

As long as the sun shines, rivers flow and grass grows...



Welcome to our third issue!

Welcome to the third issue of Long Plain's land code newsletter. This is to help Long Plain Band members learn more about an upcoming opportunity for our community to move forward with self-government for our lands and resources. This issue we will focus on the misconceptions many people have

about the land code. You may have received our second community newsletter at one of our 3 information sessions that occur in the month of October. If you would like a copy of our first and second issues please visit our website: www.longplainlandcode.com



Special points of interest:

- Land Code Overview
- Framework Agreement is NOT a Private Ownership Act
- Overview of Framework Agreement

Land Code Overview

The Land Code, drafted by the Lands Committee, under the Framework Agreement on Land Management, sets out the principles, guidelines and processes by which Long Plain will exercise control and management over reserve lands and resources consistent with the Framework Agreement.

If the Land Code is approved by the Membership the lands and resources will no longer be managed by the Minister of Indian Affairs under the

Indian Act.

The Land Code does not abrogate or derogate from any Aboriginal, Treaty or other rights or freedoms that pertain to the Long Plain First Nation or its Members.

Framework Agreement is NOT a Private Ownership Act

The Framework Agreement on First Nation Land Management is completely different from a recently *proposed* First Nation Private Ownership Act. The Framework Agreement ratified by the **First Nation Land Management Act** was and still is a First Nation driven initiative.

Conservative economists have been proposing different ways to enable First Nation people to join the Canadian Economy. Recently, a First Nation Private Ownership Act has been proposed however it does not consider the nation status of indigenous people. Some political scientist see the proposal as a very nega-

tive way to begin privatization of reserve lands.

LPFN Council, and staff would never become involved in a process that could negatively affect the reserve land base, nor would LPFN citizens allow this to occur.



Long Plain Land Code Newsletter

Overview of Framework Agreement in Relation to Key Issues

Treaty Relationship

Currently, as a signatory to Treaty 1 Long Plain First Nation has treaty rights that are derived from the fact that a treaty was entered into (ie: international relations, prior occupation of lands, self determination).

The Framework Agreement respects the Treaty relationship:

Section 1.3 states:

“This Agreement is not a treaty and shall not be considered to be a treaty within the meaning of section

35 of the Constitution Act, 1982.”

Existing treaty and aboriginal rights are protected by section 35 of the Constitution Act 1982 and will not be affected.

Inherent Rights

Currently, Long Plain First Nation has inherent rights that exist from the operation of customary international law and UN Conventions that are binding on Canada.

The Framework Agreement states in section 1.6:

“This Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands

or resources or to preclude other negotiations in respect of those rights.”

Clearly the Framework Agreement will not eliminate or reduce inherent rights of Long Plain First Nation.

Special Relationship

Currently, Long Plain First Nation has a special relationship with the Crown, which flows from the prior occupation of lands and the historical development of Canada.

The Framework Agreement states in section 1.4:

“The Parties acknowledge that the Crown’s special relationship with the First Nations will continue.”

It is made very clear that the Framework Agreement will not change the special relationship; it will continue as usual.

Reserve Lands

a. title

Currently, Long Plain First Nation lands are held by Canada for the use and benefit of Long Plain First Nation. Title is held by Canada.

This will not change because the Framework Agreement states in section 13.1:

“Title to First Nation land is not changed when a First Nation’s land code takes effect.”

If Long Plain members approve the Land Code section 4.2 clearly re-states title will not change:

4.2 “Any reserve, title to

which is vested in Canada, and managed by a First Nation under a Land Code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.”

The authority to manage lands and resources is inherent from the Creator to the Members and from Members to the Chief & Council.



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Overview of Framework Agreement in Relation to Key Issues

Reserve Lands Cont.....

b. "reserve"

Currently Long Plain lands are lands reserved for Indians within the meaning of section 91 (24) of the Constitution Act, 1867.

This will not change because the Framework Agreement states in section 2.3:

"The Parties agree that First Nation lands are lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867."

If Long Plain members approve the Land Code section 4.1 clearly re-states reserve status will not change:

4.1 "Any reserve managed by a First Nation under a land code, will continue to be a reserve within the meaning of the Indian Act."

c. "sale and exchange of reserve land"

Currently Long Plain land is not alienable which means that the Band and individual band members cannot sell reserve lands. Under the Indian Act Long Plain reserve land can only be surrendered to the Crown. Currently, Long Plain

could exchange land for land. Currently Long Plain Reserve lands can be designated for leasing.

The Framework Agreement is intended to give First Nations more land management power and control but not to sell their own land.

The Framework Agreement states in section 13.2:

13.2 "The Parties declare that it is of fundamental importance to maintain the amount and integrity of First Nation land."

Furthermore section 13.3 says:

13.3 First Nation land will not be sold, exchanged, conveyed or transferred, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

Rules are set out to make sure that a proposed exchange is fair and does not decrease the overall size of Long Plain reserve lands. (Sections in Framework Agreement;)

Rules are set out to make sure there is fair compensation for lands including replacing lands instead of just paying for value of expropriated lands.

(Sections in Framework Agreement)

d. exempt from seizure

Currently, under the Indian Act section 29 and 89 reserve lands cannot be seized due to non-payment of loans and other debt.

This will not change because section of the Framework Agreement states:

"The Parties confirm that section 29 and subsection 89(1) and (2) of the Indian Act will continue to apply to any reserve that is First Nation land."

The exemption from seizure includes lands that Long Plain has designated as lands for leasing.

The Framework clearly states this in section 15.2:

"15.2 Subsection 89 (1.1) of the Indian Act will continue to apply to all leasehold interests or leases that existed when the land code took effect if the First Nation land was designated land at that time."

"Any reserve managed by a First Nation under a land code, will continue to be a reserve within the meaning of the Indian Act."





Currently under the Indian Act section 87 the real and personal property of an Indian are exempt from taxation.

The tax exemption will continue as stated in section 15.4 of the Framework Agreement:

“15.4 The Parties confirm that section 87 of the Indian Act continues to apply to First Nation land, so that

(a) the interest of an Indian or a First

Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the Indian Act; and

(b) the personal property or the movables of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.”

[A First Nation will be able to pass a tax by-law under section 83 of the Indian Act if it chooses to do so.]

Expropriation for Public Purpose

Canada has been described in a 1959 court case *Grayson v. R.* as one of the most arbitrary jurisdictions of land expropriation in the developed world. Reserve lands were more arbitrarily treated since many times First Nation lands were not returned once the reason for the expropriation expired.

Since Indian Reserve lands are a federal responsibility, provincial expropriation legislation does not apply directly to Indian Reserve lands. Nevertheless, under section 35 of the *Indian Act*, if Canada is willing to allow a proposed use of Indian Reserve lands for public purposes, Canada can consent to the proposed taking or grant whatever interest is reasonably required, by the expropriating provincial authority.

The Framework Agreement restricts expropriation by Canada in section 32:

“32.1 In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that

First Nation lands will not be subject to expropriation.”

“32.2 Despite the general principle against expropriation, First Nation land may be expropriated by Canada

(a) only with the consent of the Governor in Council, and

(b) only by and for the use of a federal department of agency.”

If Long Plain ratifies the Land Code the province of Manitoba will no longer be able to expropriate Long Plain reserve lands.

Furthermore the threshold for expropriation by Canada has been increased from for a “public purpose” to the following:

“32.3 The Governor in Council will only consent to an expropriation of First Nation land if the expropriation is justifiable and necessary for a federal public purpose that serves the national interest”.

Under a land code Canada’s ability

to expropriate will be more restricted and limited than under the *Indian Act*.

There will also be less risk of losing land since:

33.2 The compensation will include alternate land of equal or greater size or of comparable value. If the alternate land is of less than comparable value, then additional compensation will be provided. The alternate land may be smaller than the land being expropriated only if that does not result in the First Nation having less land area than when its land code took effect.

Furthermore the land retains its status a First Nation land, remains subject to the land code and Long Plain can continue to occupy the land for uses consistent with the expropriation (Section 34.1). Finally, when the land is not longer needed for the expropriation it can be returned to Long Plain.

