At the December, 2006, meeting of the Joint Implementation Committee, the Lands Advisory Board (“LAB”) and First Nations Land Management Resource Centre Inc. (“RC”) made an oral presentation describing the evolution of these entities since the signing of the Framework Agreement on First Nation Land Management in 1996. Following that presentation, and a question and answer period, they were asked to provide a written version. This is that document.


The LAB predates the Framework Agreement on First Nation Land Management, the seminal document offering the opportunity for First Nation jurisdiction over, and control of, reserve land and resources to the First Nations who become signatories to it. It was, in fact, the LAB that organized and conducted the preliminary consultations with various provincial agencies and financial and other institutions. Formal signing of the Framework Agreement took place at Georgina Island in February, 1996. The Framework Agreement describes the continuing role of the LAB in its implementation.

Both before and after 1996, the Lands Advisory Board consisted of the representatives (normally the Chiefs) of the original 14 First Nation parties to the Framework Agreement. In fact, there was no provision in the Framework Agreement at that time for additional First Nations to become parties to it. In that context, it was foreseeable that the LAB’s role might decline as the Agreement was ratified by most or all of the First Nation parties and it makes provision for a time when the LAB may not exist. The context changed.

Following the 1996 signing ceremony, the LAB gradually developed more formalized procedures, including the annual general meeting, and, in 2000, established the role of the Chair as a separate position. It was also at the 2000 annual meeting in Fredericton (hosted by the St. Mary’s First Nation) that interim approval was given for the formation of a Finance Committee to oversee financial matters and operate, effectively, as an executive committee of the LAB.

By the time of the Fredericton meeting in 2000, the First Nations Land Management Act (“FNLMA” – 1999) had become law, ratifying the Framework Agreement, and 4 of the First Nation parties were “operational”, meaning that each of those First Nations had also ratified the agreement and were then exercising their jurisdiction over their reserve lands and resources under their respective Land Codes.

Following the Fredericton meeting, discussions with Canada intensified in relation to adding more First Nations to the Framework Agreement and plans were made on both sides for that eventuality.
It was clear, by the year 2000, that a significant number of First Nations in various regions were seeking access to the Framework Agreement opportunity of First Nation land management. It is also important to note that this level of interest did not result from any “marketing” of the Framework Agreement. Before it was signed, the LAB had made a political commitment to the Assembly of First Nations, in order to remove that organization’s prior opposition to the project, not to attempt to recruit additional First Nations. The LAB has honoured that commitment.

In practice, the LAB does provide information to First Nations, at their request, about the Framework Agreement and its implementation. It does not recommend the Agreement to any First Nation or warrant that the opportunity of land management is an appropriate choice for any First Nation. For its part, Canada has been aware of the political undertaking to the AFN and has generally referred First Nation enquiries about the Framework Agreement to the LAB.

It may also be noted here that, under the FNLMA (s. 48), no First Nation signatories to the Framework Agreement could be added to the Schedule to that act until "after the completion of a review of the Framework Agreement in accordance with its provisions and any consultations that the Governor in Council may require." This review was undertaken jointly by the LAB and INAC and the final report delivered in October, 2001.

**Lands Advisory Board (2001)**

As the LAB approached its 2001 annual general meeting, to be held at Squamish, it was clear that three primary issues had to be addressed in light of the desire, shared with Canada, to add more First Nations to the Framework Agreement and the level of interest shown by other First Nations to be added. It then appeared (as it turned out, accurately) that there could be as many as 50 First Nation signatories to the Framework Agreement within a few years. To address these matters, the agenda proposed a further amendment to the Framework Agreement ¹ to deal with:

- a procedure for additional First Nations to sign the Framework Agreement
- a procedure for future amendments to the Framework Agreement
- the structure of the LAB, and
- other administrative matters

¹ There had already been two amendments prior to enactment of the FNLMA: the first adding the St. Mary’s First Nation as a party; the second creating the obligation of First Nations ratifying the Framework Agreement to make laws in relation to matrimonial real property on reserve in the event of separation or divorce.
Notice of the agenda and draft documents in relation to these matters were duly sent in a timely manner to all 14 First Nation signatories to the Framework Agreement. During the course of the meeting itself, some modifications were negotiated directly with the then ADM, and Amendment No. 3 to the Framework Agreement was approved by the LAB. As also approved by Canada the following year, it provided:

1. **For an adhesion procedure in which both the LAB and the Minister played a role consistent with the wording of s. 45 of the FNLMA.**
   
   The parties began to implement this procedure in 2003, as evidenced by Adhesion Documents Nos. 1 & 2, and have continued to implement it since, most recently in September, 2006.

2. **For future amendments to the Framework Agreement.**
   
   The LAB determined that the First Nations have the greatest ‘vested’ interest in the Framework Agreement were those “operational” First Nations who had ratified it. These were also the First Nations who had, or would have, the most experience with the ratification process culminating in a successful ratification vote. Accordingly, it was deemed appropriate that a special majority (2/3 of them) could approve future amendments.

   In order that this change not be seen as exclusionary, it would not become effective for two years (until September of 2003). That delay would provide the First Nations signatories who had not yet ratified the Framework Agreement a reasonable period in which to do so.

3. **For the structure of the LAB**
   
   Following the same reasoning set out in the previous paragraphs, and with the additional consideration that the “operational” First Nations would be the most experienced, yet still “disinterested” in the sense of not having any conflict of interest, in the developmental process and the funding of that process, the future structure of the LAB would be determined by the First Nations who had ratified the Framework Agreement.

   Again, a two-year delay was included to provide the First Nations signatories who had not yet ratified the Framework Agreement a reasonable period in which to do so.

4. **For administrative matters**
   
   These addressed a minor matter in relation to the transfer of revenue moneys and the status of First Nations that have moved on to other land management regimes (no longer participating First Nations under the Framework Agreement).
In considering the above matters, the LAB 2001 meeting was also informed by the draft report on the joint review of the Framework Agreement (described above) and its implications in terms of the number of future signatories and future costs.

Another decision of note taken at the 2001 meeting was confirmation of the Finance Committee with an express mandate to act as the executive committee of the LAB.

**Lands Advisory Board (2002)**

During this interim period, the LAB continued as before. The 2002 annual general meeting was held at Opaskwayak and was attended by the Chiefs, or their proxies, of the original 14 First Nation signatories.

**Lands Advisory Board (2003)**

This was the first LAB annual general meeting held under the provisions of Amendment No. 3 to the Framework Agreement, meaning that it was attended by the Chiefs or proxies of the 9 operational First Nations and other First Nation guests. This meeting was held in North Bay, hosted by the Nipissing First Nation.

The principal item on the agenda was to create the future structure of the LAB.

It was determined that a board of nine members was appropriate, with membership to be allocated (3 members each) to regions representative, roughly, of the number of First Nation signatories to the Framework Agreement. Those regions were established as British Columbia, Prairie and Eastern.

Members of the LAB are nominated and seconded by resolution of an operational First Nation in the relevant region. A member need not be an elected official of a First Nation. Elections are conducted at regional meetings held in advance of the LAB annual general meeting and attended by all of the operational First Nations in the respective regions. Only the Chief or proxy of an operational First Nation can vote in the election of an LAB member. Voting is by secret ballot.

The normal term of a member of the LAB is two years, and the elections are staggered so that there should be an election of one member in each region every year. The 2003 elections designated varying terms to achieve this result and this initial cycle runs to 2008, after which it is intended that there will always be one member elected from each region every year to serve a two-year term of office.

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2 It was pointed out, in response to a question at the JIC meeting, that LAB meetings, including regional meetings, are not closed and that there are frequently First Nation guests invited (who may be funded for that purpose). Any signatory First Nation is free to attend a LAB meeting at its own expense.
The 2003 annual meeting also confirmed and continued the respective roles and mandates of the Finance Committee and the Chair. The Chair is a member of the LAB, but not of the Finance Committee.

**Lands Advisory Board (2004-05)**

Following the LAB practice of rotating the venue of its annual general meetings, the 2003 annual general meeting in North Bay (Ontario/Eastern) was followed by the 2004 annual general meeting held at Muskoday (Saskatchewan/Prairie) and the 2005 annual general meeting, held at Kelowna (BC/BC) and hosted by the Westbank First Nation.

**Lands Advisory Board (2006)**

The 2006 annual general meeting of the LAB was held at Rama (Mnjikaning), hosted by the Chippewas of Georgina Island First Nation. It was preceded by regional meetings in Muskoday, Vancouver and also at Rama. Due to uncertainty over the process leading to Amendment No. 4 to the Framework Agreement, representatives of all 17 operational First Nations were invited to this meeting and, by special procedure adopted by the LAB, were empowered to vote on resolutions considered at that meeting. Invited guests included the Innu Essipit from Quebec, the Swampy Cree Tribal Council from Manitoba and the Squamish Nation from BC.

During the course of the meeting, it was reported that resolutions in support of Amendment No. 4, which would add bilingual and bijuralized text to the Framework Agreement, had been received from 16 of the 17 operational First Nations.³

In addition to consideration of the important, if not historic, matter of Amendment No. 4, the LAB considered a variety of other significant matters of concern to Framework Agreement First Nations and aspirant First Nations. In the result, 26 resolutions were passed, all unanimously.

**Lands Advisory Board: Chair**

Chief Robert Louie of the Westbank First Nation has been Chair of the Lands Advisory by consensus that pre-dates the Framework Agreement. He was confirmed as Chair at LAB annual general meetings in 2000, 2001 and 2003. His current term in that office expires in 2008.

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³ The 17th resolution in support of Amendment No. 4 was received 2 weeks later.
Lands Advisory Board: Finance Committee

The role and mandate of the Finance Committee of the LAB was approved on an interim basis at the LAB’s 2000 annual general meeting, confirmed on a permanent basis in 2001 and continued in 2003.

The members of the Finance Committee are, and have been since its inception, Chief Austin Bear (Chairman), Bill McCue, Rennie Goose and Barry Seymour. Their current term of office expires in 2008.

First Nations Land Management Resource Centre Inc.

Following the LAB annual general meeting in 2001, the Finance Committee reviewed options for creating a corporate arm that, as INAC represented at the time, would be required in order for Canada to implement the five-year funding provision of the Framework Agreement. While that initial belief later turned out to be incorrect, it was clear that INAC would be more comfortable dealing with a corporation for funding purposes than with the unincorporated Lands Advisory Board.

The Finance Committee determined that it would be consistent with its mandate to create a corporate arm and, in December of 2001, obtained letters patent from the Minister of Industry for the First Nations Land Management Resource Centre Inc. (“RC”), a corporation without share capital pursuant to Part II of the Canada Corporations Act.

The purpose of the RC is to discharge some of the non-political functions of the LAB, a purpose that has since been incorporated into the terms of funding arrangements with INAC. Under those arrangements, the RC does receive funding for the political activities of the LAB and, in effect, acts as an administrative arm of the LAB with respect to its political activities. For these reasons, all of which were foreseeable at the time of its incorporation, it was important to structure the RC so that it would not find itself internally conflicted because of these various roles and functions.

Under the applicable legislation, a corporation without share capital has ‘members’, not shareholders. The members of the RC corporation are, by description, the members of the LAB Finance Committee. The directors of the RC corporation are also the members of the LAB Finance Committee. The chairman of the RC corporation is also the chairman of the LAB Finance Committee. Under this structure, there is no practical possibility of conflicting purposes or objectives as between the RC and the LAB.

What is different about the LAB and corporate roles is that the directors do have statutory obligations and powers under the Canada Corporations Act.
The corporation, regardless of how it is structured, has a separate legal personality and the directors have a duty of loyalty to the corporation, together with a duty to act equitably and independently in discharging that duty of loyalty. The evolution of the law of corporations over the past few decades has tended to increase, rather than lighten, the burdens of directorship and to broaden the scope of potential personal liability.

These corporate duties and obligations are seen by the directors, and accepted by the LAB, as being in addition to, and not as inconsistent with, their comparable – but obviously not identical – roles and obligations as members of the LAB Finance Committee.

**Summary**

The Lands Advisory Board is an unincorporated entity recognized in the Framework Agreement but only tangentially in the FNLMA. Its general and specific functions are prescribed by the Framework Agreement.

The structure of the LAB has evolved over time. At first, it was more or less a committee of the whole of all of the 14 First Nation parties to the Framework Agreement. As it became apparent that the addition of new First Nations as signatories would make that structure unwieldy by virtue of the number of potential members and attendant expense, the structure was changed in two fundamental ways.

First, the task of determining the structure of the LAB was confided to those First Nations that have ratified the Framework Agreement. This is expressly set out in the Framework Agreement, by way of the 2002 Amendment No. 3, and must be taken as reflecting the will of those First Nations that have signed it. It also reflects the intention of Canada, which approved Amendment No. 3.

Second, as of 2003, the operational First Nations determined that the LAB would be a representative group of 9 members elected by the operational First Nations on a regional basis and with staggered terms of office. Through the elective process, the annual regional meetings and LAB annual general meeting – quite apart from any informal or other opportunities – there is continuing and regular review of the mandate, activities and operations of the LAB.

The result is a Lands Advisory Board that is doubly representative. First, it represents all of the developmental First Nations because, under the Framework Agreement, they are represented for the purpose by the operational First Nations. Second, it represents the operational First Nations as well since its structure, direction and elected membership are determined by the operational First Nations.
For administrative purposes, the LAB has created the Finance Committee as an executive committee charged with day-to-day responsibility for LAB operations. In turn, the Finance Committee has created the First Nations Resource Centre Inc. as a corporate and administrative arm of the LAB to discharge functions of a non-political nature.

No representative group can claim that it also presents the ideal of representation or of corporate governance. Any is always open to the criticism that it is not representative enough. The LAB and RC have received such comments in the past, frequently based on a misunderstanding of the structure or the history. It is noteworthy, and perhaps explanatory, that such comments more commonly emanate from sources other than First Nations. It is certainly the case, however, that the LAB is both open and subject to the direction of the First Nations with respect to its structure and that it anticipates a continuing dialogue with First Nations on that issue. It is, as the LAB and RC see it, inevitable that there will be a particular focus on this at, or leading up to, the 2008 annual general meeting.

Some observers have also noted that there has been a high degree of continuity among the individuals who have served as LAB members, particularly in executive roles. Some seem to intend as a criticism what is, in fact, a strength. First Nations, by comparison, tend to see the serious lack of continuity among INAC personnel as an impediment to implementation of the Framework Agreement, even as causing a lack of respect for it.

The acid test for the LAB and RC is First Nation support for its direction and for its commitment to the Framework Agreement. The most recent test was the 2006 annual general meeting of the LAB, unprecedented in the number of voting participants (24), unprecedented in the number of issues they addressed and the number of resolutions they passed, and unprecedented in the degree of unanimity of purpose and resolve. This speaks well, by any measure, of the LAB structure and of its leadership.

A corollary benefit of continuity is the ability to remember and to follow through on previous commitments. Two examples of this are noted above. First, the political commitment given by the LAB to the AFN in 1995, still respected by the LAB. Second, the LAB commitment dating back to 2002 to create a bilingual Framework Agreement and to include in it bijural terminology. In 2006, working within a constricted time frame, the LAB was able to collaborate with First Nations and federal representatives to make Amendment No. 4 to the Framework Agreement a reality, awaiting only formal signing.

Such continuity is not only an asset, it is a necessity. A corporate memory is essential to preserving the good faith of the parties and their commitment to original and common intentions, regardless of any change of personnel. It is hoped that this document is a contribution to that end.