actions final	<p>(2) No order shall be made, process entered or proceedings taken in any court, whether by way of injunction, <i>certiorari</i>, prohibition, <i>mandamus</i>, <i>quo warranto</i> or otherwise, to question, review or prohibit any other action under this Act or the Framework Agreement by a verifier or arbitrator or any action under the Framework Agreement by a neutral evaluator.</p>	<p>We would like the federal government's assurance that the reference to an arbitrator in this privative clause will not apply to the decisions of any arbitrators appointed under the authority of s. 6(1)(i). Such an assurance would not be inconsistent with the Framework Agreement. We are concerned that it be unambiguously stated that the establishment of a "dispute resolution forum" does not deprive persons with interest in first nation lands from the full scope of judicial review.</p>

Suggested Amendment:

If the government cannot or will not give this assurance, we suggest that this privative clause be amended by adding the words "**under Section 17(3)**" after the word

		“arbitrator.”
Review by Federal Court	(3) Notwithstanding subsections (1) and (2), the Attorney General of Canada or anyone directly affected by the matter in respect of which relief is sought may make an application under the <i>Federal Court Act</i> on any of the grounds referred to in paragraph 18.1(4)(a) or (b) of that Act for any relief against a verifier, arbitrator or neutral evaluator by way of an injunction or declaration or by way of an order in the nature of <i>certiorari</i> , prohibition, <i>mandamus</i> or <i>quo warranto</i> .	
Other Acts	37. In the event of any inconsistency or conflict between this Act and any other federal law, this Act prevails to the extent of the inconsistency or conflict.	
<i>Indian Act</i>	38. (1) On the coming into force of the land code of a first nation, the following cease to apply to the first nation, first nation members and first nation land: <ul style="list-style-type: none"> (a) sections 18 to 20, 22 to 28, 30 to 35, 37 to 41 and 49, subsection 50(4) and sections 53 to 60, 66, 69, 71 and 93 of the <i>Indian Act</i>; (b) any regulations made under section 57 of that Act; and (c) to the extent of any inconsistency or conflict with the Framework Agreement, the land code or first nation laws, any regulations made under sections 42 and 73 of that Act. 	
Leasehold interests	(2) Subsection 89(1.1) of the <i>Indian Act</i> continues to apply to leasehold interests in any first nation land that was designated land on the coming into force of a first nation's land code.	
Application	(3) A land code may extend the application of subsection 89(1.1) of the <i>Indian Act</i> , or any portion of it, to other leasehold interests in first nation land.	
<i>Indian Oil and Gas Act</i>	39. (1) The <i>Indian Oil and Gas Act</i> <ul style="list-style-type: none"> (a) continues to apply in respect of any first nation land that was subject to that Act on the coming into force of the land code of a first nation; and (b) applies in respect of an interest in first nation land that is granted to Her Majesty for the exploitation of oil and gas pursuant to a land code. 	
Royalties	(2) For greater certainty, the provisions of the <i>Indian</i>	

Environmental laws

Oil and Gas Act respecting the payment of royalties to Her Majesty in trust for a first nation apply, notwithstanding any other provision of this Act, in respect of first nation land referred to in subsection (1).

40. (1) For greater certainty, in the event of any inconsistency or conflict between a land code or a first nation law and any federal law that relates to environmental protection, the federal law prevails to the extent of the inconsistency or conflict.

If a provincial law established a standard that was higher than that established in a federal law, compliance by a first nation with s.21(2) would be pointless because under s. 40 the lower federal standard would apply. This drafting oversight should be corrected. We suggest the following wording for s.40:

Suggested Amendment:

40(1) For greater certainty, in the event of any inconsistency or conflict between a land code or a first nation law and any federal law that relates to environmental protection, the federal law prevails to the extent of the inconsistency or conflict, **except that a first nation law establishing standards of environmental protection or punishments for failure to meet those standards that are higher or more onerous than the standards established in a federal law prevails over that federal law.**

Migratory birds, endangered species, fisheries

(2) For greater certainty, this Act does not extend or limit any right or power in relation to migratory birds, endangered species or fisheries.

Canadian Environmental Assessment Act	41. Section 10 of the <i>Canadian Environmental Assessment Act</i> does not apply to a project carried out on first nation land.
Emergencies Act	42. The <i>Emergencies Act</i> continues to apply to first nation land except that any appropriation, requisition or use of first nation land required under that Act must be expressly authorized by order of the Governor in Council.
Atomic Energy Control Act	43. (1) Subject to subsection (2), nothing in this Act limits the application of the <i>Atomic Energy Control Act</i> to first nation land.
Expropriation provisions	(2) In the event of any inconsistency or conflict between the provisions of this Act relating to expropriation and the <i>Atomic Energy Control Act</i> , the provisions of this Act prevail to the extent of the inconsistency or conflict.
Non-application of Statutory Instruments Act	44. The <i>Statutory Instruments Act</i> does not apply in respect of a land code or first nation laws.
AMENDMENT OF SCHEDULE	
Addition of band to schedule	45. The Governor in Council may, by order, add the name of a band to the schedule if the Governor in Council is satisfied that the signing of the Framework Agreement on behalf of the band has been duly authorized and that the Framework Agreement has been so signed.
Validity	46. (1) Any action taken or determination or decision made under the Framework Agreement before the coming into force of sections 6 to 14, 35 and 36 is deemed, to the extent that it would have been valid under those sections, to have been validly taken or made under this Act.
Coming into force of land code	(2) Notwithstanding subsection (1), a land code may not come into force before the coming into force of this section.
1997, c. 9	47. On the later of the coming into force of section 43 and the coming into force of the <i>Nuclear Safety and Control Act</i>, section 43 of this Act is replaced by the following:
Acts respecting nuclear energy	43. (1) Subject to subsection (2), nothing in this Act limits the application of the <i>Nuclear Safety and Control Act</i> and the <i>Nuclear Energy Act</i> to first

Expropria- tion provisions	nation lands. (2) In the event of any inconsistency or conflict between the provisions of this Act relating to expropriation and the <i>Nuclear Energy Act</i> , the provisions of this Act prevail to the extent of the inconsistency or conflict.
Order of Governor in Council	48. Section 45 comes into force on a day to be fixed by order of the Governor in Council after the completion of a review of the Framework Agreement in accordance with its provisions and any consultations that the Governor in Council may require.