

“COMMUNITY GOVERNANCE OVER LANDS AND RESOURCES”



LANDS ADVISORY BOARD



ANNUAL REPORT 2009-2010

Table of Contents

MESSAGE FROM THE CHAIRMAN, CHIEF ROBERT LOUIE	4
EXECUTIVE SUMMARY	5
1. IMPORTANCE OF THE <i>FRAMEWORK AGREEMENT</i>	6
1.1 Problems with Land Administration under the <i>Indian Act</i>	6
1.2 <i>Framework Agreement</i> Alternative for First Nations	7
1.3 <i>Framework Agreement</i> Parameters	8
2. FIRST NATION SIGNATORIES TO THE <i>FRAMEWORK AGREEMENT</i>	8
2.1 Active First Nation Signatories	8
3. ROLES OF LAB AND RESOURCE CENTRE	9
3.1 Functions of the LAB	9
3.2 Composition of the LAB	9
3.4 Functions of the Resource Centre	10
4. VERIFICATION PROCESS UNDER THE <i>FRAMEWORK AGREEMENT</i>	10
4.1 Role of the Verifier	10
5. <i>FRAMEWORK AGREEMENT</i> FIVE-YEAR FUNDING AND POLICY AUTHORITY RENEWAL	11
6. OPERATIONAL FIRST NATIONS	13
6.1 Land Governance under the <i>Framework Agreement</i>	13
6.2 Operational First Nation Law Making	14
6.3 Support Services to Operational First Nations	15
7. DEVELOPMENTAL FIRST NATIONS	15
7.1 First Nation Ratification of the <i>Framework Agreement</i>	15
7.2 Ratification Votes by Developmental First Nations 2009-2010	16
7.3 Support Services to Developmental First Nations	16
8. AUDITED FINANCIAL STATEMENTS	16

Appendix A: Summary of 2009-2010 Audited Financial Statements

Appendix B: First Nation Location Maps

Appendix C: 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, 2010
Exhibit 4	Composition of the LAB
Exhibit 5	Structure of the LAB and Resource Centre
Exhibit 6	Key Functions of <i>Framework Agreement</i> Land Governance
Exhibit 7	Logic Model for the First Nation Ratification Process under the <i>Framework Agreement</i>

MESSAGE FROM THE CHAIRMAN, CHIEF ROBERT LOUIE



Welcome to the 2009-2010 Lands Advisory Board (LAB) Annual Report. I am pleased to report that we now have had 29 First Nations ratify the *Framework Agreement on First Nations Land Management (Framework Agreement)*. Congratulations to the three most recent communities for completing their ratification process and passing their land codes:

- Mississauga First Nation;
- We Wai Kai First Nation; and
- Henvey Inlet First Nation.

I also would like to take this opportunity to congratulate two new members of the LAB who were elected at the Annual General Meeting (AGM) - Chief Jody Wilson-Raybould (BC) and Chief Clifford Tawpisin (SK). In addition, I would also like to congratulate two members of the LAB who were re-elected at the AGM - Harley Chingee (BC) and Phil Goulais (ON).

Interest in the *Framework Agreement* continues to grow. Currently, there are 70 First Nations interested in becoming signatories to the *Framework Agreement* and thereby assume direct control over their lands and resources. The LAB supports any First Nation that wishes to assume this jurisdiction and responsibility.

In 2009-2010 the LAB continued to work with Canada and KPMG to support Canada's five-year funding and policy authority renewal of the *Framework Agreement*. The findings of the KPMG cost and benefit analysis are very impressive. For example under the *Framework Agreement*, First Nations are:

- increasing the annual number of registered land transactions at a higher rate than *Indian Act* First Nations;
- completing land transactions at considerably less cost than Canada;
- experiencing increasing internal and external investment in their communities;
- enhancing their attractiveness to third-parties and increasing business interests;

Without a doubt, these findings by KPMG further substantiate that the *Framework Agreement* continues to be the most successful and effective First Nation-driven self-government process available today in Canada.

All of these accomplishments are being achieved while leaving the title to First Nation lands under Canada. The concept of changing the title from Canada to fee simple is not required to accomplish significant economic development on reserve land, as the KPMG findings indicate. Not only is changing the title from Canada to fee simple not required, but it also would be unacceptable to *Framework Agreement* First Nations.

In closing, I wish everyone the very best for 2010-2011.

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 by the Minister and Federal officials under the *Indian Act*. The *Framework Agreement* is a government-to-government contractual arrangement 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. In 2003-2004 the Framework Agreement was amended to enable additional First Nations to assume control over their lands and resources.

The *Framework Agreement* established the LAB, the composition of which is determined by the Councils of those First Nations which have ratified the *Framework Agreement* and are 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 Canada, and recommending possible amendments of the *Framework Agreement* to the Minister.

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

Throughout 2009-2010, the LAB and Resource Centre continued to provide political and technical support to developmental First Nations preparing to vote on their land codes. The ratification process under the *Framework Agreement* consists of series of activities including not only the drafting of community land codes, but also implementing communication strategies, and designing community voting procedures. In addition the LAB and Resource Centre usually are requested by First Nations to provide them with advice and guidance in their dealings with Canada, while completing the Individual First Nation Agreement.

Once a First Nation land code becomes operational there are thirty-four land administration sections of the *Indian Act* that no longer apply to these First Nations, which now are empowered to manage and govern their reserve lands and resources, including the enactment and enforcement of land laws. The LAB and Resource Centre provided support services throughout 2009-2010 to these operational First Nations by assisting them with drafting land laws, rules, procedures, agreements, policies, implementing land management systems, capacity building, etc.

In 2009-2010 the LAB, Canada and KPMG conducted further analysis to support Canada's five-year funding and policy authority renewal of the *Framework Agreement*. The KPMG findings are very encouraging. For example:

- The *Framework Agreement* provides better circumstances for First Nations to improve their land management systems and processes (i.e. governance and decision making, community support, relationship building, more favorable terms and conditions, etc.); and
- The *Framework Agreement* has contributed to First Nations increasing the number of businesses on reserve, with most new businesses being First Nation member-owned, as well as in new and/or different industry areas.

1. IMPORTANCE OF THE *FRAMEWORK AGREEMENT*

1.1 Problems with Land Administration under the *Indian Act*

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

- not recognize the right of First Nations to self-govern their reserve lands and resources;
- not protect reserve lands from being surrendered and sold, which presents the danger of further reduction of the limited reserve land base;
- 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 *Indian Act* permits such actions); and
- 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 self-government agreements or treaties to achieve the recognition of their inherent right to govern their reserve lands and resources (see Exhibit 1). However, self-government agreements are not a suitable option for most First Nations and 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>

1.3 Framework Agreement Parameters

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

- is not a treaty within the meaning of section 35 of the Constitution Act, 1982 (clause 1.3);
- continues the Crown's special relationship with First Nations (clause 1.4);
- does not affect any lands, or rights in lands, not subject to this *Agreement* (clause 1.5);
- does not prejudice inherent rights, or other rights, of First Nations to control their lands or resources or to preclude other negotiations in respect of those rights (clause 1.6)
- does not prevent a First Nation at any time from opting into any other regime providing for community decision-making and community control (clause 55.1).

2. FIRST NATION SIGNATORIES TO THE *FRAMEWORK AGREEMENT*

2.1 Active First Nation Signatories

Exhibit 3 lists the First Nation signatories to the *Framework Agreement* as of March 31, 2010. There are 29 First Nations which have ratified the *Framework Agreement* and assumed operational responsibility for their reserve lands under their land codes. The Westbank and Tsawwassen First Nations in B.C., have since implemented full self-government and treaty respectively. Fourteen First Nations were active in the developmental process throughout 2009-2010. The location of the active *Framework Agreement* signatories across Canada is displayed on the provincial maps in Appendix B.

Exhibit 3: Signatories to the *Framework Agreement* as of March 31, 2010

Prov.	Operational		Developmental
BC	Kitselas Leq'a:mel Lheidli T'enneh Matsqui McLeod Lake Scia' New (Beecher Bay) Seabird Island Shxwha:y Village Sliammon	Squiala T'sou-ke Ts'kw'aylaxw Tsawout Tsawwassen Tseil-Waututh Tzeachten We Wai Kai Westbank	Campbell River Musqueam Nanosee Skawahlook Squamish Sumas
SK	Kinistin Muskeg Lake	Muskoday Whitecap Dakota	Chemawawin Kahkewistahaw Pasqua
MB	Opaskwayak Cree		Swan Lake
ON	Georgina Island Henvey Inlet Mississagi	Nipissing Scugog Island Whitefish Lake	Alderville Anishinaabeg of Naogashiing Dokis Kettle & Stoney Point

3. ROLES OF LAB AND RESOURCE CENTRE

3.1 Functions of the LAB

The *Framework Agreement* established the LAB. The primary functions of the LAB are to implement the eleven parts (59 clauses) of the *Framework Agreement*. In addition, the functions of the LAB also include implementing the 48 clauses of the *FNLMA*, Canada's ratification and bringing into effect of the *Framework Agreement*. A detailed listing of the roles and responsibilities of the LAB can be found at www.labrc.com.

3.2 Composition of the LAB

The composition of the LAB is determined by the Councils of the operational First Nations. There are currently eleven members of the LAB and the Chair. They serve staggered terms so that positions come up for election 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, Prairie (Alberta, Saskatchewan and Manitoba), and Eastern (Ontario, Quebec and the Atlantic).

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.

Exhibit 4: Composition of the LAB

LAB Member	Region	Term
Chief Robert Louie	Chairman	2008-2013
Harley Chingee	BC	2009-2012
Barry Seymour	BC	2008-2011
Chief Allan Claxton	BC	2007-2010
Leah George-Wilson	BC	2008-2011
Chief Jody Wilson-Raybould	BC	2009-2012
Chief Austin Bear	Prairies	2008-2011
Chief Clifford Tawpisin	Prairies	2009-2012
Chief Darcy Bear	Prairies	2007-2010
Phil Goulais	Eastern	2009-2012
Councillor William McCue	Eastern	2008-2011
Rennie Goose	Eastern	2007-2010

Exhibit 5: Structure of the LAB and Resource Centre

Councils of “Ratified” First Nations



Lands Advisory Board 2009 - 2010



Finance Committee & Resource
Centre Board of Directors



Resource Centre

3.4 Functions of the Resource Centre

The LAB has two entities, the Finance Committee and the Resource Centre, to assist with implementing its responsibilities. The Finance Committee was 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 appointed as the Board of Directors for the Resource Centre, which is the service delivery organization that fulfills the LAB's technical and administrative responsibilities under the *Framework Agreement*.

All technical responsibilities assigned by the *Framework Agreement* have been formally delegated to the Resource Centre by the LAB. The Resource Centre was formally incorporated in 2004. A detailed explanation of the roles and responsibilities of the Resource Centre can be found on the LAB web site at www.labrc.com.

4. VERIFICATION PROCESS UNDER THE *FRAMEWORK AGREEMENT*

4.1 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 community ratification process were conducted in accordance with the *Framework Agreement* requirements. The independent party, or “verifier”, is jointly appointed by the First Nation and Canada. Clause 8 of the *Framework Agreement* details the role of the verifier, who also has the power to make a final decision to resolve:

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

5. **FRAMEWORK AGREEMENT FIVE-YEAR FUNDING AND POLICY AUTHORITY RENEWAL**

In 2009-2010 KPMG continued their work on the cost and benefit analysis of the *Framework Agreement* to assist the LAB and Canada with completing the new five-year funding and policy authority renewal. The purpose of the analysis is to:

- capture the current costs and benefits of implementing the *Framework Agreement* to ascertain the true cost to First Nations and Canada;
- estimate the cost and benefits of expanding the number of signatories to the *Framework Agreement*; and
- contribute to the “business case” for increased investment by Canada.

The initial KPMG findings cover a number of key areas:

1. Registered Transactions – Historical Trends, Forecasts and Costs

- *Framework Agreement* First Nations show an overall average increase in registered transactions of 9% per year; *Indian Act* First Nations show a decrease of 1% per year.
- *Framework Agreement* First Nations are estimated to see the number of future registered transactions increase by 32% over the next 10 years; *Indian Act* First Nations are predicted to see their future numbers decrease by 5% over the same period.
- *Framework Agreement* First Nations processed and registered 1,896 transactions in 2008-2009. The average cost per transaction ranged from \$370 to \$1,500; the average cost to Canada to process and register transactions under the *Indian Act* exceeded \$2,400.

2. Framework Agreement First Nations Actual Costs and Identified Additional Needs.

- Canada’s current funding contribution is 54% of **actual** First Nation expenditures; First Nations are compelled to contribute the remaining 46%.
- *Framework Agreement* First Nations have identified additional funding **needs** to properly implement their *Framework Agreement* responsibilities.
- Canada’s current contribution for **actual** First Nation expenditures will only meet 36% of the identified First Nation **need**. The First Nation’s current contribution for **actual** expenditures will only provide 31% of their identified **need**. As a result, current funding contribution levels will leave 33% of the identified First Nation **need** unfunded.

3. Framework Agreement First Nations Responses to Some Specific Questions

What were the reasons, in order of priority, for signing the Framework Agreement?

First Nations indicated their priorities:

- control of their own lands
- control of decision-making
- economic development
- better equipped to create and enforce land laws at the local level.
- sectoral step towards achieving full self-governance.

Are land governance activities under a First Nation land code more efficient than land administration under the Indian Act?

First Nations find their activities are processed significantly faster and more efficient:

- completing leases was reduced from several years under the *Indian Act* to months, and in some instances weeks, under their land code
- registration of documents was reduced from several months under the *Indian Act* to days under their land code
- revenue collection was reduced from several months under the *Indian Act* to direct collection under their land code

Has the Framework Agreement had a positive impact on community governance and decision making?

First Nations noted many positive impacts:

- the extent to which band members are involved
- the support from the community
- the speed of decision-making
- the transparency for band members and 3rd parties

Has the Framework Agreement improved relationship building?

First Nations noted many improvements;

- direct relationships with members and 3rd parties
- better municipal and industry relations
- increased community certainty and sense of security
- better negotiating environments
- increased level of stability in the community

Has the Framework Agreement had a positive impact on social attributes?

First Nations noted many positive impacts:

- community pride in control over lands and resources
- level of interest and involvement of First Nation members
- increased awareness of community issues and priorities
- land governance accountability to membership
- clarity and interpretation of individual and community rights
- revival and codification of cultural traditions and practices

What are the most significant economic advantages under the Framework Agreement?

First Nations noted significant advantages:

- processes are more timely and efficient
- Direct control over leases, licenses, permits, etc.
- higher land related revenue potential
- ability to borrow for capital and member investments through relationships with major financial lending institutions
- access to external investment that will generate jobs and revenue

Has the Framework Agreement attracted INTERNAL investment?

First Nations noted a significant impact of approximately \$53 million overall in internal investment:

- some reported amounts up to \$2 million and most of this investment has been through the creation of small member owned enterprises
- some reported amounts between \$10 million and \$20 million

Has the Framework Agreement attracted EXTERNAL investment?

First Nations noted a significant impact of approximately \$48 million overall in external investment:

- some reported amounts ranging between \$2 million and \$5 million
- some reported amounts worth more than \$20 million

Has the Framework Agreement impacted business and employment on reserve?

First Nations noted a significant impact:

- most of the new or expanded businesses are owned or operated by First Nation members.
- 1,959 jobs have been created
- 50% or more of the jobs are being filled by band members

The KPMG cost/benefit findings has confirmed that the positive impacts being generated by the *Framework Agreement* (particularly in relation to governance) are key to economic development. These findings are consistent with the findings of a number of notable reports.

- The World Bank Policy Research Working Paper on “The impact of the business environment on the business creation process” identifies a very strong and statistically significant relationship between entrepreneurship and a better business environment. The greater ease in starting a business and better governance are associated with increased entrepreneurial activity.
- The Standing Senate Committee on Aboriginal Peoples March 2007 report “Sharing Canada’s Prosperity – A Hand Up, Not A Handout” identifies six key factors shared by Aboriginal communities experiencing economic success. These include areas such as stable leadership and vision, legitimacy of economic activities to the community, strategic use of available resources, among others.
- The Harvard Project on American Indian Economic Development has published numerous research papers and has consistently found three key factors to success in economic development on reserve. One of those is independent power and authority in the community. Where tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform outside decision-makers. Tribes that make their own decisions do better.

6. OPERATIONAL FIRST NATIONS

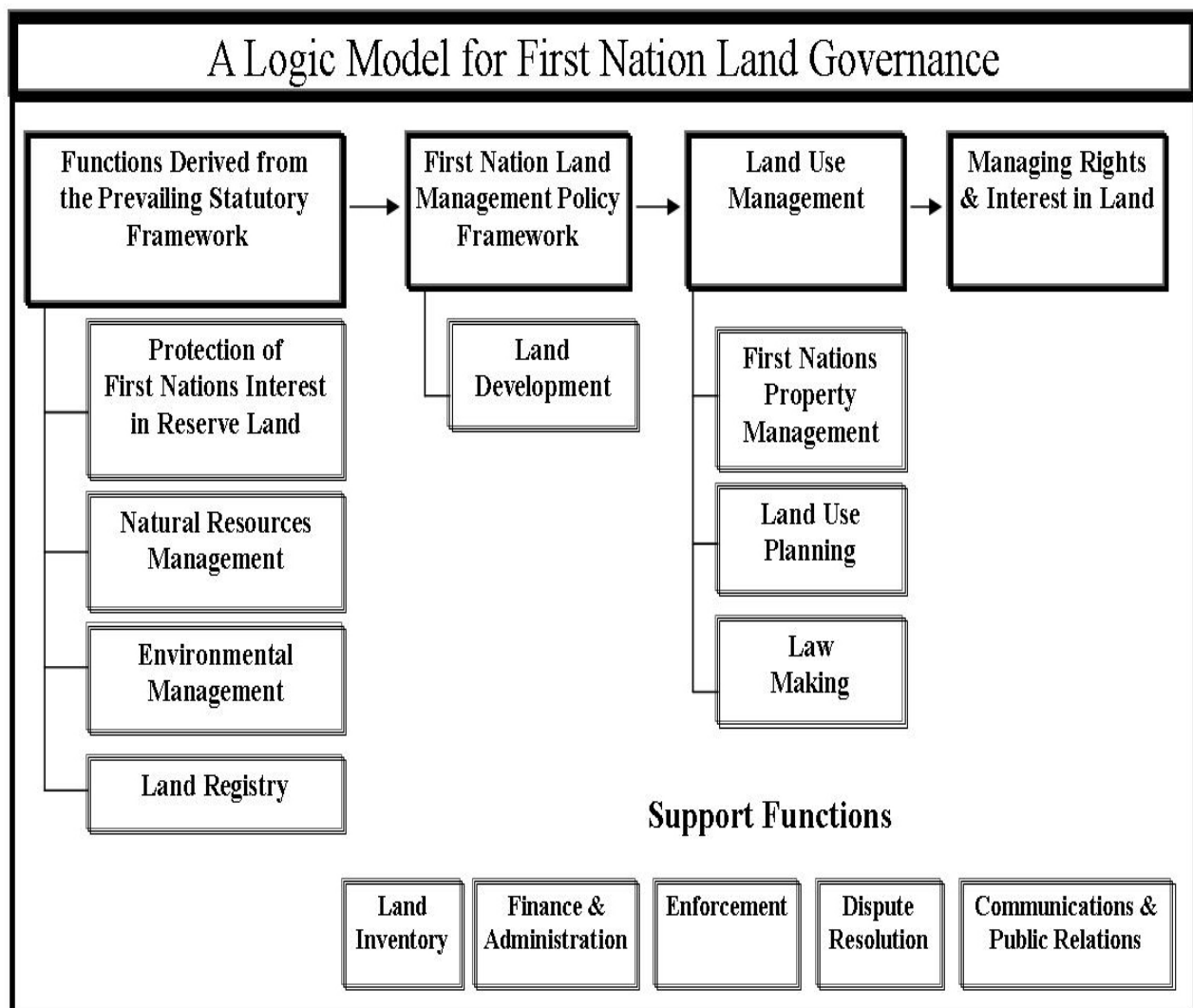
6.1 Land Governance under the *Framework Agreement*

Once a First Nation has ratified the *Framework Agreement* and enacted its land code, there are thirty-four land administration sections of the *Indian Act* that no longer apply to the First Nation’s reserve lands and resources. The First Nation is now self-governing over its lands and resources. Its authority to manage reserve lands includes all the interests, rights and resources that belong to those lands under the jurisdiction of Canada. 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*. The key functions of *Framework Agreement* land governance are indicated in Exhibit 8.

6.2 Operational 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 Aboriginal 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*. First Nations also have authority 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*.

Exhibit 6: Key Functions of *Framework Agreement* Land Governance



6.3 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 to facilitate these key functions listed above.

The LAB and Resource Centre provide an average of approximately 875 “support services” annually to operational First Nations. For example, the support services range from telephone conference calls, e-mails, faxes, and letter exchanges on the one hand to multi-day on-site meetings and workshops with Chief and councils, land committees, land managers, and advisors on the other hand.

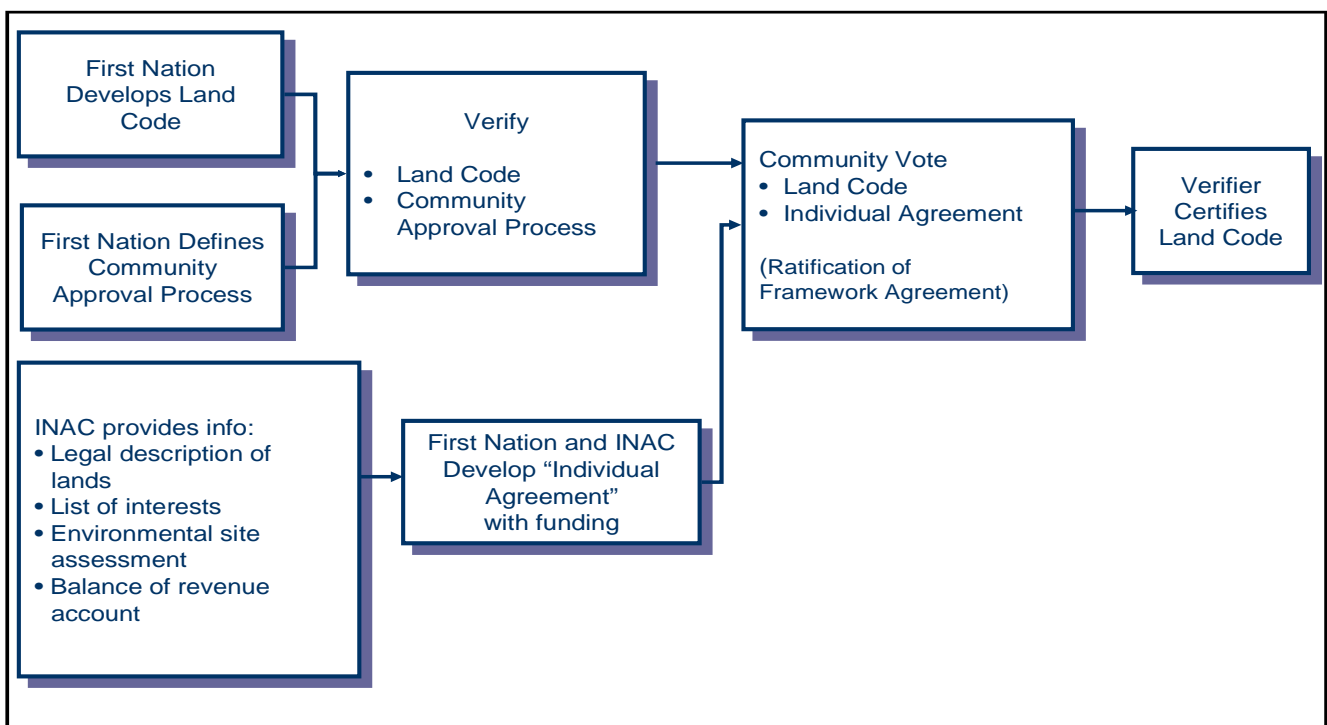
7. DEVELOPMENTAL FIRST NATIONS

7.1 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 the land code prepared by the community and the Individual Agreement negotiated with Canada.

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

Exhibit 7: Logic Model for the First Nation Ratification Process under the *Framework Agreement*



7.2 Ratification Votes by Developmental First Nations 2009-2010

Three First Nations held ratification votes to approve their land codes and ratify the *Framework Agreement*. Mississauga First Nation had an approval level of 93% of participating voters; We Wai Kai First Nation had an approval level of 84% of participating voters; and Henvey Inlet First Nation had an approval level of 88% of participating voters.

7.3 Support Services to Developmental First Nations

The support services provided by the LAB and Resource Centre to the developmental First Nations includes the drafting of the community land code; the design and implementation of a community communication and consultation strategy; and the design and implementation of the community ratification process. In addition, when requested by a First Nation, the LAB and Resource Centre provide advice and guidance on the environmental site assessment, the survey of the reserve jurisdictional boundary and the Individual Agreement with Canada.

The LAB and Resource Centre provide an average of approximately 2300 “support services” annually to developmental First Nations. The support services range from telephone conference calls, e-mails, faxes, and letter exchanges on the one hand to multi-day on-site meetings and workshops with Chief and councils, land committees, land managers, and advisors on the other hand. In some cases these meetings and workshops required the participation of several Resource Centre staff as well as the members of the LAB and the Chair.

8. AUDITED FINANCIAL STATEMENTS

A condensed version of the 2009-2010 audited financial statements is attached as Appendix A. The full audited financial statements can be found on the LAB website (www.labrc.com) along with the statements from previous years.

Appendix A: Summary of 2009-2010 Audited Financial Statements

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE INC. Condensed Statement of Financial Position as at March 31, 2010

	2010	2009
ASSETS		
Current	\$ 1,188,226	\$ 1,040,979
Equipment	234,729	253,315
	<u>\$ 1,422,955</u>	<u>\$ 1,294,294</u>
LIABILITIES AND NET ASSETS		
Current liabilities	\$ 867,984	\$ 864,169
Invested in equipment	234,729	253,315
Unrestricted net assets	320,242	176,810
	<u>\$ 1,422,955</u>	<u>\$ 1,294,294</u>

Condensed Statement of Financial Activities and Unrestricted Net Assets Year Ended March 31, 2010

Revenues	\$ 5,264,000	\$ 3,884,000
Expenses		
Lands Advisory Board	337,452	155,361
Resource Centre	1,240,246	1,045,399
Intergovernmental Relations	911,810	304,439
LAB and RC support services to First Nations operating under a community land code	1,402,300	1,132,489
LAB and RC support services to Developmental First Nations preparing to ratify the Framework Agreement	1,160,527	1,030,718
LAB and RC support services to Pre-Developmental First Nations	68,233	59,072
Total expenses	<u>5,120,568</u>	<u>3,727,478</u>
Excess of revenues over expenses for the year	143,432	156,522
Unrestricted net assets, beginning of year	176,810	20,288
Unrestricted net assets, end of year	<u>\$ 320,242</u>	<u>\$ 176,810</u>

AUDITORS' REPORT TO THE MEMBERS

The condensed statement of financial position and condensed statement of financial activities and unrestricted net assets are derived from the complete financial statements of the First Nations Land Management Resource Centre Inc. as at March 31, 2010 and for the year then ended on which we expressed an opinion without reservation in our report dated July 16, 2010. The fair summarization of the complete financial statements is the responsibility of management. Our responsibility, in accordance with the applicable Assurance Guideline of The Canadian Institute of Chartered Accountants, is to report on the condensed financial statements.

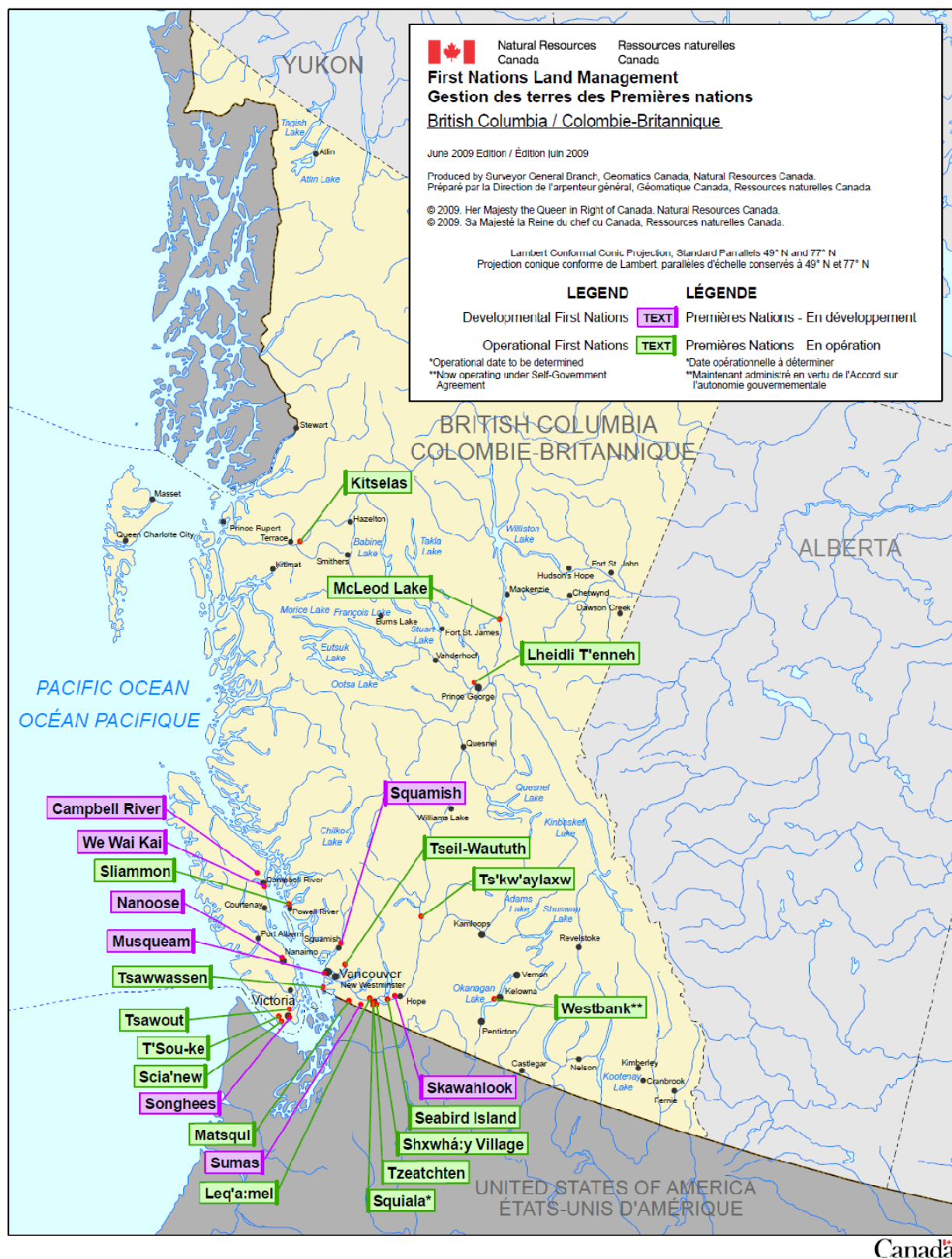
In our opinion, the accompanying condensed financial statements fairly summarize, in all material respects, the related complete financial statements in accordance with the criteria described in the guideline referred to above.

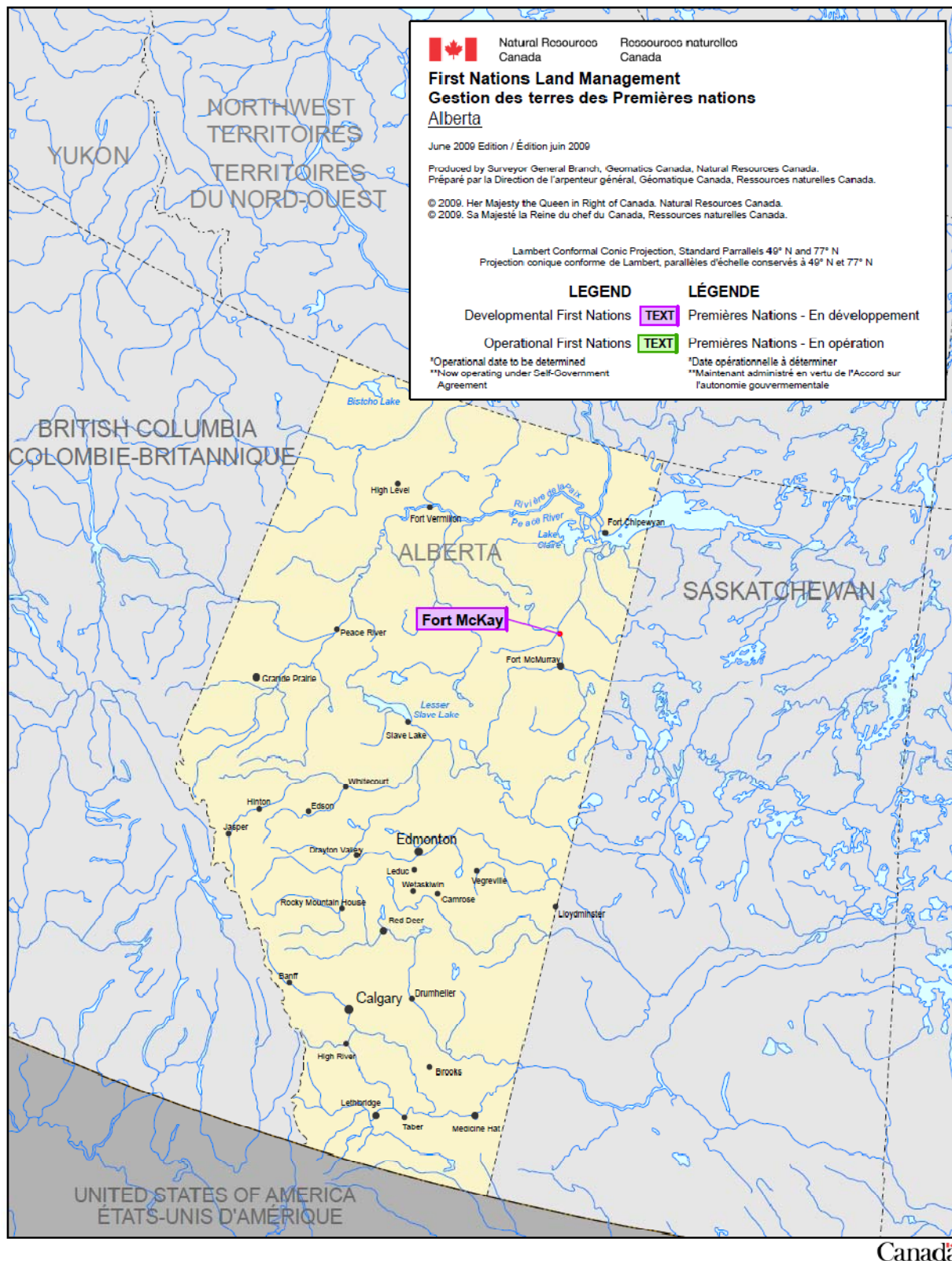
These condensed financial statements do not contain all the disclosures required by Canadian generally accepted accounting principles. Readers are cautioned that these statements may not be appropriate for their purposes. For more information on the organization's financial position, results of operations and cash flows, reference should be made to the related complete financial statements.

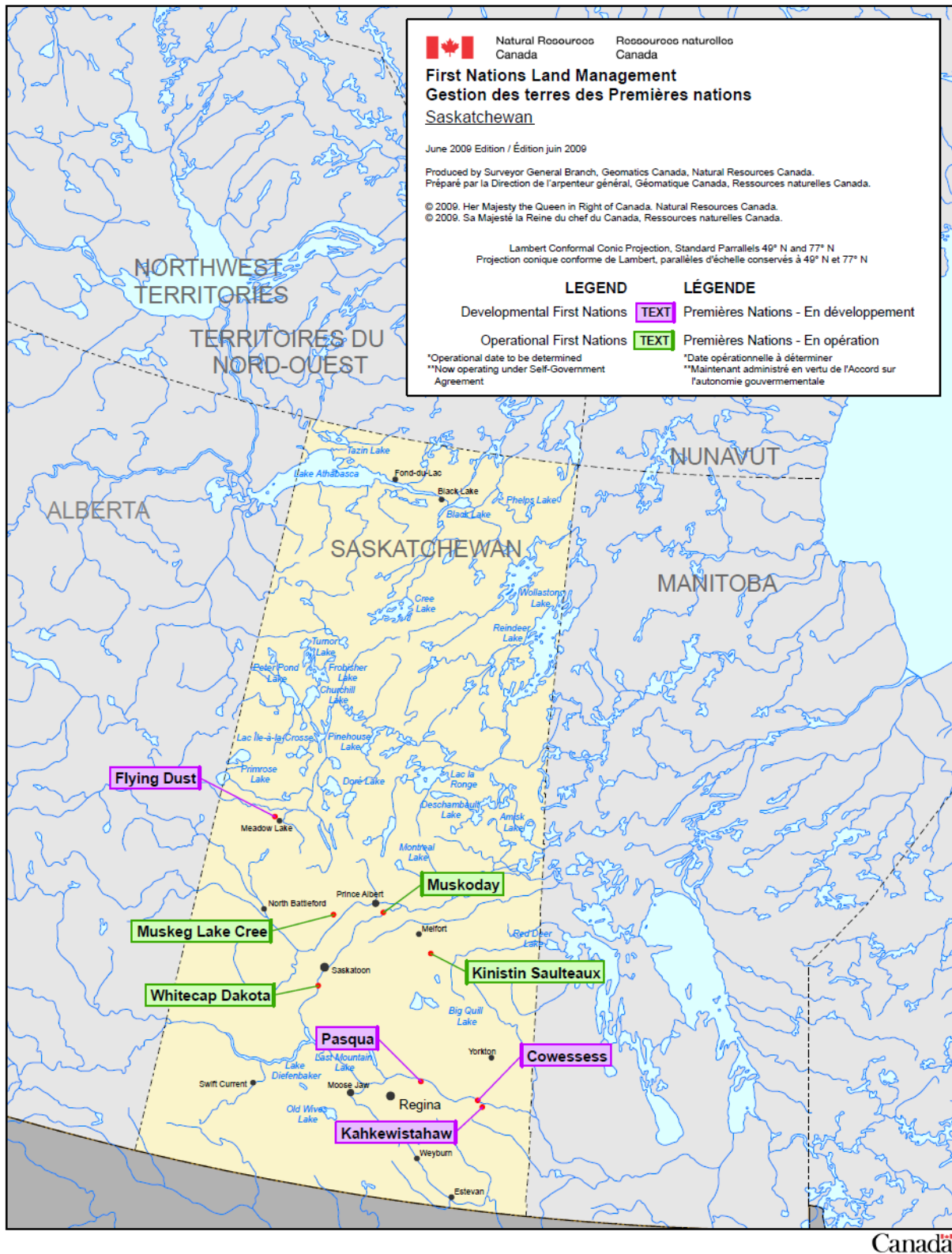
BDO Canada LLP
Chartered Accountants

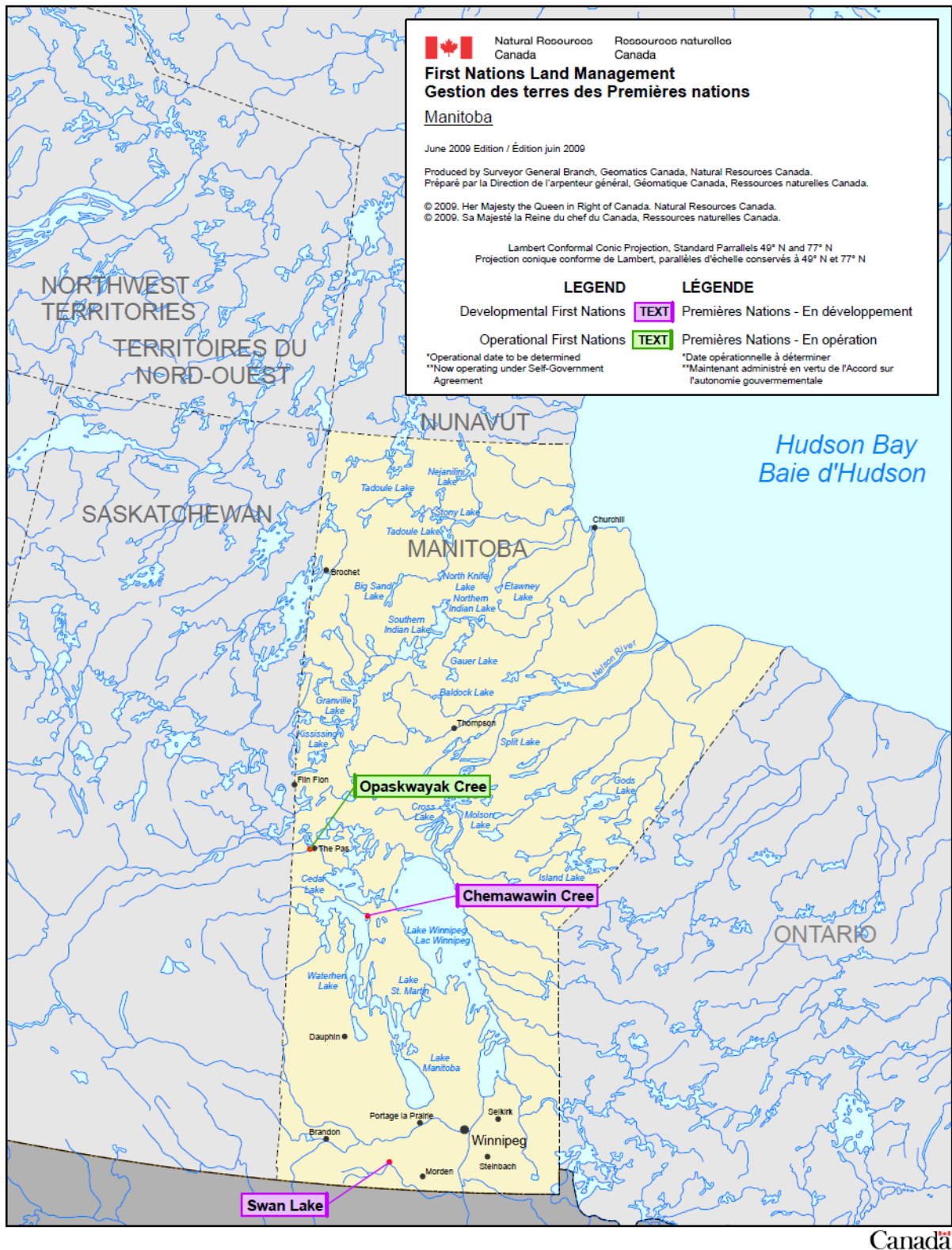
Kelowna, British Columbia
July 16, 2010

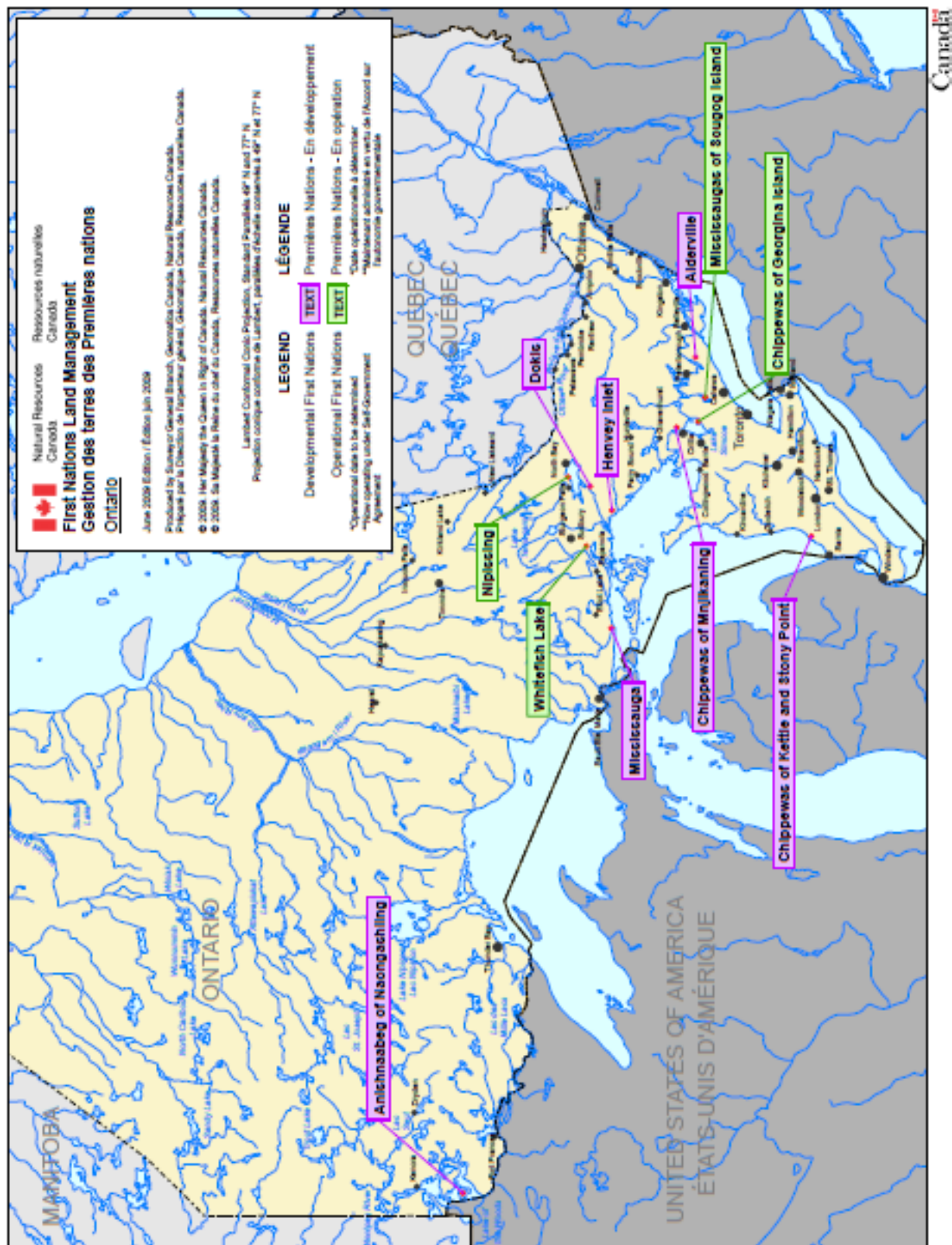
Appendix B: First Nation Locations

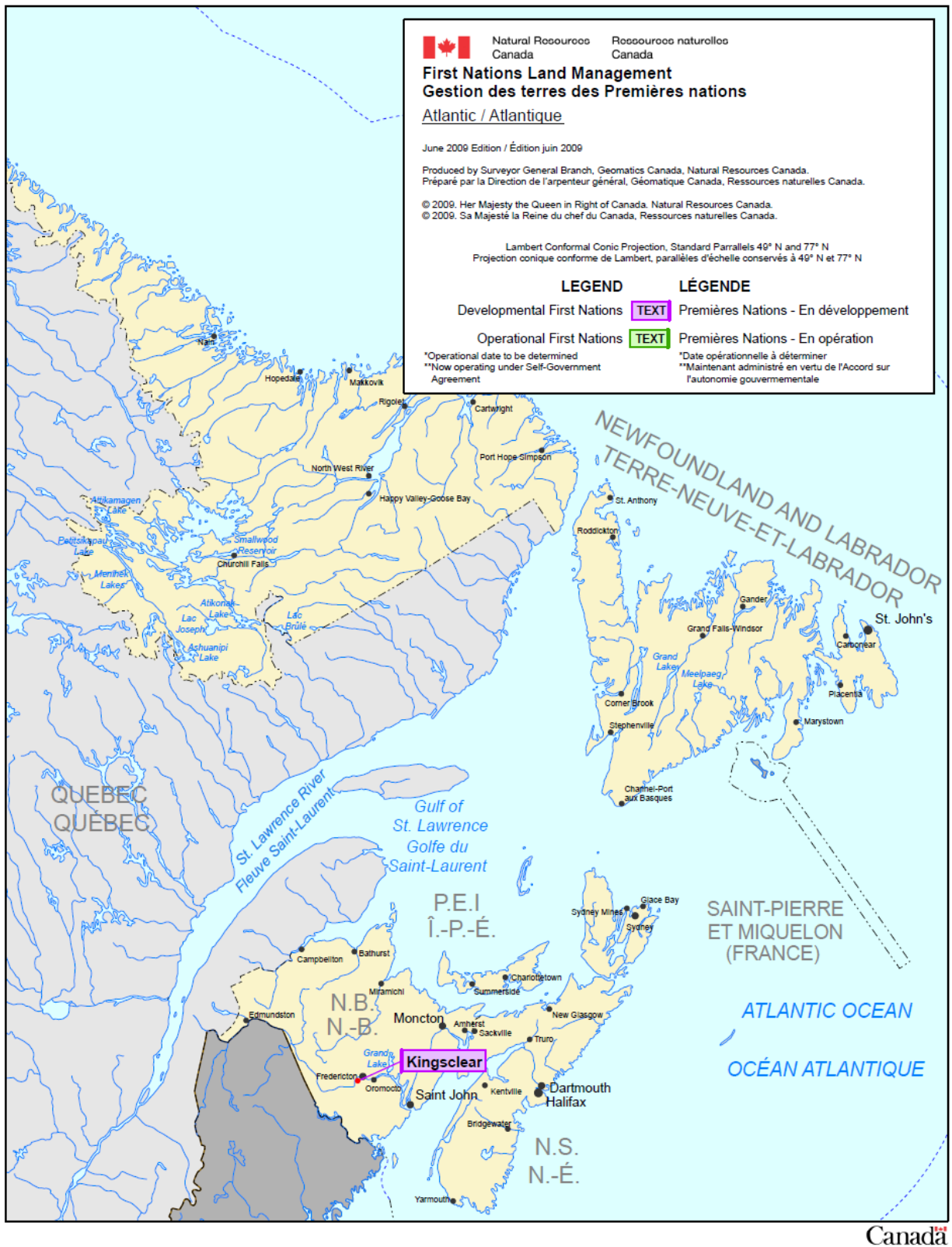














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