



Benefits of Proposed First Nations National Land Registry (FNNLR)

Prepared for the First Nations Land Management Resource Centre

Note to Reader

This study has been provided to the First Nations Land Management Resource Centre ('RC') for the purpose of describing the benefits of the proposed FNNLR for system users, First Nations' economic development, and for reconciliation.

This study provides a qualitative analysis on the benefits of the proposed FNNLR. Due to data limitations, the study scope does not include a cost-benefit analysis of the proposed FNNLR or a return on investment metric for the associated investment to implement the proposed FNNLR. In particular, the study does not examine the financial or opportunity costs of implementing the FNNLR or quantify the financial return of investing in the system.

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Executive Summary



Study Background and Objectives

This study focuses on the First Nations National Land Registry (FNNLR) Project, which aims to develop and run a new national register to manage First Nations (FN) land

Introduction

In recognition of First Nation rights and authority concerning the management and governance of their reserve lands, the LAB and RC, with support from the LTSA are developing and establishing a new First Nations National Land Registry System for the recording of rights and interests of Operational First Nation lands under the Framework Agreement on First Nation Land Management.

The proposed First Nations National Land Registry will:

- Modernize the land registry system and transform the system into an interest-based register, aligning it with similar standards established off reserve;
- Be future-proof, as the flexible design allows for enhancements to the proposed functionality; and
- Align and contribute to federal policy on reconciliation and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Articles 26, 32, 34).

Objectives

- Develop a narrative on user benefits of the new system compared to the old system;
- Identify and study some of the potential economic benefits associated with a new registry system;
- Develop a narrative outlining how the new registry system supports reconciliation and indigenous economic development.

Key Highlights of the Proposed FNNLR

The proposed new registry will replace FNNLR System operated by ISC and will provide a First Nation operated, reliable and trustworthy land-related registry, survey systems and information to support Operational First Nations in the governance, management, protection and development of First Nation land. Key highlights of the proposed FNNLR is as follows:

- Comprehensive Register of land interests
- Enhanced Registration, Search and Information Products based on end-user needs
- Enhanced user experience configuration, ease of access, new functionality and increased user-friendliness of the system
- Improved and accessible Customer Support and Training
- Increased accuracy (quickly determine parcel status), certainty (clear policy and practice standardization), efficiency (easy access), confidence (high quality data), and visibility (comprehensive map view, interest view and filtering capability)
- New First Nation not-for-profit organization will be established to operate the register
- Will be governed by other First Nations and Land Management experts, same standard of services enjoyed by other Canadians
- Will be staffed by First Nations

Summary of Benefits for Direct Users of the Proposed FNNLR

The improved features of the new register will bring five categories of benefits to direct system users summarized below



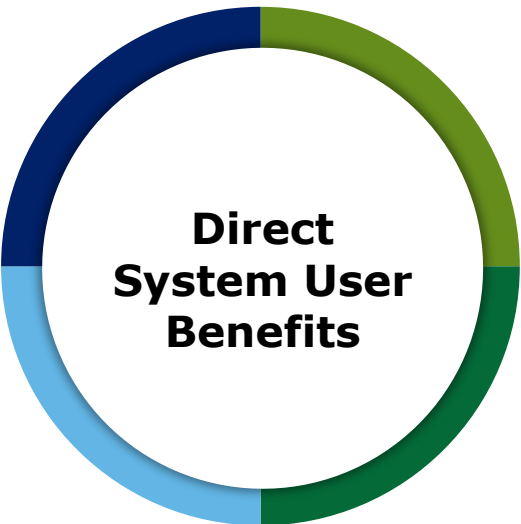
Certainty and Confidence

Capture of complete and accurate data, which removes the current uncertainty and reliance on complex legal research



Standardization

Clear policy and practice standardization; same standard of services for First Nations as those enjoyed by other Canadians



Visibility and Clarity

Provide a comprehensive map view, interest view, filtering capability, and data quality indicators



Efficiency

Easier system access and increased user-friendliness; reduced time and effort for legal searches; improved customer support and training



Accuracy

Higher quality data; improved reporting; ability to quickly determine parcel status

Summary of Broader Socio-economic Benefits of the Proposed FNNLR

The FNNLR is a critical foundational capability that can enable stronger economic development through improving land use planning, land market efficiency, access to credit, tenure security and competitiveness

Promote and contribute to Indigenous reconciliation and self-determination

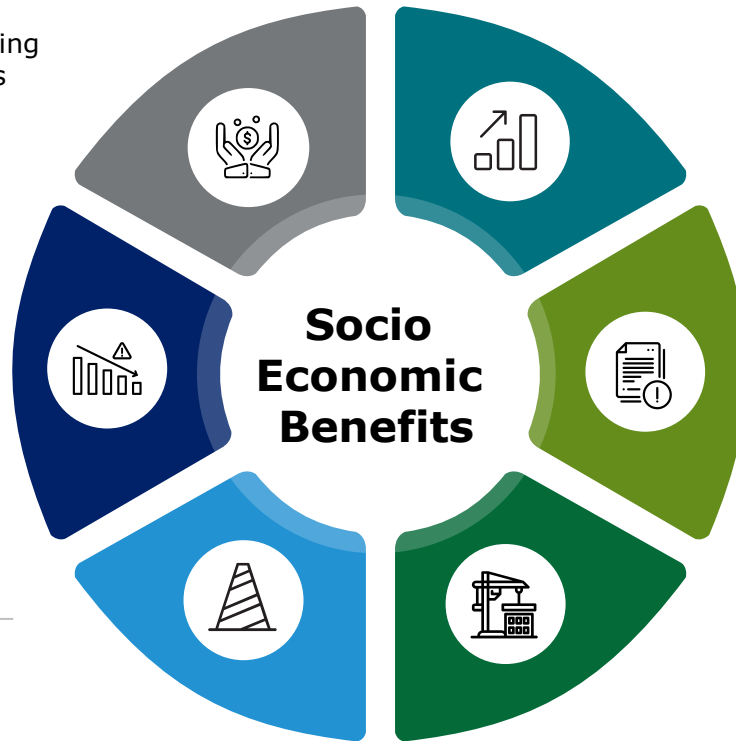
- The FNNLR is consistent with the Government of Canada's public policy objective to renew the relationship and achieve reconciliation with First Nation communities
- It furthers the government's specific objective of advancing Indigenous self-determination aligned with commitments to UNDRIP

Increased certainty and reduced risk for FN communities, investors and lenders

- The FNNLR will enable a modern, digitized, complete and accurate land record that removes the current uncertainty and reliance on complex legal research
- This will contribute to greater outside investments on reserve lands, increase the rate of commercial and residential development and potentially increase the value of reserve lands

Enables community development planning and clarity of land use

- Clarity around the boundaries, ownership, management and decision making of the land, is necessary to enable modern community development plans and zoning of land use thereby closing the service delivery and infrastructure gap
- The FNNLR will enable an increased ability to collect data on land development and growth to track how things are improving



Enable stronger economic development and growth

- A modern land registry system is a critical foundational capability to enable economic development by FN communities
- Certainty on land use can increase economic activity through bolstering land use planning, increasing the efficiency of the land market, enabling access to credit, providing greater tenure security and improving competitiveness.

Reduces Canada's overall liability by minimizing potential for registry errors

- Canada has a contingent liability under the Indian Act, for errors or omissions made in how documents were recorded in the old land registry system.
- The proposed FNNLR will minimize these errors going forward, and therefore stop the contribution to that liability burden

Laying a foundation for other First Nations' transitions to new registry

- Establishing FN governance over the FNNLR provides a model example for future transitions of management responsibilities to indigenous communities

Section 1

Introduction



About this Study

Background

The First Nation land registry is a significant tool used by private and public persons and organizations concerned with land ownership and development.

Deloitte was engaged by the First Nations Land Management Resource Centre ("RC") to articulate the benefits of the proposed, updated First Nations National Land Registry ("FNNLR") for system users, First Nations' economic development, and for reconciliation. The new proposed system:

- Fully modernizes the land registry system for First Nations and other users to both record and obtain documents concerning First Nation lands managed under a land code.
- Has been designed so that the system's architecture, data-model, and underlying tech-stack to allow the product to be continuously improved and adapted over time
- Contains features and functionality that are designed to support the transition to a modern, interest-based register with access, service and reliability comparable to the standards enjoyed by the rest of Canada
- Provides Canada with a clear opportunity to take meaningful action against its United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") commitments, and to mitigate its own risk with respect to the structure and vulnerabilities of the ISC-managed FNNLR



Objectives

The study has the following three objectives:

1. Develop a narrative on user benefits of the new system compared to the old system;
2. Identify and analyze the potential economic benefits associated with a new registry system;
3. Develop a narrative outlining how the new registry system supports reconciliation and indigenous economic development.



Approach

This project was undertaken collaboratively with RC. The project team worked with RC to scope the study, identify FN communities and users of the system that should be consulted and plan the interviews and workshops.

To incorporate the perspective of users of the land registry system, six interviews were conducted with users across five FN communities and one law organization that uses the system to conduct searches. Additionally, a workshop was conducted with RC and Deloitte subject matter professionals to identify and confirm benefit themes related to the proposed FNNLR.

The identified benefits have been described qualitatively and illustrated with quantitative examples from other jurisdictions based on secondary research, where possible. The findings from the secondary research, workshops and stakeholder interviews have been synthesized in this final report.



Section 2

Background on the First Nations Land Registry



Background on the First Nations Land Registry

In 1996, 13 First Nations and Canada entered into the Framework Agreement (FA) on First Nation Land Management. The Framework Agreement provided an option for First Nations to adopt a land code to manage and govern their reserve lands outside the Indian Act. One part of the FA provides for a new land Registry separate from the Indian Land Registry.

The First Nations Land Registry (FNLR) was established to record documents related to First Nation land. The Lands Advisory Board and Minister of Crown-Indigenous and Northern Affairs developed the FNLR Regulations together respecting the First Nation Lands Register, unlike the internal departmental policy for the Indian Act registry. The FNLR and regulations are landmark achievements, providing First Nations with greater land certainty, improved ability to secure a mortgage and title insurance, and have drastically reduced or eliminate land transaction costs.

The FNLR has three main objectives:

- give notice to the public of all documents that are registered or recorded pertaining to a legally described parcel of land;
- establish priorities among competing instruments (documents); and
- present an orderly listing of documents which concern the interests and rights to a First Nation's land or parcel of land.

The current FNLR System was developed using the Indian Land Registry System ("ILRS") as a shared platform, similarly, administered by Indigenous Service Canada and located in Ottawa. As of July 2021, there are just over 100 Operational First Nations that use the FNLR System and services provided by the Land Registry. The system is entirely electronic and does not contain any physical documents (as all physical records are scanned for use within the system). Almost all applications are submitted to the Registry through a secure, centrally managed application. Current FNLR users find the Windows-based application (accessed through CITRIX) difficult to use, with even simple tasks such as downloading reports and printing being cumbersome.



Section 3

Current state challenges and user benefits of proposed FNNLR



Existing Register Challenges

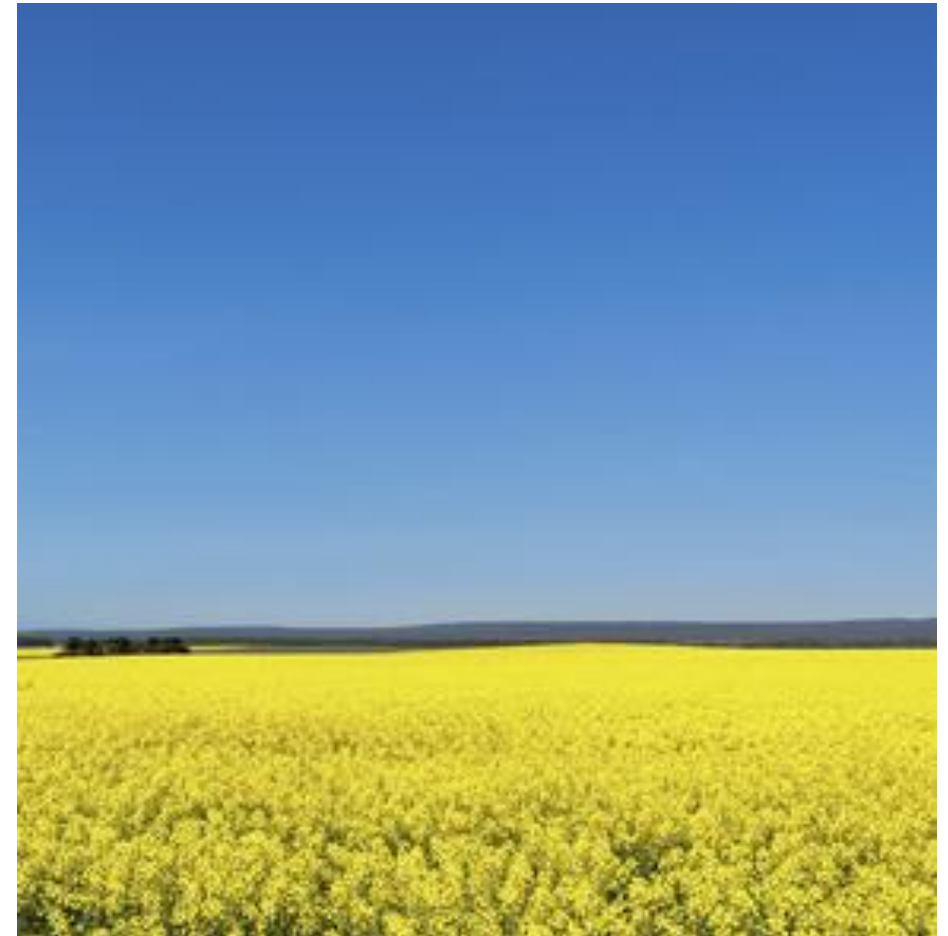
A current state assessment has been conducted among the users of the FNLR System describing the state of the current FNLR System and supporting survey processes in Canada, with specific focus on services to First Nations

LTSA and Deloitte prepared a Current State Assessment report of the FNLR and supporting services as of July 2021. The Current State Assessment report describes the state of the current FNLR System and supporting survey processes in Canada, with specific focus on services to Operational First Nations. Information within the assessment was collected through consultations with a working group with representatives from Indigenous Services Canada, National Resources Canada / Surveyor General Branch, Crown-Indigenous Relations and Northern Affairs and RC in spring 2021.

Key observations from the Current State Assessment related to current FNLR System are;

- Not led by First Nations, instead is controlled by Indigenous Services Canada
- Accessed via CITRIX, a remote access technology
- A “Deeds” registry system, where emphasis is on recorded instruments related to land management
- The FNLR System is a legacy system and not user friendly
- Little policy exists to guide the FNLR System, resulting in varying registration practices and registered records that are inconsistent across First Nations, across parcels of land and over time.

The technical challenges with the current FNLR System has been described further in the following pages. For a full copy of the Current State Analysis document, please request a copy from the RC.



Source: RC and BC LTSA, Nov 2021, 'Proposal for a First Nations National Land Registry'

Source: BC LTSA and Deloitte, September 2021, 'First Nations Land Registry - Current State Analysis'

Technical challenges with the current FNLR System

The FNLR System presents several challenges to users, outlined in the 5 categories below and on the next slide

1

Data Management

There are significant problems surrounding data storage, tracking, and analysis.

- Survey records and the registry operate independently of each other, causing issues with data tracking. Manual linkages by users are required between instruments and reserves or parcels, causing significant delays.
- Instrument packaging is not available for digital submission, shifting decision-making around application processing to the Registration Officer.
- Corrections made to the Register are not made evident to end users.
- Sub-PIN definitions are inconsistent with respect to the specific kind of space or interest on a parcel of land. There are also lack of designated options for Excluded Lands and Shared Reserves.
- The database model provides limited data structuring and contains options that are unused.

2

Service Channels

Channels through which services are provided by the FNLR System are limited.

- Limited customer support is available for FNLR System users and no contact information is provided.
- There has been a transition to digital registrations, which has caused problems for the First Nations that were still submitting written documents.

3

Product Features

The current IT solution lacks important product features.

- Windows and web applications have similar but slightly different information products, records are difficult to search, and do not match the needs of users due to unavailability of important information (such as "land status").
- The platform does not have the option to show active interests only or registered parcels per reserve, increasing the difficulty for users to determine the active interests.
- There are no digital certifications available, as the FNLR only provides products on paper.
- Export formats for products are limited, reducing consumption capabilities.
- Spatial and textual land register data is not joined together, reducing user comprehension.

Technical challenges with the current FNLR System

continued

4

Primary Processes

Challenges exist with processes associated with filing, searching, and charging fees.

- The platform has an abundance of labor-intensive and likely unnecessary processes embedded (like redaction), which has caused a significant backlog for employees.
- There is ambiguity surrounding the processes and requirements for conducting searches, and a lack of established benchmarks for processing times.
- There is an asymmetric fee structure where ISC provides services free of charge, yet Land Offices sometimes have fees.

5

Services Provided

The core services provided by the FNLR System are limited with little power given to the First Nations to address the shortcomings of the system

- First Nations lack decision-making power as it relates to nature of services provided.
- There is limited training offered to First Nations users by ISC, focusing only on the basic functions of the system.
- ISC HQ often lack specific knowledge of all operational Land Codes and only operate in accordance with FNLMA and accompanying regulations. The FNLMA does not track all obligations and matters established by the Framework Agreement.



Proposed First Nations National Land Registry (FNNLR)

In recognition of First Nation rights and authority concerning the management and governance of their reserve lands, LABRC, partnering with the LTSA, are developing and establishing a new First Nations National Land Registry for the recording of rights and interests of Operational First Nation lands under the Framework Agreement on First Nation Land Management.

The proposed registry will replace the FNNLR System currently operated by ISC by providing a modern, First Nation operated, reliable, and trustworthy land-related registry. The new system will provide easy access to information to support Operational First Nations in the governance, management, protection and development of First Nation land.

Devolution of the current registry* is seen by LABRC and LTSA as a step toward Canada meeting its objectives to First Nations’ sovereignty and self-governance related to UNDRIP, including but not limited to:

- First Nation peoples determining their political, economic, social and cultural development
- First Nation peoples advancing their own governance institutions
- First Nation communities advancing their own governance capacity

Features of Proposed IT Solution

- Register of land interests, with comprehensive incorporation of land concepts, records and laws
- Comprehensive map view making all parcels visible
- Interest-based view, clearly identifying primary interest on a property/parcel and relation of other interests
- Filtered view that hides historic instruments no longer in effect and derived interests, as well as instruments that do not pertain directly to land
- Search results, abstracts and other information products will make prominent the First Nation they pertain to, as well as the land code and any laws that may apply.
- Attributes to capture the state of the quality of a property/parcel description
- Enhanced user experience configuration, ease of access, new functionality and increased user-friendliness of the system
- Improved and accessible Customer Support and Training

New Governance and Management Features

- New First Nation not-for-profit organization will be established to operate the register
- Staffed by First Nations
- Governed by other First Nation organizations and Land Management experts
- Providing the same standard of services enjoyed by other Canadians

* Note that the FNNLR is not replacing any of the Canada Land Survey systems and will continue to use those provided by NRCan/Surveyor General Branch

Benefits for Direct System Users

The improved features of the new register will bring five categories of benefits to direct system users summarized below; additionally, the system will enable wider socio-economic benefits to First Nations and Canada as a whole, which are detailed in the next section



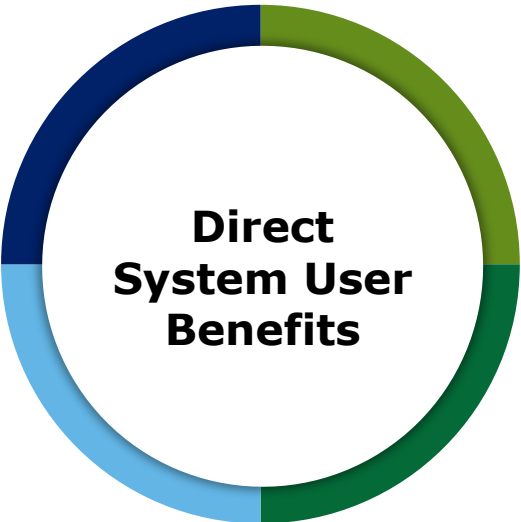
Certainty and Confidence

Capture of complete and accurate data, which removes the current uncertainty and reliance on complex legal research



Standardization

Clear policy and practice standardization; same standard of services for First Nations as those enjoyed by other Canadians



Visibility and Clarity

Provide a comprehensive map view, interest view, filtering capability, and data quality indicators



Efficiency

Easier system access and increased user-friendliness; reduced time and effort for legal searches; improved customer support and training



Accuracy

Higher quality data; improved reporting; ability to quickly determine parcel status

Section 4

Socio-economic benefits of proposed FNNLR



Summary of Broader Socio-economic Benefits of the Proposed FNNLR

The FNNLR is a critical foundational capability that can enable stronger economic development through improving land use planning, land market efficiency, access to credit, tenure security and competitiveness

Promote and contribute to Indigenous reconciliation and self-determination

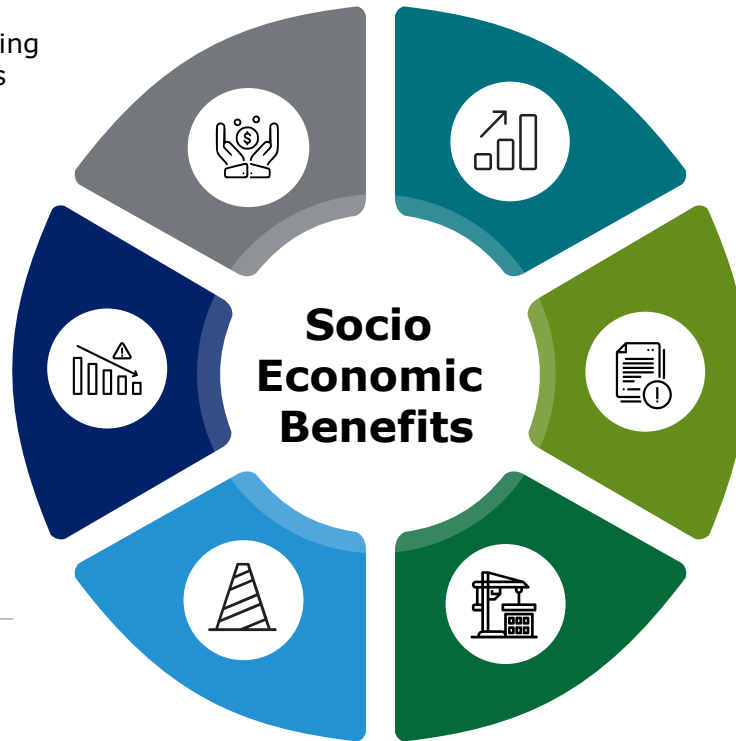
- The FNNLR is consistent with the Government of Canada's public policy objective to renew the relationship and achieve reconciliation with First Nation communities
- It furthers the government's specific objective of advancing Indigenous self-determination aligned with commitments to UNDRIP

Increased certainty and reduced risk for FN communities, investors and lenders

- The FNNLR will enable a modern, digitized, complete and accurate land record that removes the current uncertainty and reliance on complex legal research
- This will contribute to greater outside investments on reserve lands, increase the rate of commercial and residential development and potentially increase the value of reserve lands

Enables community development planning and clarity of land use

- Clarity around the boundaries, ownership, management and decision making of the land, is necessary to enable modern community development plans and zoning of land use thereby closing the service delivery and infrastructure gap
- The FNNLR will enable an increased ability to collect data on land development and growth to track how things are improving



Enable stronger economic development and growth

- A modern land registry system is a critical foundational capability to enable economic development by FN communities
- Certainty on land use can increase economic activity through bolstering land use planning, increasing the efficiency of the land market, enabling access to credit, providing greater tenure security and improving competitiveness.

Reduces Canada's overall liability by minimizing potential for registry errors

- Canada has a contingent liability under the Indian Act, for errors or omissions made in how documents were recorded in the old land registry system.
- The new FNNLR will minimize these errors going forward, and therefore stop the contribution to that liability burden

Laying a foundation for other First Nations' transitions to new registry

- Establishing FN governance over FNNLR provides a model example for future transitions of management responsibilities to indigenous communities

01 Promote and contribute to indigenous reconciliation and self-determination (1/2)

The new FNNLR will transfer ownership of the land registry system from the Government of Canada to FN communities. In doing so, the FNNLR will promote and contribute to Indigenous reconciliation and self-determination aligned to both the Government of Canada's policy objectives as well as Canada's commitment to the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). The FNNLR is also aligned to the FNLMA and the Framework Agreement, which allows First Nations to opt out of the land management sections of the Indian Act and resume governance and management control of their reserve lands and natural resources. Broadly speaking, the new FNNLR will support the priorities and objectives listed below.

Alignment to Government of Canada's Policy Objectives

Section 35 of The Constitution Act, 1982 recognizes and affirms existing Aboriginal rights. It provides constitutional protection to the indigenous and treaty rights of indigenous peoples in Canada and has contributed to the creation of space for Indigenous Peoples and the government of Canada to prioritize the reconciliation of Aboriginal rights and title. The new FNNLR is aligned to several policy objectives that the Government of Canada has established with respect to FN communities, including but not limited to:



“

The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to **self-determination**, including the inherent right of **self-government**.

— *[Principles respecting the Government of Canada's relationship with Indigenous peoples]*

”



The new modern register will be owned and operated by First Nations who are Signatory to the Framework Agreement on First Nation Land Management. Supporting this First Nations-led initiative is aligned with Canada's specific objective of advancing indigenous self-determination through transferring the ownership of the land registry to First Nations.

“

[The mandate of Indigenous Services Canada states its vision is to] support and empower Indigenous peoples to **independently deliver services** and address the socio-economic conditions in their communities.

— *[Indigenous Services Canada mandate and vision]*

”



Federal policy objectives also include empowering First Nations to independently deliver services. Transitioning ownership of the land registry system will enable FN communities to independently deliver services related to the management and administration of reserve lands, such as land surveying, land registering, land use planning, and further land development.

01 Promote and contribute to indigenous reconciliation and self-determination (2/2)

Alignment to UNDRIP Commitments

By creating structures in which FN communities are able to advance their own priorities and systems with respect to land governance, the FNNLR is aligned with the government's commitments to UNDRIP (specifically Articles 26, 32, and 34 listed below).



“

Article 26.2. Indigenous peoples have **the right to own, use, develop and control the lands**, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

”



The implementation of a new land registry system can help advance the downsizing of government and increased FN involvement. This will play an important role in land development and planning for FN communities, as they are able to own the land registry system and associated data.

“

Article 32.1 Indigenous peoples have the right to **determine and develop priorities and strategies for the development or use** of their lands or territories and other resources.

”



The FNNLR will empower First Nation land governance and administration by ensuring that First Nations have the knowledge, resources and authority to determine and implement strategies for their land use and development.

“

Article 34. Indigenous peoples have the right to promote, develop and maintain their **institutional structures and their distinctive customs**, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

”



The current land registry was historically developed for use by the Government of Canada, with minimal consultations with FN communities. The proposed new registry system will be designed and developed by First Nations to reflect their institutional structures, customs, processes and requirements.

02 Increased certainty and reduced risk for Indigenous communities, investors and lenders (1/2)

Registering land interests with the existing system has been cited as bureaucratic, cumbersome and unreliable for users of the current system, including Indigenous communities, investors and lenders. Data records are often incomplete and inaccurate when compared with the reality on the ground in First Nations communities. As a result, there is currently a heavy reliance on complex legal searches to validate land registry records. NRCan has found that the quality of parcel fabric in reserve communities was less accurate compared to off reserve communities, with significant discrepancies between cadastral fabric and occupation on the ground (see Uashat case study to the right).

This cumbersome process introduces uncertainty and can discourage investors' from pursuing commercial and residential development projects in FN communities. In addition, lenders may perceive a greater risk with proposed projects associated with the uncertainty of the land registry records. Altogether, this may deter investments in FN communities, leading to underdevelopment, depressed land values and an inability to realize their full economic potential, which is a lost economic opportunity for the Canadian economy at large.

The new land registry system will ensure that each transaction is entered in a computerized system that displays key information regarding interests and land codes in a clear and organized manner (see slides 16 for specific system features). By creating a modern, digitized, complete and accurate land record that removes the current uncertainty and reliance on complex legal research, the FNNLR has the potential to attract greater outside investments on reserve lands and increase the rate of commercial and residential development (please see Kyrgyzstan case study on the next page).

With simple and transparent rules, a digital system also enables users and communities to assess and understand registry procedures. Increasing the transparency of the current land registration system stems is a key feature that the new land registry seeks to improve. For instance, the current land registry system does not contain a prioritization system which would allow competing interests to be assessed.¹ In addition, there is no dispute resolution mechanism which outlines rules or escalation in matters of land contention. The new land registry offers parties a way to prioritize registration, providing transparency to the registration process and so increasing certainty for the communities, investors and the wider public.

1. The FNNLR has a prioritization system, however the ILRS does not have one.
2. NRCan, (2019). "Parcels renewal in the context of boundary dispute resolution"

Case Study: Uashat No. 27 Reserve²

In 2008, NRCan found that the quality of the parcel fabric in Reserve communities was less in Reserve communities compared to off Reserve communities (on average). As a result, a parcel fabric renewal project was rolled out in 2010 to improve the fabric and capacity in select communities and strengthen the links between parcels and economic development.

One of the communities selected for the pilot parcel fabric renewal was Uashat No. 27 Reserve. The goal of the project was therefore to reconcile legal surveys, titles (land rights or interests) and land occupation. A key part of this process was boundary dispute resolution in instances where there were discrepancies between cadastral fabric and occupation on the ground.

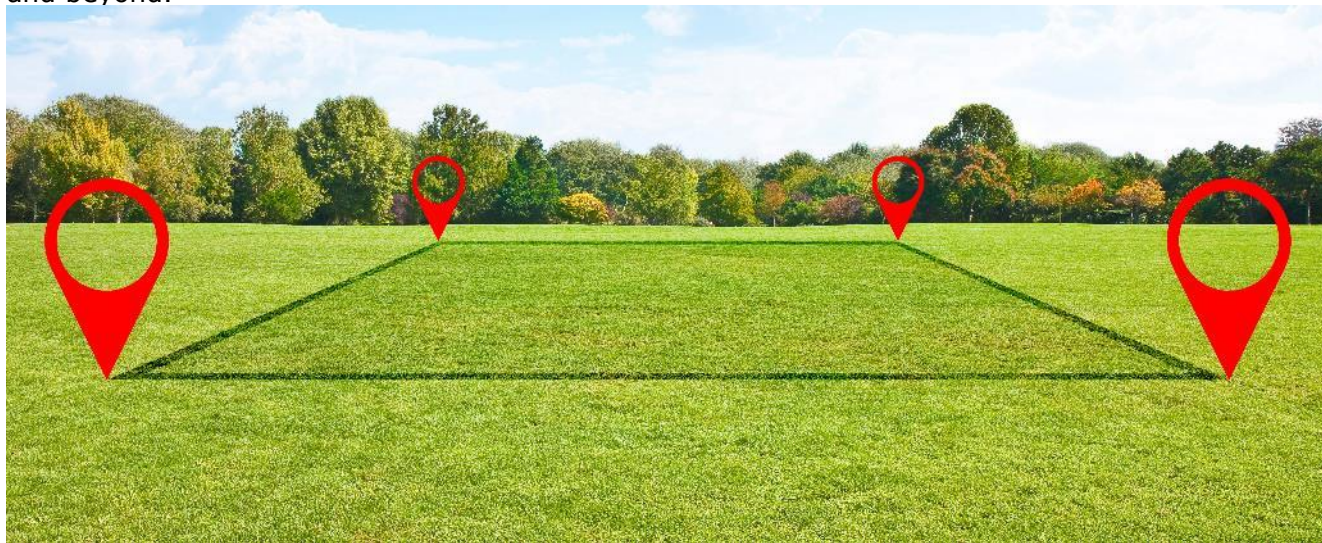
During the course of the project, Uashat no.27 Reserve was found to have ± 575 lots differences, illustrating that uncertainties in parcel fabric can be significant in Reserve communities which increases the level of risk from an investment perspective due to the higher possibility of dispute.



02 Increased certainty and reduced risk for indigenous communities, investors and lenders (2/2)

Impact on Reserve Land Values

Through attracting outside investments and enabling greater development in FN communities, the new system can also potentially increase the value of reserve lands, thereby reducing the gap that currently exists compared to off-reserve lands. This effect has been observed in other jurisdictions. For example, a study examining property rights in Thailand found that the strengthening of land registration procedures resulted in increases to land prices of 25% to 133% (see page 26 for more details). This is particularly salient for reserve lands, as the Supreme Court considered that Indian reserve features implied a reduction of 50% in the appraised value of land (*Musqueam Indian Band v. Glass*, 2000). In this respect, the implementation of the new registry system will further build on the progress made during the transition of First Nations from the Indian Act to the Framework Agreement and beyond.



Case Study: Kyrgyzstan³

Transitioning from Soviet Rule in 1999, Kyrgyzstan implemented a land registry system to recognize private ownership. As part of these efforts, the government created an agency called Gosregister to formally recognize rights to land and create a transparent central register of ownership. The agency made key investments into information technology to ensure long-term effectiveness and data accuracy.

By 2012, the agency had registered 92% of the country's privately held parcels. This helped lay the foundation for an increasingly active real estate market as well as increased certainty around the ownership and boundaries of the land.

Particularly, the agency reported that:

- Real estate sales increased from 25,901 in 2002 to 67,609 in 2012
- Mortgage transactions nearly tripled from 22,387 in 2002 to 66,612 in 2012.



1. KPMG, (2014). Framework Agreement on First Nation Land Management Update Assessment of Socio/Economic Development Benefits

2. World Bank,. (2015). *Registering property: The paths of digitization*

3. Geiner, M. (2017). Cementing the right of ownership: Land registration in Kyrgyzstan, 1999-2009. *Global Challenges Land, Innovations for Successful Societies*.

03 Enabling community development planning and clarity of land use

Effective community development and zoning of land use requires clarity around the boundaries, ownership, management and decision making of the land in question. There are several factors that can improve the process of land use planning, including streamlined land survey capabilities, efficient land registration processes and clear land management.

While the new land registry system will not address all aspects of the community development process, it is an important enabler for community development and land-use planning by providing essential infrastructure for First Nation land governance. Furthermore, the FNNLR will facilitate the ability to track progress of community development through improved data collection and management. By enabling the ability to layer on zoning and community development plans, the proposed system will empower First Nations to pursue community development and reduce the infrastructure and service delivery gap with non-indigenous communities in Canada.

Infrastructure GAP

There is a significant infrastructure gap between FN communities and other communities in Canada. The Canadian Council for Public-Private Partnerships estimates it will take up to \$30 billion in investment to close the First Nations infrastructure gap, which includes investments in drinking water, housing, wastewater treatment, energy, broadband connectivity, trade and transportation links. While closing the infrastructure gap requires coordination across several dimensions, effective land registration processes are critical as inaccurate or incomplete land records impede infrastructure planning.

Implementing the new system will help facilitate the clear zoning of reserve land for specific uses that identify areas of protection (from both an environmental and cultural standpoint) and areas for potential infrastructure investments. Effective community development planning and more accurate land data can help to identify current infrastructure gaps in FN communities as well as future needs and requirements.

Service Delivery GAP

In addition to acting as a barrier to community development planning, inconsistencies related to land registration can also hinder service delivery in FN communities whereby built structures do not correspond with surveyed parcel boundaries. Particularly, a study by NRCan found that data in the registry did not correspond with actual boundaries in certain communities. These uncertainties resulted in difficulties establishing municipal service agreements like emergency services. Ultimately, discrepancies between parcel boundaries can affect the quality of service delivery in FN communities.

The new FNNLR will help rectify data inconsistencies pertaining to boundary demarcation which are prevalent in the current registration system. This can provide a more solid foundation for service provision in FN communities, supporting broader community development planning and which will potentially lead to economic growth. In addition, the ability to track progress through data collection can provide a basis upon which service delivery can expand to serve community growth, particularly as known boundary issues are recorded in the registry. These efforts will be supported by data quality indicators that are included in the FNNLR, which include information that describes the quality of a property/parcel description.

04 Enabling stronger economic development and growth (1/3)

The new register will provide benefit not only to users of the system itself, but also enable stronger economic development and growth in First Nation communities and Canada as a whole. This study identifies several mechanisms through which land registry systems can enable stronger economic development and growth, including:

Land use Planning

As detailed in the previous section, an improved land registry system can enable more effective land use planning and tracking of development progress in First Nations communities. Having greater community control over leases and planning can contribute to attracting investments and infrastructure that are aligned with community objectives and needs (for more information on the FNNLR and community development planning, see Page 23). In addition, community planning efforts can help FN communities derive wealth from their land and natural resources and bolster their position to influence the direction of development. Once land tenure is secured through the new FNNLR system, it provides the basis to negotiate benefit sharing agreements that can be a catalyst for development if they are linked to a community plan.



Land Market Efficiency

Land registry systems are critical for the development of an efficient market for transfer of land rights. Studies have shown that improved land management and land registry practices have also led to stronger real estate activity and higher land prices (see Thailand case study, page 27). This uplift can occur for different reasons, for example through increased investment and planning efforts due to lower risk and uncertainty regarding titling. Across OECD countries, land and buildings constitute by far the most important share of wealth, making up 86% of total capital stock (roughly evenly split between land and property). This underscores the importance of effective land markets for economic development and wealth generation.



Case Study: The link between land management and economic development

The link between land management and stronger socio-economic development has been well documented in previous studies. For example, an extensive study by the OECD assesses how Indigenous peoples in Canada secure and use land. The study finds that land is a fundamental asset for sustainable economic development for Indigenous communities³.

The study finds that while First Nations have different levels of property rights over their lands, security of tenure is generally associated with improved economic outcomes. In addition, the study finds that improved land use planning, leasing and certificates of possession are critical factors to empower Indigenous economic development.

The study identifies a range of opportunities to improve the efficiency of land tenure systems in Canada, including providing tools for Indigenous organizations to collect their own data to support more informed decision-making regarding economic development.



1. TD Economics. (2011). Special Report. https://www.td.com/document/PDF/economics/special/sg0611_aboriginal.pdf
2. National Aboriginal Economic Development Board. (2016). Reconciliation: Growing Canada's economy by \$27.7 billion.

04 Enable stronger economic development and growth (2/3)

Access to credit



This benefit relates to the ability to use land and/or property as investment collateral, thereby relaxing credit constraints. This is a key issue in Canada where the level of credit that Indigenous people can access ranks below those of non-Indigenous people.¹ First Nation governments face unique limitations because property cannot be used as collateral, which can lead to underinvestment in public infrastructure. Specific to FNs, mortgage/collateral is on the property itself rather than the land since the ownership of the land cannot be transferred. The Framework Agreement has created room for financing/leasing innovation to address this issue. "A to A" leasing is a relatively new concept whereby the first lease is granted by one person (party A) who is both the grantor and grantee of a lease. In case the mortgage owner can not fulfill the payments, then the lender can re-lease the house to cover the debt without taking the ownership of the land. This transaction is only possible if the land interests are well defined and accessible by the lenders as well as FN communities. Thus, secure and easily accessible land interests through an improved registry system could contribute to better access to credit for FN communities and governments.

Tenure Security



Modern land registry systems can provide greater tenure security to the land/property owners by reducing expropriation risk as well as the costs of protecting property. From an economic perspective, the productivity of land depends on complementary investments (for example through drainage, land preparation, or other infrastructure projects). The incentive to undertake these investments depends on the time horizon upon which an investor may expect to receive benefits, which will in turn depend on the risk that an investor faces regarding their possession of the land. As a result, there is a strong relationship between tenure security and land productivity. Research shows that tenure security is positively associated with improved economic outcomes in FN communities in Canada. Particularly, improved property rights in the form of modern treaties in Canadian FN lands has resulted in reduced transaction costs, increased resource extraction in the form of mining agreements and higher local incomes.²

Case Study: The benefits of land registration and titling: economic and social perspectives²

This paper reviews evidence that land registration has led to improved economic and social outcomes. It identifies prerequisites for land registration to be economically viable, as well as key social considerations when designing registration systems.

Based on a review of empirical evidence from Asia, Latin America, and Africa, the study shows that land registration has led to better access to formal credit, higher land values, higher investments in land, and higher income/output.

For example, a study in Costa Rica found positive correlations existed between the degree of ownership security and farm investment per land. In addition, another study found that tenure insecurity is an important source of low productivity in agriculture. A study in Paraguay found that land registration increased land-attached investment, enhanced access to credit, and broadly enhanced the productivity of agricultural resources.



1. Public Policy Forum. (2016). Improving access to capital for Canada's First Nation communities.
2. Feder, G., & Nishio, A. (1998). The benefits of land registration and titling: economic and social perspectives. *Land use policy*, 15(1), 25-43.
3. Aragón, F. M. (2015). Do better property rights improve local income?: Evidence from First Nations' treaties. *Journal of Development Economics*, 116, 43-56.
4. Lorenz, O., Beye, M., Ibrahim Haidar, J., Latha, K., Malinska, J., Hacibeyoglu, C., ... & Ziv, L. (2007). Celebrating reform 2008-doing business case studies.

04 Enable stronger economic development and growth (3/3)

Investment Attraction Competitiveness

An effective land registry system can improve the competitiveness of communities to attract outside investment through lowering the risk and increasing the return on capital. Research shows that the strengthening of private forms of land tenure on Canadian reserves, such as certificates of possession and leasing, has contributed to greater investment attraction.¹ Particularly, investments in housing quality, water quality and public spending has increased with greater private property rights. These investments contribute to higher productivity and economic growth. The FNNLR can enable greater community investments by strengthening the access and certainty of land rights.

Realizing the Economic Potential of Indigenous Communities

Previous studies have estimated that the total economic output of Indigenous peoples in Canada is approximately **\$32 billion** (based on the combined total income of indigenous households both on-reserve and off reserve, business and government sectors).² However, the potential of the Indigenous economy is significantly higher given disparities in economic development outcomes between Indigenous and non-Indigenous Canadians. For example, the National Aboriginal Economic Development Board, estimated that closing the socio-economic gap between Indigenous and non-Indigenous Canadians could result in an increase of **\$27.7 billion** in Canadian GDP (or 1.5% of national GDP).^{3,4}

While closing the gap between Indigenous and Non-Indigenous Canadians requires coordination on several dimensions, the sections above show that a modern land registry system is a critical foundational capability that can enable stronger economic development through bolstering land use planning, increasing the efficiency of the land market, enabling access to credit, providing greater tenure security and improving competitiveness. Thus, the proposed FNNLR is a critical foundational step in enabling FN communities to reach their economic potential.

1. Aragón, F. and A. Kessler (2018), "Property rights on First Nations' reserve land", Simon Fraser University

2. TD Economics. (2011). Special Report. https://www.td.com/document/PDF/economics/special/sq0611_aboriginal.pdf

3. National Aboriginal Economic Development Board. (2016). Reconciliation: Growing Canada's economy by \$27.7 billion.

4. Note: this \$27.7 billion GDP figure may not be interpreted as additive to the \$32 billion output cited above. This is due to differences in terminology and methodology employed by the studies.

5. Feder, G., Onchan, T., & Chalamwong, Y. (1988). Land policies and farm performance in Thailand's forest reserve areas. *Economic Development and Cultural Change*, 36(3), 483-501.

Case Study: Thailand⁵

In the 1980s, the government of Thailand enacted a policy to legalize squatters in specific forest reserve areas by issuing special titles that allowed for cultivation but restricted the sale and rental of the land. In this context, the property rights reform in Thailand can demonstrate the economic development benefits from an improvement in the efficiency and certainty of land transfer processes.

A study using econometric analysis compared the economic performance of farmers who operate with and without legal land titles in the region. Land registration was found to correlate with improved economic outcomes for farmers, where titled farmers had

- Increased revenues of 15% to 21%,
- Higher land prices of 25% to 133%, and
- Higher access to institutional capital by 52% - 521% compared to untitled farmers.



05 Reducing Canada's overall liability by minimizing potential for registry errors

The Government of Canada has had the responsibility to manage the existing land registration system, own the associated land records and make decisions regarding land disputes. Historically errors and omissions have occurred in how documents were recorded in the old land registry system, for example through errors in land boundaries and ownership. These issues have resulted in disputes over land rights and created a contingent liability for the government of Canada associated with potential future disputes. The size of this liability will continue to grow over time as the continued use of the old system creates the risk of new issues. The new FNNLR will minimize the potential for errors going forward, and at the same time transfer ownership over the land registry system and the associated data to First Nations. This will essentially stop the contribution to the Government of Canada's contingent liability burden from any future errors or omission made in the land registry system.

The liability created by the existing system can be illustrated through the time and resource costs associated with the resolution of land claim settlements, additions to reserves, and treaty land entitlement processes. For example, every land claim settlement is the rectification of a historical error or dispute, and the negotiation and award/settlement amounts can represent significant costs for the Canadian government. To date, Canada has settled over 590 specific claims through negotiated settlements with First Nations across the country, with over 180 claims settled since 2016.¹

It is worth noting that delays in resolving land disputes significantly compounds the cost of dispute resolution to the Canadian government. With land claims that are years old, the amount compensated is largely estimated based on what could have been the best and most productive use of the land, which will be higher the longer the claim is not settled.

Case Study: Mississagi #8 (Mississauga)

Mississagi #8 provides an example of registry errors that have resulted in significant delays and uncertainty with respect to the land ownership and use.

To become operational under the Framework Agreement, a First Nation must develop a land code and finalize an individual agreement with Canada. When Mississagi came into the framework agreement, several land description issues became apparent. The individual agreement contains the description reserve land boundaries, however, often these boundaries are not clear for any number of reasons. To determine boundaries, research into the Indian Land Registry is a key step, however often this research reveals deficient, missing or unclear data.

In the case of Mississagi, the FN believed they had hundreds of hectares of land, as the community was spread out over large land area. However, the land registry documents did not get transferred properly and research found that only 0.162 of an acre could be validated as reserve lands.

This created many years of delays and uncertainty on the ground, particularly for the completion of a Phase I Environmental Site Assessment ("ESA"), which is another requirement for completing an Individual Agreement.



1. Prime Minister of Canada, (2022), Press Release: Major historical claim settlement with Siksika Nation.

06 Laying a foundation for other First Nations' transitions to new registry

The current land registration system was historically introduced for use by the Government of Canada, with minimal consultations with FN communities regarding the design and features of the registry. Further, the original system was intended to act primarily as a ledger and transaction record as opposed to a tool to enable community development. The technology and processes associated with the current land registration system has been cited as a hindrance to economic growth in FN communities.

Implementing the proposed land registry system will lay the foundation for other First Nations to modernize their land systems in a way that is conducive to growth. Due to the work completed to collect business requirements, map out business processes and design system features from a FN perspective, the new FNNLR offers a baseline template that other FN communities can leverage. This can be a useful starting point for FN communities regardless of where they are on the continuum of land governance, from First Nations whose lands are still governed by the Indian Act without title - to First Nations who have established management codes but are still using non-digitized or non-standard systems to manage their lands. The new FNNLR is intended to be independently controlled by the FN, meaning that there could be built in flexibility to accommodate different objectives and land interests across different communities.





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