



LANDS ADVISORY BOARD
First Nations Land Management



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11 August 2011

Guyanne Desforges
Clerk of the Committee
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Ms. Desforges:

Re: Presentation for the 2012 Federal Budget Consultations

This letter is further to the July 4th, 2011 request from the First Nations Land Management Lands Advisory Board (LAB) to make a presentation before your committee on the 2012 budget process. Below you will find our written submission in support of our request.

If you have any questions or concerns, please feel free to contact me at (250) 769-2804 or Kerry Kipping at (613) 591-6649.

Sincerely,

Chief Robert Louie
Chair, LAB



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2012 Pre-Budget Submission
August 2011

Executive Summary

- The *Framework Agreement on First Nations Land Management* is a First Nations led initiative that enables First Nations to control and manage their reserve lands and resources outside the *Indian Act*.
- Over 11 years of operation this has been one of the most successful government-to-government agreements involving First Nations and Canada, having grown from 13 participating First Nations at the outset to 56 currently. Of these 56, 34 are currently operating under a land code and a two others have moved on to full self-government.
- First Nations and Canada have benefited through increased economic activity and reduced social dependence in participating communities.
- Employment opportunities for 2,000 First Nations members and 10,000 non-members have been created in these communities resulting in a significant contribution to the Canadian economy as a whole.
- There is now a “waiting list” of 78 First Nations wishing to assume responsibility for their lands but are unable to do so due to federal funding shortages.
- We are asking that the Budget 2011 commitment to provide \$20M over two years be extended and included in the multi-year funding arrangements for the First Nations Land Management regime.

The First Nations Lands Advisory Board (LAB) represents the First Nation signatories to the *Framework Agreement on First Nation Land Management (Framework Agreement)*. Signed in 1996 between Canada and the original group of 13 First Nations, the *Framework Agreement* was ratified and brought into effect by Canada through the passage of the *First Nations Land Management Act (FNLMA)* in 1999. Currently there are 56 signatories to the *Framework Agreement* with an additional 78 First Nations having passed resolutions expressing an interest in taking advantage of this opportunity.

The *Framework Agreement* is a First Nations- led initiative providing an option for First Nations to take over the control of their lands and resources outside the *Indian Act*. It sets out the principal components of the land governance process, but it is not a treaty and does not affect treaty or other constitutional rights of the First Nations. A First Nation may only exercise their option of assuming control of their reserve lands with the consent of the community members, both on and off reserve. A First Nation signatory exercises this option by creating its own Land Code, drafting a community ratification process and entering into an Individual Agreement with Canada.

Over the 11 years of operation, the signatories to *Framework Agreement* have grown from the original group of 14 to a total of 56 First Nations. Of these, 34 are now fully operational under their own Land Codes and 2 of these communities have included their land codes under broader self-government arrangements with Canada. The remaining 20 communities are either in the process of developing their Land Codes and obtaining the necessary skills to take on the responsibility for the governance of their lands or have opted to not proceed further at this point in time.

The 34 communities that have opted for greater control of their reserve lands through the *Framework Agreement*, have witnessed the benefits of local decision making through enhanced economic activity, reduced social dependence amongst membership and stronger more vibrant communities.

The LAB has held the view for some time that there are greater economic benefits to First Nations and to Canada when communities have the opportunity to make their own decisions for land governance and economic development under the terms of the *Framework Agreement*. These economic benefits range from greater efficiencies in managing the lands through to additional economic development opportunities and employment, both on and off reserve.

Two years ago, the First Nations Land Management Resource Centre and the Department of Indian Affairs & Northern Development commissioned KPMG to compare the costs and benefits to the Government of Canada of administering reserve land under the *Indian Act* with the costs and benefits to First Nations governing their lands under the *Framework Agreement*.

The KPMG analysis confirms that our views on these points are valid and supported by research. For example, the study has listed some of the many benefits of land governance under the *Framework Agreement* including:

- Better relationships with third-parties due to direct involvement with the First Nations, increased sense of certainty for third-parties and a better negotiating environment;
- Better market opportunities through enhanced communications, ability to compete, timing and implementation of instruments and better relationships with industries and municipalities;
- Better circumstances to attract business to reserves through direct access to First Nation representatives, increased sense of security to investors and simplified processing conditions.

The KPMG study indicated that, for many of the operational First Nations interviewed, there already has been a 40% increase in new business by band members, a 45% increase by the First Nations into more types of businesses, including supplier businesses and spin-off businesses. In addition, these First Nations indicated that they are able to attract both internal and external investment in their reserve land development.

The study has also found that trends in the volume of transactions performed under the *Indian Act* are decreasing by an average of 1% annually; while at the same time transactions performed under the *Framework Agreement* are increasing on an annual average of 9%. Furthermore, the study has found that First Nations are able to complete land transactions more efficiently (faster and at a lower cost) than Canada.

By any measure, this increase in economic activity and the resulting employment benefits will serve to assist in the recovery of the Canadian economy and therefore any investment in this regime will serve to benefit all Canadians. In addition to these direct economic benefits, there is another very important benefit to the Government of Canada. As environmental management and regulation is a responsibility that these First Nations assume under the *Framework Agreement*, all future legal liability for these matters becomes the responsibility of the First Nation.

In terms of the funding formula, the Government of Canada's commitment contained in Budget 2011 to reallocate up to \$20M over the next two years is a welcome commitment to the *Framework Agreement* process. This will be a good step to removing current financial barriers to entry for the some 80 First Nations who have expressed an interest in exercising this option for their lands. That said, in order to allow more First Nations to enter the process we believe that this reallocation should become permanent and be included in the current and all future long term funding agreements. It is important to note that First Nations share in the costs of the regime. In their study, KPMG found that First Nations contributed up to 50% of the true costs of land governance on reserve. While this contribution is matched equally by Canada, the study has showed that there is still an unfunded requirement of 30% of the costs of operating the regime. It is this "unfunded requirement" that must be provided, on an ongoing basis, in order to ensure that lands are managed effectively and that there is the required capacity that will enable more First Nations to enter the regime. Both the Auditor General and KPMG have observed that without ongoing support to meet, what we have described as, the "unfunded requirement" it is not possible to increase the number of First Nation signatories to the *Framework Agreement*.

We submit that this two-year commitment should be extended through the life of the current funding agreement to an increase of \$10M annually. We believe that this affordable increase in the current investment over the next 5 years would enable an additional 60 First Nations to take advantage of the benefits of the *Framework Agreement*.

Further results of the KPMG study indicate that enhanced participation by First Nations would result in additional savings to the Government of Canada. These savings will increase as more First Nations take on the responsibilities currently carried out by DIAND. It stands to reason that if savings are identified with a process involving 34 operational First Nations, the savings will increase dramatically if such an investment more than doubles the number of signatories to the *Framework Agreement*.

In addition to KPMG, both the Auditor General and the Senate Committee on Aboriginal Peoples have commented on the benefits of the *Framework Agreement*. In their 2007 report on the involvement of Aboriginal communities and businesses in economic development activities in Canada entitled: “SHARING CANADA’S PROSPERITY – A HAND UP, NOT A HANDOUT”, the Senate Committee made the following comments and recommendations:

“The *Indian Act* has artificially raised the cost of doing business on reserve. The legislative regime often acts to prevent market forces from operating properly on “Indian lands”. Inefficiencies around the land tenure and land registry systems act as disincentives to economic development and impede outside investment. In addition, slow and burdensome *Indian Act* processes, particularly around designating land for commercial purposes, often results in lost business opportunities. Most troublesome, the restrictions placed on the use of property as collateral has made it very difficult for individuals and communities to secure financing. Measures, such as the *First Nations Land Management Act*, have allowed participating First Nations to opt out of the land related provisions of the *Indian Act* and manage their lands more competitively. Recommended actions are targeted to addressing *Indian Act* restrictions that affect on-reserve development. These include:

- A national process to review the negative impacts of the *Indian Act* and the development of timely, joint solutions;
- The extension of the *First Nations Land Management Act* to additional First Nations and adequate funding to signatory First Nations; and,
- The development of a national First Nations land registry system.”ⁱ

In her Fall 2009 Report to Parliament the Auditor General pointed out, “First Nations under the FNLMA may give their own consent for land transactions. This provision of the Act aims to enable First Nations to make timely business and administrative decisions and to accelerate their progress in economic development, resource management, and land use planning.” She went further to recommend that:

“Indian and Northern Affairs Canada should ensure that First Nations who are ready and who want greater autonomy over their land management can access either the Reserve Land and Environment Management Program or the *First Nations Land Management Act* regime.”ⁱⁱ

These three studies have all concluded that the *Indian Act* is an impediment to economic development on reserve and that the *Framework Agreement* approach is the most appropriate readily available option open to First Nations. Furthermore, they all agree that the regime is currently under funded thereby restricting access to a process that will benefit First Nations and Canada as a whole.

A prime example of the benefits of a First Nation being in a position to make such decisions can be found at the Whitecap Dakota First Nation (WDFN) in Saskatchewan. The Land Code has allowed WDFN to approve commercial leases of up to 49 years. The commercial leases include an award winning golf course, a world class Casino, and a \$25 million hotel complex. In addition, a number of smaller businesses have been attracted to the WDFN reserve based on the developments and ease of negotiating land leases under the Land Code. These developments are expected to generate 750 jobs on reserve, exceeding the total First Nation population of 524 members. These job opportunities are available to First Nations members, as well as to residents of the surrounding municipalities.

With higher employment levels on reserve, and in neighbouring communities, we have also seen that community social assistance costs are lower, health care costs are reduced, participation in higher education is higher and levels of discretionary spending are greatly increased. A 2009 report prepared by WDFN showed that unemployment in the community has dropped from 67% in 1993 to 8% in 2008; and, the number of social assistance clients has dropped from 87 clients to 14 clients over the same period of time.

These improvements are directly attributable to the economic development activity that has been made possible by involvement in the *Framework Agreement*. This First Nation, as well as other *Framework Agreement* signatories, is now able to respond to economic development opportunities at the speed of business (days) rather than the much slower speed (months, years) of the *Indian Act*.

This process has been successful due to the desire of First Nations to take greater control of their lives and their communities through the management of their lands. Unlike several federal initiatives of the past, this one works because native communities interested in making it work developed it to meet their needs.

In addition to WDFN, there are many other success stories in all parts of Canada. In British Columbia the Westbank First Nation has taken the next step by moving to full self-government. In Ontario the Georgina Island First Nation is developing a wind turbine project that will assist in reducing reliance on fossil fuels; and the Nipissing First Nation has developed a long-standing relationship with an external partner in the road paving business bringing jobs and economic development to their lands.

The soon to be released 2010-2011 Annual Report of the Lands Advisory Board will highlight additional success stories by the Henvey Inlet First Nation in, Ontario, the Tsleil-Waututh First Nation in B.C. and the Tzeachten First Nation in B.C. where the ability to work quickly with community members, as well as with external interests, has brought previously unavailable opportunities to these communities.

Through participation in the this process, First Nations have not only been able to re-assume control of their reserve lands and resources for the first time since the passage of the *Indian Act* over 130 years ago, but they have expanded their capacity to govern themselves and have capably created opportunities for economic development in their communities.

As impressive as they are, the studies that we have cited can only take into account the results from communities operating under the *Framework Agreement*. We are asking you to consider the potential benefit to Canada if the 78 First Nations councils who want to improve the lives of their members are allowed to become signatories to the Framework Agreement do so. We believe that this is possible if a modest and affordable increase in the long-term allocation of funding to the First Nations Land Management regime is included in Canada's fiscal framework.

If anything, the *Framework Agreement* process has shown that First Nations communities have the desire and ability to prosper outside of the constraints of the *Indian Act*. These communities have proven to be more efficient and business friendly than government agencies and as a result have produced better results for themselves and for Canada. Further investment by Canada in this process will assist in enabling more First Nations to grow and stand on their own to make more positive contributions to the country.

We look forward to the opportunity of expanding on these views and recommendations during your hearings this fall.

ⁱ The Standing Senate Committee on Aboriginal Peoples; Special Study on the involvement of Aboriginal communities and businesses in economic development activities in Canada; March 2007, Recommendation # 5, page xiii.

ⁱⁱ Auditor General of Canada, Report to Parliament Fall 2009, Chapter 6, paragraph 6.9, page 11.#