



Land Code Questions & Answers

Below are questions and answers that have come in from our community members over the past few weeks. Keep them coming...

How are First Nations taking control of reserve lands and resources?

A First Nation signatory to the Framework Agreement on First Nations Land Management exercises its land management authorities by:

- creating its own Land Code,
- entering into an Individual Agreement with Canada;
- establishing a community ratification process; and
- conducting a community vote to approve the Land Code and Individual Agreement.

What is the Kitsumkalum Land Code?

If approved, the Kitsumkalum Land Code becomes the basic land law of Kitsumkalum and replaces only the land management related provisions of the Indian Act.

During 2016 to 2019, the Kitsumkalum Land Code was prepared by the Kitsumkalum Land Management Committee with support from staff, legal counsel, and the First Nations Land Management Resource Centre.

The Kitsumkalum Land Code deals with the following matters:

- Identifies the reserve lands under the Kitsumkalum Land Code;
- The general rules and procedures for the use and occupation of these by members and others;
- Financial accountability for revenues from the lands (except oil and gas revenues, which continue under other federal laws);
- The making and publishing of Kitsumkalum land laws;
- The conflict of interest rules;
- A dispute resolution process;
- Procedures by which Kitsumkalum can grant interests, such as leases or permits for reserve lands or acquire lands for community purposes;
- The delegation of land management responsibilities; and
- The procedure for amending the Land Code.

What does it really mean for Kitsumkalum?

With new land management authorities, Kitsumkalum can:

- develop Kitsumkalum land laws, which are more powerful than any of the existing Kitsumkalum by-laws made under the Indian Act;



- better take advantage of economic development opportunities (without Indian Act administrative hurdles);
- manage lands autonomously in accordance with Kitsumkalum values;
- involve community members in major land decisions;
- perform land governance, management and administrative functions;
- create and operate a fully functioning lands office (under a land code, this becomes a necessity that receives funding to deal with this important matter).

How does the Kitsumkalum Land Code replace 44 sections of the Indian Act?

The Kitsumkalum Land Code replaces 44 sections of the Indian Act with a more coordinated and complete approach to land governance, management and administration. Remember that the Indian Act was from 1876 and was never created to benefit indigenous peoples. Drafting the Kitsumkalum Land Code was an exercise in updating and improving outdated land management processes in some of the following ways:

- Providing clear and consistent processes;
- Customizing land management to respond to specific community concerns and situations;
- Incorporating Kitsumkalum values and interests;
- Improving accountability and transparency; and
- Incorporating a role for membership in land management.

Can we turn back to the Indian Act as a land management system if a Land Code is voted on and approved by a community?

No. Once the Land Code is enacted, there is no turning back to the Indian Act as a system for land management. When changes need to be made, the Land Code can be amended by getting community approval through a referendum vote.

Does Kitsumkalum have the expertise and technical knowledge to implement a Land Code?

The Kitsumkalum Land Code delegates specific land management responsibilities to staff, leadership, a Lands Committee and members (such as voting to approve laws). Implementation of the Land Code will require coordination between these parties and there will likely be specific situations where the services of consultants and legal advisors may be necessary.

Does taking responsibility for land management put us at risk? How do we protect ourselves from liability?

Taking responsibility for land management includes assuming liability for issues that arise. This means potential legal costs and financial losses if a lawsuit comes from administering the Land Code. It will be prudent for legal counsel to be sought to review contracts and assist in the development of waivers and save harmless agreements that effectively transfer liability.



Is there funding available for enacting a Land Code?

Yes. Canada provides operational funding to First Nations - to manage its reserve land, to make, administer and enforce its laws under a Land Code, and to administer an environmental assessment process. The amount of the funding is set out in the Individual Agreement with Canada which is subject to approval by members as part of the ratification process.

Why does the proposed Kitsumkalum Land Code refer to the Kitsumkalum Financial Administration Policy and the Conflict of Interest Policy?

Kitsumkalum has existing conflict of interest and financial administration policies in place. Because the Land Code is required to address these topics, the Land Code uses the existing policy framework, to ensure coordination of this framework.

What are the challenges of having a Land Code, and how can we deal with them?

Potential drawbacks of enacting a Land Code include:

- costs –Federal funding may not cover all costs associated with implementation.
- learning curve - the learning curve is steep.
- liability - taking responsibility includes assuming liability for issues that arise.
- finality of the decision - there is no turning back to the Indian Act as a land management system once the Land Code is enacted.

So how can we tackle these?

- costs - while the Federal funding may not cover everything, Kitsumkalum is still eligible for grants, programs, services offered by Indigenous Services Canada, the Province, etc.
- learning curve - staff can use the First Nations Land Management Resource Centre (FNLMRC) as a tool. The FNLMRC was established as a resource specifically for communities developing and implementing land governance systems. They offer hands on training, funding and expertise to support First Nation communities in land management initiatives.
- liability - Kitsumkalum will need to ensure risks are managed appropriately. Having legal counsel review contracts and assist in the development of waivers and save harmless agreements help reduce risk.
- finality of the decision – while there is no turning back, the value and empowerment of self-governance is significant. We've heard from communities that enacting their own Land Code has helped their band administration organize more effectively.

Is this part of aboriginal self-government?

Yes. This is one sectoral component of self-government and deals only with reserve lands and resources. Matters related to other topics, e.g. elections, governance and education, would be dealt with in the context of other agreements.



Will there be any impact on other self-government arrangements?

No. There is no direct impact on other self-government arrangements. The provisions of the Framework Agreement are sufficiently flexible and progressive that other self-government initiatives are able to fit harmoniously with land management systems established under the Framework Agreement.

The Framework Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources, e.g. rights under s. 35 of the Constitution. The Framework Agreement also does not preclude other negotiations in respect of those rights.

Does the Framework Agreement affect Treaty rights?

The Framework Agreement is not a treaty and does not affect any treaty rights.