



**LAND  
CODE**



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## LEGAL MEMO CONFIRMING THAT A LAND CODE WILL NOT AFFECT TAHLTAN TITLE AND RIGHTS

A common concern that we have heard from our members is that by signing onto the Framework Agreement and voting to approve a land code, we could be negatively impacting Tahltan claims to ownership (title) and rights to the territory (such as hunting or trapping rights). Other concern that our members have expressed is that a land code is a treaty and a tool for government to extinguish our inherent Aboriginal rights and title.

To address these concerns, the Chiefs and Councils of the Tahltan Band and Iskut Band, together with the Land Code Development Committees, engaged lawyer Stacey Edzerza-Fox of Morgan and Associates to develop a legal memo that answers four (4) important questions. Here are the questions, and the summary of her answers:

### **Question 1: Is a land code a treaty?**

**Answer:** No. A land code is not considered to be a modern treaty, land claims agreement, final agreement, or comprehensive land claims agreement. Treaties are constitutionally protected nation-to-nation agreements that deal with areas where we have “claims” to Aboriginal rights that have not been settled (in court or through other legal agreements). Land codes are not constitutionally protected and only address the use and management of reserve land, not the ownership or title of that reserve land.

### **Question 2: What impact, if any, would a land code have on Tahltan rights and title?**

**Answer:** None. If the members of the Tahltan Band or Iskut Band choose to sign onto the Framework Agreement and develop a land code for all or some of their reserve lands, this will not affect Tahltan rights or title to any Tahltan lands, including reserve lands, in any way. The Framework Agreement and land code only address the use and management of the reserve land, and do not address inherent Tahltan rights, including title. While a land code would provide Tahltan Band and Iskut Band with “all the rights, powers and privileges of an owner”, they will not have the power to sell the land, and the underlying title to the land will not be affected. A land code does not establish or extinguish Tahltan title and will have no effect on Tahltan title to the reserves contained within it.



**Question 3: Would adopting a land code give stronger claim to sovereignty and title by the Crown (either provincial or federal)?**

**Answer:** No. The only way asserted Crown sovereignty and title could be strengthened would be through the removal or weakening of overlying interests, such as Aboriginal interests (including Aboriginal title). The only way the government can extinguish Tahltan rights and title is if we voluntarily surrender them or if there is an amendment made to the Canadian constitution that clearly intends to extinguish our title and rights. Adopting a land code does not extinguish or weaken Tahltan title and rights, so therefore it will not give stronger claim to sovereignty and title by the Crown.

**Question 4: What does ratification of a land code by the Band imply for acknowledgment of Crown title?**

**Answer:** By signing the Framework Agreement, the bands technically acknowledge that title to reserve lands is vested in the federal Crown (under the current legal system), but this acknowledgment does not weaken Tahltan title, nor strengthen the Crown's claim to title. Language can be built into the land code to explicitly state that such acknowledgment is only for the purpose of the land code and does not detract from or diminish Tahltan Aboriginal rights and title.

**In closing, the legal memo provides this final opinion to the Tahltan Band and Iskut Band regarding the development of their land codes:**

*Ultimately, the First Nations Land Management Initiative offers bands the opportunity to exercise more control over their reserve lands and resources, but has no effect on constitutionally protected or other inherent Aboriginal title and rights. In contemplating whether to sign onto the Framework Agreement and adopt a land code, TBC and Iskut will need to consider the associated costs and liabilities of land management (such as environmental liabilities), but can assure their communities that there will be no effects on Tahltan title and rights.*

**E-mail [askus@tahltan.ca](mailto:askus@tahltan.ca) to request a copy of the full memo.**