



4th ANNUAL FIRST NATIONS TECHNOLOGY CONFERENCE: PRE-CONFERENCE WORKSHOP

How First Nations Collaboration with Industry &
Government Might Work

February 21, 2008
Coast Salish Territory
Vancouver, BC

FINAL REPORT For Discussion Purposes

Event Organized by:



Sponsored by:



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DISCLAIMER

This report is not yet officially endorsed by the First Nations Technology Council (FNTC), First Nations in BC, and provincial/federal organizations. The purpose of the report is to summarize the presentations and discussions during the workshop. All reasonable efforts have been made to accurately represent what was said during the workshop. This document also should not be used as legal advice. This Report will be released publicly for discussion purposes and may be formally endorsed by First Nations, their organizations, and/or federal/provincial agencies. The FNTC takes no responsibility for omissions, errors, misrepresentations, and actions taken as a result of this report.

This report is also available online at www.fntc.info.

EXECUTIVE SUMMARY

The purpose of the pre-conference workshop was to build on some of the recommendations resulting from the First Nations Land Referrals Forum that took place on September 12 & 13, 2007 in Prince George, BC, which was organized by the First Nations Technology Council and the Carrier Sekani Tribal Council. First Nations, their representatives, industry and government workers, were invited to present information on the information management of land referrals and natural resources, and identify collaboration opportunities. The frustration and determination exhibited by the First Nations and the audience, was evident in both the presentations and invited questioning. Of paramount importance to this particular workshop was the legal update to the effect of recent legal decisions on First Nations land use planning, within the context of the question of whether First Nations are becoming or can become permitting agents, under current legal jurisprudence and instruments such as the United Nations Declaration on the Rights of Indigenous Peoples. As a result of the workshop it was evident that First Nations are investing considerable resources and energy in designing and implementing technological tools, to help manage the overwhelming number of referrals received in the communities.

BACKGROUND

When the province British Columbia (BC) wants to lease, license or sell Crown land it must consult with First Nations that may be affected by such action. There are a variety of purposes for which such land is used including residential, commercial, industrial, agricultural, tourism, recreational and investigative (e.g. wind power testing). As First Nations continue to negotiate their rights and title through various processes, Crown lands are being alienated from these negotiations. At the same time First Nations are inundated by 'Referral' letters, which constitutes forms a type of consultation.

The BC Ministry of Agriculture and Lands (MAL) is the government agency responsible for the administration of Crown Lands. Its goal is to promote sustainability and the greatest benefits for British Columbians.¹ In order to facilitate the process, the province has created FrontCounter BC, an organization intended to serve as a single point of contact for applicants who want to buy, lease or use Crown land. FrontCounter BC provides a single window into 11 other provincial agencies as well as access to land use information and to some 28 on-line application forms.

A visit to the BC Ministry of Agriculture and Lands website shows the legislative and policy framework for Crown land administration to consist of four Provincial Acts and 31 Crown Land policies. Absent from the provincial website is reference to case law that has emerged over the past decade pertaining to Aboriginal rights and title affirming the Crown's duty to 'consult and accommodate' Aboriginal interests. This duty "...flows from the Crown's assumption of sovereignty over lands and resources formerly held by the Aboriginal group any time the Crown makes a strategic level policy decision regarding land and resource use, or when it is called upon to make a specific decision that may affect the use of lands and resources within the traditional territory of an aboriginal people."

Most First Nations lack sufficient technical staff and resources to undertake research, to consult within their own communities, and to respond to development proponents and government. Also, First Nations are not being provided any financial compensation by BC for these referrals; however, some companies are recognizing that it is 'good business practice' to pay First Nations for these Referrals.

In keeping with its mandate from the BC Chiefs to develop an integrated approach to information management, the First Nations Technology Council (FNTC) is working with a number of Tribal Councils, Nations and First Nations organizations to develop a collaborative approach to land and resource stewardship information management. While the long term goal is to work towards setting up a comprehensive information management system for First Nations Land Stewardship, the first step is to bring stakeholders together to look at how First Nations organizations may benefit from working together on the referral process, finding commonalities and sharing best practices.

¹ Internet: www.corporate.gov.bc.ca/SP_brochures/AL-brochure.pdf

WORKSHOP REPORT SUMMARY

On February 21, 2008, more than 120 participants (First Nations, technical staff, consultants, industry and government staff) attended a one-day pre-conference workshop on *How First Nations Collaboration with Industry & Government Might Work*. Organized by the First Nations Technology Council, the workshop was delivered in Coast Salish Territory (Vancouver) at the Coast Plaza Hotel. The purpose of the workshop was to bring First Nations, industry and government workers into the same room to discuss collaboration—successes, challenges, and possibilities—in the process of government sanctioned land use referrals and data/information management systems.

Additionally, and one of the highlights of the pre-conference workshop, was the legal update from Dr. Roshan Danesh and Douglas White regarding the recent legal decisions that affect First Nations, and the question of First Nations becoming permitting agents. The presentations and responses to the pre-break questions held so much valuable new information that participants asked for a transcript of the presentation and discussion. A transcript of both is included as Appendix B to this document.

The entire day was both webcast live over the Internet for interested parties unable to attend in person, and recorded to DVD for distribution.

This report contains a summary of the presentations and discussion including:

- An overview of the presentations made by First Nations organizations, consultants and the participating government agencies;
- Next steps suggested by the participating First Nations to address their political, technical and operational challenges.

The Appendices contain additional information from the Workshop that might interest readers.

SUMMARY OF PRESENTATIONS & DISCUSSIONS

This section outlines summaries of the presentations and discussions during the workshop. At the workshop, participants shared information about their respective referral processes, the technologies they are using to streamline and make accessible traditional and industrial land usage information for decision making, and the challenges they are encountering in attempts to deal with industry and government. The following organizations presented (in order of appearance):

LIST OF PRESENTATIONS		
First Nation/Organization	Presenter	Presentation Title
First Nations Mountain Pine Beetle Working Group	Dan George (CEO)	"First Nations Mountain Pine Beetle Initiative"
Land, Marine and Resource Planning Working Group	Frank Brown	"Ecosystem Stewardship Planning"
Mandell Pinder	Dr. Roshan Danesh (Associate) & Douglas White (Associate)	"Can/Are First Nations Becoming Permitting Agents: Legal Update"
Industry Council for Aboriginal Business	Marlane Christensen (President)	"Preparing Common Ground for Business"
Doig River Resources	Garry Oker	"First Nations Alliance: Operations Management System"
PRESENTATIONS ON PREVIOUS LAND REFERRAL WORKSHOPS		
Carrier Sekani Tribal Council	Jaime Sanchez	"First Nations Land Referrals Workshop: Sept 12 & 13, 2007"
Okanagan Nation	Gwen Bridge	"Referrals Response, Collaborative Decision-Making & Land Use Planning Workshop Oct 2007"
Neskonlith First Nation	Chief Judy Wilson	"Ska'tsin Lands & Resources" & "RTS – Referral Tracking System©"
PANEL DISCUSSIONS: FIRST NATIONS, GOVERNMENT & INDUSTRY		
Neskonlith First Nation	Chief Judy Wilson	
Golder & Associates	Nola Markey	"Collaboration & Digital Literacy"
Integrated Land Management Bureau (ILMB)	Judy Steves	"Summary: FrontCounterBC's Role in the Referral Process" & "Land and Resource Information Management: Service Discussions with The First Nations Referral Forum"
Kamloops Indian Band	John Jules (Cultural Resource Manager)	"Summary: AOA Process and Model for Forest Development in the Kamloops TSA"
PRESENTATION		
Indian and Northern Affairs Canada (INAC)	Harold Powell	"Understanding the Federal Action Plan on Aboriginal Consultation & Accommodation"

Presentations varied in length from approximately 10-35 minutes. At different points during the day there was additional time for questions from the audience. While the legal questions were recorded and included in this report, other questions were unfortunately unable to be included due to the recording and/or microphone difficulties.

First Nation/Organization	Presenter	Presentation Title
First Nations Mountain Pine Beetle Initiative	Dan George, CEO, First Nations Mountain Pine Beetle Initiative	First Nations Mountain Pine Beetle Initiative
www.fnmpbi.com		

FIRST NATIONS MOUNTAIN PINE BEETLE INITIATIVE

The FNMPBI vision was created in the spirit of the New Relationship, to harmonize First Nations and government strategic partnerships in the management of the Mountain Pine Beetle epidemic. The FNMPBI mission is to build effective working relationships with First Nations, government, industry and the broader community through innovative evidence-based and culturally relevant policy development, strategic planning, facilitation and negotiation.

With industry, the prime areas of collaboration are expertise in planning, permitting and implementing the strategic plans. The broad goals with government include new institutions/bodies, new decision-making processes, royalty/revenue sharing and new land use approaches. Through the facilitation of dialogue, the building of relationship and the harmonization of plans move towards focusing on area of commonality where measurable progress can be made. Building upon the foundational themes of 'Meaningful First Nation Engagement' and the 'Retention and Restoration of First Nation Cultural Values', the following areas of focus have been identified utilizing the Balanced Scorecard approach:

- Community Protection
- Sustainable Economy
- Ecosystem Stewardship

NEXT STEPS:

First Nation Forestry Council Action Plan Themes

- At the First Nation Forestry Forum March 11-13, 2008 Chiefs will be developing an Action Plan addressing the following:
 - Legislative, Regulatory, Policy, Institutional & Research Development
 - Economic, Land and Marine Use Planning
 - National & International Development
 - Negotiations & Litigation

First Nation/Organization	Presenter	Presentation Title
<i>Land, Marine and Resource Planning Working Group</i>	Frank Brown	Ecosystem Stewardship Planning
www.fnforestrycouncil.ca		

LAND, MARINE AND RESOURCE PLANNING WORKING GROUP ECOSYSTEM STEWARDSHIP PLANNING

Planning for the protection and wise utilization of natural resources is a means to establish a conservation ethic into the balance of providing economic opportunity and resilience to a changing environment.

In British Columbia a *New Relationship* was achieved in March 2005. Amongst other things, it provides for mutually developing processes and implementing new institutions to achieve:

- integrated intergovernmental structures and policies to promote cooperation, including practical and workable arrangements for land and resource decision making and sustainable development;
- financial capacity for First Nations and resourcing the Province to develop new frameworks for shared land and resources decision making and engage in negotiations; and
- mutually acceptable arrangements for sharing benefits, including, resource revenue sharing.

The *Transformative Change Accord* was entered into in November 2005 for the purposes of closing the social and economic gap between First Nations and other British Columbians over the next 10 years, of reconciling Aboriginal rights and title with those of the Crown, and of establishing a new relationship based on mutual respect and recognition. One of the fundamental considerations was the need to monitor and track changes as a means of measuring progress, or lack thereof, in efforts to close the gap.

The Land Use Planning Task Group Session held in March 2006 (co-sponsored by the First Nations Mountain Pine Beetle Working Group and the Integrated Land Management Bureau) brought together First Nations and provincial government representatives from across the province to engage in a preliminary exchange of perspectives in relation to strategic level land use planning.

BC and First Nation Leadership Council completed scoping of a proposal in February 2007 for the negotiation of a joint, provincial level, protocol that will provide overarching guidance for future strategic land use planning protocols between BC and individual First Nations.

- A “Draft Protocol” is currently undergoing a legal/technical review, prior to the FNLC and First Nations consideration
- The Protocol, once approved, may be used as a template by BC and FNs when they agree to engage in land, marine and resource planning processes
 - For new plans

- Amending existing plans
 - Reconciling plans where BC and local FNs have their individual existing plans
- The Protocol also contemplates the possibility of planning for a specific purpose, for example, micro hydro within a geographic area
- The Protocol is designed with four stages of development phases in the process with funding and shared decision making the guiding principle in each phase:
 - Pre-planning phase – geographic area to be included in plan, identifies the parties to the plan, objectives, guiding principles
 - Planning phase – development of the Plan
 - Implementation phase – activities required to give effect to the Plan
 - Stewardship phase – ongoing activities on a government to government basis

CHALLENGES

The Protocol does not deal with some FN interests that cannot be set aside if land, marine and resource planning is going to become reality. For example:

- Funding for land, marine and resource plans throughout the Province that are collaboratively developed
- A commitment to a timeline to complete land, marine and resource plans
- An understanding as to the legal underpinning that will bind the parties to actually implement a collaboratively developed plan
- The gathering of data and sharing of data on a government to government basis
- A process for sharing of benefits and revenue

NEXT STEPS

- Present the Draft Protocol and Discussion Paper to the province-wide FNFC forum scheduled to take place in March 2008 for their information and input;
- Present the Draft Protocol and Discussion Paper, along with a progress report, to the First Nations Summit, Union of BC Indian Chiefs and BC Assembly of First Nations as soon as practicable with the intent of confirming mandates as set out in the recommendations:
 - to develop and implement a “Sustainable Development Institute” with a centralized database system that protects First Nations autonomy and decision-making
 - to develop and implement an “Aboriginal Title and Law Registry System” as part of the Sustainable Development Institute;
- Engage with senior and political level representatives of the Province to determine what work needs to be done with Treasury Board and Ministers to secure the \$150 million funding commitment;
- Engage with senior level provincial representatives to secure an agreement on the exchange of information through a centralized system;
- Direct the Land, Marine and Resource Working Group and the Recognition Working Group work closely on application of legislation and legal framework;
- Direct the Land, Marine and Resource Working Group assist the Recognition Working Group in their efforts with regard to benefit/revenue sharing;
- Direct the Land, Marine and Resource Working Group begin the development of a handbook/user guide for the Protocol;

We can change this by creating a centralized database, which would provide a direct and user-friendly access to multiple data sets. A centralized database would allow us to:

- Communicate with each other easily through a centralized address book
- Share information so that we do not have to recreate the wheel
- Move to an equal footing with other levels of government who have this ability now
- Design our own database system and to own the system
- Develop a cadre of top trained individuals to maintain and manage the data input
- Provides First Nations with a tool to provide good government
- Have a cost effective solution to a very important issue facing each and every First Nation today

First Nation/Organization	Presenter	Presentation Title
Mandell Pinder	Dr. Roshan Danesh (Associate) & Douglas White (Associate)	“Can/Are First Nations Becoming Permitting Agents: Legal Update”

CAN/ARE FIRST NATIONS BECOMING PERMITTING AGENTS: LEGAL UPDATE

Topics

1. Recent developments in Aboriginal law – where are we at?
2. Where are we going? Implications for jurisdiction, decision-making, and permitting.

Recent Developments

- *Tsilhqot'in Nations v. British Columbia*, 2007 BCSC 1700
- Evolving Consultation/Accommodation case law
- United Nations' Declaration on the Rights of Indigenous Peoples

Recent Developments – Tsilhqot'in

Context – The Outstanding Land Question in British Columbia

- History and tradition of denial
- *Delgamuukw* – Title not extinguished
- *Haida* – Prior to proof, the Crown must meet obligations to consult and accommodate, and act honourably in all dealings with Aboriginal Peoples.

Core Issues

- Scope of Title – the Province's “small spots” theory; private lands
- Content of Title – jurisdiction, reconciliation

Key Principles

- Title = Right to choose, use, and economic component – “To have any significance for Aboriginal people, Aboriginal title must bring with it the collective right to plan for the use and enjoyment of that land for generations to come.”
- Title can exist over large tracts of land
- Fee simple grants do not extinguish Aboriginal Title
- Provincial land and resource laws do not apply to Aboriginal Title lands
- Proper Title and Rights holder is Nation
- Damages are appropriate when resources on Aboriginal Title lands are unlawfully removed – “The Resources on Aboriginal title land belong to the Tsilhqot'in people and the unjustified removal of these resources would be a matter for appropriate compensation.”

Status of Decision

- Declaration of Title not issued for technical reason
- Appeal?
- Provides guidance on reconciliation

Decision Endorsed Following Statement:

“...For Canada to advance to maturity...Aboriginal peoples must be able to bargain their way into a fair constitutional contract. This can only be accomplished with recognition on the Canadian side of the table of the position occupied by Aboriginal peoples: they come to these negotiations in the same state they were in 500 years ago, as organized societies existing ‘prior’ to the assertion of Crown sovereignty, societies organized according to separate and distinct conceptions of the good and of how to lead good lives.”

Recent Developments – Consultation and Accommodation

- Post-*Haida*, there have been almost 30 cases asserting a Crown failure to consult and accommodate. A failure to meet Crown obligations was found in a substantial majority of the decisions.
- Decisions have put various frameworks for decision-making and permitting into question (e.g. *Dene Tha’* – The Court found an obligation to consult arose “in relation to the development of the environmental and regulatory process”)

Recent Developments – UN Declaration

UN Declaration of Rights of Indigenous Peoples

- Declaration of UN General Assembly
- Application in Canada
- Recognizes rights of Indigenous Peoples in relation to:
 - Self-Determination
 - Ownership of traditional lands
 - Jurisdiction over traditional lands
 - Redress, including restitution or compensation, for lands, territories and resources confiscated, taken, occupied, used or damaged without their free, prior and informed consent

Where are we going? - Current Crown Engagement Model

- Current Crown decision-making
- Operational level, not strategic level
- Small-spots/site-specific
- Information-gathering and mitigation, not reconciliation and accommodation
- Downloading onto Industry

CHALLENGES

Some insufficiencies of current Crown Engagement Model

- Crown cannot assume jurisdiction – Probability of Title
- Failure to engage at strategic level – “collective right to plan for the use and enjoyment of that land for generations to come”
- Incomplete information base and gathering – “At present, British Columbia does not have a database that provides information on the individual species of wildlife or their numbers in the Claim Area. The Province has not conducted a needs analysis which would inform decision makers on the needs of the Tsilhqot’in people related to their hunting, trapping and trading rights.”
- Lack of reconciliation or accommodation approach
- Lack of territorial-specific justification

Future Directions

1. Recognition-Based Engagement (e.g., focus on reconciliation, not on proof of strength of claim)
2. Consent-Based Shared Decision-Making (e.g., joint decision-making bodies; two decision-maker models; clear jurisdictional spheres)
3. Strategic-Level Engagement (e.g., land use planning; pre-screening)

NEXT STEPS

- Practical Implications of Jurisdiction – authority, responsibility and liability for First Nations decision-making.
- Changed Legal Context may require changed information and analysis from a First Nations perspective and approach.
- Aboriginal Knowledge of the Environment takes into consideration different values, principles and concepts.
- Decision-making based upon Aboriginal Title Jurisdiction will need to incorporate the limitation articulated in *Delgamuukw*: “lands subject to Aboriginal title cannot be put to such uses as may be irreconcilable with the nature of the occupation of that land and the relationship that the particular group has had with the land which together have given rise to Aboriginal title in the first place”

First Nation/Organization	Presenter	Presentation Title
Industry Council for Aboriginal Business	Marlane Christensen, President	“Preparing Common Ground for Business”
www.icab.ca		

INDUSTRY COUNCIL FOR ABORIGINAL BUSINESS PREPARING COMMON GROUND FOR BUSINESS

The vision of the Industry Council for Aboriginal Business (ICAB) is to realize a vibrant BC business economy where Aboriginal and non-Aboriginal people prosper together. To goal is to assist member to realize economic opportunities through collaboration, participate in venues and processes for networking among corporations and Aboriginal business organizations, and respective understanding of Aboriginal and non-Aboriginal business environments.

Areas of program development ICAB is delivering:

- Leadership Exchange
- Dialogue Forums
- Online Toolkit Development

ICAB aims to assist its Aboriginal and non-Aboriginal members to:

- provide practical “how to” information about successful past initiatives
- establish a broader platform for Aboriginal business development and increase Aboriginal business access in mainstream markets.

Making the Grade: A Guide to Success for Corporate Aboriginal Initiatives:

- Corporate-Aboriginal Initiatives—why now?
- Case Studies (8)
- Elements of Successful Corporate-Aboriginal Initiatives
- Self-Assessment Tool
- Project Summaries (8)

Corporate-Aboriginal Initiatives—Why Now?

- Institution building among First Nations, including economic development, treaty and land claim processes
- Corporations/Industry more aware of opportunities, risks and more adept as relationship-building (i.e. culture, capacity)

Partnership Drivers—Industry:

- Consent/License to operate
- Aboriginal consultation and accommodation (rights & title)
- Corporate Social Responsibility
- Access to new business opportunities: land use, employees, markets

Corporate/Industry Decision Roles:

- Mandate and resources understood within company
- Clear, specific, achievable commitments (more and more companies are developing formalized programs around Aboriginal commitments and engagement).
- Knowledge of the Aboriginal community and its expectations
- A willingness to be creative—a willingness to invest

Accomplishments – Aboriginal Business

- Communities are managing resources, human and economic development
- Revenue
- Training and employment
- Acquisition of business expertise
- The development of additional tools and access to additional resources

Accomplishments – Corporations/Industry

- Predictable and optimistic business environment resulting from mutual respect and trust
- Enhanced supply of services and labour
- Increased access to business opportunities
- Profit
- Effort to manage issues together
- Creating a common ground for business

Key Elements of Success

- Understand the respective business environment (Leadership Program)
- Assess 'readiness' of both your and the potential partner organization and address deficiencies

First Nation/Organization	Presenter	Presentation Title
Doig River Resources	Garry Oker	First Nations Alliance: Operations Management System
www.nwrm.ca		

**FIRST NATIONS ALLIANCE: OPERATIONS MANAGEMENT SYSTEM
STORYTELLING INFORMATION MANAGEMENT SYSTEM (STIMS)**

Our goal is to create an operations management system using a storytelling information management system as a key input. We are respecting traditions while shaping the future by shifting the corporate culture mind set. We want to tell a different story.

Elements of Operation Management System

Leadership, Organization Effectiveness, Quality Health and Safety, How to Integrate Legal and Regulatory, Financial Integrity, First Nations Community Affairs, Contract and Management Procurement Process, Information Management, Management of Change Quality Improvement

The Management System is built on consultation to assist and create:

- Building Values—Highly trained competent individuals who foster innovation, creativity and highest standards
- Capacity – Common integrated business management system that can mobilize resources to meet customer requirements
- Critical Success Factors—Effective system in place to implement and measure strategic business elements that will execute the project
- Building relationship success through unity, develop network of hope, vision and action
- Partnerships—we offer solutions to business risk, attitudes and behaviours
- Economic prosperity that is culturally rich by aligning the sustainable vision into management systems.

NEXT STEPS

- Promote higher learning of traditional knowledge through building infrastructure and relationships
- Adapt a system to improve processes for consultation, business operation and execution
- Demand support for information systems that will incorporate tribal networks with the New Relationship Trust

First Nation/Organization	Presenter	Presentation Title
Carrier Sekani Tribal Council	Jaime Sanchez	Summary of First Nations Land Referrals Workshop Sept 12 & 13, 2007
www.cstc.bc.ca		

**FIRST NATIONS LAND REFERRALS WORKSHOP
SEPT 12 & 13, 2007**

SUMMARY OF RESULTS

Purpose of Workshop

- To share information about various First Nation information management projects in British Columbia
- Goal: To work together to share best practices for building sustainable land stewardship information management
- Approximately 80 people in attendance

Recommendations – Technology

- Technology Issues
 1. Create User Groups (First Nation LUP Communities of Practice) & improve existing ones (e.g. AMN)
 2. Getting all existing First Nation technology practices out to all First Nations (FNTC as facilitator of the process)
 3. Information consolidation – data access, more workshops like this: training in policy/standards, operations & new technologies (e.g. Open Source)
 4. Develop cost analysis of First Nation systems that were demonstrated, and others in progress

Recommendations – Operations Policy/Capacity Building & Training

- Develop feasibility plans for referrals management
- Support First Nation administrative structures
- Clarify policies (e.g. fee for service vs. accommodation, standards for relations or acceptable range of modes of accommodation, developing institutional & regulatory framework for permits/licensing)
- Partnerships needed with businesses, government and business organizations to develop guidelines for accommodations, relationship building & policies
- Create opportunities for fee structures and economic development using new technology tools

Recommendations – Strategic Policy

- Clarify role of FNLC (limits, benefits) and the role of First Nations
- Develop a Policy Working Group
- Develop First Nations Lands, Water & Resource Working Group for 'on the ground' issues: shared decision-making, referrals practices, joint LUP, etc.
- Create Consultation/Accommodation Ombudsman
- Develop standardized provincial or regional fee-for-service systems to manage referrals, ensure government & industry pays for legal duty to consult

NEXT STEPS

1. Link this work to higher strategic initiatives
2. FN Technical Support Network being created by FNTC – for coordination/networking
3. Need follow-up session to some topics discussed during this workshop (e.g. Referrals Policy)
4. Develop an Ombudsman Organization for intervening in consultation issues
5. Connect with other upcoming events (e.g. FNFC Forum)
6. Listing all events/forums in a single website/listserve

First Nation/Organization	Presenter	Presentation Title
Neskonlith First Nation	Chief Judy Wilson	Summary of Results: Cultural Resources Predictive Modeling Workshop
www.neskonlithband.com		

SUMMARY OF RESULTS: CULTURAL RESOURCES PREDICTIVE MODELING WORKSHOP

Workshop Purpose

It was the first time on April 25th, 2007, that the Okanagan and the Sewepemec cultural resource and referral workers got together. They met to talk about several concerns, not just in lands management and referrals, but the cultural values of those lands, and the concerns of custodianship and stewardship. The Neskonlith Indian Band (NIB), in partnership with the Okanagan Shuswap Forest District (OSFD) office delivered the workshop directed at the 11 Bands (10 Participated) to share information, identify common issues and concerns.

Key Issues Identified

Discussions focused on 4 areas:

- Government relations, policy and legislation impacts
- Tools, processes & applications
- Operations and management
- Internal First Nations issues

We do have a consultation and accommodation guideline, but we need to break it down Ministry by Ministry. Right now we have only an overarching one. We are also working on a land encroachment map. We now have a cumulative map showing agriculture, mining, forestry, and fee simple that have all happened in our territory. We have to backend system that has a database and special mapping. We are custodians of our data and it belongs to us, our children, our Elders, and community technicians.

Challenges

- Lack of understanding of legislation and policies, inconsistent approaches by various agencies to consultation and accommodation
- Consultation starts too late in the planning and development cycles, and requested response times do not facilitate effective information transfer We need higher strategic planning. Pushing to have Land and Water Use at a higher level will reduce some referral processes at the lower levels and we will then see more at the sign off level.
- Confusion over which systems and processes will deliver good value for money and are scalable and durable
- Standardized training, assessment, and data storage methods and best practices are not widely employed and vary widely between First Nations
- Procedures for addressing consultation are time-consuming and expensive
- Information is often not kept current or in an acceptable digital format Referrals currently are not consistent
- Lack of protocol between First Nations on information sharing, working relationships

NEXT STEPS

Subsequent to the April 24 workshop, the Neskonlith and Adams Lake Indian Bands and the Shuswap Nation Tribal Council discussed how the outcomes could be followed up. This led to the development of the 6-point technical strategy. This strategy outlines the steps, tasks, timeframe and budget for implementation

Activity #1 – Technical Review and Updates

- Presentations and technical reviews by OSFD Bands, SNTC, ONA

Activity #2 – Capacity Building

- Develop partnership consortium, including ALIB, NIB, OSFD, FN Forestry Council, ILMB, DR Systems
- Develop technology and knowledge building strategy

Activity #3 – Regional First Nation Information Management Workshops

- They had a conference last year that Dan George spoke at, but we challenged them asking where the First Nations representatives were. We need more First Nations engagement at that level. How can we improve this for next year?
- Develop Forestry Information Management Working Group
- Develop regional First Nations workshop
- Develop First Nations venue for Annual Forestry Information Management Workshop

Activity #4 – First Nations Cultural Resources & Archaeological Assessment Tools Forum

- Discuss the creation of a Hybrid Predictive Cultural Resources Model
- Update/refinement of AOA and other CR assessment tools
- With the Assessment Tools we wanted to look at other backend systems, looking at the cumulative impacts, mapping and spatial data component, and predicative modeling. Some of the Bands have built different systems, and with the RTS, is an automated referral tracking system, a frontend system that will work with any backend system. Because we recognized immediately that some First Nations have worked in this area and didn't want to say that would be the only backend system. It needs to be built to First Nations capacity and what the First Nations primary interests are, and uses are in that backend system.

Activity #5 – First Nations Technology Council: Lands & Resources Forum

- We participated at the planning level.
- Develop a presentation on RTS and Referrals Processes for the provincial First Nations workshop sponsored by GeoConnections
- We now have more tools with case law.

Activity #6 – Policy/Legislation Impacts & Changes

- Internal review with OSFD First Nations
- Implement new timber harvesting decisions for First Nations
- Review of FSPs, EA and AOA requirements & issues against First Nation objectives for CR management

We have Forest and Range Opportunity consultation in our area right now. We will be meeting with the ministries March 27th to look at impact of the latest decisions. We are committed and have several different tables and teams we are working with.

First Nation/Organization	Presenter	Presentation Title
Okanagan Nation Alliance	Gwen Bridge	"Referrals Response, Collaborative Decision-Making & Land Use Planning Conference" - October 2007

REFERRALS RESPONSE, COLLABORATIVE DECISION-MAKING & LAND USE PLANNING CONFERENCE

SUMMARY OF RESULTS – October 2007

Purpose of the RR/CDM/LUP Conference

1. Education

- To build Okanagan support for NRLUT strategy
- To describe benefits of Referrals Response systems, the process of Land Use Planning, and the need for Collaborative Decision Making

2. Successful Models

- To showcase successful First Nations from throughout BC to see Best Practices

3. Feedback

- To provide leadership/membership/staff the opportunity to provide informed direction to the ONA

WHAT DID WE LEARN?

Reaffirmed our long-term goal:

- Land use planning and land management title and rights assertion based on quality data and data management and presentations

Interim stages:

- Build an interactive database for bands and the ONA
- Bands can download and upload data according to band specific data sharing protocols
- Referrals response data can be used to build a land use plan
- Research referrals response/tracking programs will be able to communicate with the First Nations Gateway
- Collect only quality data for database
- Collaborative decision-making models are limited by legislative mandates

NEXT STEPS

Development of a Land Use Plan strategy:

- Working Groups
 - Research working group
 - Land Use Plan working group
 - GIS Technical working group
 - Community Visioning groups

- Develop rigorous standards and Title and Rights research agenda
- Develop technical capacity in member bands
- Continue to develop ONA Inter-tribal protocol
 - Operational roles and responsibilities
- Involvement of community members
- Work with government/other Nations to develop interoperability between systems

PANEL DISCUSSION SUMMARIES

First Nation/Organization	Presenter	Presentation Title
Golder & Associates	Nola Markey-- Archaeologist	Panel Discussion - First Nations, Government & Industry

COLLABORATION AND DIGITAL LITERACY

Purpose of Golder Associates' involvement with First Nation Organizations:

- Provides collaborative and on-call consulting services for various First Nations. Some of these services include cultural land use and environmental studies, webpage design, report review and comment, training (office and field-RISC), proposal preparation for various types of research, capacity building, Archaeological Overview Assessments (AOA), Archaeological Impact Assessments (AIA), and mitigation and monitoring projects. Further, Golder works on several archaeological and land use (TUS) joint-ventures with First Nation organizations in other provinces of Canada.
- For the past few years, Golder maintains that First Nations are included at all levels of their projects in order to address their perspectives, concerns, and advice.

There are generally three approaches that an archaeologist is engaged in a project: a) Environmental Assessment Process; b) Referral Process; and c) Reference.

- Environmental Assessment is required to predict the impacts of any proposed development project. Types of studies conducted in the EAO process include, social, environment, heritage, economic, and health. First Nations and other stakeholders participate in this process at various levels, and archaeologists are engaged to conduct studies to assess whether ancient/contemporary heritage sites will be impacted.
- Referral Process requires First Nation involvement where they are notified by industry such as, forestry, mining, and highways of the proposed development within their homelands (specifically on crown land not settled by land claim) and are given a certain time frame to respond to any concerns. Archaeologists are engaged by First Nations or industry to provide whether ancient/contemporary heritage sites will be impacted.
- Archaeologists are engaged through reference by First Nations, private industry, ministries, and universities for various types of research (i.e. academic and cultural resource management).

How archaeological fieldwork results can integrate with the Referral Tracking System.

The Referral Tracking System (RTS) is a database that was developed and designed by Neskonlith Indian Band, *Chief Judy Wilson*, and Adams Lake, *Steve Murphy* and D.R. Systems Inc. The RTS has the capacity to efficiently respond to the numerous referrals that a First Nation Band is asked to on a specific area proposed by land altering activities and other initiatives. The RTS has the ability to interact with many other programs on their systems (front end system program), such as interactive reporting, invoicing, wildlife, fisheries, land use Studies, and archaeological studies. The RTS is user friendly and affordable for First Nation communities.

First Nation/Organization	Presenter	Presentation Title
Neskonlith First Nation	Chief Judy Wilson	Panel Discussion—First Nations, Government & Industry

PANEL PRESENTATION – CHIEF JUDY WILSON

So I think what we're hearing here in the recurring themes is that engagement at those different levels, at the EA level, moving up to some of those primary discussions at the higher levels before we get the information at the lower levels, and it doesn't quite make sense, and we've been saying that for years now. And also, when the Crown engagement model is sitting there, we have the engagements model for industry. Industries are looking at ways to improve how they do business, and First Nations are looking at the engagements models, how do we protect the lands, resources and cultural values, and proceed with some of the economic opportunities at the same time.

So we are looking at how those are unfolding and how the impacts of legislation and policy—also impact that whole process. And then with the developers submitting any disturbances on the land, that's not the way we see it. But we also see it as an opportunity to get out and do data capture, that we can get some of that data. How to respond to some of those technical permits, licensing, so many recommendations that are made, we need to do that.

I think a lot of these discussions are going in a positive direction, but we need to be mindful of how those engagement model processes unfold, and it's really key to understanding that, and to continue to educate our workers who are on the front line, and to be able to understand what kind of foundation we are coming in with when we're sitting at the table with industry and government.

First Nation/Organization	Presenter	Presentation Title
Integrated Land Management Bureau	Judy Steves	Panel Discussion—First Nations, Government & Industry

ARCHAEOLOGICAL OVERVIEW ASSESSMENT (AOA) PROCESS AND MODEL FOR FOREST DEVELOPMENT IN THE KAMLOOPS TIMBER SUPPLY AREA (TSA)

AOA Steering Committee Current Members includes First Nations, Government and Industry.

Purpose of the Steering Committee

- **In Past:** developed and recommended the AOA model and process
- **Operational:** to oversee, monitor, review implementation of the revised 1999 AOA model & process. To develop the AOA Report template. To track results.
 - To recommend revisions to the 'process' to address situations (e.g. Forest Fire (2003) or Mountain Pine Beetle (2004-on))
- **Strategic:** To utilize arch assessment results and updated data to look at opportunities to refine the model and the process. Electronic database compiled annually. Intend to have electronic field card report – which flows into electronic database.

“NEW” revised AOA process:

Steps 1-3 completed by First Nations in a business relationship with forest licensees. Rationalize each step—as to which sites need more detailed assessments. Recommend mitigative strategies.

- Step 1: office review
- Step 2: preliminary field review (PFR)
- Step 3: comprehensive field survey

Step 4: Archaeological Impact Assessment (AIA)

- **(AIA)** as required. Completed by an archaeologist (recommended by First Nation community); under permit with Archaeological Branch.

Guidelines for “NEW” process

Guidelines were developed and recommended by the Committee:

- Qualifications for First Nation contractors
- Recommended fee schedule
- Process for addressing overlap areas—lead Band concept
- Expedited AOA processes for some situations
- Database tracking assessments for future model update
- Guidelines updated regularly as a living document on the website

First Nation AOA work Qualifications:

- A minimum of RIC/RISC standards “Archaeology Training for Crew Members”
- Contact list endorsed by Chief and Council of contractors/workers who can do AOA contract work—and of sign-off archaeologists.
- Work signed—off by First nation archaeologist or other archaeologist endorsed by Band.

Why use a digital model?

- A tool to assess the risk or potential for finding archaeological evident
- Scale of zoning is for forestry
 - suggests areas of *high* and *medium* potential—that could require more detailed field assessment
 - suggests areas of low potential—that could have no further assessment
 - can be used as a tool to support expedited processes.

Digital Information Management

- Currently the digital ‘model’ resides with District, and the Committee is considering options to have First Nations be the host.
- Some Bands are gaining expertise in the digital manipulation of the model.
- Currently the tracking database is manually compiled from Arch assessment reports completed by First Nation contractors.
- We are working on an electronic field card for First Nation contractors—with database consistent with model.

Achievements

Intent #1: Involve First Nations directly

- Local First Nation communities are receiving the financial benefits of direct contracts—as a monopoly to First Nation contractors.
- AOA Steering Committee meets regularly with ongoing dialogue to monitor/improve process and model. General approach is by consensus recommendation.
- Improved First Nation capacity—funded RISC training for archaeology, First Nations achieving qualifications needed.
- Enhanced relationships and improved communication between three parties
- Some First Nation communities going electronic (Skeetchesth)

Intent #2: Achieve better digital model

Intent #3: More effective for all parties

- First Nations carry out the majority of field work
- Model requires more ground to be assessed than the 1995 model, so costs are generally higher due to increased field presence. However, this extra cost is offset by the value associated with First Nation involvement.
- Committee endorsed some expedited processes
- Where appropriate, mitigative strategies assist in avoiding higher costs of AIAs
- Lead band concept minimized extra work in overlap areas
- Maintaining baseline qualifications for First Nation crew is a cost
- Time associated with Steering Committee is a cost

NEXT STEPS

The AOA Steering Committee is working on the following:

- Refining the model
- Going electronic (only a few Bands currently)—electronic reporting could flow into electronic tracking database and flow into review of the model
- Improve the tracking of mitigative strategies
- Improve the quality of the final report
- Increase Band capacity (i.e. there are Bands without qualified members)
- Develop a protocol to share the 'model and process' with other parties
- First Nations are seeking to implement this AOA process with other agencies & in other TSAs
- Parties could work together to develop a process that works for your business/community. Looking where this might fit with your business/structure
- Implement in small steps over time
- Pilot a trial run in your organization
- Use this AOA process as a catalyst to move forward in relationship building and enhancing communications between parties

First Nation/Organization	Presenter	Presentation Title
Kamloops Indian Band	John Jules	Panel Discussion—First Nations, Government & Industry

One of the things that I want to talk about today is the complexity of what we're doing. We're talking about the AOA process that was years in the making. One of the things I know that's been thrown around here today was the concept of relationships. As if it were a piece of candy that you could just hand out. I want to assure everyone that at least in Kamloops, that this isn't the case. We are easy to work with. But, to develop a relationship we need years of protocol, and years working together to develop a good history so that we can honestly say we've developed a relationship.

One of the things that we have been looking at is the primary concern of my Band, of the division of the nation. The primary concerns being interests: our wants, needs and wishes, and how we deal with all of these matters. We know, at least in my valley, that we have guests that in three years would have been here two hundred years. We are still trying to educate our guests into what we have, and what we have to offer. This is what we say, when we say that this process has been years in the making--hundred of years.

Developing this process is just a small portion of looking at the complexities of how development is going to happen within the land base. Whether it's extraction, whether it's harvesting, and how we get to that point. A lot of the process within identifying that is that we look at the archaeological overview assessment as a key that gets you into a systems approach. We know that archaeology in itself is just a small portion of what we have out there. We've separated from cultural heritage overviews and the misnomer of what's called 'traditional use.' But what we have out there is customary use. A traditional use refers to a phase, refers to a decade, refers to a generation or a lifetime.

So we go beyond that. To the archaeological overview assessment, and what we identify in terms of working on it since 1998, just about ten years ago, is something that our people viewed with a little bit of alarm. We had academic and professional archaeological consultants coming in and telling us what our interests were, and what a predictive model was, and what that was going to look like. It fell far short of any of the expectations that we had. So we took that back, and we took it in hand. We identified, just to make it clear and simple, 32 indicators in which we could develop a predictive mapping model. In doing that, we recognized that 28 of those were related to water source and water activities. But you have to remember that a water source is not just a stream: it's not just a river. It's the freshets: it's the ground water: it's the riparian areas: it's the ponds, that all have input into an eco-system and a biosphere. Each of those, when you look within that paradigm, gives you a good cover of 90% of your land base anyway.

Looking at that, there were at least another six indicators that looked at dry land. And, these were quarry sites. These were petroglyphs, petroforms, and pictograph sites. All of those things related to areas away from a water source, and when you look at the land base, it covers 100%. So the mandate, such as we have, yes it's only 70% or 76% accurate, but that's a lot better than the 35-40% accuracy that was presented previously. There were no huge white blotches within the predictive model. Now the model covered about 100% of our land base, and that was where we wanted to get to.

The beauty of this whole mapping process is the predictive map. It is transferable. It can be transferred to any culture type, within BC. It can be transferred to a micro area, or a macro level, so you can get into site specific. You can get into a land-based archaeology, which is a broader base. And, where we're striving to get to, because we didn't operate within pockets of our land base. Now, one of the things that must be recognized: archaeology, being archaeology, and signing off on that is a legislative process. It's not consultation. So in signing off on archaeology we do not have to sign off on cultural heritage, or any of the customary utilization that you had. It's a sign off on archaeology only. This is why I say it is only a key, but it's an important key that opens the door. It's a safety gate, so that you can define for yourself what a consultation or negotiation process is going to look like, if you want to go to that step in terms of accommodation. I really hate to use the word compensation, because it always seems that we have to approach industry and government with cap in hand, and we don't have to do that for any of them. Not in our land base.

And looking at this process, you always hide within that: that this is a service agreement. It's business. It's an economy. It impacts within the language of what the licensees, or the developer, an extractor, or the government, understands. So everything is geared within that, but your research, and everything gleaned from that research, is meant for your people. Information is where your power is. We all know that knowledge is power, but there is a value attached to your information. The people want that: the terms to getting to the point of certainty. Then they have to know that within the business world there is a cost too. So you get into the service agreements, you apply service fees that make sense. There are standards out there that we can relate to within industry. And, once you coach that in words that anyone can understand, without going to a court, without going to a workshop, you're actually on the ground. You're actually doing something.

We've noticed far too long that too many of us have taken the process of 'I'll go to this workshop' and 'I was to the one last year and the one the year before that.' But we have no information flowing through to the people we actually need on the ground, getting the work done. Well now we have a process. And the process is, we are working with industry: not the professional archaeologists, not academic archaeologists--industry. People that can actually pay their bills. But we are getting government to facilitate. When you get them to facilitate, you begin to educate them into your wants, needs and wishes, you can get to the next step. You educate them so that when you get to consultation and negotiation, they already understand your language. They already understand your points of view. It's not the 'be all end all,' but it certainly is a proper tool, that when you use it well, it makes a huge difference in what we have out there.

One of the things in looking primarily at archaeology is that within land based forestry, archaeology, our mountaintop archaeology, the lack of evidence does not mean a lack of use or occupancy. Nor does it mean a lack of right or title. In defining your interest area that you're going to be working on, in the acceptance of industry and government, they already accepted your Aboriginal title and your Aboriginal rights within that area. So they've already accepted that. Even within a postage-stamp process that we've already defined as being part of the problem. We can't go around in this lifetime pointing to all the problems out there. Otherwise, we'll just be developing more workshops, and developing more discussion tables, without getting any of the work done. So we have to give ourselves the flexibility to actually get out there and do the work. To bring the information home, just as it is, when you become a technician. You carry the past with you as the keeper of the flame, but you also become an

interpreter. Not only for industry, but for government, but you also do it for academia, you also do it for the people within the legal table. Those that could take this approach forward and litigate. Because all your research should be geared for that if you have to go to that area. However, at the same time you have to interpret for your own people. And no one can do that better than you--no one.

So if we empower ourselves and give ourselves to those types of opportunities, then we've gone forward leaps and bounds. Archaeology opens that door: it gives a process where we look at cultural memory and oral history. It also opens the door to ethno history and research that is tied to you, and also points to the obstructions that are out there. All those obstructions that may have been generated through policy, through procedures, and through the permitting system itself. It gives you an opportunity to look at all of parts.

The only information that you're going to be required to share is the development of a field card, and within forestry, it's recognized that there are forestry field cards, within mining, there are mining field cards; any industry that you have, there are field cards that you look at as being checks and balances. To learn how to operate those things, whether it's hard copy, or whether it's electronic data, that is what you share with the outside world. The detail of any of those is to create your own land and resource management plans, comprehensive for your Sprout reserves, your Douglas reserves, the Douglas treaty area, your traditional territories, what ever you choose to call it. That's where the crux of your information needs to go, to your own people.

So what we're looking at is all of those processes. We recognize the power that you actually have within the recommendations. Do you go towards an AOA, which is a deeper need for involvement that you include other people? We said we have a few archaeologists within our area, but we have to also remember that we have six certified and diploma archaeologists. We only put one forward that goes after permits with the government because we have our own permitting system--we are government. So we ask anyone that comes into our territory to work in archaeology, or cultural heritage overview, or environmental assessments, to take one of our permits. We developed a business model: which pays for itself, which pays for a referrals system, which pays for the on the ground work that our people are doing, which pays for the information in curriculum development for our children. These are the things that we've been doing.

And I'm saying this is very important. Yes, we've been working on it for ten years, but been working on it for many, many years before that. And it's the tip of the iceberg of where we need to go. But it's a very important portion of how we are going to lay that table. Thank you.

QUESTIONS FROM AUDIENCE²

Dan George: We are a little bit ahead of schedule. I brought some speakers along just so we could have the opportunity for a couple of questions from the audience prior to going to the break. Does anyone have a burning question out there that they want to ask the panel? Yes sir, stand up and say who you are please.

My name is Keith; I'm from the Chamber of Commerce. I would like to thank the panel for a fascinating and provocative presentation. I have two questions I would like to bring up right now. First, with respect to the Tsilhqot'in and White cases, what is your assessment as to the impact on the Land Title act, Land Registry Act on the provincial pieces of legislation, and how do they, would they be effected on Aboriginal titles? And the second question has to do with the proposal going forward in the consultation process where you talk on the shared decision-making and how does that fit with Madame Justice McLaughlin secured in Haida in no veto in the consultation process?

Dr. Danesh: The second one first. One has to consider that Tsilhqot'in changes Haida. The principles of Tsilhqot'in effect Haida directly in the following way. Haida articulated a spectrum idea, which was the higher the strength of claim of title and the greater the potential infringement the higher the scope of the duty. While the Crown is engaging properly and receiving information concerning the potential existence of title, based on Tsilhqot'in, there's going to come a point in time that the Crown would have to be considering to itself, "wait a minute, I may not have any jurisdiction here to do anything." Because the information might clearly illustrate that the case of title is quite clear, quite strong, and so for the Crown to act honorably, there's be going to be some point in time, if they're engaging properly, which is on the premise that I'm not necessarily willing to admit. But if they're engaging properly, there's going to come a point in time where they would have evidence for them that they may have come to, or back off risk damage claim to both industry and to themselves for taking any action. So the reality is that the principles from Tsilhqot'in and the principles from Haida are going to have to be read together. And when you read them together, the Crown is doing what they intended to do under Haida, then there is some point in time that to not seek consent and receive it and to act, Creates great risk of an unlawful action leading to damages going forward. So you have to use them together certainly, that's the best reading of the case that we have. Did you want to add anything?

Douglas White: I want to simply add that it's easy to consider the fact that in Haida, the court was dealing with some kind of imperfect knowledge about the existence of Aboriginal title or not. And, and how to, how does government how does First Nations, how does industry, how do they operate? And, how do they work together in that situation where, where undetermined knowledge about Aboriginal title. And so in that framework Justice McLaughlin made a comment about no veto, but let me go back to Delgamuukw for you. Justice Lamere talked about the potential for the need to consent in relation at the time when there is recognized Aboriginal title. That there very well may be clear consent with First Nations and decision making processes.

² This section is not an official verbatim record.

Dr. Danesh: And on the land title registry question, I was actually in a meeting yesterday with our friend here. He actually has been doing much more hard thinking about it than we have. So I'll turn it over to him on that one.

Frank Brown: Actually, I'd like to make a comment on the proposal in general. I think that we were in negotiations with the Crown when the Williams decision came down and quite honestly, they looked like a deer in the headlights of an oncoming semi-truck. And in the midst, the Deputy Minister of Forests asked "What are the implications?" because if clearly the decision was that the decision didn't have jurisdiction or control much like in Gladstone? With DFO and because I'm involved, I was involved with the Heiltsuk community committee for Bella Bella. And what it said in that decision was just because DFO assumed jurisdictional control didn't mean that there was any extinguishment of the Heiltsuk right to harvest and sell seafood in Canada. And we established a pre-European contact commerce without doubt, and all the judiciary did which was affirmed what we knew in our heart of hearts. And what we stood by and the wisdom of our Elders and said this is who we are, this is who we've always been, and this is who we will continue to be, by providing guidance to the next generation. This proposal provides recourse to create some economic certainty for the various governments. We said, this is why you have to support this proposal, because if you don't we're talking about chaos, we're talking about anarchy, and bringing the, we're talking about billions of dollars worth of revenue into the provincial treasury and you want some certainty I'm sure. Like the rest of the province of British Columbia. So they looked at it in a different light, and that's the way it's been. The body of case law has been supporting us, affirming what they have always known. Now that we have the opportunity to engage with lawyers and to make our case and you heard him. You know, every time we go to court, we win. But we also know that there's a time for litigation and a time for negotiation. And I think that we have a really solid proposal. And we, you know, we need to be able to level the playing field. And whether it's going to be the necessary good will to get to that point, time will tell. The political and economical winds in the province of British Columbia got changed forever. We cannot continue to exist in the state that of denial. Thank you.

(Audience clap)

Dr. Danesh: Just on the land registry point there is some previous case law that says title is not an encumbrance that can be registered under the existing title system. And that, I can't remember with what year that those decisions are from, so you know, I don't think the Tsilhqot'in necessarily changes the nature of the registry system itself. But it speaks to a whole different category of property interests that is vast. You know the type of work Frank is doing in terms of finding a way to get a database to organize and structure information about that. How do people interact is, still some of the unresolved issues like the fee simple land claims verses title underline it. What that relationship is, we don't really know yet. Tsilhqot'in did not delve into that detail because it wasn't for him in a direct sense. So we don't really know more than that.

Dan George: Thank you. Any other questions?

Bernie from Soda Creek Indian Band: I noticed on your engagement model, you talked about shared decision-making. Say you have the Department of Fisheries and Oceans, a user to the Fraser River and First Nations who disagree with that. So you have one side agreeing and the other side not agrees. What were your ideas to use on shared decision-making?

Dr. Danesh: Shared decision making is the concept framed in the New Relationship document that is short of the implication of the Tsilhqot'in case which is the province, you wouldn't even use a federal example, but the province, wouldn't have a decision-making role to play. What it is, is, the reconciliation discussion that would take place. Let's take your example of you know, the province's view for example, of shared decision-making, is engaged in talking to each other prior to the Crown making the final decision. That's how they continue to define it. That is clearly not the view of sharing decision-making that is advanced by the First Nations Leadership Council and so forth, in defining what it means. What it would mean in my view, is it has to be a situation where the decision of the First Nation involved, whether the First Nation chooses to issue permits formally, or however it may look. That to go forward on an action, there has to be if it's the two decision-making model there has to be a consensus decision from both, from all decisions makers involved, and if there isn't, then it doesn't go ahead. If it's the joint decision-making body, then you've just formalized that. So if you have a Fraser River decision-making authority and it has 12 First Nations seats, and 12 non-First Nations seats, and they function in a certain way, and they collectively make the decisions. Then that is a shared decision making model. If you had the third model, the third model is you could have certain spheres of activity where, going back to this point, you could be so clear that in this scenario or in this issue, that the title claim is so strong that it could be First Nations jurisdiction fully there, and they're simply assumingly full decision-making authority in other areas. Of where going back to claim, it's so clear that on this claim, on this issue, that the title claim is so strong that it could be First Nations consultation and they're simply ?? Those are the three models. So what I mean when I say those phrases and categories, I don't mean engagement towards a unilateral ground decision. I mean recognition based decision making, which is, there's more than one decision making authority, and there has to be a clear mechanism for both those authorities to be fully respected. That's what I understand.

Frank Brown: We're not there yet. Clearly we're not there yet. I had referenced the Gladstone decision. Our rights recognized by the Supreme Court of Canada to harvest and sell seafood. We've been in process for the last decade trying reconcile our commercial Aboriginal rights. And there is still a state of denial that exists because industry is driving the agenda. And we have advised DFO, we have advised industry in no uncertain terms that you, we have to protect these herring resources, these stocks. But it's a sad fact the herring stocks on the Queen Charlotte Islands Haida Gwaii. The herring stocks in Nuuchahnulth territory on the west coast of Vancouver Island, they're not healthy, they're below cut offs there, so therefore there's no fishery. Last year we only got 50,000 of our 250, 000 lb quota. For five years we've been telling these people "give it a break." We're not saying don't fish. We're saying let the stocks get healthy, then we can all fish. We consider ourselves to be the stewards of this resource. It got to a point where as a community we had to go out on the grounds. We talk about shared decision-making. We went through their process. We talked to 3 or 4 different Ministers of Fisheries, and finally the community said we're not going to put up with this anymore. The shared decision-making involved us not only standing up for the herring stocks, but standing up for ourselves. To say we're not allowing you to come in here and decimate these stocks. Because we live here and we'll continue to live here. We're trying to design a system that could be more effective--a protocol. A system that will help to address these issues but we're not there yet. And so we have to be ever diligent. We got a commercial Aboriginal right and there is a state of denial, and nobody is just going to give it to us. We have to go and take ours, but we have to be disciplined. We have to be thoughtful in our actions as we move forward. We have to be strategic because we're talking about splitting up the pie whether it's biomass allocation of fisheries, whether it's AAC on forestry, whether it's mining we, we're coming to the table. Thank you.

Dan George: I think there's one comment I would make on that is, just to support what Frank's saying. That we're not there yet, and if you look at decision-making or jurisdiction, jurisdiction on a continuum, right. On one hand you have administration, then you could have management decisions or full on regulatory legislative responsibilities and authority. Where do we want to land on that continuum? What is important to us? What is critical to our title, and our rights and our identity? What do we have? What do we have in terms of capacity to be able to occupy the field? What access to systems, what access to technologies? So if you look at it as a continuum, you have the ability to place joint decision-making on that continuum, you have the ability to place the two decision-making model spoken about by the gentleman this morning, or the clear jurisdictional spheres. So I think it's a work in progress. I think through our collective experience here, we are all at different places on that decision-making continuum.

Norm Leech: Recognizing the success of First Nations pattern in Supreme Court cases, the Supreme Court of Canada, I just want to remind people that it's not the Supreme Court of Tsilhqot'in, nor the Supreme Court of Haida that's making decisions on these court cases. It's the Supreme Court of Canada that's deciding in our favor. But also, recognizing the language that gets attached; titles, rights, jurisdiction, all these things have legal definitions that are clear cut in boxes. Now part of the conflict is First Nations worldview verses the other worldview, and we've been very successful in adapting ourselves to this others' worlds view. This other justice system, but is the time coming when we start, as I propose, adapting technology to our world view and moving it forward from that perspective. To start taking more control of the language and the definitions attached. My experience at home is that traditionally we didn't talk about rights. We didn't talk about title. We talked about relationships. We talked about respect, and now some more words are coming: recognition, reconciliation, and the other one that I've come to understand traditionally is responsibilities. We're based on responsibilities. In our worldview we have a responsibility that the Great Spirit, the Creator gave us the responsibility live on use care to protect and maintain our lands in a good way, since the beginning until the end. That's our responsibility. Any rights required to fulfill that responsibility, that's what we have. That's what's given to us. Now responsibilities are more easily shared, share responsibility. Rights end up becoming the conflict whether that's an individual right, whether it's collective rights, whether it's they just end up being, requiring a resolution. Now is there any thought to moving the legal arguments into a new realm, creating new definitions, and new areas of law in fact.

Dan George: Do you have a 30 second answer to that?

Douglas White: Most of the law that we've talked about this morning so far, it's Canadian law about Aboriginal issues. And more and more we're, you know as well as I do and other people in the room, that there's always been decision-making processes internally for Indigenous peoples in this part of the world. That is based on Indigenous jurisdiction, Indigenous ownership, Indigenous relationships with the land and the territory. That has always been basis and the framework in the foundation how we live in the world, how we make decisions in the world, about the way that we use the world and the resources in the world. So when we talk about Aboriginal title we talk about the use of the Supreme Court of Canada courts and the legal systems of Canada. I think what the over all project is to create that space of recognition of the legal frame or the constitutional framework so that Canada will begin to recognize and the provinces will be able to recognize, that Aboriginal peoples do have jurisdiction. There is more and more references to the state of Indigenous legal systems in recent decisions, which implied back to Aboriginal titles, incorporates the right to choose how the land will be used with reference to jurisdiction. So as we, as the legal system catches up with the reality that Indigenous peoples have systems of knowledge in ways of ordering knowledge and the fact that

Indigenous peoples have legal systems as that becomes more and more recognized then that space will begin to blossom more and more internally encouraging the Indigenous peoples to use that system to articulate it in a more meaningful and more importantly, more recognized ways. So definitely when the space is created when Aboriginal titles finally recognize the declared in British Columbia there will be space for that to come to fruition, and we will definitely we making decisions in a very, very different mode at that point. Which will require significant modifications I think to the way that we use technology, the way we analysis what we know about the world, and how that knowledge and analysis with the information are of those decisions we make.

Chief Judy Wilson: My question really is alluding to what were talking about here. What we're talking about; our customary laws, our governments, our land resources, our people, and our language, and our culture. We had those laws in British Columbia before anyone new arrivals came into this country. And as a basis as to where we're moving to, we're connecting with those responsibilities. The provincial jurisdiction and the provincial legislation laws are trying to catch that up, and I sort of alluded to that. We talk about ecosystems. Ecosystems are part of how we do that, and I think in that how we do that evolved in the provincial legislation doesn't cover that. The Aboriginal right policy for our, for the provinces is very outdated. The accommodation consultation policy for the province is very outdated. I think how to attain the Ministry of Forests had their analysis on that, I don't know if very many First Nations have that red book circulating at our tables trying to digest what the Tsilhqot'in case means to us or at least to the government. And in our articulation, you know how do we move with how that legislation, legislation we're trying to draft. But until those ministries are mandated, they're not going to move on anything and is part of the gap I think, in the processes that we're working for. Is how do we have our voice at that table and they're starting to articulate the new mandates that they hand down to ministries. There's inter-agency groups at the higher level, the regional levels, what are they saying about these case laws? And I'm glad that some of our representatives are here today, so they can hear. They can try to understand what does that mean to them when they're doing business. Business has got to change, how they're doing that in Indian country. And how they're taking anything within our territories, the land resources. They have to be able to have us sitting at the table and not just at a table, at that entire decision making table where First Nations need to be. And I think part of that process today is we're talking about technology, but we're also trying to talk about how we move forward, collectively as a nation, and be able to address those specific, key issues that you need change in the province here.

First Nation/Organization	Presenter	Presentation Title
Presentation: Indian and Northern Affairs Canada	Harold Powell, Manager, Federal Provincial Relationships	Understanding the Federal Action Plan on Aboriginal Consultation and Accommodation
www.ainc-inac.gc.ca		

UNDERSTANDING THE FEDERAL ACTION PLAN ON ABORIGINAL CONSULTATION AND ACCOMMODATION

What Did The Supreme Court Of Canada Say?

- The Supreme Court (*Haida and Taku River*, 2004) ruled that the Crown, federal and provincial, has a legal duty to consult and possibly accommodate First Nations, Metis or Inuit communities when the Crown has <<real or constructive knowledge>> of an established or potential Aboriginal Right and contemplates conduct that might adversely affect it.
- The scope and content of the duty will be proportionate to a preliminary assessment of the strength of the claimed right and the seriousness of the adverse effect on the right. Therefore, the duty will be highest when the claimed Aboriginal right is very compelling and the impacts of the proposed project or activity will be severe and permanent.
- In *Mikisew Cree* (2005), the Court recongized a similar obligation to consult when the Crown proposes to <<take up>> treaty lands for specific purposes.
- In all cases, the duty is grounded in the <<Honour of the Crown>>; does not apply to industry and does not confer upon Aboriginal groups a <<,veto right>> as the Crown can make decisions based on societal interests other than Aboriginal interests.

How Important Are These Decisions?

- They represent a significant <<turning point>> as Court expanded circumstances where the Crown has a legal obligation to consult and possibly accommodate First Nation, Metis or Inuit communities.
- The duty to consult may be triggered by a federal approval, license, permit or any other federal activity that could affect Aboriginal and treaty rights whether it be with regard to large or small scale projects.
- Judges may possibly strike down consultation practices, which may halt approvals, thus creating uncertainty to many economic development initiatives that can benefit Aboriginal communities.
- Concerted effort required to bring about effective change because,
 - conflicting interpretations on the scope and meaning of the duty results in considerable uncertainty which:
 - affects government initiatives and decision-making processes
 - creates tension and difficulties with First Nation, Metis and Inuit groups, Provinces and Territories, and Industry;
 - band Councils are experiencing “consultation fatigue” as many are overwhelmed by large number of consultation requests;
 - governments need to bring about increased consistency, efficiency and effectiveness of process and outcomes;
 - the legal duty to consult may be triggered in situations where a parallel consultation process is also required under a statutory regime (e.g. CEAA).

- Federal departments have their own mandates in how to deal on Aboriginal Peoples, there is room for improvement in that area.

Canada's Response To The Court Decisions

- Since November 2004, Canada has been implementing a three-pronged strategy:
 1. engage with representatives of First Nation, Metis and Inuit groups in discussions aimed at understanding their position regarding the development of a federal policy on consultation;
 2. inform federal employees of these decisions and related implications;
 3. open dialogue with provincial/territorial officials to better understand each other's perspectives and to, whenever possible, coordinate our respective consultation and accommodation approaches.
- This strategy has been undertaken by INAC and Justice Canada together with representatives from 14 other federal departments and agencies.
- In the spring of 2005 a working group was created in Ottawa. Out of that came how to consult with First Nations from a federal perspective.
- In the fall of 2006 and the spring of 2007, preparatory discussions were conducted across the country. The First Nations Leadership Council was initially involved, then dropped out due to business reasons.

Challenges

- Amongst numerous challenges, the following are particularly important
 - How to ensure that departments/agencies inform each other of their "real or constructive" knowledge of established and potential Aboriginal and treaty rights?
 - How to ensure that the "strength of a claim and severity of the impacts" analysis is carried out properly over thousands of projects or activities annually?
 - How to ensure consistent consultation practices across departments and agencies?
 - How to ensure that consultation activities are better coordinated when both a federal and provincial duty of consult are triggered?
 - How to ensure that discharging the duty to consult facilitates Crown/Aboriginal reconciliation while not delaying investment in communities in need of employment opportunities?

NEXT STEPS

What Does The Action Plan Consist Of?

- On November 1, 2007 the Government of Canada issued a Communique announcing a federal Action Plan on First Nation, Metis and Inuit consultation and accommodation. In particular the Plan consists of the following concrete measures:
 - Create a repository for information on location and nature of potential or established Aboriginal and treaty rights;
 - Establish mechanisms to coordinate and monitor government-wide consultation practices and accommodation precedents;

- Develop policy positions to address many legal and policy gaps and engage with Aboriginal groups on elements of such a policy;
- Meet with Provinces, Territories and Industry groups to discuss elements of the policy;
- Release interim guidelines to officials, provide related training;
- Set up a small Interdepartmental Team to implement the Action Plan.

Developing of the Action Plan: Expected Results

- The Action Plan is expected to:
 - assist in reducing departmental inconsistencies and precedent setting by cutting across all departments and agencies;
 - ensure that First Nation, Metis and Inuit groups are engaged in a dialogue aimed at developing Canada's policy positions on issues of importance to them (e.g. funding their participation at consultation exercises);
 - allow Canada to facilitate coordination with other related federal activities (e.g. Major Projects Management Office, Canadian Environmental Assessment Agency) and provincial and territorial activities;
 - inform all stakeholders, including provinces/territories, Aboriginal groups, industry and the courts that Canada is taking its duty to consult seriously and in working collaboratively towards finding a lasting solution to the consultation and accommodation challenges.

CONCLUSION

The one-day workshop was filled with information that was stimulating and valuable for participants, FNTC and ILMB. The presentations were well balanced with a history of collective collaboration, new alliances, technologies, challenges, and information from First Nations, industry and government perspectives. The legal update gave concrete information surrounding new decisions and their effects post-*Haida*, post-*Tsilhqot'in*, and implications of the UN Declaration on the Right of Indigenous Peoples. It was evident and reiterated that common themes recurred throughout the various presentations. Clearly, First Nations are not only being proactive in their approach to using technology for building their governments and cultures, but they are actively determining their future in the political context through assertion of their Aboriginal rights and title.

Since the workshop and the FNTC Conference in February, the FNTC has signed a Memorandum of Understanding (MOU) with the ILMB that commits the parties to work together in the spirit of true partnership built on mutual respect, open communication and honesty for the benefit of First Nations in BC. The purpose of the MOU is to provide an on-going working relationship between ILMB and FNTC. Some of the collaborative initiatives that currently under way include:

- A User Needs Assessment (UNA) of First Nations needs for BC resource information access through the proposed ILMB GeoBC First Nations Portal. The UNA survey was completed by over 100 BC First Nations between February and March 2008, and a focus group session was held in Vancouver in early March 2008 with over 15 key representatives from BC First Nations. A report of the UNA will be released in the near future, which will be available on the FNTC website;
- An environmental scan of resource information activities, and identification of gaps, that will result in a strategic plan to build resource capacity in First Nations communities;
- E-Services in the area of resource management to be developed by BC for the benefit of BC First Nations

A Steering Committee (made up of representatives of ILMB and FNTC) is being formed to foster horizontal and vertical communication and collaboration, set strategic priorities, authorize and support working group initiatives.

As technology changes, so will the need for improved policy and legislation for all aspects of gathering, storing and accessing natural resource information. It is work that both First Nation communities and the government of BC, as well as industry, will have to address. Only through collaborative efforts will all parties be able to develop new institutions for shared decision-making and respect for jurisdictional authorities. Much work has already begun that requires the commitment of communities, leaders and those interested in building a new relationship between First Nations, government and industry. We are looking forward to a mutually beneficial evolution of information management for natural resources.

Participants

FIRST NATION / TRIBAL COUNCIL	TC MEMBERS	CONTACT
Adams Lake		Steve Murphy Art Michel Avis Denault
Cariboo Tribal Council / Northern Shuswap Tribal Society	Canim Lake, Canoe Creek, Soda Creek, Williams Lake	Edna Boston
Carrier Sekani Tribal Council (CSTC)	Nadleh Whut'en, Nak'azdli, Saik'uz, Stellat'en, Takla Lake, Tl'azt'en, Ts'il Kaz Koh & Wet'suwet'en	Jamie Sanchez Marlene Flannery Alim Karin
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Esh-kn-am CRM Services		Brenda Aljam Rebecca Shackelly
Esketmc		Fred Robbins
First Nations Technology Council		Sue Hanley
FNTC		Murray McNeil
Haida Nation		Marguerite Forest
Heiltsuk Tribal Council	Heiltsuk	Jennifer Carpenter Frank Brown Victor Jackson Rob Johnson
Hesquiaht		Lisa Sabbas
Kamloops Indian Band		John Jules
Kelly Lake Cree Nation		Jennifer Morrison, Laurian Calliou, Priscilla Calliou
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K'omoks First Nation		John Munro

Kwakiutl District Council	Kwakiutl, Mamalilikula- Quye'Qwa'Sot'Em, Da'Naxka'xw, Gwa'Sala- Nakwaxda'xw, Tlatlasikwala, Quatsino, We Wai Kai, We Wai Kum, Kwiakah, Comox	Ken Barth
Kwicksutaineuk-ah-kwaw-ah- mish		Bob Chamberlain
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Mowachat/Muchalaht		Mel Orecklin Ben Jack
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Musqueam		Fran Guerin
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Nazko First Nation		Bernice Cremo

Neskonlith		Judy Wilson
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Nisga'a Lisims Government	Gingolx, Gitwinksihlkw, Laxgalts'ap, New Aiyansh	Wilf Blonde
Nlaka'pamux Nation Tribal Council	Ashcroft, Boothroyd, Boston Bar, Kanaka Bar, Lytoon, Oregon Jack Creek, Skuppah, spuzzum	Tawnya Durant
Northern Shuswap Tribal Council		Edna Boston
Nuu-chah-nulth Tribal Council	Ahousaht, Dididaht, Ehattesaht, Hesquiaht, Hupacasath, Huu-ay-ahy, Ka:'yu:'k't'h/Che:k:tes7et'h, Mowachaht/Muchalaht, Muchatlaht, Tla-o-qui-aht, Toquaht, Tseshaht, Uckucklesaht, Ucluelet	Celeste Haldane
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Okanagan Nation Alliance	Lower Similkameen, Upper Similkameen, Okanagan, Osoyoos, Penticton, Westbank, Upper Nicola	Gwen Bridge

Oweekeno-Kitasoo-Nuxalk Tribal Council Wuikinuxv, Nuxalk, Kitasoo		Debbie Nelson
Penticton Indian Band		Amadeus Mozart
Saulteau First Nation		Monica Rice
Seabird		Jay Hope
Shuswap Nation Tribal Council	Adams Lake, Bonaparte, Kamloops, Little Shuswap, Neskonlith, North Thompson, Skeetchestn, Spallumcheen, Whispering Pines	Crystal Simon
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Squamish		Chrystal Nahanee
Stellat'en		Roselita Louis Juanita Heron
Sto:lo Nation Council	Aitchelitz, Lakahahmen, Matsqui, Popkum, Skawahlook, Skowkale, Shxwha:y, Sqaiala, Sumas, Tzeachten, Yakwekwioose	Valerie Sam
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T'it'q'et		Norm Leech

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Treaty 8	Blueberry River, Doig River, Fort Nelson, Halfway River, Prophet River, Saulteau, West Moberley	Leeana Rhodes Stephen Kilburn
Tsawataineuk		Dawn Nicholson
Tsesaht		Darrell Ross
Tsi del del		Otis Guichon
Tsilhqot'in National Government	Tl'etinqox, Tsi Del Del, Esdilagh, Yunesit'in, Xeni Gwet'in	San Zirnhelt Gene Cooper
Ucluelet		Iris Frank Richard Mundry
Ulkatcho		Betty Squinas
Williams Lake		Cody Williams
Yekooche		Wendy Drummond Mitchell Joseph
WORKSHOP PANEL / PRESENTERS		
Presenter	Neskonlith	Chief Judy Wilson
Presenter	Kamloops Indian Band	John Jules
Presenter	ILMB First Nation Liaison/ Crown Land Planner	Judy Steves
Presenter	Golder Associates	Nola Markey
Presenter	INAC	Harold Powell
Keynote	Doig River Resources	Gary Oker
Keynote	Industry Council for Aboriginal Business	Marlane Christensen
Presenter	Mandell Pinder	Roshan Danesh Doug White
Presenter / Assistant	CSTC	Jaime Sanchez

Presenter	Okanagan Nation Alliance	Gwen Bridge
Organizer	First Nations Technology Council	Sue Hanley
Chair		Dan George
GOVERNMENT		
ILMB		Eamon O'Donoghue Gurdeep Singh Kevin Walker Merima Domazet Insah Khan Ross Douglas Larry Price Richard Mark Melanie Madsen Carole Bjorkman Angela Smith-Rockwell Evert Kenk Al Becker Rob Gowan Nicole Goranko Judy Steeves
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GeoBoreals		Scott Emmons Alim Karim

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Council of Forestry Industries		Gary Crooks
AMEBC		Laureen White
NGO		
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