



LANDS ADVISORY BOARD



ANNUAL REPORT
2007-2008



Table of Contents

| | |
|--|---------|
| Chairman's Message | page 4 |
| Executive Summary..... | page 5 |
| Letter from the Minister | page 8 |
| 1. Importance of the <i>Framework Agreement on First Nation Land Management</i> | |
| 1.1 Problems with Land Administration under the <i>Indian Act</i> | page 10 |
| 1.2 <i>Framework Agreement</i> Alternative for First Nations | page 11 |
| 1.3 <i>Framework Agreement</i> Parameters | page 12 |
| 2. First Nation Signatories to the <i>Framework Agreement</i> | |
| 2.1 First Nation Signatories | page 12 |
| 3. Roles of the Lands Advisory Board (LAB) and the First Nations Land Management Resource Centre | |
| 3.1 Functions of the LAB..... | page 14 |
| 3.2 Composition of the LAB..... | page 14 |
| 3.3 Mandate and Strategic Focus of the LAB..... | page 16 |
| 3.4 Resource Centre | page 16 |
| 4. LAB in 2007-2008 Accomplishments | |
| 4.1 Annual General Meeting | page 17 |
| 4.2 <i>Framework Agreement</i> Five-Year Authority Renewal | page 17 |
| 4.3 New Operational Funding Methodology..... | page 17 |
| 4.4 Matrimonial Real Property on Reserves..... | page 17 |
| 4.5 Capacity Building, Training & Professional Development Strategy..... | page 19 |
| 4.6 Revised Developmental Funding Process in 2008-2009 | page 20 |
| 4.7 Corporate Risk Profile | page 21 |
| 4.8 Bijuralism..... | page 21 |
| 4.9 Audited Financial Statements | page 23 |
| 5. Operational First Nations | |
| 5.1 Land Governance under the <i>Framework Agreement</i> | page 23 |
| 5.2 First Nation Law Making | page 23 |
| 5.3 Support Services to Operational First Nations | page 23 |
| 5.4 Operational First Nation Achievements..... | page 26 |
| 6. Developmental First Nations | |
| 6.1 First Nation Ratification of the <i>Framework Agreement</i> | page 44 |
| 6.2 New First Nation Signatories to the <i>Framework Agreement</i> | page 45 |
| 6.3 Support Services to Developmental First Nations | page 45 |
| 7. Verification Process under the <i>Framework Agreement</i> | |
| 7.1 Role of the Verifier | page 48 |

Table of Contents (cont.)

| | |
|--|---------|
| 8. Agreements and Regulations | |
| 8.1 Environmental Management Agreement | page 49 |
| 8.2 Environmental Assessment Process | page 49 |
| 8.3 Land Registry Regulations | page 49 |
| 9. National Partnerships | |
| 9.1 Ongoing Relationship with Professional Organizations | page 50 |
| 9.2 <i>Framework Agreement</i> Land Governance Association | page 50 |
| 9.3 First Nations Tax Commission..... | page 51 |
| Appendix A: First Nation Location Maps | |
| BC | page 52 |
| AB | page 53 |
| SK | page 54 |
| MB | page 55 |
| ON | page 56 |
| QC | page 57 |
| NB..... | page 58 |
| Appendix B: List of Exhibits | page 59 |
| Appendix C: LAB 2007-2008 Annual General Meeting Summary of Resolutions.. | page 60 |
| Appendix D: Proposed New Operational Funding Methodology | page 61 |
| Appendix E: LAB Response to Bill C-47 | page 62 |
| Appendix F: Revised 2008-2009 First Nation Developmental Funding Process ... | page 66 |
| Appendix G: Protocol with First Nations Tax Commission..... | page 79 |

MESSAGE FROM THE CHAIRMAN, CHIEF ROBERT LOUIE

Fiscal year 2007-2008 was another challenging but productive time for the Lands Advisory Board (LAB) and the First Nation signatories to the *Framework Agreement on First Nation Land Management (Framework Agreement)*. Six communities conducted community votes on ratifying the *Framework Agreement*. Twenty two First Nations are operational under their land codes and successfully managing their reserve lands and resources. The LAB welcomed six new First Nations as signatories to the *Framework Agreement*. There now are 58 First Nation signatories to the *Framework Agreement*. Thirty First Nations are in the developmental phase actively preparing for their community ratification votes, many of which are anticipated in 2008-2009.



The *Framework Agreement* provides the opportunity for First Nations to assume direct authority, jurisdiction and control over their reserve lands and resources. Once a First Nation ratifies the *Framework Agreement* and enacts its land code, the community effectively replaces the Minister of Indian and Northern Affairs Canada (INAC) as the decision-maker in relation to its reserve lands and resources and replaces Parliament as the legislator in respect of those lands and resources.

The *Framework Agreement* is historic. There is no other initiative in Canada today, short of a self-government agreement or treaty, whereby a First Nation is recognized as a government with full authority to legislate and enforce its own laws over its reserve lands and resources. The primary objective of all First Nations participating in this land management opportunity is to be recognized as decision-makers over their reserve lands and resources without reliance on the Minister or the Government of Canada. The *Framework Agreement* and community enactment of the First Nation's land code are the means by which this landmark opportunity is brought to fruition.

The *Framework Agreement* is historic in one other respect. Parliament in 2006-2007 brought new focus on the issue of matrimonial real property on reserve lands. Under the *Indian Act*, there are no rules for the division of reserve land interests on the breakdown of a marriage or on divorce, a fact that has led to much confusion and unfairness since provincial laws do not apply. In 1999, an amendment to the *Framework Agreement* ensured that First Nations who ratify it would also implement appropriate rules, without discrimination, to deal with matrimonial real property issues. First Nations that have done so to date have received positive comment on the rules they have made. They are proud to have been trailblazers on this important issue. During this past year the LAB had the opportunity to comment on the new proposed federal legislation, *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

The LAB is committed to continuing implementation of the *Framework Agreement* in accordance with its spirit and terms and to assisting all First Nations in achieving their goal of jurisdiction and control over their reserve lands and resources. This, to us, is justice that has been much delayed, but no longer denied.

As the LAB Executive prepares this annual report, we have just had the pleasure of meeting with Minister Strahl, who is a strong supporter of the *Framework Agreement* and First Nation self-government. We have included a copy of the Minister's letter which he sent to First Nations following our meeting.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Robert Louie', with a stylized flourish at the end.

Chief Robert Louie, O.C.

EXECUTIVE SUMMARY

The *Framework Agreement* 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 (FNLMA)*, “an Act providing for the ratification and bringing into effect” of the *Framework Agreement*.

The Chiefs’ pursuit of a sectoral approach to self-government by way of a government-to-government agreement on land management provided Canada with the opportunity to engage actively in a First Nation-led initiative by passing the federal legislation to ratify the *Framework Agreement*. First Nation ratification of the *Framework Agreement* is similar and involves a community process, developed by the community and monitored by an independent verifier, culminating in a community vote in which all electors are eligible to participate regardless of whether their residence is on-reserve or off.

The *Framework Agreement* also established the LAB. The composition of the LAB is determined by the Councils of those First Nations which have ratified the *Framework Agreement* and are now operational under their Land Codes. The LAB is the political body with the mandate to assist First Nations in implementing the *Framework Agreement*, including assisting them in their dealings with the Government of Canada and recommending possible amendments to the *Framework Agreement* to the Minister of INAC. Included in this mandate are political, technical, legal and financial support to the operational First Nations managing their lands and resources under land codes and to the developmental First Nations preparing to conduct their community ratification vote.

The LAB has established a Finance Committee to assist in fulfilling its *Framework Agreement* responsibilities. The Finance Committee, which manages the financial and technical aspects of this work has, in turn, created and directs the First Nations Land Management Resource Centre Inc. (Resource Centre) as the administrative and corporate arm of the LAB.

Throughout 2007-2008, the LAB and Resource Centre continued to provide political, financial and technical support to developmental First Nations preparing to vote on their land codes. The ratification process under the *Framework Agreement* consists of 34 distinct and separate activities. In 2007-2008 a total of 30 First Nations were actively preparing for a community ratification vote and six completed the process.

The LAB and Resource Centre supported the developmental First Nations with drafting of their community land codes, designing and implementing their communication strategies, and designing their community voting procedures. The LAB and Resource Centre also were requested to provide advice and guidance on environmental site assessments of reserve lands, surveys of reserve jurisdictional boundaries and Individual Agreements with Canada.

The LAB and Resource Centre provided 2,742 support services to developmental First Nations throughout the year. The support services included daily telephone conference calls, emails, faxes and letter exchanges on the one hand to multi-day on-site meetings and workshops with Chiefs and Councils, Land Committees and coordinators on the other hand. In some cases these

meetings and workshops required the participation of several Resource Centre staff as well as the LAB.

The LAB and Resource Centre also provided 1,512 support services throughout 2007-2008 to operational First Nations. Once a land code takes effect, there are 34 land administration sections of the *Indian Act* that no longer apply to these First Nations' reserve lands and resources. The *Framework Agreement* and their community land codes empower these First Nations to manage their reserve lands and resources, as well as pass and enforce their land laws.

The authority to manage reserve lands includes legislative jurisdiction, management and control of all the interests, rights and resources that belong to those lands which were formerly under the jurisdiction of Canada. Within the unique constitutional arrangements with respect to "lands reserved for the Indians, operational First Nations exercise all the rights, powers and privileges of an owner. The LAB and Resource Centre have a mandate under the *Framework Agreement* to assist operational First Nations with drafting land laws, rules, procedures, agreements, policies, implementing land management systems and capacity building.

The land management successes of the 22 operational First Nations in 2007-2008 include 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 these provide communities with employment opportunities and increased revenues.

The LAB and Resource Centre continued to build national partnerships to support land management. For example, the LAB completed a protocol agreement with the newly-formed First Nations Tax Commission and the LAB is working closely with the newly-formed *Framework Agreement* Land Governance Association.

In 2007-2008 the LAB laid the foundation for a number of activities which will be completed in 2008-2009. These activities are intended to facilitate the implementation of the *Framework Agreement* and recognize the government-to-government relationship between First Nations and Canada. A number of important agreements between the *Framework Agreement* signatories and Canada are near completion. For example, a new federal authority to fund the *Framework Agreement* process is required effective April 2009. The LAB Executive has been assured by Indian and Northern Affairs [INAC] that the signatory First Nations will be given ample opportunities to provide their input and direction for this First Nation—led initiative. This renewal authority process will enable the First Nations to negotiate with Canada a new operational funding methodology, one based on land governance activities rather than on the number of registered transactions.

Also, Environmental Management Agreements [EMAs] are required between Canada and the 22 operational First Nations. The *Framework Agreement* requires that an EMA be completed between Canada and an operational First Nation within twelve months of the First Nation land code taking effect. The LAB, First Nations and Canada have been negotiating the content of the EMA. However, no EMAs have been completed to date due to a lack of funding and no funding is available from Canada in 2008-2009. The LAB and First Nations hope that this situation is corrected in the authority renewal which will be effective in April 2009.

Clause 39(1)(e) of the *Framework Agreement* directs the LAB to establish curricula and training programs for managers and others who perform functions pursuant to a land code. *Framework Agreement* First Nations have articulated a comprehensive definition of the scope of the key land, environmental and resource governance functions that they carry out. In response, the LAB and First Nations have designed a capacity building, training and professional development strategy which will provide the skills, competencies and tools necessary to handle the complex set of land governance activities. The strategy is designed for lands managers, Chiefs and Councilors, lands committee members and communities. The strategy will also significantly mitigate risk and liability associated with land governance. *Framework Agreement* First Nations have expressed their concern with the lack of any funding available from Canada to date for capacity building, training and professional development. The First Nations hope that this situation will be corrected in the five-year authority renewal beginning in 2009-2010.

In 2007-2008 Royal assent was given for amendments to the *FNLMA*. The amendments brought the legislation into accord with the two legal traditions of Canada, the civil law and common law. The amendments received Royal assent by Parliament on June 22, 2007. Simultaneously, the *Framework Agreement*, which was originally drafted in common law terms, was amended. The amendments received the unanimous approval of the signatory First Nations.

In 2007-2008, as an outcome of a series of working sessions and a review of possible and actual risks, the LAB completed a Corporate Risk Profile (CRP]. Three of the key risks were assessed as high, while two were placed in the medium risk category. The CRP is a critical component of the LAB's Risk Management Strategy.

Finally, in 2007-2008 the LAB and Canada discussed the possibility of revising the developmental funding process to assist the *Framework Agreement* First Nations in completing the community ratification activities. The consulting firm of KPMG assisted the parties to redesign the funding process to assist developmental First Nations with a timely flow of funding, simplicity in reporting, flexibility in implementation, and the potential to retain unexpended funds. Fiscal year 2008-2009 will be the pilot year for the new funding process.

Indian and Northern
Affairs CanadaAffaires indiennes
et du Nord Canada

April 17, 2008

Dear Chief and Council:

A minority Parliament means that I (and all other MPs) have to spend most of my time close to the Hill, with the daily Question Period and the threat of a 'confidence' vote keeping me in Ottawa more than I would like. Of course, we schedule office visits with First Nations and Aboriginal leaders when we can, and I get some sense of the issues - both opportunities and problems - in those communities. A recent meeting with the Land Advisory Board was about as encouraging a meeting as I've had in a long time.

Chief Robert Louie from Westbank First Nation kicked off the discussion, describing some of the billion dollar (that's billion with a 'B') investment that has been happening on their land in BC. Self-government is working well for them and listening to the Chief describe the economic opportunities for his community was music to the ears.

Not to be outdone, another Board member, Rennie Goose from Scugog Island spoke about the number of people on social assistance in his First Nation. The emphatic answer was "zero", and he was proud to talk of the positive impact that economic development was having on their community as well as the neighbouring towns. They are ploughing some of their own-source-revenue into extra education, ("the long-term key to the future", says the former Chief).

Chief Austin Bear from the Muskoday First Nation in Saskatchewan was proud of their latest proposal to invest in a diamond academy that would train people in sorting, cutting, polishing and evaluating diamonds, given there is a potential diamond mine on their territory. I had been out to Muskoday earlier this year, pleased to deliver on a \$10 million promise to settle a longstanding specific claim. Obviously this progressive First Nation is wasting little time taking advantage of their local situation, and we spoke about partnering to develop the skills training necessary to make it work.

- 2 -

Barry Seymour, the former Chief of the Lheidli T'enneh near Prince George BC, is also a Board member. Unfortunately, this First Nation turned down a potential Treaty agreement last year, but they're moving ahead with a possible investment in biomass power generation as a way to use up 'pine beetle wood.' They seem sure they can make a go of it, while I also offered to help in whatever way possible if the First Nation wants to reconsider their Treaty ratification vote and give it another whirl. Of course that's up to them, but their new-found confidence makes me think they may want to do so at some future date.

These First Nations are located in different parts of the country, but they have one thing in common - they control their own land under the Framework Agreement with Canada and through the Land Management Act. This makes decision-making on land use and taxation easier and more responsive to local demands, but more importantly, it gets these Nations out from under the Indian Act. Good things happen when you control your own land!

Once the Parliamentary session ends, it will be great to get out and around the country even more, to meet people where they live. In the meantime, I can do with plenty more of the kind of meetings I enjoyed with the representatives of the Land Advisory Board.

Sincerely,



Chuck Strahl
Minister of Indian Affairs and Northern Development
and Federal Interlocutor for Métis and Non-Status Indians

For more info about the First Nations Land Management Act and what it means for participating First Nations, please check out www.ainc-inac.gc.ca

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

1.1 Problems with Land Administration under the *Indian Act*

The *Indian Act* requires the Minister of INAC 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 right of First Nations to self-govern their reserve lands and resources;
- the *Indian Act* does not protect reserve lands from being surrendered and sold, which presents the danger of further reduction of the limited reserve land base;
- the *Indian Act* does not prevent Canada, provincial governments, municipalities or any corporation with expropriation powers from expropriating reserve lands without the consent of the First Nation (in fact, the *Act* permits such actions); and
- the *Indian Act* does not provide an adequate statutory basis for managing and developing reserve lands in the 21st Century.

The only options available to First Nations prior to 1996 were implementation of self-government agreements or treaties to achieve the recognition of their inherent right to govern their reserve lands and resources (see Exhibit 1). Self-government agreements were not an option for most First Nations and the current round of treaty negotiations in British Columbia had only just begun.

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 | Full Self-Government |
|---|---|---|--|---|
| Statutory Regime: | <i>Indian Act</i> | <i>Indian Act</i> | <i>Indian Act</i> | Other (e.g., treaty, self-government legislation, etc.) |
| Distribution of Authority and Responsibility: | <div>Minister of Indian Affairs</div> <div>First Nation</div> | | | |

1.2 Framework Agreement Alternative for First Nations

The *Framework Agreement* represents the culmination of years of effort by a national group of dedicated Chiefs to provide for their First Nations the opportunity to govern their own lands free from the constraints and delays imposed under the *Indian Act*. The management of reserve lands and resources is a crucial component of First Nations' self-government and self-sufficiency.

The *Framework Agreement* was signed in February 1996 at the Chippewas of Georgina Island First Nation by the Chiefs of 14 First Nations and the Government of Canada. Canada later enacted the *First Nations Land Management Act (FNLMA)*, “an Act providing for the ratification and bringing into effect” of the Framework Agreement. Royal Assent was granted in June 1999.

Previously, Canada had not succeeded in enacting any sectoral statutory alternative to the *Indian Act*. The Chiefs' 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. Ultimately, this led to the *Framework Agreement* as we know it today, as ratified by Canada and as ratified, and continuing to be ratified, by First Nation signatories to it.

Exhibit 2 outlines the distribution of authority and responsibility under the Indian Act and post *Framework Agreement*.

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

[illegible]

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, the following clauses state:

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."

1.4: "The Parties acknowledge that the Crown's special relationship with First Nations continues."

1.5: "This Agreement does not affect any lands, or any rights in lands, that are not subject to this Agreement."

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."

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 Nation Signatories

Exhibit 3 lists the 58 First Nation signatories to the *Framework Agreement* as of March 31, 2008. Twenty two First Nations, including Westbank, have ratified the *Framework Agreement* and assumed operational responsibility for their reserve lands under their land code. Thirty-one of the 36 developmental First Nations were active in the developmental process throughout 2007-2008. The location of the *Framework Agreement* signatories across Canada is displayed on the provincial maps in Appendix A.



| Exhibit 3: Signatories to the <i>Framework Agreement</i> as of March 31, 2008 | | |
|--|--|---|
| Province | Operational | Developmental |
| BC | McLeod Lake Beecher Bay Kitselas Lheidli T'enneh Matsqui Tsawwassen Ts'kw'aylaxw Sliammon T'sou-ke Shxw'ha:y Village Tsawout Squiala Tseil-Waututh Westbank | Squamish Musqueam Songhees Osoyoos Seabird Tzeachten We Wai Kai Leq'a:mel Campbell River Nanoose Sumas Skawahlook N'Quatqua* Cowichan* Skeetchestn* |
| AB | | Fort Mckay Siksika* |
| SK | Muskoday Kinistin Whitecap Dakota Muskeg Lake | Flying Dust Pasqua Kahkewistahaw Cowessess |
| MB | Opaskwayak Cree | Chemawawin Swan Lake |
| ON | Scugog Island Georgina Island Nipissing | Mnjikaning Garden River Mississagi #8 Whitefish Lake Dokis Moose Deer Point Kettle and Stoney Point Henvey Inlet Alderville Anishinaabeg of Naogashiing |
| NB | | Kingsclear St. Mary's* |
| QC | | Innué Essipit |

NOTE:

~First Nations identified with an asterisk (*) were inactive in 2007-2008.

~Westbank First Nation ratified their land code in May 2004 and proceeded to implement full self-government on April 1, 2005.

3. ROLES OF THE LANDS ADVISORY BOARD (LAB) AND THE FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE (RESOURCE CENTRE)

3.1 Functions of the LAB

The *Framework Agreement* established the LAB. The principal functions assigned to the LAB are itemized in clause 39 of the *Framework Agreement*. They include, but are not limited to:

- (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;
- (e) in consultation with First Nations, negotiating a funding method with the Minister; and
- (f) proposing to the Minister such amendments to this Agreement and the federal legislation as it considers necessary or advisable;

3.2 Composition of the LAB

The composition of the LAB is determined by the Councils of the operational First Nations. There are currently ten members of the LAB, including the Chair. They serve staggered terms so that positions come up for election almost every year with the intent that three of the positions, one from each of the three regions, will annually come open for election. The three regions referred to are British Columbia (representing 29 First Nations), Prairie (representing 12 First Nations in Alberta, Saskatchewan and Manitoba), and Eastern (representing 16 First Nations in Ontario, Quebec and the Maritimes).

The LAB Chair and the members of the LAB Finance Committee are elected by the LAB for fixed terms. Exhibit 4 lists the composition of the LAB and their terms. Exhibit 5 indicates the structure of the LAB and Resource Centre.

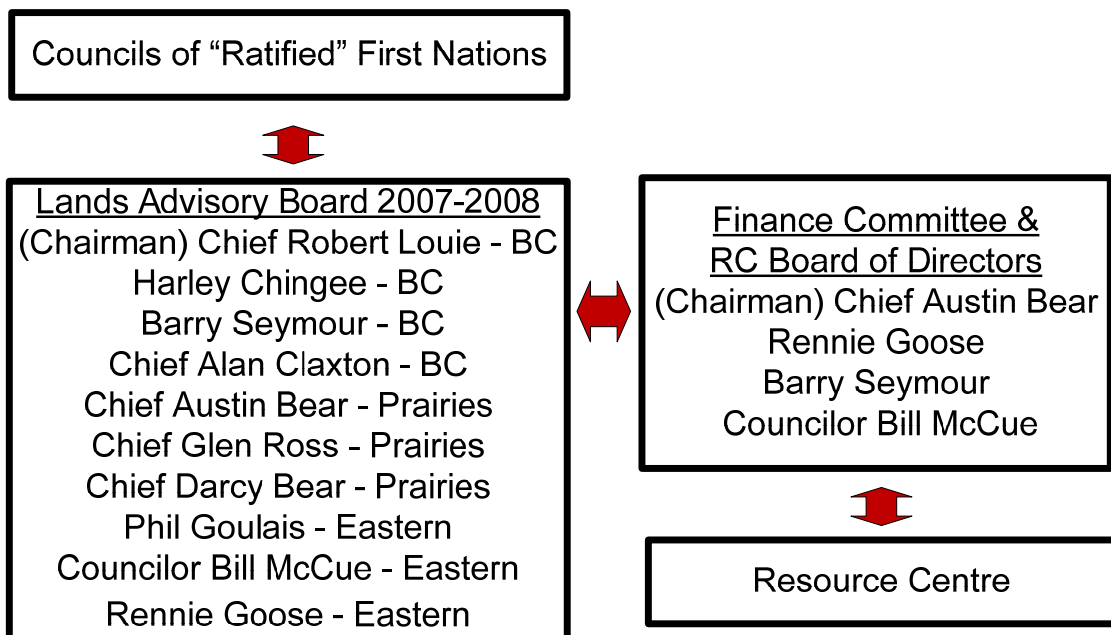


LAB Finance Committee: (from left)
Councilor & former Chief Bill McCue, Chief Austin Bear,
former Chief Rennie Goose, former Chief Barry Seymour

Exhibit 4: Composition of the LAB

| <u>Members:</u> | <u>Region:</u> | <u>Term:</u> |
|----------------------|----------------|--------------|
| Chief Robert Louie | Chairman | 2003 – 2008 |
| Harley Chingee | BC | 2006 – 2009 |
| Barry Seymour | BC | 2005 – 2008 |
| Chief Alan Claxton | BC | 2007 – 2010 |
| Chief Austin Bear | Prairies | 2005 – 2008 |
| Chief Glen Ross | Prairies | 2006 – 2009 |
| Chief Darcy Bear | Prairies | 2007 – 2010 |
| Phil Goulais | Eastern | 2006 – 2009 |
| Councilor Bill McCue | Eastern | 2005 – 2008 |
| Rennie Goose | Eastern | 2007 – 2010 |

Exhibit 5: Structure of the LAB and Resource Centre



3.3 Mandate and Strategic Focus of the LAB and Resource Centre

The mandate and strategic focus of the LAB and Resource Centre in accordance with the *Framework Agreement* are summarized in Exhibit 6.

| Exhibit 6: LAB Mandate and Strategic Focus | | |
|--|---|---|
| Mandate | Strategic Focus | Relevant Parts of the Framework Agreement |
| 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 Framework Agreement | 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 Framework Agreement | 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 |

3.4 Resource Centre

The LAB has two entities, the Finance Committee and the Resource Centre, to assist with implementing its responsibilities. The Finance Committee has been established to manage all financial and reporting matters on behalf of the LAB and in effect, to function as its executive committee. The Finance Committee is responsible for the Resource Centre, which is the service delivery organization that fulfills the LAB's technical and administrative responsibilities under the *Framework Agreement*. Exhibit 5 indicates the accountability for the Resource Centre.

The *Framework Agreement* assigns specific "technical" duties, referred to in the third column of Exhibit 6, to the LAB. In order to provide separation between the "political" and "technical" administrative regimes, all technical responsibilities assigned by the *Framework Agreement* and *FNLMA* have been formally delegated to the Resource Centre by the LAB. The Resource Centre was formally incorporated in 2004 to undertake the technical responsibilities of the LAB that were ratified and legislated by the Parliament of Canada through the passing of the *FNLMA*.

4. LAB IN 2007- 2008 ACCOMPLISHMENTS

4.1 LAB Annual General Meeting

The Whitecap Dakota First Nation in Saskatchewan hosted the 2007-2008 LAB Annual General Meeting (AGM) on September 11-13, 2007. The AGM dealt with a number of important topics which are discussed below. A summary of the AGM resolutions is attached (Appendix C).

4.2 *Framework Agreement* Five Year Authority Renewal by Canada

On March 31, 2008, the current five-year funding authority for the implementation of the *Framework Agreement* expired. Canada has extended the current authority by twelve months to March 31, 2009. An evaluation was conducted by KPMG, an independent consulting firm, on behalf of the LAB and Indian and INAC. The findings will be incorporated into a submission for Canada to consider in 2008-2009. The evaluation identified options for the future implementation of the *Framework Agreement* and documents the many economic and social benefits that have resulted from First Nations assuming control over their reserve lands and resources.

The evaluation also identified the lessons learned to date. All aspects of the process were looked reviewed including the developmental process and the Individual Agreement, the mechanism for developmental and operational funding, the impact of *Indian Act* legacy and environmental issues on First Nations implementation of their Land Codes, and the roles of the various parties to the *Framework Agreement* in delivering their responsibilities.

4.3 Operational Funding Methodology

The current interim operational land management funding methodology, which has been in place since January 2000, has been based primarily on the volume of land transactions registered in the Indian Land Registry at INAC in Ottawa. In order to develop a more modern and appropriate funding methodology, a series of workshops were held with developmental and operational First Nations. The workshops provided First Nations with the opportunity to report on their concerns regarding the current funding methodology and make recommendations for a new methodology. As a result of the workshop recommendations, and Canada's commitment in the *Framework Agreement* to provide adequate land management funding, the First Nations proposed a new operational land management funding methodology (Appendix D). The new methodology departs from the previous transaction-based calculations and focuses on the concept of land governance. The new approach recognizes the self-government authority of First Nations under the *Framework Agreement*. The First Nations expect that this new approach will be incorporated into the renewed five-year funding authority proposal effective 2009-2010.

4.4 Matrimonial Real Property on Reserves

The issue of matrimonial real property on reserve lands was first addressed by the Chiefs when they negotiated the content of the *Framework Agreement* in 1996 with Canada. Clause 5.2 of the *Framework Agreement* included the provision to establish a community process in a Land Code to develop rules and procedures, that would be applicable on the breakdown of a marriage, to the use, occupancy and possession of reserve land and the division of interests in that land.

Prior to the passage of Bill C-49 in Parliament in 1999, the LAB was approached by Minister Jane Stewart to add a clause for clarification. We agreed and clause 5.4 was added to the *Framework Agreement*, beginning with the words “In order to clarify...”

First Nations have twelve months from the date their Land Code takes effect to enact rules and procedures. First Nations under the *Framework Agreement* are committed to the clarification of property rights issues between men and women on reserve and in a manner that does not discriminate on the basis of sex.

Matrimonial property law has always been a priority of the *Framework Agreement*. In fact, prior to the March 4, 2008 introduction of Bill C-47 (*Family Homes on Reserves and Matrimonial Interests or Rights Act*), the operational First Nations under the *Framework Agreement* were the only First Nations in Canada who had the explicit law making authority to deal with this complex area of law.

Matrimonial real property laws deal exclusively with the use, occupation and possession of First Nation land and the division of interests in First Nation land. Provincial family law statutes deal with many matters beyond the range of the *Framework Agreement* and the *Lands Act* [i.e. support obligations, domestic contracts, dependent's claims for damages, etc.] Child custody and maintenance are usually dealt with in other provincial statutes dealing specifically with children. Divorce itself is covered by the federal *Divorce Act*.

There are four basic rights under family law - the right to possession of the matrimonial home; the right to a division of family property; the equality of treatment between spouses; and the right to compensation for a spousal interest. These “minimum standards” are protected in the *Framework Agreement*. It is mandatory for each of the operational First Nations, if they wish to manage their lands, to establish rules and procedures dealing with the first three of these rights.

Since the *Derrickson* decision of the Supreme Court of Canada almost twenty years ago, the status quo has remained. It is only since the *Framework Agreement* that any First Nation in Canada has made real law on this subject matter.

There currently are 22 operational First Nations under the *Framework Agreement* and 10 have enacted matrimonial real property laws. There are a number of factors why a First Nation may have difficulty in enacting its matrimonial real property law within the twelve month time frame: a lack of financial capacity to deal with this complex issue, since little funding is provided by INAC; a large number of members living off reserve and who must be consulted; a First Nation election may result in the temporary suspension of work; or a First Nation may be focused briefly on other pressing matters.

Some of the operational First Nations that have completed their matrimonial real property law have included other subject matters, such as applying their law to spouses married by tradition/custom; applying their law to common-law couples, as well as “married” couples; and protection of the family home during the relationship.

The LAB was approached during the fall of 2007 regarding the proposed federal legislation. A copy of the LAB's response is attached as Appendix E.

4.5 First Nation Capacity Building, Training and Professional Development Strategy

Clause 39(1)(e) of the *Framework Agreement* directs the LAB to establish curricula and training programs for managers and others who perform functions pursuant to a land code. Operational First Nations have expressed their concern with the lack of capacity building and professional development funding available from Canada. The LAB and RC commissioned a study on the creation of new capacity building training and professional development programs.

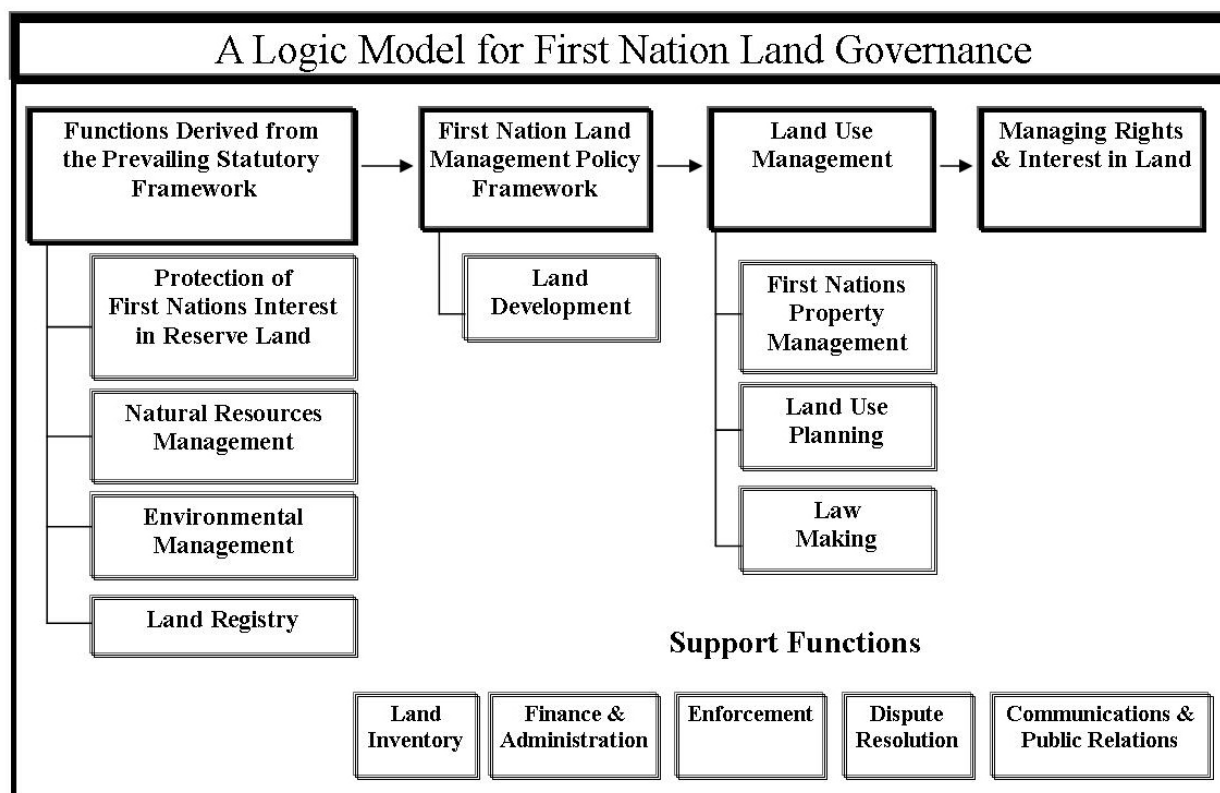
The goal of the LAB's capacity building, training and professional development strategy is to enable sound land management principles and practices for *Framework Agreement* Lands Managers. This strategy provides the skills, competencies and tools necessary to handle the complex set of land governance activities required under a First Nation's land code as a *Framework Agreement* signatory. The strategy will also significantly mitigate risk and liability associated with the exercise of governmental and land management authority under the *Framework Agreement*.

With a significant portion of the *Indian Act* no longer applicable, it is necessary to reconfigure land management functions into a "new" nation-specific governance approach. This capacity building, training and professional development strategy assists in the implementation of the *Framework Agreement* and First Nation land codes. It is designed for Lands Managers, Chiefs and Councilors, Lands Committee members and Communities. As Exhibit 7 illustrates, there is a significant portion of the *Framework Agreement* Lands Manager role that requires an individualized and specific set of skills and competencies.

Framework Agreement First Nations have articulated a comprehensive definition of the scope of the key land, environmental and resource governance and management functions or processes ("land management functions") that First Nations have to carry out in accordance with prevailing and contemporary standards for local government in Canada and, thereby, achieve the objective of the *Framework Agreement* – effective First Nation land governance.



Exhibit 7: Key Functions of *Framework Agreement* Land Governance



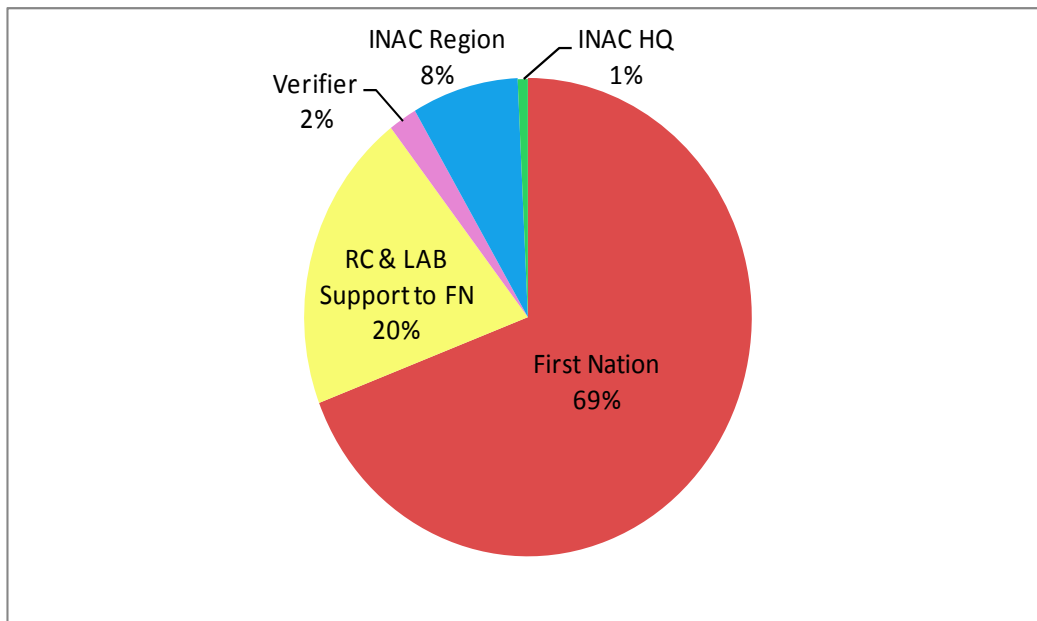
The strategy recognizes that no two First Nations operate under the same conditions and, as a result, any capacity building, training and professional development must be flexible, accessible and have multiple entry and exit pathways. Faced with the need for a flexible, dynamic curriculum as well as the need for access anywhere and at anytime, this strategy includes an online learning environment to facilitate a blended approach to building capacity through training. A cornerstone of the LAB strategy is that all workshops, online offerings and program components will incorporate each Nation's needs and involve real life situations and First Nation experts to ensure application to the specific First Nation context. The LAB capacity building, training and professional development strategy can be found on the LAB website at www.labrc.com.

4.6 Revised First Nation Developmental Funding Process in 2008-2009

The LAB and Canada discussed the possibility of revising the developmental funding process in 2008-2009 to assist the *Framework Agreement* First Nations in completing the community ratification activities. The firm of KPMG was asked to assist the parties to consider and design a revised funding process. KPMG addressed four issues— initial set-up, delivery of funds, funding flow and reporting, and unexpended funds. KPMG determined that a revised funding process would assist developmental First Nations with a timely flow of funding, simplicity in reporting, flexibility in implementation, and the potential to retain unexpended funds. The KPMG letter to the LAB on the proposed milestone-based funding process, and the KPMG recommendation to the First Nations, are attached in part (Appendix F). The full document can be downloaded from the LAB website.

The developmental process, redesigned with the assistance of KPMG, involves 54 milestones over a two year period. Exhibit 8 indicates the proportional responsibilities of the various parties – First Nations, LAB and RC, Verifier, INAC regions and INAC headquarters – in the redesigned developmental process.

Exhibit 8: Revised Developmental Process Time Allocation



4.7 Corporate Risk Profile

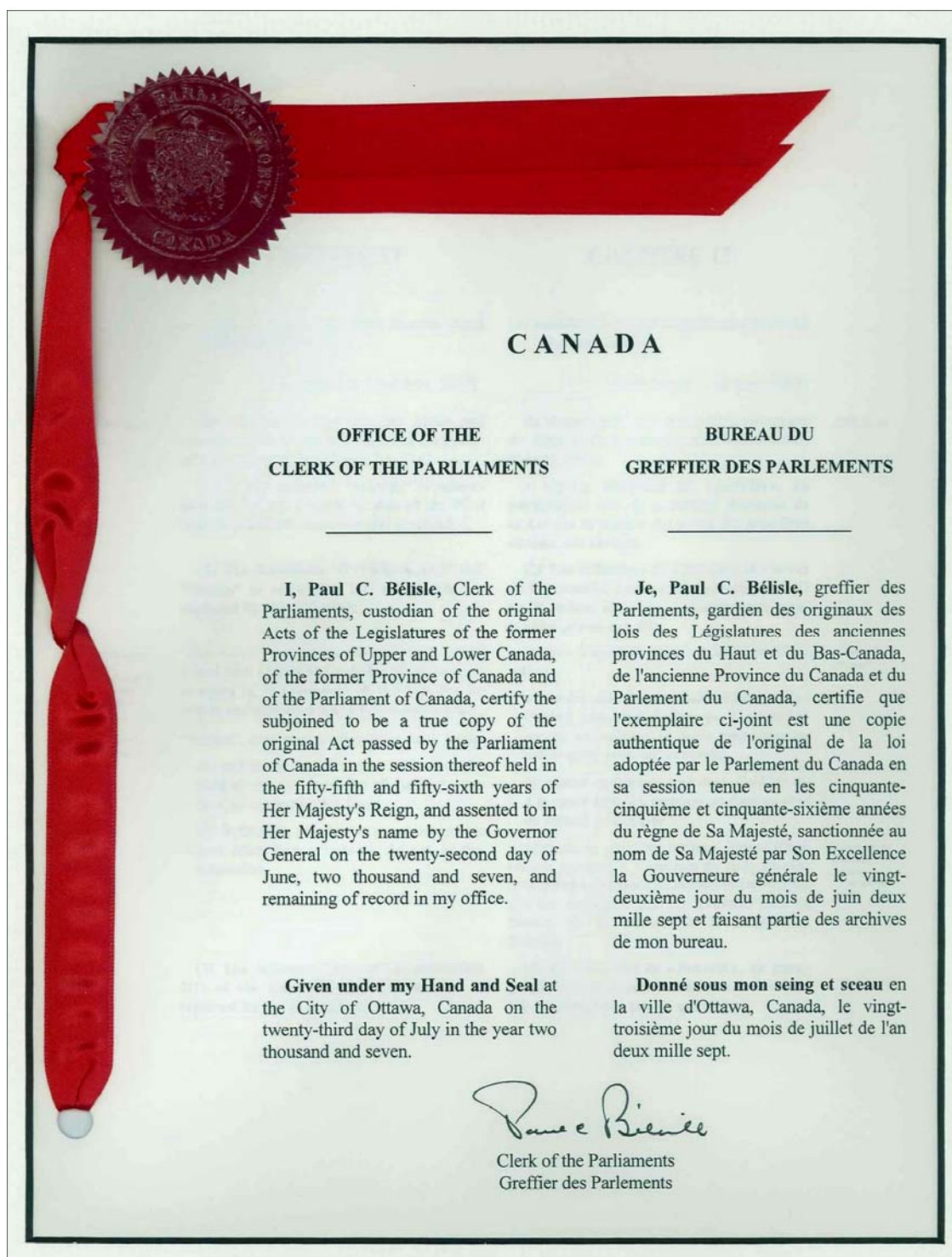
As an outcome of a series of working sessions and a review of possible and actual risks, the LAB and Resource Centre's top five risks were identified and assessed in 2007-2008. The results of these deliberations have been set out in a Risk Area Identification Worksheet. Three of these key risks have been assessed as high, while two have been placed in the medium risk category.

The specifics and particular concerns and impacts of each of these risks were elaborated on further in a Risk Analysis Worksheet. A Risk Score Card, along with an Impact and Likelihood Matrix were developed to establish the scoring and the methodology employed to assess each of the risks. A Risk Tolerance Model and a Risk Register were completed. The Risk Register identifies the overall strategy for each risk assessment, sets out the incremental mitigation strategy, and establishes the person/s responsible for managing the risk. This overall document constitutes the LAB and Resource Centre's Corporate Risk Profile (CRP) – a critical component of a Risk Management Strategy. All of these documents can be found on the LAB website.

4.8 Bijuralism

One of the major successes in 2007-08 was the introduction and Royal Assent of the amendments to the *FNLMA*. The amendments brought the legislation into accord with the traditions of Canada, civil law and common law. The LAB and Resource Centre along with representatives of Canada, INAC and DOJ, as well as the First Nation of Innue Essipit concluded negotiations on amendments to the *FNLMA* in March of 2007. The Legislative amendments received Royal assent by Parliament on June 22, 2007.

Simultaneously, the *Framework Agreement*, which was originally drafted in common law terms, was amended to address the principles of its terminology to describe legal concepts in terms that express civil code principles. These amendments received the unanimous approval of the signatory First Nations and opened the process to First Nations in Quebec.



(Certified copy of the amendments to the *FNLMA*, which received Royal Assent on June 22, 2007)

4.9 Audited Financial Statements

The 2007-2008 audited financial statements can be found on the LAB website along with the statements from previous years.

5. OPERATIONAL FIRST NATIONS

5.1 Land Governance Under the *Framework Agreement*

Once a First Nation has ratified the *Framework Agreement* and enacted its land code and the Individual Transfer Agreement, there are 34 land administration sections of the *Indian Act* that no longer apply to the First Nation's reserve lands and resources. The First Nation now is self-governing over its lands and resources.

First Nation 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 a "natural person" and governmental body. This authority is described in Parts II, III and XI of the *Framework Agreement*.

5.2 First Nation Law Making

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 and possession of lands on reserve following matrimonial breakdown or divorce. This authority is described in Parts IV and V of the *Framework Agreement* and sections 20 to 23 of the *FNLMA*. First Nations also have authority, under the *Framework Agreement*, to appoint justices of the peace with summary conviction powers to enforce their land laws.

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* and in section 24 of the *FNLMA*.

5.3 Support Services to Operational First Nations

The LAB and Resource Centre assist the operational First Nations with designing the necessary land laws, processes, agreements, policies, plans, land management systems, and enforcement procedures in order to facilitate:

- granting of interests in reserve lands;
- establishing and maintaining a First Nation register to record the granting of interests in reserve lands;
- dividing interests in reserve lands on the breakdown of a marriage;
- accountability to First Nation members (eg: moneys managed under a land code);
- making and publishing First Nation laws;
- establishing a forum for the resolution of reserve land disputes;
- conflict of interest;
- expropriating interests in reserve lands deemed necessary for Community works or other

First Nation purposes;

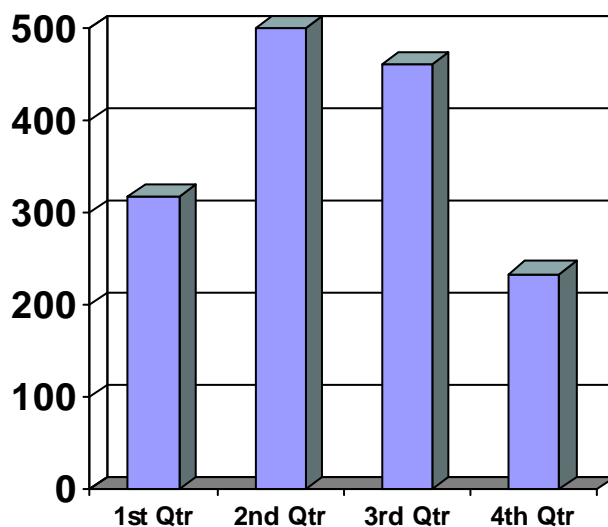
- transferring, by testamentary disposition or succession, interests in reserve lands;
- exchanging reserve lands for other lands; and
- delegating administrative authority, or establishing a legal entity, to manage reserve lands and resources.

The Resource Centre also assists operational First Nations in drafting model rules and procedures to deal with:

- traditional and individual holdings;
- agricultural leases and permits;
- residential, commercial, industrial and recreational leases;
- resource leases and permits;
- utility and annual permits;
- assignments, transfers and exchanges;
- fees and rent collection; and
- mortgage registration and discharges.

The LAB and RC provided a total of 1,512 support services to the operational First Nations in 2006-2007. The support services consisted of interactions with First Nation participants that ranged from telephone conference calls, emails, faxes and letter exchanges on the one hand, to multi-day on-site meetings and workshops with Chiefs and Councils, Land Committees, Land Managers and advisors on the other hand.

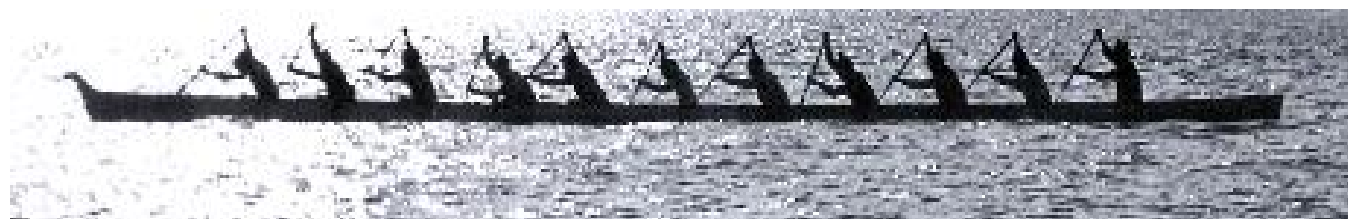
**Exhibit 9A:
Quarterly Support Services to Operational First Nations**



The operational First Nations receiving support services in 2007-2008 were as follows:

**Exhibit 9B:
Quarterly Support Services to Each Operational First Nation**

| Prov. | First Nations: | April - June | July - Sept | Oct - Dec | Jan - Mar | Total |
|---------------|------------------|--------------|-------------|------------|------------|--------------|
| BC: | L'heidli T'enneh | 39 | 40 | 39 | 39 | 157 |
| | McLeod Lake | 34 | 43 | 30 | 35 | 142 |
| | Beecher Bay | 23 | 33 | 31 | 2 | 89 |
| | Tsawwassen | 7 | 23 | 9 | 4 | 43 |
| | Sliammon | 29 | 31 | 31 | 7 | 98 |
| | Kitselas | 25 | 22 | 34 | 13 | 94 |
| | T'Sou-ke | 15 | 13 | 25 | 19 | 72 |
| | Skxwha:y Village | 25 | 29 | 15 | 4 | 73 |
| | Tsawout | 32 | 28 | 43 | 14 | 117 |
| | Ts'kw'aylaxw | 11 | 21 | 15 | 4 | 51 |
| | Tsleil Waututh | 14 | 18 | 27 | 5 | 64 |
| | Squiala | 0 | 0 | 24 | 12 | 36 |
| | SK: | | | | | |
| SK: | Muskoday | 9 | 27 | 21 | 18 | 75 |
| | Whitecap | 4 | 22 | 14 | 5 | 45 |
| | Kinistin | 13 | 28 | 19 | 5 | 65 |
| | Muskeg Lake | 12 | 10 | 10 | 4 | 36 |
| MB: | OCN | 10 | 31 | 27 | 25 | 93 |
| ON: | Georgina Island | 4 | 17 | 16 | 6 | 43 |
| | Scugog Island | 9 | 28 | 10 | 4 | 51 |
| | Nipissing | 2 | 36 | 21 | 9 | 68 |
| Total: | | 317 | 500 | 461 | 234 | 1,512 |



5.5 Operational First Nation Achievements

5.5.1 Beecher Bay First Nation, BC

Beecher Bay First Nation (BBFN), also known as the Scianew First Nation, is located south west of Victoria on Vancouver Island. BBFN ratified their Land Code in June 2003 and became operational August 1, 2003.

Under the BBFN Land Code there have been positive developments that are a direct result of the community having the authority to decide what land management priorities are important and to be able to work towards these goals in a quicker manner than under the *Indian Act*.

Additional Reserve Land

BBFN along with the Department of National Defence and INAC are nearing the end of the transfer of the 116 acres to be returned to reserve status.

Economic Development

BBFN has been working on developing a marine campsite, meeting with various investors to turn this location into a tourist destination resort. There are many individual band members and non-band members who are interested in opening businesses on reserve.

Other Initiatives

BBFN will be opening a daycare centre in September 2007.

Additional Laws

BBFN implemented the *Matrimonial Real Property Act* June 2004, which has been used once successfully in assisting a band member. BBFN will be working on additional laws, such as land use planning.

5.5.2 Kitselas First Nation, BC



Kitselas First Nation (KFN) became a signatory to the *Framework Agreement* in 2002 and ratified their land code in 2005. KFN, with a membership of 500, surrounds the City of Terrace, BC and is involved in a number of economic ventures. The first priority was to establish a series of laws including an interest law for 3rd parties (ie. BC Hydro & BC Telus), a Lands Financial Management Law, and a Conflict of Interest law.

In addition, protocols with local municipalities continue to be implemented, such as with the Regional District. Kitselas members are being trained in residential fire fighting and rescue operations as a part of this agreement.

The goal of the Kitselas Band Council is to transfer ownership of house and property to the Kitselas membership. Under the Kitselas Land Interests Law, the benefits of this transfer will be that the membership no longer requires permission of the Band to: make changes to their homes, sell, will or give it away to another Kitselas member. The house and property can also never be

taken back by the Band. The steps to complete the transfer still need approval.

The Kitselas Band Council wants to ensure that people are treated equally upon the breakdown of their marriage concerning their house of residence and property. The other priority is that any minor children involved have a place to live. The Family Property Law was proposed in February 2008 and has gone through its 1st Reading in Council. The draft law has also been mailed to the membership and is now being reviewed by the Kitselas Law Committee.

The Kitselas Law Committee is also tasked with drafting committee procedures which includes developing a process to encourage feedback from the Kitselas membership and to report to the community once the Law Committee has completed their review.

Two other proposed Kitselas laws which have the Council is proposing are the Kitselas Zoning Law and the Kitselas Financial Administration Law. The zoning law is required to formally zone only the reserve areas that are presently being used and to provide regulations attached to each type of zone such as commercial, residential, park, light industrial, etc. The second law, titled the Kitselas Financial Administration Law, will be drafted with the help of the Financial Management Board to meet the standards set under the Fiscal and Statistical Management Act of which Kitselas is part of. This law deals with financial matters in relation to the management and administration of Kitselas Lands.

As Kitselas drafts its own land laws, we can decide what works for us and just do it! Kitselas governs itself in lands and resources while working towards self-government. Kitselas is working towards providing a system of transparency and open communication with its membership when making laws in order to receive meaningful feedback from the People as to how our lands are managed.

LHEIDLI T'ENNEH BAND

"THE PEOPLE FROM THE CONFLUENCE OF THE TWO RIVERS"



5.5.3 Lheidli T'enneh, BC

The Lheidli T'enneh First Nation (LTN) has 4 reserves totalling approximately 675 ha located within and adjacent to the City of Prince George. LTN was an original signatory to the Framework Agreement. In October 2000, LTN ratified the first land code in British Columbia and became the fourth to ratify a land code in Canada.

Lheidli T'enneh's Lands Authority Committee continues to meet once or twice a month, as necessary. Some of Lheidli T'enneh's successes in 2007-2008 and work priorities for 2008-2009 include:

Matrimonial Real Property Law (MRPL) Project

The MRPL project was successfully completed in September 2006. Under the direction of the Lands Authority Committee Lheidli T'enneh lands department staff have been diligently writing funding proposals so that the implementation of community priorities and recommendations for this initiative can continue to move forward.

Environmental Management Agreement

Lheidli T'enneh has recently completed Step 1 of the EMA process, which included the identification of environmental priorities and community validation of these priorities. Preparation for Step 2: Develop the EMA is also being completed.

Planning Initiatives

Lheidli T'enneh Lands Authority Community and the Lheidli T'enneh Lands & Resources Office have both been engaged in recent planning exercises. The purpose of the planning sessions has included:

- Identification of needs and resources
- Establishing short, medium and long-term priorities
- Identification of issues and possible solutions
- Establishing work plans for the short, medium and long-term priorities

Once the work plans have been finalized, the office is going to be restructured and staff will work towards acquiring additional funding to complete the identified priorities.

Zoning Law & Development Process

Research and information gathering for the drafting of the Zoning Law and creation of our development process is currently ongoing. The lands department will be writing funding proposals so that the completion of phase 1 of this project can occur in the next year.

Comprehensive Community Planning Development

Lheidli T'enneh staff successfully wrote for funding under the First Nations Infrastructure Fund to develop a Comprehensive Community Plan for the Lheidli T'enneh Reserve Lands. Both a CCP facilitator and community liaison officer have recently been hired to complete this project, which has a deadline of March 31, 2009.

5.5.4 McLeod Lake Indian Band, BC

The McLeod Lake Indian Band is using its Land Code to implement Treaty Number 8.

The Band concluded an adhesion to Treaty 8 in March 2000 which entitled it to approximately 20,000 ha of new reserve land, most of which was selected for commercial timber value. Its Land Code came into effect in May 2003, which coincided with the official turn-over of some of the lands.



One of the provisions of the treaty is that McLeod Lake will manage its forest resources under its own Forest Practices Code that will “meet or beat” provincial forest management standards. At the time the treaty was concluded, Canada and McLeod Lake agreed to “take all necessary steps to attempt to implement the McLeod Lake Indian Band Forest Practices Code through use of the *Indian Act*, a new regulation pursuant to the *Indian Act* or some other available means”.

The Band established its Forest Practices Code through a community consultation process in 2000, but by the time the new land was transferred so that the Code could be implemented, *Indian Act* jurisdiction over forestry resources had been replaced by the Land Code. McLeod Lake was then able to independently enact the *McLeod Lake Indian Band Forest Practices Code Act* under its Land Code and implement the treaty agreement in this way.

The Land Code provided a level of governing authority that is unique in a numbered treaty. It enabled the Band to start exercising its jurisdiction over timber resources in a much more definite and timely manner than would be possible under the *Indian Act*. Despite economic problems caused by Mountain Pine Beetle infestations, the Band is continuing to implement its forestry legislation, including development of an efficient system for planning and issuing cutting permits.

5.5.5 Shxwha:y Village, BC

The Shxwha:y Village Land Code was approved by an 85% margin by membership through Ratification Votes held June 15, 16, and 17, 2006. The Minister of Indian and Northern Affairs formally approved their Individual Agreement on January 8, 2007 at which point Shxwha:y Village became an operational First Nation. Shxwha:y Village has a Lands Manager in place and administrative support. They are finalizing laws for the Land Code Committee and Matrimonial Property and working on the Environmental Management Agreement. Phase 2 of the Environmental Site Assessment has been completed including some clean up activities and negotiations are currently underway regarding Phase 3 measures.

The approval of Shxwha:y Village's Land Code has proven to be of great benefit to the community. There is a lot of work to be done and many issues to be addressed but they now manage their own lands. Shxwha:y Village's first concrete example of this was in their ability to obtain a Timber Mark from the BC Ministry of Forestry. The process took them less than 10 days. With INAC, it took them at least 6 months.

Shxwha:y Village is now moving ahead with developing their lands. They have been approached by several large developers who do not currently deal with First Nations because of INAC bureaucracy. The developers have reviewed their Land Code and are excited to work with Shxwha:y Village as they see Shxwha:y Village has the final decision making authority.

Shxwha:y Village is nearing a development agreement for up to a \$30M investment on their lands in partnership with third party developers. This will create long-term benefits including employment, training, profits, and a significant property tax base as Shxwha:y Village also has its own taxation authority. They will be able to finalize this in 6 months or less. Previously, INAC's processes would have taken a minimum of 2 years. Developers are very positive about the Land Code process and are looking towards others finalizing theirs.

Shxwha:y Village has passed the Matrimonial Real Property law and we have completed the Supplemental Environmental Site Assessment Phase II & III study. In addition, the Village has

completed Step 1 of its Environmental Management Agreement with Canada. The permit royalties are now being transferred directly to the Village and not our Ottawa Trust account. The Village continues to work on setting up a Land Management Advisory Committee with a Selection Law in final draft format.

Shxwhe:y Village continues to work with LAB and INAC to reach a more equitable operational and environmental funding system. The costs for a First Nation to establish their laws and to be operational far exceed current funding levels. First Nations have to rely on professionals, have higher duty to consult their members and do not have the internal resources that INAC has. Interaction with neighbouring municipalities and other government agencies is also a costly process. However, they are moving forward and managing their own lands and resources as First Nations did long before Canada existed.

5.5.6 Sliammon First Nation, BC

Over the past year Sliammon First Nation (SFN) has been busy working on developing a new head lease which will be completed in the near future. With the completion of the head lease SFN will be in a position to begin renewing sub-leases which will bring in revenues to the SFN community.

The Lands Department has completed a study to identify all interests on SFN six reserves. The Final Report for the SFN Reserve Lands Interest Verification Project Phase One includes: a comprehensive list of current individual and collective interests on SFN Reserve Lands; a list of potential outstanding issues relating to individual certificates of possession (CP's); and a list of related documentation required to support the resolution of those issues. SFN is currently awaiting funding to implement Phase Two of this project.



The SFN Lands Authority Board has met with other internal entities such as SFN Development Corporation, SFN Treaty Society, Tla' Amin Health Society and SFN First Nation Band Administration and has developed a Comprehensive Community Plan. SFN has adopted the Plan and are beginning the implementation phase. With respect to lands, this will be the implementation of a Comprehensive Community Plan; and the formation of a Regional Technical Working Group (Regional District, City, SFN) which provides for joint community planning with respect to land and infrastructure.

Sliammon is currently in the process of taking the final draft of Matrimonial Law to the community in the very near future.

SFN has completed an Environmental Management Framework which establishes an Environmental Assessment baseline which makes recommendations about Land Use Planning; Emergency Preparedness and brings together in one group of documents all the existing regulatory framework pertaining to reserve land.

The following list are ongoing matters and issues in progress that the Land Management is doing under Land Code:

- interests and licenses for land and natural resources
- revenue and expenditures
- zoning, land use, sub divisions, land development
- environmental protection and assessment
- transfers including wills and estates
- expropriation
- matrimonial property
- dispute resolution
- enforcement
- administration and accountability including conflict of interest rules and delegated authority
- capacity building within our Registry

5.5.7 Squiala First Nation, BC



Squiala had a successful ratification vote on September 12, 2007 with ninety-seven (97) percent of its registered eligible voters voting in favour of the Land Code and Individual Agreement. Squiala chose to become a signatory to the Framework on First Nations Land Management because regaining control of its lands and resources means that Squiala will no longer be restricted to the lengthy land management processes of the *Indian Act*. Squiala is now pursuing economic development opportunities to ensure the First Nation reaches its goal of becoming self-sufficient.

5.5.8 Tsawout First Nation, BC

Tsawout First Nation (TFN) band members voted on March 23, 24, and 26th, 2007 to approve a community Land Code developed under the *Framework Agreement*. Three hundred eligible voters registered to cast ballots, including off-reserve members who voted by mail; 208 members voted in favour of the initiative; and 70 voted against with two ballots rejected.

The *Framework Agreement* enables participating First Nations the opportunity to develop modern and/or traditional tools to manage and protect their reserve lands and resources. The initiative enables First Nations to make timely business and administrative decisions and to accelerate progress in areas such as economic development, resource management, and land use planning. This initiative also enables First Nations to enact and enforce sound environmental management and practice laws.

"We want to improve our investment climate and promote economic growth and jobs in our community. In order to do that our Nation needs to provide an environment of certainty for public and private sector investment." said Chief Allan Claxton. "We have now taken full responsibility of our reserve lands and will contribute to our local economy."

The *Framework Agreement* and the *First Nations Land Management Act*, were originally open to only the 14 signatory First Nations. This Government-to-Government Initiative provides participating First Nations with the opportunity to come out from under the land administration sections of the *Indian Act*, and establish their own regimes to manage their lands and resources providing for more decision-making at the local level.

Today, the TFN Lands Department is responsible for the use, protection and management of TFN Lands, the main reserve I.R.#2, the Saltspring Island Fulford Harbour reserve, and the shared reserves on Saturna, Pender, Goldstream, and Bare Island.

2007-2008 Activities:

On a day-to-day basis, the lands department is responsible for managing the band lands, managing existing leases (including 5 year rent-reviews of registered leases), ordering legal surveys, providing land status reports to landowners and lessees (real estate agents for re-sales of mobile homes), dealing with archaeological sites within our traditional territory.

Due to a number of reports of squatters on the band lands in the gulf-islands, TFN representatives are also making regular site visits to ensure that there is no misuse of these lands.

Since meeting in May 2007, the Lands Committee has drafted, reviewed and recommended that the Chief and Council adopt a number of laws and lands policies.

- Draft #4 Tsawout Matrimonial Real Property Law
- Draft #1 Traffic Law
- Trespassing Law – as of May 29th this law has been given first reading and is currently being circulated to the band members and the non-band member residents.
- Dispute Resolution Process (to deal with outstanding land matters) – as of May 29th, Chief and Council have given the authority for the process to start.
- Adoption of the departmental work plan
- Adopted the new Lands Advisory Committee Terms of Reference
- A Lands Fee Schedule for 2008
- Lands Instruments for the Tsawout Lands registry process

A BCR for the banning of soil being dumped on Tsawout land, unless it is “clean fill”. Prior to dumping any fill a report must be submitted to TFN, at no expense to the Band. A Soil dumping law is currently being developed.

TFN will be hiring a Lands Clerk shortly. Staffing this position will allow TFN to begin development of a community plan and the development of environmental policies.

Additions to Reserve

We have asked our municipal neighbour, the District of Central Saanich, to return a portion of Tixen Spit to us. The only way that this area can be accessed is to drive through Tsawout. The District has so far indicated a willingness to return this parcel of land to Tsawout. The municipal Council will be reviewing the “Additions to Reserve” process report prepared by the Lands Department on July 7, 2008.

5.5.9 Tsawwassen First Nation, BC



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

As with other First Nations involved in the *Framework Agreement*, the impetus for TFN to become a signatory was the desire to achieve land management autonomy. One of the driving forces was also the reduction of bureaucratic intervention and the streamlining of land transaction processes; the latter are now implemented in weeks, rather than months. Laws are now in place to help govern the lands; more are being developed. The transition from the *Indian Act* management regime was not without its challenges, particularly because the costs of training staff and developing laws and procedures are significant. With a complete reorganization of the Lands Department, however, land management is now carried out or supervised, in house. One exception to the latter is the set of procedures involved with environmental management; these remain to be negotiated with the federal government.

The Land Management Department has been developing zoning guidelines, policies and regulations for various land management sectors, and gradually putting into place procedures for managing TFN lands.

Renewed emphasis on economic development continues to take place, due especially to the community's wish to invigorate its economy, and also to third party confidence in TFN's ability to manage its lands. A comprehensive community planning exercise has been underway for some time; the aim is to plan for long-term, land-based economic development activities and projects.

5.5.10 Ts'kw'aylaxw First Nation, BC

Ts'kw'aylaxw First Nation is an operational First Nation, having ratified their Land Code in March 2004. Ts'kw'aylaxw First Nation has accomplished a great deal in the years since it ratified the Land Code, and has developed a working draft of a Strategic Management Plan in 2007, and received funding from the BC Capacity Initiative to develop a Comprehensive Community Plan in 2008, which will greatly assist in the management of their reserve land base.



Operating under the Land Code has ensured that Ts'kw'aylaxw First Nation has control and management of their reserves through the elimination of those sections of the *Indian Act* as per Section 21 of the *Framework Agreement*.

Monitoring of the reserve lands has been ongoing for two years now. Ts'kw'aylaxw First Nation is in full control of the monitoring of its reserve lands and fully participates in all aspects of associated environmental issues. This would not have been possible if not for the *First Nation*

Land Management Act / Framework Agreement and the Lands Advisory Board.

In 2007-2008 Ts'kw'aylaxw First Nation began Step 1 of the Environmental Management Agreement, during which it utilized the services of a consultant that had also worked with them on their ESA's and their EA as per Annex F of their Individual Agreement.

5.5.11 Tsleil-Waututh, BC



Tsleil-Waututh successfully ratified their Land Code on June 6, 2007. Since then, the Tsleil-Waututh Lands Office has been established and staffed to implement the Land Code, develop land laws, policies and procedures and to establish a Lands Advisory Committee.

The first year of being an operational First Nations Land Management community has been challenging, however it provided the space to establish basic infrastructure and procedures for the Lands Office to be fully functional for the 2008-2009 fiscal year.

Tsleil-Waututh Land Registry

Between June 6, 2007 to March 31, 2008, the Land Registry processed 435 land registrations. The bulk of the registrations were related to Assignment of Subleases and Mortgages from the market multi-family housing development on the Reserve known as Ravenwoods.

Given the large number of land registrations, most of the focus of the Lands Office has been to establish land registry procedures and to process land registrations. It is anticipated that the number of land registrations will increase for the 2008-2009 fiscal year due to a new townhouse development, *Signature Estates* at Ravenwoods.

Land Development

In the absence of development by-laws, procedures or policies, Tsleil-Waututh have relied on consultants, certified professionals and legal counsel to ensure that the Nation's risks and liabilities have been covered in any proposed land developments.

A land development process has been developed over the last 6 months in response to a new 48 unit townhouse development, *Signature Estates* by Takaya Developments, a development company of which Tsleil-Waututh is a partner.

In order to move the development forward for construction in early 2008, Tsleil-Waututh conducted a process to review the development to ensure the Nation's interests and liabilities were addressed in a number of areas including environmental and archaeological impact assessment and natural resource harvesting.

The use of a development contract, temporary use permits and natural resource permits provides the Nation with assurances that the interests of TWN have been addressed, and provides the developer with certainty over land use and development on the leased land.

Lands Advisory Committee (LAC)

Six members of the Lands Advisory Committee (LAC) were elected in February 2008 and one representative of Council was appointed in March 2008.

The LAC is currently in the process of establishing a Terms of Reference for the Committee, developing a training program and beginning to review the development of a Tsleil-Waututh Matrimonial Real Property Law.

Law Making

The Tsleil-Waututh Land Code instructs the Nation to develop a Matrimonial Real Property Law (MRPL) within one year of ratification of the Land Code. Given the limited human resources to manage the development of the legislation and conduct a thorough community consultation process, the development and ratification of a Tsleil-Waututh MRPL will not be completed until the end of the 2008-2009 fiscal year.

Research and information gathering began in the latter part of the 2007-2008 fiscal year for the development of a Development By-law, Land Use Plan and Zoning By-law. The development of these by-laws is being planned for the 2008-2009 fiscal year.

Land Development

Policies and procedures are being drafted through the experience of reviewing the *Signature Estates* development. It is anticipated that formal policies and procedures will be established by the end of the 2008-2009 fiscal year.

Communications

The Lands Office has established a webpage to communicate with clients the process and functions of the land registration process. Clients are able to glean basic information from the website, download forms, find contact information and links to other specifics.

The website will be revised in the 2008-2009 fiscal year to communicate additional information regarding by-law development, land use planning and the work of the Lands Advisory Committee. It will be catered to both land registry clients and to community members.



5.5.12 T'Souke First Nation, BC



T'Sou-ke First Nation has a land base of approximately 67.2 hectares with a population of approximately 232 people living on each of the two reserves.

Environmental Management Agreement

T'Sou-ke First Nation have successfully completed Step One of the Environmental Management Agreement. The Lands Department and Environment Department worked together to gain community input and list known environmental issues on our reserve lands. T'Sou-ke now have compiled a list of environmental priorities.

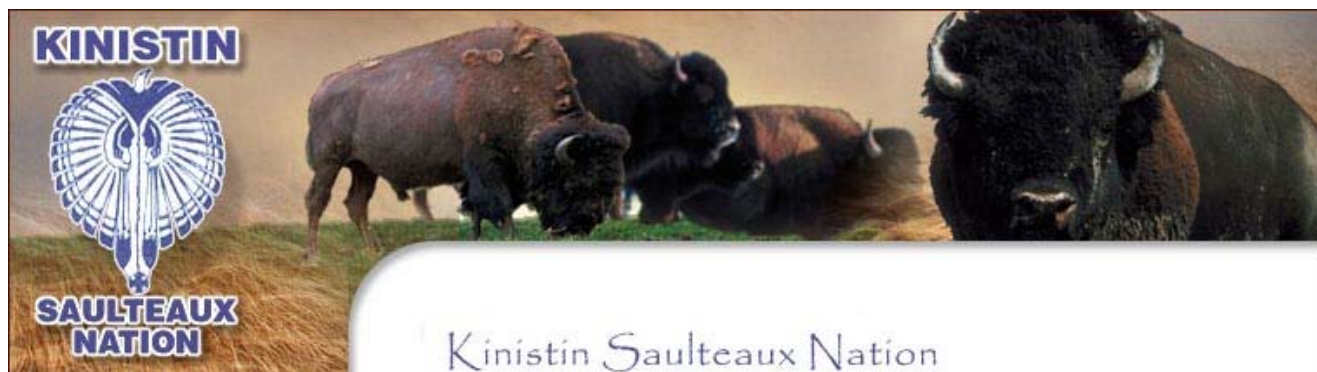
Matrimonial Property Law

T'Sou-ke is moving forward with the Matrimonial Property Law, with help and support of our lands committee and the Lands Advisory Board.

Land Use Planning

T'Sou-ke is currently working on developing a land use plan in order to determine what the T'Sou-ke community would like to see happen on reserve lands in the future. Having a land use plan will assist the community with cultural, residential and commercial use decisions.

5.5.13 Kinistin Saulteaux Nation, SK



Kinistin Saulteaux Nation (KSN) ratified its Land Code in 2004. Since then, KSN's Lands Committee has been working productively in undertaking all aspects of lands management. The KSN Land Code allows its membership to become aware of all issues pertaining to KSN lands. A good example is the Lake Front Development Project which involved community consultations and participation from all members. Members discussed all aspects of the project and ultimately made a collective decision to pursue priority areas for development. This process created a positive attitude within the community and has set a precedent for future land use decisions. The process also fostered empowerment amongst membership from being in control of decision making without the involvement of government.

The KSN Land Code also continues to foster discussions on a number of areas including traditional land designation, environmental issues, by-law making, and capacity building. The Land Code also instils a sense of pride in members and allows the development of relationships between local land owners and the KSN members and thus, provides a sense of pride and ownership in land use and development.

Urban KSN members also experience a sense of belonging in the community because their participation is invited in the development of land initiatives and their input in all discussions have proven to be helpful to the leadership of KSN. Many forums have been held and discussions amongst band members has allowed a more effective and positive method of land management to occur.

5.5.14 Muskoday First Nation, SK



Muskoday First Nation is located in central Saskatchewan, 16 kilometers southeast of the city of Prince Albert. Muskoday was an original signatory to the *Framework Agreement on First Nations Land Management* and was the third community in Canada to ratify its Land Code in 1998. The Land Code came into effect on January 1, 2000 and has since been amended on March 17, 2007.



Chief Austin Bear and Chuck Strahl, Minister of Indian and Northern Affairs formally sign the Muskoday TLE Settlement Agreement

Treaty Land Entitlement

On January 10, 2008, Muskoday First Nation, Canada and the Province of Saskatchewan formally signed the Muskoday First Nation Treaty Land Entitlement (TLE) Settlement Agreement. Following three years of tripartite negotiations and a successful First Nation ratification vote, the agreement provides Muskoday First Nation with a settlement of approximately \$10.2 million for an outstanding TLE shortfall as well as \$542,828 for negotiation, ratification and acquisition costs. In addition, Muskoday is entitled to purchase up to 38,014 acres (15,384 hectares) of land, on a willing seller/willing buyer basis, anywhere in Saskatchewan. These lands may then be converted to reserve status, which will also be administered under our Land Code. Muskoday First Nation is the first operational First Nation under the Framework to successfully negotiate and implement a Treaty Land Entitlement claim.

Muskoday has started looking at a number of land acquisitions in and around the city of Prince Albert and also within our traditional territory of the Fort a la Corne forest, 70 km northeast of the present reserve.

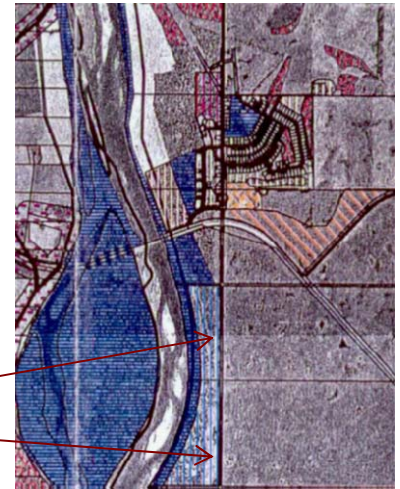
In July of 2007, Muskoday First Nation entered into a joint venture agreement with Embee Diamond Technologies to establish the Canadian Diamond Academy (CDA) in Prince Albert. The Diamond Academy will deliver training for the emerging diamond industries in east-central Saskatchewan. It will help equip First Nation people with the necessary skill sets to successfully

capture quality jobs in the primary and secondary diamond industries. Muskoday will hold 60% share of the CDA, which will be housed in a former bank building in downtown Prince Albert. Acquisition of this property will be finalized in the summer of 2008, with anticipated fall classes beginning in September.

Lease Residential Development

In 2002, Muskoday First Nation adopted a Land Use Plan for zoning development. One area along the South Saskatchewan riverbank was zoned for Residential leasing. In May 2008, two developers (one local and one from Toronto) met with Muskoday to look at the possibility of developing these lands for housing to lease to members and non members. Development would be structured on phases after securing a head lease. With the economic boom in Saskatchewan and Muskoday's strategic location to the city of Prince Albert, the opportunities for a multi-phase project are positive.

(area of proposed development)



Community Garden Project

Muskoday First Nation, in partnership with the local community school, Elders and the Muskoday Organic Growers Cooperative has started two organic community gardens on the reserve. The gardens will feature corn, squash and beans, which were main staples of our ancestors prior to European contact. 2.5 acres of organic potatoes have also been seeded, which will be distributed to the elders and other community members this fall. Students from the school, elders and co-op members will work together in weeding and watering the gardens. A drip irrigation system was been purchased with funding coming from Heifer International. A successful harvest may spur an expansion of the community garden project in future years.

Commercial Leasing

MFN has leased out the restaurant facilities located in the same building as the community owned store and gas bar. The new tenants not only provide a service and employment to members and non-members from surrounding communities, but also help generate revenue for the First Nation as the lease is administered under the Land Code. This lease was recently renewed for another 12 month period.

MFN also continues to lease billboard space on its lands to three different companies in the City of Prince Albert. Businesses from other surrounding communities have approached the Lands department on leasing billboard space along Highway #3, one of the busiest routes in the province.

Land Use Planning

MFN adopted a land use plan in 2002 which helps provide direction for development on its community lands. The priority issues in having a land use plan in place include:

Maintaining the environmental integrity of the community with new or existing commercial, agricultural or industrial development. Retaining prime agricultural land for that specific purpose. Conserving Mother Earth and healing or reclaiming the earth where it has already been adversely affected. Ensuring that MFN continues to be an enjoyable place to reside. A comprehensive review of this plan will begin this year and amendments will be made to reflect new lands acquired under the Treaty Land Entitlement process.

5.5.15 Whitecap Dakota First Nation, SK



Whitecap Dakota First Nation (WDFN) is located 26km south of the City of Saskatoon. The members of WDFN approved its land code in November 2003. The WDFN Land Code came into effect January 1, 2004.

Land Use Planning

WDFN has developed a land use plan which divides the reserve into land use districts. This has enabled Whitecap to identify lands for commercial, industrial, agricultural, residential, resource conservation and cultural uses with specific development standards for each district. These standards ensure developments are consistent within each land use district and ensure they are done in an orderly manner. The land use plan has been a successful tool in marketing commercial, industrial and residential lots.

Commercial Leases

Since the Land Code came into effect, WDFN has approved 16 new commercial leases. The land code has allowed WDFN to approve commercial leases of up to 49 years. The commercial leases include the award winning golf course, *Dakota Dunes Golf Links* (Golf Digest best new course in Canada in 2005), a world class Casino opened in August of 2007, and a 20.0 million dollar hotel complex scheduled for construction in the spring of 2008 to compliment the golf course and casino. As well, a number of smaller businesses have been attracted to the Whitecap reserve based on the developments and ease of negotiating land leases under the land code. The developments are expected to generate 650 jobs on reserve. The jobs generated exceed the total First Nation population of 500 members. These jobs will be provided to members and those residing in surrounding municipalities.

Permits and Easements

The land code has allowed WDFN to issue permits, easements, and rights-of-way to utility and transportation entities. This has been particularly effective with Provincial crowns who provide utility services. The land code has provided for timely responses to providing new utilities (Sask Power, Sask Energy, Sask Highways and Transportation and SaskTel).

Residential Leases

WDFN has the ability under its land code to approve residential leases of up to 99 years in duration. WDFN is developing a residential subdivision with lots available to members and non-members. Due to the existence of their land code, WDFN is now more appealing to buyers who may now obtain mortgage financing from conventional lenders.

Infrastructure

WDFN provided 10 million dollars in community infrastructure to accommodate the commercial and residential developments. Infrastructure development included sewer and water upgrades, and expanded utilities (power natural gas, telephone/ cellular). WDFN can now market both commercial and residential lots as fully serviced.

5.5.16 Opaskwayak Cree Nation, MB



Opaskwayak Cree Nation has been operational since August 2002. Our First Nation enacted certain land laws that were of particular importance for implementation. The first law was the interim land law for establishing a lands board until an elected board was in place. This was important so there was continuity in dealing with ongoing land issues. The next land law enacted was an interim land law for governing for use of land and occupancy. This law was necessary to deal with ongoing land interests. In the meantime, these land laws of permanency nature were developed, enacted and implemented.

Land Law 2003/002 - Land Law for Establishing a Land Authority - March 10, 2003

Land Law 2003/003 - Governing the Use and Occupancy of OCN Lands - August 11, 2003.

Land Law 2006/001 - Spousal Interest Land Law - February 15, 2006

Land Authority Board

The Land Authority Board holds duly convened meetings on a monthly basis - the first Tuesday of each month to deal with land issues, land allocations, financial matters, and any environmental issues. Any issues requiring Council's input or approval is dealt with monthly at their meeting.

The lands department staff carry out decisions made by the Board as well as carry out administrative functions related to land management. The Land Authority Board of Directors, and the Chief and Council, play an essential role in fulfilling their responsibilities under the Land Code and land laws along with bringing resolution to outstanding land exchange issues.

An orientation and updates were provided to new Directors of the Land Authority. Throughout the 2007-2008 fiscal year, some of the Land Authority Directors, along with Lands personnel, were involved in consultation meetings with Lands Advisory Board and Resource Centre, and the Department of Indian and Northern Affairs Canada to discuss a new operational funding formula for communities that are operational under the *Framework Agreement*. This involved research and analysis on needs for land management.

Individual Transfer Agreement (ITA)

Work was conducted with INAC Staff involving outstanding land issues under the Annexes of the

Transfer Agreement. One such outstanding issue is the Highway #10 south/Umpherville Road land exchange. In July 2007, a land exchange agreement was drafted with the involvement of Justice, INAC Region-Lands, Province of Manitoba, and OCN Lands personnel. Since the meeting, the draft agreement has been with the Province. Once the Umpherville Road land exchange is completed, other outstanding land issues, as contained in the ITA, can be dealt with.

Environment

Throughout the year, the Land Authority and lands personnel have been involved with the development of steps for an Environmental Management Agreement with the Lands Advisory Board (RC) and the Department of Indian and Northern Affairs Canada.

The environmental process identified a step by step process. Step 1 of the process involves an environmental scan of issues affecting Opaskwayak Cree Nation lands. An environmental consultant was hired to conduct the work. The actual work took about three months to complete and involves community members' input. A separate report has been prepared and presented to the appropriate personnel at INAC Region.

Environment - Administrative

All applicants for use of land are required to complete an environmental assessment screening form. This document is reviewed by lands personnel to determine if further action is required. An OCN environmental team (technical), reviews these environmental assessments for proposals to use land for economic, agricultural, recreational purposes. The purpose of the review is to ensure that potential impacts to the environment are mitigated. Site inspections of reserve lands are conducted at random. This is done to protect the land by making sure that any land use activities do not compromise the land and resources.

Forestry

The NRCan forestry program funded our forestry activities under a funding arrangement. An area of Reserve 21F was cleared to allow for growth of planted trees. This was a six-week project where four band members were hired to undertake the task. A separate report has been prepared and presented to the appropriate personnel at NRCan Forestry.

Land Transaction Activities

All land transactions are managed and administered in accordance with the Land Code and land laws. Any new transactions within the year were registered in the OCN Land Registry with duplicates submitted to the First Nations Indian Land Registry in Ottawa. This Registry is a depository for land leases, permits and any other agreements.

2007-2008 saw the registration of 141 new transactions which included, among others - Residential Leases; Residential Permits; Billboard Permits; Commercial Leases; Licensing, Resource Permits, and Agricultural Permits.

Other Accomplishments

Another accomplishment, is that OCN has been able to successfully negotiate financing with the local financial institution for mortgage loans for two public service buildings, the OCN RCMP detachment and OCN Child and Family Agency. The banking institution was very receptive to our land management system and the security it provides in terms of leasehold interests and the registration of those interests.

OCN has also successfully negotiated for the establishment of business on reserve. Our success in enticing new business development, is a result of the security offered through our land management system. One business venture in particular will require a large land base for its industrial operations, and is poised to provide numerous employment opportunities for our members, as well as other economic gains.

5.5.17 Chippewas of Georgina Island, ON

The Chippewas of Georgina Island First Nation (GIFN) have realized the many benefits of sectoral self-government from their reserve lands and resources since they ratified their land code. Due to the streamlining of leasing processes GIFN has been able to increase both the number of leases and revenues from those leases. This funding goes a long way towards providing adequate social and post secondary services to all members of GIFN.

The ability to make timely decisions about the development of our lands has also meant that GIFN has been able to embark on a wind energy project which will generate more than enough power to the residents of the community as well as sufficient power to sell back to Ontario Hydro.



5.5.18 Mississaugas of Scugog Island First Nation, ON

The Mississauga's of Scugog Island First Nation Land Code came into effect January 1, 2000.



Scugog Island First Nation was the first of the original 14 signatories to the Framework Agreement to pass a Land Code.

During the summer 2005, an addition was added to the band Administration office, housing a new council chamber and four new offices. Another addition was deemed necessary, this time adding 18 new offices, a small conference room and a staff lounge. This addition was completed in 2006. Construction has also begun on a housing sub-division with 16 beautiful lots for members who wish to return home.

The success of the Great Blue Heron Charity Casino 2007/08, has enabled MSIFN to start the process of obtaining a water/sewage treatment facility. The facility will serve the casino with the possibility of serving the First Nation homes. MSIFN has completed the necessary environment and archeological assessments that are required for the development of the sewage plant.

2007/08 has also seen additional housing in the form of retirement residences for our seniors. Mississauga's of Scugog Island First Nation is progressively growing for the future of our members.

5.5.19 Nipissing First Nation, ON

Nipissing First Nation has operated under the Nipissing Land Code since June of 2003. Both the Nipissing Nation Membership and its land leasing clientele have homes built in villages, hamlets and subdivisions that are located along the shores of beautiful Lake Nipissing.



The Nipissing Land Office has registered interests in Jocko Point and Beaucage subdivisions numbering 285 leased lots with a total capacity of 334 lots for lease. The Nipissing Land Code provided a legal framework for the registration of direct leases between Nipissing Nation and its clientele. The direct lease arrangement was negotiated by a Committee made up of Nipissing Council, the Nipissing Land Staff and lessees. Resulting from those negotiations the Committee members were able to put in place a lease that received Canada Mortgage and Housing's backing for mortgages. The development of custom rent review provisions and mediation processes assisted in the acceptance of the lease arrangement.

Nipissing Nation has experienced an emerging housing market in both the land leasing subdivisions and Nation member communities. The land leasing subdivisions have increased attention by financial institutions providing increased mortgaging capability for our client lessees.

Commercial and Industrial

Commercial Industrial properties have been leased since the mid 1950's. Nipissing leases land to clients that are both non-nation entities and Nipissing Nation member entrepreneurs.

All commercial operations are encouraged to employ Nipissing Nation members to take advantage of rental concessions provided under their leases. Nipissing boasts as clients in the commercial sector, a motel, a travel agency, a storage facility, recreational vehicle sales and servicing facility, brick and tile sales, a coffee shop, convenience stores, gas stations, tobacco product manufacturer and an office complex.

The Nipissing quarry has a lessee who is a major privately owned North American company who operates a quarried rock operation. The Miller Group has been beneficial to Nipissing by providing royalties for rock extraction sales and employment to our Nation members. A direct lease with Nipissing, an ability to structure a lease beneficial to both Nipissing and the lessee and strong mediation clauses were instrumental in attracting this lessee to develop on Nipissing land.

Nipissing members employment is not restricted to on reserve employment. Nation members work in the waste management facilities operated in North Bay by the Miller Group and in other Miller Group operations in Ontario. Job mobility within the Miller Group facilities have been embraced and is encouraged by Nipissing Nation.

Nipissing Nation is presently investigating with the Miller Group other projects that will greatly enhance the land leasing and employment aspirations of Nipissing Nation.

Laws and Regulations

The Nipissing Nation Land Law Committee has developed a Land Law Enactment Process under the Nipissing Land Code. This enactment process has provided for the enactment of the Nipissing Business Licensing Law.

Environmental Management

Nipissing Nation land base consists of 58,000 acres of land. The Nipissing environmental concerns embrace land, flora, fauna, water shed and impacts of Nipissing as well as by the neighboring communities.

Since 1996, Nipissing has anticipated the requirements under a land management regime for environmental strategies on its land base. Beginning that year and implemented in all land projects, environmental studies and strategies have been Investigated and an inventory has been set in place. With the assistance of Public Works Canada, Indian and Northern Affairs and various environmental consulting firms a management strategy may now be formed to comply with the Framework Agreement set in place and signed by Canada and Nipissing.

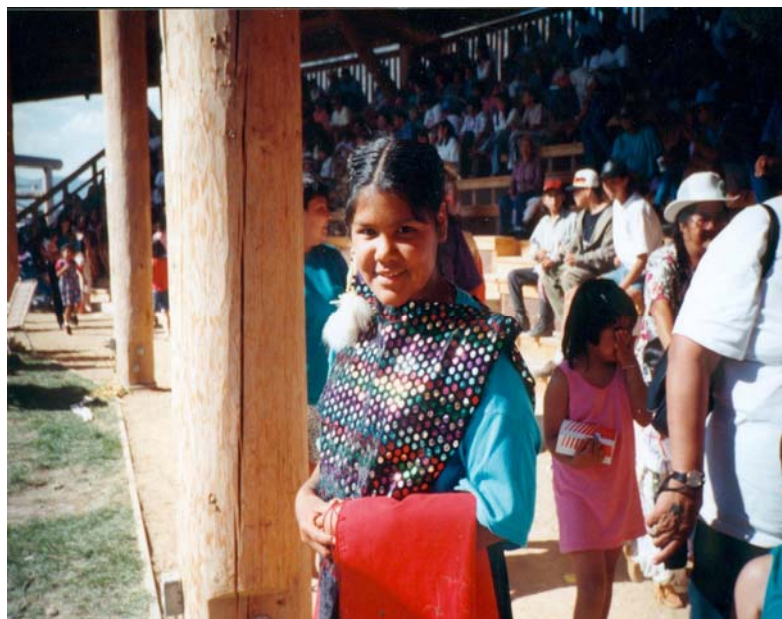
While protection of the environment is foremost in developing an environmental management plan, Nipissing is putting weight to the adoption of laws that provide for the protection and enforcement of environmental standards at Nipissing.

Nipissing also wishes to address in the environmental management plan, remediation of a radon contamination site, special land zone protection laws, a review of impact landfill sites off reserve, acknowledgement by federal and provincial governments of the Nipissing Fisheries Law, enabling of future protectionist resource laws and appropriate laws to govern land, resource and watershed activities on Nipissing land.

6. DEVELOPMENTAL FIRST NATIONS

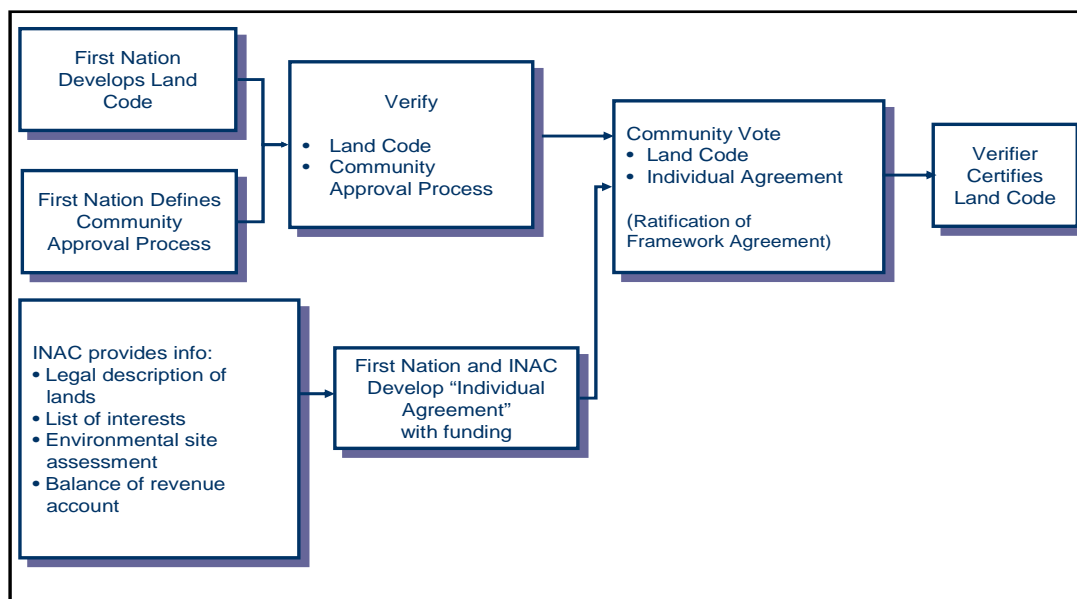
6.1 First Nation Ratification of the Framework Agreement

A signatory 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.



The activities to complete the community ratification process required under the Framework Agreement are as follows:

**Exhibit 10:
Logic Model for the First Nation Ratification Process under the Framework Agreement**



In 2007-2008 the active developmental First Nations made considerable progress towards completing these activities. As a result, many anticipate completing their community votes and beginning operational land management under their land codes in 2008-2009.

6.2 New First Nation Signatories to the Framework Agreement

Six First Nations were recommended by the LAB and approved by Canada in 2007-2008. Two of these First Nations began developmental activities in 2007-2008. The four remaining communities will begin their community developmental process in 2008–2009.

6.3 Support Services to Developmental First Nations

The support services provided by the LAB and RC 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 & implementation of the community ratification process. In addition, when requested by a First Nation, the LAB and RC provide advice and guidance on the environmental site assessment, the survey of the reserve jurisdictional boundary and the Individual Agreement with Canada. Exhibits 11 to 13 indicate the support services provided by the LAB and RC in assisting each of the developmental First Nation to complete their ratification activities.

The support services included daily telephone conference calls, emails, faxes and letter exchanges on the one hand to multi-day on-site meetings and workshops with Chiefs and Councils, Land Committees and coordinators on the other hand. In some cases these meetings

and workshops required the participation of several RC staff as well as the LAB.

Exhibit 11 A: Quarterly Support Services to Each Developmental First Nation

| First Nations: | April - June | July - Sept | Oct - Dec | Jan - March | Total |
|------------------------------|--------------|-------------|-----------|-------------|-------|
| BC: Songhees | 30 | 43 | 35 | 22 | 130 |
| Musqueam | 6 | 39 | 24 | 18 | 87 |
| Squamish | 16 | 40 | 41 | 45 | 292 |
| Osoyoos | 9 | 13 | 3 | 1 | 26 |
| Leq'a:mel | 17 | 41 | 25 | 3 | 86 |
| Tzeachten | 15 | 34 | 53 | 46 | 148 |
| Seabird Island | 38 | 46 | 51 | 38 | 173 |
| Matsqui | 38 | 51 | 67 | 21 | 177 |
| We-wai-kai | 21 | 38 | 34 | 41 | 134 |
| Squiala | 21 | 42 | 24 | 11 | 98 |
| Nanoose | 0 | 0 | 6 | 5 | 11 |
| Sumas | 0 | 0 | 2 | 9 | 11 |
| Campbell River | 0 | 0 | 0 | 5 | 5 |
| Skahowlook | 0 | 0 | 0 | 7 | 7 |
| AB: Ft. McKay | 11 | 31 | 21 | 16 | 79 |
| SK: Flying Dust | 8 | 13 | 18 | 12 | 51 |
| Pasqua | 22 | 31 | 21 | 10 | 84 |
| Cowessess | 0 | 18 | 3 | 3 | 24 |
| Kahkewistahaw | 0 | 14 | 4 | 11 | 29 |
| MB: Swan Lake | 15 | 24 | 24 | 5 | 68 |
| Chemawawin | 10 | 31 | 8 | 10 | 59 |
| ON: Mnjikaning | 7 | 7 | 2 | 0 | 16 |
| Garden River | 24 | 42 | 19 | 5 | 80 |
| Moose Deer Point | 4 | 13 | 0 | 0 | 17 |
| Mississauga | 24 | 46 | 25 | 7 | 102 |
| Whitefish Lake | 12 | 43 | 33 | 33 | 121 |
| Kettle and Stony Point | 16 | 37 | 22 | 23 | 98 |
| Dokis | 20 | 34 | 21 | 14 | 89 |
| Henvey Inlet | 26 | 61 | 35 | 19 | 141 |
| Anishinaabeg of Naongashiing | 14 | 30 | 18 | 14 | 76 |
| Alderville | 0 | 15 | 32 | 22 | 69 |
| QC: Innue Essipit | 0 | 48 | 46 | 6 | 100 |
| NB: Kingsclear | 11 | 34 | 4 | 5 | 54 |
| TOTAL: | 435 | 959 | 721 | 487 | 2,742 |

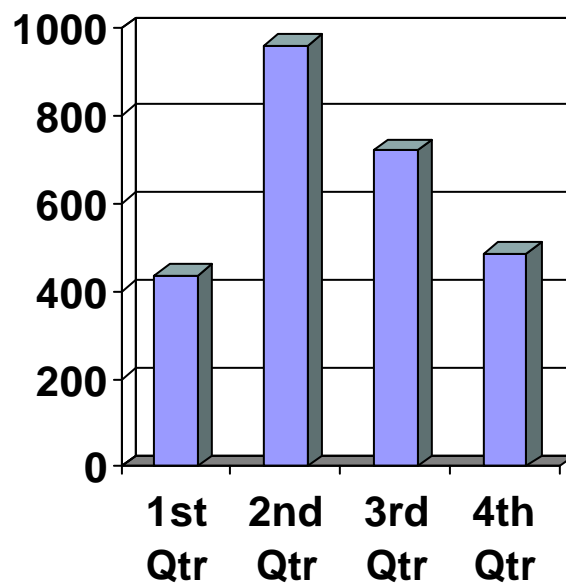
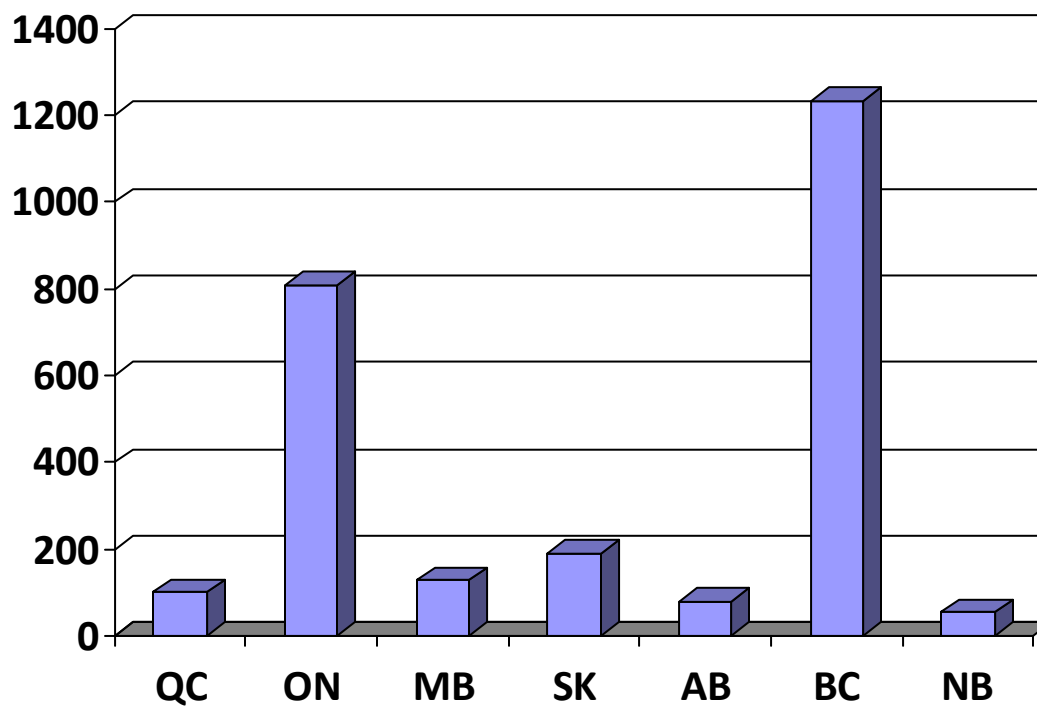
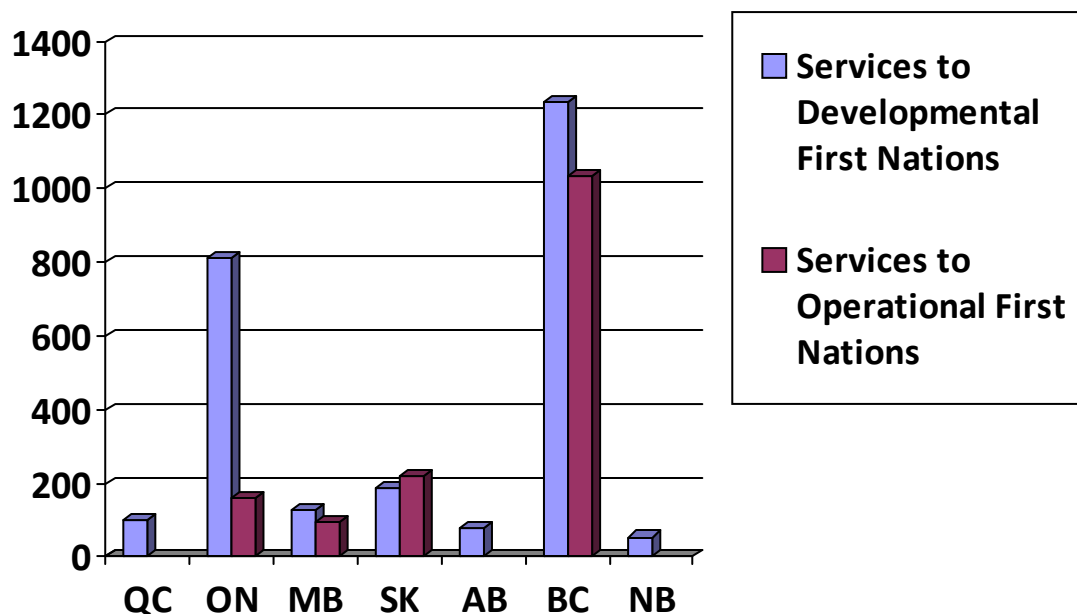
Exhibit 11B: Quarterly Support Services to All Developmental First Nations**Exhibit 12: Support Services to Developmental First Nations by Province**

Exhibit 13: Support Services to Both Operational and Developmental First Nations by Province



7. VERIFICATION PROCESS UNDER THE FRAMEWORK AGREEMENT

7.1 Role of the Verifier

The Chiefs who negotiated the *Framework Agreement* in 1996 introduced the concept of an independent party who would ensure that all aspects of the ratification process were conducted to the satisfaction of both the First Nation and Canada. The “Verifier” is jointly appointed by the First Nation and Canada.

Clause 8 of the *Framework Agreement* states that the role of the Verifier is to:

- (a) decide whether the proposed land code conforms with the requirements of clause 5;
- (b) decide whether the proposed community approval process conforms with the requirements of clause 7;
- (c) determine whether the community vote is conducted in accordance with the community ratification process approved by the Chief and Council; and
- (d) certify that the land code is properly approved by the First Nation.

The Verifier also has the power to make a final decision to resolve:

- (a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and
- (b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.

8. AGREEMENTS AND REGULATIONS

8.1 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 a First Nation will enact environmental protection laws deemed essential... It will include timing, resource, inspection and enforcement requirements.”

Fiscal year 2007-2008, witnessed the continuation of discussions with representatives from INAC and Environment Canada on the development and finalization of an Environment Management Agreement (EMA) process and the establishment of a funding base for operational communities to properly carry out their environmental protection responsibilities. The parties conducted four major meetings in Richmond (B.C.), Victoria (B.C.), Tsleil-Waututh First Nation (B.C.) and at the Whitecap Dakota First Nation (S.K.), including a number of technical meetings to support this work.

One-time funding was secured by INAC during the year for operational communities to begin identifying their issues and visions (Step 1 of the EMA process) with respect to environmental protection. In addition, three late winter sessions were organized and conducted in each region to specifically support communities in the completion of this Step 1 activity. Of the 22 operational communities in fiscal year 2007-2008, 13 First Nations chose to begin Step 1 of the EMA development process. Funding is expected to be secured in the new fiscal year for the other operational communities to complete Step 1.

The LAB, Resource Centre and Canada are finalizing work on an EMA template that will be used to assist Canada and the communities to develop the environmental management agreements. Once finalized, the EMA template will be available on the LAB web site.

8.2 Environmental Assessment Process

Although fiscal year 2007-2008 saw the continuation of focused discussions between Canada, the First Nations and the LAB in the area of environment management agreements, the existing interim environmental assessment process, as contained in the Individual Agreements with Canada, remains the sole method for First Nations to conduct these assessments. Provisions within the *Framework Agreement* provide for an opportunity to negotiate a more formal environmental assessment process that guides conduct and allows for sign off on environmental screenings and assessments.

8.3 Land Registry Regulations

The *First Nations Land Registry Regulations* officially came into force on November 5, 2007 and was published in the Canada Gazette on Wednesday November 14, 2007. The publication of the registry regulations is a direct result of a working partnership between Canada and the LAB.

The Land Registry created by these Regulations is located in the National Capital Region, and the system is accessible to First Nations, law firms, the public, and federal and provincial government. The Register was established in order to provide for the recording and registration of documents relating to First Nations land and interests therein, through online submissions and registration. In accordance with the advice and recommendations of the major banks, trust companies and title insurance companies obtained during the course of developing these regulations, the regulations provide for a registry system that assigns priorities to interests in First Nations lands as they are registered.

Tsleil-Waututh First Nation recently indicated that the newly established land registry (has)

“... created efficiencies as well as obstacles in carrying out land registrations. While (we) no longer have to shift through and courier bags to Ottawa, the electronic system was plagued by technical problems in the first 2 months of operations. This caused some disturbance to the work of the Lands Office as we could not process registrations within the time required by the client.

However, once technical problems were resolved, we have been able to provide faster turn-around times for our clients. Whereas it had taken up to 4-6 weeks to provide a registration number, it now takes about a week to receive confirmation of the registration from FNLRS.

With the electronic system, the Lands Office saved on courier and mailing costs ... FNLRS technical and land registration staff have been very helpful and responsive to problems that have arisen with the electronic FNLRS and registration process. We have been working closely with FNLRS staff to problem solve some of the technical and administrative issues that have come up with the new system.”

To support the implementation of the new registry system, training sessions were provided to operational First Nations in Vancouver and Regina. A similar training session is being planned for Ontario First Nations sometime in 2008.

9. NATIONAL PARTNERSHIPS

9.1 Ongoing Relationship with Professional Organizations

One of the LAB's priorities is to create ongoing relationships with professional organizations. In 2007-2008 the LAB established partnerships with two new organizations—the *Framework Agreement* Land Governance Association and First Nations Tax Commission.

9.2 *Framework Agreement* Land Governance Association

A group of *Framework Agreement* lands managers/coordinators have established their own lands association, the *Framework Agreement* Land Governance Association (FALGA). The objectives of FALGA include:

- promoting the mutual interest of the members in matters of land governance and administration pursuant to the *Framework Agreement*.
- promoting, through education, discussion, networking and codes of conduct, professionalism in the field of land governance, management and administration under the *Framework Agreement*.
- seeking to incorporate First Nation traditions and practices into the governance and administration of First Nation lands.
- providing information to non-member First Nation lands managers and to the general public about land governance, management and administration under the *Framework Agreement*.
- establishing relationships with other organizations or other entities having an interest in First Nation land governance.

All of the Lands Managers/Coordinators of *Framework Agreement* signatory First Nations are entitled to become members of FALGA.

9.3 First Nations Tax Commission

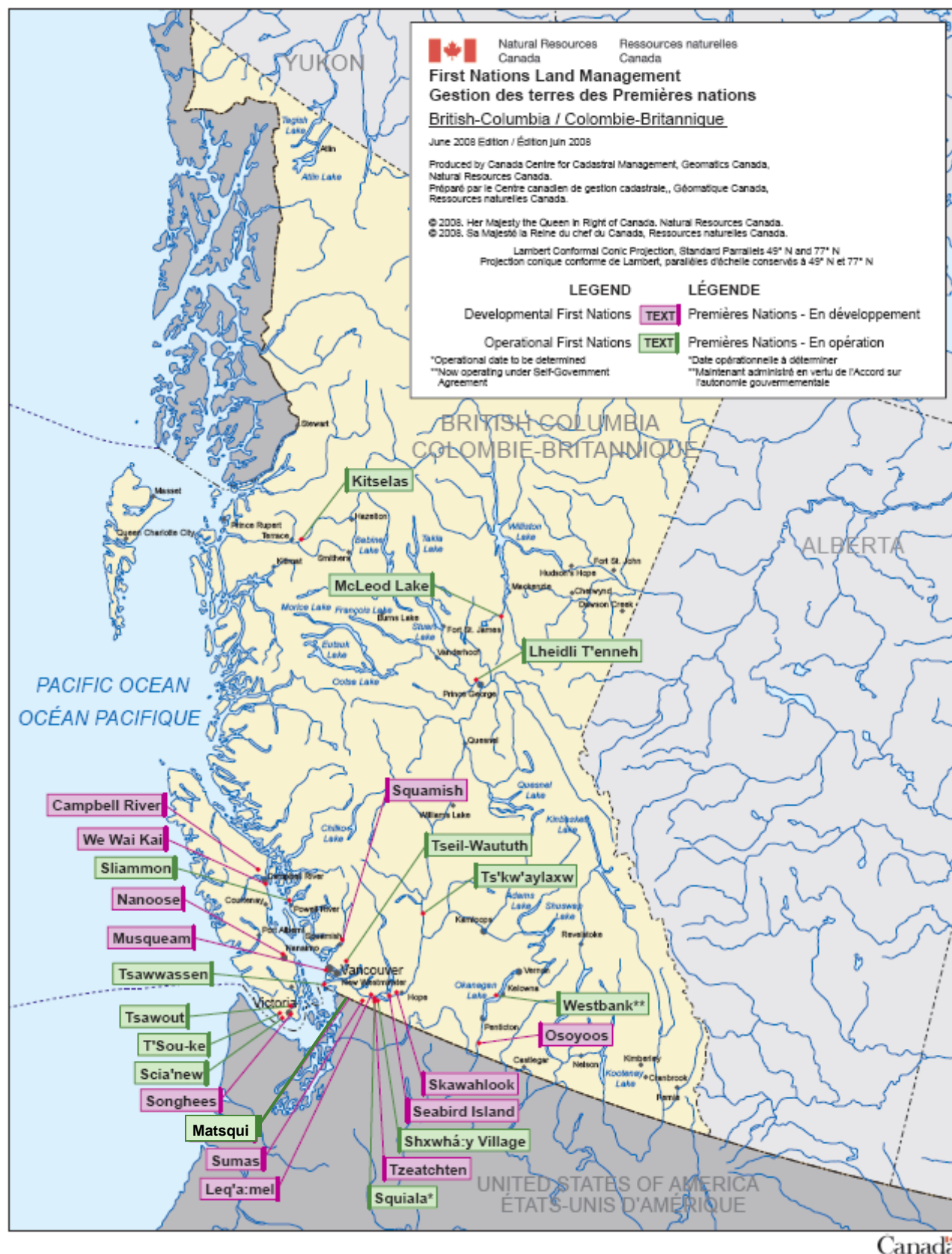
The ongoing relationship between the LAB and First Nations Institutions and Organizations is critical to the success of First Nations' implementing the *Framework Agreement*.

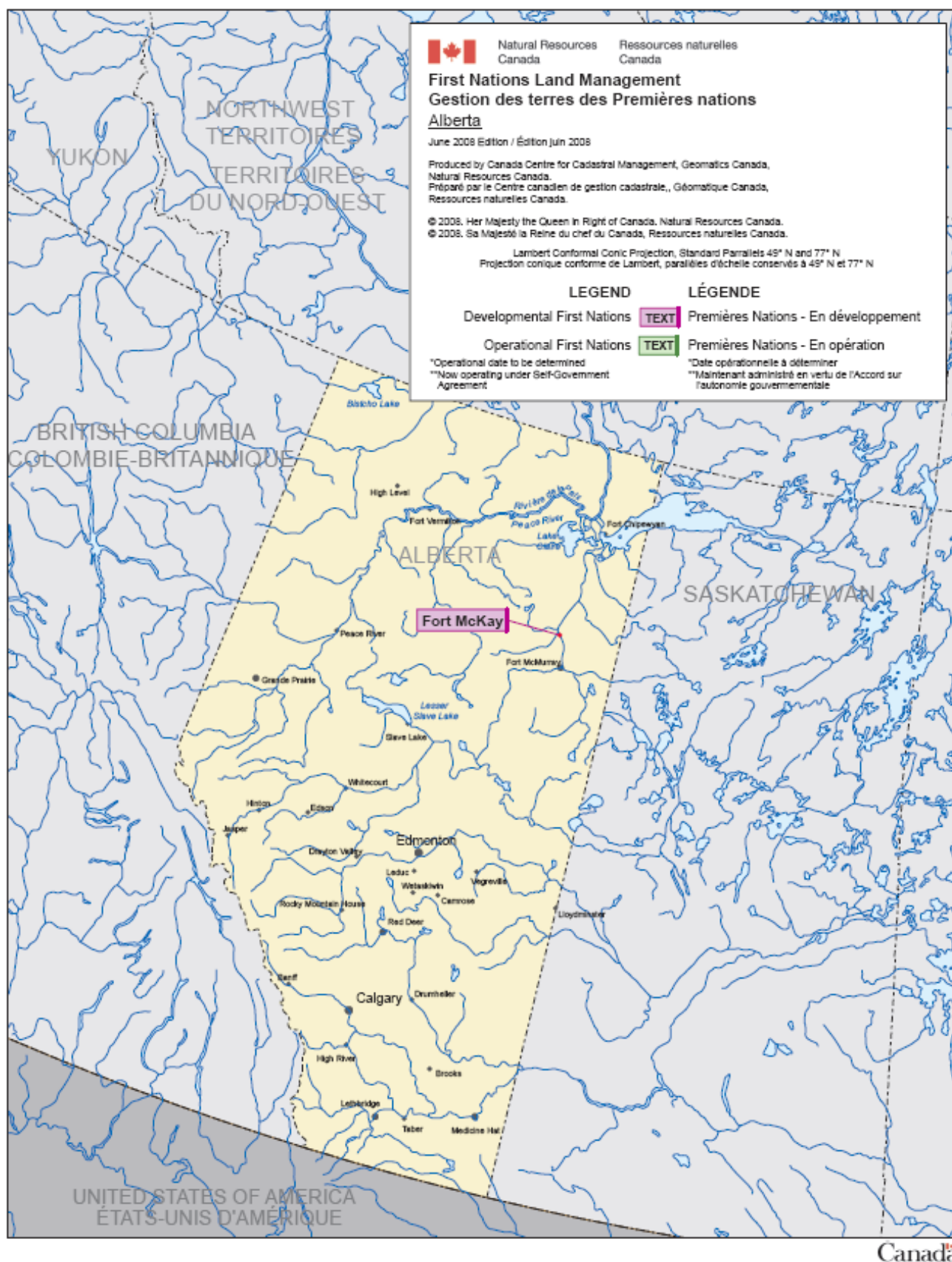
In November 2007, the LAB signed a new protocol (Appendix G) with the First Nations Tax Commission to further develop and strengthen the relationship that was established over the past several years under an existing agreement. The Commission is the successor institution to the Indian Taxation Advisory Board and builds on the Board's 18 years of experience and expertise.

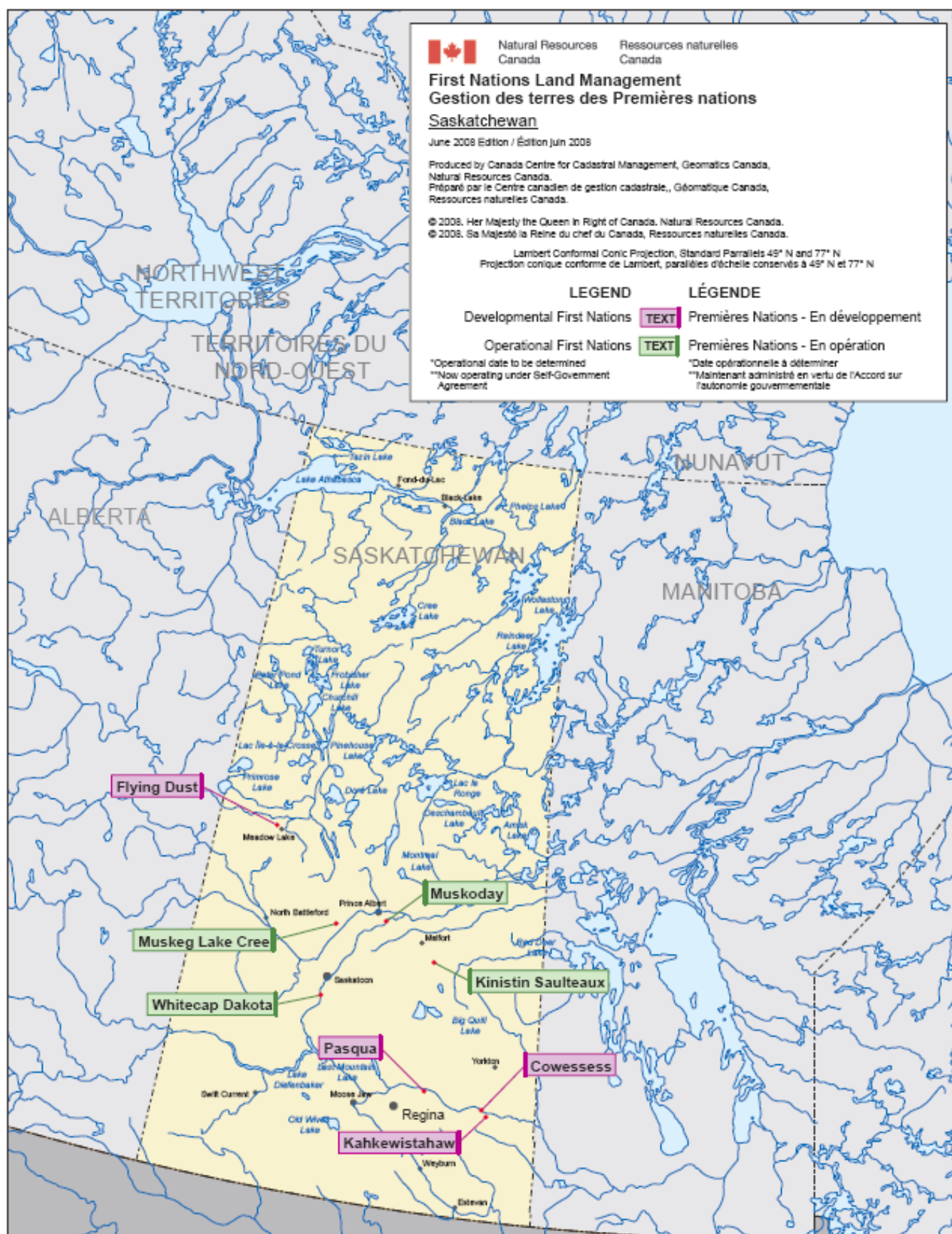
The Commission has the overall responsibility of maintaining the integrity of First Nations taxation. The Commission helps First Nation governments maintain fair and efficient First Nation property tax regimes. It is instrumental in the creation of national standards, procedures and policies which govern how the Commission reviews and approves First Nation laws and how the Commission approaches dispute prevention and resolution.

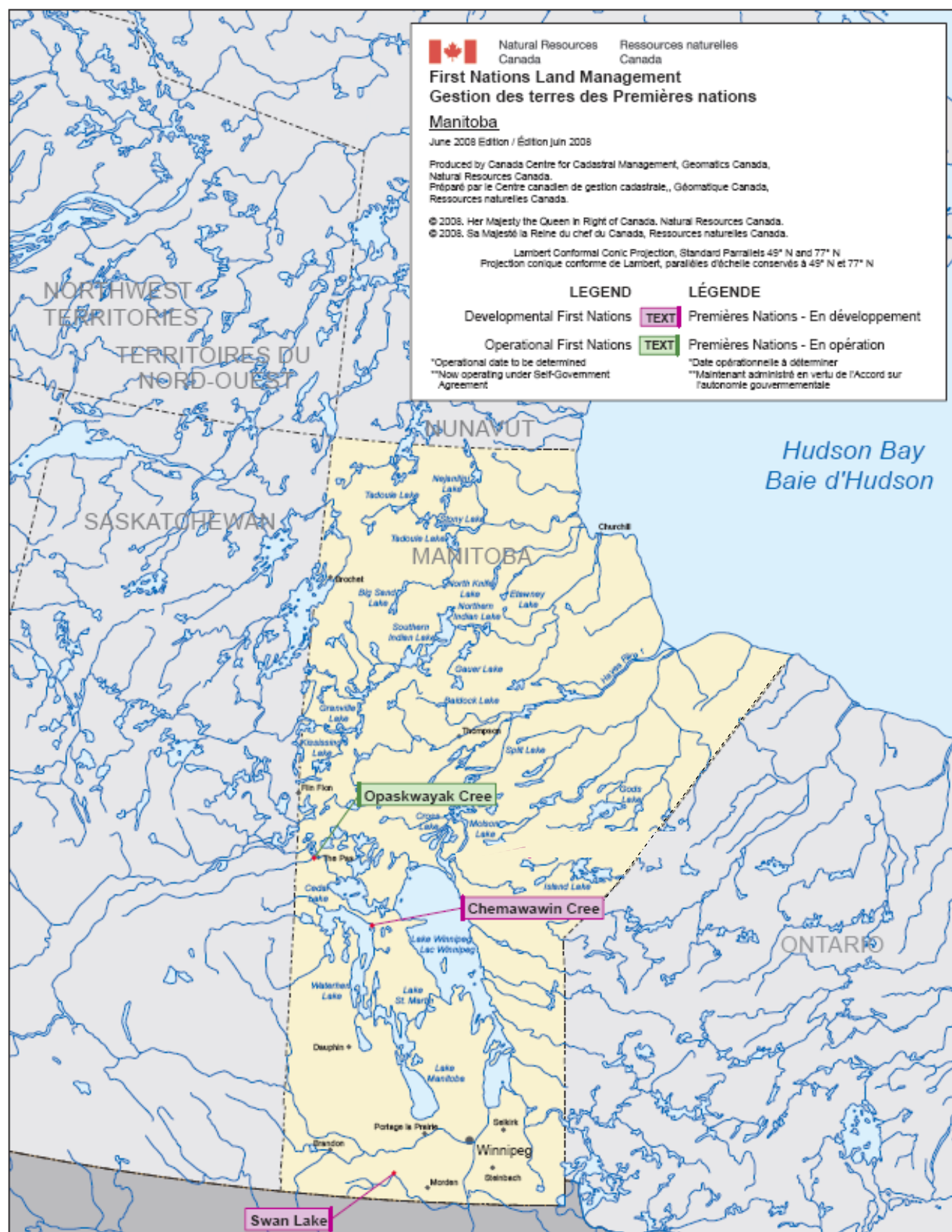
The new protocol, signed between the Chief Commissioner of the Tax Commission, C.T. (Manny) Jules and the Chair of the LAB, Chief Robert Louie, commits the parties to promoting the furthering of mutual interests, identifying and undertaking of joint projects and to enhance communications between the parties in support of their respective mandates.

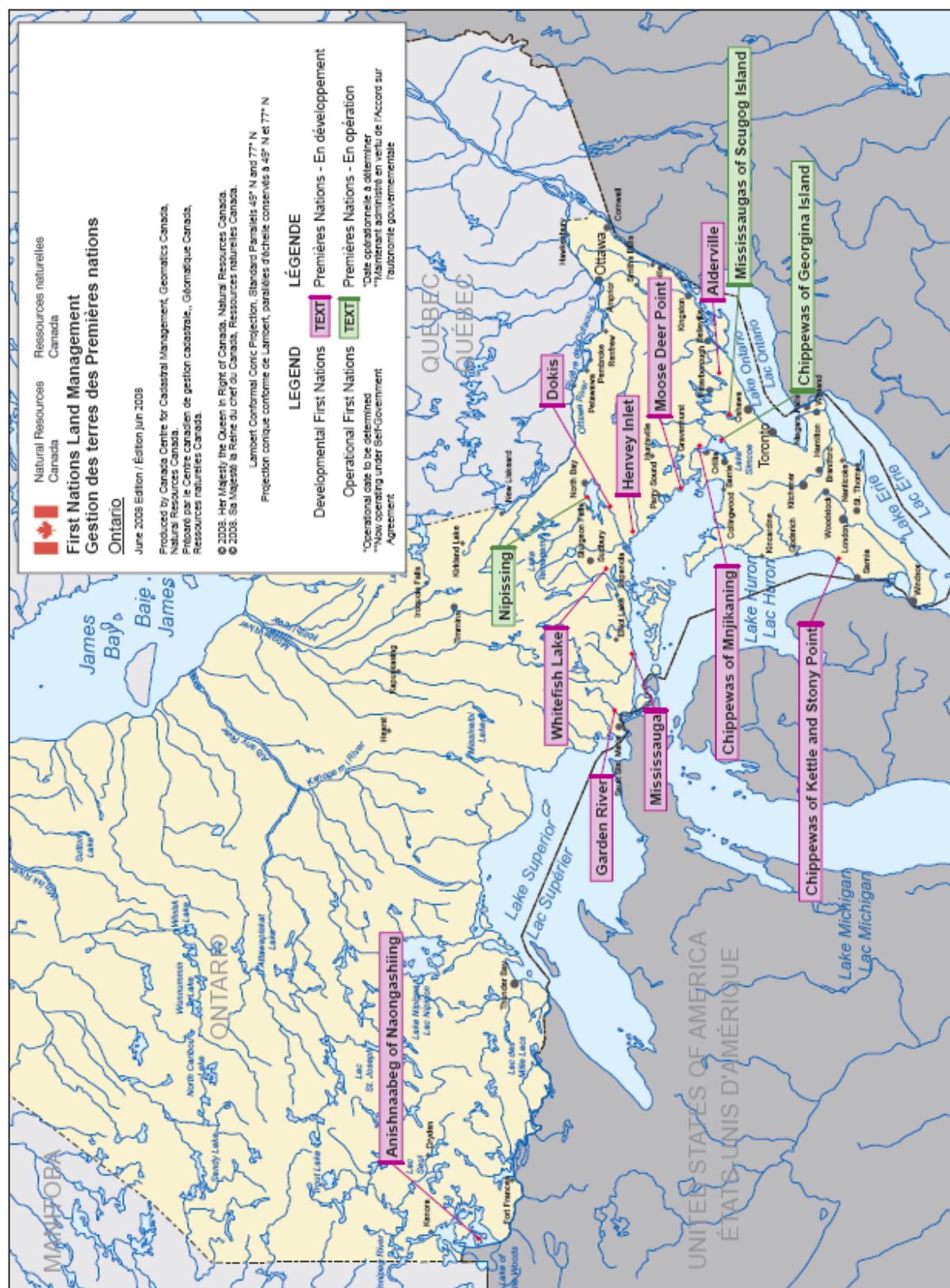
Appendix A: First Nation Locations

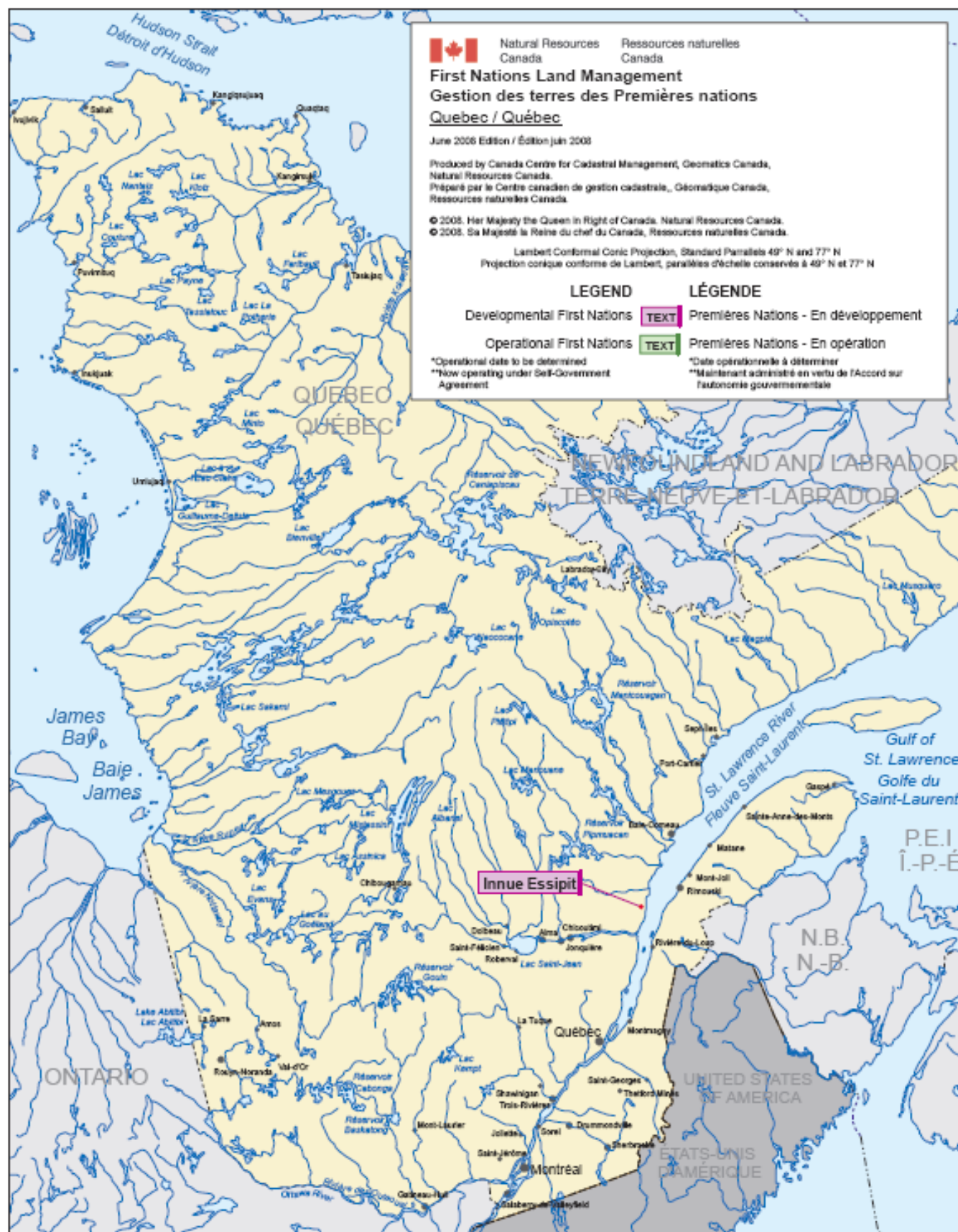


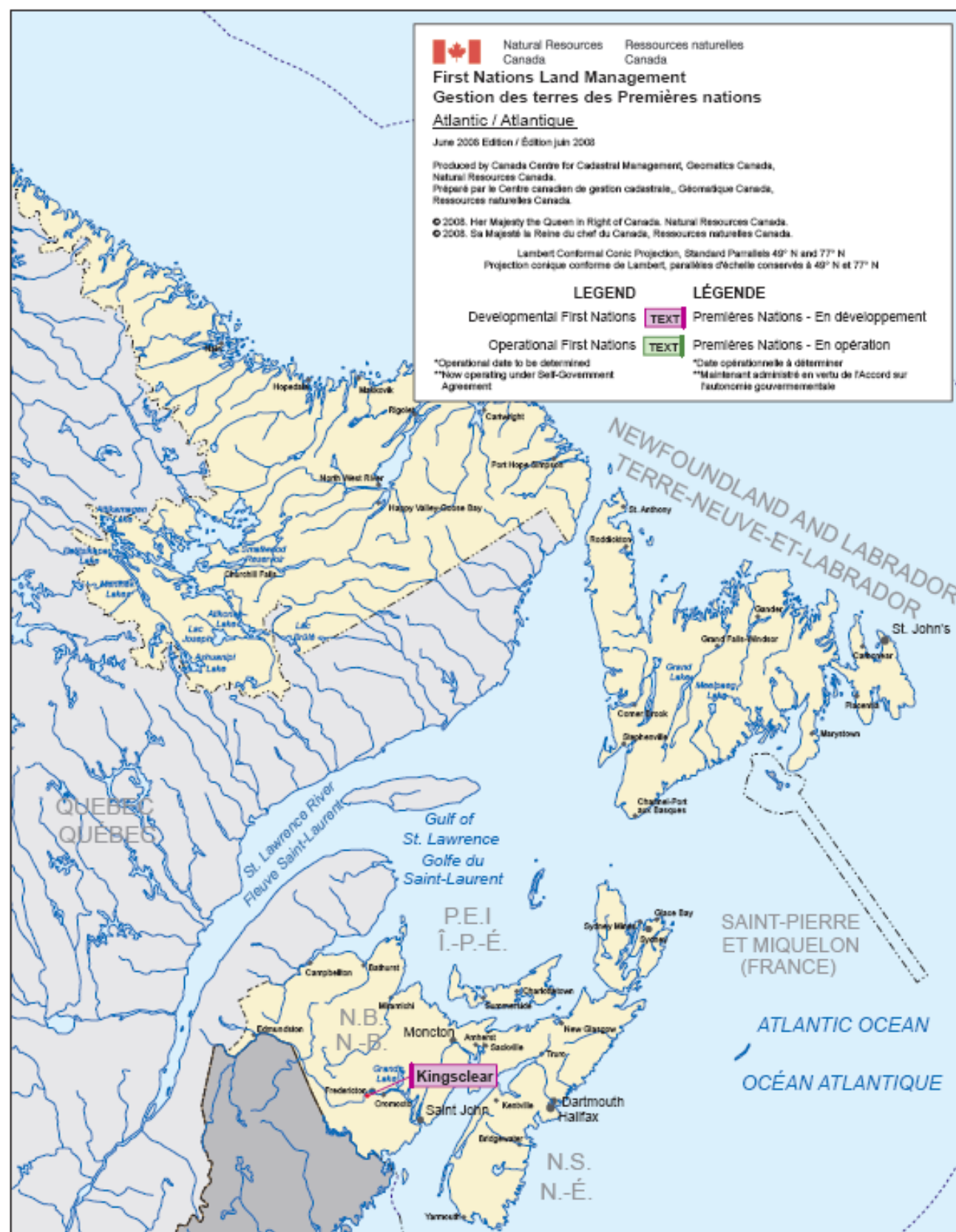












Appendix B: List of Exhibits

| | |
|-------------|--|
| Exhibit 1 | Options for First Nations Before the <i>Framework Agreement</i> |
| Exhibit 2 | Options for First Nations After the <i>Framework Agreement</i> |
| Exhibit 3 | Signatories to the <i>Framework Agreement</i> as of March 31, 2008 |
| Exhibit 4 | Composition of the LAB |
| Exhibit 5 | Structure of the LAB and Resource Centre |
| Exhibit 6 | LAB Mandate and Strategic Focus |
| Exhibit 7 | Key Functions of <i>Framework Agreement</i> Land Governance |
| Exhibit 8 | Revised Developmental Process Time Allocation |
| Exhibit 9A | Quarterly Support Services to Operational First Nations |
| Exhibit 9B | Quarterly Support Services to Each Operational First Nation |
| Exhibit 10 | Logic Model for the First Nation Ratification Process under the <i>Framework Agreement</i> |
| Exhibit 11A | Quarterly Support Services to Each Developmental First Nation |
| Exhibit 11B | Quarterly Support Services to All Developmental First Nations |
| Exhibit 12 | Support Services to Developmental First Nations by Province |
| Exhibit 13 | Support Services to Both Operational and Developmental First Nations by Province |

Lands Advisory Board 2007-2008 Annual General Meeting Resolutions

| RESOLUTION # | RESOLVED |
|--------------|--|
| 01-2007 | That all of the Chiefs of First Nation signatories to the <i>Framework Agreement</i> , or their duly appointed proxies, in attendance at the 2007 AGM of the LAB shall be entitled to vote on resolutions proposed by members of the LAB at these meetings. |
| 02-2007 | That the Executive be directed to assess all current protocols and recommend to the LAB: those which should remain in force or remain in force with amendments; those which should be terminated; and new protocols which may be desirable. |
| 03-2007 | That the LAB Executive and the Resource Centre Executive Director meet with Doug Williams, KPMG team leader for the evaluation project, to review their concerns and work with him to ensure they are dealt with appropriately in the final report; alternatively that the LAB Executive and the Resource Centre Executive Director prepare an LAB commentary to be included with the final report presenting the LAB perspective. |
| 04-2007 | <p>(a) That any legislation by Parliament addressing the subject of matrimonial real property on reserve contain and confirm a 3 year exemption for <i>Framework Agreement</i> First Nations, to the extent that it may apply to them, from the date such legislation may come into force and effect.</p> <p>(b) That the LAB Executive continue to monitor and consult with respect to the development of the federal legislation and report to the <i>Framework Agreement</i> First Nations.</p> |
| 05-2007 | <p>(a) That the LAB Executive communicate to INAC that the absolute minimal base level of funding necessary for appropriate implementation of the <i>Framework Agreement</i> for the <u>current</u> First Nation signatories to the <i>Framework Agreement</i> and for the LAB and RC, is \$150 million over the 5 fiscal years commencing April 1, 2008 (This figure excludes funding for all federal agencies).</p> <p>(b) That the Executive continue to work with INAC, NRCAN and Environment Canada as previously directed to establish consensus on an appropriate level of funding beyond the absolute minimal base level of \$150 million for additional First Nations to become parties to the <i>Framework Agreement</i> over those 5 fiscal years, with projected funding over a period of 10 fiscal years.</p> |
| 06-2007 | <p>That the LAB Executive is directed to negotiate a new working arrangement with INAC, NRCAN and Environment Canada with respect to the former JIC and the following objectives:</p> <p>(i) implementation of the <i>Framework Agreement</i> and all other agreements contemplated by the <i>Framework Agreement</i>;</p> <p>(ii) matters of consistency and compliance in relation to implementing agreements, mutually agreed upon strategies and undertakings, courses of action and policies;</p> <p>(iii) adopting and continuously renewing the spirit of openness, cooperation, good will and unwavering commitment to the <i>Framework Agreement</i>.</p> <p>That the LAB and RC continue to act through the new executive steering committee to ensure continuing participation in the cabinet document process and also in the process of seeking Treasury Board approvals relating to the 5 year renewal of Canada's commitment to the <i>Framework Agreement</i>.</p> |
| 07-2007 | That the LAB confirms the Finance Committee's approval of the BDO Dunwoody LLP audit of the financial statements for the fiscal year 2006-2007. |
| 08-2007 | That the LAB appoints BDO Dunwoody LLP as auditors for the fiscal year 2007-2008 |

Appendix D: Proposed New Operational Funding Methodology

| | | |
|---|---|----------------------|
| (First Nation Name) | | |
| Number of Registered Transactions | | 1 |
| Ongoing Operational Costs | | |
| Staff (includes salary, benefits and other costs) | | |
| | PM-5 Land Manager | \$ 96,702.80 |
| | PM-3 Land Officer (51-150 Transactions) | \$ - |
| | PM-3 Land Officer (151-250 Transactions) | \$ - |
| | PM-3 Land Officer (251-over Transactions) | \$ - |
| Professional Fees | | \$ 25,252.65 |
| Making and Administering First Nation Laws | | |
| | Lands Committee | \$ 14,440.00 |
| | Public Governance | \$ 10,937.85 |
| | Land Use Plan Mtc | \$ 3,645.95 |
| | Financial Audit and Reporting | \$ 10,000.00 |
| Administrative Costs | | \$ 10.00 |
| Enforcement | | |
| | Prosecution and Adjudication | \$ 7.00 |
| | Monitoring and Compliance | \$ 54,689.25 |
| Insurance Premiums | Governance Insurance | \$ 10,000.00 |
| Sub-Total Transitional Costs | | \$ 225,685.50 |
| Transitional Costs (Years 1-3) | | |
| Staff Costs | | \$ 85,035.76 |
| Professional Fees | | \$ 25,521.65 |
| Sub-Total Transitional Costs | | \$ 110,557.41 |
| Annual Funding (Years 1-3) | | \$ 336,242.91 |

Appendix E: LAB Response to Bill C-47



First Nation Lands Advisory Board
Chairman, Lands Advisory Board, 9-2220 Horizon Drive East,
Kelowna, B.C.

October 12, 2007

By Facsimile: (819) 997-5526

Ms. Sandra Ginnish,
Director General,
Indian and Northern Affairs Canada,
10 Wellington Street,
Gatineau, Quebec

Dear Ms. Ginnish:

I have attached a list of my concerns with the proposed legislation. In addition, as you will recall, I indicated to you during our conversation that there should be a three year transitional period for developmental First Nations.

I look forward to future discussions on the proposed legislation and will be requesting to appear before the House Standing Committee on Aboriginal Affairs when the proposed legislation moves forward.

Sincerely

Chief Robert Louie,
Chair, Lands Advisory Board.

cc Chief Austin Bear, Chair, First Nations Land Management Resource Centre

Concerns with the proposed MRPOR legislation:

- The whole scheme of the draft is to put in place a complete code for matrimonial property on reserve, although that is only one of many issues that courts and valid legislation deal with on breakdown of a relationship. The issue arises particularly in relation to the valuation and division provisions. Normally, this would be only one element of a global assessment of matrimonial assets and the rule of parity applies in the global sense. Under this proposed legislation, there could be two courts dealing with the same issue but in respect of different property. Who goes second? In other words, which court gets the final say on global parity?
- The judicial procedures is confusing, with the "designated judge" provision raising the legal doctrine of "persona designata", complicating the issue of whether a party has an appeal or whether he or she must seek judicial review.
- There are presumptions in this proposed legislation -- e.g., presumption that a gift of real property is a gift to both spouses -- that may be improbable, especially if one of the spouses is not a First Nation member. This may also be a problem of conflict with existing *Framework Agreement* First Nation laws, most of which reverse such presumptions and put the onus of proof on the party claiming the interest. Are these laws assumed to be inconsistent with the proposed legislation and challengeable?
- There does not appear to be any definition of common law spouse; i.e. how long do the parties have to live with each other : 1, 2, 3 years?
- In the case of spouse, it refers to common-law situations which would create a difference with most provincial systems. In addition, laws on matrimonial property adopted by *Framework Agreement* First Nations so far do not refer to spouse as including a common-law partner, reflecting provincial laws on point.
- The proposed legislation automatically includes common law partners. In most provinces, common law partners have rights and remedies upon breakdown of the relationship but not rights or remedies in respect of real property. The proposed legislation automatically confers such rights, whether or not justified in fact or excluded by contract. The proposed legislation does not seem to adopt or refer to "domestic contracts", although it does refer to "agreements between the parties", but when it talks about "enforcement of agreements" (s 37) it only describes separation agreements after the fact. There are many other examples.
- The FNLMA limits First Nation MRP laws to the division of MRP for married or cohabiting couples; the proposed legislation extends the authority to include survivor rights to MRP in an estate, an area not dealt with in FNLMA. The proposed legislation arguably extends the authority of a First Nation with a Land Code to deal with the estate situation. This is not clear. However, to date First Nations under a Land Code have not dealt with the estate issue. This will be a major concern to those First Nations with both a Land Code and an MRP law and will add to the issues which each First Nation must address. Section 45 (2) (a) of the proposed legislation appears to address this concern but only from a procedural perspective -- an application can be made to a court to deal with survivor's entitlement, subject to the First Nation Land Code or law.

- In respect of definitions, it is not clear that the proposed legislation applies to customary rights to possession; i.e. rights not recognized by the Indian Act. The definition of “possessory interest or right” and “matrimonial real property or immovables” in s. 2(1) may be attempting to recognize custom rights.
- Definitions: definitions are different than those of the *Framework Agreement* and the FNLMA ratifying it (especially in the bijural version), and particularly in terms of interests in land.
- In addition, the proposed legislation adds definitions such as family home, matrimonial real property and spouse.
- Preamble: Canada states that it respects the aim of First Nations to make laws respecting matrimonial real property situated on reserves, presumably as part of the inherent rights policy. However, the proposed legislation states **at section 60 that this Act prevails over any other federal law**, which would include the FNLMA ratifying the *Framework Agreement* (but not necessarily the *Framework Agreement* itself).
- In addition, it would appear that sections 1 to 16 (definitions, procedure for enactment) would apply to all First Nations, including the ones under the *Framework Agreement*; these provisions differ from those of the *Framework Agreement*.
- The position of developmental First Nations is to be inferred, since it is not stated. Presumably, the proposed legislation does apply to them until such time as they enact their own MRPOR laws whether under the draft legislation or under the *Framework Agreement*. This could mean that a developmental First Nation voting in the near future could be subject to three sets of MRPOR laws within a relatively short period. Of course that could be said of all First Nations under this proposal.
- The enactment procedure under the proposed legislation differs from the *Framework Agreement* and the FNLMA. Is the proposed legislation intended to impose additional procedures to First Nations than those already provided for in their Land Code for the adoption of laws?
- The application of even part of this proposed legislation to *Framework Agreement* First Nations will infringe on the self-government powers of the First Nations and create numerous interpretation problems, even for the First Nations that already have a law in effect.
- 17 (1) (a) Sections 18-59 apply to a First Nation only if, (a) in the case of a First Nation as defined in subsection 2(1) of the FNLMA, the First Nation laws that it enacts under section 7 or the Land Code that it adopts under section 6 of the proposed legislation are not in force.
- Section 17 (Application) further implies that sections 1 through 16 apply to **all** First Nations communities across the country, regardless if they are under the *Framework Agreement* or not. Will communities that are developmental, and become operational when the proposed legislation is enacted, be required to utilize the verification process that is outlined or can they use their own process under their Land Code? There is a mention of “First Nation Practices” but there is no mention as to how this is determined if challenged.

- The proposed legislation makes reference to some proposed wording (currently at section 9) of the requirement to, "notify the Attorney-General of the province in which any reserve of the First Nation is situated that the First Nation intends to enact First Nation laws " The *Framework Agreement* and the FNLMA do not presently contain any requirements for communities to notify the provincial Attorneys General. The question is, in light of section 60 respecting inconsistency, is the proposed legislation intended to impact *Framework Agreement* communities by imposing this new obligation on *Framework Agreement* communities?
- Section 60 is currently square bracketed - does this indicate that the section is not yet finalized? It provides for inconsistencies and conflicts. What effects will it have on the FNLMA (and ultimately the *Framework Agreement*)?
- The *Framework Agreement* one year time allowed for a First Nation with a Land Code to make MRP is being challenged, as s. 17 requires that the First Nation MRP law be in force if the proposed legislation is not to apply. This issue needs to be addressed.
- Section 54 et seq. - Canada gives courts in the province the right to make rules to deal with applications and procedures under the proposed legislation. It is noted that a First Nation does not have a similar right. i.e. a First Nation with a Land Code has no authority to give to the court to make rules. This is a constitutional matter.
- Cost implications for the extension of First Nations jurisdictions are a critical factor to the implementation of this proposed legislation
- The proposed legislation will require all First Nations to go through an unfunded legislative process to develop an MRP law. After the legislation is passed and a First Nation becomes developmental, and then approves a Land Code, it is mandated under the *Framework Agreement* to enact a Matrimonial Real Property law within one year of the Land Code taking effect. The First Nation will effectively be required to go through two separate MRP law development processes. This does not make practical sense. Does the wording in section 17 (1) (a) address this by mentioning section 7 of the proposed law?

Appendix F: Revised 2008-2009 First Nation Developmental Funding Process

KPMG LLP
Advisory Services
160 Elgin Street, Suite 2000
Ottawa, ON K2P 2P8
Canada

Telephone (613) 212-5764
Telefax (613) 212-2896
www.kpmg.ca

Chief Robert Louie
Chief Austin Bear
Lands Advisory Board Executive
First Nations Land Management Resource Centre
Suite 106, 350 Terry Fox Drive
Kanata, Ontario K2K 2W5

March 11, 2008

Dear Sirs:

**RE: FIRST NATIONS LAND MANAGEMENT
UNDERSTANDING THE PROPOSED MILESTONE-BASED DEVELOPMENTAL FUNDING PROCESS**

The purpose of this letter is to present KPMG's understanding of the proposed new milestone-based FNLM developmental funding process to be delivered through Indian and Northern Affairs Canada (INAC).

KPMG was tasked to collect information relating to the proposed new funding process and help identify and validate the requirements, delivery mechanisms and management mechanisms necessary for the efficient delivery of FNLM developmental funding.

FNLM developmental funding overview

In order to document the proposed process, we conducted a series of working sessions with both Resource Centre (RC) staff and INAC HQ staff to generate an outline of the activities and areas required to be addressed. An overview of the proposed process is presented below, with a more detailed account included in Appendix A:

- **Initial set-up:** INAC HQ is being proactive in the establishment of the mechanisms and policies desired to effectively flow developmental funding. Exemptions from some of the more restrictive financial management policies are being requested to allow more flexibility in delivery.
- **Delivery of funds:** INAC is taking advantage of existing mechanisms, tools and policies to deliver developmental funding through the regions (i.e., a First Nations existing funding arrangement (CFA/CFNFA) and amendment procedures, electronic transfer methods



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process*

between INAC HQ and regions). A more efficient planning and budgeting process has been identified to facilitate forecasting and management of the 24 month period.

- **Funding flow and reporting:** The current agreed upon developmental funding formula will be used to calculate a budget that covers the entire 24 month period. The 24 month budget will be allocated to milestones that will in turn determine quarterly funding releases. First Nations will be required to report against their milestones on a quarterly basis using a simple report format that then triggers the release of the next quarter funding.
- **Unexpended funds:** First Nations will have the ability to keep any unexpended funds from the 24 month budget to use towards other land management activities with no impact to Transitional or Operational funding. There will be no reduction in the 24 month budget if a First Nation should accelerate efforts and complete milestones ahead of schedule, however, missed/late milestones will require supporting action plans and there is a possibility of re-payment if milestones cannot be met at all within the 24 month period.

We also worked with RC staff as well as INAC HQ staff to define the baseline set of milestones and scenarios for quarterly funding allocation and release of FNLN developmental funding. These documents were then reviewed by INAC staff at the INAC regional workshop held in Halifax (February 14) and subsequently distributed for further feedback and comment from INAC regional representatives. The consolidated regional responses were presented by INAC HQ staff to our study team.

A detailed account of the proposed milestone-based developmental funding process can be found in Appendix A. Appendix B and C hold the templates being proposed for reporting and for allocation and release of funding.

Identified Benefits

Using the available information, we have determined that the new proposed milestone-based developmental funding process should provide the following benefits to First Nations:

- **Timely flow of funding** – As funding will now flow directly from INAC to the FN, dependencies on the completion of, or amendment to, the RCs Comprehensive Funding Arrangement have been removed. INAC regions are in a better position to cash manage new requirements as they arise.
- **Simplicity in reporting** – Reporting requirements based on the completion of milestones with supporting deliverables is a much easier method of reporting than the compilation, submission and validation of invoices and supporting receipts at the activity level.



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Understanding the proposed milestone-based
developmental funding process*

- **Flexibility in implementation** – First Nations will have the flexibility to define the milestone work plan that best suits their circumstance as long as the end-to-end process is completed within 24 months. First Nations also have the flexibility to spend their budgets against activities that will most effectively serve their efforts in the development of the land code and final ratification.
- **Potential to retain unexpended funds** – First Nations completing all milestones within the 24 month timeframe may retain 100% of the 24 month budget. First Nations have the ability to accelerate the completion of scheduled milestones with no impact to their developmental, transitional or operational funding budgets.

We believe this represents the current understanding of how developmental funding would be delivered through INAC HQ and the regions. There does not appear to be any outstanding issues that would prevent the First Nations from testing this new method of delivery. We recommend that the First Nations adopt this proposed process, assuming the basis of assumptions we have outlined in the attached documents are correct.

Should you have any questions regarding the content of this letter or the attachments, please do not hesitate to contact me or Karen Croteau (613) 212-5764, for further information or clarification.

Yours very truly,

Douglas Williams, PhD
Associate Partner
(613) 212-3642



*Understanding the proposed milestone-based
developmental funding process
Appendix A*

APPENDIX A

UNDERSTANDING THE PROPOSED MILESTONE-BASED FUNDING PROCESS



*Understanding the proposed milestone-based
developmental funding process
Appendix A*

First Nations Land Management Developmental Funding Understanding of proposed milestone-based funding process Version 8

1. Initial set-up

| | Proposed process | Details | Status |
|-----|---|---|---|
| 1.1 | Authorities are in place to allow funding advances above 25%. | This will be more than sufficient to support the funding scenario where quarterly advances range from 9%-15% of 24 month budget. | INAC HQ has confirmed. |
| 1.2 | INAC HQ will define funding as a Flexible Transfer Payment. | | INAC HQ has confirmed funding will be FTP. |
| 1.3 | INAC HQ will create a separate line item in the Chart of Accounts to allow developmental funding to flow separately from other land monies. | Developmental funding is already identified in the 08/09 Chart of Accounts with the associated financial coding. | INAC HQ has confirmed. |
| 1.4 | An exemption from the 10% holdback is being contemplated. | Authorities already exist to exercise an exemption from the 10% holdback. FNs are looking for this exemption to be put in place. | No decision has been made whether this will apply or not. |
| 1.5 | There are no other regional specific holdbacks that could be applied. | INAC HQ will direct regions that there are to be no other holdbacks applied to developmental funding. | INAC HQ and Regions have agreed. |
| 1.6 | Regardless of how current FN funding arrangements are defined (e.g., CFA/CFNFA), developmental funding will be treated as FTP. | Currently some FNs are under a contribution agreement where technically all unexpended monies flow back to the Crown. FNLM funding will be an anomaly to the existing arrangements. No separate | INAC HQ and Regions have agreed developmental funding is FTP and will be treated as such. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process
Appendix A*

| Proposed process | | Details | Status |
|------------------|---|---|----------------------------------|
| | | agreement will be necessary. The language within the overall funding agreement can be changed to incorporate FNLM. | |
| 1.7 | INAC HQ will direct developmental funding to the regions as targeted funding. This prevents incorporation with block funding in existing FN contribution agreements. | Labelling developmental funding as FTP provides authority to target the funds and avoid amalgamation with FNs block funding. This is currently how Operational funding is delivered and developmental funding will flow the same way. | INAC HQ has confirmed. |
| 1.8 | Developmental funding will not be held up if other reporting requirements attached to the CFA/CFNFA are not met (e.g., housing report, education report, etc.). INAC Regional Program Manager has ability to override the system. | INAC Regional Program Managers will direct their Financial Services Officers (FSOs) to release developmental funding. | INAC HQ and Regions have agreed. |

2. Delivery of funds

| Proposed process | | Details | Status |
|------------------|---|--|----------------------------------|
| 2.1 | Funding will be transferred through existing FN agreements (CFA/CFNFA) | | INAC HQ and Regions have agreed. |
| 2.2 | Funding allocations will be transferred from INAC HQ to INAC regions annually. Funding will arrive by April 1 st . Historically funding has arrived on time. | Funds are delivered from INAC HQ to the regions by electronic transfer. Developmental funding will flow to the FN once the CAPP has been negotiated and the CFA/CFNFA is finalized and in place. | INAC HQ and Regions have agreed. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process
Appendix A*

| | Proposed process | Details | Status |
|-----|---|---|---|
| 2.3 | Ideally the 24 month CAPP will be negotiated at the same time as new year CFA/CFNFA in Jan/Feb so funding can flow April 1 st . | This is the most efficient timing for both the FN and INAC, however entrance into the FNLN is not restricted to the start of the fiscal year (see 2.4 below). | INAC HQ and Regions have agreed. |
| 2.4 | Amendments can be made to CFA/CFNFA if FNs come in at another point in the year. Initial start and milestones will reflect lag time required to process amendment. | Amending CFA/CFNFA is noted to be a fairly straightforward process that should not take more than 1 month. E.g., amendments finalized 15 days before the end of a month would take effect the following month. | INAC HQ and Regions have agreed. |
| 2.5 | It appears that Regions have the flexibility to cash manage new requirements (i.e., FNs coming in post-April 1) while awaiting funding for amended CFA/CFNFA. | It is not anticipated that the Regions will need to do this. Regions will receive 100% of the yearly developmental funding per FN on April 1 st . With new FNs coming in at other points in the year, the developmental funding formula is used to determine the budget and INAC HQ has the ability to transfer funding to the Region in advance of the CFA/CFNFA being amended. | INAC HQ and Regions have agreed. |
| 2.6 | The developmental funding budget will be calculated for 24 month period based on existing agreed upon developmental funding formula. | The developmental funding formula will be used to calculate the entire 24 month budget and quarterly milestone allocations as the 24 month CAPP is prepared. | INAC HQ and Regions have agreed. |
| 2.7 | The 24 month CAPP will form part of the FN CFA/CFNFA agreement. CAPP will include 24 month work plan with budget mapped to quarterly milestones. INAC intends to attach the 24 month CAPP (or | The CAPP will be signed for the entire 24 month period and 24 months of funding will be defined (subject to annual parliamentary appropriations). The 24 month CAPP is not resigned each year, but reviewed/reassessed to reflect | INAC HQ, Regions and NRCan have agreed. |



First Nations Land Management Resource Centre
 Understanding the proposed milestone-based
 developmental funding process
 Appendix A

| Proposed process | Details | Status |
|--|---|--|
| annex) to the CFA/CFNFA as the terms and conditions (subject to amending CFA wording to reflect FTP targeted funding). The 24 month CAPP is negotiated between FN, INAC, NRCan and the RC. NRCan intends to be a signatory to the 24 month CAPP. | progress against defined milestones. | |
| 2.8 | Milestones are based on activities required to complete ratification within a 24 month timeframe. Milestones will be determined between FN, INAC, NRCan and the RC. | A milestone reporting template has been created that sets out the baseline plan. The scheduling of the milestones is flexible depending on the circumstances of each individual FN, however, all milestones must still be met with the 24 month period. (See Annex B). |
| | | The RC, INAC HQ, Regions and NRCan have agreed. |

3. Funding flow and reporting

Timing of quarterly reports. The quarterly reports would be due 30 days after each quarter end which would mean that Q1 and Q2 funding would flow prior to the submission of the First Nations first quarter report. The table below outlines the timing of funding release and report submission. The first row identifies the date on which the First Nation would receive the funding advance and the second row identifies the date on which the First Nations quarterly report would be due.

| | Q1 | Q2 | Q2 | Q3 | Q3 | Q4 | Q4 | Q5 | Q5 | Q6 | Q6 | Q7 | Q7 | Q8 | Q8 | Dev Phase End |
|---------------------|-------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|---------------|
| | 1-Apr | 1-Jul | 31-Jul | 1-Oct | 31-Oct | 1-Jan | 31-Jan | 1-Apr | 30-Apr | 1-Jul | 31-Jul | 1-Oct | 31-Oct | 1-Jan | 31-Jan | 30-Apr |
| Funding Release | 1st Q | 2nd Q | | 3rd Q | | 4th Q | | 5th Q | | 6th Q | | 7th Q | | 8th Q | | |
| Milestone reporting | | | 1st Q | | 2nd Q | | 3rd Q | | 4th Q | | 5th Q | | 6th Q | | 7th Q | 8th Q |

| Proposed process | Details | Status |
|------------------|---|---|
| 3.1 | Developmental funding will be released quarterly to the | Some FNs receive a first quarter advance and then subsequent monthly funding based on their |
| | | INAC HQ and Regions have agreed. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process
Appendix A*

| | Proposed process | Details | Status |
|-----|--|--|---|
| | FN. | CFA/CFNFA. Advancing developmental funding on a quarterly basis is not an issue for INAC regions. | |
| 3.2 | Developmental funding formula will be used to determine quarterly cash flow. Milestones will have budgets attached to them. | An initial cash flow and milestone budget allocation has been developed. Conceptually there is agreement on how the developmental funding would be allocated to the milestones. (See template Appendix C). | INAC HQ, Regions and RC have agreed. |
| 3.3 | Budgets will not be allocated to milestones outside a FN's control. | The baseline template includes milestones for all delivery partners. Only those for which a FN has direct control will have funding attached to them. | INAC HQ, Regions and RC have agreed. |
| 3.4 | FN has flexibility to spend development funding in manner they feel will most effectively serve their efforts in the development of the land code and ratification as long as milestones are met. | The developmental funding formula is an activity based formula. Although it is recommended a FN undertake the prescribed activities, they are not bound by these activities (except as defined in the Framework Agreement and Act) and now have the flexibility to add/change activities to best suit their implementation of the Framework Agreement. | INAC HQ, Regions and RC have agreed. |
| 3.5 | Quarterly reporting requirements will be based on milestone activities as identified in the 24 month CAPP. Minimal reporting requirements include "tick box" format to indicate completion of milestones with submission of supporting deliverables. There is no longer a requirement for reimbursement based on | See Quarterly Reporting template in Annex B. FN will only report on those milestones for which they control. | The RC, INAC HQ, Regions and NRCan have agreed. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process
Appendix A*

| | Proposed process | Details | Status |
|------|---|---|--------------------------------------|
| | receipts. | | |
| 3.6 | RC will provide support to FNs for the completion of FNs quarterly reporting. | The RC is available to assist FNs in compiling required information and completing the quarterly report. | INAC HQ, Regions and RC have agreed. |
| 3.7 | FN will submit quarterly reports to INAC Regional Office with a copy to the RC for information. | The FNs quarterly report will trigger the release of funding from INAC regions. The RC will use the FNs report as part of consolidating an overall progress report for each FN. | INAC HQ, Regions and RC have agreed. |
| 3.8 | INAC Regional Program Managers are responsible for receiving and reviewing FN quarterly reports for release of funding. | Neither the RC nor INAC HQ is involved in reviewing/validating FN reporting related to funding releases. | INAC HQ, Regions and RC have agreed. |
| 3.9 | Late submission of FNs quarterly report on the achievement of FNLM developmental milestones may impact the release of the subsequent quarter funding. | Late submission of quarterly reports will not automatically trigger a hold on the release of the next quarter funding for this coming fiscal year (08/09). However, next year (09/10), once updates to the First Nation Reporting Handbook and related updates to the First Nations & Inuit Transfer Payment System have been completed, a late report will automatically trigger a hold on the payment of developmental funding. This is not any different from what exists for other program funding. | INAC HQ, and Regions have agreed. |
| 3.10 | FNs will be responsible for reporting developmental funding received as part of their Annual Audit. | This is not an additional cost item as the Annual Financial Audit is an existing requirement under CFA/CFNFA. | INAC HQ, Regions and RC have agreed. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process
Appendix A*

4. Unexpended funds

| | Proposed process | Details | Status |
|-----|--|--|--------------------------------------|
| 4.1 | Developmental funding defined as FTP allows a FN to keep unexpended funds provided FN has met all milestones. | If there are unexpended funds, the FN must apply these towards land management activities. | INAC HQ, Regions and RC have agreed. |
| 4.2 | Should a FN wish to accelerate the timing of the milestones as defined in the 24 month CAPP, an amendment would be required to alter cash flow. | If a FN completes milestones scheduled for months 13-24 during months 1-12, an amendment to the FNs CFA/CFNFA would be required to adjust the funding allocation and incorporate the additional milestones. The CFA/CFNFA does not allow for multi-year funding. | INAC HQ, Regions and RC have agreed. |
| 4.3 | Should a FN accelerate the achievement of milestones, funding will be delivered as assigned to the milestones defined in the 24 month CAPP. | Funding will not be reduced or milestone budget allocations adjusted if a FN accelerates progress. The FN is entitled to receive the entire 24 month budget as long as all milestones are completed within the 24 month timeframe. | INAC HQ, Regions and RC have agreed. |
| 4.4 | Should a FN complete all milestones ahead of schedule and retain unexpended funds, there will be no penalty to transitional or operational funding. | Transitional and operational funding will be treated separately from developmental funding. | INAC HQ, Regions and RC have agreed. |
| 4.5 | If milestones are not met, there is the potential for INAC region to withhold future funding releases or request repayment of funds as terms and conditions have not been met. | Any adjustments required will be reviewed and completed on an annual basis. Adjustments will not be made quarterly. However, in a situation where all parties have | INAC HQ and Regions have agreed. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental funding process
Appendix A*

| Proposed process | | Details | Status |
|------------------|---|---|--------------------------------------|
| | | determined that a First Nation is not going to meet their deliverables at all (which impacts the completion of other deliverables) INAC Region will halt further funding and retrieve any funding that has already been released to the First Nation for deliverables they cannot meet. This will allow the timely reallocation of surplus funds. | |
| 4.6 | Action plans are to be developed in support of FN missed/late milestones that outline how the milestone will be met. If suitable action plan is in place (INAC regional Program Manager makes decision) quarterly release will not be affected. | First Nations that are seen to be meeting their deliverables (as per action plan and coordination by all parties) but not necessarily within the quarter identified would not see a halt to their quarterly funding or adjustments made to funding due to deliverables not being met. | INAC HQ and Regions have agreed. |
| 4.7 | FNs that are not progressing to completion within a 24 month period will be directed to the Executive Steering Committee. | If there is slippage in the whole process whereby a FN cannot complete the developmental phase within 24 months, a case will be developed by all delivery partners and presented to the ESC. | INAC HQ, Regions and RC have agreed. |
| 4.8 | INAC region will recover developmental funding from FNs who have missed/late milestones (and will not complete within the 24 month period) through a FNs program dollars. | Any recovery required will come out of a FNs program dollars. It is not the intent to look at recovery on a quarterly basis. A FNs progress overall in completing the 24 month | INAC HQ, and Regions have agreed. |



*First Nations Land Management Resource Centre
Understanding the proposed milestone-based
developmental finding process
Appendix A*

| Proposed process | | Details | Status |
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| | | plan will be considered. See 4.6 and 4.7. | |
| 4.9 | Some FN milestones are dependent on other milestones being reached by other parties. If delays are being experienced that would preclude a FN from completing the developmental phase within a 24 month period, the Executive Steering Committee will become involved to resolve issues. | All parties are held to the 24 month timeline. See 4.7. | INAC HQ, Regions and RC have agreed. |

Appendix G : Protocol with First Nations Tax Commission



PROTOCOL



BETWEEN:

The First Nations Tax Commission
(hereinafter referred to as the "FNTC")

AND:

The Lands Advisory Board
(hereinafter referred to as the "LAB")

WHEREAS the duties and responsibilities of the FNTC, as set forth in the First Nations Fiscal and Statistical Management Act, include matters respecting the effective overall operation and management of First Nations real property taxation jurisdiction over First Nation reserve lands; and

WHEREAS the LAB is constituted pursuant to the Framework Agreement on First Nation Land Management, for purposes of enabling and assisting First Nations to withdraw their lands from the land management provisions of the Indian Act, in order to exercise control over their reserve lands and resources; and

WHEREAS the above stated mandates and purposes of the FNTC and the LAB involve matters of mutual strategic and practical interest;

NOW THEREFORE the FNTC and the LAB hereby enter into this Protocol for the more orderly and mutually satisfactory conduct of their respective mandates and business, insofar as such mandates and business involve matters and issues of mutual interest and concern, and hereby agree to the following:

1. The appropriate officers and members of the FNTC and the LAB shall meet for the purposes of furthering their mutual interests and identifying joint projects under this Protocol at least twice annually.
2. The said officers and members shall utilize their good offices and direct their respective employees to conduct the necessary communications and produce any necessary and mutually agreed documents in furtherance of the undertakings agreed to under this Protocol.
3. The FNTC and the LAB shall alternate in hosting the above mentioned meetings, unless it is mutually agreed.
4. The joint meetings of the FNTC and the LAB shall be jointly chaired by the FNTC Chief Commissioner and the LAB Chairman respectively.

Signed this 19th day of Nov., 2007

For and on behalf of the
First Nations Tax Commission


Chief Commissioner C.T. (Manny) Jules

For and on behalf of the
Land Advisory Board


Robert Louie, Chairman



First Nations Land Advisory Board

Address:

First Nations Lands Management Resources Centre
350 Terry Fox Drive, Suite 106
Kanata, Ontario
K2K 2W5

Telephone:

(613) 591-6649

Facsimile:

(613) 591-8373

