

# First Nations Lands Advisory Board



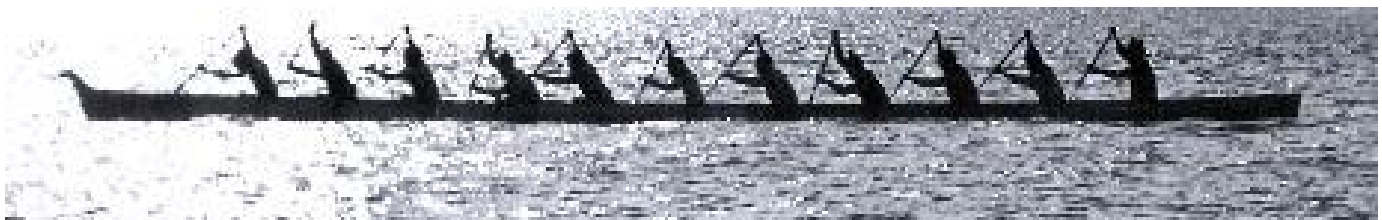
Annual Report  
2004-2005





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## CHAIRMAN'S MESSAGE



Fiscal year 2004-2005 was another productive but challenging time for the Lands Advisory Board and the 41 First Nation signatories to the *Framework Agreement on First Nation Land Management*. The 14 operational First Nations continued with their successful management of reserve lands and resources. At the same time, 23 of the 27 developmental First Nations actively worked on the completion of their community votes to ratify their land codes. Meanwhile, many other First Nations from across Canada anxiously wait to participate in this First Nations' initiative.

In 1996 a group of First Nations entered into a government-to-government relationship with Canada by signing the *Framework Agreement*. The *Framework Agreement* provides the opportunity for First Nations to assume direct authority and jurisdictional control over their reserve lands and resources. Once a First Nation successfully ratifies a land code, the community effectively replaces the Minister of Indian and Northern Affairs Canada as the decision-maker over reserve lands and resources.

The *Framework Agreement* is historic. There is no other initiative in Canada today, short of a self government agreement or treaty settlement, whereby a First Nation is recognized as exercising its inherent right as a government with the jurisdictional authority to pass its own laws. The primary objective of all First Nations participating in this First Nation-led land management initiative is to be recognized decision-makers over their reserve lands and resources without reliance on the Minister. The *Framework Agreement* and the First Nation land code provide this landmark opportunity.

Any First Nation, if it wishes, should have the opportunity to participate in this land management initiative. I shall continue to urge Canada to significantly increase the number of First Nation signatories to the *Framework Agreement*. The Lands Advisory Board is committed to assist all First Nations in achieving their desired goal of exercising their inherent right to control their reserve lands and resources.

Sincerely,

Chief Robert Louie  
Chairman, Lands Advisory Board

## EXECUTIVE SUMMARY

### Background

The *Framework Agreement on First Nation Land Management* represents the culmination of years of effort by a national group of dedicated Chiefs to create, for their First Nations, the option to manage reserve lands and resources under their own land codes, free from constraints imposed under the *Indian Act*. The *Framework Agreement* is a government-to-government agreement signed in February 1996 by the Chiefs of 14 First Nations and Canada. In June 1999, Canada enacted the *First Nations Land Management Act*, “an Act providing for the ratification and bringing into effect” of the *Framework Agreement*.

The Chiefs’ pursuit of a legislative sectoral approach to the development of a government-to-government agreement on land management provided Canada with the opportunity to engage actively in a First Nation-led initiative. The *Framework Agreement* was consistent with the federal government’s policy objective of recognizing First Nations’ inherent right of self-government.

The *Framework Agreement* established a Lands Advisory Board (LAB). The composition of the LAB is determined by the Councils of those First Nations which have ratified the *Framework Agreement* and passed their individual land codes. The LAB is the political body with the mandate to implement the *Framework Agreement*. This includes providing support to the operational First Nations that have voted and are functioning under a community land code and also to the developmental First Nations preparing to conduct their community vote.

The LAB established a Finance Committee to assist in fulfilling the *Framework Agreement* responsibilities. The Finance Committee manages the financial and technical aspects and is assisted by the First Nations Land Management Resource Centre.

Throughout 2004-2005, the LAB and Resource Centre provided political, financial and technical support to 23 developmental First Nations preparing to vote on their individual land codes. The ratification process under the *Framework Agreement* consists of 43 activities. The LAB and Resource Centre supported the developmental First Nations with the drafting of the community land code, the design and implementation of a communication strategy and the design of a community voting procedure. The LAB and Resource Centre also were requested by the developmental First Nations to provide advice and guidance on the environmental site assessment of the reserve lands, the survey of the reserve jurisdictional boundaries and the Individual Agreement with Canada.

The LAB and Resource Centre also provided support throughout 2003-2004 to the operational First Nations functioning under their land codes. Once a land code takes effect, there are 34 land administration sections of the *Indian Act* that no longer apply to a First Nation’s reserve lands and resources. The *Framework Agreement* now applies and First Nations are empowered to manage reserve lands and resources, pass land laws and enforce their land laws.

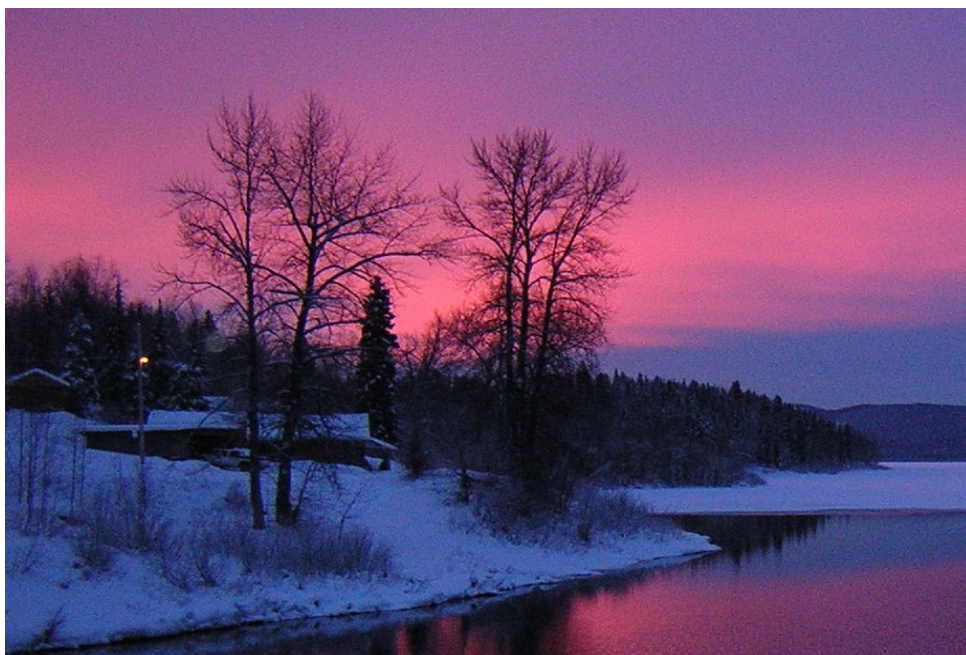
The authority to manage reserve lands includes all the interests, rights and resources that previously belonged to those lands under the jurisdiction of Canada. The operational First Nations exercise all the rights, powers and privileges of an owner. The LAB and Resource Centre are responsible to assist the operational First Nations with drafting land laws, rules, procedures, agreements, policies, and land management systems that will be specific to each community.

The land management success in 2004-2005 of the 14 operational First Nations includes the completion of new residential and agricultural leases, the development and negotiation of an increasing number of commercial leases and the negotiation and signing of major resource development agreements, all of which provide the communities with employment opportunities and increased revenues.

The LAB and Resource Centre continued to build national partnerships to support land management including the Canadian Institute of planners, the Federation of Canadian Municipalities, the National Aboriginal Land Managers Association, the Indian Taxation Advisory Board and the Municipal Aboriginal Issues Network.

The annual report also includes a brief discussion of some of the topics that will be the focus of activities in 2005-2006. These activities are intended to facilitate the implementation of the *Framework Agreement* and recognize the government-to-government relationship between First Nations and Canada. Special effort will be made to conclude a number of important agreements between the operational First Nations and Canada in such areas as environmental management, environmental assessment, operational land management funding and Land Registry regulations.

The annual report recognizes that Canada will continue to propose and introduce new legislative initiatives. The LAB and the Resource Centre will continue to monitor the effects of such legislation on the *Framework Agreement*.



**1. IMPORTANCE OF THE *FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT***

**1.1 Fundamental problems with land administration under the *Indian Act***

The *Indian Act* requires the Minister of Indian and Northern Affairs Canada to administer reserve lands and resources on behalf of First Nations. There are four fundamental problems under the *Indian Act*:

- the *Indian Act* does not recognize the inherent right of First Nations to govern their reserve lands and resources;
- the *Indian Act* does not protect reserve lands from being surrendered and sold, which presents the possibility of further erosion of the limited reserve land base;
- the *Indian Act* does not prevent Canada and provincial governments from expropriating reserve lands under section 35, without the authorization of the First Nation; and
- the *Indian Act* does not provide an adequate statutory basis for managing and developing reserve lands in the 21<sup>st</sup> Century.

The only option available to First Nations prior to 1996 was full self-government to achieve the recognition of their inherent right to manage their reserve lands and resources (see Exhibit 1). Such agreements were not an option for most First Nations and treaty negotiations in British Columbia had only recently been initiated.

**Exhibit 1:  
Options for First Nations Before the *Framework Agreement***

Option:	Land Administration by INAC	Regional Land Administration Program (RLAP)	Delegation of s53 & s60 authorities under the Indian Act	Self-Government
Statutory Regime:	Indian Act	Indian Act	Indian Act	Other (e.g., treaty, self-government legislation, etc.)
Distribution of Authority and Responsibility:	Minister of Indian Affairs			
		First Nation		

## 1.2 Framework Agreement alternative

The *Framework Agreement on First Nation Land Management* represents the culmination of years of effort by a national group of dedicated Chiefs to create, for their First Nations, the opportunity to govern their reserve lands and resources under their own land code, free from constraints imposed under the *Indian Act*. The management of reserve lands and resources is a crucial component of First Nations' self-government. The *Framework Agreement* was signed in February 1996 by the Chiefs of 14 First Nations and the Government of Canada, which later enacted the *First Nations Land Management Act*, "an Act providing for the ratification and bringing into effect of the *Framework Agreement on First Nation Land Management*". The *Act* received Royal Assent in June 1999.

Previously, Canada had not succeeded in enacting a sectoral statutory alternative to the *Indian Act*. The Chiefs' sectoral approach to the development of a government-to-government agreement on land management provided Canada with the opportunity to engage actively in a First Nation-led initiative. The Chiefs' intent was consistent with Canada's policy objective of recognizing First Nations' inherent right of self-government. Exhibit 2 indicates the importance of the *Framework Agreement*.

**Exhibit 2:  
Options for First Nations After the *Framework Agreement***

Option:	Land Administration by INAC	Regional Land Administration Program	Delegation of s53 & s60 authorities under the <i>Indian Act</i>	<i>Framework Agreement</i>	Self-Government
Statutory Regime:	<i>Indian Act</i>	<i>Indian Act</i>	<i>Indian Act</i>	↗ FN Land Code ↗ <i>FNLMA</i>	Other (e.g., treaty, self-government legislation, etc.)
Distribution of Authority and Responsibility:	Minister of Indian Affairs				
			First Nation		

### 1.3 *Framework Agreement* parameters

The Chiefs were careful to limit the scope of the *Framework Agreement* in order to prevent unintended impacts on other parties, rights and relationships. For example:

Clause 1.3: *“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.”*

Clause 1.4: *“The Parties acknowledge that the Crown's special relationship with First Nations continues.”*

Clause 1.5: *“This Agreement does not affect any lands, or any rights in lands, that are not subject to this Agreement.”*

Clause 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.”*

Clause 55.1: *“Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.”*

## 2 FIRST NATION SIGNATORIES TO THE *FRAMEWORK AGREEMENT*

### 2.1 Growing Number of First Nations Signatories

Exhibit 3 lists the 41 First Nation signatories to the *Framework Agreement*. Fourteen First Nations have successfully completed the community ratification of their land code under the *Framework Agreement*. Twenty-three First Nations currently are in the developmental process to complete the community ratification of their land code. There were four inactive signatory First Nations in 2004-2005.





<b>EXHIBIT 3: Signatories to the Framework Agreement</b>		
<b>Province</b>	<b>Operational</b>	<b>Developmental</b>
British Columbia	Lheidli T'enneh Westbank McLeod Lake Beecher Bay Tsawwassen Ts'kw'aylaxw (Pavilion) Sliammon	N'Quatqua* Tsawout T'sou-ke Squamish Musqueam Songhees Osoyoos Skeetchestn Kitselas Tseil-waututh (Burrard) Skway Leq'a:mel Cowichan*
<b>Alberta</b>		Siksika*
<b>Saskatchewan</b>	Muskoday Kinistin Whitecap Dakota	Cowessess Flying Dust Muskeg Lake
<b>Manitoba</b>	Opaskwayak Cree	Swan Lake
<b>Ontario</b>	Scugog Island Georgina Island Nipissing	Mnjikaning Garden River Mississagi #8 Whitefish Lake Dokis Moose Deer Point Chippewas of Kettle and Stony Point*
<b>New Brunswick</b>		Kingsclear St.Mary's

\* inactive in 2004-2005



Exhibit 4 lists the 90 other First Nations that have expressed an interest in the *Framework Agreement*. The geographic locations across Canada of the signatory and interested First Nations are identified in Appendix A.

#### Exhibit 4

#### First Nations which have expressed an interest in the *Framework Agreement*

##### **British Columbia**

Metlakatla  
Tzeachten  
Seabird island  
Matsqui  
We Wai Kai  
Fountain  
Sumas  
Popkum  
Tl'azt'en  
Squiala  
Shuswap  
Nak'azdli  
Little Shuswap  
Williams Lake  
Nanoose  
Malahat  
Campbell River  
Skawahlook  
Chawathil  
Aitchelitz  
Yakweawkwoose  
Cheam  
Kamloops  
Fort Nelson  
Skowkale  
Shxw'ow'hamel  
Skwah  
Kwaw Kwaw Aplit  
Scowlitz  
Moricetown  
Kwantlen  
Nee-Tahi-Buhn  
Tla-o-qui-aht  
Soowahlie

##### **Alberta**

Horse Lake  
Alexander  
Ft. McKay  
Tsuu T'Ina Nation

Alexis  
Blood Tribe

##### **Saskatchewan**

Little Pine  
Kahkewistahaw  
Peepeekisis

One Arrow  
Gordon  
Kawacatoose

Pasqua  
Yellow Quill  
Peter Ballantyne

##### **Manitoba**

Nisichawayasihk Cree Nation  
Sioux Valley Dakota Nation

Mathias Colomb  
Ebb & Flow

Sagkeeng  
Rolling River  
Norway House

Pine Creek  
Marcel Colomb  
Chemawawin Cree

Grand Rapids  
Mosakahiken Cree  
Wuskwi Sipiik

Skownan  
Sapotaweyak  
Gamblers  
Keeseekoowenin  
O-Chi-Chak-Ko-Sipi

##### **Ontario**

Beausoleil  
Wasauksing  
Henvey Inlet  
M'Chigeeng  
Curve Lake  
Big Grassy  
Saugeen  
Naotkamegwaning  
Sagamok  
Sheshequaning  
Nicickousemenecing  
Northwest Angle No.33  
Gull Lake  
Big Island  
Alderville

##### **Quebec**

Kahnawake  
Innu Essipit

##### **New Brunswick**

Woodstock

##### **Nova Scotia**

Millbrook  
Annapolis Valley

##### **Prince Edward island**

Lennon

##### **Northwest Territories**

K'atlodeeche  
Liidlii Kue

### 3. ROLE OF LANDS ADVISORY BOARD AND RESOURCE CENTRE

#### 3.1 Functions of the Lands Advisory Board

The *Framework Agreement* established the Lands Advisory Board. The principal functions assigned to the LAB are itemized in clause 39 of the *Framework Agreement*. They include:

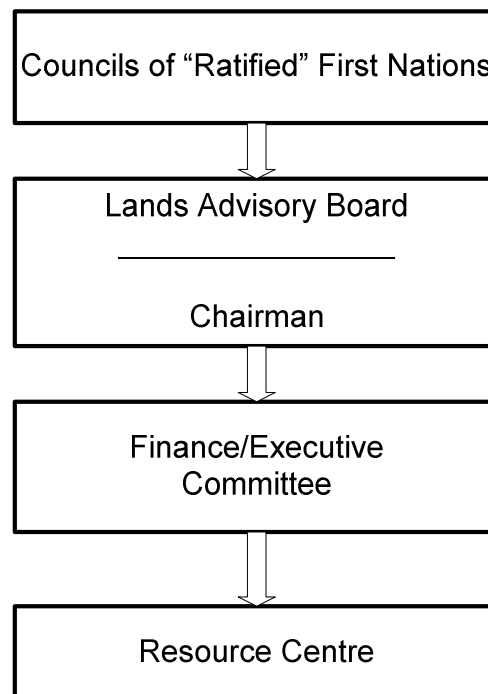
- (a) developing model land codes, laws and land management systems;
- (b) assisting First Nations in developing and implementing their land codes, land laws, land management systems and environmental assessment and protection regimes;
- (c) establishing a Resource Centre, curricula and training programs for managers and others who perform functions pursuant to a land code;
- (d) proposing regulations for First Nation land registration; and
- (e) in consultation with First Nations, negotiating a funding method with the Minister.

#### 3.2 Composition of the Lands Advisory Board

The composition of the Lands Advisory Board is determined by the Councils of those First Nations which have ratified the *Framework Agreement* by voting to manage their reserve lands under a community land code. The Lands Advisory Board is the political body with the mandate to implement the *Framework Agreement*. This includes providing support not only to the operational First Nations that have voted and are functioning under a community land code but also to the developmental First Nations that are preparing to conduct their community vote.

The Chairman of the LAB is an elected position selected by those Councils of First Nations which have ratified the *Framework Agreement*. Exhibit 5 indicates the structure of the Lands Advisory Board.

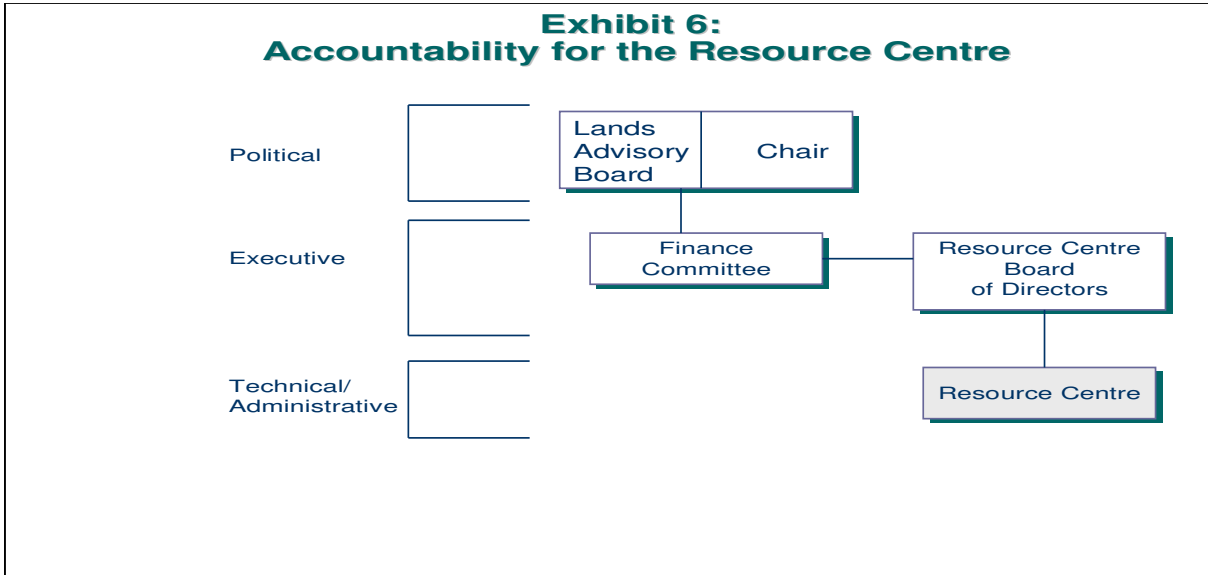
Exhibit 5  
Structure of the Lands Advisory Board



### 3.3 First Nations Land Management Resource Centre

The Lands Advisory Board has two entities to assist with implementing its responsibilities. The Finance Committee, which is made up of representatives of the signatory First Nations, is established to manage all financial and reporting matters on behalf of the Lands Advisory Board. The Finance Committee is responsible for the First Nations Land Management Resource Centre, which is the service delivery organization that fulfills the Lands Advisory Board’s technical and administrative responsibilities under the *Framework Agreement*.

The accountability for the Resource Centre is indicated in Exhibit 6:



**Finance Committee: from left Chief Bill McCue, Chief Austin Bear, Rennie Goose, Chief Barry Seymour**

### 3.4 Mandate and Strategic Focus of the Lands Advisory Board

The mandate and strategic focus of the Lands Advisory Board and Resource Centre are summarized in Exhibit 7:

**Exhibit 7:**

LANDS ADVISORY BOARD MANDATE AND STRATEGIC FOCUS		
Mandate	Strategic Focus	Relevant Parts of the <i>Framework Agreement</i>
1. LAB & Resource Centre (RC) policy, planning and administration to implement the <i>Framework Agreement</i> and <i>FNLMA</i> .	1.1 LAB will fulfill its responsibilities pursuant to the <i>Framework Agreement</i>	Parts VI, VIII & XI
	1.2 LAB & RC will support First Nations with their government-to-government relationship with Canada	Parts V, VIII & XI
	1.3 LAB & RC will support First Nations to access the governance tools required for land management.	Parts VIII
	1.4 LAB & RC will support First Nations to establish relationships with related sectors and institutions	Parts III, IV & VIII
	1.5 LAB & RC will support additional First Nations to be added as signatories to the <i>Framework Agreement</i>	Parts VI, VIII & XI
2. LAB & RC will provide support services to operational First Nations which have ratified the <i>Framework Agreement</i> .	2.1 LAB & RC will support First Nations to exercise their jurisdiction over their reserve lands pursuant to their Land Codes in such areas as rights & powers, law making, dispute resolution, enforcement, environment, registration, provincial & municipal relations	Parts III, IV, V & XI
3. LAB & RC will provide support services to developmental First Nations ratifying the <i>Framework Agreement</i> .	3.1 LAB & RC will support First Nations with developmental funding	Part VIII
	3.2 LAB & RC will support First Nations to complete the ratification process	Parts II & VIII
	3.3 LAB & RC will support First Nations to conclude their Individual Agreement with Canada	Parts II & VIII

## 4. Operational First Nations Successes

### 4.1 Land Management Under the *Framework Agreement*

Once a First Nation has completed the community ratification of the land code and the land code takes effect, there are 34 land administration sections of the *Indian Act* that no longer apply to a First Nation's reserve lands and resources. The *Framework Agreement* now applies and First Nations are empowered to manage reserve lands and resources, pass land laws and enforce their land laws.

The authority to manage reserve lands includes all the interests, rights and resources that belong to those lands under the jurisdiction of Canada. The operational First Nations exercise all the rights, powers and privileges of an owner. This authority is described in Parts II, III and XI of the *Framework Agreement*.

First Nation authority to pass land laws includes development, conservation, protection, use and possession of reserve lands. In addition, operational First Nations are the only jurisdictions in Canada to have enacted (as required by the *Framework Agreement*) laws relating to the use, occupancy and possession of lands on reserve following matrimonial

breakdown or divorce. This authority is described in Parts IV and V of the *Framework Agreement*. The Lands Advisory Board and Resource Centre assist operational First Nations in designing the necessary land laws, processes, agreements, policies, plans and land management systems.

First Nation authority to enforce land laws includes establishing offences and comprehensive enforcement procedures and providing for fines. The authority is described in Part IV of the *Framework Agreement*. The Lands Advisory Board and Resource Centre assist the operational First Nations with designing enforcement procedures.

#### 4.2 Westbank First Nation, British Columbia

The Westbank First Nation (WFN) located adjacent to Kelowna in south central British Columbia was one of the original 14 signatories to the *Framework Agreement* and where the Chiefs' initiative began. WFN members voted on their land code in May 2003 and the code came into effect on July 1<sup>st</sup> 2003. The code now forms part of the WFN self-government.

One of the guiding principles in developing the WFN Land Code was to remove the administrative role of Chief and Council in approving land transactions where the Council was not a party to the transaction. This was important at Westbank where there are many private business transactions that can become complicated and delayed where approvals have to be sought from a governing body - a clear disadvantage to conducting business on-reserve where such paternalism does not exist off-reserve. Under the land code, transaction times have been reduced and administrative procedures simplified.



#### Residential Leases

In addition to the individual and small development projects, a number of significant and large private development have started. There are two large residential developments consisting of over 800 homes, both under 99 year residential subleases and located on Tsinstikeptum Indian Reserve No. 9. These homes are selling well in the real estate market and commanding higher prices than originally anticipated. Other significant private developments include a 320 unit Park Model RV development on Tsinstikeptum Indian Reserve No. 10.

### **Okanagan Lake bridge**

With respect to projects undertaken by the WFN government in accordance with the new land code, the most recognized has involved the Okanagan Lake bridge project and the westside approaches to the bridge. WFN negotiated agreements with the Province of British Columbia (Ministry of Transportation) which were approved by WFN members in accordance with the WFN Land Code and Constitution. This is the first time that the Code's provisions are being tested with respect to what happens when lands are proposed to be taken out of reserve status (to become provincial roads) and need to be replaced with additional reserve lands. Today provincial expropriation is not an option (there is no provincial power of expropriation when a First Nation is under its own land code). The Westside approach interchanges are estimated in phase one to cost approximately \$20 million and there is the potential for up to \$100 million in construction projects over the next ten to fifteen years. The land code is helping to ensure fairness, and bring certainty, for WFN in these bridge transactions .



### **Retail Outlets**

WFN has engaged in negotiations with developers and large retail (box-store) outlets for construction along Highway 97 adjacent to the town of Westbank. Developers are extremely interested in working with WFN given the certainty of conducting business with a First Nation under its own Land Code with clear land management jurisdiction and the capacity to handle the administration associated with complex leases and associated agreements without interference from Canada.

### **Wood Manufacturing Plant**

In 2004 WFN purchased a wood manufacturing company and built a new operations plant, which is approximately 18,000 square feet in size. The plant primarily manufactures hardwood flooring and siding for buildings. It also builds prefabricated cottages, wine racks, stakes for survey and other miscellaneous wood products. It is wholly owned and operated by WFN and employs approximately 28 people. This project was the first business venture of the WFN involving land and financing approved by WFN members in accordance with the new procedures under the land code and WFN Constitution.



### **Non-Member Advisory Council Law**

As part of WFN law development, WFN has enacted an Advisory Council Law for non-members to provide advice to Council on matters that significantly and directly affect them. This applies to land matters. This was important at Westbank where there are over 8,000 non-member residents living on WFN lands. Other laws developed include a Long Term Debt Liability & Guarantees Law to control community indebtedness. Some of the laws in the development stage, and which are required by the Land Code, include a Family Property Law, a Land Use Planning Law, and an Allotment Law. As an interim step until the Land Use Planning Law is enacted, Council has adopted a physical development plan that includes “zones” for different types of development.

### **Land Development Brochure & Website**

The process for developing on Westbank land has been set out in a land development procedures brochure that is provided to potential developers. A copy of this brochure, as well as copies of the WFN laws and policies that it addresses, can be found on the WFN website [www.wfn.ca](http://www.wfn.ca).

### **Additional Reserve Lands**

The implementation of land and resource management jurisdiction under the WFN Land Code has the added benefit of creating comfort in WFN’s ability to manage its reserve lands and resources while negotiations are underway on a treaty settlement. A treaty settlement will ultimately involve WFN’s off-reserve land jurisdiction. A demonstrated proven and experienced implementation of land and resource management on-reserve will make the off-reserve jurisdiction implementation that much more palatable.



### **Additional Laws**

Since the coming into effect of the WFN Land Code and Constitution, there has been significant activity on Westbank reserve lands as the new law is tested. Work remains on completing the additional laws required or contemplated by the land code. In all, the transition to land management under a land code and community constitution has been smooth and members, developers and professional alike are approving.

### **4.3 Nipissing First Nation, Ontario**

The Nipissing Nation in May of 2003 ratified the Nipissing Land Code and the code came into force on July 1, 2003. The current land base being managed is 53,284 acres and it will shortly expand to 90,152 acres. Under the land code, there have been a number of positive developments that are a direct result of Nipissing being able to make decisions in an expeditious manner.

### **Residential Leases**

A new residential lease has been developed for the more than 400 leased lots on Nipissing reserve lands. One of the remarkable attributes of the new lease is that it is mortgageable and insurable by the Canada Mortgage and Housing Corporation, a first in Ontario. This will provide for greater investment by homeowners in their residences and higher property values within the leased lands. Nipissing is now exploring opportunities for mortgageability for all First Nation members.

### **Business Partnership & Jobs**

Nipissing also has signed an agreement with the Miller Group for the lease of the Nipissing quarry. This has resulted in the installation of a new asphalt plant at the quarry and 10 full-time jobs for Nipissing members.

One of the elements that attracted the Miller Group to the Nipissing quarry was the Nipissing Land Code. The code provided the certainty that Miller was looking for when dealing with First Nations and the dispute resolution mechanisms, in particular, gave the company confidence that in the unlikely event that there was a dispute between the First Nation and the company, that it would be handled in a fair and equitable manner.



The Miller Group and Nipissing recently have begun discussions on expanding Miller's operations in the community to include other operations, such as recycling and composting which will provide 30 full-time jobs for Nipissing members. Nipissing also is focused on business licensing, zoning and planning by-laws to ensure that a proper long term planning regime is in place within the community.

## 4.4 Muskoday First Nation, Saskatchewan

### Agriculture

In 2004-05, 19 new agricultural permits were signed which have generated revenue for Muskoday. Other sources of revenue include billboard permits, right of way easements and new commercial leases. Since coming under the land code in 2000, over 170 different cash permits have been drafted and executed. No documents have to be sent to any regional or district office for any sort of approval, therefore, the time frame involved in tendering out land to signing a new permit is less than a month.



### Agroforestry

Muskoday was approached in 2004 by the Canadian Forestry Service to partner in a new tree planting project called the 2020 Forestation project. Through this partnership, Muskoday would provide land for a hybrid poplar plantation that will not only become a beautification plan situated right next to the new school, but will also aid in carbon credits with the new Kyoto accord. Over 50,000 seedlings were planted, employing 15 part time workers. This partnership will see Muskoday receive over \$ 35,000 over the course of the next 5 years, making this once vacant pastureland a revenue generating piece of property.

### Commercial Leases

In October 2004, Muskoday leased the band-owned restaurant to private interests. As the building is situated on reserve, the lease was drafted and administered under the Muskoday Land Code. The time frame involved from tendering to signing the lease was less than three months—a fraction of the time that is required to complete commercial leases under the *Indian Act*. Over the term of this commercial lease, additional revenue will be provided to Muskoday.

### Billboard Leases

Three different companies advertise with billboards on Muskoday reserve lands, with two other local companies hoping to rent advertising space along Route #3. As well as bringing in revenues from the

rental, the billboards provide excellent exposure for Muskoday since approximately 2,500 vehicles use the provincial highway passing through Muskoday each day.



### **Other Businesses**

Other individuals have expressed interest in opening up businesses on reserve. This will involve a mini strip-mall, a car wash/oil change business, and a gift shop dealing mainly in native artwork. These ventures will provide additional revenues for Muskoday.

### **Additional Reserve Lands**

Muskoday's land base will be growing in the near future with the anticipated finalization of its Treaty Land Entitlement claim in the fall of 2005. In total, over 6000 shortfall acres will be added, plus monetary compensation to buy other agricultural or commercial properties. This will greatly increase the job opportunities and revenue for Muskoday and its people. With the land code already in place, administration and property management should be virtually seamless.

## **4.5 Georgina Island First Nation, Ontario**

The Georgina Island Land Code came in to effect on January 1, 2000. Since that time Georgina Island has been actively developing land interests and maximizing the economic potential generated by the new governance authorities afforded under the land code. In 2004 - 2005 a significant number of transactions were concluded, all without the constraints of the *Indian Act*.



### **Residential Leases**

The new interests include the negotiations and processing of 125 new residential and cottage leases. As opposed to the *Indian Act* with its lengthy administrative and approval process of years, these transactions were accomplished within two weeks and will provide Georgina Island with additional revenue.

Additionally, Georgina Island renegotiated 250 existing interests. Land appraisals were completed and agreement reached with the lessees in one month and will generate additional annual revenue. Discussions also were concluded on the setting aside of 12 new lots for members who currently reside off-reserve but wish to return to their community. In this instance the transfer of those interests were processed in one day.

### **Commercial Leases**

Georgina Island also conducted substantive negotiations on the development of a new golf course and resort. This development, which will include 200 new cottage lots, involves a total of 500 acres and will produce a projected 150 new full-time and part-time jobs. Under the land code, these negotiations were completed over a 5 month period, as opposed to an indeterminate period of years under the *Indian Act*.

## 4.6 Whitecap Dakota First Nation, Saskatchewan

### Commercial Leases

Whitecap Dakota approved its land code in November 2003. Since the code came into effect on January 1, 2004, Whitecap Dakota has approved 13 new commercial leases. The Code has allowed Whitecap Dakota to approve commercial lease up to 49 years. The commercial leases include a championship golf course, a major casino and a number of small businesses, all approved through the Whitecap Dakota Council without the involvement and delay of Indian and Northern Affairs Canada. The commercial developments will provide approximately 650 jobs for members and for those residing in the surrounding municipalities. Whitecap Dakota also has approved 30 agricultural leases which will provide additional revenues.



### Permits & Easements

The land code has allowed the First Nation to issue permits, easements and right-of-ways to major utility and transportation providers significantly reducing the time to initiate approvals.

### Residential Leases

Whitecap Dakota also has the ability under the land code to approve residential leases up to 99 years. This has enabled Whitecap Dakota to market residential properties on reserve land. Whitecap Dakota is in the process of developing residential lots for members and non-band members. In order to ensure that developments are done in a orderly manner, several laws have been implemented, such as business development and taxation.

### Infrastructure

Approximately \$10 million in infrastructure development is required to accommodate the commercial and residential development on reserve. Under the land code, Whitecap Dakota has the capacity to facilitate this infrastructure development, including the financing of major sewer and water as well as the granting of utility installation permits. The infrastructure development will employ approximately 50 individuals during construction.

### Land Use Planning

In conjunction with the land code, Whitecap Dakota has developed a land use plan which allows the community to develop land use districts with specific development requirements for each district. This has enabled Whitecap Dakota to identify lands with commercial, residential, agricultural and cultural values and establish guidelines for each. Operating under the land code has been a definite asset to Whitecap Dakota and has enhanced the community's capacity to govern its lands in an efficient and effective manner.

#### 4.7 Tsawwassen First Nation, British Columbia

The Tsawwassen First Nation (TFN), located on the southern reaches of Lower Mainland British Columbia signed onto the *Framework Agreement* in 2001. TFN members voted on their land code in late 2003, and the code was enacted in March 2004. The code has become the core component of TFN's land management.

As with other First Nations involved in the *Framework Agreement*, one of the driving forces was, from the beginning, the reduction of bureaucratic intervention and the streamlining of basic land transaction processes; the latter are now implemented in weeks, rather than months. A related secondary objective was to reorganize the TFN Lands Department, enabling better management of TFN lands, and integrating land management with economic development planning initiatives. Under the TFN land code, laws continue to be developed, such as a "fill and deposit of soils" law which enables TFN Chief and Council, through its Lands Department, to govern fill operations undertaken by various locatees, and a "utilities access" law, providing the ability for TFN Chief and Council to grant access to TFN lands to utilities.

Since the ratification of the TFN land code, a renewed emphasis on economic development has taken place, mostly due to community, locatee and third party confidence in TFN's ability to manage its lands. At the same time, a Land Use Plan is being developed, in turn enabling better planning and longer term economic development commitments

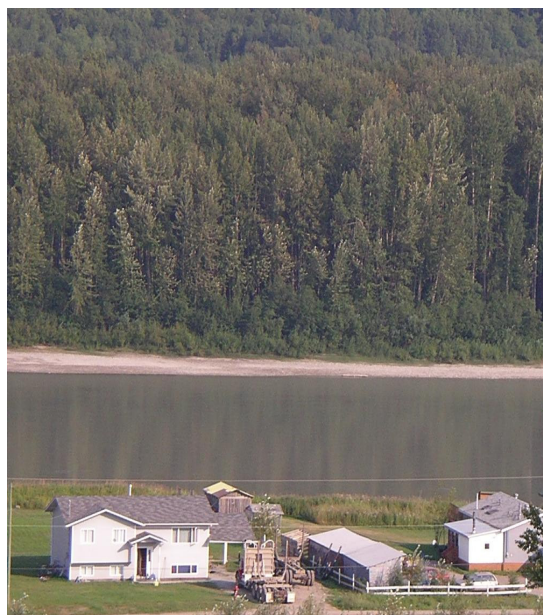
#### 4.8 Sliammon First Nation, British Columbia

Since the coming into effect of its land code, Sliammon has been becoming more active in the administration of reserve lands. In 2004-05 a total of 50 new and renewed leases and permits were issued. Approximately one-third of these were new residential leases. Additionally, Sliammon is actively planning a new light industrial park which, when complete, will generate significant revenues and employment over a 15 year time frame.

#### 4.9 Lheidli T'enneh First Nation, British Columbia

Lheidli T'enneh completed a comprehensive land use plan in 2004-2005 that will see full implementation in 2005-2006. With the completion of this plan, the community is now in a position to undertake the next steps of a full economic development strategy including hunting, fishing, tourism and agriculture.

Under the land code, Lheidli T'enneh has been able to significantly change the relationships with other levels of government. More specifically new working relationships have been established with the City of Prince George and the Regional District to conclude new service agreements and protocols.





#### 4.10 McLeod Lake First Nation, British Columbia

McLeod Lake spent the 2004-2005 year developing and concluding a land use plan and will be preparing to send the plan to the membership for approval in the new year. In the interim, McLeod Lake has continued to undertake transactions under its temporary rules established pursuant to the Land Code. McLeod Lake continues to build on the economic development potential in the forestry industry and has recently constructed a new green house for its forestry program.

#### 4.11 Ts'kw'aylaxw First Nation, British Columbia

In 2004-05 Ts'kw'aylaxw became the first community under a land code to negotiate a lease on reserve lands with a mining company. Ts'kw'aylaxw negotiated a new multi-year lease arrangement with Graymont Western Canada Ltd. for the limestone quarry,

replacing the previous arrangement that had been negotiated under the *Indian Act*. Under the terms of the agreement, the community has secured employment and new revenue in the future while forging a new working relationship with Graymont Western Canada Ltd., which had been strained under the old *Indian Act* lease.

#### 4.12 Opaskwayak Cree Nation, Manitoba

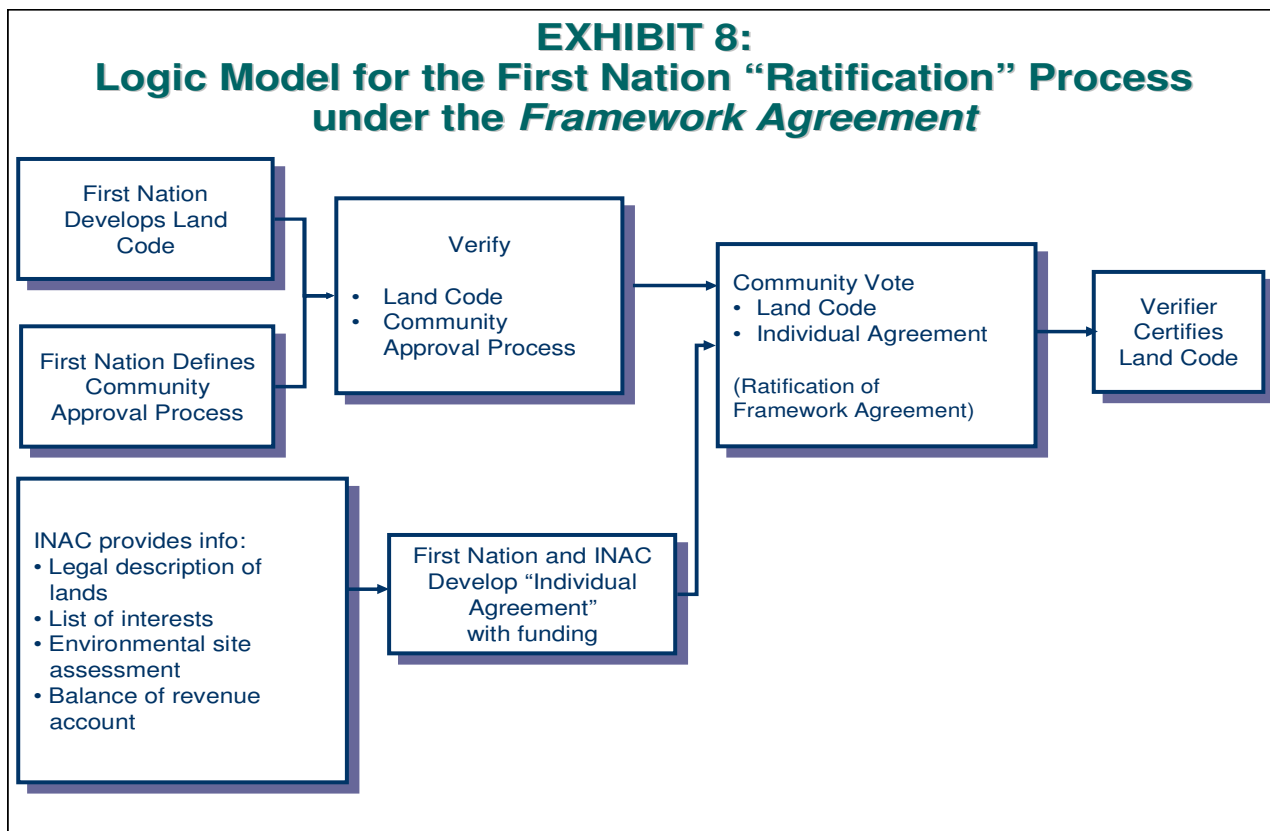
Under the new land code authorities, Opaskwayak Cree negotiated a major commercial lease with the RONA corporation. The new lease secured jobs for the community as well as new revenues. The negotiations included the completion and signing of new leases, development permits, and tenure documents. The Opaskwayak Cree planning process was also incorporated into the plans and members were integrally involved in the planning and development of the site. The company found the process of working with Opaskwayak Cree to be a very positive experience, as a result of the security of the rules and process in place under the land code.

Opaskwayak Cree further negotiated four new commercial and industrial leases, which were financed through a major banking institution with mortgages registered against the lease. In addition, 12 new residential leases were negotiated and granted. These new leases were accomplished within days, as opposed to months and years under the *Indian Act*. All of these interests have generated new revenue for the community. Since these interests can be registered, the banks are more prepared to grant mortgages.

## 5. DEVELOPMENTAL FIRST NATIONS' COMMUNITY RATIFICATION PROCESS

### 5.1 First Nation ratification of the *Framework Agreement*

In order to “ratify” the *Framework Agreement*, a First Nation is required to complete a vote by eligible members, both on-reserve and off-reserve, on whether to approve a land code prepared by the community and an Individual Agreement negotiated with Canada. Exhibit 8 presents a logic model for the ratification process.



### 5.2 Support Services Provided to Developmental First Nations

There are 43 activities to complete the ratification process required under the *Framework Agreement*. The support provided by the Lands Advisory Board and Resource Centre to the developmental First Nations includes the drafting of the community land code, the design and implementation of a community communication and consultation strategy, and the design and implementation of the community ratification process. In addition, when requested by a First Nation, the Lands Advisory Board and Resource Centre provide advice and guidance on the environmental site assessment, the survey of the reserve jurisdictional boundary and the Individual Agreement with Canada.

In 2004-2005 the 23 developmental First Nations made considerable progress towards completing the 43 activities. As a result, 17 of these First Nations anticipate completing their community votes and beginning operational land management under their land codes in

2005-2006.

## **6. IMPACTS OF FEDERAL LEGISLATION ON THE *FRAMEWORK AGREEMENT***

### **6.1 *First Nations Commercial & Industrial Development Act***

First Nations are becoming increasingly more sophisticated in the size and complexity of economic development projects. Many of these new projects include major industrial developments such as oil and gas refineries, major sawmill operations, and manufacturing operations, which constitute a risk in terms of environment and public safety. Unfortunately, there are no regulations in place to manage these risks. Legislation is required to authorize referential incorporation of provincial schemes to regulate these types of projects.

The proposed legislation is an interim stewardship measure to fill this regulatory gap and would only apply to First Nations who have not yet entered into self-government legislation such as the *First Nations Land Management Act*, which ratifies the *Framework Agreement*. As part of the regime under this new legislation, project specific regulations are contingent on the successful negotiation of a tripartite administrative agreement between a First Nation, Canada and a province, enabling the province to function as a federal agent to monitor and enforce the regulation.

Under the *Framework Agreement*, First Nations have the authority to create laws and regulations, or to adopt laws and regulatory regimes of other levels of government, and create their own monitoring and enforcement regimes to address this gap in federal legislation. The Lands Advisory Board will continue to monitor the development of this legislative initiative to provide guidance to First Nations and to ensure there are no conflicts created between these regimes.

### **6.2 *First Nations Oil and Gas and Moneys Management Act***

Introduced as Bill C-54 on June 1, 2005, this legislation will enable First Nations to assume control over the management of their oil and gas resources and moneys. This is viewed as building stronger and more self-reliant communities.

Section 3 of the *Framework Agreement* notes that the *Indian Oil and Gas Act* continues to apply in respect of First Nation land. Additionally in respect of moneys, the *Framework Agreement* applies only to revenue money originally managed under the *Indian Act* but not to capital money held within the Consolidated Revenue Fund as "Indian Money".

There are impacts resulting from this new legislation in respect of moneys. The processes contained in the legislation may conflict with authorities contained in land codes passed under the *Framework Agreement*. These impacts will be examined to identify and limit the effects on First Nation operating under a land code.

As well, First Nations communities under the *Framework Agreement* with land codes in place, which have oil and gas resources and who wish to manage these resources, will need to ensure that there will be a seamless adoption of the new legislation. The new process should be complementary, and not in conflict, with their existing land management processes



established under lands codes.

### **6.3 First Nations Fiscal and Statistical Management Act**

The First Nations Fiscal and Statistical Management Act (Bill C-20) received Royal assent on March 23, 2005 and comes into force on April 1, 2006. The legislation creates four new First Nations Institutions: the First Nation Tax Commission, the First Nations Financial Management Board, the First Nations Finance Authority; and the First Nations Statistical Institute. The position of the Lands Advisory Board is that First Nations, which have ratified the *Framework Agreement*, have the right to decide whether or not to delegate some of their authorities to any of these institutions. The Lands Advisory Board will continue to monitor this new legislation on behalf of the signatory First Nations to the *Framework Agreement*.

### **6.4 Species at Risk Act**

The *Species at Risk Act (SARA)* is one part of the federal government strategy to protect species that are defined as being at risk. Section 3 includes a non-derogation clause. However, the courts have suggested that in the event of a conflict between aboriginal/treaty rights and conservation, conservation may be of more importance.



Under *SARA*, a proposed development project on reserve land requires an environmental assessment of any species at risk. As a result, *SARA* will complicate and increase the cost of a land development application, assessment and approval process for First Nations. There may be opportunities to enter into stewardship arrangements between First Nations and other governments, which could provide financial incentives to preserve or protect a critical habitat on First Nation reserve lands. The Lands Advisory Board will continue to work closely with operational First Nations to secure resources for implementing strategies and to strengthen partnerships with other governments to manage the process.

## **7. AGREEMENTS AND REGULATIONS**

### **7.1 Environmental Management Agreement**

Section 24 of the *Framework Agreement* states that:

“The Minister [of INAC] and the Minister of the Environment and each First Nation with a land code...will negotiate an environmental management agreement.

An environmental management agreement in essence will be a plan on how First Nation will enact environmental protection laws deemed essential...It will include timing, resource, inspection and enforcement requirements.

For those areas identified...First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.”

A draft model of an Environmental Management Agreement to fulfill the requirements of the *Framework Agreement* continues to be under discussion. In 2004-2005 the Lands Advisory Board and the signatory First Nations held two workshop sessions to complete the draft model. Discussions between the Resource Centre, INAC and Environment Canada are ongoing. The Lands Advisory Board and Resource Centre will be assisting each of the operational First Nations to complete their Environmental Management Agreement with Canada as quickly as possible once the model is finalized.

## **7.2 Environmental Assessment Agreement**

An interim environmental assessment process has been a major component of a First Nation's Individual Agreement with Canada. Provisions in the *Framework Agreement* provide an opportunity to negotiate a more formal environmental assessment process to guide the conduct and sign-off on environmental screenings and assessments. Preliminary discussions between Canada, the First Nations and the Resource Centre commenced in 2004-2005 on this initiative and, in conjunction with an environmental management regime, should be in place by April 2006.

## **7.3 Land Registry Regulations**

There are no existing land registry regulations under the *Indian Act*. Financial Institutions have expressed concern over this regulatory vacuum and the uncertainty in relation to the security of real estate investment on reserve. The Lands Advisory Board is mandated by the *Framework Agreement* to propose “regulations for First Nation land registration”. The initial drafting of the land registry regulations was commenced by the Board and First Nations in conjunction with INAC in 2003-2004. The drafting process continued through 2004-2005. It is now expected that the new regulations will be operational in April 2006. A priority for the new registry regime is to achieve clarity and transparency with respect to land tenure and to improve the climate for investment on reserve, while respecting the integrity of traditional land holdings. Now that the major consultations with financial institutions and First Nations are concluded, the next step will be for Canada to proceed with the regulatory enactment process.

## **8. National Partnerships**

One of the Lands Advisory Board's earlier priorities was the creation of an ongoing relationship with professional organizations. The Resource Centre was directed by the Board to begin dialogues with the Canadian Institute of Planners (CIP) and the National Aboriginal Lands Managers Association (NALMA). These discussions led to protocol

agreements with both professional organizations. The intent in both cases is to build support networks for signatory First Nations and to begin to formally develop training and capacity building.

### 8.1 Canadian Institute of Planners

In July 2003, the Canadian Institute of Planners (CIP) and the Lands Advisory Board signed a five-year Memorandum of Understanding to work collaboratively to build capacity in land use, resource and environmental planning and land management for the First Nations operating under their land codes. In 2004-2005 CIP and the Resource Centre initiated a number of collaborative projects. A CIP - First Nation Committee has been established with representatives from the Association of Canadian University Planning Programs and the CIP President and Vice-President.



In May 2004, Dalhousie University organized and delivered an introductory workshop on community leased planning. The session was attended by over 30 Land Managers and Chiefs. Follow up sessions have taken place.

A First Nation lands governance think-tank session was held in November 2004. The purpose was to develop a strategy with requirements and a work plan for preparing First Nations under the *Framework Agreement* to regulate land use and development. The outcome of the work continues to be a main driver of the relationship with CIP.

### 8.2 Municipal Aboriginal Issues Network

This project funded by Canada brings together such major stakeholders as the Federation of Canadian Municipalities (FCM), the Canadian Institute of Planners (CIP), the Indian Tax Advisory Board, the Aboriginal Human Resources Development Council, representatives from the Privy Council Office and the Lands Advisory Board.

In March 2005, the partners signed a Memorandum of Understanding agreeing to work together on projects of common interest. Initial projects will focus on economic development through a joint initiative between municipal governments and aboriginal communities.

In addition, discussions continue with the FCM on matters directly related to land management and capacity development. These discussions will continue with a series of workshops scheduled for 2005-2006.

### 8.3 Protocol Agreement with the National Aboriginal Land Managers Association

The National Aboriginal Land Managers Association (NALMA) and the Resource Centre are both national First Nation organizations dedicated to land management. NALMA assists First Nations under the *Indian Act* while the Resource Centre assists First Nations under the *Framework Agreement*. A professional protocol seemed natural due to the complimentary mandates. On October 21, 2003 the Resource Centre and NALMA entered into a protocol agreement to provide reciprocal support and collaboration on projects and issues that support the aim of lands management.

Throughout 2004-2005 there has been professional collaboration between the Resource Centre and NALMA on INAC's redesign of delegated authority under the *Indian Act* sections 53 and 60, the Reserve Lands Administration Programs (RLAP) and the Lands Management Training Program. The Resource Centre and NALMA also have conducted joint briefings to new First Nations interested in becoming signatories to the *Framework Agreement*.

The Resource Centre accepted an invitation from NALMA to attend and make a presentation at their 2004-2005 Annual Conference. The conference was well attended by many First Nation land managers from across Canada as well as representatives from many different federal and provincial government departments. This sharing of information has proven to be valuable to First Nations as well as the various levels of governments that were present at the conference.

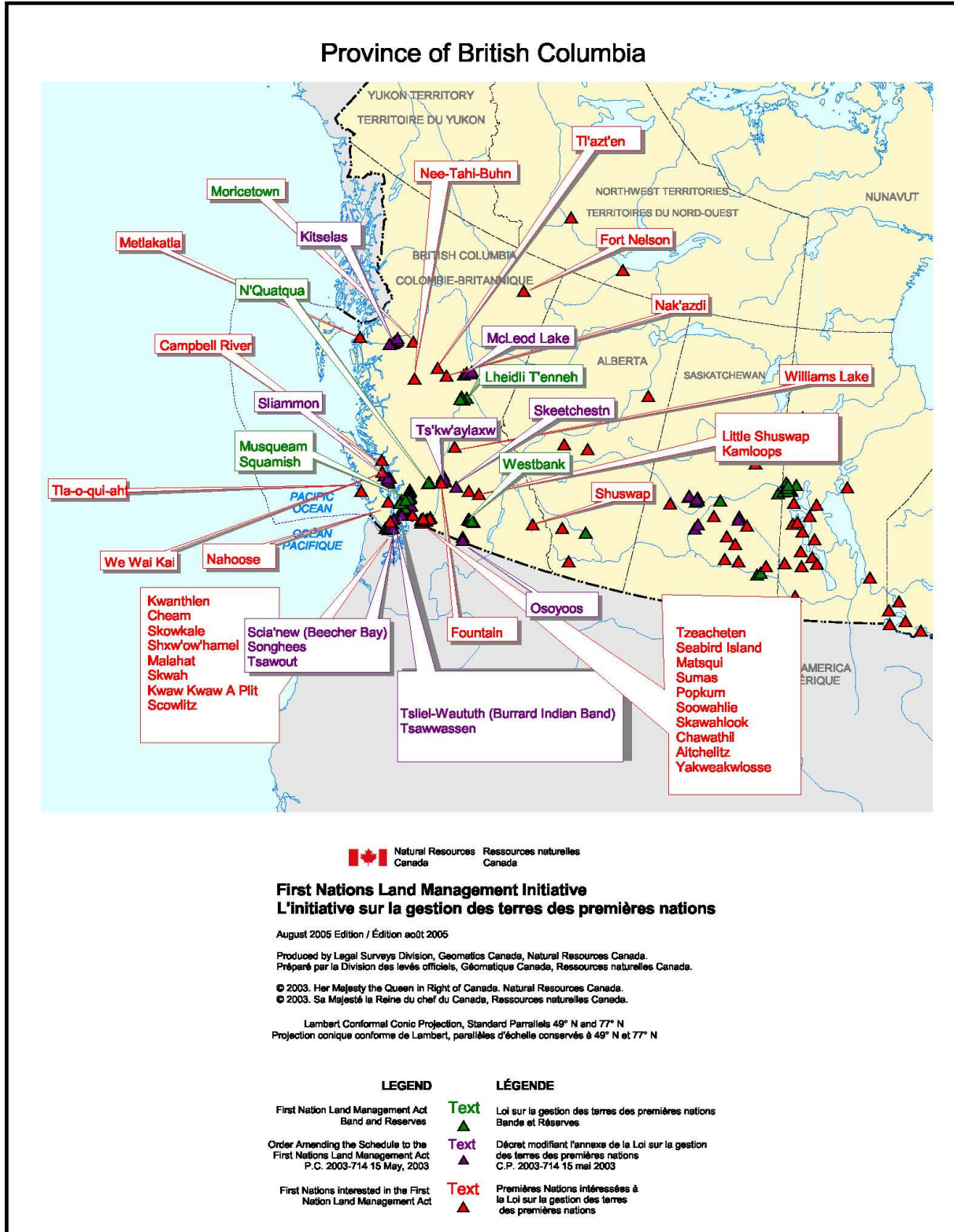
### 8.4 First Nation - Natural Resources Canada Survey Agreement

The nature of the changing relationship between the First Nations operating under their land codes and Canada necessitates direct protocols with various government departments. In particular, Natural Resources Canada (NRCAN) will now require a more direct relationship with these operational First Nations in order to determine how surveys will be delivered. As set out in clause 2.3 of the *Framework Agreement*, First Nations lands are lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867 and, as such, remain federal lands for the purposes of the *Canada Lands Surveys Act*.

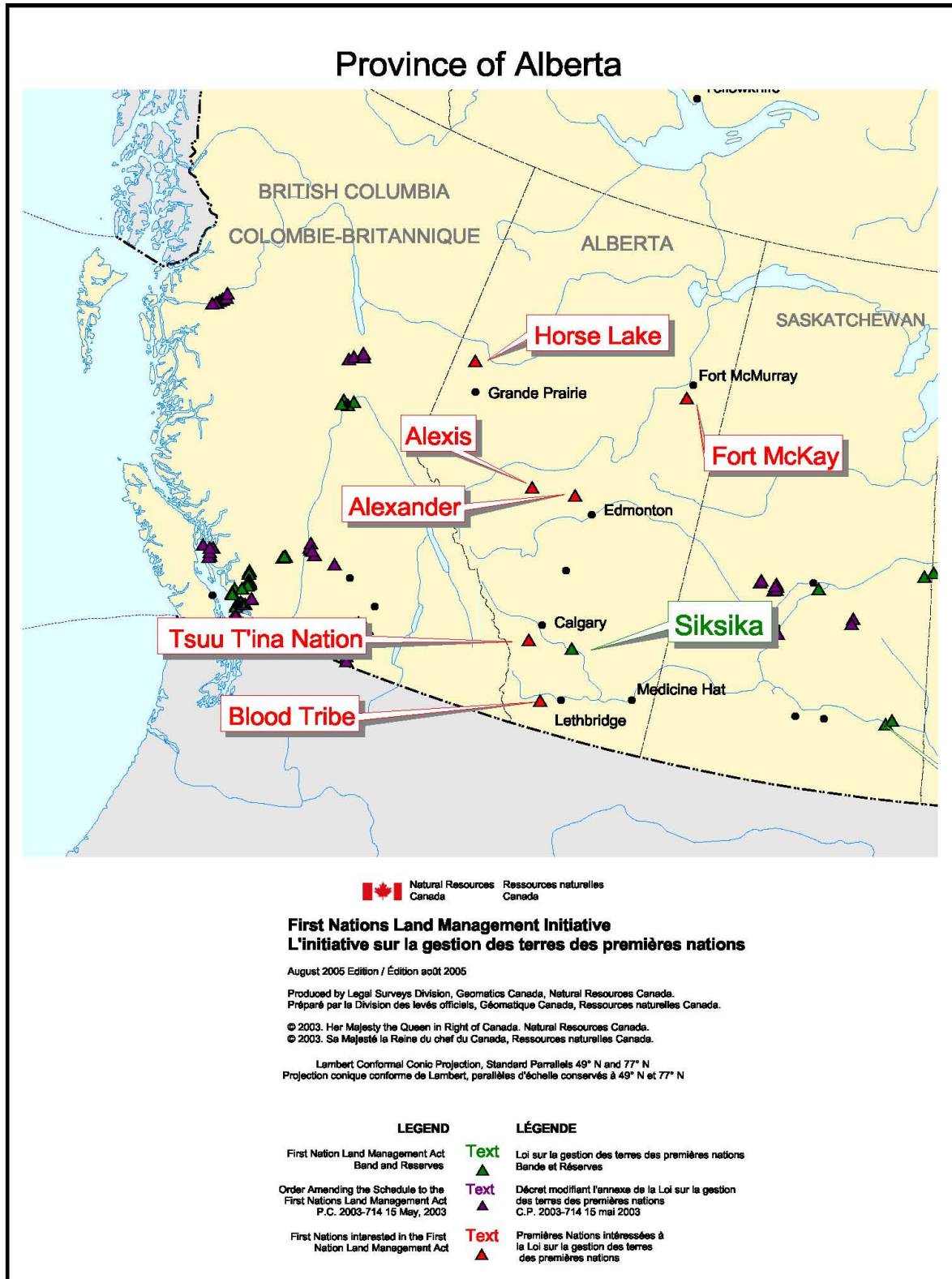
Previously, INAC had a fiduciary responsibility for the day to day decision-making for reserve lands. Further, the land registry system established under the *Indian Act* required surveys to be conducted to satisfy the registration process. However, day-to-day survey decision-making for operational First Nations will no longer be under the purview of INAC and the Minister.

The survey delivery requirement to operational First Nations, and the associated costs, currently are a matter of negotiations between the Resource Centre and NRCAN. It is anticipated that a formal arrangement between the individual First Nations and NRCAN will be in place in 2005-2006 to guide the process.

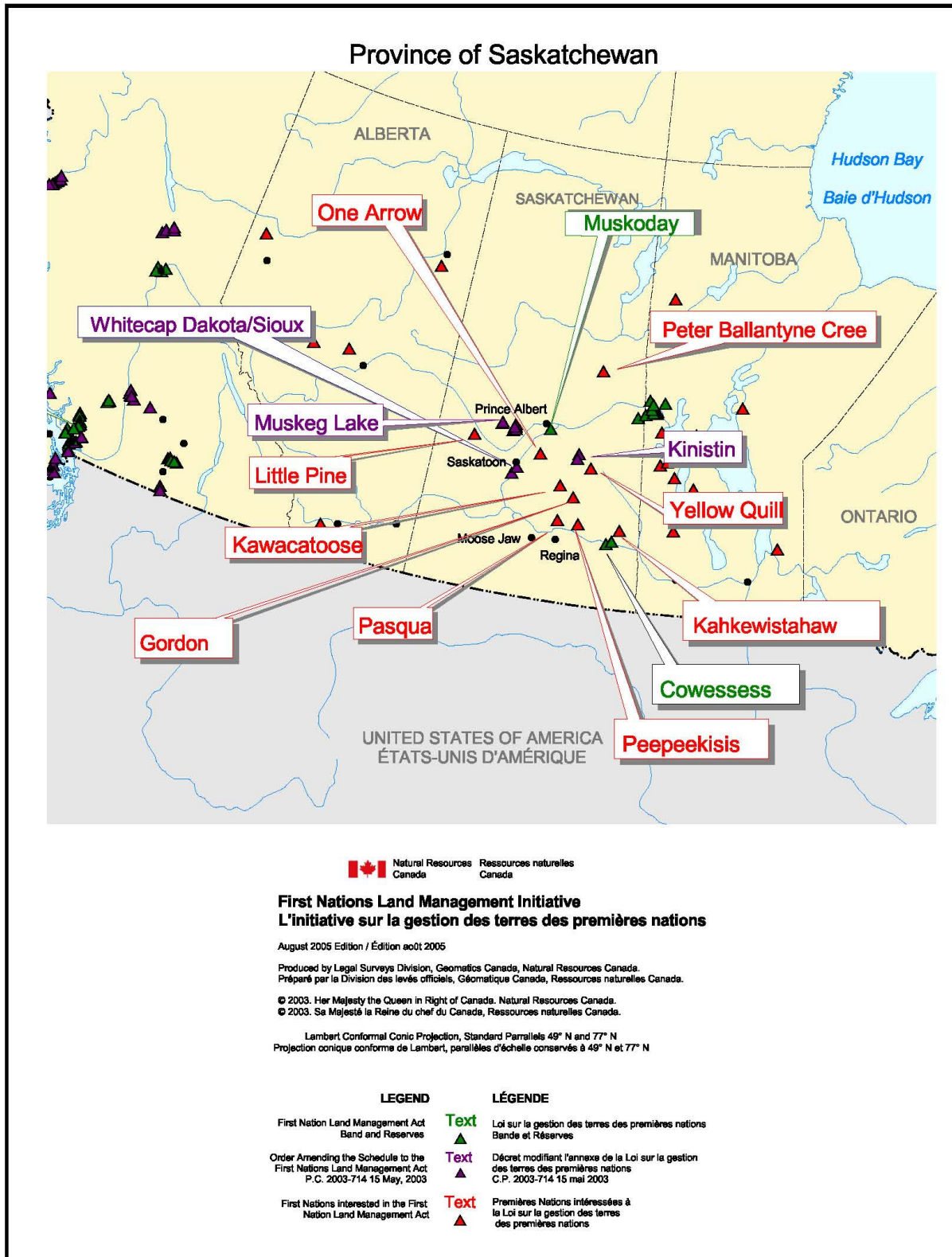
### Appendix A: British Columbia



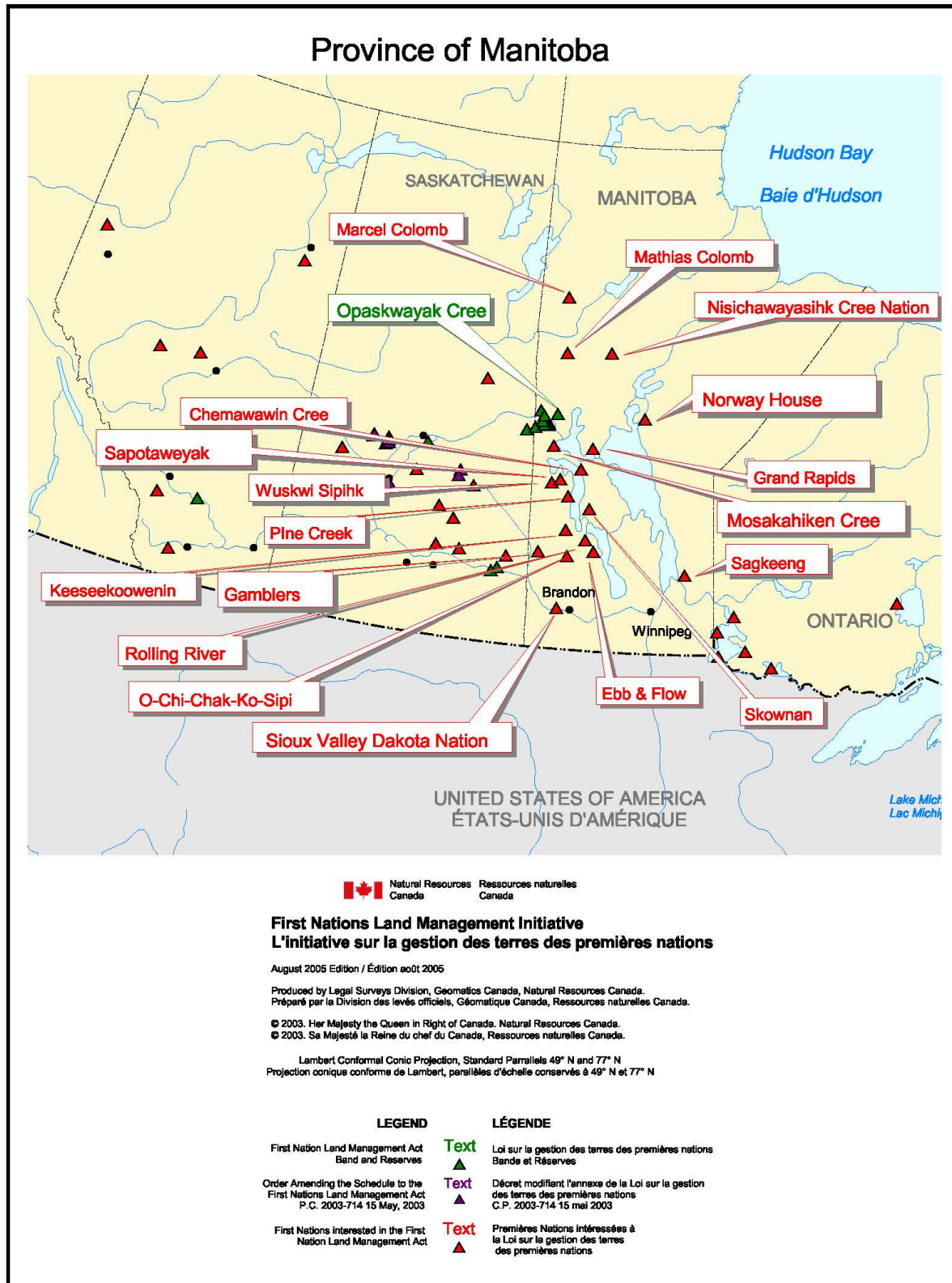
Appendix A: Alberta



### Appendix A: Saskatchewan



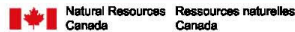
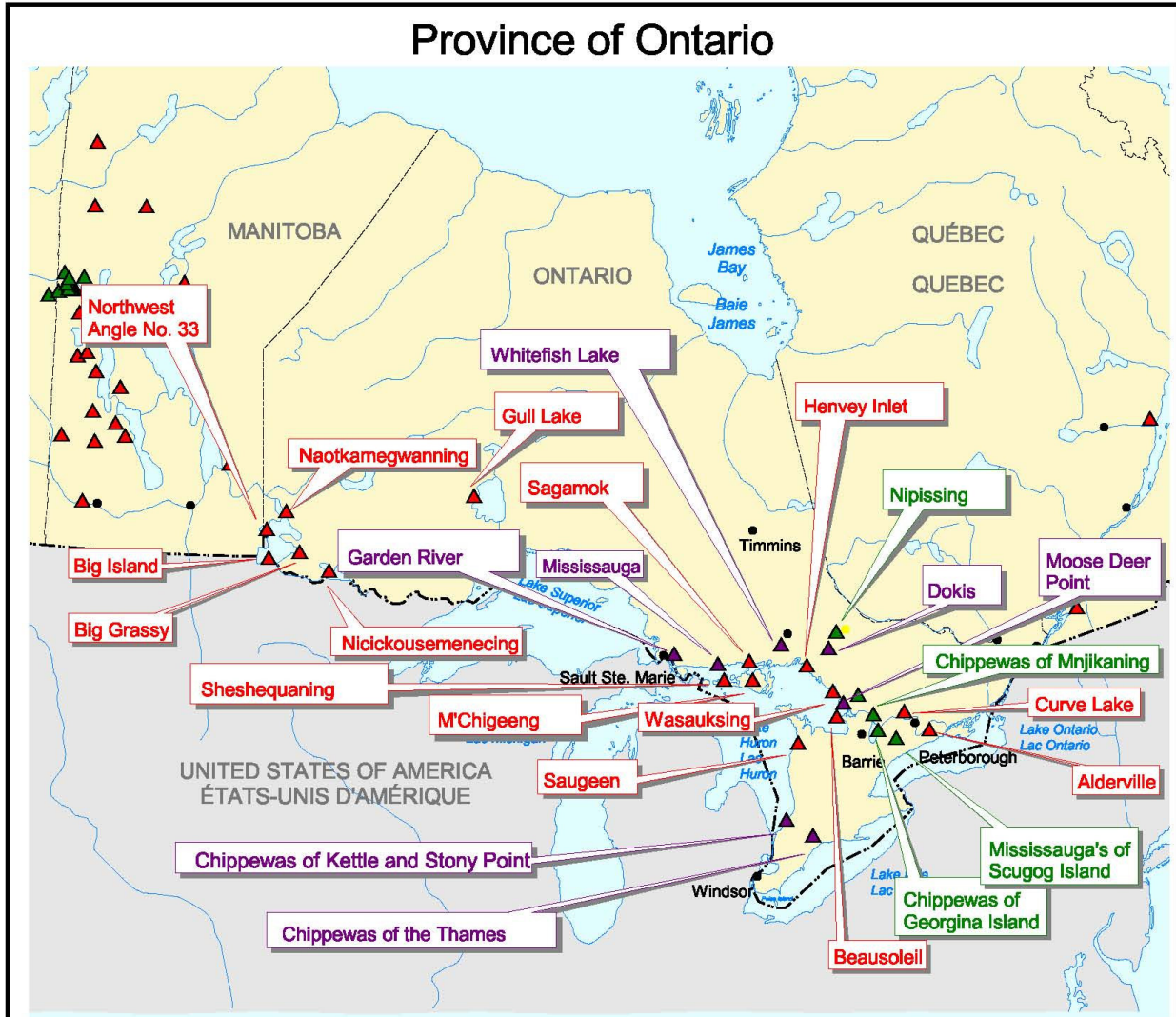
### Appendix A: Manitoba





Appendix A: Ontario

Province of Ontario



**First Nations Land Management Initiative**  
**L'initiative sur la gestion des terres des premières nations**

August 2005 Edition / Édition août 2005

Produced by Legal Surveys Division, Geomatics Canada, Natural Resources Canada.  
 Préparé par la Division des levés officiels, Géomatique Canada, Ressources naturelles Canada.

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Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N  
 Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N

LEGEND	LÉGENDE
First Nation Land Management Act Band and Reserves	<b>Text</b> ▲ Loi sur la gestion des terres des premières nations Bande et Réserves
Order Amending the Schedule to the First Nations Land Management Act P.C. 2003-714 15 May, 2003	<b>Text</b> ▲ Décret modifiant l'annexe de la Loi sur la gestion des terres des premières nations C.P. 2003-714 15 mai 2003
First Nations interested in the First Nation Land Management Act	<b>Text</b> ▲ Premières Nations intéressées à la Loi sur la gestion des terres des premières nations

Appendix A: Quebec

Province of Quebec



**First Nations Land Management Initiative  
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Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N  
Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N

**LEGEND**

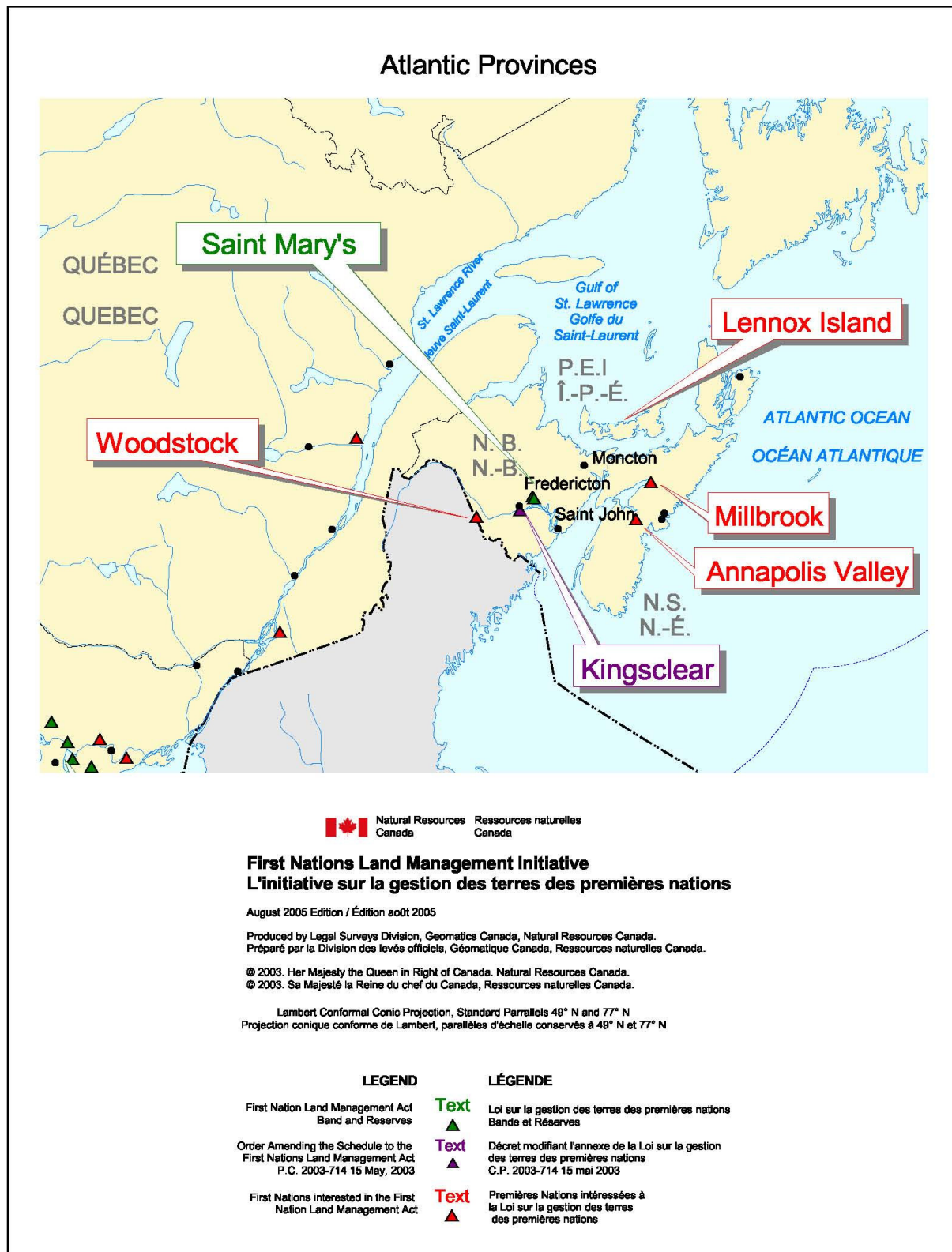
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P.C. 2003-714 15 May, 2003
- First Nations interested in the First  
Nation Land Management Act

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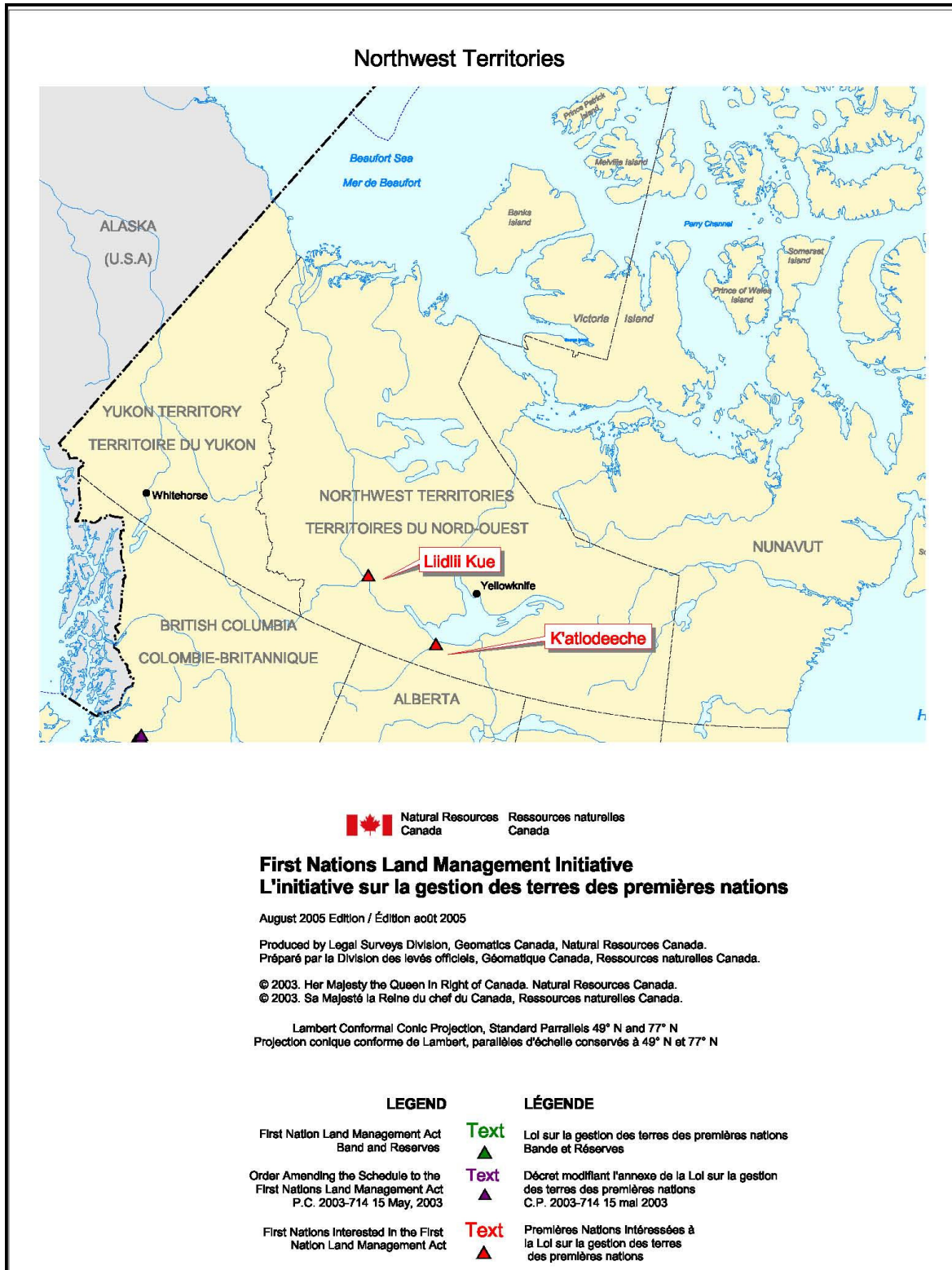
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- Loi sur la gestion des terres des premières nations  
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des premières nations

### Appendix A: Atlantic Provinces



## Appendix A: Northwest Territories



**Appendix B**  
**2004-2005 Annual Financial Report**

## Appendix C List of Photographs

Cover page	top downward: - residential development at Tseil - waututh First Nation (BC) - reserve lands at McLeod Lake First Nation (BC) - commercial lease at Muskoday First Nation (SK) - ceremonial canoe at Squamish First Nation (BC)
Page 2	top: reserve lands at McLeod Lake First Nation (BC) bottom: ceremonial canoe at Squamish First Nation (BC)
Page 3	Robert Louie, Chairman, Lands Advisory Board & Chief, Westbank First Nation (BC)
Page 5	sunset over reserve lands at McLeod Lake First Nation (BC)
Page 8	Chiefs and representatives attending the Lands Advisory Board Annual Meeting hosted at the Muskoday First Nation (SK)
Page 9	First Nation technical representatives, Lands Advisory Board legal advisors and Resource Centre technicians
Page 12	Lands Advisory Board Finance Committee & Board of Directors of the First Nation Land Management Resource Centre Inc., from left to right: - Chief William McCue, Georgina Island First Nation (ON) - Chief Austin Bear, Muskoday First Nation (SK) & Chairman of the Finance Committee and Resource Centre - Rennie Goose, former Chief, Scugog Island First Nation (ON) - Chief Barry Seymour, Lheidli T'enneh First Nation (BC)
Page 14	top: aerial view of reserve lands at Westbank First Nation (BC) bottom: residential leases on reserve lands at Westbank First Nation (BC)
Page 15	aerial view of reserve lands at Westbank First Nation (BC) and the bridge across Lake Okanagan to Kelowna, BC.
Page 16	Westbank First Nation (BC) wood manufacturing plant
Page 17	business partnership between Nipissing First Nation (ON), represented by Chief Philip Goulais (third from left) and the Miller Group, represented by Mr. Les MacCarther (extreme left)
Page 18	top: agriculture on reserve lands at Muskoday First Nation (SK) bottom: commercial lease on reserve lands at Muskoday First Nation (SK)
Page 19	aerial view of part of the reserve lands at Georgina Island First Nation (ON)
Page 20	Dakota Dunes golf course on reserve lands at Whitecap Dakota First Nation (SK)
Page 21	reserve lands at Lheidli T'enneh First Nation (BC)
Page 22	reserve lands at McLeod Lake First Nation (BC)
Page 25	Grizzly bear resting on reserve lands at McLeod Lake First Nation (BC)
Page 27	CIP - First Nations workshop on land-use planning and development
Page 39	Welcome sign at T'Sou-ke First Nation (British Columbia)

## Appendix D List of Exhibits

- Exhibit 1 Options for First Nations Before the *Framework Agreement*
- Exhibit 2 Options for First Nations After the *Framework Agreement*
- Exhibit 3 Signatories to the *Framework Agreement*
- Exhibit 4 First Nations which have expressed an interest in the Framework Agreement (also see Appendix A provincial maps for the locations)
- Exhibit 5 Structure of the Lands Advisory Board
- Exhibit 6 Accountability for the Resource Centre
- Exhibit 7 Lands Advisory Board Mandate and Strategic Focus
- Exhibit 8 Logic Model for the First Nation Ratification Process under the *Framework Agreement*

