ASSESSING ALTERNATIVE LAND & NATURAL RESOURCES MANAGEMENT REGIMES AT SHOAL LAKE FIRST NATION NO.40

By

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A Practicum Submitted
In Partial Fulfillment of the
Requirements for the Degree,
Master of Natural Resources Management

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Abstract

The community of Shoal Lake First Nation No.40 is located approximately 160 km east of Winnipeg at the Manitoba/Ontario border. The community was once reliant on the walleye fishery, which accounted for the main economic resource base of the community. The closure of the fishery in the early 1980's has since left the First Nation striving to re-gain a new economic resource base.

Under the present form of the *Indian Act*, the community of Shoal Lake First Nation No.40 is unable to manage their reserve lands and resources as they would prefer. Currently the jurisdiction to manage reserve lands and resources is held by the Government of Canada through Indian and Northern Affairs Canada. Shoal Lake First Nation No.40 is seeking to gain the authority to manage and develop their lands and resources in a manner that would facilitate employment, other economic gains, and sustainability for the future.

With the land and resource needs of Shoal Lake First Nation No.40 in mind, the primary purpose of this study was to identify a feasible land and resource management alternative to the present *Indian Act* and to design a strategy for implementation at Shoal Lake First Nation No.40. As a result, both the proposed Indian Act Optional Modification Act (IAOMA), and the Framework Agreement on First Nation Land Management (FAFNLM) were analyzed and compared in order to determine the feasibility of implementing either or both alternatives at the Shoal Lake First Nation No.40 reserve.

Specific objectives of the study included: describing the present land and natural resources management regime at Shoal Lake First Nation No.40 under the existing Indian Act; identifying and examining the feasibility of implementing alternative land and resources management regimes (IAOMA and the Framework Agreement on First Nation Land Management) at Shoal Lake First Nation No.40; highlighting the strengths and weaknesses of the land and resource management aspects of each regime; and finally developing a strategy for improving land and resources management at Shoal Lake First Nation No.40 through the development of an alternative land management model.

Findings revealed a limited ability of the First Nation to manage and develop on reserve resources resulting from a lack of authoritative power. With the needs of Shoal Lake First Nation No.40 in mind, the Framework Agreement on First Nation Land Management was identified as being the most feasible and beneficial alternative land and resource management regime for the First Nation to pursue. Strengths of the Framework Agreement on First Nation Land Management included the fact that the Framework Agreement was designed by First Nation people, and has been well received by those First Nations currently involved in it. Most importantly, the Framework Agreement can give a First Nation full authority to manage, develop, conserve, and protect reserve lands and land related resources. While IAOMA had applicability to areas beyond resources management, the Minister and Governor in Council remained in the ultimate position of authority.

The alternative land management model that was developed identified ways in which each individual resource sector could benefit from the authoritative powers achievable under the Framework Agreement. The model was created with the present management regime in mind, as well as the problems and constraints tied to it.

Acknowledgments

I would like to dedicate this page to all of the people who helped me to make it through the practicum process, I am forever indebted to you. I could not have completed this effort without the constant support of my family and friends, who may not have known exactly what I was up to, but were always there for me when I needed a hand or encouragement. I would especially like to thank Thomas for being an awesome photocopier, supplier of office essentials, and fan of my dedication and hard work!

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CHAPTER ONE

INTRODUCTION

1.0 PREAMBLE

In terms of natural resources management, the restrictions and limitations that are currently experienced by the Shoal Lake First Nation No. 40 (SLFN No. 40) under the *Indian Act* have been dissatisfying and problematic. In an attempt to improve their position and advance further towards their ultimate goal of self-government, SLFN No. 40 has decided to look beyond the *Indian Act*, for a more appropriate means by which to manage their lands and resources. Both the Indian Act Optional Modification Act (IAOMA) and the FAFNLM offer opportunities to improve the land and natural resources management regime currently in place on the reserve. A strategy for implementing these options at SLFN No. 40 needs to be considered as it could prove to be an essential component of the enhancement of the present land and resources management regime on-reserve.

1.1 BACKGROUND

1.1.1 Shoal Lake (Manitoba/Ontario)

Shoal Lake is divided by the Manitoba/Ontario provincial border, and is located 160 km southeast of Winnipeg at approximately 95° west longitude and 49°30′ north latitude. While the majority of the 286 km^2 lake lies within Ontario, a large portion of both Indian and Snowshoe Bays are contained within Manitoba's borders (Figure 1). The Shoal Lake basin comprises an area of 1003 km^2.

Situated within the basin are seven parcels of First Nation-reserve land, of which two contain settlements. SLFN No. 40 is included in one of these settlements. SLFN No. 40

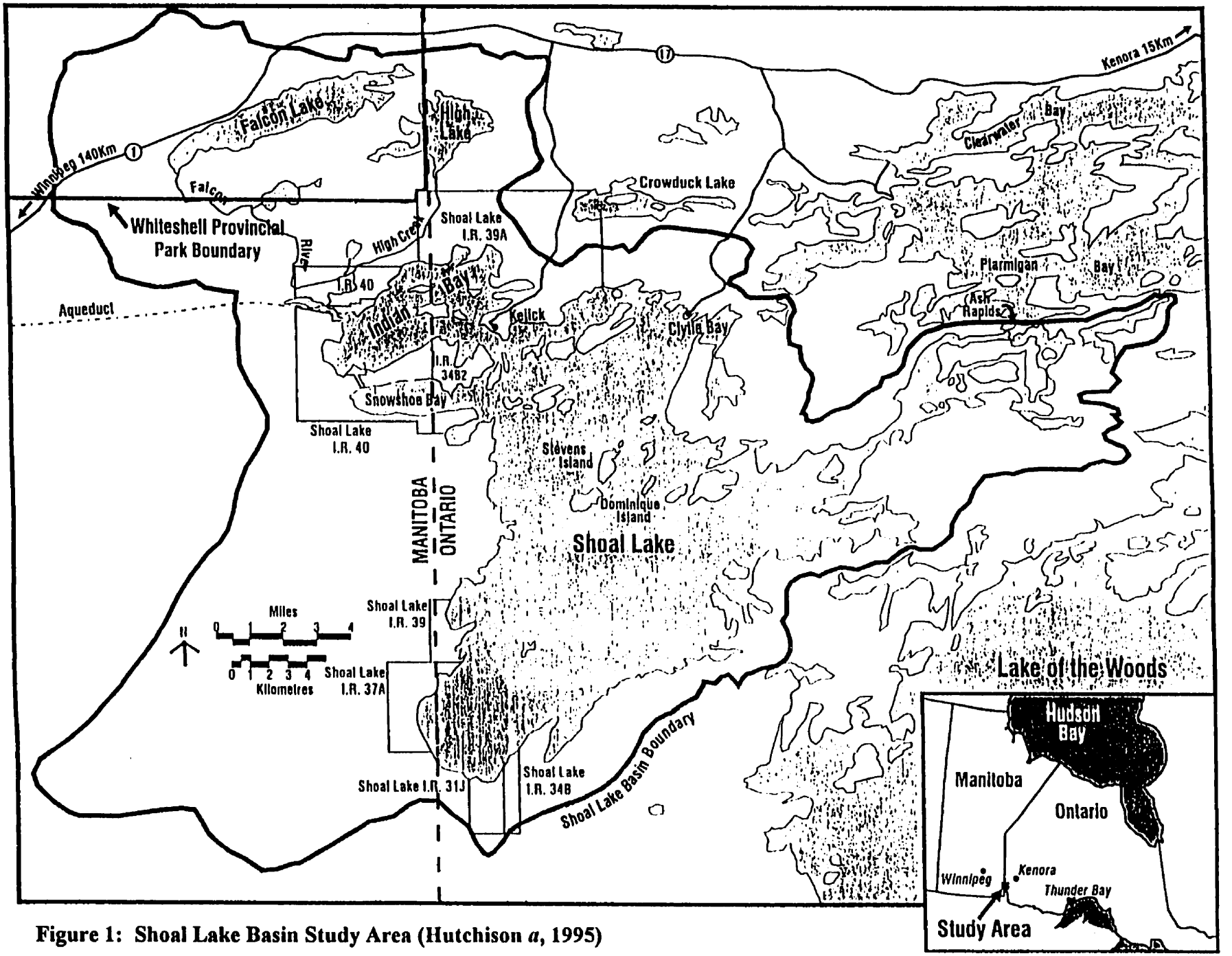

Figure 1: Shoal Lake Basin Study Area (Hutchison *a*, 1995)

residents reside on both I.R.40, which has been provided for their exclusive use, as well as on I.R.34B2 in Ontario, which is a shared reserve provided for the joint use of both SLFN No. 40 and Iskatewizaagegan No.39 Independent First Nation. The majority of residents reside on the much larger I.R.40.

As part of the watershed of the Lake of the Woods, a large lake which extends into Minnesota, U.S.A., Shoal Lake is not only part of an inter-provincial body of water, but an international body as well (Hutchison *a*, 1995; Waterworks, Waste and Disposal Department, 1991; Neskar, 1986).

The Shoal Lake watershed area is a resource rich, yet fragile environment that contains vast water resources, wildlife, fish, trees, and minerals. Past and present aboriginal resource uses in the area include hunting, trapping, fishing, cultivation of manomin (wild rice), and forestry (Neskar, 1986). While these traditional resource uses continue to exist, more recent activities in the area have grown to include mining, water removal and usage for domestic use, and hydro-electric power. Since 1919, water from Shoal Lake's Indian Bay has provided the City of Winnipeg with a quality drinking water supply (Waterworks, Waste and Disposal Department, 1991; Neskar, 1986). Tourism and recreation have also joined the list of more recent resource uses within the Shoal Lake basin. The diversity of resources, natural beauty of the area, and multitude of uses have subsequently drawn a large and varied number of resource users (stakeholders). The large number of stakeholders, the presence of reserve land within the basin, and the inter-provincial nature of Shoal Lake frequently create complications and jurisdictional complexities when it comes to planning and decision-making (Hutchison *a*, 1995; Neskar, 1986).

1.1.2 Land & Resources Management Under the *Indian Act*

Currently, First Nations are governed according to the legislation contained within the *Indian Act*, which dates back to 1876, when it was first enacted (Haugh, 1994: 98). Although the *Indian Act* of today has gone through changes over the years it remains in

many ways outdated and patronizing (Myers et al., 1997; IAOMA Summary, 1996). As First Nations of today grow, change, and strive for independence, the limitations and unwarranted restrictions found under the present form of the *Indian Act*, become more and more apparent.

First Nations of today want to fulfill their inherent right to self-government and obtain the ability to control their own land and resources and make their own management decisions. Currently, however, the authority over First Nation lands and resources resides within Indian and Northern Affairs Canada (INAC).

While some First Nation's have taken on some authority over their lands (section 53 and 60 of the *Indian Act*), this authority is delegated by the Government of Canada. The amount of authority delegated is up to the discretion of the Minister and Governor In Council (GIC). As well, the authority is subject to removal. In actuality, First Nations operating under sections 53 and 60, are really just doing the job of Indian Affairs, which is still ultimately the controlling body.

Frustration over the authority to manage lands and resources in recent years led to the formulation of two separate pieces of legislation. The first piece of legislation was the proposed Indian Act Optional Modification Act (IAOMA), also known as Bill C-79, which was "An Act to permit certain modifications in the application of the *Indian Act* to bands that desire them" (Bill C-79, 1996). IAOMA was designed to improve upon the present form of the *Indian Act* by removing unnecessary, outdated, paternalistic provisions, and by adding new provisions that lead to increased First Nation management power in a number of areas, as well as improving the efficiency of day-to-day band business (Government of Canada, 1997; Myers et al., 1997; IAOMA Summary, 1996; IAOMA Summary of the Bill, 1996). IAOMA was created by Ronald Irwin, the former INAC Minister, to be open to all First Nations across Canada wishing to opt into it.

The second piece of legislation is the First Nation Land Management Act, also known as Bill C-75. This legislation serves to ratify the Framework Agreement on First Nation

Land Management (FAFNLM). The FAFNLM was designed by First Nations for First Nations. The Agreement allows for signatory First Nations to gain complete authority to control and manage reserve lands and resources independent of INAC.

Increased management power gained as a result of implementing either IAOMA or the Framework Agreement may change the way natural resources and lands are currently managed on the reserve. Extended control could allow for easier development of resources, possibly leading to greater economic gains.

1.2 ISSUE STATEMENT

The reserve lands and natural resources contained within it are essential for the livelihood of the people of SLFN No. 40. Under the present *Indian Act*, the First Nation experiences limited management powers and control over its reserve lands and natural resources. Implementation of an alternative land and resources management regime could provide SLFN No. 40 with more power to control the management and development of lands and natural resources and possibly provide the opportunity to establish a greater economic resource base. By gaining more control over lands and resources, the First Nation may also be brought closer to its ultimate goal of self-government.

1.3 PURPOSE

The primary purpose of this study is to identify a feasible land and resource management alternative to the present *Indian Act* and design a strategy for its implementation at SLFN No. 40 through an assessment of IAOMA and the FAFNLM.

1.4 OBJECTIVES

The following objectives were designed to guide the study:

1. To describe the present land and natural resources management regime on the SLFN No. 40 reserve under the existing *Indian Act*.

2. To identify and examine the feasibility of implementing alternative land and resources management regimes (IAOMA and the FAFNLM) on the SLFN No. 40 reserve.

3. To highlight the strengths and weaknesses of the land and resource management aspects of each regime.

4. To develop a strategy for improving land and resources management at Shoal Lake First Nation No. 40 reserve through the development of an alternative land management model.

1.5 METHODS

The research methods that were utilized in order to meet the objectives of this study included a review of related literature and legislation, consultations, as well as selected interviews.

1.5.1 Existing Natural Resources Regime

Determination of the present land and natural resources management regime at SLFN No. 40, as it exists under the present form of the *Indian Act*, required a thorough investigation

of the *Indian Act*. Within the *Indian Act*, the various regulations and limitations applicable to the specific areas of reserve lands and natural resources were identified. The *Indian Act* was used to distinguish which lands and resources activities are and are not legally permissible. As well, the *Indian Act* was used to determine the level of authority that SLFN No. 40 is able to legally exercise in these areas. The current power of the Band Council in terms of by-law making and enforcement, resource harvesting, use, and management was also identified.

Consultation with Chief and Council of SLFN No. 40, as well as interviews, led to the identification of problems, concerns, and issues that the First Nation faces as a result of the legislative confines experienced under the *Indian Act*. How these constraints limited the First Nation's ability to manage lands and natural resources, and engage in economic development was investigated.

Not all First Nations strictly adhere to all of the provisions found within the *Indian Act*. It was therefore necessary to communicate with SLFN No. 40 Chief and Council in order to determine how closely the *Indian Act* is adhered to, what provisions are not followed, or are dealt with in other ways, or perhaps covered under different legislation or agreements.

Interviews and consultations with Chief and Council at SLFN No. 40 were essential for this portion of the study in order to obtain an aboriginal (First Nation Government) perspective on the *Indian Act* and it's relation to on-reserve natural resources management. As well, since the SLFN No. 40 people must live according to the rules of the *Indian Act*, Chief and Council were able to describe how it has affected the community's ability to utilize, develop and manage its reserve lands and the natural resources found within.

Due to the ecological fragility of the Shoal Lake region, and the concern over water quality, resource development proposals prepared by SLFN No. 40 have often been turned down. SLFN No. 40 is also a signatory to two agreements, one of which affects

resources management and development on-reserve. The conditions found within these agreements are of significance in determining what changes and developments can and cannot be undertaken on-reserve.

The first agreement is actually a two part agreement. The first part is an agreement between SLFN No. 40, the City of Winnipeg, and the Province of Manitoba (The Tripartite Agreement). The second part was an agreement between SLFN No. 40 and the Government of Canada and was a provisionary requirement of the first part of the agreement (Hutchison *a*, 1995). The second part of the agreement has expired, leaving only the first part remaining effective. Both parts of the agreement were designed to protect the quality of the water resources found within Shoal Lake.

The second agreement that the SLFN No. 40 is a party to is the Shoal Lake Watershed Agreement. This agreement is held between five Shoal Lake First Nations holding reserve land within the Shoal Lake area and several Ontario Ministries. The Agreement was established in order to develop a watershed co-management plan that included the involvement of the province of Manitoba, and the Government of Canada. This agreement is, however, essentially non-functioning, and does not directly involve the management of reserve lands. It is the Tripartite Agreement which further restricts the ability of SLFN No. 40 to manage, utilize, and develop their reserve lands and natural resources.

It was necessary to examine the agreements, as well as to consult with Chief and Council in order to see how the agreements have affected the First Nation. The extent of the restrictions could then be determined and areas where the First Nation could possibly make beneficial management changes could be identified. How these agreements could potentially be affected by legislative changes, i.e. those resulting from opting into IAOMA, or the FAFNLM were of significance and examined.

Questions were developed, and two separate formal interview based surveys were created and conducted on Chief and Council (see appendices I and II). The first survey contained

questions regarding general background information on the community, the people, and current issues. This survey was necessary as it provided relevant information that was utilized in the description of the SLFN No. 40 community included within Chapter Two. The second survey was designed to cover reserve land and resource management and related issues. This lengthy and detailed survey was designed to ensure that all resource sectors, as well as the issues mentioned in the preceding paragraphs were adequately addressed. The resource survey proved essential to the making of Chapter Three, which provides a detailed description of the present natural resources management regime at SLFN No. 40.

Lawyers were consulted to aid in the understanding of the *Indian Act* and how it pertains to lands and natural resources. Lawyers also aided in the clarification of the legalities surrounding the *Indian Act*, the Shoal Lake agreements, IAOMA, and the Framework Agreement. Legal experts proved to be important in identifying SLFN No. 40's capabilities under present legislative controls, as well as identifying capabilities and changes to the management and development of reserve lands and resources made possible through the implementation of an alternative regime.

Study of the legislation, related literature, and information received through personal communications provided the information required to meet the first objective of this study which was to describe the present natural resources management regime at SLFN No. 40 under the existing *Indian Act*.

1.5.2 *Indian Act* Alternatives

Once the current natural resources management regime under the present *Indian Act* was determined, the feasibility of implementing IAOMA and The FAFNLM was examined and determined. A close examination of the two alternatives was conducted. Consultation with Chief and Council led to the identification of land and resource use problems as well as changes that they would like to see occur through the implementation of an alternative regime.

Study of the IAOMA legislation, and comparison with the *Indian Act* led to the identification of the differences between the two pieces of legislation. The legislative changes involved in the adoption of the IAOMA, and how the implementation of these changes could alter the control and management of SLFN No. 40's lands and natural resources was determined through an assessment of the IAOMA. This assessment was carried out through a detailed analysis of the proposed legislation, an examination of critiques and related literature, as well as interviews and consultations with Chief and Council, INAC representatives, lawyers and other experts.

The FAFNLM and ratifying legislation, the First Nation Land Management Act, were assessed and compared to the land and resources management capabilities under the *Indian Act*. Related literature, information provided through interviews with those involved in the creation of the Agreement and First Nation Signatories of the Agreement, lawyers and other experts, were utilized in the assessment of the Framework Agreement. How the Agreement could be utilized to benefit SLFN No. 40 was identified throughout this investigation. A formal interview was conducted with three First Nation Land Managers involved in the FAFNLM (appendix III). The questions contained in the interview were designed to identify strengths and weaknesses, as well as potential benefits and problems that SLFN No. 40 could face.

After an investigation into each alternative land and resource management regime was completed, a comparison between IAOMA and the FAFNLM was conducted in order to establish which of the two alternatives was the most feasible and beneficial for SLFN No. 40.

Lawyers and other experts were consulted in order to determine what changes to the present land and natural resources management regime would be legally permissible under IAOMA and the Framework Agreement. Advice on the feasibility of certain changes, recommendations as to how to go about best implementing change, and advice as to problems that could potentially arise and situations to avoid was also sought.

The variety of identified sources provided information on what changes the IAOMA and the FAFNLM could allow for, what changes the First Nation would like made regarding the management of their lands and natural resources, as well as the feasibility of those changes. Identification of the best and most feasible alternatives resulted.

In some cases the consultations and interviews that were conducted with the First Nation Chief and Council, officials from governmental departments, lawyers, and other experts took the form of open-ended discussions. In other instances more formal questionnaire/ surveys were used.

Analysis of the legislative alternatives led to the identification of strengths, weaknesses and problems inherent within IAOMA and the Framework Agreement. The identified sources allowed for the inclusion of perspectives from First Nations, government, lawyers, and other experts who have knowledge in the area of the *Indian Act*, IAOMA, The FAFNLM, First Nations law, and land and natural resources management. The objective of conducting a thorough investigation of the identified land and resources management alternatives guided the investigation.

1.5.3 Development of an Alternative Land & Natural Resources Management Strategy.

Once the best and most feasible of the two identified land and resource management alternatives was identified, a strategy was developed for its implementation at SLFN No. 40 which would best incorporate the needs and wants of the First Nation.

Development of the strategy required knowledge of the present *Indian Act*, awareness and consideration of unique circumstances faced by the First Nation (such as the shared nature of I.R.34B2, water quality issues, the Snowshoe Bay Development issue, and the issue of road access, all of which are discussed later in the practicum) as well as an understanding of existing third party agreements and outstanding legal issues. Again,

related literature, interviews and consultations were utilized throughout strategy development.

In terms of land and resources management, the needs and wants of SLFN No. 40 members were carefully addressed and worked into the implementation strategy in such a way as to potentially provide the First Nation with the greatest benefits possible.

1.6 SCOPE

This study includes the analysis of two potential alternatives to the present land and natural resources regime at the SLFN No. 40 reserve. Both the proposed IAOMA legislation and the FAFNLM were analyzed in terms of feasibility and suitability to the community of SLFN No. 40. Aspects of the alternatives not related to natural resources were not included within this study. Although this study is directed towards the implementation of an alternative land and management regime at SLFN No. 40, much of the information provided can be used as a guide to determine how other First Nations may be similarly affected.

1.7 ORGANIZATION

This practicum has been divided into six chapters. The first chapter introduces and outlines the study, and includes background information, a description of the study's purpose and objectives, as well as the methods that were used in order to achieve those objectives. The second chapter consists of a review of related literature pertinent to the study, which includes the history of the region and its original inhabitants, the importance of land and resources to the people, as well as a description of the Shoal Lake First Nation 40 community of today. Chapter Three provides a description of the present state of land and resource management at the SLFN No. 40 reserve. Chapter four takes an in-

depth look into and compares both the proposed IAOMA and the FAFNLM resource management models. Chapter Five contains the strategy for implementing the best alternative identified from Chapter Four (the FAFNLM). Chapter Six, the final chapter of the study, contains conclusions and recommendations. Appendices containing formal surveys and relevant legislation have been included at the back of the document.

CHAPTER TWO

OVERVIEW OF THE SHOAL LAKE REGION

2.0 HISTORY

North America has long been home to indigenous civilizations. Current estimates reveal that habitation by the first aboriginal people dates back to 40,000 years ago. From this time onward populations grew and flourished. Best estimates indicate that in Canada, at the time of first contact with Europeans, the aboriginal population consisted of 500,000 or more people. The aboriginals were organized, sophisticated people who lived off the land and the many resources that it supplied (Royal Commission on Aboriginal Peoples (RCAP) *a*, 1996).

Historically, the aboriginal peoples of Canada, like those of North America, generally formed successful, organized and self-sustaining societies. Aboriginal people had unique spiritual and cultural ties to the land and it's resources, of which they were dependent upon for survival. Until rather recently, it was believed that aboriginal civilizations had little impact on the land around them and were not involved in large scale alterations to landscape or resource distribution and make-up. It is now realized that indigenous peoples had, as Lewis (1982: 3) describes, "a tremendous and decisive influence on several aspects of [their] physical environment." Given this history, aboriginal peoples could truly be considered as the first and original managers of lands and resources in North America. For example, aboriginal peoples used fire to create and maintain specific prairie and forest landscapes. Through burning, the aboriginals were able to create habitat for wildlife, berries, and many other plants and animals. Fire was also used to create and maintain trails, as well as improve the conditions of settlement areas and campsites (Lewis, 1982). Growing, maintaining, and, harvesting of traditional agricultural products such as wild rice (manomin) was practiced, as were hunting, fishing, and trapping. Certain species were utilized for food, clothing, and tools, others

for medicinal purposes, while others still were considered more sacred, and killing these creatures was considered a taboo (McMillan, 1995). Such beliefs and uses definitely affected population make-ups and distributions. For example, in some cultures where the killing of beaver was a taboo, this would definitely impact on the water flows in the region, and definitely be different from a culture who may have traditionally taken a lot of beaver. From these examples, the fact that cultural institutions played a significant role in shaping the lives of aboriginal people becomes apparent.

Aboriginal people could be very respectful of their land and resource base and were spiritually tied to it. The aboriginals were organized, and efficient resource users taking from the land in accordance with social and cultural norms. Sustainability is a term that could be used to describe many aboriginal resource use systems (Chapeskie, 1997; Fisher *a*, 1995). Vennum (1988: 295) describes aboriginal people as having the ability to "[know] how to use natural resources to their fullest without depleting them". Aboriginal management practices of stewardship served to maintain and enhance the diversity of natural resources. Their alteration of the landscape largely through fire, for example improved soil fertility and created suitable habitat for a multitude of animal and plant species.

As Lewis (1996) has noted, aboriginal people did have significant affects on the landscape and resources, however, not to the destructive and disruptive extent as the European settlers through their culture of resource use. The differing impacts that aboriginal and non-aboriginal societies have had on natural resources largely stems out of two very different world views and management systems. The principle of equity to resource access and distribution has led aboriginal societies to live sustainably through fostering cooperative access to local resources. By contrast the more competitive and hierarchical nature of non-aboriginal societies has led to the diminution of biological diversity and ecosystem resilience resulting from attempts to maximize yields of a narrower range of resources (Chapeskie, 1996).

Throughout Canada, the Indian people were part of political systems through which numerous societies or tribal nations governed their affairs. Commercial alliances and trade were also practiced by these First Nations. Forest trails were used for trade and travel, as were rivers and other water bodies. Geographical features such as rivers and lakes also served as boundaries between tribal nations (RCAP *a*, 1996)

2.1 The Anishinaabe

At the time of European contact, the aboriginals of the Shoal Lake area, were of the Salteaux Ojibway culture (Figure 2). The word Salteaux is a derivative from the French word Saulteurs, which translates as 'people of the rapids'. The rapids referred to are those of Sault Ste. Marie, the area from which the original Salteaux Ojibway people are said to have originated (McMillan, 1995). Many of the Ojibway people located in the region around Lake Winnipeg in Manitoba, and Lake of the Woods in Ontario are of Salteaux Ojibway origin (McMillan, 1995). While Ojibway is a correct term, and the term used to describe the ancestry of the people in Figure 2, First Nation people prefer to use the term Anishinaabe to describe their people.

The Anishinaabeg were the ancestors of the present day Shoal Lake First Nations people. Living in proximity to abundant water resources, the Anishinaabe people were skilled fishers and planters and harvesters of wild rice. The abundance of natural resources in the area provided the people with all of the requirements needed for a healthy and sustainable existence (Hutchison *a*, 1995).

The Anishinaabe people have been divided anthropologically and jurisdictionally in Canadian law into 'bands', each of which was politically independent from the next. Bands were connected by common traditions and kinship. Each band had its own leader as well as its own territory (McMillan, 1995). The society established by the Anishinaabe people was divided into clans or grand families. Each clan was represented by a totem or clan symbol. Such totems were symbolized by a particular animal, bird, fish, or reptile, which was used to represent and signify a particular clan (McMillan,

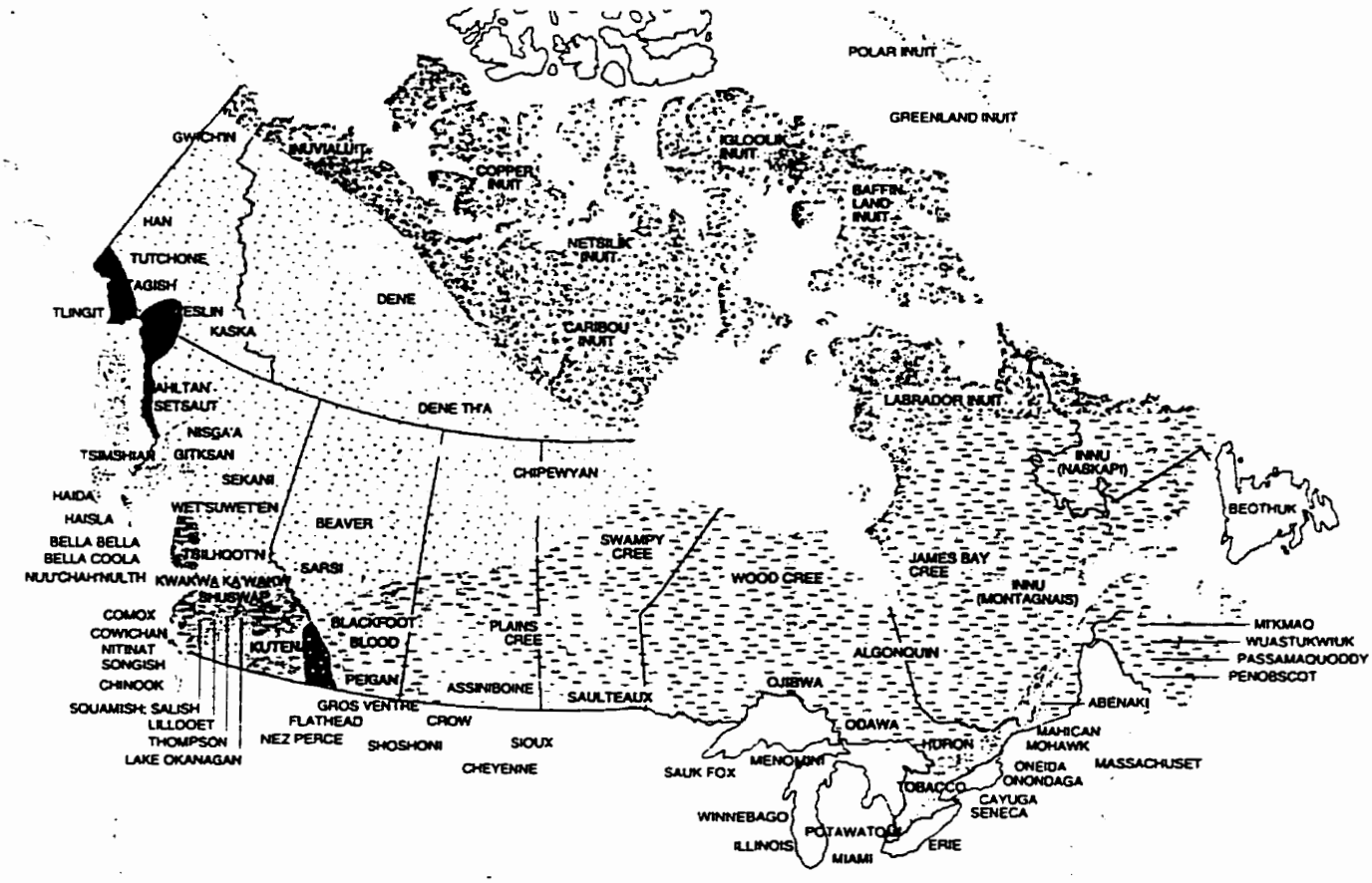

Figure 2: Tribal Distribution of Aboriginal People in Canada at the Time of Contact (RCAP *a*, 1996)

1995). The Anishinaabe traditional systems of governance was very different from the Chief and Council Band system that has been imposed on First Nations by INAC. Unlike the colonial system of governance that is hierarchical and serves to concentrate power in the hands of a few people, traditional Anishinaabe systems of governance were not systems of "commanding leadership" (Fisher, 1996: 4). Anishinaabe systems of governance were more along the lines of partnerships, or as Fisher (1996: 5) has described, as people getting along by working together by sharing their knowledge, customs and spirituality. Traditionally, all Anishinaabe people within a community assumed similar levels of deference and respect toward each other. The imposition of the Chief and Council system has in many cases served to reduce equality amongst First Nation members. Quite often the people in government accumulate wealth and decision-making power, while the people over whom they govern are faced with poverty and an inability to influence change (Boldt, 1993).

Traditionally the Anishinaabe lifestyle was based on sustainable hunting and fishing, as well as gardening and the collection, seeding, cultivation and harvesting of plants including berry patches, maple trees and manomin (RCAP *c*, 1996). The Anishinaabe had specific spiritual ties to the land, and a unique relationship with the land and resources. Traditional customary and spiritual practices governed the way the Anishianaabe people utilized the land and resources (Fisher *a*, 1995; Fisher *b*, 1995). McMillan (1995) provides a detailed description on the traditional lifestyle led by the Anishinaabe people.

Throughout history, aboriginal people had managed their lands and utilized the natural resources contained within in accordance with their traditional, cultural and spiritual beliefs and practices. The traditional ways, resource uses, and ranges of the Anishinaabe people dramatically changed with the coming of Europeans to Canada, and the establishment of the fur trade in the 1600's. In the early 17th century, the Europeans came to Canada in search of fur, especially that of beaver, which happened to be in vogue in Europe at the time. Driven by the desire for European goods, the Indian people used their hunting and trapping skills to obtain abundant amounts of furs. Furs were traded

with the Europeans for enticing goods such as cloth, beads, kitchenware, tobacco, tea, sugar, lard, flour, and alcohol. These goods were used by the aboriginal people and in many cases replaced the traditional native implements such as bone, hides, rock, and wood. Although many of the goods helped to improve native lifestyles, the influence of alcohol upon the Indian people had devastating effects and is well documented (McMillan, 1995; Miller, 1991). Problems including dependency, addictions, and abuse resulted (McMillan, 1995; Miller, 1991). While traditional aboriginal hunting tools became replaced with those of the Europeans, and a shift to a more European diet resulted from European influence during the fur trade, traditional hunting practices, the belief in stewardship over the lands and the spiritual ties that the Indian people had with the land, have as Berkes (1989: 79) described, "survived colonialism". Chapeskie (1997) has also noted that many Anishinaabe customs continue to "guide their livelihood activities on the land".

The traditional use of animals for food, clothing and tools, allowed for the existence of healthy and abundant animal populations. Under the pressures imposed by the Europeans, over-harvesting occurred leading to the demise of animal populations. Berkes (1989) has described, wildlife/hunting resource systems, such as the system exemplified by the Anishinaabe people, as cyclical and able to adapt and recover from external disturbances such as the European fur trade. Berkes's (1989) work has shown that not only did animal populations show resiliency to colonial pressures, but traditional aboriginal hunting practices remained resilient as well, allowing for system recovery following external pressures, whether natural or colonial in nature.

As the European demand for furs subsided, and the wildlife/hunting system began to recover, a new demand arose. This time it was the demand for land, a necessary requirement for the European settlement of North America. Now the Indian people faced displacement from their own lands.

2.2 Royal Proclamation, 1763

The Royal Proclamation of 1763 was made in an attempt to alleviate mounting tensions between aboriginals and Europeans, as well as to strengthen the relationship between the Indians and the British Crown. The Royal Proclamation of 1763 as described by the Royal Commission on Aboriginal Peoples (*a* 1996: 260) was, "a public proclamation confirming the nature, extent and purpose of the unique relationship that had developed in North America between the British Empire and Indian nations." The Royal Proclamation had two main purposes behind it. The first purpose was to distinguish between and separate Indian lands from those lands which had become British colonies. The Indian lands to which the Proclamation referred, were reserved for the exclusive use, occupation, and possession of the Indian people and could be surrendered only to the Crown. These lands were under the care and protection of the British Crown.

The second purpose of the Proclamation was to institute a procedure designed for the purchasing of Indian lands for development and/or settlement. This system of Indian land purchase was designed to eliminate problems of fraud. Such frauds acted to damage relations and trust between the Indians, European settlers, and the British Crown (RCAP *a*, 1996).

It was out of the Royal Proclamation that the many land treaties emerged, allowing for the British Crown to extinguish aboriginal title over much of the land. Within the Proclamation, the term "aboriginal title" came forth, and was to be distinguished from the quite dissimilar term of "proprietary title". Within proprietary title was included the legal right of ownership and usage; such was not the case for aboriginal title.

Although the Crown provided the native people with reserve lands and recognized their usufructory rights to reserve lands in the process of treaty making, the ownership and control of the reserves belonged to the Crown.

2.3 Treaties

Long before the arrival of Europeans, aboriginal nations in North America had been making treaties with each other for reasons of alliance, land and resources usage, protection, peace, neutrality, and trade. Treaties and other agreements between aboriginal nations were often, but not always constituted in an oral fashion. Oral pledges were accompanied by symbolic acts which were conducted in recognition of the obligations and commitments of the involved parties. The earliest European arrivals made treaties with the Indian people over matters such as commerce and trade, law, peace, friendship, and alliance. Later land cession treaties were signed, and title to aboriginal lands was considered to be surrendered by the Indians in return for obligations from the Crown, which included the establishment of Indian reserve lands and protection of the Indian people (RCAP *a*, 1996; Bartlett *a*, 1991).

Bartlett (1991: 39) described the settlement and development of Canada by the Europeans as being made possible through treaties made with the aboriginal people. According to Haugh (1994: 94), treaties "entrench a legal relationship between the Crown and aboriginal people." The signing of such treaties placed a fiduciary obligation upon the federal Crown in regards to the aboriginal people involved.

The Anishinaabe people of the Shoal Lake region signed into Treaty 3, the Northwest Angle Treaty of 1873 (Figure 3). Treaty 3, which includes lands in northwestern Ontario and southeastern Manitoba, is one of the numbered treaties which was created to meet the demands of land and development required by the European settlers in Canada (Bartlett *a*, 1991). In return for the sharing of the land that allowed for the settlement and development of the European people, the aboriginals wanted to be left with enough land and resources to ensure the present and future survival of their people (Bartlett *a*, 1991).

Problems associated with interpretation and understanding of the meaning of treaties often occurred between the European and Indian parties. The differences stemmed largely from the very different cultural, historical, political and religious backgrounds of the two sides. The treaty making process involved the use of both oral customs and

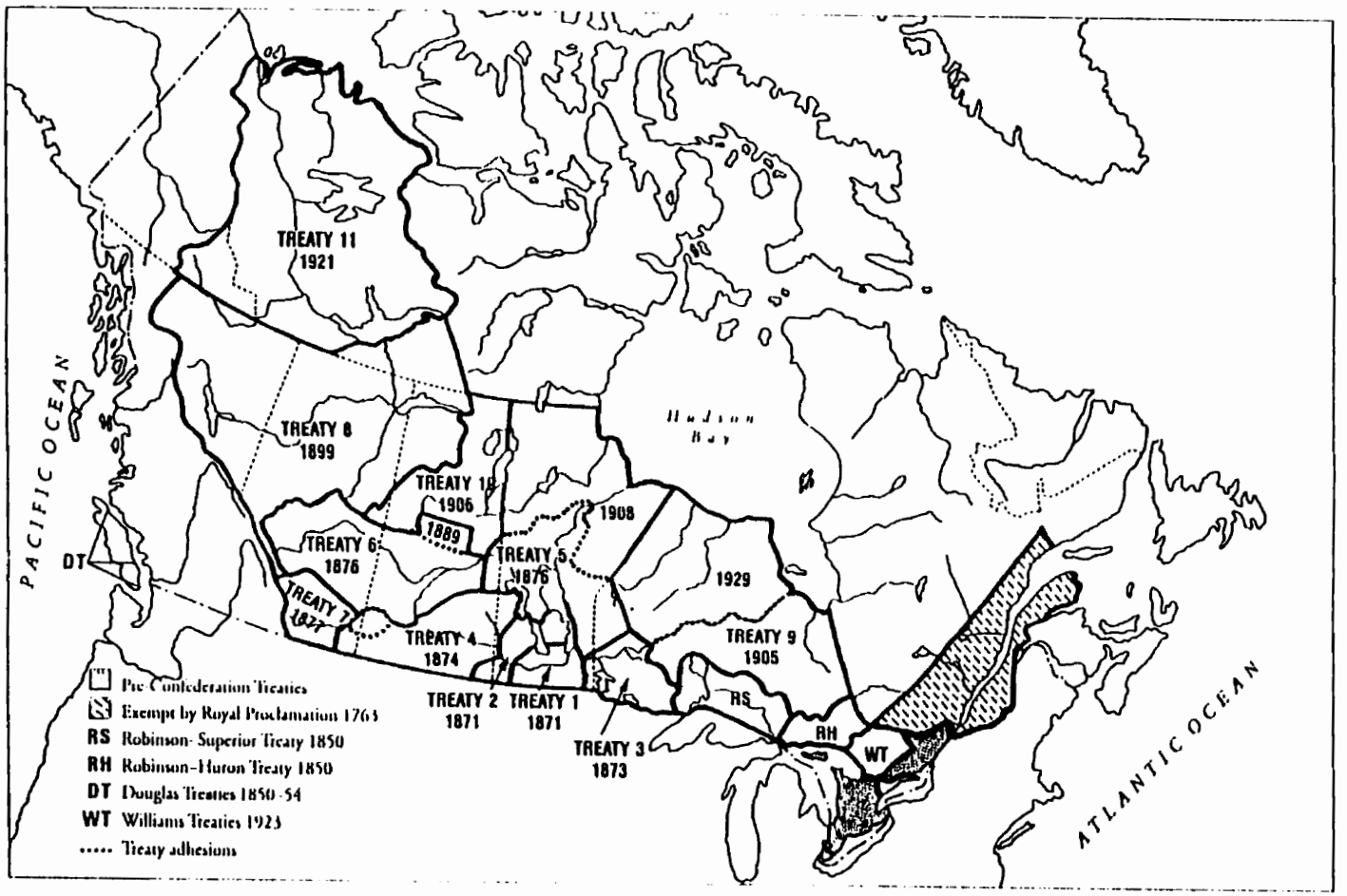

Figure 3: Treaty Areas in Canada (McMillan)

written documentation. While the aboriginal culture focused upon the oral meaning of the treaties, the Europeans were only concerned with what was contained within the final written treaty document. It is now believed that the written documents do not contain the entire agreement, and certainly do not contain the treaty agreements as they were understood by the aboriginal people who signed them. Had the aboriginal signatories been fully aware of the legal and political implications that the treaties would later have on their people, the treaty making process may not have proceeded as it did. While the Crown was fully aware of their treaty obligations with the First Nation people, the obligations that they were going by were those written in the text of the treaty document, and not the obligations that were orally understood and agreed to by the Indians. By not honoring these oral obligations, the Crown has been accused by First Nation people as breaching their Treaty obligations to the First Nation people.

The land treaties, as they were understood by the aboriginal people who signed them, were treaties of partnership with the Crown. They were treaties by which the Indian people agreed to share their lands and resources with the European settlers. As RCAP (*a* 1996: 174) describes, First Nations were willing to share their land base "on the condition that they would retain adequate land and resources to ensure the well-being of their nations". It was also understood by the First Nations that the treaties allowed for the continued maintenance of their traditional lifestyles, including their aboriginal laws, customary ways, and resource harvesting practices (including hunting, fishing, trapping, and plant harvesting activities). It was also understood that in return for their sharing of lands and resources, compensation would be received through annual annuities and provisions of goods (RCAP *a*, 1996: 174).

The written treaty documents do not tell the same story, or provide the same interpretation that was understood by the aboriginal people through their oral agreements with the Crown. Within the written treaty text, aboriginal peoples were not seen as partners of the Crown, but as subjects, or wards of the Crown (RCAP *a*, 1996: 175). As subjects of the Crown all rights and titles to the land were removed from the aboriginals

and placed in the possession of the Crown. According to Treaty 3, of which SLFN No. 40 is a signatory,

> "The Saulteaux Tribe of the Ojibbeway Indians and all other Indians inhabiting the district hereinafter described and defined, do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges whatsoever, to the lands included within the following limits..." (Treaty 3: 3).

These written surrenders of title and rights which appear in Treaty 3, and in other Treaties as well, were not at all what the First Nation signatories agreed to. According to Cardinal (1977: 148) "the only things that we agreed to do was to live in peace with the white man, and to share with him the available land so that he could come into this country, and bring his livestock, and support his families". Cardinal (1977) goes on to say that despite what the written treaties may attest to, aboriginals in no way surrendered sovereignty, lands, resources, and traditional ways of life.

Both the aboriginals and the Crown are often viewed as having willingly entered into Treaty agreements, because both sides felt that they could benefit from the relationship that the Treaty would create. The Treaties were designed to fulfill political and economic objectives, both of the Crown and of the First Nations (RCAP *a*, 1996). The Crown served to benefit from the lands and resources that the First Nations brought to the table. Aboriginals served to benefit through the promise of a continued way of life and for compensation for accommodating Europeans. The Crown obtained the lands and resources; the First Nations did not receive adequate compensation, or the possibility for continuance of their traditional ways of life. In fact, the numerous limitations, restrictions, and regulations placed upon them through the *Indian Act* and other legislation has promoted erosion, not maintenance of traditional ways.

First Nations did not ask to be placed on reserves under the rule of the non-aboriginal laws of the Crown. They did not ask the Crown to take away their privileges to harvest

and develop resources on traditional lands. First Nations want to break free of the strong hold of the Crown and regain the ability to manage their lands and resources in accordance with their aboriginal rights and traditional ways. Ideally First Nations would like to gain management authority over traditional lands, both inside and outside of the reserve. While the land management alternatives examined in this study only pertain to extending authority over reserve lands, attempts have also been made by the Anishinaabe to influence management outside of reserve lands.

Grand Council Treaty 3, a body of First Nation leaders designed to represent Treaty 3 First Nations, has attempted to exercise authority and control development over its Treaty 3 territory, through the creation of a Treaty 3 Resource Law. The law that they have designed requires that "those who may affect the environment of Treaty #3 territory or the exercise of rights of the Anishinaabe consult with the Nation" (Grand Council Treaty #3 *a*, 1997).

The Grand Council Treaty #3 is assuming more responsibility for the self-regulation of its First Nation Treaty 3 trappers. The Grand Council has created a Trapping Resource Centre which keeps record of individual trapper profiles and fur harvest data, as well as grants licenses to trappers (Grand Council Treaty #3 *b*, 1997). While Treaty 3 trappers are assuming more responsibility for self-management through the Grand Council Treaty #3, the powers of the Grand Council do not really extend much beyond that of administration. The Grand Council has no authority to directly alter the management of the resource, as the regulations of the Ministry of Natural Resources must be followed. The Ministry is responsible for the monitoring and enforcement of those rules.

The power that First Nations are able to obtain over traditional lands outside of the reserve is limited. The Government of Canada is more willing to grant jurisdiction to First Nations over reserve lands than over entire traditional land use areas. The relevance and importance of obtaining authority over reserve lands should not be overshadowed by desires to obtain control over the larger area of traditional use. At the same time considerable potential exists to pursue development opportunities on-reserve which could

meet many contemporary economic aspirations for SLFN No. 40 members. SLFN No. 40 has good reason therefore, to focus foremost on gaining the control over their reserve lands and resources. Once control over reserve lands is obtained, the possibility of extending control over the larger traditional use area could be greater.

2.4 The SLFN No. 40 of Today

Resource Use

Traditionally the aboriginal people of Shoal Lake were active resource users. They were involved in hunting, fishing, the aquaculture of manomin, gardening, and the management of wild plants, trees, and berries. In 1873 when Treaty 3 was drawn up for the Indian people of Northwestern Ontario, it recognized their right to pursue their 'avocations' of traditional natural resources uses on surrendered lands, so long as those lands were not taken up by the government for other uses. The reserve lands and resources provided for SLFN No. 40 also remain an important component in the lives of the people. The Anishinaabe have strong community ties, and the reserve lands serve to strengthen those ties by forming the base of the community. The reserve lands are of special significance to the people in that the lands have been provided to them for their exclusive use. The reserve is home to the people of SLFN No. 40, but it is more than that; it contains community structures, sacred grounds, and is the place where cultural gatherings are held. Despite the reserve's significance, because of the small reserve land base in comparison to the much larger area of traditional use, the majority of traditional resource harvesting activities occur off the reserve, on the surrendered, unoccupied Crown lands of Treaty 3. As Figure 4 depicts, resource use by the people of SLFN No. 40 is of importance year-round. Reserve lands themselves, however, do contain significant economic development potential. This is evidenced by the Showshoe Bay cottage lot development proposal. This potential could be utilized to offset off-reserve resource harvesting activities that have declined.

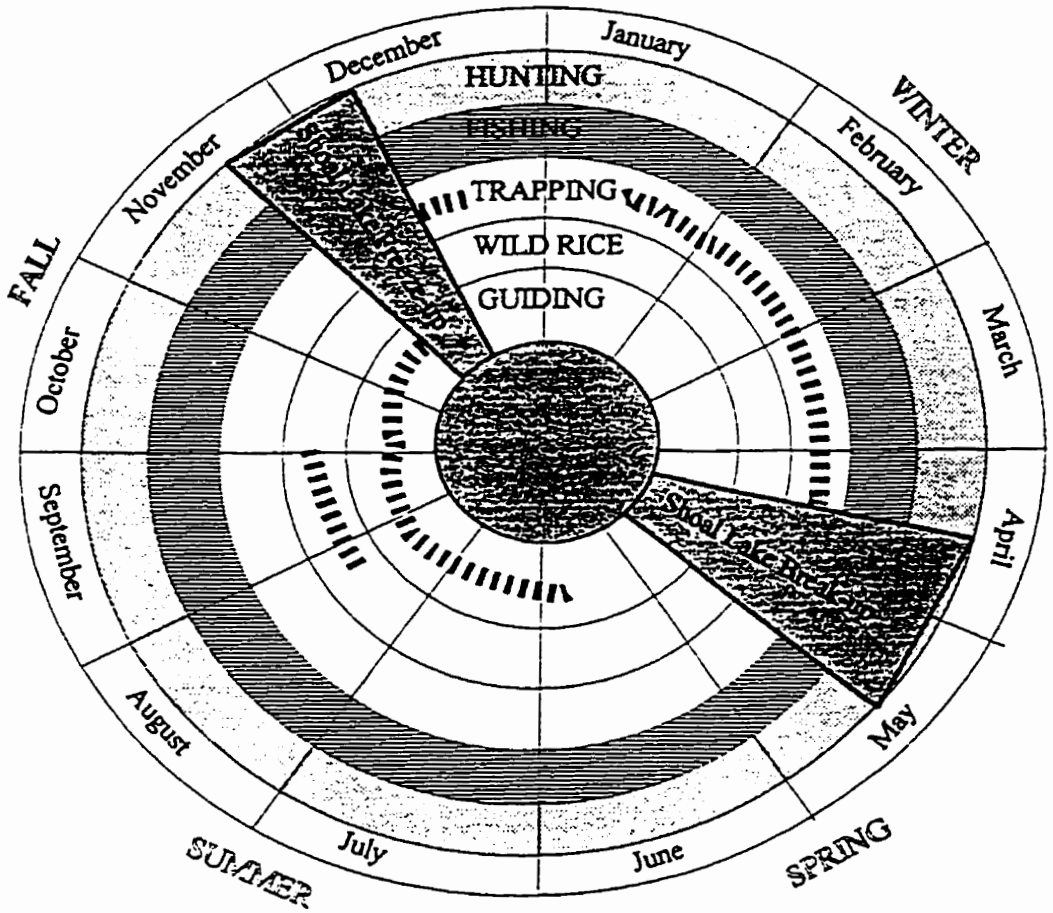

Figure 4: Resource Use at SLFN No. 40 (Hutchison, 1996)

Economy

From the early 1920's up until the early 1980's, SLFN No. 40 had relied upon the abundance of walleye in the region to form its commercial economic base (Neskar, 1986). Over-exploitation of the resource became apparent in the 1970's, resulting from increasing numbers of sport and non-aboriginal commercial fishers. It had been permitted in the region by the Ontario Ministry of Natural Resources, and was not directly caused from First Nation activities. Fishing catches were first restricted in 1978, followed by the closing of the walleye fishery in 1983. The closing of the walleye fishery effectively eliminated a cultural tradition as well as the most important economic resource relied upon by the SLFN No. 40 community in the decades prior to the closure (Hutchison *a*, 1995). Since the fishery collapse, the First Nation has been looking for other means of achieving a new stable economic resource base, as economic development is necessary in order to meet the needs of the First Nation's people (Cardinal, 1977). Cardinal (1977: 47) also describes the importance of aboriginals having their own resources, expertise, and organizational base in that such factors allow First Nations to "establish working relationships with other Canadians in all walks of life, and to compete in the world."

As hunting, trapping and forestry on reserve lands are also not viable alternatives in terms of establishing an economic resource base, the First Nation has looked towards other developments with significant potential, such as tourism. The beauty of the region draws cottagers and campers to the Lake and surrounding area where they enjoy activities such as fishing, boating, biking, and hiking. Proposals from SLFN No. 40 in the past have included cottage lot developments (Beak *a*, 1983). However, due to the opposition of the City of Winnipeg, many of these proposals have not been accepted.

Formerly, SLFN No. 40 owned and operated a mini-mall located near Clearwater Bay, Ontario. A sport fishing tourist camp at Ash Rapids, Ontario was also operated by the First Nation. These past endeavors have been sold and SLFN No. 40 is not currently

involved in any private economic ventures. The businesses were sold when they were no longer profitable. An indication was given that the failures could be attributed to the fact that government should not be involved in business. It should be the individual First Nation members who get involved in such ventures. Cornell and Kalt (1992) have also noted that a mix of government and business often gets in the way of successful development. A fish hatchery project is, however, scheduled to start up in the spring of 1998 (Campbell, 1997; Hutchison *a*, 1995).

Snowshoe Bay Development

The best known of the rejected tourism proposals developed by SLFN No. 40 was the Snowshoe Bay Development proposal of 1979. The proposal called for the development of 350 cottage lots and four condominium complexes, to be located on a peninsula of I.R.40 located on the Manitoba side of the border (Figure 5 a & b) (Beak *b*, 1983). Under the *Indian Act* a band cannot lease reserve lands, unless the lands are first surrendered to the Crown. The First Nation subsequently surrendered approximately 600 acres of land in order for the development to take place. The surrendered lands were then leased to Snowshoe Bay Development Corporation Limited for a renewable period of 68 years (Beak *a*, 1983). Under the new lease the Corporation was given "the right to sublease the lands with uses limited to recreation, tourism, cottage development and associated commercial enterprises" (Beak *a*, 1983: 3.7).

An environmental assessment study which focused on water quality and socio-economic impacts of the proposed development was conducted by IEC Beak (*a*, 1983). The findings of the Beak studies revealed that the proposed development could be implemented without adversely affecting the City of Winnipeg's drinking water supply, so long as the appropriate recommended measures were taken to ensure recreational activities, runoff, and solid and liquid wastes were sufficiently managed (Beak *b*, 1983). Recommendations of the study included: creating road access to the community; use of construction practices which minimize surface runoff and erosion; sewage to be held in monitored holding tanks and disposed outside of the Shoal Lake basin; pesticides to be

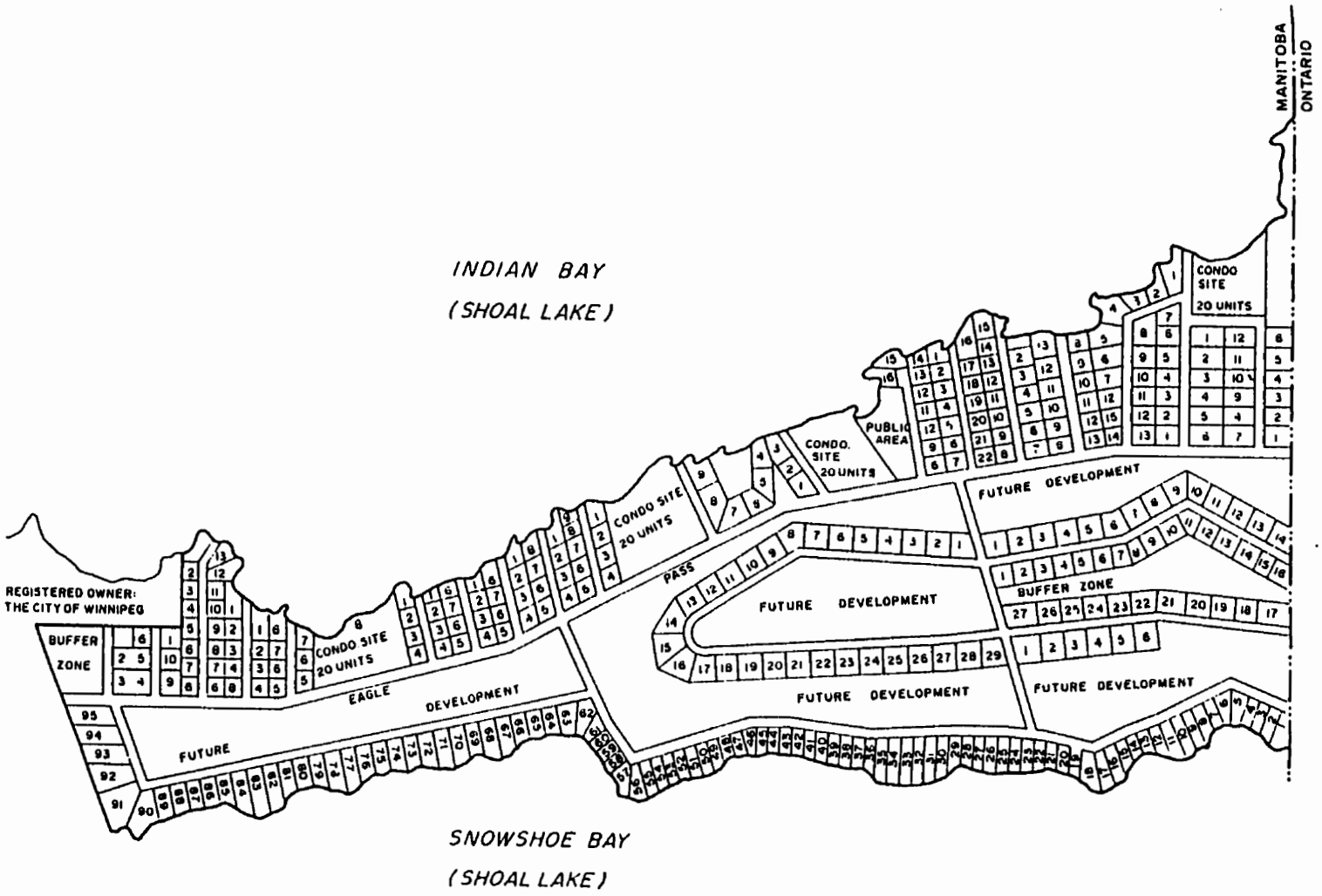

Figure 5 a: The Proposed Snowshoe Bay Development (Beak *b*, 1983)

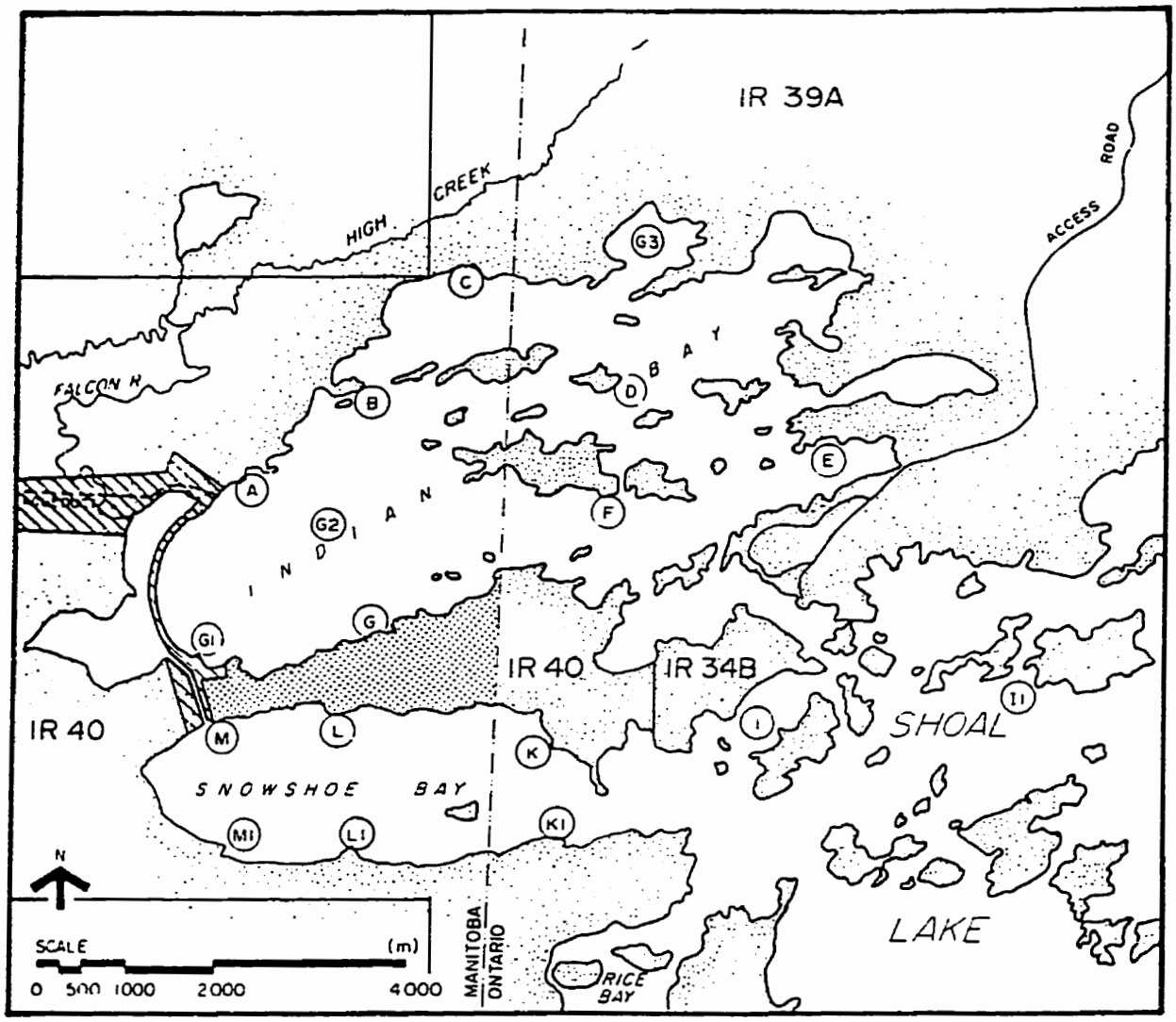

Figure 2

Project Area

Proposed Development Area

Lands Owned by the City of Winnipeg

(K) IEC Beak Water Quality Sampling Stations

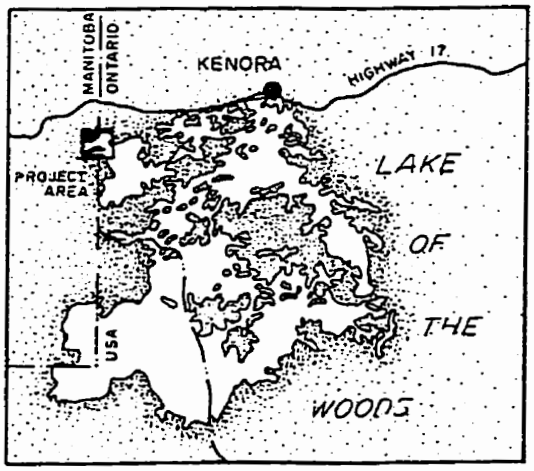

Figure 5 b: The Snowshoe Bay Development Project Area (Beak *b*, 1983)

banned and fertilizers regulated; solid wastes removed out of the basin; regulation of fuel and other hazardous materials; regulation of power boats in Indian Bay; and regulation of water use activities in the west end of Indian Bay (Beak *b*, 1983).

The proposed development was to be completed in phases, permitting funds from earlier phases to aid in the finance of later phases. The project would bring revenue to the First Nation, which could be used to finance other developments involving the use of natural resources, such as improvements in the fishery and harvesting of wild rice. Employment opportunities would be gained both in the short and long term as a result of the cottage lot development.

Despite the benefits that could be gained by the community of SLFN No. 40, and the fact that the Beak report indicated the development could be established without negatively impacting upon the City of Winnipeg's water supply, the development was contested by the City of Winnipeg and the Province of Manitoba. The City and Province felt that implementation of the Snowshoe Bay development could jeopardize the water quality of Indian Bay.

As the City had no authority to stop the Snowshoe Bay cottage lot development project, the City of Winnipeg and Province of Manitoba negotiated a buy-out of the development rights of SLFN No. 40. Negotiations resulted in the development of a tripartite agreement which would take away the right of the First Nation to develop Snowshoe Bay. In return it provided compensation for the loss of the development, and made provisions for the protection of water quality.

Despite the signing of the Tripartite Agreement, a settlement over the Snowshoe Bay Development issue remains unresolved. Resolution of the issue will eventually take place. However, the development of the project likely will not proceed.

Shoal Lake Agreements

SLFN No. 40 is presently involved in one agreement which directly affects management and development activities on SLFN No. 40 reserve lands, that agreement being the Tripartite Agreement.

The Tripartite Agreement is between SLFN No. 40, the City of Winnipeg, and the Province of Manitoba. Resulting from a provisionary requirement of the Tripartite Agreement, a second agreement between SLFN No. 40 and the Government of Canada was created (Hutchison *a*, 1995). Both agreements serve to protect the quality of the water resources found within Shoal Lake. As Shoal Lake provides drinking water to the City of Winnipeg, to First Nations, campgrounds and cottages in the area, it is of great importance to protect and maintain the quality of Shoal Lake waters. Protection of the water is of importance to SLFN No. 40. However, the downside of this protection has meant more restrictions and prohibitions on activities involving resource usage and development.

Details of the Tripartite Agreement

1989 Shoal Lake Agreement - SLFN No. 40, the City of Winnipeg, and the Province of Manitoba.

The Tripartite Agreement, which has a sixty year duration, was signed on June 30, 1989. The objective of the Agreement was that of combining the protection and enhancement of Shoal Lake water quality on a cooperative basis to the mutual benefit of all signatories while promoting and providing opportunities for sustainable economic development for SLFN No. 40 members (Manitoba Environment, 1991).

In terms of water quality protection, the Tripartite Agreement prohibits and regulates reserve activities that could negatively impact upon the water quality of the lake. Toxic chemical use (including pesticides and herbicides), mining, and heavy industrial activities are prohibited on the reserve. Commercial and industrial development of defined reserve lands draining into Indian Bay are also prohibited. Aboriginal, treaty, constitutional and

other existing rights remain unaffected by the Tripartite Agreement. The proposed 350 lot cottage development on Snowshoe bay was prohibited by the signing of this Agreement. The land on which the proposed development was to take place was to be returned to full reserve status. However, non-residential cottage lot developments are still permitted on the south shore of Snowshoe Bay. The Tripartite Agreement also included a provision for a federally funded 2 million dollar waste management system to be put in place by the band. Also under this Agreement, SLFN No. 40 in affiliation with the City of Winnipeg was to develop an environmental management plan (Memorandum of Agreement, 1989).

Since under the Tripartite Agreement certain economic development activities are prohibited or restricted, a resource development inventory study was to be undertaken in order to identify environmentally sustainable economic resource development alternatives.

To compensate for lost economic opportunities through the signing of the Agreement, a trust fund was established for the benefit of the band. Total fund capital consists of 6 million dollars, the interest on the capital of which is to be annually distributed to the First Nation, with the principle paid when the agreement comes to an end. Of the 6 million dollars provided, 3 million was granted by the province of Manitoba, while the remaining 3 million was provided by the City of Winnipeg. The Agreement also required the Government of Canada to enter into a similar agreement with the SLFN No. 40 (Memorandum of Agreement, 1989).

The Tripartite Agreement places much of the decision-making control over the management of SLFN No. 40 reserve lands and resources into the hands of the City of Winnipeg, which uses its control of trust pay-outs to control the actions of SLFN No. 40. If SLFN No. 40 is to stay within the terms of the Agreement, almost nothing can be done to the lands or resources without the consent of the City. The Tripartite Agreement is most interesting in that it grants a city control over lands that are federal in jurisdiction. The fact that the City of Winnipeg has attempted to control lands that are not under their

jurisdiction raises questions surrounding the strength of the Tripartite Agreement, something that can only truly be tested in a court of law. However, a practical consideration is that should SLFN No. 40 breach the terms of the Tripartite Agreement, the City of Winnipeg could withhold trust and present a case for a court challenge.

While the Tripartite Agreement is of sixty year duration, it does contain a clause that allows for termination of the Agreement by either the City of Winnipeg, or SLFN No. 40. Five years written notice is required, and notice cannot be given until ten years has passed from the date of the signing of the Tripartite Agreement (Memorandum of Agreement, 1989). In other words, the Agreement must remain in effect for a minimum of fifteen years. SLFN No. 40 has indicated that a notice to end the Agreement will likely be given next year, after the ten year duration has passed.

1990 - Shoal Lake Agreement - SLFN No. 40 and Government of Canada

As already mentioned this agreement came about through a provision of the Tripartite Agreement between SLFN No. 40, the City of Winnipeg, and the province of Manitoba. As Hutchison (*a*, 1995: 29) describes, "the [1990] agreement confirms and promotes SLFN No. 40's inherent right of self-government and self-determination, fulfills the federal government's mandate of responsibility for First Nations and reserves, and recognizes the need to promote sustainable economic growth." Under this agreement, SLFN No. 40 was obliged to develop an Environmental Management Plan, as well as a community Economic Development Strategy. The First Nation also had to agree to stop pursuing the Snowshoe Bay cottage lot development project. The City of Winnipeg felt that the implementation of the Snowshoe Bay cottage lot development project could negatively impact on Shoal Lake water quality and lead to environmental degradation.

Joint obligations, which were the responsibility of both signatories, included the design, construction and implementation of a waste management system for the reserve. The agreement also had a provision which included the promotion of sustainable economic growth (Shoal Lake #40/Canada Agreement 1990).

The funding that came out of this agreement included a $2,500,000 contribution, which was to go towards the implementation of the waste management system for the SLFN No. 40 band. In the agreement, the construction of an appropriate waste management facility was deemed necessary for the protection of the Shoal Lake water supply (Shoal Lake #40/Canada Agreement 1990).

In terms of economic development, the federal government was to contribute $500,000 which was to be used for economic activities which would benefit SLFN No. 40. The government also provided the band with $234,000. These funds were used to support the purpose of negotiating the agreement and were not repayable. The government also provided $100,000 in funds for the purposes of assisting in the implementation of the agreement (Shoal Lake #40/Canada Agreement 1990).

This agreement between SLFN No. 40 and the Government of Canada was only of five year duration, and has since expired. The funds were paid to SLFN No. 40, new septic waste systems were installed, and an environmental management plan resulted. It was felt, however, that the short duration of this agreement did not provide for continued water quality protection by SLFN No. 40. While SLFN No. 40 is obligated to the City of Winnipeg to protect water quality, since this agreement has ended there are no longer federal funds available for such things as upgrading and maintenance of septic systems (Campbell, 1998).

Restricted Access

The aesthetic beauty of the Shoal Lake area naturally attracts tourists to the area. The fragility of the area, however, limits the amount of tourism and developments that the area can sustain, if water quality is to be maintained. Access to the area has been purposefully restricted to isolate and preserve the Lake as much as possible. As can be seen from Figure 1, no direct road access exists to the Lake from within Manitoba. The only access from within Manitoba is by a railway, which is operated by the City of

Winnipeg's Waterworks Waste and Disposal Department. The railway, which runs alongside the aqueduct, was created for maintenance purposes. The City's aqueduct, extends from Indian Bay to the City of Winnipeg's Deacon Reservoir. Within Ontario there are two access roads to the Shoal Lake area from the Trans-Canada highway. The first access road runs to the Iskatewizaagegan No.39 Independent First Nation Community at Kejick, Ontario, and the second access road runs to Clytie Bay, Ontario, where a quarry and cottage development exists. Boat access to Shoal Lake from Ontario exists at Ash Rapids (Hutchison *a*, 1995).

Accessing I.R.34B2 and I.R.40

Members of the SLFN No. 40 reside on both I.R.34B2 and I.R.40 (Figure 6). I.R.40 has been provided for the exclusive use of SLFN No. 40. I.R.34B2 lands are shared between Shoal Lake 40 and Iskatewizaagegan No. 39 Independent First Nation. The shared I.R.34B2 is comprised of 172 hectares, while I.R.40 is comprised of 2579 hectares, making up a total of 2751 hectares of reserve land. Both reserve areas are isolated from road access. The gravel access road from the Trans-Canada highway only extends as far as Kejick, Ontario. From Kejick access to the reserves must be by boat in summer, and by ice road in winter. The freezing and thawing lake conditions of spring and fall make access at these times difficult and dangerous (Neskar, 1986). The struggle to gain road access to the reserve remains a controversial and unsettled issue.

Two possible options for obtaining access to the reserve lands of SLFN No. 40 exist (Figure 7 a & b). The first, and option most desired by the First Nation is the construction of a road through Manitoba, providing access through I.R.40. This option has been denied by the City of Winnipeg, Manitoba, due to concerns over the impact that construction of a road through the area would have on the water quality and general environmental integrity of the area. The second option involves a proposal for a bridge/causeway system. This proposal involves the construction of a causeway which would connect I.R.39A to a privately owned island. A road would run from the causeway across the island to a bridge that would connect the island with I.R.34B2, and

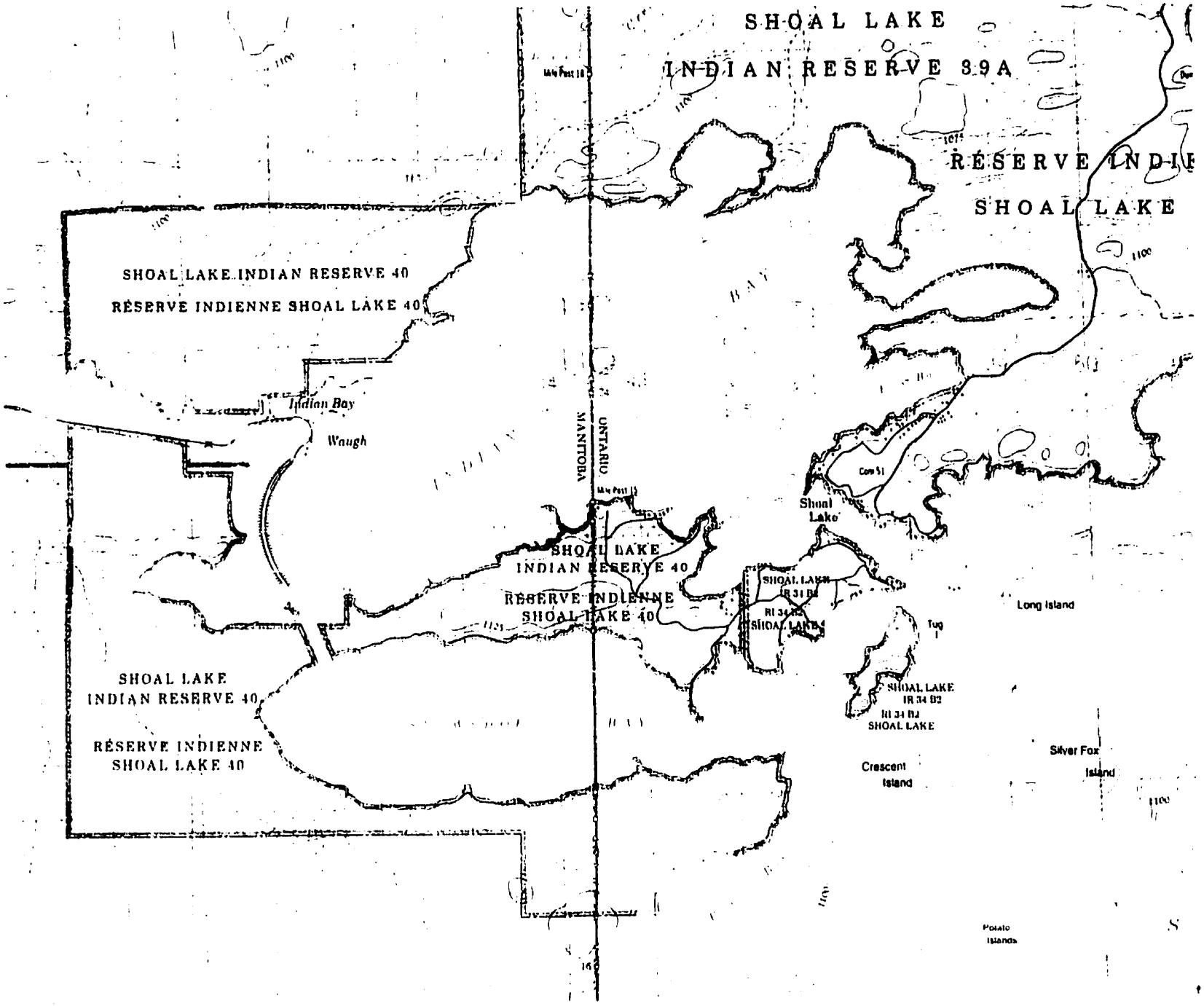

Figure 6: The SLFN No. 40 reserve lands within the Shoal Lake Basin (Energy, Mines & Resources Canada, 1995).

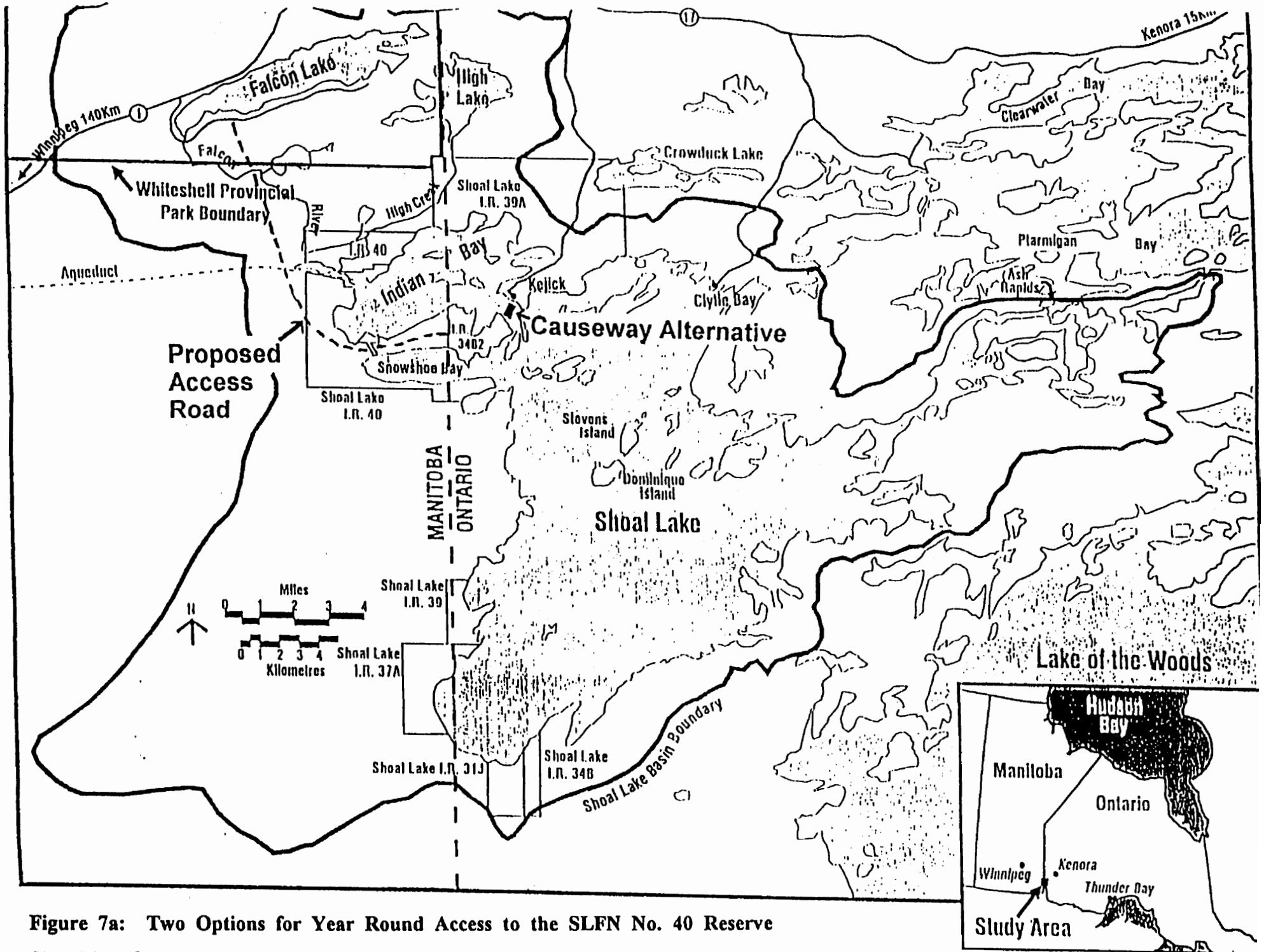

Figure 7a: Two Options for Year Round Access to the SLFN No. 40 Reserve (Hutchison *b*, 1995).

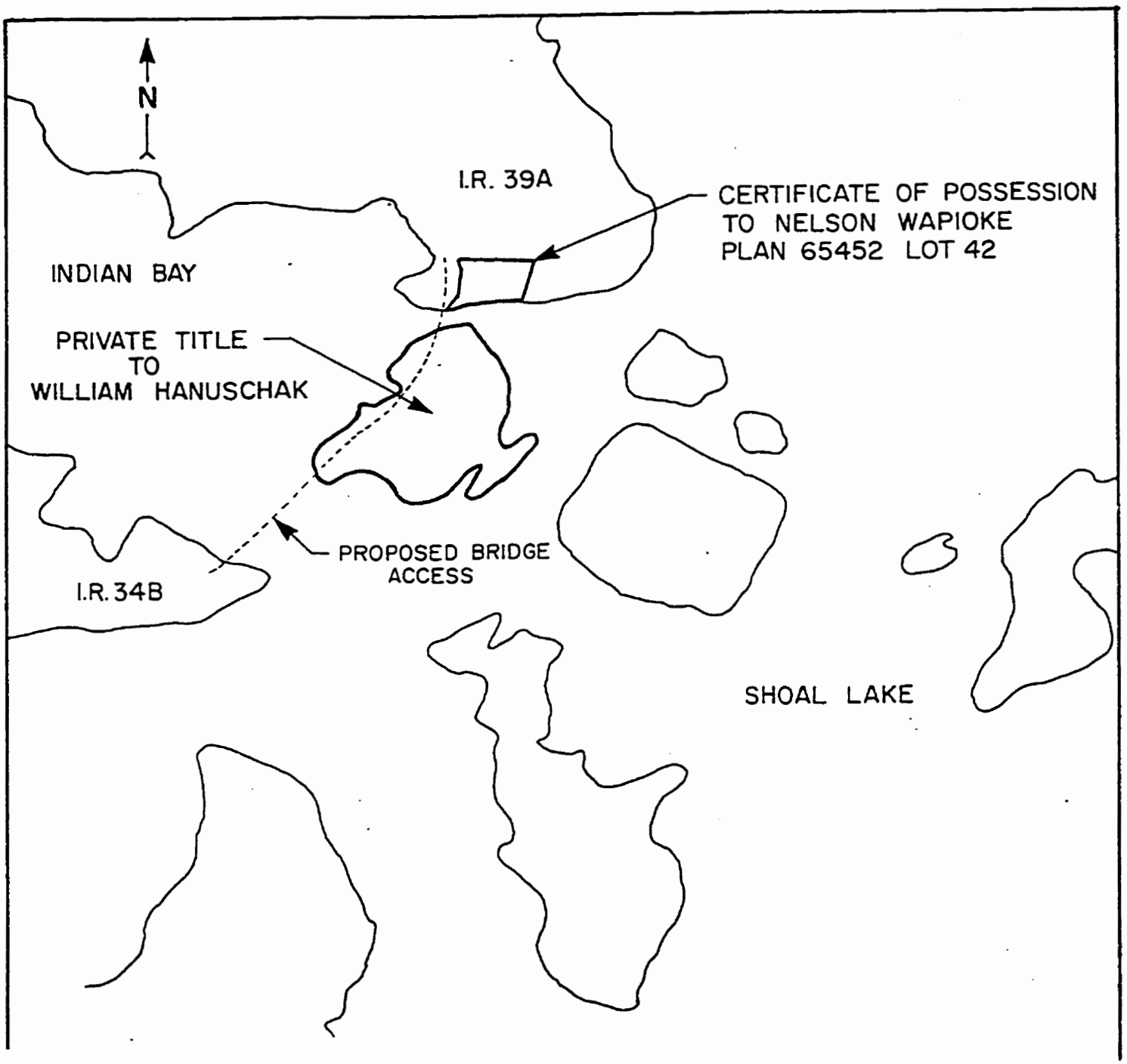

Figure 7b: The Bridge/Causeway Option (Ontario North Engineering Corporation, 1987).

the community of SLFN No. 40. The City of Winnipeg has promoted the bridge/causeway option. Current hold-ups surrounding the initiation of the bridge/causeway option seem to stem from the inability for the two communities (SLFN No. 40 and Iskatewizaagegan No. 39, the First Nation residing on I.R.39A) to reach an agreement (Hutchison, 1997).

Community Structure

The most recent census indicates that the on-reserve population at SLFN No. 40 is 204 residents, 117 of whom are male and 87 of whom are female. 185 members reside off-reserve resulting in a combined total membership (on and off-reserve) of 405 (Indian Register, 1996). The on-reserve population is rapidly on the rise due to an increase in births, as well as immigration to the reserve resulting from the 1985 passage of Bill C-31. Bill C-31 permitted Indians who had lost status through enfranchisement to regain their status. Bill C-31 provided affected individuals with a chance to return to the reserve (INAC, 1990). Many have and more continue to return to SLFN No. 40.

The election proceedings of the First Nation government at SLFN No. 40 currently operate in accordance with the *Indian Act*. Some First Nations have chosen to operate elections according to custom, and not according to the election regulations under the *Indian Act*. SLFN No. 40 is pursuing the issue of changing to customary methods in order to acquire greater governance flexibility.

There are seventy-seven homes in the community, fifteen of which are located on I.R.34B2, the rest are situated on I.R.40 lands. A shortage of housing on-reserve has resulted from the rapidly rising on-reserve population. In many cases, houses contain more than one family, a reflection of the current housing shortage. While the 1985 passage of Bill C-31 did permit people to return to the reserve, the government did not adequately match the number of homes with the number of people returning. As a result, the reserve is 60 homes short, and has an annual plan to build 20 homes per year until the

shortage is alleviated. On average homes on-reserve only last about 10 years before they must be replaced or rebuilt (Campbell, 1997).

In terms of employment, approximately fifty residents collect welfare. The First Nation employs seventy-two residents in positions relating to day care, school, recreation centre, First Nation Government, Ojibway Child and Family Services, and health care. Other residents must commute to local businesses in the West Hawk Lake, Falcon Lake area where they work. Term and seasonal positions provide significant employment opportunities in areas such as road repairs, construction, housing, commercial fishing(non-walleye), manomin harvesting, and tourism (Campbell, 1997).

Human resources are valuable at SLFN No. 40. While the majority of students who leave to go to high school in a larger centre do return, the loss of people to out-migration is a concern. As skills are lost, people must be retrained, or outsiders brought in to carry out certain required functions. As the First Nation is funded on a per capita basis, loss of residents negatively impacts the First Nation budget. With such a small population residing on reserve, the effects of out-migration are accentuated even more (Campbell, 1996). Creation of a healthy economy at SLFN No. 40 will prove instrumental in maintaining a strong on-reserve community structure.

2.5 The *Indian Act*

The *Indian Act* is the principal legislation through which the federal government of Canada implements its constitutional authority over "Indians and lands reserved for the Indians." This constitutional authority that the federal Parliament has over Indians and their reserve lands is found in section 91 of the *Constitution Act*, 1867. Originally passed in 1876, the *Indian Act* has undergone some modifications, however, in many respects it remains relatively unchanged from it's original form (*Indian Act* Alternatives, 1993). The passing of the *Indian Act* removed from First Nation people the powers to control and regulate their own lives, their lands, and their resources on reserves. Taken from the native people, this power was put in the hands of the federal government, which despite

good intentions, often did not take into consideration or recognize the best interests of the native people. Cardinal (1977: 116) describes the *Indian Act* as legislation "intended to serve the needs and priorities of the federal government." The rationale for the preceding statement lies in the fact that the federal bureaucrats have the authority to administer programs to First Nations people without their knowledge, consent, or consultation (Cardinal, 1977). Provisions within the *Act* which reflected policy objectives of 'civilization' and assimilation support the argument that the primary purpose of the legislation was to "assimilate aboriginal peoples into the Euro-Canadian culture and political system" (Haugh, 1994: 100).

Since Confederation and well before, the *Indian Act* has provided native people with a special legal status. The *Act* has symbolic importance and gives native people to which the *Act* applies a special place in society. Although the *Indian Act* does provide Indian people with special status, benefits and reserve lands, these advantages are largely outweighed by the restrictive and controlling measures which this legislation permits the Government of Canada to exercise over its aboriginal people. The *Indian Act* could be termed a "legislative straitjacket," as it regulates almost every important aspect of daily living for First Nation people (RCAP *a*, 1996: 257).

Although the *Indian Act* is unsatisfying and derogatory to native people, they do not want to give it up too hastily for the unknown, as it has been seen as their only insurance for the protection of their land and aboriginal rights (*Indian Act* Alternatives, 1993). Harold Cardinal (1977), who is a Cree leader, describes aboriginal people as being fearful that changes to the *Indian Act* will eradicate treaties and the special relationship that the Indian people have with the government of Canada. Cardinal (1977), also referred to the psychological fear of letting go that is experienced by people in a situation of long term dependency on an outside group, the situation of aboriginal dependence upon the government of Canada. In an excerpt from the Royal Commission on Aboriginal Peoples (*a*, 1996: 256-257) Cardinal, described his views on the *Indian Act* in the following quote:

> "We do not want the *Indian Act* retained because it is a good piece of legislation. It isn't. It is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government, as it should be. No just society and no society with even pretensions to being just can long tolerate such a piece of legislation, but we would rather continue to live in bondage under the inequitable *Indian Act* than surrender our sacred rights. Any time the government wants to honour its obligations to us we are more than ready to help devise new Indian legislation."

Today the *Indian Act* is seen by many as containing provisions which are paternalistic, colonial, racist, unfair and no longer relevant (RCAP, 1992). Aboriginal people and non-aboriginal people alike are angered by this legislation. Aboriginal people are frustrated by the lack of control they have over their own livelihoods. As the Royal Commission on Aboriginal Peoples (1992: 22) found:

> "Aboriginal people do not want to be defined by the federal government. They want to be able to define themselves according to their own values and to retain their own identities."

Many First Nations now want to break free of the stronghold the Government of Canada, through the *Indian Act*, has over them. They want to fully exercise their inherent right of self-government, as it is entrenched within the Constitution of Canada. The right of self-government is seen by many as having been recognized and affirmed in section 35(1) of the *Constitution Act* of 1982 as an existing and aboriginal or treaty-protected right (RCAP *a*, 1996). The Government of Canada has recognized this inherent right of First Nations people, and is working towards helping First Nations to implement their rights. A 1995 policy guide entitled Aboriginal Self-Government states:

> "The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act*, 1982. It recognizes, as well, that the inherent right may find expression in treaties, and in

> the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources". (RCAP *a*, 1996: 205)

While the government of Canada recognizes the inherent right to self-government of aboriginal people, recognition and implementation of self-government are two very different things. Much time, effort, work, and cooperation will be needed from both sides in order for self-government to become a reality.

2.6 *Indian Act* Provisions

The establishment of the 1876 *Indian Act* turned the Indian people into "wards of the federal government" (Green, 1996). The *Indian Act*, which only applies to status Indians, allows the federal government to control such native affairs as land holdings and transfers, local government, taxation, education, and band membership. As the practice of traditional lifestyles became no longer possible, aboriginal people became dependent upon the *Indian Act* and the protection that it provided (Green, 1996). According to Cardinal (1977: 151),

> "the federal government's trusteeship over Indians has been perverted, since the signing of the treaties, into a welfare relationship. This has come about because in many ways, Indians were not prepared to cope with the new society and, consequently, could not become a successful part of its economic and social structure."

The government's policy goals in regards to Indian people, have not been in the best interests of native people. In fact, goals of protection, civilization, and assimilation, all acted to erode the culture of Canada's first inhabitants (RCAP *a*, 1996).

Many of the amendments to the *Indian Act* that have been enacted were done for the reasons of reducing government expenditures, or for supporting more comprehensive federal policies, and not for the betterment of the Indian people (RCAP *a*, 1996). Some of the unfair legislation included requiring a permit to leave the reserve. This was in place up until 1950. It was also illegal for natives to file legal claims against the Canadian government, to hire lawyers, or to raise money for Indian political organizations up until 1951. Voting by Canadian Indians was prohibited until 1960, and enfranchisement was still in effect up until 1985. Limited and supervised by-law making and enforcement powers are still within the confines of the present *Indian Act*. As a result of this, First Nation bands, remain in many cases, are unable to effectively provide safety, protection, and economic development to their members (Green, 1996; RCAP *a*, 1996). The Royal Commission on Aboriginal Peoples (1996) provides further details of unfair, discriminatory and culturally damaging provisions which were, and still are, contained within the *Indian Act*.

Throughout Canadian history the Government of Canada has been responsible for decisions made regarding Indian people, and has largely ignored them, and their suggestions relating to important issues, as well as their attempts to become part of the decision-making process. In many cases the government has seen native outcries as a need for modifications in the form of increased government controls. Such actions have only further aggravated the problems, and further removed the Indian people from a position of control.

2.7 Problems Related to Natural Resources Under the *Indian Act*

In its present form, many provisions of the *Indian Act* limit the management, usage, and control that First Nations can exercise over natural resources on their reserves. According to the Royal Commission on Aboriginal Peoples (*c*, 1996), the restrictive federal policies imposed upon First Nations people have greatly hindered their ability to utilize their natural resources in such a way as to make a living for themselves. Natural

resources play an integral role in the lifestyle and economy of First Nations people. In order to achieve the eventual goal of self-government, it is essential to have an adequate economic land and resource base to govern, utilize, and develop (RCAP *c*, 1996). For many First Nations an 'adequate' reserve land base may not exist; for others the base may exist but the potential to develop the land and resources may not. It will remain a challenge for many First Nations to find ways of overcoming small reserve land bases, and economically poor resource development potentials. Whether the potential is small or large, Haugh (1994: 115) describes the self-management of lands and resources as being "a key element in the eventual development of First Nation's self-determination or self-government". The ability of First Nation's to be able to sustainably and efficiently develop resources will allow for economic gains, greater self-sufficiency, and enhanced lifestyles. Control and development of lands and resources will be key elements in improving the economies of First Nations. Such powers as enforceable law-making, development capabilities, and the ability to effectively conduct business will be essential to the future success of First Nations people.

2.8 Confusion Over the Issue of Aboriginal Rights

From the time in which aboriginal and treaty rights were first established, problems have occurred and continue to occur regarding the question of aboriginal and treaty rights. It remains unclear to this day exactly what these 'rights' are and what exactly they entail in terms of resources usage. According to Haugh (1994: 91), "aboriginal rights have many legal bases for definition, but no academic or judicial consensus exists on their meaning." Aboriginal rights can basically be defined as the rights to the use and enjoyment of the products of the land, the forests and the water, inclusive in these rights are the rights to hunt, fish, and trap on reserve and surrendered crown lands. The vagueness of the definition has resulted in much controversy over the years. The many issues and court battles that have arisen (such as *Flett*, *Horseman*, *Sparrow*, and *Sylliboy*) have largely resulted from government policies and regulations which acted to infringe upon aboriginal rights (Haugh, 1994). Most of these infringements were over fishing and hunting rights on surrendered crown lands.

While many off-reserve conflicts have been documented, few if any, documented disputes have been found involving the utilization of land and resources on reserve. This is likely due to the fact that reserve lands are under federal jurisdiction, while incidents occurring off-reserve are under provincial jurisdiction (but this should not be taken to imply that reserve lands are conflict free). In the case of off-reserve disputes, the obscurity of the definition of aboriginal rights has often worked in favor of the aboriginal people. Many acquittals have been granted, and in some instances major changes (for example the changes that resulted from *Sparrow*) regarding the issue of aboriginal resource usage have occurred (Usher, 1991).

On reserves, problems stem from the inability of First Nations to control land and resource use, development, and transactions on their own. At the present time, these powers are in the hands of INAC. While some First Nations practice some of their own management under sections 53 and 60 of the *Indian Act*, the management which they practice is delegated to them by the Department, and is not of their own prerogative.

In all areas of resource use and harvesting, many of the problems that exist today have stemmed from the fact that the rules and regulations governing natural resources activities on-reserve have been made for aboriginal peoples by non-aboriginal people. Subsequently, aboriginal people have little or no say in how they are able to use and develop their reserve lands and resources (RCAP *c*, 1996). Mistrust and cultural misunderstandings have also resulted, and continue to pose problems.

2.9 Specific *Indian Act* Provisions Related to Natural Resources Management

Presently the *Indian Act* contains many constraints which prohibit efficient and effective management and development of natural resources on Indian reserves. Unnecessary ministerial intrusions and restrictions are present throughout the entire *Indian Act*.

Under all sections of the *Indian Act* which deal with fines, i.e. for breaking by-laws, the fines and penalties which are currently in place are so low as to be ineffective. For example, the maximum fine for breaking a regulation made under section 57, which deals with timber and mines and minerals, is one hundred dollars or a maximum of three months imprisonment. In many cases, the lack of enforcement power which bands currently possess, makes regulations difficult to enforce. The safety of band members as well as band resources may be compromised under the current provisions.

An example of unnecessary Ministerial power can be found under section 34 of the current *Indian Act*, whereby maintenance of bridges, ditches, roads, and fences located on reserve lands are to be maintained according to instructions given by the superintendent.

Under section 53 of the *Indian Act*, lands are under the management of the Minister, and not Band Councils as would be more appropriate and beneficial for First Nations people.

Section 57 of the *Indian Act* deals with natural resources, including forestry and mining. Under this section, the Minister is authorized by the GIC to make regulations concerning forestry and mining. This includes the granting of licenses and the various terms and restrictions that go along with them. According to the *Indian Act*, Band Councils have no authority to issue licenses concerning these activities. Despite this, many First Nations are conducting these activities. This section also fails to deal with natural resources beyond those of minerals and forestry.

Section 58 of the *Indian Act* allows the Minister to employ people for the purpose of 'improving' or cultivating land within the reserve. Band funds would also be spent to do so. Also under section 58(4) is the needless provision that allows the Minister to dispose of wild grass and dead or fallen timber. The Minister has the power to control the disposal and taking of aggregates as well.

Section 60(1) of the *Indian Act* states that the GIC "may at the request of the band grant to the band the right to exercise such control and management over lands in the reserve

occupied by that band as the GIC considers desirable" (Henderson: 54). According to this provision, if the Minister does not deem it "desirable," the granting of land management responsibility to the band will not occur. Henderson has also noted that "the actual limits of such delegation of authority have not been determined." Under section 60(2) the Minister maintains the power to withdraw any rights given to the band under section 60(1).

According to Sections 61-72, which deal with Indian moneys and finance, the control of such matters lays largely in the hands of the GIC and with the Minister.

The limited by-law making powers of Indian bands, especially in terms of natural resources are inadequate at present time. In areas where by-laws can be enacted, the process of doing so is inefficient and paternalistic, as exemplified in Section 86 of the *Indian Act* where Ministerial consent is required.

Throughout the *Indian Act*, provisions can be found that require Ministerial consent, or impose unnecessary Ministerial involvement and intrusions. First Nation's cannot grow and flourish under such constraints. Control over reserve lands needs to shift into the hands of the First Nation people so that they can utilize their resources in such a way as to improve the economies and lifestyles of their people. The present *Indian Act* does not provide First Nations with the ability to manage lands and resources as they would like. Examination of the *Indian Act* Optional Modification Act and the FAFNLM will identify if and how theses alternatives can be used to improve upon the land and natural resources management on reserve. The appropriate implementation of one of these alternative approaches may serve to address and improve upon the many natural resources issues and constraints faced by the Shoal Lake First Nation No.40.

2.11 CHAPTER SUMMARY

Chapter Two provided historical information about aboriginal peoples, and demonstrated the importance that the land and resources have held for them. The lifestyles and settlement of the Anishinaabe people to the Shoal Lake region were described, as were the effects of European explorers and settlers to the region on aboriginal people. The changes resulting from European settlement, including the declaration of the Royal Proclamation, as well as the signing of treaties, specifically Treaty Three were also described. The historical events outlined within the Chapter demonstrated the decline of the capacity of First Nations to govern themselves and control their lands, and resources as they had traditionally in the past.

Following the more general history, the focus then changed to the present day settlement of SLFN No. 40. The continued value and importance of resource usage to the lifestyles of the people was detailed. The economic strife that was caused by the collapse and closure of the Shoal Lake walleye fishery, which has left the First Nation in search of a means for regaining the economic resource base that was lost by the fishery closure, was described. In their search the First Nation has come up with proposals to use its reserve land base to foster economic development. This includes tourism ventures, the best known of which, the Snowshoe Bay Development proposal was outlined. Not only was this development proposal opposed and contested by the City of Winnipeg, but further restrictions on development and terms resulted from the signing of the Tripartite Agreement.

The present structure of the community was outlined, as was the unique location of the reserve lands, and the issues surrounding the lack of year round accessibility.

Up until this point, the reader was provided with an understanding and feel for: the First Nation people; the importance of lands and resources to the people; the changes in

control and governance that resulted from European settlement and assertion of Crown sovereignty; the current issues and state of affairs at SLFN No. 40; as well as the Shoal Lake region in general.

With the background of the history, the people, and the region established, Chapter Two then focused in on the *Indian Act*. How the *Act* applies to, has affected and restricted the capabilities and lifestyles of First Nation people across Canada, with specific reference to land and resources management was defined. Specific *Indian Act* provisions which adversely limit or restrict First Nations from adequately and effectively managing, controlling, protecting, and conserving their lands and resources were described.

The ultimate goal of this Chapter was to set the stage for subsequent Chapters by demonstrating the need for the First Nation to be able to foster economic development using its reserve-based resources and the inadequacy of the *Indian Act*, specifically in terms of reserve land and resources management to allow for this. The inadequacies and ineffectiveness of the *Indian Act*, serve to demonstrate the need for an alternative way to manage reserve lands and resources at SLFN No. 40.

In order to define the best alternative for SLFN No. 40, it is essential to first become familiar with the present lands and resources regime at SLFN No. 40 and the problems and concerns surrounding it. Chapter Three has been structured to address this issue.

CHAPTER THREE

PRESENT STATE OF LAND AND RESOURCES MANAGEMENT

3.0 RESOURCE OVERVIEW

The reserve lands provided for the people of SLFN No. 40, contain a variety of important resources including scenic shoreline, wildlife, minerals, timber, and water resources. Resources which lie outside of the jurisdiction of the reserve, but are of significant importance to SLFN No. 40 include manomin, fish and the waters of Shoal Lake. For centuries natural resources have been harvested and used by the ancestors of today's aboriginal people at Shoal Lake. The fact that these same harvesting practices are still occurring today, and the fact that the First Nation has sought ways to benefit from them economically in their contemporary context, serves to affirm the important role that resources play in the livelihoods of the people of SLFN No. 40 (Figure 4). Within the community, it is estimated that approximately thirty percent of the adult population takes part in some form of resource harvesting (Hutchison, 1996). Additionally, many people are active in working in tourism. In order to provide future generations with enhanced opportunities to earn their livelihoods, proper land and resources management on the reserve is essential. In order to better govern and protect the reserve lands and natural resources contained within them, environmental protection, effective waste management, and sustainable use and development practices must be developed, applied and enforced.

A description of the types of resources which remain important to the people of SLFN No. 40 follows. The importance and potential of the resources, as well as problems stemming from current management and things to look for when considering the implementation of a new management regime are discussed for each resource. The information provided in this Chapter was obtained through documented reviews and interviews.

3.1 ON-RESERVE RESOURCES

Resources falling within the jurisdiction of First Nation reserves only include those resources on the land, or water bodies enclosed within reserve land. Water, and water resources surrounding, or adjacent to reserve lands are not considered part of the jurisdiction of the reserve.

3.1.1 Shoreline, Inshore and Near-Shore Lands (Real Estate)

Historically Anishinaabe people have been inextricably linked to the interface between land and water – the shoreline. Communities and homes were located near the water's edge. The near shore location was not only aesthetically pleasing, but convenient, as waters provided: a means of transport, a means for hunting grazing animals on shore, for cultivating manomin (wild rice) and other plants, a source of fish and water fowl, and clean water for domestic use.

The shoreline, inshore and near-shore lands remain important to the community of SLFN No. 40, for the very same reasons today as in the past. However, today the shoreline of the SLFN No. 40 reserve lands could also provide a superb opportunity for tourism developments such as cottages, marinas, lodges, and guiding services. The proximity to the water, could also create the opportunity for the lands to be used to house processing facilities for resources such as fish and manomin. Due to the real estate and developmental potential of the reserve lands, a plan to adequately protect the shoreline, and near shore lands while still allowing for sustainable development needs to be put in place.

3.1.2 Wildlife, Hunting and Trapping

Wildlife not only holds food and fur value to the people of SLFN No. 40, but it also holds aesthetic, cultural, and traditional values, including medicinal uses. Due to the small

reserve land base, the majority of hunting and trapping activities occur off-reserve, on unoccupied Crown lands.

Wildlife in the Shoal Lake area which is either hunted or trapped can be broken down and categorized into: waterfowl, such as Canada geese, mallard ducks, teals, canvasbacks, redheads, scaups, buffleheads, and goldeneye; fur-bearers, which include beaver, otter, mink, fox, and wolves; big game which consists of moose and white-tailed deer and; small game which includes spruce grouse, ruffled grouse, rabbit, and beaver (Hutchison, 1996).

While wildlife populations on-reserve are seen to be healthy they are, however, thought to be somewhat lower today than in the past due to human impacts, caused from developments such as those of the tourism, forestry, and mining industries in the region (Campbell, 1997; Redsky, 1997). Although populations are healthy today, there is no integrated management plan that would facilitate activities like tourism and at the same time protect and enhance populations, and promote public safety. Conservation measures are not affecting harvests on reserve lands. While hunting and trapping on reserve lands is presently not officially regulated, Anishinaabe people, including those from Shoal Lake do possess and can follow customary resource harvesting methods and customs. The people of SLFN No. 40 are able to meet their needs in terms of what they want wildlife resources to provide for them. However, harvesters must venture off the reserve in order to accomplish this. Commercial selling of wildlife products is currently illegal, except for furs. The present market for furs is currently too low to be worthwhile and profitable for commercial harvest.

Interview responses indicated that implementation of a new management regime should include the ability to allow the First Nation to make laws and regulations that protect and promote sustainable wildlife resource use. It should be noted that while IAOMA and the FAFNLM may provide the First Nation with the opportunity to improve management of wildlife resources on-reserve, the powers provided by these alternative arrangements do not apply to off-reserve resources. If economic opportunities are to include eco-tourism

(a low-impact type of tourism which focuses on nature and environmental values) a healthy and abundant wildlife population would be essential. As enforcement is a necessary component of any effective management regime, an opportunity could be provided for the establishment of First Nations Natural Resource game-keepers.

3.1.3 Mineral Resources

A small deposit of precious minerals is located in the northwest corner of I.R.40. Development of the resource at present time would be unprofitable and is not feasible (Redsky, 1997). Other mineral resources within the reserve include a sand and gravel quarry, the materials from which are used to aid in the construction and maintenance of roads. There could possibly be potential need for crushed rock for road development (for example if an access road to the community is constructed). Other than road construction and maintenance, on-reserve minerals have little economic potential, and are not of much concern for the First Nation at present. Off-reserve mining activities in the Shoal Lake region are of concern to the First Nation, as such activity has the potential to negatively impact traditional resource usage. No management plan for on-reserve minerals currently exists at SLFN No. 40. While lack of a management plan may be adequate at present, a plan for sustainable management could help to ensure that future generations will not be jeopardized by inappropriate use of this non-renewable resource today.

Minerals are of greater importance in the Shoal Lake region outside of I.R.40 lands. The Shoal Lake basin contains within it both precious and base metal mineral deposits, as well as deposits of aggregate and ornamental stone. Today, quarrying of granite is the only form of extraction taking place. Exploration by prospectors continues, and the future will likely see an increase in mineral developments throughout the region. In the late 1800's and early 1900's, mines operating in the area produced significant amounts of gold (Hutchison *a*, 1995).

3.1.4 Forestry

The most recent forestry management plan for SLFN No. 40 was prepared in 1992 by Mitigonaabe Forestry Resources Management Incorporated for the period of 1992-1997. Two previous forestry management plans are also in existence. Implementation of an alternative land and resources management regime should assist in effectively following the recommendations outlined in the management plan.

The most critical factors which will determine the amount of forestry activities to take place on reserve include the present lack of road accessibility to the reserve, as well as wood quality, volumes, and market conditions (Mitigonaabe Forestry Resources Management Incorporated, 1992).

The 1992 report indicated that of all forested reserve land, 1026 hectares were found to be unproductive, while 1620 hectares (61%) were considered to be productive. The forest is mainly comprised of aspen which accounts for 81.3% of the productive forest. Following poplar is spruce, accounting for 11.5% of productive forest lands (Table 1). The remaining 7.2% is comprised of jack pine, white pine, white birch, and cedar. Bur oak and white elm are also present but are not very prevalent. The majority of forest stands are mixed in nature. All age classes are present, but for the most part forest resources are between 21 and 100 years of age. The 1992 report also indicated that a total net merchantable volume (for all species) of 157,545 cubic meters existed on the reserve (Mitigonaabe Forestry Resources Management Incorporated, 1992).

Table 1: Productive Forest Composition at SLFN No. 40 Reserve (Mitigonaabe Forestry Resources Management Incorporated, 1992).

PRODUCTIVE FOREST	COMPOSITION
Species	**% of Total Productive Area**
Poplar	81.3%
Spruce	11.5%
jack pine, white pine, white birch, cedar	7.2%

In the past, the reserve contained an abundance of valuable softwoods. Due to poorly managed harvesting practices (high-grading, and no replanting) over the past hundred years, the majority of this wood has been exploited, and the new forest make-up (stand conversion) has grown back as mainly low-grade mixed hardwoods. Softwoods in the past were harvested and sold as fuel wood, poles, pulp, saw logs, and cedar posts (Mitigonaabe Forestry Resources Management Incorporated, 1992).

Income and employment resulting from on-reserve forestry activities has never been continuous. One person is currently employed to collect firewood for the community. Proper management could possibly provide more opportunities for continuous seasonal forestry on the reserve. Mitigonaabe Forestry Resources Management Incorporated (1992) has suggested forestry activities that could provide economic gains for SLFN No. 40, including: fuel wood cutting for use in on-reserve homes, as well as for sale outside of the reserve; forest care through replanting and proper management; small annual pulpwood cutting operations; small annual saw log harvests and; the use of an on-reserve portable sawmill operated to provide a source of construction materials for various on-reserve projects. A more recent possibility is the sale of hardwoods (poplar) to Tolko industries for use in the production of oriented strandboard (Campbell, 1997).

Not only can improved management of on-reserve forest resources lead to improved economic gains and employment opportunities, but it can also enhance wildlife populations, aesthetics, improve the quality of the environment, and promote sustainability.

Concerns over the harvesting of timber include loss of habitat, increased access to remote areas, and water quality risks. Water quality can be adversely affected by chemicals, herbicides and pesticides, as well as by erosion caused from the removal of forest materials.

Implementation of an alternative management regime could be used to regulate forestry activities on reserve, and improve third party interactions. Regulations will aid in the protection of timber resources, and perhaps aid in the implementation of the forest management plan which was prepared by Mitigonaabe Forestry Resources Management Incorporated (1992), but never implemented on the forested reserve lands.

Outside of the reserve, forestry in the district of Kenora is an important industry. Saw and pulp mills in Kenora rely upon both the hardwoods and softwoods available within the region. Although a prosperous industry in the Kenora district, the lands of the Shoal Lake basin provide far less promise, due to the effects of past harvests and lack of good, accessible stands. Forestry management in the Shoal Lake basin is the responsibility of the Ontario Ministry of Natural Resources and the Manitoba Department of Natural Resources (Hutchison *a*, 1995).

3.1.5 Water Resources

Water resources considered to be part of the reserve only include those bodies of water which are completely encompassed by reserve lands. A close look at a map of the reserve (Figure 6) indicates that such water bodies are not found to any significant extent on the reserve.

3.2 OFF-RESERVE RESOURCES

Not all resources utilized by SLFN No. 40 fall within the jurisdiction of their reserve lands. Resources falling outside of the reserve jurisdiction are not covered by the *Indian Act*, and thus are unable to be covered by either the FAFNLM, or IAOMA. Due to the significance and importance of these off-reserve resources to the people of SLFN No. 40, mention is given to them in this section.

3.2.1 Fishing

As previously mentioned, the commercial walleye fishery which played an integral role in the tradition and economies of the First Nations people remains closed. Domestic and commercial fisheries, as well as sport fishing exist in the region. The domestic fishery provides a subsistence food supply, and is a major part of the diet of the Shoal Lake First Nations people (Hutchison *a*, 1995; Beak, 1983).

Although the commercial walleye fishery remains closed, other fish species which have proven to be commercially valuable include: white fish and northern pike. Despite the potential value of these species, quotas have been placed on them, and commercial harvest is only permitted during the fall. The harvest restrictions greatly reduce the economic returns available to SLFN No. 40.

Angling is a popular activity enjoyed by local residents, and tourists alike. Although the sport fishing industry suffered from the over-exploitation of the walleye resource, and subsequent closure of the walleye fishery, other fish species, such as largemouth and smallmouth bass are proving to be desirable. As a result, the number of sport fishers on Shoal Lake has been on the rise (Hutchison *a*, 1995).

The management of the Shoal Lake basin fisheries is the delegated responsibility of both the Ontario Ministry of Natural Resources and the Manitoba Department of Natural Resources. Federal jurisdiction, under the Fisheries Act can be exercised over the fisheries if fish health or habitat are seen to be threatened (Hutchison *a*, 1995).

Hutchison (1996) has found that despite the commercial ban on walleye, and the low revenue returns achievable through the limited whitefish and pike commercial fishery that does exist, participation and interest in fishery activities remains high. These fisheries, however, do not fall under the jurisdiction of the *Indian Act*, and subsequently can not be affected by IAOMA or the FAFNLM which deal strictly with reserve lands.

3.2.2 Manomin (Wild Rice)

The numerous bays and narrows found in the Shoal Lake/Lake of the Woods region contain an abundance of shallow water zones which provide the necessary conditions for the growing of manomin. Manomin, known by most as wild rice, actually is not a rice at all, but a grass belonging to the family Gamineae. Vennum (1988) describes wild rice as being the only native North American cereal grain with a well documented history of food uses. Manomin has historically played a central role in the lives of the Anishinaabe people in the Shoal Lake region. Manomin not only provided the people with a highly nutritive food staple, but it was used ceremonially. It also provided the people with opportunities for trade or sale (Vennum, 1988). Manomin remains a harvested, valuable and lucrative resource of the Shoal Lake region today. However, harvests are now more variable due to the regulation of water levels by the Lake of the Woods Control Board (Chapeskie, 1998).

As a traditional food staple of the Anishinaabe people, the manomin harvest is of cultural and historical importance to the First Nation people of Shoal Lake 40. According to Hutchison (1996), 39% of those involved in resource harvesting activities take part in either the domestic or commercial aspects of wild rice harvesting. The manomin harvest accounts for a significant proportion of resource harvest economic values (Hutchison, 1996). Considering that the harvest period extends for only a few weeks in the late summer/early fall, and the inputs involved are generally low, the returns on investment for the manomin resource are great. Several wild rice locations exist adjacent to reserve lands and are harvested by community members. (Figure 8).

SLFN No. 40 has identified 386.2 hectares of traditional rice beds in total (Table 2). It is estimated by the First Nation that approximately 112 kg/ha of rice is manually harvested each year, while approximately 450 kg/ha is additionally harvested through the use of mechanical rice harvesting equipment (Hutchison *a*, 1995). Hutchison (*a*, 1995) has estimated that it could theoretically be possible to harvest 217,044 kg of rice annually using a combination of the two harvesting methods. It should be noted, however, that

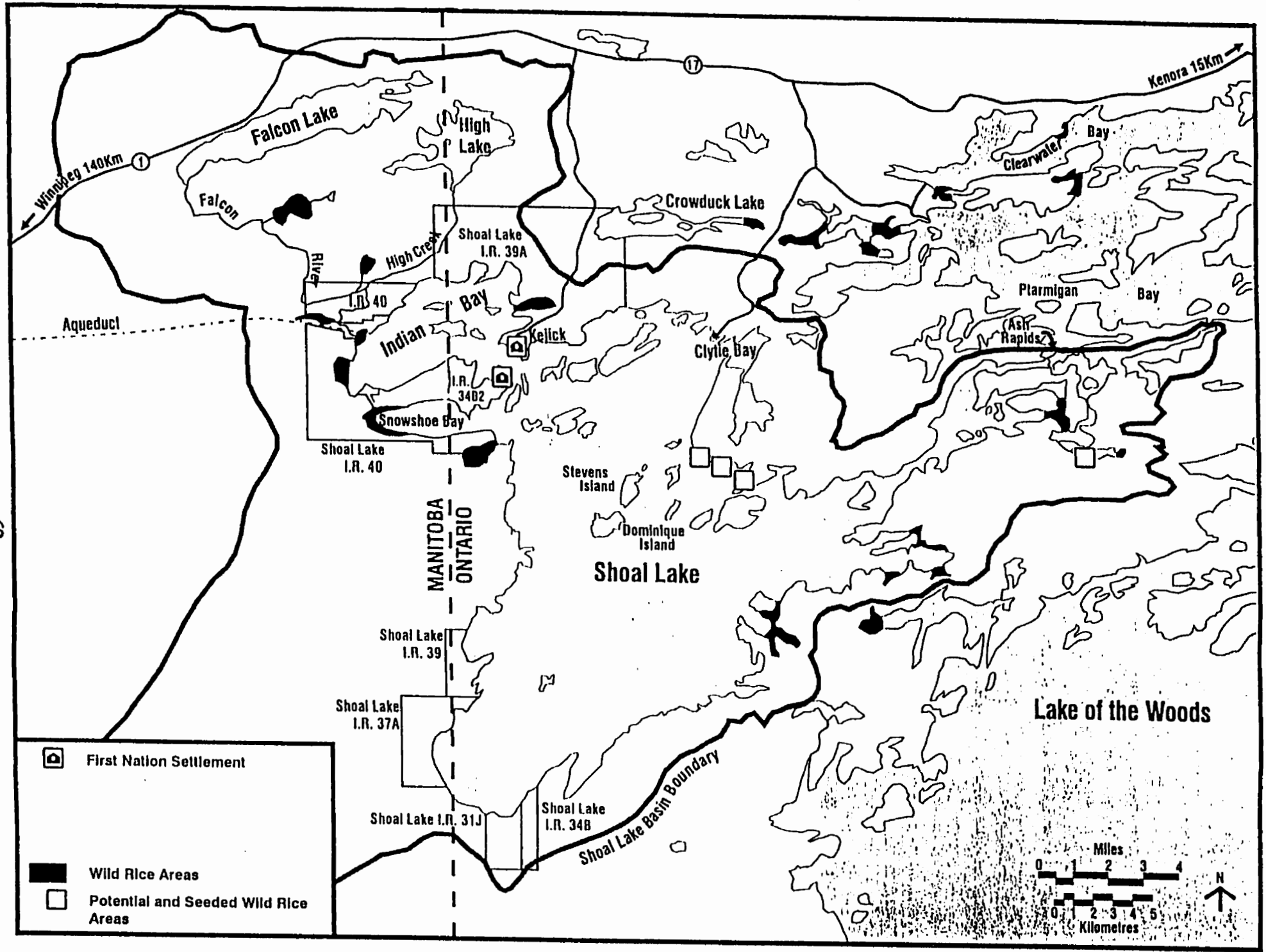

Figure 8: **Location of Wild Rice Harvesting Sites in the Shoal Lake Area (Hutchison, 1996).**

Table 2: Traditional Rice Bed Areas in Hectares for SLFN No. 40 (Beak *a*, 1983: 5.44)

Wild Rice Location	Rice Bed Area (ha)
Rush Bay	81.1
Crow Duck Bay	37.4
Zig Zag Island	38.4
Pine Island	27.5
Carl Bay	15.0
Deception Bay	1.4
Woodchuck Creek	1.4
Labyrinth Bay	28.1
Rice Bay	63.7
Snowshoe Bay	89.0
Queen's Bay	2.0
Portage Bay	1.2
Falcon Bay	--
Snake Lake	--
Total Exceeding	386.2

while it may be theoretically possible, varying water level fluctuations, whether natural or induced by water works infrastructure, will dictate manomin production and harvests on any given year. In 1997, green rice was sold at a price of $1.54/kg. At this price, an annual revenue of $334,248 could potentially be obtained (Shoal Lake Wild Rice Ltd., 1998). All harvesting of wild rice is conducted in Kenora Wild Rice Harvesting Area #4. Shoal Lake First Nation shares this harvesting area with Iskatewizaagegan No.39 Independent First Nation (Hutchison, 1996).

Manomin has expanded in areas where it has been planted. However, it has been depleted or eliminated in areas where water conditions have been altered, for example from the impacts of the Greater Winnipeg Water District (GWWD), and hydro projects. The resource is sensitive to, and its growth will reflect, changes in water levels and conditions. Vennum (1988: 20) describes correct water levels as being "above all the crucial factor for a successful yield". Vennum (1988) has also indicated that the resource is very sensitive to pollution and other forms of human mismanagement, such as; improper harvest techniques, alterations of water levels through construction of dams and dikes, excessive motor boat traffic which affects wave activity, as well as the removal of

beaver dams which serve to provide a gentle downstream flow on which manomin is known to thrive.

Traditional 'ricing' harvests involve paddling into the area by boat and collecting the wild rice kernels when they have ripened by beating the plants with sticks to shake the kernels loose into the boat. Processing of the collected kernels must then be completed on shore. The processing procedure involves sun drying, followed by roasting which involves further drying through the use of smoke or scorching with kettles. Treading or threshing, followed by air-tossing the seeds with the use of winnowing or fanning trays is used to free the chaff from the seed. Once the seeds have been separated from the chaff, the trays will contain manomin which is ready for cooking or storage (Vennum, 1988).

Technology has simplified the harvesting process through the introduction of time and labour-saving mechanized harvesting equipment and processing plants. Machines are now able to harvest in half an hour what one person would be able to harvest in a day by hand (Vennum, 1988). According to Campbell (1997), technology such as that provided by commercial picking machines, has led to a decline in the number of SLFN No. 40 members involved in the manomin harvest. With the technology comes an increased risk of crop destruction resulting from careless operation of equipment and poor harvesting techniques.

Jurisdiction over the manomin resource remains within the provinces. In terms of management of the resource, the Ontario Wild Rice Harvesting Act exists. However, the Act only sets up licensing for areas, including First Nation block areas, and does not include provisions surrounding the management of harvesting practices. First Nations purchase licenses to harvest block areas of wild rice from provincial Natural Resources Departments. First Nation block areas are communal resources. Currently the management of the resource by the First Nations is through internal verbal agreements, and customary harvesting practices (Campbell, 1997). There is, however, no way of stopping someone from harvesting an area that was through verbal agreement, delegated to someone else. SLFN No. 40 currently shares a block area with the neighboring

Iskatewizaagegan No.39 Independent First Nation. Interviewees indicated that a need for regulations and controls exists and is essential for the protection of the resource. Lack of harvesting regulations can easily lead to the damage of the resource through careless and improper harvesting techniques. Wild rice currently brings in the greatest revenues of any resource harvested by the First Nation. With some education, regulations, and improved management the valuable manomin resource could be made more sustainable and create greater long term profitability. Given that the block area license system involves no provincial regulation, a First Nation resource management regime could be de-facto extended to the manomin resource based on custom.

3.2.3 Water Resources

Water from Shoal Lake is used to provide quality drinking water to the Shoal Lake First Nation reserves, surrounding camps and cottages. The major user of Shoal Lake waters for domestic purposes is, however, the City of Winnipeg, which since 1919 has been withdrawing water from Indian Bay (Figure 9). In 1914, the City of Winnipeg was authorized by the International Joint Commission to withdraw a maximum of 455 million litres per day (ML/D). However, the maximum capacity of the present aqueduct system only permits the withdrawal of 385 ML/D. The waters provided from Shoal Lake supply the City of Winnipeg with a high quality source of drinking water, requiring only the addition of chlorine (Waterworks, Waste and Disposal Department, 1991). The City of Winnipeg required lands for the construction of the aqueduct system. As a result, between 1916 and 1921, 1,332 hectares of land was expropriated from I.R.40 by the City of Winnipeg. The City now owns the land under Indian Bay and some land in the surrounding area (Beak *a*, 1983).

While the Shoal Lake water supply remains of high quality, gradual deterioration of the water supply is occurring, likely due to developments in the region and the changes in water flows resulting from the Greater Winnipeg Water District (GWWD) and hydro developments. Activities that have the largest impact upon Shoal Lake water quality include developments such as residential cottage lots, land erosion, pollution, human

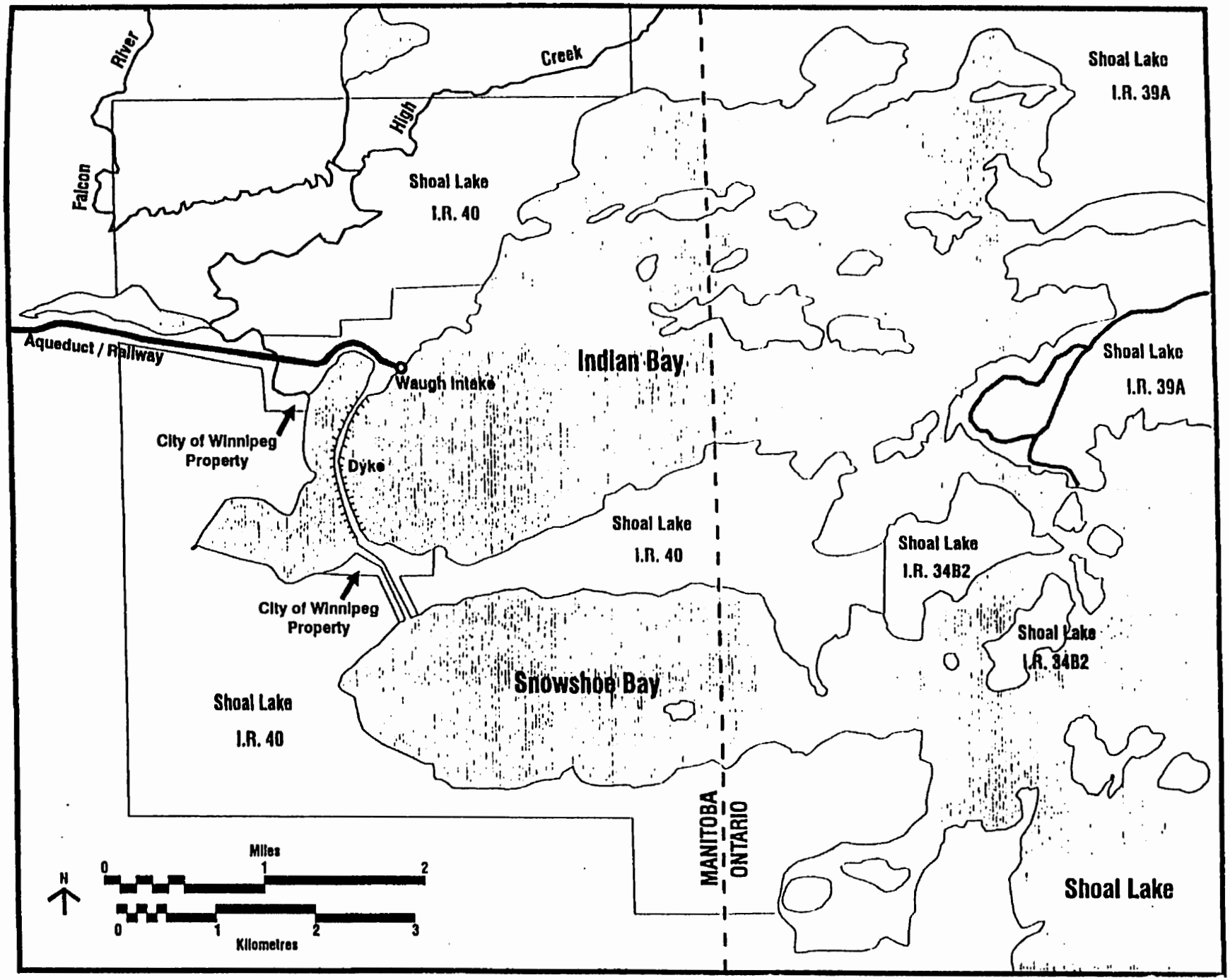

Figure 9: City of Winnipeg Water Supply System (Hutchison, 1995)

activities and solid and liquid wastes. Treatment of the water used by First Nation members has only been occurring since 1996. Chlorine is added, and it is felt that this treatment is necessary and adequate (Campbell, 1997).

Concern over water quality is minimal for the present generation; greater concern will be felt by future generations. Monitoring, environmental protection, and enforcement is needed in order to protect and maintain water quality. While an environmental management plan exists, as does an environmental management by-law, enforcement is difficult, and in many cases the plan is not followed. A major existing problem includes the lack of road access, which creates high risk possibilities for water pollution through accidental contaminant spills during transport across the lake. Efforts are still being made to create year round access for the community which would reduce the high risks and dangers posed by aquatic transport. Road access, regulations, and enforcement are needed. While water resource management cannot be directly impacted by either IAOMA or the FAFNLM, water quality can certainly be affected by management decisions made for on-land resources, such as environmental regulations.

Concern over water quality is always the foremost argument that must be resolved when dealing with proposals for land developments. The First Nation feels that the many restrictions placed upon it are not fair and are too stringent. Other non-First Nation user groups are able to develop in the Shoal Lake region, without facing the restrictions and opposition that SLFN No. 40 faces. Consistency needs to be established among user groups in the area, First Nation and non-First Nation alike.

Both the 1994 Watershed Agreement and the 1989 Tripartite Agreement have had limited success in establishing a framework for water quality preservation. As a result, it is felt that Shoal Lake water is inadequately protected by these agreements and is a commodity in need of protection (Campbell, 1997; Redsky, 1997).

Protection of the water resource is considered to be a priority in the agreement by the City of Winnipeg and Province of Manitoba under the Tripartite Agreement. However, there are a number of problems associated with the Agreement, which may ultimately undermine its effectiveness at preserving Shoal Lake water quality. Definite problems over the management of this resource exist, and can indirectly be improved through improvements over land management and environmental protection.

3.3 RESOURCE ISSUES

Beyond the natural resources utilized by SLFN No. 40, there are a number of resources management issues that need to be addressed as well. The management of the following activities can directly affect the quality and sustainability of the natural resources found on the reserve.

3.3.1 Waste Management

Improper management of solid wastes can lead to both soil and ground water contamination. Solid wastes are supposed to be collected daily from each home and transported to a landfill site located off the reserve on Ontario Crown Lands. Collection and maintenance of the landfill, which has been provided for the use of both SLFN No. 40 and Iskatewizaagegan No.39 Independent First Nation, is the responsibility of SLFN No. 40.

According to the former Chief at SLFN No. 40, not everyone is participating in garbage collection. Some people are leaving garbage to collect in their yards, as there is no enforcement. During freeze up and break up, garbage is stored in a temporary on-reserve landfill site, for later transport to the designated off-reserve site. As break-up and freeze-up can last for four to five weeks or more, significant quantities of solid waste can be generated and left on the reserve during this period of time. Only minimal recycling occurs; efforts to improve this facet of waste management need to be made. There is a

need for education, regulations, and enforcement, all of which an alternative land and resource management regime could provide.

According to the site operating plan, collection and disposal is to be conducted weekly. Final disposal of waste at the site is by the trench and fill method. The trench is to be compacted and covered, bi-weekly or as required. Any burning at the site is under the discretion and direct supervision of the Ontario Ministry of Natural Resources Fire personnel, and a fire permit issued by the Ministry of Natural Resources in Ontario is required for any burning activities. Whether or not the operating plan is followed is questionable.

3.3.2 Liquid Waste

During the years of 1993 and 1994, INAC spent between eight and nine million dollars on the installation of new septic systems on the SLFN No. 40 reserve. The old septic units ran at a cost of approximately $8000 each. The new septic units run at a cost of $43,000, and have a life expectancy of only ten years. While the new system is far more costly, they do contain four times the capacity for seepage than the old systems. Health Canada is in charge of setting the regulations regarding liquid waste disposal, and the new systems were designed to meet those standards (Campbell, 1997; Redsky, 1997).

The major concerns and problems with the new system include the high cost of hydro-electric power required to operate each system. In some cases families simply cannot afford to pay their electrical bills, their power is subsequently turned off, creating an opportunity for septic tank malfunction and over-flow. Spring melt water can pose problems as well, as melt water can seep into the systems causing tanks to fill quickly and over-flow. Erosion problems were also cited to have been experienced with these systems. Sewage seeping into the water supply, as a result of seepage or over-flow is of course a major health concern (Redsky, 1997).

While the new system is certainly not without flaws, no matter what kind of system is implemented, problems are certain to arise. The ecological fragility of the environment, and the fact that rocky pre-cambrian shield and shallow sandy soils must be contended with, make septic installation challenging at best. At present, no sewage treatment plant exists on the reserve, and septic sewage must pumped out and trucked to the mainland (Redsky, 1997). The fact that spring break-up and winter freeze-up make vehicular travel impossible for a period of time each season, means that septic maintenance is neglected during that time period, and septic systems run a higher risk of overflow. Hauling raw sewage across the lake by barge, when travel is possible, also poses risks for water contamination, should a mishap occur during transport.

An assessment of the current system should be conducted, and solutions derived to solve the present problems within the system. Implementation of an alternative land and resources regime could be used to create enforceable by-laws surrounding the disposal and handling of liquid waste. Such measures would serve to improve the current management of liquid waste on-reserve and minimize some of the risk associated with it.

3.3.3 Tourism

The economic development potential of individual resources on reserve is currently not sufficient to provide for an adequate economic base. Tourism, however, may be an alternative that can make use of the natural beauty of the area. Currently no tourism activities are taking place on the reserve, however, according to former Councilor Tom Campbell, there is room for cottages, a marina, and campgrounds on reserve lands. However, such developments have traditionally faced much opposition from the City of Winnipeg. If an alternative land and resource management regime places more control and power into the hands of the First Nation, the First Nation may more easily be in a position to go forward with such developments.

Eco-tourism

Ventures along the eco-tourism line were noted to be of interest to the First Nation (Redsky, 1997). If properly designed, such ventures can have a low environmental impact and allow for aboriginal people to make use of their local skills and knowledge of the land. Engagement in economic activities that combine development with traditional aboriginal values, will serve to promote both sustainability and an improved quality of life (Miawpukek: Reaching Self Sufficiency. . . 1997). Many conventional activities such as forestry or mining can be destructive to the land, pollute the environment, and negatively impact wildlife and human health. Even if well managed, such developments often inadvertently leave a significant 'ecological footprint'. As many First Nation reserves were established on areas of unproductive lands (SLFN No. 40 included), or had productive lands expropriated, the potential for many conventional resource based economic development ventures simply may not exist. In some cases, such as the case of SLFN No. 40, reserve access may be too difficult to make conventional developments feasible, or perhaps the environment may be too fragile to sustain such developments.

Many First Nation communities, including SLFN No. 40, still need to establish an economic resource base in order to improve community living, promote autonomy and self-confidence, and prepare for the future of self-government.

Tourism in Canada and worldwide is a large and growing industry. In 1988, $24 billion was added to the Canadian economy by tourists alone (Tourism Introduction, 1997). The aesthetic beauty of the land and resources found on many First Nation reserves can provide First Nations with opportunities for successful and sustainable developments in the tourism industry. With recently heightened and growing interest in aboriginal cultural heritage within North America and abroad, aboriginal tourism has become a fast growing tourism sector. Aboriginal tourism can be designed to be relatively low impact and it allows for the sharing and promotion of aboriginal cultural awareness to keen visitors from around the world (First Nations in Canada, 1997).

Many aboriginal communities across Canada are setting up traditional aboriginal villages. The villages allow visitors to not only see how the aboriginals lived historically, but also to some extent allow visitors to live as the aboriginals traditionally lived. Tourists can learn about aboriginal history and culture, and experience first hand, aboriginal cuisine and cultural practices. This type of tourism, which is known as eco-tourism, focuses on nature and on environmental values. Eco-tourism provides for low environmental impact and encourages the preservation, appreciation and respect of nature which is an integral part of aboriginal culture.

Elders can play an active role in providing the stories and information that can be shared, and in teaching this information to their own people for sharing. The teaching, guiding, and sharing involved in tourism ventures allows for the people to make use of their cultural skills and knowledge of the land and its resources. Eco-tourism helps to ensure the preservation of aboriginal history and tradition. Not only does this benefit the non-aboriginal tourist, but many aboriginal people who have lost touch with traditional teachings will benefit as well.

Eco-tourism ventures allow for the generation of revenue, while still promoting the preservation of culture and spirituality (Where The Buffalo Roam, 1997). The initiative, determination and hard work on the part of aboriginal people is paying off with many successes. The successes of aboriginal businesses include the creation of wealth to the economy of the First Nations and the provinces. They result in the creation of jobs, improvement of community ethics and living, and the promotion of economic independence. Examples of successful eco-tourism ventures from Manitoba include; Riding Mountain National Park's Anishinabe Village, Brokenhead Ojibway Nation Historic Village, and A Wawa Tae Me Kee Wapa, a little Cree village near Waboden, Manitoba (Success Stories From Manitoba, 1997; Stark, 1997).

The natural beauty of the Shoal Lake region, and the growing interest in aboriginal culture could possibly provide SLFN No. 40 with an opportunity to get involved in the tourism industry, and allow them to work towards re-establishing an economic resource

base. The lack of road access to the reserve could actually prove to be an asset. Many tourists are enticed by the sense of adventure and remoteness generated by boat and ice road traverses. An alternative management regime should provide SLFN No. 40 with the control needed over lands and resources to get involved in such an industry if they should choose to do so.

3.3.4 Environmental Protection

Environmental protection is necessary in order to maintain a quality water supply, as well as to preserve natural beauty and maintain environmental integrity. According to a 1995 environmental issues inventory that was conducted for SLFN No. 40, "no issues were identified as posing imminent health or environmental impacts requiring immediate mitigation measures" (CH2M Hill Engineering Ltd., 1995: I). The study did recommend that both solid and liquid waste management be monitored and approved, and that a risk analysis be conducted to determine the potential impact of fuel release posed by the barge. While problems may not presently be imminent, poor management and improper measures could certainly lead to unwanted problems in the future.

In 1992, an Environmental Management Plan was prepared for SLFN No. 40 by Hilderman Witty Crosby Hanna and Associates. The plan was designed to meet one of the requirements of the Tripartite Agreement, that being to provide "reasonable, effective control over the preservation and enhancement of the natural environment, especially as it relates to the preservation of the water quality of Indian Bay being the source of the Winnipeg water supply" (Shoal Lake#40/Canada Agreement, 1990: 12). The Environmental Management plan is coordinated with an Environmental Management By-law. The Environmental Management By-law was designed to provide for the "adoption, administration, and enforcement of an environmental management plan, which includes restrictions on land use" (Environmental Management By-law, 1995). The by-law came into force in February of 1996 (Gray, 1996).

The strength of the by-law, in terms of its ability to withstand a court challenge is questionable. Questionability results from SLFN No. 40's inability to correctly follow the by-law development procedures as outlined by INAC.

The environmental management by-law was passed both under section 81 of the *Indian Act*, and according to the inherent right of self-government. While the by-law fits within the parameters of section 81 of the *Indian Act*, until a self-government agreement is reached between SLFN No. 40 and the Government of Canada, by-laws cannot be created based on the inherent right (Gray, 1996).

Due to the shared nature of I.R.34B2, it was recommended that both SLFN No. 40, and Iskatewizaagegan No.39 Independent First Nation pass the same environmental by-law together in order to avoid enforceability problems. A by-law passed by SLFN No. 40 alone would not be enforceable against any members of Iskatewizaagegan No.39 Independent First Nation staying on I.R.34B2. Despite the recommendations, Iskatewizaagegan No.39 did not sign the environmental by-law. The by-law cannot, therefore, apply to any members of reserve I.R.39A on I.R.34B2 (Gray, 1996).

According to subsection 82(1) of the *Indian Act*, by-laws made under section 81 must be received by the Minister no later than four days after being enacted by the Band Council. The environmental management by-law was sent to the Minister without the accompanying environmental management plan, which was considered to be a component part of the by-law. As the environmental management plan was not forwarded to the Minister until several months after the by-law, the four day period identified in the *Indian Act* was violated. Gray (1996) describes this violation of procedure as potentially jeopardizing the legal validity of the by-law. While it may be of the opinion of the Minister that a by-law is valid, only a court of law has the actual power to rule on validity (Gray, 1996).

While the plan and by-law do exist, according to the former Chief at SLFN No. 40, the plan has not been implemented, is not followed, and is not enforced. As SLFN No. 40

has no enforcement officers, the power to enforce the plan is very limited (Redsky, 1997).

Another problem with the plan is the lack of education that went into informing and teaching the community about the plan. Many people are simply unaware of the contents of the environmental management plan and by-law. Therefore, when a community member breaks a by-law provision, they may not even be aware that they have done so (Redsky, 1997).

The resource development inventory studies that were completed along with the environmental management plan, suggested the expansion of wild rice and fisheries as being two areas with a potential for environmentally sustainable economic resource developments (Campbell, 1997).

Improvement of the current on-reserve situation could be attained through the establishment of a functioning environmental management office on reserve with staff to deal with policy, jurisdiction, and field assessments. Currently there is one person employed in this area. This person is in charge of monitoring water supply, inspection of liquid and solid waste, researching applications for development as well as advising Chief and Council on remediation, mitigation, and reclamation (Campbell, 1997).

Those that were interviewed felt that the current environmental protection program is ineffective. An alternative land and resource management regime should identify a means of implementing an effective strategy that will serve to protect the environment, while still allowing for sustainable resource development initiatives.

3.3.5 Roads, Buildings, Housing

Construction of roads, buildings, and housing is done according to the Indian Affairs project implementation process. Plans must be submitted, and designs approved prior to the initiation of construction. Construction processes must be done according to codes

and regulations, as well, processes must meet certain environmental standards. People wanting to build without the financial aid of INAC can, however, do so unregulated. Construction and maintenance of roads, buildings and housing provides seasonal employment opportunities for members of the First Nation community.

Funding for the construction of roads, buildings, and housing is received from INAC'S major and minor capital funds flows. Funding problems tend to arise as the level of funding and frequency is inadequately administered. Indian Affairs follows a funding formula which only allocates a particular amount of money to each First Nation, regardless of the amount that is actually needed. The funding formula attempts to create equity and fairness across all First Nations in Canada. However, it falls short in that it does not allow for the consideration of unique circumstances. Funding is a problem, as is the high cost of accessing hydro-electric power, and construction. These problems are further exacerbated by the difficulty of accessing the reserve. Often technical problems are encountered, in which certain parameters are not accounted for. The result is inadequate funds designated to a project. When funds prove inadequate and re-applications must be made, the development process becomes slowed considerably. A need exists for increased development funds for on-reserve projects. Establishment of an economic resource base could serve to alleviate some of that need.

3.3.6 Current Resources Initiatives

An on going community restoration project has been developed. Community restoration projects are carried out by youth from the community during the summer months. The projects provide youth with summer employment, as well as an opportunity to contribute to the community in a positive way.

3.3.7 Resource Development Obstacles

Even if a new resources management regime is identified as acceptable and implemented at SLFN No. 40, the First Nation will face a number of development obstacles. Cornell and Kalt (1992: 6-7) have identified several obstacles to development faced by aboriginal

communities including: inability to obtain financial capital; lack of First Nation members with the necessary education and skills to undertake developments; lack of effective planning mechanisms on-reserve; reserves that are poor in natural resources; isolation from markets and high costs of travel; difficulty attracting investors to reserve lands; federal and provincial policies which are counterproductive to First Nation developments on-reserve; outside intervention and control over First Nation decision-making (in the case of SLFN No. 40, the City of Winnipeg under the Tripartite Agreement), lack of First Nation government accountability or integrity, or inability to handle development; finding suitable developments which do not clash with cultural beliefs; finding a management technique that works (aboriginal, non-aboriginal, or some combination of techniques).

Another obstacle to contend with involves the difficulties involved in trying to obtain a bank loan. Obtaining a bank loan is a difficult endeavor for First Nations people and organizations, as under sections of the *Indian Act* assets situated on reserve lands are protected from seizure. Banks engaging in business with First Nations undertake a large risk. If a loan is not re-paid the bank has no collateral to go after, as it is prohibited from touching assets found on reserve lands (Kikiwak Inn Provides A Home Away From Home, 1997). These problems are in many cases a deterrent to third parties interested in pursuing economic developments on reserve lands.

It is likely that at some point SLFN No. 40 will be faced with the majority of the issues identified by Cornell and Kalt (1992). In order for successful development to be achieved, SLFN No. 40 must be aware of the obstacles that it faces and search for ways to eliminate or overcome them.

Cornell and Kalt (1992: 9) have also noted, "as natural resource endowments rise, so do the chances of success. . . such resources [,however,] are not necessarily the key to successful development". This statement should provide hope for SLFN No. 40 as despite its low natural resource development potential, successful development through other means could still be achieved. It is not necessarily the resource potential, but rather

the mechanisms and structures by which the resources are managed that determine developmental success. Obstacles to development and management structures will be further discussed within the Chapters that follow.

3.4 CHAPTER SUMMARY

Chapter Three identified and discussed the importance of specific resource sectors, as well as the importance of resource management issues to the community of SLFN No. 40. From this discussion it was found that little management of resources appeared to be occurring on-reserve, raising concerns over resource sustainability. Problems and concerns surrounding the management of each sector were discussed. Common problems included: inadequate authoritative power over resources; lack of regulations; lack of resource development opportunities; and, insufficient compliance to existing regulations resulting from unsatisfactory enforcement capabilities and poor knowledge of regulations. Comments were made regarding things to look for in an alternative management regime, in order to potentially provide solutions.

The *Indian Act* as well as jurisdictions of both provincial and federal governments were found to prohibit SLFN No. 40 from managing their lands and resources as they would like. In order to improve community living and safety, SLFN No. 40 needs to establish an economic resource base, practice sustainable resource use, as well as protect the surrounding environment through the establishment of necessary and enforceable regulations. Achieving its goals will be a challenge to SLFN No. 40, and numerous obstacles are likely to be encountered along the way.

An alternative land and resources management regime will be necessary in order for SLFN No. 40 to improve the current land and resources situation on-reserve. The needed arrangement will require the First Nation to be placed in a position of greater control and power. As well, the alternative regime must be able to adequately address the resource issues and concerns identified within this Chapter. Chapter Four focuses on this very issue.

CHAPTER 4

ALTERNATIVE LAND AND RESOURCES MANAGEMENT REGIMES

With a need for new land and resources management previously identified, two options which could provide management alternatives are identified, compared and analyzed within this Chapter. The two legislative options are, the proposed Indian Act Optional Modification Act (IAOMA), and the FAFNLM. Each option is discussed in turn. It should be noted at this point that neither the IAOMA, nor the FAFNLM has been passed as legislation at the time of this analysis.

4.1 BILL C-79, THE *INDIAN ACT* OPTIONAL MODIFICATION ACT (IAOMA)

4.1.1 Background

The *Indian Act* Optional Modification Act is "An Act to permit certain modifications in the application of the *Indian Act* to Bands that desire them" (Bill C-79, 1996). Development of the Act was based upon amendments which were derived from the many consultations and discussions that occurred between First Nations and Ronald A. Irwin, the former INAC Minister (IAOMA Summary of the Bill, 1996). Since April of 1995, every Chief and First Nation organization was contacted in writing four times by former Minister Irwin. Each time the former Minister sought First Nation input, while at the same time provided relevant information to First Nations (Indian and Northern Affairs Canada, 1997).

The IAOMA is designed to serve as an interim measure until such time as First Nations self-government can be put into place. The legislation removes some of the unnecessary and frustrating restrictions and intrusions faced by local First Nations Governments. The legislation would provide increased control over day-to-day business by removing

needless federal government intrusions and effectively streamlining business processes (Government of Canada, 1996).

IAOMA is an optional piece of legislation that First Nations can choose to opt into if they so wish. First Nations who do not choose to opt into the legislation would remain under the present *Indian Act*. The decision to opt in must be made wisely, as there is no ability to opt out once a First Nation has chosen to be governed by the new legislation. IAOMA is a package deal; Bands cannot opt into certain parts of the Act, but must opt into the Act in its entirety (Assembly of First Nations, 1997).

As with any legislative change, concern arises over the impact that the change could have on existing aboriginal and treaty rights, the inherent right to self-government and on the special relationship that exists between First Nations and the federal government. In order to ensure that these rights and relations remain unaffected by the IAOMA, a non-derogation clause was included within the Act. The clause guarantees that adoption of the IAOMA legislation would not in any way affect existing rights and relationships (IAOMA Summary of the Bill, 1996). In a letter addressed to Chiefs, Councilors and Leaders of First Nation Organizations, former Minister Ronald A. Irwin (1996) made the following statement in an attempt to clarify and appease First Nation concerns;

> "I again give you my assurance that the federal government will continue to respect its fiduciary relationship with First Nations. It is my clear intention that aboriginal and treaty rights will not be affected. None of the changes affect taxation, Indian registration, band membership, or the protection from arbitrary sale and expropriation that reserve lands currently have. They do, however, streamline procedures, increase local control, repeal unused sections, and foster economic development on reserve while reducing the authority that I and my department have to direct your decisions or override the aspirations of your communities."

A synopsis report of the IAOMA legislation by the department of Indian and Northern Affairs Canada has identified four major groups into which the proposed amendments can be categorized. The first group of amendments act to restructure both Ministerial and First Nation's powers, thereby increasing local First Nations control, supporting economic development, and removing provisions deemed to be paternalistic, intrusive and invading. The second group of amendments act to expedite and streamline band business processes and procedures, while the third group of amendments involves the repeal of unnecessary and outdated revisions. The final group contains amendments which offer the validation of the current practices performed both by First Nations and the Canadian Government (Indian and Northern Affairs Canada *b*, 1996.)

Irwin (1996), former INAC Minister, describes each individual amendment as being minor. However, collectively the proposed amendments act to remove a good number of the federal control powers which currently rule the lives of First Nations people today.

4.1.2 IAOMA Provisions Related to Natural Resources Management.

The proposed IAOMA legislation contains a large section specifically dealing with on-reserve natural resources management practices. Many of the provisions in this section deal directly with natural resources issues. While other IAOMA provisions are more indirect, significant implications in the way natural resources are managed on reserves could result. Indirect provisions which concern resources management include areas of business, monetary matters, economic developments, and environmental protection. These areas, along with the natural resources, must collectively be considered when making natural resources management decisions.

First Nations of today are strongly pushing for and working towards autonomy. Establishment of a viable and sustainable economic resource base is a key factor on the road towards self-government, independence, improved living conditions, and success (First Nations in Canada, 1997). IAOMA legislation addresses the need for the establishment of an economic base, and the changes outlined in the IAOMA are designed

to provide First Nation Communities with improved natural resource development capabilities.

Expediation of Day-to-Day Band Business.

In order to improve the efficiency of day-to-day band business transactions, changes have been made under IAOMA. According to subsection 2.(3)(b)(ii) a Band Council meeting does not have to be called every time a business decision is to be made. Instead, in cases where all council members agree with the resolution, all that is required is the written consent of all members of the Band Council (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997).

Re-defining the Term "Band".

The definition and capacity of the term "Band" has changed under the new section 16.1. As the IAOMA legislation describes, "A band has the capacity and, subject to this Act, the rights, powers and privileges of a natural person" (Bill C-79, 1996). This means that a band now has the right to sue and to be sued, as well as the right to hold land (INAC *a*, 1996). Members of the Assembly of First Nations have raised concerns over the legal impact of changing the "band" definition. Despite the non-derogation clause, they are fearful that if a band takes on a corporate persona, it may eliminate the ability of members of a band to possess aboriginal and treaty rights, including the right of aboriginal self-government (Nahwegahbow, and Nadjiwan, 1997). The government intended the change in definition to improve the position from which First Nations can enter into deals with other governments and corporations and better facilitate economic development ventures. The non-derogation clause was included in order to eliminate fears over the definition, like those expressed by the Assembly. The amendment also provides First Nations with the ability to acquire additional reserve land (INAC *a*, 1996).

By assuming a more 'corporate persona', a First Nation should be better equipped to deal with other governments and corporations on business matters. The First Nation is able to play on a more equal level, which includes the ability to sue, and to be sued. The ability

to be sued holds a First Nation more accountable for its actions, and should promote responsible decision-making. The right to hold land and acquire new lands are definite assets, especially for developments and business dealings.

SLFN No. 40 could benefit from the ability to acquire new lands to increase their land base for development and future population expansion. As SLFN No. 40 is also interested in having government that is accountable for its actions and to its people, they will likely be interested in the clause related to accountability.

Repeals - Farm Produce, Roads and Bridges.

The paternalistic section 32, dealing with the sale or barter of agricultural produce has been repealed. First Nations are no longer banned from the sale or barter of farm produce. Sections 33 and 34 have also been repealed. Section 33 made it an offense to enter into a transaction under section 32. Section 34 stated that road and bridge maintenance was to be conducted as the Minister dictated. The repeal of these sections serve to eliminate paternalistic and outdated *Indian Act* provisions.

Improvement Upon Claims and Treaty Land Settlements.

Subsection (b) was added to section 38(2), which deals with surrendered lands. Subsection (b) deals with present and future rights or interests in land that have been requested to be set aside, as reserve lands, for the purpose of being leased. The added clause is designed to aid in the implementation of specific claims and treaty land entitlement settlements, and should prove beneficial when dealing with situations involving third party interests.

In the case of SLFN No. 40, this clause could be used to settle outstanding land claim issues, such as the one involving land expropriated by the City of Winnipeg for the construction of the aqueduct. Perhaps the addition of this subsection will help to settle the outstanding issue of the Snowshoe Bay Development as well.

Land - Absolutely Surrendered or Designated.

Section 53 of the *Indian Act*, dealing with the management of surrendered and designated lands has been modified under IAOMA, subsection 53(1.1) to allow the Minister at the request of the Band Council to transfer the functions of the Minister to the Band Council. The functions referred to in this section deal with the management and selling of absolutely surrendered lands as well as the management, lease, and other transactions affecting designated land. Under the additional section (1.2), the Minister maintains the right to revoke authorization given in 1.1) (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997).

The fact that the Minister can revoke decisions indicates that the First Nation does not have full decision-making power since, if the decision the First Nation makes is unfavorable with the Minister, the Minister can revoke the First Nations powers to make such decisions.

This clause could possibly prove favorable for Shoal Lake First Nation in the settlement of the Snowshoe Bay Development issue. However, according to the clause, the Minister 'may' provide a First Nation with the authority upon their request and following the steps outlined in the clause. 'May' is certainly not the same as 'shall', and there is likely Ministerial discretion as to whether or not this authority would be actually provided to the First Nation requesting it. As well, the fact that the Minister can revoke authorization once the decision has been made seems to leave the ultimate power in the hands of the Minister.

4.1.3 Natural Resources.

In terms of natural resources section 57, which has been largely expanded under IAOMA, is of greatest relevance. Under the present *Indian Act*, section 57 is very short, only dealing with limited provisions on forestry and mining. All regulations under this section are made under the authority of the GIC and the Minister. The only power that a Band Council has is to issue consent if logging is to occur on reserve lands. Current penalties

for non-law abiding citizens are very weak, not exceeding $100 or 3 months in jail or both.

Timber.

Section 57 (a) gives the GIC the power to make regulations regarding, "the cutting, removal and disposal of timber on surrendered and reserve lands and any related activities" (Bill C-79, 1996: 40). Included in this authority would be the prohibition of said activities without a license (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997). Currently section 57(a) only deals with the authorization of timber cutting licenses. The modifications provide the GIC with more authority.

In part (b) of section 57 the GIC gives the Minister license issuing authority. The authority granted to the Minister can be passed into the hands of Band Councils. Band Councils can then legally carry out the function of issuing licenses regarding cutting, removal, and disposal of timber. This power extends to surrendered land, designated land, reserve land in the possession of a band member (with consent of that member), and other reserve lands (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997). Under this provision, First Nations could gain greater control over forest resources.

The increased authority of the GIC in part (a) can now be distributed to the Band Councils, giving them the power to grant timber licenses on their reserves, including surrendered, or designated reserve lands. There is one catch to part (b), "authorizing the Minister or a person or council of the band designated by the Minister on such conditions as the Minister may specify..." This means that Band Councils are still subject to conditions imposed on them by the Minister; however, this is still an improvement over current circumstances.

Mining.

Part (c) of section 57 gives the GIC the authority to regulate and prohibit mining and related activities on or under reserve or surrendered lands. According to INAC (*a*, 1996), the defined authority of the GIC should provide increased protection to First Nations, as well as attract more industries to invest in mining projects which could prove to be a good source of economic returns for First Nations. Currently the authority of the GIC is not so clearly and specifically defined, creating a likely deterrent to interested investors.

Under part (d) of section 57, of IAOMA the mining lease authority given to the Minister by the GIC can be transferred to Band Councils which desire such authority. Band Councils could then effectively regulate the exploration and development of mining and related activities on or under designated lands through the issuance of leases for these activities (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997).

Although presently the development of mineral resources by SLFN No. 40 on reserve lands does not appear to be economically viable, there is a mineral deposit on the reserve. At some future date, this deposit may prove to be economically viable to develop. At such time the authority which could be provided to the First Nation resulting from this modified provision would be beneficial.

GIC Regulation of Leases and Licenses.

Section 57, part (e) gives the GIC the ability to designate terms, conditions and restrictions regarding the granting of leases and licenses. This is applicable to parts (b) and (d) and allows the GIC to regulate lessees and licensees in areas within 57(e) (i) - (vii) which include: environmental protection, forest fire prevention and control, requirements and locations of buildings, works, and access roads, security deposits, access rights and conditions applicable to mines and related facilities, regeneration of forests after harvesting, and rehabilitation of sites such as those resulting from mines and processing facilities. Although the powers of part (e) are currently under the control of the GIC, according to a Clause by Clause Analysis of the *Indian Act* Optional

Modification Act (1997), if the Bill becomes law new regulations would be proposed to allow the Minister to delegate these increased powers to Band Councils.

There is a definite need for regulations regarding the matters covered in subsection 57(e) (i) through to (vii), which deals with control over a number of natural resources issues. Having the authority on these issues fall into the hands of the GIC is not what SLFN No. 40 wants to see. Such an arrangement does not provide opportunity for self-government, which is what Shoal Lake ultimately seeks. Although transfer of these powers from the GIC to First Nations is mentioned under the interpretation section of INAC's Clause by Clause Analysis of the Indian Act Optional Modification Act (1997), the actual Bill does not contain such a clause. As a result, there is a need to be wary, and it would be beneficial for such a clause to be included in subsequent drafts of the legislation.

GIC Penalization of Licencees & Lessees.

Under the new section 57 part (f) in IAOMA, the GIC can penalize licensees and lessees who breach the terms of their agreements. Cancellations and suspensions can occur as can the designation of monetary fines of up to $5, 000 or twice the value of the stumpage fee of the timber removed or the royalty value of mined minerals. Ridiculously low monetary fines not exceeding $100 currently exist under the present *Indian Act.* Increased fines would serve as a greater deterrent to potential offenders. The same monetary fine of $5,000 exists for those who breach agreements where remediation, regeneration or rehabilitation was required. Security deposits can be forfeited by the GIC. The GIC also has the ability to seize and forfeit belongings which remain after the termination of the license or lease period.

It should be noted that the provisions of subsection 57 (f) are necessary to control the activities of resource users and abusers. The power to control these activities, however, is in the hands of the GIC and not in the hands of Band Councils.

Dispute Resolution.

Under the current *Indian Act*, there are no mechanisms in place which facilitate the resolution of disputes regarding the rights and obligations contained within license and lease agreements. Part (g) of section 57 acts to establish the necessary mechanisms and was included in the legislation in order to deal with disputes when they arise.

This would be beneficial to the First Nation if or when problems arise dealing with forestry or mineral license and lease agreements, as under IAOMA, the Band Council may obtain the authority to issue such licenses.

Summary Conviction.

Part (h) allows the GIC to institute summary conviction offenses when regulations are violated.

Comments on Section 57.

Myers et al. (1997) have described section 57 as providing the GIC with an increased range of regulatory powers to facilitate the development of natural resources upon reserve land. The authority to grant mining and forestry licenses can be delegated to Band Councils, thereby increasing local control in these areas.

While more control can be placed in the hands of First Nations Councils under the IAOMA modified version of section 57, the Assembly of First Nations (1997) has stated that some commentators believe giving the power to the Band Council acts to diminish the fiduciary role of the Minister. More control by First Nations is inevitably going to lead to a reduction in fiduciary responsibility, and in terms of First Nation's self-government, this would lead to increased First Nation independence. Of larger concern to the Assembly of First Nations (1997) is the fact that throughout section 57 the GIC has the decision-making authority, which does not require consultation with or the consent of First Nations communities. Although this may be the case, the development and protection of natural resources under the modified section 57 are vastly improved under the legislative provisions found within IAOMA.

4.1.4 Lands Provisions

Repealed - Land Cultivation.

The paternalistic and unfair *Indian Act* provision in 58.(1)(a) has been removed in the IAOMA legislation. No longer can the Minister 'improve' or cultivate lands within a reserve as he deems necessary. The ability of the Minister to conduct such activities is an intrusion in the lives of First Nations peoples.

Band Member Development of Leased Reserve Lands.

Subsection 58.(3) of IAOMA allows for individual First Nations members to develop leased areas of reserve lands. Under this section the Minister can lease reserve lands to a band member to which the parcel of land has been allotted, to other band members, or to any other person. Under the current *Indian Act* uncertainty surrounds the issue as to whether or not the land can be leased to a band member (INAC *a*, 1996).

The addition of this provision can allow for developments to more easily occur on reserve lands. It eliminates the need for the lands to first be designated (Myers et al., 1997). This is a definite plus for SLFN No. 40, which is currently seeking ways to develop an economically viable resource base for it's community.

Repealed - Disposal of Grass, Trees. Non-Metallic Mineral Development.

Subsection 58.(4) (a) of the *Indian Act* has been repealed under IAOMA. The Minister no longer has the authority to dispose of natural resources, which include wild grass and dead or fallen trees. The modified section 58.(4) (b) allows the Minister to distribute leases which deal with all aspects surrounding the area of non-metallic mineral development. Licenses can be issued, with the consent of the Band Council, for lands that have not been surrendered or designated. Removal and usage of non-metallic minerals is no longer restricted to a "taking" situation, as it is under the present *Indian*

Act. No longer can temporary permits be issued for such activities without band consent (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997).

Through this provision, the request of a Band Council, the Minister can deal with issues of non-metallic mineral development (i.e. sand and gravel). Although First Nations still must deal with the Minister, who has authority under this area, First Nations do have increased powers as the Minister cannot take actions without Band Council consent. This is an improvement, and can benefit SLFN No. 40 in the management and development of sand, gravel and dimensional stone.

Land Management.

Section 60 has been modified under IAOMA to provide First Nations with more local control in the area of land management. Under IAOMA, the Minister is placed in charge of granting First Nations control over land management. Under the present *Indian Act*, the authority over land management is held by the GIC. Under IAOMA, bands can acquire any or all of the powers that the Minister has with regards to reserve land management and transactions. In the present form of the *Indian Act*, the GIC can grant land management and control powers to a First Nation, but the extent of the powers granted is up to the discretion of the GIC. Part (2) of section 60 in IAOMA has also been modified. The power of the GIC to withdraw authorization given in part (1), as in the present *Indian Act*, has been given to the Minister.

Although any or all of the powers of the GIC can be obtained by a First Nation through defined processes (special band meeting, secret ballot vote), which is a definite improvement over the current GIC discretion over powers, powers authorized in subsection 60 (1) can still be withdrawn. Under the modification the powers are withdrawn by the Minister instead of the GIC, as is currently the case. Regardless of who does the withdrawing, it remains that the ultimate control does not reside in the hands of the First Nation.

Repealed - Loans, Operation Of Farms.

Section 70, dealing with loans was found to be paternalistic and has been repealed under IAOMA. Section 71 has also been repealed. Under this section the Minister's authority to operate farms on reserves was not only paternalistic, but an impediment to First Nation farmers.

Regulatory Fines Increase.

Section 73.(2) increases monetary fines up to $5000 for offenses committed against regulations made under section 73.(1). This includes the protection and preservation of fish and wildlife, destruction and control of the spreading of noxious weeds, diseases, and pests that could harm vegetation on the reserve, the inspection, alteration, destruction and renovation of premises found on-reserve, provision for sanitary conditions in both private and public places, as well as a number of other regulations that deal with issues less directly tied in with the area of natural resources (Imai, 1996). Increased fines would serve to deter lawbreakers.

4.1.5 By-law Creation.

Subsection 81.(1) lists the different purposes for which a First Nation Band Council can create by-laws. IAOMA has added to the list by including several provisions which follow paragraph (o).

By-laws - Natural Resources.

Paragraph (o) allows for by-laws to be written concerning the management, protection, and preservation of fish and fur-bearing animals and other game located on reserve lands. Paragraph (o.1) has been added to include (i) the cutting of timber for personal use on the reserve by a band member, and (ii):

> "the use and disposition of other natural resources, other than minerals, oil and gas, on lands in the reserve, including water the right to use of which is associated with ownership of those lands"

(Bill C-79, 1996: 13). Subsection (o.2) has also been added and allows for by-laws to be made regarding forest resource preservation and fire prevention.

As timber for personal use by band members is an important resource for SLFN No. 40, the ability to make by-laws regarding it would help to ensure in the sustainability of forestry practices. Part (ii) of (o.1) could be quite beneficial to the First Nation as it allows for general natural resources by-laws to be made (with the exception of minerals, oil and gas). As the nature of this clause is quite non-specific, and the area of natural resource uses is quite broad, the First Nation may be able to take this provision quite far in terms of by-law creation. As water resources are of great importance to SLFN No. 40, and are of constant concern and controversy, the addition of the ability to create by-laws regarding water usage would be quite beneficial to the First Nation. It must be remembered, however, that only waters that are included within the definition of 'land' would be subject to this provision.

By-laws - Financial Accountability.

After subsection 81(1)(p.4) a clause has been added (p.5) which allows Band Councils to make by-laws regarding financial administration of the Band, and the accountability of Chief and Council to members of the Band.

Accountability of Chief and Council to the members of the First Nation Community is of importance to SLFN No. 40 members. The inclusion of this provision can allow for by-laws to be put in place that would hold Chief and Council accountable to the people, and ensure that the powers of Chief and Council are not abused.

By-laws - Enforcement.

Subsection 81(1)(q) allows for the hiring of by-law enforcement officers by Band Councils. By-laws can also be made regarding ticketing schemes, as well as the setting of fines for tickets. Part (r) of 81(1) describes the terms of punishment available for anyone who breaks a natural resources by-law as sanctioned under 81(1)(o.1). A person

found liable upon summary conviction faces "the maximum fine of $5000, or twice the value of the resource removed, whichever is greater, or imprisonment for a term not exceeding three months, or both" (Clause by Clause Analysis of the *Indian Act* Optional Modification Act, 1997: 32). When a breach of any other by-law, outside of those concerning natural resources occurs, offenders would be subjected to a maximum fine of $5000, and or imprisonment for a maximum time of 30 days. The addition of increased fines and punishment under IAOMA should act as a greater deterrent to those considering committing an offense.

Enforceability of by-laws was cited as a problem at SLFN No. 40. Without enforceability the implementation of by-laws has little effect. Enforcement would help to ensure that regulations are followed, and the increased fines and punishment, as well as the ability to create and administer ticketing regimes would help to deter offenders and promote protection of the people, property, and the environment. Also of benefit is the fact that the First Nation has the ability to appoint and hire enforcement officers, and that these officers are not simply appointed by the Minister.

By-laws - Additional Orders.

Under subsection 81(2), of the *Indian Act* the only additional order that a court can place upon an offending person is to prohibit the repetition or continuation of the offense. IAOMA gives more powers to the court on this matter. Additional orders can be given when contravention of a by-law occurs. These include: remediation of the environment where damage occurred, repeal or suspension of permits, destruction of works, as well as destruction or quarantine of animals when such actions are deemed necessary.

Increasing orders would further deter offenders of wrongdoing, and place the onus and cost of remediating the wrongdoing on the offender, and not on other people.

By-laws - Fines - land taxation, business licensing

Subsection 83.(1) of the *Indian Act* deals with by-law making powers under the areas of land taxation, and business licensing. IAOMA proposes to add the maximum fine of $5000, 30 days in prison, or both to violators of by-laws created within this subsection.

Addition of fines and penalties would serve to reduce tax evasion and unlawful business licensing practices.

Internalized Certification of By-law Copies.

IAOMA has also amended section 86 of the present *Indian Act* which deals with certification of by-law copies. Presently, by-laws are certified and kept at the regional offices of INAC. If a Band requires a copy of a by-law a request must be submitted to the department in order to obtain the copy. Under IAOMA the Band Council or a person assigned by INAC can certify by-laws for a Band. This provision removes a source of paternalism and promotes local control over by-law certification.

4.1.6 Repeals - Trade, Natural Resources

Section 92 which was a hindrance to trade and business conducted by First Nations people (i.e. certain persons were disallowed to trade with aboriginals without the acquisition of a special license) has been repealed under IAOMA. Section 93, dealing with natural resources has also been repealed, as the issues dealt with in this section have been placed under the modified version of section 57 which explicitly deals with natural resources issues.

4.1.7 Enforcement

Search and Seizure, Warrants

Section 103 of the *Indian Act* has been modified to include a provision which gives enforcement officers search and seizure powers which can be used when dealing with offenses related to natural resources under section 57. Such powers are necessary for

effective prosecution. Also under section 103, subsections (3) and (4) have been created to replace the current subsection (4). This change still allows for warrants to be issued (as is currently the case under the *Indian Act)*. However, in cases of emergency, peace or by-law enforcement officers can act without a warrant. Under the current *Indian Act* only goods and chattels can be seized and held for three months. IAOMA has modified this provision by allowing for anything to be seized for a period of three months (subsection 103.(5)). Under the *Indian Act* as well, only goods and chattels can be forfeited. IAOMA includes a provision that allows for the forfeiture of anything related to the offense.

Search and seizure, forfeiture, and search without a warrant in cases of urgency, provides enforcement officers with the necessary tools to identify, verify, and halt wrong-doings related to natural resource offenses and other areas.

Fines collected from offenses returned to the First Nation

The provision 103.1 has been added under the IAOMA. The addition of this subsection allows for increased Band Council control over by-law enforcement and serves to create more revenue for the Band. Payment of fines issued over the breaking of a by-law are to be delivered to the Band. Also under 103.1 is the provision which entitles Bands to hold agreements with provincial authorities regarding ticketing programs. Even though these agreements are with the province revenues collected would be turned over to the Band where the offense took place and can, therefore, be looked upon as a source of revenue (subsection 104.(1)).

Fines collected by the band would aid to finance the enforcement program, help with the costs of remediation and repairs required resulting from offenses, as well as being used for other means as the First Nation sees fit. The fact that the money collected through fines, tickets, etc. would be returned directly to the First Nation where the offense occurred provides the First Nation with an incentive to enforce the by-laws that they create. If the money was not directly returned to the First Nation, the First Nation would likely be less interested in apprehending offenders.

4.1.8 Additional Modifications.

The proposed IAOMA also contains many modifications in areas not related to natural resources management, such as wills and estates, intoxicants, and elections of Chief and Council. Although all changes to the *Act* are of relevance to First Nations, only IAOMA changes that may affect natural resources management issues have been discussed here. Topics outside of the realm of natural resources management are beyond the scope of this study.

4.1.9 Present Status of IAOMA

One of the results of the last federal election was a change in the appointment of the INAC Minister. As of June 11, 1997, the newly appointed INAC Minister is the Honorable Jane Stewart P.C., M.P. (About INAC, 1997). The *Indian Act* Optional Modification Act died on the order table as a result of the election.

In order for the proceedings of this proposed legislation to continue, IAOMA will have to be reintroduced into the legislature at a future date.

4.2 THE FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT & BILL C-75, THE FIRST NATIONS LAND MANAGEMENT ACT

4.2.1 Background

Under the present form of the *Indian Act,* control over land management issues is largely the delegated responsibility of the GIC and INAC Minister. As First Nations across Canada strive towards autonomy, the ability to control, manage, and develop reserve lands would be central to achieving their goal of self-government.

Working towards their goal, fourteen First Nation Chiefs from various communities across Canada developed an operational document known as the FAFNLM (appendix IV). The agreement grants First Nations full control over the management of reserve lands and resources, thereby facilitating economic development. As a result, certain provisions dealing with land and resources management under the *Indian Act* will no longer apply to Agreement signatories. The FAFNLM was developed throughout 1994 and 1995, and signed on February 12, 1996 (Press Release, 1996). Signatories of the agreement include the following 14 First Nations:

- Westbank, Musqueam, Lheit-lit'en, N'Quatqua, and Squamish of **British Columbia**
- Siksika of **Alberta**
- Muskoday and Cowessess of **Saskatchewan**
- Opaskwayak Cree of **Manitoba**
- Nipissing, Mississaugas of Scugog Island, Chippewas of Georgina Island, and Chippewas of Mnjikaning, all of whom are from **Ontario**
- St.Mary's of **New Brunswick** (Press Release, 1996).

(See Figure 10 for approximate locations across Canada).

Figure 10: Locations Across Canada of the 14 Signatories of the FAFNLM (INAC *c*, 1996).

While the Agreement has been signed, it must be ratified both by each individual First Nation, and by the Government of Canada in order for implementation of the Agreement to take place (see Figure 11 which outlines the process). Ratification of the agreement by the Government of Canada will come with the legislative passing of The First Nations Land Management Act, which is defined as "An Act providing for the ratification and bringing into effect of the Framework Agreement on First Nation Land Management" (Bill C-75 1996). According to the summary of Bill C-75,

> "[The Act] provides for the establishment of an alternative land management regime that gives first nations community control over the lands and resources within their reserves. It also gives first nations the power to enact laws respecting interests in and licenses in relation to first nation land and respecting the development, conservation, protection, management, use and possession of that land" (Bill C-75, 1996).

Due to elections earlier this year and the appointment of a new Minister for Indian and Northern Affairs, the ratification process has been delayed. The Act went through its first reading in December 1996, and currently awaits re-introduction into Parliament for further processing. The legislation nearly made it to ratification before it died on the order table. The government's focus on attempting to pass the IAOMA legislation served to delay the process and resulted in neither piece of legislation being passed (Powell, 1997). Current estimates suggest that the FAFNLM legislation could be re-introduced into Parliament for first reading by May of 1998, with a final ratification date in August of 1998.

Although the provisions of the Agreement and Act are only applicable to the fourteen Agreement signatories, it is possible that other interested First Nations may be provided with the opportunity to become involved in the Agreement as well (Borutski, 1997; Powell, 1997). Becoming a party to the Agreement does not create the obligation for implementation, but simply provides First Nations with the opportunity to implement the Agreement if or when they become inclined to do so (Aronson, 1997).

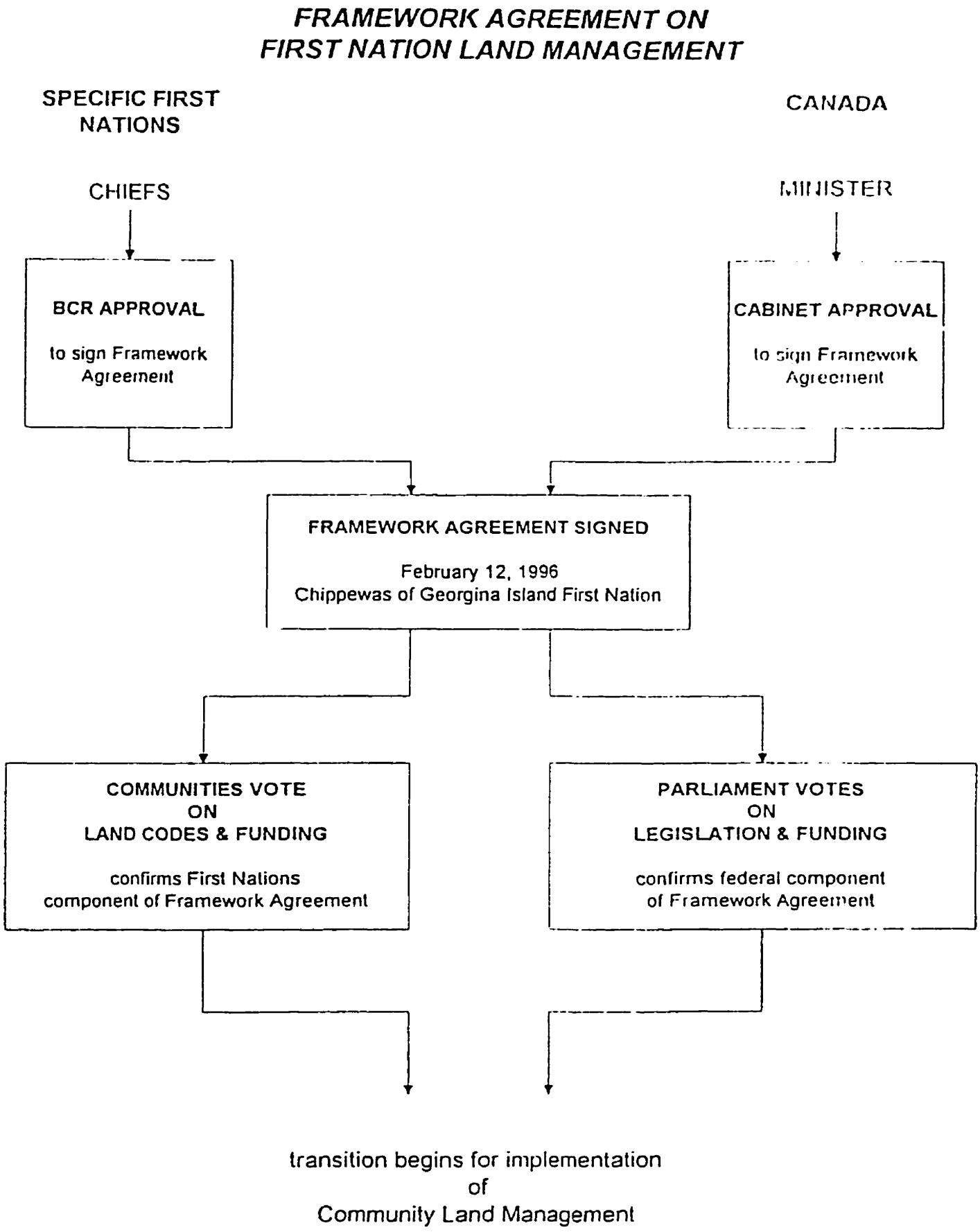

Figure 11: The FAFNLM Process (INAC *c*, 1996).

The ability to govern its own lands and resources is a large step for any First Nation, and may not be a step that every First Nation is ready to take. The signatories to the FAFNLM Agreement should have little trouble adjusting to their new powers as many have extensive land management experience. Some First Nations are managing their lands according to sections 53 and 60 of the *Indian Act*, while others are involved with managing reserve lands using the capabilities provided under the Department's Regional Lands Administration Program (Press Release, 1996).

The aforementioned section 53 of the *Indian Act* deals with the management or sale of surrendered lands, as well as the management, lease, or carrying out of other transactions that affect lands that have been designated. The powers of section 53 can be granted to a First Nation community. Under section 60 of the Act bands can request control over land management, however the issuing and extent of control is subject to the discretion of the Minister, and the rights granted to the band can be withdrawn by the GIC at any time (Imai, 1996). Under the new Framework Agreement, neither the GIC nor the departmental Minister holds the discretion and ultimate control that they currently exercise under the *Indian Act*. Under delegated authority, the First Nation is really just taking over certain responsibilities from INAC, which basically involves doing INAC's job for them. Under the FAFNLM First Nations would be able to do the job for themselves (Peckett, 1997).

Extensive land management experience and involvement in land transactions is not a requisite of the FAFNLM. Scugog Island, Ontario for example is a very tiny First Nation Community, with only 31 members residing on-reserve, and a remaining 107 members residing off-reserve. The reserve lands of Scugog Island are administered under the *Indian Act*. The community has no delegated authority, and is involved in very few land transactions and activities (Edgar-Menzies, 1997). It was noted that a situation such as that at Scugog would actually be an easier one in which to create Land Codes (see below). In communities with a lot of development, much time is spent rectifying outstanding issues and past errors (i.e. through the creation of by-laws) before Land Codes can be finalized. In a community with few land transactions, such time consuming

processes can be by-passed (McCloud, 1997). SLFN No. 40 could benefit from the examples provided by other First Nations involved in the FAFNLM, especially Scugog Island, which presents a similar situation to the one found at SLFN No. 40 (small population, little management experience).

4.2.2 Details of the Agreement

Signing of the Agreement and ratification of the First Nations Land Management Act, are not the only requirements of a First Nation intending to assume management power and control over its lands and resources. There are several steps and Agreement requirements that must first be met in order for the First Nation to undertake the control outlined in the Agreement.

Land Codes (section 5)

(Note: sections refer to the Framework Agreement, and do not always correspond with the same section no. in the Land Management Act).

The first step that must be taken by a First Nation is the development of a Land Code. The Land Code would identify the laws, rules and procedures that would apply to the lands of the First Nation. Licensing schemes, leases, transfers, natural resources revenues, accountability of First Nation Government with respect to money and land management, law-making procedures, conflict of interest rules, dispute resolution, as well as several other provisions must all be contained within the Land Code (FAFNLM, 1996).

Land Codes are developed by the First Nation for the First Nation, allowing for specific community situations and concerns to be adequately addressed. The Land Code model provides for much flexibility. Therefore, First Nation communities can determine the level of authority that they would like to administer over their lands, and work it into their Land Codes (Aronson, 1997). Land falling under the Land Code would continue to be defined as reserve land and the *Indian Oil and Gas Act* would continue to apply to

those lands, as would those portions of the *Indian Act* which the Land Management Act does not exempt (Backgrounder, 1996).

Reserve lands that have been designated for the shared use by more than one First Nation cannot be brought under Land Codes unless all involved First Nations are Agreement signatories and are in agreement over the Land Codes developed for that shared land. Therefore in the case of SLFN No. 40, the shared I.R.34B2 cannot be brought under a Land Code unless both Shoal Lake No. 40 and Iskatewizaagegan No.39 both become signatories to the Agreement, and work together to create a Land Code for the I.R.34B2 parcel of land.

Individual First Nation Agreement with the Government of Canada (section 6)

The individual agreement between each First Nation and the government of Canada is designed to determine the amount of operational funding required by each First Nation in order to carry out their own management regime. Another purpose of the Agreement is to determine how the transition of the transfer of land management power from the Government of Canada to the First Nation is to occur (FAFNLM, 1996).

As each First Nation is unique from the rest, the ability to have their own individual agreement with the Government would better ensure that their needs are met. Attempting to create one agreement that would apply to all, clearly would not sufficiently account for the unique situation of each individual First Nation. Funding formulas designed by INAC in the past have often left First Nations under-funded and unable to carry out the operations that the funds were designed for.

Community Approval (section 7)

Both the Land Code and the individual First Nation/Government of Canada agreement must meet with the approval of the affected First Nation community. Community approval would be determined through a voting process as described in the Framework Agreement and Land Management Act. Community approval would require a majority

vote in favor of the code and individual agreement. A jointly appointed (by the First Nation and Government of Canada) verifier is required in order to ensure that the proposed Land Code and approval process meet the requirements of the Agreement (section 8 of the FAFNLM). The inclusion of community approval ensures that the best interests of the community are accounted for, and that the First Nation government cannot go against the wishes of its people. By more equally distributing power amongst the people, the land management system shows resemblance to the traditional customary management practices of the Anishinaabe people, and thus quite possibly has a greater chance for success. At present three First Nation communities (Nipissing and Scugog Island of Ontario, as well as Muskoday First Nation of Saskatchewan) have voted on and successfully approved and ratified their Land Codes.

Land Code Certification (section 10)

Once a First Nation approves a Land Code and individual agreement, it would be sent to the appointed verifier for certification. Upon certification the Land Code has the force of law.

Land Management Powers and Law-making Powers (sections 12 & 18)

Under the Agreement, First Nations are granted all the rights and privileges of an owner with respect to reserve land. First Nations would have the ability to pass laws regarding the possession, use, development, conservation, protection, and management of their lands as well as interests and licenses in relation to those lands.

Protection of First Nation Land (section 13)

Title of First Nation Land does not change with the coming into effect of this Agreement. First Nation Land cannot be sold, exchanged or conveyed unless an exchange or expropriation is made in accordance with the Framework Agreement.

Voluntary Land Exchange (section 14)

A First Nation can exchange a parcel of First Nation land for another new piece of land if the new piece of land becomes First Nation land. In order to ensure that the original land base is not diminished, the new piece of land must be as large in size, or larger than the original parcel of land. Any exchanges may include compensation, and be subjected to other terms and conditions. Exchanges must meet community approval, and receive the consent of the Government of Canada as well.

Third Party Interests (section 16)

Third party interests in First Nation land would be unaffected by the switch in management that would take place through the certification of a Land Code.

For SLFN No. 40, this means that the Tripartite Agreement, and any other existing agreements would continue to exist and remain effective if Shoal Lake became a party to the Agreement.

Expropriation by First Nations (section 17)

First Nation Councils have the power to expropriate interests in First Nation Lands on their reserves without consent. Such expropriation can occur if Council finds expropriation necessary in order for community works and other First Nation purposes. Expropriation must be done according to procedures outlined in the First Nation's Land Code and the Agreement.

Enforcement (section 19)

Under the FAFNLM, First Nations can enforce Land Code provisions and laws as they see fit through a number of means including fines and imprisonment. Justices of the Peace can be appointed by the First Nation or by the GIC to aid in enforcement, otherwise laws would be enforced through provincial courts. Since enforcement was cited as being a resource management problem in the preceding Chapter, an increase in enforcement capabilities would prove beneficial for SLFN No. 40.

Inapplicable Sections of the Indian Act and Regulations (section 20)

The following sections of the *Indian Act* would no longer apply: sections **18** to **20**, **22** to **28**, **30** to **35**, **49**, **50(4)**, **53** to **60**, **66**, **69**, **71**, **93**, as well as regulations made under section **57**. If regulations made under sections **42** and **73** of the *Indian Act* are inconsistent with the Framework Agreement, Land Codes, or a First Nation law, the *Indian Act* would no longer apply either.

Under the IAOMA proposed legislation, section 57 is significantly expanded and improved. These changes would not apply to a First Nation opting into IAOMA that is a signatory to the Framework Agreement. Under the Framework Agreement, First Nations would already possess more power than the proposed updated version of section 57 contains.

Environment (section 23)

First Nations are empowered with the ability to make environmental laws in relation to their First Nation lands. Environmental assessment and protection regimes would be established and harmonized with regimes of the federal government, as well as with regimes in effect within the province. Environmental standards and penalties would at the very least be as stringent as those of the province. Environmental management agreements between the Government of Canada and the First Nation would be negotiated, the purpose being to effectively enact essential environmental protection laws.

Since portions of I.R.40 are located both within Manitoba and Ontario, if SLFN No. 40 was to take part, harmonization would likely be more complex and include the involvement of both provincial governments. As well, SLFN No. 40's location at the source of the City of Winnipeg's water supply, and the long history of the problems associated with this, would likely add further to the complexity of establishing environmental protection regimes.

Funding (section 29 and 30)

Funding would be provided for First Nations to develop the Land Codes, community approval processes and other processes involved in being a party to the agreement. Operational funding agreements would also be implemented between the Government of Canada and each First Nation in order to facilitate in the management of First Nation lands. The Agreement recognizes that each First Nation is unique, and this would be accounted for in the funding arrangements made with each First Nation.

Expropriation of First Nation Land by Canada (section 32)

The Government of Canada largely tries to avoid the expropriation of First Nation lands. If expropriation cannot be avoided it can only be carried out with the consent of the GIC, who can only consent if the expropriated land is to be used by a federal department or agency for a federal public purpose that serves the national interest. Replacement lands would be provided to ensure that the original size of the land base is not diminished. Compensation would be paid for expropriated lands according to the terms of the Agreement. Expropriated lands no longer required for the purpose for which they were originally expropriated would be returned in full to the First Nation from which they were taken.

Expropriation at the provincial and municipal levels is prohibited, making this provision a definite improvement over the present situation under the *Indian Act*. This provision would protect SLFN No. 40 from the further expropriation of reserve lands by the City of Winnipeg.

Lands Advisory Board (section 38)

Such a board would be established to represent all First Nations involved in the FAFNLM and be comprised of no less than 3 of First Nation members. The purpose of the board is to aid in development of Land Codes, individual agreements, and law creation. The board would be required to establish a resource centre, develop training

programs as well as keep records regarding Land Codes. The Advisory Board would have several other duties as well, which are outlined in detail in the Framework Agreement.

Dispute Resolution (section 43)

The FAFNLM contains a section on dispute resolution. The dispute resolution section has been created in order to facilitate the settling of problems that arise between the parties of the Agreement. Dispute resolution would help to settle both internal disagreements, for example those resulting from the development of Land Codes, as well as external disagreements that may arise between a First Nation and the Government of Canada.

Ratification (section 48)

The FAFNLM is said to be ratified by a First Nation upon First Nation approval of a Land Code. Approval is reached through a majority vote resulting from the community voting process, and certification of that majority vote by the community's verifier. Ratification by the Government of Canada will occur when the federal legislation, The First Nation Land Management Act, is passed and comes into effect.

Enactment Inconsistencies (section 49)

The federal legislation (First Nation Land Management Act) is consistent with the FAFNLM. If an inconsistency occurs between the Land Management Act and any other federal enactment, the Land Management Act would prevail. If an inconsistency occurs between a Land Code and any other enactment by a First Nation, the Land Code would prevail.

Since the Act is consistent with the Agreement, the contents of the two documents are basically the same, the Act primarily serves to confirm what is written in the Agreement and make it legally binding. The priority that the Land Management Act takes over other

legislation when an inconsistency occurs demonstrates the power of the First Nation Land Management Act.

Liability

Once the land management agreement is put in place, the Government of Canada assumes no liability for the acts of the First Nation. As managers of their reserve lands, First Nations must be prepared to be liable for the management decisions that they make.

4.2.3 Further Considerations, Cautions, and Limitations

Although the FAFNLM does provide First Nations with management control over their lands and resources, limitations to the power do exist, calling for caution. The transfer of land titles by First Nations would not be permitted under the Agreement, and the existing protections from taxation and seizure would continue to be effective. Existing third party agreements would continue and remain unchanged by the Agreement (Backgrounder, 1996). It should not be forgotten that a reserve is still a reserve, and that other than the sections specifically excluded by the First Nation Land Management Act, the rest of the *Indian Act* would continue to apply.

Authority over land and resources management will not necessarily eliminate existing problems associated with location, access, and resources. For example, if the First Nation has no resources which to develop, then the power to develop could prove futile. The First Nation may, however, use the Agreement to obtain lands that are more conducive to development. In the case of SLFN No. 40, limitations to effective implementation of the Framework Agreement would include existing third party agreements, lack of road access, location near the City of Winnipeg's water supply source, and low developmental potential of resources.

The Agreement allows for First Nations to become more business oriented. Success will depend upon efficient use of existing resources and the utilization of skilled personnel (Peckett, 1997). Ultimately the community must be accepting of the changes that can be

brought about by the Agreement, and showing enthusiasm and an interest to become involved would help ensure success by the First Nation.

Another obstacle to consider, is the shared nature of I.R. 34B2. If SLFN No. 40 does want bring this piece of land into the Agreement, it can only be done if Iskatewizaagegan No.39 Independent First Nation also enters into the Framework Agreement and agrees to work with SLFN No. 40 to create a Land Code for I.R. 34B2.

Even if developments at present are unfeasible, the possibilities under the Agreement will remain avaiiable for use by future generations. Even if the First Nation chooses never to develop those lands, under the Framework Agreement that choice is theirs to make. Control over lands and resources are what the Agreement is all about. By obtaining control, a First Nation would achieve a significant measure of self-government over lands and resources. Many First Nations feel that the Framework Agreement provides a First Nation with self-government over lands and resources, and as a result could serve to prepare First Nations for further self-government agreements (McCloud, 1997).

With the degree of independence obtainable under the FAFNLM, First Nations must be willing and ready to take on the responsibilities that come along with that independence. Once a First Nation is granted sovereignty over their lands and resources it will be held accountable for all of the decisions that it makes. As a result Canada will not be held responsible or accountable for any decisions that a First Nation makes under the Framework Agreement. In this sense there appears to be a reduction in the fiduciary responsibility that Canada has for First Nations involved in the Framework Agreement. Powell (1998) has described the term fiduciary responsibility as being somewhat superficial, in that it sounds good, but that there is really no substance to it. Powell (1998) has also pointed out that the Government of Canada often does not make decisions with the best interests of First Nations in mind, and that many First Nations would be glad to get out on their own. Powell (1998) does advise that First Nations must be wise and extra careful at their decision-making. Currently, those working on the Framework

Agreement are looking at establishing an insurance contingency to help protect First Nation development ventures from the risk of financial failure (Powell, 1998).

Since title to reserve land would remain held under the Crown, reserve lands and resources would not be financeable. Interests, however, would be financeable, and because of this, Powell (1998) has described the importance of adding conditions to First Nation Land Codes which allow for First Nations to have first right to take over failed developments on First Nation land, thus keeping financial institutions at bay.

First Nations should exercise caution when it comes to funding. While adequate funding to carry out the Framework Agreement is to be established under the Individual Agreement, how much funding will be granted, and whether or not the amount is found to be adequate by the First Nation will remain to be seen.

First Nations across Canada face problems regarding the enforceability of band by-laws. Band by-laws are often ineffective as they do not have the ability to hold up in a court of law, making effective enforcement difficult, if not impossible. Powell (1998) has described the major difference between band by-laws and Land Code laws as being enforceability. Land Code laws will hold up in a court of law, and will thus be enforceable. McCloud (1998) sees the federal legislation backing the Framework Agreement as ensuring that Land Code laws will be enforceable.

Interviews revealed that other First Nations involved in the FAFNLM view it very positively, and feel that it allows for the Agreement process to be specifically designed to meet the land and resources needs of each First Nation signatory.

4.2.4 Agreement Success

The success of the FAFNLM thus far, the positive responses from First Nations involved in it, the positive promotion received by the Assembly of First Nations, and continued interest in it can be attributed to the fact that the Agreement has been written by First

Nations for First Nations, and not by the Government of Canada for First Nations, as was the case with IAOMA. As Powell (1997) has noted, when government tries to make legislation suitable and open to all First Nations, the legislation tends to be vague and general and ends up not meeting the needs of anyone. The Framework Agreement allows each signatory First Nation to design their own specific Land Codes and eliminates the problems associated with general legislation designed to be implemented by all First Nations.

4.3 COMPARISON BETWEEN IAOMA AND THE FRAMEWORK AGREEMENT

The preceding sections of this Chapter outlined the relevant details of the IAOMA and the FAFNLM including the inherent strengths and weaknesses of each. In order to determine which alternative would best serve the needs and wants of SLFN No. 40, a comparison between IAOMA and the FAFNLM was conducted. The resource findings from Chapter Three must also be considered throughout the comparison. This section of Chapter Four has been designed to carry out a comparison through which the strengths, weaknesses, and feasibility of each alternative would be revealed. This comparison will result in a decision being made as to which resource management alternative should be implemented at SLFN No. 40.

The fact that the Framework Agreement and ratifying legislation would provide SLFN No. 40 with significantly increased authority over reserve lands and resources tailored to local concerns indicates that the Agreement powers are potentially far more extensive than IAOMA, under which ultimate authoritative power remains with the Minister and GIC. The goal of SLFN No. 40 is to achieve self-government, and the Framework Agreement can provide it over reserve lands and resources. SLFN No. 40 would no longer have to seek time-consuming and frustrating Ministerial or GIC approval in order to create change. The Framework Agreement would prove superior over IAOMA in terms of all resource sectors.

While the Framework Agreement is superior to IAOMA in terms of lands and resources, the IAOMA legislation provides improvement to many areas of the *Indian Act*, not just those related to lands and resources, and for these reasons could be beneficial to opt into. Although the land and resources section of IAOMA would not be applicable to SLFN No. 40 if governed under the First Nation Land Management Act, the First Nation would still be able to receive the benefits of the *Indian Act* improvements to other areas not covered under the first Nation Land Management Act, such as election procedures and wills and estates. SLFN No. 40 has indicated an interest in changing election procedures by reverting to customary methods, but such a change is not precluded by the *Indian Act*, and thus IAOMA would not provide further benefits in this area. As IAOMA provisions outside of the realm of lands and resources were not extensively examined, since they were beyond the scope of this study, closer examination of these other areas should be completed before a decision is made as to whether it would be beneficial to opt into IAOMA.

When making any important decision, it is a good idea to consider the views of others that would be similarly affected. In this case, the views of other First Nations involved with the two alternatives was considered. Although not mentioned earlier in within the text, IAOMA was not well received by the Assembly of First Nations. The majority of First Nation communities across Canada were opposed to the proposed legislation. The Assembly cited the consultative process that went into the making of the legislation as being inadequate. It was also felt that the IAOMA discouraged self-government agreements. The Assembly made reference to both the Penner Report and Royal Commission on Aboriginal Peoples Report, which indicated that adjustments and alterations to the original *Indian Act*, were not recommended. On the flip side, the Assembly of First Nations, and signatory First Nations provided broad support for the FAFNLM. As well, the list of First Nations wishing to be involved in the Agreement continues to grow. Based on overall acceptance across Canada, the FAFNLM was preferred to IAOMA by the majority of First Nations.

It must be remembered that both IAOMA and the FAFNLM only apply to federal reserve lands and resources tied to those lands. Neither alternative can be used to make management improvements outside of federal jurisdiction. While this is a limitation, both alternatives contain the same jurisdictional constraint.

Ideally, it would be beneficial for SLFN No. 40 to become involved in both the Framework Agreement, which would provide it with control over lands and resources, and the IAOMA, which could provide improvements in other areas of the *Indian Act*. As it appears that the IAOMA legislation will not be reintroduced into parliament, entering into it will likely not be an option any time soon. As the focus of this research is to implement the best land and resource management alternative at SLFN No. 40, it would appear from this comparison that the FAFNLM would best serve the needs and desires of the First Nation, providing them with self-government in terms of land and resources.

4.4 RECOMMENDATIONS

The comparison from the previous section indicated that SLFN No. 40 should focus on implementing the FAFNLM. SLFN No. 40 should not fixate on the fact that the Framework Agreement powers do not extend to lands and resources off-reserve. Instead, the Framework Agreement should be seen as a powerful tool that returns the jurisdiction to manage reserve lands and resources back to the community. The Framework Agreement could have the ability to strengthen the community and help it to achieve management goals. Implementation will be a challenge as the Framework Agreement is currently unavailable to non-signatory First Nations. In order to become involved Shoal Lake should pursue a deliberate strategy. Following the recommended steps will not guarantee access to the Agreement, but will largely increase the chances of the Government of Canada opening up the Agreement to interested First Nations. Table 3 provides a summary of the recommended steps, which are provided in greater detail within the following paragraphs.

Table 3: Required Steps in the Framework Agreement Process (Powell, 1997).

GETTING INVOLVED IN THE FRAMEWORK AGREEMENT
Chief and Council - become familiar with Agreement.
Chief talks with other signatory First Nations, and Robert Louie, Chairman of Lands Advisory Board.
Community awareness should be promoted (on and off-reserve members).
Pass BCR to invite Lands Board Representative to the community.
Make presentation before standing committee (as soon as June, 1998).
Encourage Iskatewizaagegan #39 Independent First Nation to get involved in F.A.

It is recommended that the Chief become familiar with the contents of the Agreement and what it could mean for SLFN No. 40. In order to obtain a clearer picture of what is involved, and how others are coping with the Agreement, the Chief should talk with other First Nations involved in the Agreement. Robert Louie, the Chairman of the Lands Advisory Board should be contacted and informed of Shoal Lake's desire to become a party to the Agreement. Robert Louie can then add SLFN No. 40 to the growing list of First Nations interested in becoming involved. As there is strength in numbers, the more First Nations showing interest, the more likely the Government of Canada will be to listen to their requests. It is therefore essential that Shoal Lake actively become involved in letting their intentions be known. In order to strengthen their case, community support, and approval will be required. As community approval is a requisite of the Agreement, if the community is not interested in the Agreement, the First Nation will not be able to implement it even if the opportunity arises.

Community members (those both on and off-reserve) should be informed about the Agreement, and Shoal Lake's desire to become involved. Each individual will then have sufficient information to form an opinion on whether or not the Framework Agreement would benefit SLFN No. 40. This will help Chief and Council to establish the level of community acceptance of the Agreement.

If Shoal Lake is interested in bringing I.R.34B2 into the Agreement as well as I.R.40, then Chief and Council should meet with Iskatewizaagegan No.39 Independent First Nation and encourage them to become involved in the Framework Agreement as well.

It is also advised that the First Nation pass a Band Council Resolution (BCR) inviting a Lands Board Representative to their community to discuss the Framework Agreement. Passing a BCR will help to convince the Lands Advisory Board to take the community's aspirations seriously. As a result, the Lands Advisory Board will be more inclined to provide SLFN No. 40 with any necessary assistance (Powell, 1997).

Interested First Nations are advised to make a short presentation before the Standing Committee of the House of Commons. This will simply involve providing a brief summary as to why Shoal Lake First Nation would welcome the opportunity to become involved in the Agreement. It is predicted that the Standing Committee stage could be reached as soon as June of 1998 (Powell, 1997).

Powell (1998) has indicated that a clause will be included into the legislation, allowing the Framework Agreement to be opened up to new signatory First Nations after a year of review. This would mean that by the spring of 1999, SLFN No. 40 would be able to become a signatory of the FAFNLM if they choose. Powell (1998) still recommends that if SLFN No. 40 is interested in becoming involved in the Framework Agreement that they should let their intentions be known. As well, Powell (1998) has indicated that interested First Nations can do preparatory work ahead of time to speed up the process once they are involved. Gathering community support, getting ideas for Land Codes, planning, management, and development ideas can all be thought out ahead of time.

While the steps for getting involved in the FAFNLM have been outlined within this section, the strategy and steps involved in the implementation of the Agreement at SLFN No. 40 will be the focus of Chapter 5.

4.5 CHAPTER SUMMARY

This Chapter examined two alternative reserve land and resources management regimes that were identified as being of interest and considered potential benefit to SLFN No. 40. The two alternative regimes were the IAOMA, and the FAFNLM. The review indicated that the proposed IAOMA legislation was the product of Indian and Northern Affairs Canada, and was designed to be an optional piece of legislation which provided revisions, changes, and improvements to many areas of the *Indian Act*. Within the improvements was the addition of a section devoted to the management of on-reserve natural resources.

Provisions related to lands and resources were identified and described. As well, the potential effects of these provisions were considered. While the scope of IAOMA extended beyond that of lands and resources, provisions outside of this realm were not considered within the discussion, as they were beyond the scope of this study.

The second part of this Chapter focused on a similar assessment of the FAFNLM. One of the major differences between the two arrangements was that the Framework Agreement was designed by a number of First Nation communities from across Canada. A second major difference was that the Framework Agreement only applied to First Nation lands and resources, and did not affect other areas of the Indian Act. Once again, provisions related to lands and resources were identified and described. Potential effects of these provisions were also established.

The comparison at the end of the Chapter showed that of the two alternatives the FAFNLM would likely best serve the people of SLFN No. 40. The Framework Agreement was found to be better for the following reasons: it was created by First Nations for First Nations; it could provide SLFN No. 40 with comprehensive authority to govern and manage lands and resources; the Agreement effectively establishes self-government in terms of lands and resources; the Framework Agreement was more likely to pass into the legislature than IAOMA; Land Code laws under the Framework

Agreement would be enforceable; the Framework Agreement was well received by the Assembly of First Nations; First Nations involved in the Agreement responded positively to it. While IAOMA had applicability beyond that of lands and resources, the proposed legislation overall was weaker, and did not provide the authoritative power to First Nations that was obtainable under the Framework Agreement. Under IAOMA, ultimate control would remain within the hands of the Departmental Minister, and the GIC.

The Framework Agreement was identified as having many strengths. However, areas where caution should be taken were also identified. For example, existing third party arrangements remain unaffected by the FAFNLM; for SLFN No. 40, that means that the provisions of the Tripartite Agreement would remain in effect even after the signing of the Framework Agreement. With authority over lands and resources comes responsibility. First Nations must be willing to be accountable for the decisions that they will make. As well, authority over lands and resources does not eliminate the numerous obstacles to development on reserves faced by First Nations.

Involvement in the Framework Agreement could prove beneficial to the community of SLFN No. 40. Since the Agreement is currently closed to new signatories, this Chapter also contained steps for how to best overcome this challenge and gain involvement.

With the best alternative established, a strategy was recommended for implementation of the FAFNLM at SLFN No. 40. Chapter Five focuses upon meeting this recommendation.

CHAPTER FIVE

IMPLEMENTATION STRATEGY FOR THE FAFNLM

5.0 STRATEGY IMPLEMENTATION OVERVIEW

Once SLFN No. 40 has taken the necessary steps required in order to become a party to the FAFNLM, a strategy for implementation of the Agreement provisions is necessary. Such a strategy will help to ensure that maximization of benefits, in terms of the land and resources issues identified within this research, is achieved. This Chapter utilized the findings of the preceding Chapters as well as incorporate findings from further interviews and documentation. This information is utilized to develop a strategy for implementation of the Framework Agreement at SLFN No. 40. At the present time, entry into the FAFNLM cannot be assured to SLFN No. 40. However, inevitably at some point in the future, the First Nation will be involved in its own land and resources management and a management plan will be needed. While the implementation strategy contained within this Chapter specifically conforms to the Framework Agreement, the strategy could be modified with relative ease to suit the conditions of a different management plan, should a new alternative arise.

The implementation strategy which follows, closely adheres to the provisions and requirements of the FAFNLM, while at the same time considering the unique situation in terms of lands, resources, and community structure found at SLFN No. 40.

5.1 DEVELOPMENT OF A LAND CODE

In order to identify the laws, rules and procedures that will apply to all First Nation lands and resources, a Land Code must be created for all First Nation lands brought into the Framework Agreement. A Land Code under the Framework Agreement is basically a

management scheme. A Land Code as defined within the Framework Agreement (1996: 7) is:

> "a code, approved by a First Nation in accordance with this Agreement, that sets out the basic provisions regarding the exercise of the First Nation's rights and powers over its First Nation land".

Examples of Land Codes created by other First Nations already involved in the Agreement demonstrate that the Land Code is an official document of a format similar to the Framework Agreement. It is similar to a piece of legislation. Land Codes written by other First Nations were found to be very similar, and will provide SLFN No. 40 with an excellent basic format from which to create a Land Code suited to meet the needs of their community. The specific laws related to individual resources and lands are not to be contained within a First Nation Land Code. The Code simply contains the bounds under which laws can be made. It sets out the extent of powers and the procedures to be followed. All laws that are enacted by a First Nation must be made in accordance with the official Land Code of the First Nation in order to have any legally binding effect.

Table 4 provides a summary of the framework required to create a Land Code. The sections have been modeled after the Land Codes created by the Chippewas of Georgina Island First Nation (1997), the Mississaugas of Scugog Island First Nation (1997) of Ontario, and the Muskoday First Nation (1997) of Saskatchewan (Figure 10). In some cases actual provisions contained within the aforementioned codes could be copied directly and incorporated into a Land Code for SLFN No. 40. In other cases modifications may be required regarding certain sections and provisions in order to adequately meet the needs and serve the purposes required of SLFN No. 40. Only the more important headings of Table 4 are further described within the Chapter sections following Table 4. For greater detail and information on all of the Land Codes headings outlined in the table, the Land Code examples provided by First Nation signatories to the Framework Agreement should be examined.

Table 4: Framework for Land Code Creation.

LAND CODE FRAMEWORK		
Heading	**Brief Description**	**Considerations**
Authority	Defines who will take over the governing authority over land & resources at the F.N.	Chief & Council would be the likely choice. They then appoint Lands Advisory Committee.
Purpose	Create land & resources management plan.	
Land Description	Defines lands to be entered under Land Code.	Define I.R.40. I.R.34B2 only if No.39 is also involved.
Lands & Affected Interests	Describes all resources & interests associated with land.	Only includes lands of federal jurisdiction. Water & related resources not transferred to F.N.
Law-Making Powers	States powers obtainable through F.A.	Powers must be used effectively for improvements to be realized.
Limits on Law-Making Powers	Defines F.N. limits or restrictions to law-making.	Can be used to protect community & create more community involvement.
Law-making Procedure	Sets out the procedures to be followed by Council.	Used to ensure laws created are legal, consistent, fair.
Publication of Land Laws	Defines the procedure for the publication of land laws	Ensures members are aware of new laws.
Land Laws Coming into Force	States when land laws are to take effect.	How long after enactment?
Conflict of Interest Rules	Describes conflict of interest & mechanisms to deal with it.	Excluding persons with conflict of interest from decision-making can reduce bias.
Interests and Licenses	Describes how interests & licenses are to be dealt with.	Consider involving community votes in more cases.
Lands Advisory Committee	Committee to inform & advise Council on land management. Carry out lands duties.	Choose members who will best carry out required duties. Note training and funding through Transfer Agr.
Registration of Interests	Outlines the procedure for registering land interests.	Ensures more effective management and enforcement.
Transfer & Assignment of Interests	Identifies procedures for transferring & assigning land interests.	Define transactions requiring community vote & Council consent.
Lots & Resources	Describes allocations.	Will resource rights belong to the person to whom lot is allocated? Allocations to members only?
Mortgages & Seizures	Identifies terms & conditions.	Who is eligible? Will seizure be permitted? If so under what conditions?
Land Exchange	Develop procedure for land exchange.	Ensure community involvement & protection.
F.N. Expropriation	Indicates F.N. expropriation procedures.	Will F.N. expropriation be permitted at all?
Borrowing	Defines conditions required for borrowing money.	Restrictions & limits can help to reduce financial problems.

Financial Control & Accountability	Define monetary entitlements & how managed.	Accepted accounting practices. Books & records available for members viewing. Employees bondable.
Auditor Appointment	Describes auditor appointment procedure & auditor related issues.	Auditor report accessible to community, will increase trust.
Community Approvals	Defines which matters require community vote & approval	Increasing community involvement puts members on a more equal level.
Rights of Eligible Voters	Describe eligibility requirements.	What age? Who is allowed to attend meetings?
Community Meetings	Community meeting procedure.	Procedure should promote community awareness.
Annual Community Meeting	Describes the procedure for the Annual Community Meeting.	When? Agenda to include? Who will be Secretary?
Dispute Resolution	Describes the dispute resolution mechanism.	Who will serve on dispute resolution body?
Liability Coverage	Describe insurance coverage for lands employees.	No personal liability. Insurance a must. Bond all employees?
Offenses	Describe procedure for dealing with land offenses.	Opportunity to create relevant fines & penalties.
Commencement	List pre-conditions, and identify commencement date.	Note: pre-conditions include community approval of Land Code & Transfer Agreement.

(Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

5.1.1 Authority

The new governing authority responsible for the execution of land and resources management duties for lands described within the Code should be stated. Scugog Island, Georgina Island, and Muskoday First Nation all stated that the authority would be passed to Chief and Council, unless delegated otherwise within the Land Code. For example, certain powers may be delegated to the Lands Advisory Board (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

The Chief and Council form the First Nation Government at SLFN No. 40. They have the experience and are in control of matters related to governance and control over the reserve and First Nation people, to the extent that is permitted under the *Indian Act*. It

makes sense then that the powers obtainable through the FAFNLM should be put under the authority of the governing power at the First Nation. Chief and Council can then later delegate duties related to the new land and resources authority to working groups or individuals, while still maintaining the ultimate control over land and resources matters.

Cornell and Kalt (1992: 15) have described how by giving First Nations control over decision-making, "it tightens the link between decision-making and its consequences". While the transfer of power to First Nations does not guarantee success, Cornell and Kalt (1992) acknowledges that directly bearing the costs and benefits of decision-making creates greater incentives for First Nations to make wise decisions. While self-government over lands and resources can provide the opportunity for successful development, Cornell and Kalt (1992) also note that the reverse can also result, leading to a situation in which economic development becomes impossible. Cornell and Kalt (1992: 17) have found that the key to success for a self-governing nation is having community support. Without this support the results can often lead to stagnation, instability and a self-serving government.

The requisite for community support and involvement in the FAFNLM should help to reduce potential governance problems by spreading power amongst the people. As well, by implementing a Lands Advisory Committee at SLFN No. 40 will help to separate day-to-day decision-making from politics, which as Cornell and Kalt (1992) have also noted can lead to greater governance success.

The powers that govern should base their governance on cultural foundations, and not on the hierarchical and centralized basis of non-aboriginal governments. Cornell and Kalt (1992) have found that it is those communities that incorporate customary methods into their government structure, which ultimately achieve the greatest success. By appropriately de-centralizing some of the power amongst the Lands Advisory Committee, elders, and amongst the community in general, the system of management over lands and resources will more closely follow traditional Anishinaabe ways.

5.1.2 Purpose

The purpose of the Land Code should be stated, and should be along the lines of, "set[ting] out principles, rules and structures that apply to [SLFN No. 40] lands and resources and by which [SLFN No. 40] will exercise authority in accordance with the Framework Agreement" (Muskoday First Nation *b*, 1997: 4).

5.1.3 Description of SLFN No. 40 Land

The description of SLFN No. 40 land to be brought under the Agreement should only include I.R.40, and any other lands that may in the future may be set apart for the exclusive use and benefit of SLFN No. 40. As described previously, I.R.34B2 could only be brought under a Land Code if Iskatewizaagegan No. 39 Independent First Nation also becomes a signatory to the agreement.

5.1.4 Lands and Interests Affected

This section would describe exactly what is included within the aforementioned lands defined within the Land Code. The Land Codes of Muskoday, Scugog Island and Georgina Island all include the same clause in reference to what is encompassed by the term 'land'. According to the Land Codes of these First Nations 'land' refers to "all the rights and resources that belong to the land, and includes:

(a) the water, beds underlying water, riparian rights, and renewable and non-renewable natural resources belonging to that land, to the extent that these are under the jurisdiction of Canada; and

(b) all the interests and licenses granted by Her Majesty in right of Canada listed in the Transfer Agreement" (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

Interpretation

The inclusion of such a clause makes it clear that by gaining control of land the First Nation is to also gain control of resources associated with that land, as well as interests tied to it. The aforementioned clauses may appear more all-encompassing than they are

in actuality, the catch phrase being, 'under the jurisdiction of Canada'. This means that any water, beds underlying water, riparian rights, renewable and non-renewable natural resources belonging to the land that are under jurisdiction other than federal, will not be contained within the definition of 'land'.

While the jurisdiction over reserve lands and resources is federal in nature, in most cases jurisdiction over waters is provincial. There are cases when both provincial and federal governments can legislate with respect to waters. This is due to the fact that while the provinces have the ability to legislate the waters for the majority of purposes, when it comes to navigation, fisheries, federal lands, international relations and First Nations, the federal government has legislative authority which can serve to supersede that of the provinces (Hutchison *a*, 1995).

In the case of Shoal Lake the jurisdictional problem is even more complex due to the inter-provincial, and international nature of the water body. As the water body is divided by the Manitoba/Ontario border, both provinces involved have jurisdictional interests in it. As a part of the watershed of the Lake of the Woods, which is an international water body, certain water quality and water level issues must be dealt with by the International Joint Commission (IJC), which is a decision-making body comprised of members from both the United States and Canada (Hutchison *a*, 1995). Due to the City of Winnipeg's use of water resources from the Indian Bay Arm of Shoal Lake, and ownership of expropriated lands, the City is also involved in the use of water in the region. Table 5 indicates the jurisdictional divisions found both within the basin area, and the lake itself.

Table 5: Jurisdictional Divisions of Various Shoal Lake Basin and Lake Areas (Hutchison *a*, 1995).

FEATURE	BASIN (km^2)	% OF BASIN (km^2)	LAKE (km^2)	% OF LAKE
Shoal Lake Basin Area	1003	100	----	----
Shoal Lake Area	286	29	286	100
MB Portion of Basin/Lake	448	45	17	6
ON Portion of Basin/Lake	555	55	269	94
City of Winnipeg Land Area *(includes 11.75 km^2 of land under Indian Bay).	13	1	----	----
First Nation Reserve Land Area	81	9	----	----

Table 5 shows that while the provinces of Manitoba, and Ontario, the City of Winnipeg, and First Nations all have jurisdiction over portions of the land within the Shoal Lake basin, only the Manitoba and Ontario Provincial Governments have jurisdiction over the waters within the Shoal Lake basin. Since none of the waters are under federal jurisdiction, nor under the jurisdiction of the First Nations in the area, SLFN No. 40 will not obtain any rights over the waters surrounding their reserve lands, should they become a party to the agreement. The only waters that the First Nation can gain authority over are those waters which are completely surrounded and enclosed by reserve lands (Bartlett *b*, 1991).

Examination of a map of the region (Figure 6) indicates that the number of water bodies on the reserve that fall under the aforementioned definition are few in number, very small in area, and unfortunately do not include areas of productive rice beds (Figure 8). According to the provisions of the FAFNLM, the many productive rice beds in the Shoal Lake Basin will continue to remain under the jurisdiction of the provinces. However, as noted the block area licensing system for wild rice could allow for de facto application of the FAFNLM management system to the use of the rice beds by SLFN No. 40 members. Custom could play an important role here.

To summarize, the FAFNLM could provide SLFN No. 40 with substantial control over reserve lands and resources. Despite the fact the Shoal Lake water body lies adjacent to SLFN No. 40 reserve lands, the provincial jurisdiction over the waters of Shoal Lake do not fall within the Framework Agreement, and jurisdiction will remain with the provinces. In terms of reserve land, the Agreement has much to offer to SLFN No. 40. In terms of water rights, however, the Agreement does very little. Control over waters, which of course includes fisheries, must be sought through a different arrangement. These areas should indeed be pursued, as manomin and fish harvests make up the bulk of natural resources revenues obtained by SLFN No. 40.

5.1.5 Law-making Powers

The Land Code of any First Nation should state the powers of the First Nation that are acquired through the Framework Agreement. The transfer of lands and management powers to a First Nation (through a Transfer Agreement between the Government of Canada and the First Nation), creates the power needed for the First Nation to make laws respecting the development, management, conservation, protection, possession, and use of their reserve lands, as well as any interests and licenses attached to those lands. Law-making powers under the Agreement also provide a First Nation with the ability to "make laws in relation to any matter necessary or ancillary to the making of laws in relation to [their First Nation] land" (Muskoday First Nation *b*, 1997).

The broad powers granted to First Nation signatories provide them with the opportunity to govern their lands much as they incline. If used effectively this gain in power could be used to make large improvements to the land and resources regimes presently used to manage reserve lands. No longer will First Nations have to deal with the paternalistic, lengthy, and difficult processes currently required where First Nations have to gain approval and support from Indian and Northern Affairs Canada under the *Indian Act* in order to pass a by-law for reserve lands. Such law-making capabilities could certainly serve to improve the present state of lands and resources management at SLFN No. 40, where present constraints under the *Indian Act* make improvements difficult.

5.1.6 Limits on Law-Making Powers

A First Nation my also decide to place limits or restrictions on the law-making powers of the Council. For example, if the First Nation feels that it is not ready to take on all of the powers that are available under the FAFNLM, or if the First Nation members want more community involvement in decision-making, they may decide to limit the number or variety of laws that can be instated without community vote and acceptance. Muskoday First Nation (1997: 7) included such a clause, which restricts the powers of the Council by limiting the law-making capabilities that could be conducted without community approval via a ratification vote.

As SLFN No. 40 is interested in having a community structure where all community members are able to equitably participate, inclusion of such a clause would help to ensure that members of the community are included in decision-making processes and that power is more equally distributed throughout the community. Such an arrangement would more closely follow the customary governance arrangements of the First Nation, and create a greater potential for the successful management and development of lands and resources (Cornell and Kalt, 1992).

5.1.7 Law-Making Procedures

In order to ensure that laws are created in a legal, consistent, and fair manner, the First Nation must design a law-making procedure. The procedure should include how proposed land laws are to be introduced at the First Nation and how the proposed laws are to be tabled, voted upon, approved, passed, and certified.

Other First Nation Land Codes have included a clause which could prove beneficial in the case of emergency or risk of immediate damage. The clause simply states that if the Council feels that a law is immediately needed in order to protect public health and safety, the law can be enacted by Council without having to go through the regular law enacting procedure, which could prove too time consuming. Shoal Lake should also

consider including such a clause, as without it health and safety could be jeopardized under specific circumstances (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

5.1.8 Conflict of Interest Rules for Land Management

As detailed in the FAFNLM, a conflict of interest section must be included in the Land Code of the First Nation to avoid bias and personal interests from corrupting the management regime at the First Nation. First Nations made this section of their Land Codes applicable to Council members, employees of the First Nation, and any members of boards, committees, or other groups which deal with management issues surrounding First Nation lands. Furthermore, if any person to whom the conflict of interest section applies has an interest (financial or otherwise) in the land matter at hand which involves the person, or immediate relatives of the person, the interest must be revealed to the pertinent body and the person must then be excluded from involvement in the issue (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

In order to promote fairness in decision-making and to be in accord with the FAFNLM, SLFN No. 40 should adopt similar conflict of interest provisions within the Land Code that they develop.

5.1.9 Interests and Licenses in Land

A section on how interests and licenses in SLFN No. 40 lands will be dealt with must be included within the First Nation Land Code. Other First Nations have placed the following under this section: the process by which transactions are to be legally completed; that all dispositions be given in the form of a written document; which allocations require community votes; the range of dispositions which the Council will assume the authority to grant; and the process by which dispositions will be granted to persons who are not members of the First Nation Community. SLFN No. 40 should

consider a similar format (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997).

SLFN No. 40 may also wish to include a section on limits to interests and licenses which could serve to better protect the First Nation community by restricting the actions that can be legally taken by Council, and requiring more transactions to require a ratifying community vote. Such a section was included in the Muskoday First Nation Land Code (Muskoday First Nation *b*, 1997).

5.1.10 Lands Advisory Committee

A SLFN No. 40 Lands Advisory Committee should be appointed by the Council under the FAFNLM in order to inform and advise the Council on land management issues. The Council should also establish terms and duties of the Lands Advisory Committee members. Other First Nations have also chosen to include a provision that at least one of the appointed Lands Advisory members reside off of the reserve lands of their First Nation.

Some Land Codes have allowed for the Lands Advisory Committee to make its own procedural rules, so long as those rules are consistent with the rules already established by the Council.

SLFN No. 40 should carefully examine the duties of the Lands Advisory Committee, and choose First Nation members who they feel will best carry out the duties involved in committee appointment. Funding for training, which will enable First Nation members to adequately take over the land and resources management duties of the First Nation, will be established within the Transfer Agreement between the Government of Canada and the First Nation Signatory.

5.1.11 Residential Lots and Resources

How lands and resources are to be allocated, and who has a right to such an allocation should be included within the Land Code. For example, if a First Nation wishes that residential lots only be granted to members of the First Nation, it should be stated. How the decisions to allocate are to be made should also be included. Other First Nation's left the 'decision of allocation statement' very general, stating that allocations will be decided upon by the Council (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997). While this statement has proven to be sufficient, a more detailed procedure could prove to be beneficial.

A very significant and important provision that is included under this section, is the provision related to the rights of resources on allocated lots within the reserve. Inclusion of a statement regarding this issue will eliminate uncertainty and confusion over resource rights. The First Nation has the opportunity to decide whether or not the resources contained within an allocated lot and the revenues that may be generated from them are or are not to be entitled to the person holding the lot. For example, Muskoday First Nation (1997) decided that the benefits gained from resources on a person's lot were not the entitlement of that person. Scugog and Georgina Islands (1997), however, stated within their provisions that resources and resulting benefits were the property and entitlement of the person to whom the lot had been allocated.

Scugog Island First Nation (1997), made this section of their Land Code very lengthy, and included such matters as allocation of a lot upon death of the occupant, public access to lands, prohibitions against residence and trespass.

5.1.12 Voluntary Land Exchanges and Protections

As detailed in the FAFNLM (1996: 21), "A First Nation has the right to exchange a parcel of First Nation land for another parcel of land, if that other parcel of land becomes First Nation Land". Accordingly, it is necessary that the First Nation designate the procedure by which such exchanges can take place. Much of the procedure is outlined in

the Framework Agreement (1996: 21), and the Land Code procedure must match that of the Agreement. There is room for procedural adjustments to be made by the First Nation.

5.1.13 Expropriation of SLFN No. 40 Lands

According to the FAFNLM (1996: 24), "A First Nation with a Land Code in effect has the right to expropriate interests in First Nation lands without consent if deemed by the First Nation Council to be necessary for community works or other First Nation purposes". Should SLFN No. 40 choose to enable the exercise of the expropriation powers granted under the Agreement, a procedure for the expropriation of lands must be developed and included within the First Nation Land Code. Muskoday First Nation (1997) provides such an example. Scugog and Georgina Islands (1997) have decided not to exercise their right to expropriation, and have included a prohibition on such activities within their Land Code. It is therefore up to SLFN No. 40 to decide whether or not they will permit First Nation expropriation by Council to occur on the lands within their Land Code.

5.1.14 Borrowing

As Scugog Island First Nation has done, SLFN No. 40 may decide to include a section on the borrowing of money for land-related purposes. This is a good section to include, as a First Nation can place restrictions upon and limit the amount of money that it can borrow for specified purposes at any time, thereby reducing the likelihood of accruing debt and related financial troubles.

5.1.15 Financial Controls and Accountability

As financial control and accountability has been a identified as a concern at SLFN No. 40, the Land Code provides the First Nation with an opportunity to create mechanisms which will adequately deal with the concerns of the First Nation. It must be remembered, however, that the provisions within the FAFNLM only apply to lands and related resources and interests. Thus, the provisions created regarding financial matters will only

be applicable to land matters (FAFNLM, 1996: 20). Improvements in the financial plan related to other First Nation issues must be dealt with through another mechanism or arrangement.

In accordance with the FAFNLM, a First Nation is entitled to all moneys related to its land including: Government of Canada transfer payments, moneys received from interests or licenses in the land, revenue generated from charges, fees, fines, levies resulting from a land law or land resolution, capital and revenue moneys received from the Government of Canada resulting from the grant or disposition of licenses and interests in First Nation lands, as well as any form of revenue generated by the land. It is up to the First Nation to manage these moneys, and by including the necessary provisions, ensure that the moneys are managed in the best interests of the First Nation (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

The Land Code should identify where moneys are to be deposited, as well as the requirements and number of persons who will be authorized as signing officers. Other First Nations have included the requirement that signing officers be bonded. Such a provision can help to safeguard against any wrongdoing, and should be implemented at SLFN No. 40, where concern over this issue exists. Another precautionary provision that was included by other First Nations in their codes was that all moneys drawn from First Nation Land accounts must receive the signature of two signing officers (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

Definition of the fiscal year should also be incorporated under this section, and should contain a provision for the creation and adoption of a land management budget prior to the start of the fiscal year. A procedure for notifying the community of the budget should be included.

By including a section which places restrictions on expenditures, the First Nation could reduce the chances of encountering financial difficulties. For example, Scugog Island First Nation (1997) included a condition whereby land and resource expenditures cannot be made unless authorized by land law, land resolution, or approved land budget, in accordance with its Land Code. As well, for amounts larger than a specified sum, the First Nation Land manager at Scugog must issue a certificate stating that funds are available for the expenditure. Should SLFN No. 40 want to make even stronger stipulations on the expenditure of land moneys, it could certainly choose to do so.

The Land Code should include a statement that requires that books of account and financial records be kept in a manner consistent with generally accepted accounting practices. As well, these books and records should be made available to members of the First Nation for their viewing. By making the books and records viewable by the First Nation community, those involved in keeping these accounts will be more inclined to keep them correctly. If errors do occur, the likelihood of being discovered will be increased, and the community will be more trusting of the Lands Advisory Committee, as well as Chief and Council.

SLFN No. 40 could also include a provision regarding offenses related to financial controls and accountability. The provision could define what constitutes an offense as well as how financial offenses would be dealt with.

A procedure for the preparation of the fiscal year end financial statement should be included within the First Nation community Land Code.

A statement recognizing that the accounting and auditing requirements of the Land Code may be done together, and consolidated with other SLFN No. 40 accounts, should be included within the Land Code.

McCloud (1998) has indicated that the fact that the management of lands and resources on-reserve under the Framework Agreement is 'people driven' should serve to greatly

reduce the potential for corruption by First Nation governments over the financial aspects of the lands and resources accounts. Direct community involvement and awareness will help to ensure that the people's needs and desires are adequately addressed and respected.

5.1.16 Liability Coverage

This section could provide SLFN No. 40 with the opportunity to provide an adequate safeguard against wrongdoing regarding the carrying out of duties related to the management of lands and resources.

The liability coverage examples received from the Land Codes of other First Nations included the provision that the Council obtain insurance for all employees and officers involved in the management of lands and resources. The insurance was to be paid for out of the operational funding granted to the First Nation by the Government of Canada, and would serve to protect persons against any personal liability which could arise from their duties. The Council retains the right to determine the extent of coverage. The Land Codes of Georgina Island First Nation (1997), Scugog Island First Nation (1997) and Muskoday First Nation (1997) all include a provision that requires the bonding of all employees involved in the area of land management.

It should be noted that in accordance with section 50 of the FAFNLM (1996: 50) "No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, during the course of and for the purposes of carrying out his or her function under this Agreement." It is therefore in the best interests of Council take to out insurance and insist that all employees be bondable.

5.1.17 Offenses

In accordance with the FAFNLM (1996: 27), a First Nation will have the power to enforce its Land Code and its First Nation laws by:

"(a) establish[ing] offenses that are punishable on summary conviction;
(b) provid[ing] for fines, imprisonment, restitution, community service, and alternate means for achieving compliance; and
(c) establish[ing] comprehensive enforcement procedures consistent with federal law, including inspection, searches, seizures and compulsory sampling, testing and the production of information."

These new powers certainly go significantly beyond the limited scope of enforcement powers currently attainable under the present form of the *Indian Act*. Under the *Indian Act*, enforcement is placed in the hands of the Minister. As the Minister is far removed from the actual situations that occur on reserves, the enforcement and punishment process is inefficient and ineffective. As a consequence, under the current process many offenses are simply not dealt with. Effective enforcement is a critical component in any management regime. No matter how good the regime, if there is no enforcement, the regime will not be followed as people need not fear or heed the consequences of their actions. Enforcement has been identified as a problem at SLFN No. 40. By placing the decision-making and enforcement powers in the localized hands of the First Nation, where the offenses actually occur, the First Nation can effectively take control of situations in a manner it deems fit, through the provisions of a Land Code and First Nation land laws, so long as they are in accordance with the FAFNLM.

The FAFNLM, would provide SLFN No. 40, with the opportunity to establish the means by which offenses are punishable. The First Nation can determine appropriate monetary amounts for fines, as no maximum fines constraints exist, as is the case under the *Indian Act*. The First Nation is not limited in its means of enforcement and compliance, and can establish and incorporate more traditional mechanisms of penalization as it sees fit, so long as they are in accordance with the Framework Agreement. SLFN No. 40 would need to consider appointing a lands enforcement officer, who would be responsible for ensuring that the Land Code and related laws are being complied with, and that non-compliance is adequately dealt with.

By being enabled to establish enforcement procedures consistent with federal law, and through the incorporation of the *Criminal Code*, a First Nation can maintain enforcement standards consistent with the rest of Canada. Should a First Nation not want their laws enforced through provincial courts, a Justice of the Peace can be appointed to alternatively deal with such matters.

Under the Framework Agreement, the First Nation has alternatives available to it for the prosecution of offenses. The First Nation can retain its own prosecutor, have the Government of Canada appoint a provincial prosecutor, or have Canada arrange for a federal agent to prosecute offenses (FAFNLM, 1996: 28).

The Land Codes of Muskoday First Nation (1997), Scugog Island First Nation (1997), and Georgina Island (1997), all contained the same clause in reference to offenses, "Unless some other procedure is provided for by a land law, the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time, apply to offenses under this Land Code, a land law or resolution". Inclusion of such a clause forms a base of protection, while still allowing for other means of protection to be developed. This can be accomplished through First Nation land laws or resolutions for situations which are considered to be not adequately dealt with under Part XXVII of the Criminal Code of Canada.

5.1.18 Commencement

The final section found within the First Nation Land Code should list commencement pre-conditions as well as the time of commencement of the Land Code. Preconditions include: community approval of the Land Code and Transfer Agreement with Canada; certification of the Land Code by a verifier in accordance with the Framework Agreement; that the Federal Legislation which ratifies the Framework Agreement has come into force (First Nation Land Management Act); and the provision of sufficient funding for land management provided by Canada within the bounds of the Transfer

Agreement (Chippewas of Georgina Island First Nation, 1997; Mississaugas of Scugog Island First Nation, 1997; Muskoday First Nation *b*, 1997).

5.2 INDIVIDUAL TRANSFER AGREEMENT ON FIRST NATION LAND MANAGEMENT

Clause 6 of the FAFNLM requires an Individual First Nation Agreement to be developed between the Government of Canada and each signatory First Nation. The purpose of the Individual Agreement is to establish the level of operational funding that each First Nation will require to implement the land management authority obtainable through the Framework Agreement. As well, the Individual Agreement will define the specifics involved in the transfer of the administration of lands between the Government of Canada and the First Nation. Both the Land Code and the Individual Agreement must receive First Nation community approval, through a process defined by the First Nation. The Individual Agreement is to take effect on the same date as the coming into effect of the First Nation Land Code (FAFNLM, 1996: 12).

The Individual Agreement is to contain a number of provisions including: when the transfer of lands from the government to the First Nation will occur; the amount of operational funding that will be provided to the First Nation; how the money will be transferred; the handing over of all information relevant to the lands and resources management of the First Nation to the First Nation; the transfer of rights from Canada to the First Nation; how affected third parties are to be notified of the change in management; the establishment of an interim environmental assessment process; how amendments to the Transfer Agreement can be made; what mechanism for dispute resolution will be utilized; and the coming into force of the Transfer Agreement.

For a detailed example of what an Individual Agreement contains, readers should refer to the example provided by the Individual Transfer Agreement on First Nation Land Management between Muskoday First Nation & The Government of Canada (1997).

5.3 COMMUNITY RATIFICATION PROCESS

One of the requirements of the FAFNLM is the formulation of a document containing the community's ratification process. The purpose of the document is to, "set out the procedure by which [the] First Nation will decide whether to approve its proposed Land Code and the proposed Transfer Agreement with Canada, as required under the FAFNLM" (Muskoday First Nation *a*, 1997).

This document will describe how the vote will be conducted, who will be eligible to vote, how voters and affected third parties will be notified, the procedure for voter registration, in-person and mail-in ballot procedures, how voting results will be counted and a decision made, as well as how certification of the Land Code and Transfer Agreement will occur. Muskoday First Nation (*a*, 1997), provides a good example of what the ratification process should look like. In some cases, SLFN No. 40 could utilize the provisions within this document for their own procedure. In other cases, modifications which will better suit the needs and wants of the community will be required.

5.4 MANAGEMENT IMPROVEMENTS TO SPECIFIC RESOURCES RESULTING FROM THE FRAMEWORK AGREEMENT

The previous sections in this Chapter dealt with the design of documents which are provisionary requirements of the FAFNLM namely, creation of a Land Code, Transfer Agreement and Community Ratification Process. None of these documents, however, specifically focus on how the Framework Agreement can be used to produce management improvements to the resources of SLFN No. 40. These resources were specifically identified in Chapter Three, which describes the present state of land and resources on SLFN No. 40 reserve lands.

Section 5.4 has been designed to identify resource management improvements that can be acquired through implementation of the Framework Agreement at SLFN No. 40. The broad law-making powers which can be acquired by the First Nation through the Agreement include the ability to make enforceable laws respecting the development, management, conservation, protection, possession, and use of its lands, as well as any interests and licenses attached to the land. Effective use of these law-making powers can ensure improvements to the land and resources found on reserve. Even if these powers are not used immediately, they can be used at any future time that an issue of significance arises.

Regardless of resource type, all resources can benefit from planning and from the incorporation of regulations which provide for and promote sustainability through resource use restrictions, inclusion of customary laws and traditions, remediation, safety, opportunities for economic gains, and allow for regulatory enforcement. For each resource sector it is important for SLFN No. 40 to determine what activities would be culturally acceptable on its reserve lands. Cornell and Kalt (1992: 48) have noted that often "development activities are controversial because they force the society to confront trade-offs between economic development and cultural values". By incorporating what is and is not culturally acceptable into the Land Code, SLFN No. 40 can minimize the potential for controversial situations to arise.

A substantial proportion of the resources utilized by SLFN No. 40 occur outside of the reserve boundary. However, by demonstrating effective planning and management of resources on the reserve through the implementation of the Framework Agreement, SLFN No. 40 could improve its chances for being granted authority over other lands and resources outside of the reserve boundary.

5.4.1 Shoreline, Inshore and Near-Shore (Real Estate)

The aesthetic beauty of the reserve lands, the proximity of the reserve lands to the waters of Shoal Lake, and the remote location of the reserve, could create the opportunity for

revenue and employment generating tourism ventures, such as the previously proposed Snowshoe Bay Development. While the Tripartite Agreement put an end to the Snowshoe Bay Development proposal, should the Tripartite Agreement come to a close, SLFN No. 40 could once again have the opportunity to pursue such a development.

Under the FAFNLM, SLFN No. 40 would not have to surrender reserve lands for the purpose of development, as is the case under the present *Indian Act*. SLFN No. 40 would have the complete authority to manage the development, and lease of reserve lands. If SLFN No. 40 does not want to take the responsibility of putting in place real estate developments, under the FAFNLM, the First Nation could hire an outside source to put in place and manage developments.

SLFN No. 40 should include in their Land Code the extent to which it would be willing to participate in real estate type developments, as well as the development of processing facilities. The Land Code should outline the process for putting such developments in place. Elders and community members should be actively involved in deciding how much development and what types of development would permissible on their First Nation reserve. The environmental protection plan, which is a requisite of the FAFNLM, will help to ensure that developments are environmentally safe and sustainable.

The FAFNLM could certainly provide SLFN No. 40 with a powerful tool to manage the development of reserve lands and realize the economic potential of real estate developments.

5.4.2 Wildlife, Hunting, and Trapping

The majority of hunting and trapping activities previously identified were found to occur off of the reserve. The management of these off-reserve activities cannot be changed by the Framework Agreement, which is only applicable to reserve lands. However, as previously mentioned, Grand Council Treaty 3 has been taking steps towards exercising greater management authority over lands and resources within the Treaty 3 territory.

On reserves, currently no formalized regulation of hunting and trapping occurs, although customary practices and traditional laws are indeed management tools of a non-formal kind. Under the Framework Agreement, new law-making powers would permit SLFN No. 40 to make regulations regarding hunting and trapping on-reserve. These regulations should provide for human safety, resource sustainability, and should incorporate traditional and customary management practices. The incorporation of traditional knowledge into the regulatory process will help to maintain and ensure the continuance of the culture of the Anishinaabe at SLFN No. 40. Things to consider would be to:

- create hunting zones, each zone having different regulations depending on proximity to housing, species composition, etc.
- limit the reserve area on which hunting and trapping activities are permitted, so that the area directly surrounding the community is excluded
- make hunter safety training mandatory
- teach hunters the principles of sustainable resource use, and impose punishment on those who are unsustainable in their usage
- place restrictions on certain weapons
- restrict the time of day in which hunting can occur in each hunting zone
- place a hunting/trapping limit on certain resources, should scarcity become a problem
- impose significant fines and punishment on law breakers
- have elders be part of the regulatory process, and incorporate the wisdom, teachings, and traditional knowledge of the elders when making regulations
- let elders play a role in the teaching of safe and sustainable hunting practices to new or young hunters and trappers

These considerations and others should be taken into account when changes to the hunting, trapping, and wildlife management regime are dealt with. By making safety precautions mandatory and enforceable, the security of First Nation members can be improved, especially the safety and security of First Nation children.

Should the First Nation decide to become involved in tourist ventures of any kind on reserve land, the ability to create hunting and trapping laws will be essential. Tourists will not want to venture on reserve land where they could accidentally encounter a trap, or find themselves in an unregulated area where they could risk being injured.

Although any regulations made to the hunting, trapping, and management of wildlife on SLFN No. 40 reserve lands would only apply on the reserve, it is likely that many of the principles learned or maintained on the reserve would also be carried off the reserve as well. For example, by placing elders in charge of teaching and passing on Anishinaabe cultural hunting and trapping knowledge, hunters will apply their knowledge whether on or off the reserve.

5.4.3 Mineral Resources

Although not much concern over mineral resources was expressed by the First Nation, the Framework Agreement can still prove to be of benefit to their management. While the First Nation may not feel a need for mineral resource management laws at present, as a signatory to the FAFNLM, the First Nation would have the ability to create land and resource laws at any time in the future. This ability allows for changing needs to be adequately addressed.

The First Nation should, however, consider creating laws now; doing so can serve to reduce the number of problems that may arise in the future. For example, it could prove beneficial for the First Nation to create some regulations surrounding on-going aggregate extraction, and future remediation of the sand and gravel pit. Such regulations could help to ensure that the potential of the deposit was maximized, and that environmental impacts were minimized or at least reduced. Remediation regulations can help to ensure that once extraction has ceased the area would be restored to a more environmentally sound state. The First Nation could refer to regulations from municipalities within the region, and model their laws after the examples that they provide.

It could also prove beneficial to put some regulations in place regarding the on-reserve precious mineral deposit. Although the deposit may never prove to be economically viable, the possibility does exist that economic viability may be realized in the future. Should economic viability come about in the future, planning and the creation of general regulations today could help to minimize problems in the future. By making some general laws surrounding development requirements, use and right to revenues generated, as well as requirements for remediation, the best interests of the First Nation people could be better protected from the negative impacts that might arise as a result of poorly regulated resource extractions.

It should be noted that the Tripartite Agreement contains a number of restrictive provisions, including the prohibition of all mining and heavy industrial activities on SLFN No. 40 reserve lands (Table 6). Although the Tripartite Agreement is of sixty year duration, it can be terminated after fifteen years. If no similar agreement is re-entered into following the expiration of the agreement, the potential for mining on the SLFN No. 40 reserve could potentially be re-attained.

Table 6: Restrictive Provisions of the Tripartite Agreement (Memorandum of Agreement, 1989).

Major Restrictive Provisions of the Tripartite Agreement
Disposal of lands to third parties prohibited.
Prohibition on mining, heavy industry, pesticides, herbicides, & other toxins
Commercial & industrial development (logging included) is prohibited unless for domestic purposes.
Commercial development to provide recreation activities to non-band members restricted to south shore of Snowshoe Bay.
Developments on the south shore subject to approval by Shoal Lake Agreement Committee.

5.4.4 Forestry

The Framework Agreement would permit SLFN No. 40 to make laws which can be utilized to improve the management of on-reserve timber and non-timber forest resources. By creating regulations which promote sustainability, the First Nation could ensure that its forest resources will be adequately protected for both present and future generations. Improved forestry management could lead to economic gains, more employment opportunities, enhancement of wildlife populations, an improved environment, and sustainability of timber resources. Mismanagement of these resources in the past has led to the deterioration of the quality of the timber on the reserve. By gaining the authority to manage the resource on their own, SLFN No. 40 could have the opportunity to prevent further degradation, and to remediate negatively impacted areas. SLFN No. 40 should refer back to and incorporate recommendations contained within the 1992 forest management plan prepared by Mitigonaabe Forestry Resources Management Incorporated (1992). The suggestions from the plan should be utilized to impose forestry regulations which will lead to improvements in forest stand composition and health as well as provide for economic gains.

In accordance with the FAFNLM, a First Nation has the opportunity to license and lease lands and resources, and directly obtain the revenues gained as well as to set license/lease standards allowing harvesting. Unfortunately, for the community of SLFN No. 40, the Tripartite Agreement to which they are a signatory, prohibits any disposal of lands or resources to third party interests. The Tripartite Agreement also prohibits commercial and industrial development (including logging) for purposes other than domestic use. While the First Nation may sell forest resources on the reserve, according to the Tripartite Agreement they are not to sell wood to outside commercial markets.

The Tripartite Agreement thus reduces the control that the First Nation can exercise over it's lands and resources, which would of course include timber resources. Should the Tripartite Agreement expire without renewal, or otherwise become void or amended, the First Nation could have the opportunity to enter into license and leasehold agreements over timber resources with third parties. Consideration should be given to the types of

regulations SLFN No. 40 would like to create surrounding license and leasing activities should the opportunity arise.

Areas where forestry regulations should be considered include:

- designating a forest manager, and outlining duties
- forest remediation
- licensing and leasing forest areas and resources to third parties, to First Nation members.
- how revenues will be spent, for example designating what portion of revenues are to go back into forest improvements, or forest employment
- regulating and designating areas for different forest uses through a forestry management plan.
- regulating harvesting practices in order to promote sustainability and forest health
- the creation of forestry safety regulations
- the incorporation of customary land management practices and the traditional knowledge of community elders
- enforcement

Another suggestion that could prove beneficial would be the appointment of a First Nation Forestry Manager. This person could be put in charge of ensuring effective forest management through implementation of a forestry plan, ensuring that regulations are followed, and advising Council on improvements that could be made.

Effective management will depend upon the provision of sufficient funds. By stating an interest in forest management improvements, perhaps an arrangement could be made for some of the funds which will be provided by the Government of Canada for the implementation of the Framework Agreement to be utilized in the area of forest management. Another alternative is utilizing other funds that would be transferred to the First Nation as a result of the Transfer Agreement which the First Nation must enter into with the Government of Canada.

5.4.5 Fishing

As the waters surrounding the I.R.40 reserve are provincial in jurisdiction, none of the water rights and water resources can be transferred to the First Nation as a result of the Transfer Agreement. Management of the Shoal Lake Fishery will continue to be a provincial responsibility. As the walleye hatchery is located on I.R.34B2, it cannot be regulated by the Framework Agreement. As previously mentioned, I.R.34B2 can only be brought under a Land Code if Iskatewizaagegan No.39 independent First Nation also becomes a signatory to the FAFNLM. The two First Nations would have to create and agree upon a separate Land Code for I.R.34B2, which has been provided for the shared use of both First Nations.

SLFN No. 40 must turn to another mechanism in order to gain greater control over the Shoal Lake fishery. The mechanism that they choose will have to involve an agreement with the Government of Ontario, which currently has control over the fishery through it's Ministry of Natural Resources. In order for SLFN No. 40 to gain some control, Ontario has to be willing to give up or share some control, this could be accomplished through a co-management agreement.

By demonstrating proficiency in the management of reserve lands and resources through effective implementation of the Framework Agreement, SLFN No. 40 members would place themselves in a better position to work out an agreement with the Ministry of Natural Resources. Perhaps the Ministry would agree to let SLFN No. 40 utilize principles or components of the Framework Agreement model in working out such an agreement.

5.4.6 Manomin (Wild Rice)

Despite its value and importance, manomin, like the fishery has previously been identified as being outside of the jurisdiction of the Framework Agreement. As with the fishery, improvements to the management of the manomin resource must be sought through a means other than the FAFNLM.

The Ministry of Natural Resources does not impose management regulations on First Nations, but allows them to establish their own management practices, thus Framework Agreement management principles could be applied to manomin.

SLFN No. 40 has indicated a need for improved management to ensure resource sustainability. Perhaps the Province and the First Nation could set up an education program that would have elders from SLFN No. 40, or from other First Nations with manomin management experience, teach sustainable practices to harvesters through the incorporation of customary practices and traditional knowledge. A co-management agreement should also be reached between SLFN No. 40 and the Ministry that allows SLFN No. 40 to make enforceable management rules, and create penalties for offenders, as under the FAFNLM, penalties and enforcement could not extent to the management of manomin.

As mentioned previously, another option that the First Nation may want to pursue is the complete challenge of the rights to the manomin resource in a court of law.

5.4.7 Water Resources and Environmental Protection

Implementation of an effective environmental plan, which includes enforceable regulations would enable the First Nation to do its best to protect water resources and the environment in general. While the First Nation may indeed do its part, other area stakeholders must cooperate and become involved in effective environmental protection as well, if Shoal Lake water is to be protected. SLFN No. 40 should do its best to protect these water resources, and keep a close watch on the actions of other stakeholders as well.

SLFN No. 40 does have an environmental management plan and by-law. However, neither is followed or enforced. Lack of adherence can place the quality of the water, the

health of the people, and the environment at risk. Fortunately, environmental protection has been made an essential component of the FAFNLM.

Environmental Management Agreement

Development of an environmental management agreement between each individual First Nation and the Government of Canada is required under section 24 of the FAFNLM (1996: 31). Section 24.2 of the Framework Agreement states that provincial involvement in the agreement will also be sought. For SLFN No. 40, that would mean involving both Manitoba and Ontario. The agreement that is developed will lay out the design for how environmental protection laws will be enacted by the First Nation. Once an Agreement is reached, it is essential that the First Nation establish sufficient funds to implement and enforce the provisions and regulations related to the agreement and environmental protection. Funds for such activities should be accounted for under the Transfer Agreement. Inability to effectively enforce was cited as a reason why the current environmental management plan has been ineffective at SLFN No. 40.

Environmental Assessment

Another requisite of the Framework Agreement (1996: 32) is the formulation of an Environmental Assessment procedure, which will be applied to First Nation projects. The procedure must detail what projects would be subject to assessment as well as how assessment is to be carried out and paid for. The procedure that the First Nation designs must be consistent with the *Canadian Environmental Assessment Act (CEAA)*. While the assessment process must be at least as stringent as the *CEAA*, SLFN No. 40 can certainly place emphasis upon areas which they feel warrant greater protection.

5.4.8 Waste Management (Solid & Liquid)

In the FAFNLM process (1996: 31), both the areas of solid and liquid waste were identified by all First Nations as being essential components of the environmental management agreement mentioned in the previous section (5.4.6). How these areas will be dealt with will, therefore, be decided and agreed upon by all parties to the agreement.

Section 24.5 of the Framework Agreement (1996: 31) does state, however, that the environmental protection penalties and standards in the areas of solid and liquid waste management (as well as fuel storage tank management, and environmental emergencies) must be at least as stringent as the provincial laws within which the First Nation is situated. Whether Manitoba standards, or those of Ontario, or a combination of the two are chosen would remain to be seen. The First Nation may decide that the provincial standards are adequate, or in some cases may decide that certain areas require the imposition of stronger regulations. The provision was included in order to ensure that an adequate baseline of environmental protection is achieved at the First Nation level.

Effective management of both solid and liquid wastes at SLFN No. 40 has been cited as being problematic, mainly due to a lack of enforcement. The FAFNLM certainly allows for the First Nation to make enforceable laws regarding these issues. SLFN No. 40 should promote waste recycling, as such an effort will help to reduce waste problems. Until year-round road access is attained by the community, the risks associated with the transport of wastes by barge will continue to remain higher than they otherwise could be if transport of wastes by barge, boat, or ice road could be eliminated.

5.4.9 Tourism

As the FAFNLM allows First Nations the flexibility to manage their own lands and resources, First Nations would not require permission from Indian Affairs to operate tourist businesses on-reserve. Tourism activities must, however, meet the environmental standards set out by the First Nation in accordance with the Framework Agreement. It should also be remembered that entering into the FAFNLM, does not negate the Tripartite Agreement and any of the restrictions that this agreement imposes on developments by SLFN No. 40. Unfortunately for SLFN No. 40, the Tripartite Agreement does contain provisions which impact upon and reduce tourism potential. Once the Tripartite Agreement has expired, the limitations resulting from the Tripartite Agreement will be removed, potentially opening up larger tourism opportunities for the First Nation.

The Tripartite Agreement eliminates the possibility of leasing lands to third parties for use in the tourism industry. Another limiting factor for tourism at Shoal Lake 40, is the fact that commercial activities which provide recreational benefits to non-band members can only be conducted on the South Shore of Snowshoe Bay. Such activities are prohibited from all other areas of reserve land. Any developments that the First Nation may propose for this area must meet the approval of the Shoal Lake Agreement Committee. While the tourism potential for the SLFN No. 40 reserve is certainly reduced by the Tripartite Agreement, it is not altogether eliminated. The potential for eco-tourism type activities (referred to in Chapter 3) does exist, and would likely meet the approval of the Shoal Lake Agreement Committee. By keeping the activities very nature oriented, the approval would certainly stand a better chance than if a cottage lot development was proposed for the south shore.

SLFN No. 40 could use its authority under the FAFNLM to create laws surrounding the type of tourism activities that would be permitted on their reserve lands. Such regulations could help to ensure that the cultural integrity of the people does not become destroyed by tourism ventures. For example, by making a regulation that elders pass final decision on the cultural information and experiences that could be shared with tourists, the integrity of the culture and people would not become jeopardized.

5.4.10 Roads, Buildings and Housing

As roads, buildings and housing would fall under the category of land development, the First Nation would have the law-making power to regulate such activities on the reserve as deemed necessary. The Council would consider zoning the reserve, much like one would a municipality. Zoning could help to preserve certain areas, keeping them free from development, as well as help to plan for future growth and development of the community.

5.4.11 Enforcement and Education

Transfer fund moneys gained through the Individual Transfer Agreement should be used to train and employ one or more First Nation land management enforcement officers. The Council could make regulations regarding the duties and practices of officers. The First Nation would likely best be served by permitting officers to enforce all land and resource laws made in relation to the FAFNLM. Costs could be saved by having officers that are able to enforce all areas as opposed to a separate officer for each resource area. A portion of the funds should also be spent on community education, so that people are aware of regulations and the punishment that they will face should they decide not to comply. Educational opportunities should also be made available for First Nation members wishing to get involved in business developments on reserve lands. SLFN No. 40 should also identify members who would like to be involved in the implementation of the FAFNLM. Funding should be obtained from INAC so that members can obtain the training and skills needed for effective implementation. An educated population will have a greater chance at achieving development success through the FAFNLM.

5.4.12 Employment

Amongst its many potential benefits to the community, another positive spin-off of the FAFNLM, would be the creation of employment opportunities at SLFN No. 40. Members will be needed to serve on the Lands Advisory Committee, to take care of lands and resources finances, and to serve as enforcement officers and resource managers.

5.4.13 Further Considerations

For SLFN No. 40, perhaps the greatest limitation of the Framework Agreement is its inability to influence the management of those resources that are currently most significant to the community, which include manomin, fish, and the waters of Shoal Lake. While the First Nation feels that these resources should be theirs to govern, Canada and the provinces have determined otherwise. These problems and limitations reach far deeper than the Framework Agreement, and should not be seen to overshadow the numerous benefits which can be derived from the Framework Agreement. The most

important of these benefits is the ability of SLFN No. 40 to gain jurisdiction over its reserve lands and resources, and permit the community of SLFN No. 40 the opportunity to make important decisions regarding its future. Demonstrating proficiency over the management of reserve lands through the Framework Agreement should help to place SLFN No. 40 in a better position to gain greater control over those important resources currently outside of the jurisdiction of the reserve boundary.

While traditional resource developments on reserve land, such as mining, and timber harvesting are not economically viable, this should not be taken to mean that SLFN No. 40 has no potential for successful developments on its reserve lands. SLFN No. 40 should focus its efforts on innovative thinking and consider exploring the potential for establishing successful tourism ventures on the reserve. Outside of economic development, SLFN No. 40 should not forget that the Framework Agreement could be utilized to implement effective community planning, development and decision-making. Even if economic development is not in the immediate future of SLFN No. 40, the Framework Agreement still offers many benefits, including the opportunity to become involved in such endeavors in the future.

The Tripartite Agreement restrictions on development have been identified as a hindrance to SLFN No. 40. The control over SLFN No. 40 that the City of Winnipeg currently exercises, in many cases reduces the powers that would ordinarily be obtainable by a First Nation under the Framework Agreement. Once the Tripartite Agreement has been terminated, SLFN No. 40 should be able govern their lands and resources free of the restrictions currently applied by the City of Winnipeg. While the end of the Tripartite Agreement may be something that SLFN No. 40 looks forward to, the end of the Tripartite Agreement will not likely result in the end of the City of Winnipeg's attempts to control activities at SLFN No. 40.

5.5 CHAPTER SUMMARY

This Chapter concluded that the FAFNLM could be utilized to improve the management of all reserve lands and resources that are under federal jurisdiction, as these powers could be transferred to the First Nation through an Individual Transfer Agreement. The Framework Agreement requires design of a Land Code, as well as the development of an individual transfer agreement and community ratification process. All three of these components were described in the first three sections of this Chapter and the description incorporated examples provided from First Nation signatories to the Agreement.

The Chapter determined how the Framework Agreement could be used to improve the management of previously identified resource sectors which are: wildlife, hunting and trapping; fishing; manomin; mineral resources; forestry; water resources and environmental protection; waste management; tourism; roads, buildings, housing; and enforcement. Suggestions for management improvements, as well as cautions and limitations were identified for each resource sector.

Despite the wide variety of resource sectors examined, common themes emerged and some generalized conclusions could be drawn. As was identified in Chapter Three, all resource sectors lack written codified management regulations, raising concerns for resource sustainability, maximization of benefits, as well as environmental and human safety. Suggestions for ways in which regulations could be used to address these issues were made for each sector. Education and enforcement capabilities appeared to be a major problem across all sectors as well. The Chapter recommended that enforcement officer positions be established, and that these people be able to enforce all regulations made in regards to lands and resources management, and that efforts be made to educate the people about resources regulations and the need for them. The Chapter also recommended that elders be involved in the development of Land Codes and laws, so as to ensure that customary traditions and beliefs are maintained and passed on.

Chapter Five recognized the fact that three of the most important resources to SLFN No. 40, fish, manomin, and the waters of Shoal Lake fall outside of the jurisdiction of the Framework Agreement, and that other means for improving management of these resources must be sought.

As the provisions of the Tripartite Agreement would remain in effect, if SLFN No. 40 were to participate in the Framework Agreement process, in many cases a limit to the powers that could ordinarily be exercised under the Framework Agreement, especially in terms of resource development capabilities, would result. An end to the Tripartite Agreement may allow for SLFN No. 40 to regain the authority, which is currently limited under the Framework Agreement. It is not likely, however, that the City of Winnipeg will stop attempting to control the activities of SLFN No. 40. This Chapter did identify eco-tourism type ventures as a possible development option with potential for regaining the lost economic resource base at SLFN No. 40.

This Chapter has established that the Framework Agreement could provide benefits to all of the resource areas identified within Chapter Three. Since at this time resource developments remain subject to the restrictions of the Tripartite Agreement, the benefits derived from the Framework Agreement would be more along the lines of resource sustainability. The main benefit that the Framework Agreement could provide to SLFN No. 40 would have to be the power of jurisdictional authority over reserve lands and resources.

CHAPTER SIX

CONCLUDING REMARKS & RECOMMENDATIONS

6.0 OVERVIEW

The purpose and objectives of this research practicum were identified in Chapter One. The materials presented within subsequent Chapters focused upon satisfying the purpose and objectives of the study. To recap: the primary purpose of this study was to identify a feasible land and resource management alternative through assessment of IAOMA and the FAFNLM and to design a strategy for implementation at SLFN No. 40. The specific objectives of the study were: to describe the present land and resources regime at SLFN No. 40; to identify and examine the feasibility of implementing an alternative land and resources management regime at SLFN No. 40 through the assessment of IAOMA and the FAFNLM; to highlight the strengths and weaknesses of each alternative and; to develop a strategy for improving land and resources management through the development of an alternative land and resources management model.

6.1 CONCLUSIONS

The information presented within each Chapter of this study has led to a number of conclusions. From these conclusions, recommendations could be made as to how SLFN No. 40 could best make use of the findings of this research study.

Conclusions derived from the information presented in Chapter Two, which presented an overview of the Shoal Lake region, indicated that under the present form of the *Indian Act*, the ability of SLFN No. 40 to manage and control their lands and resources as they would like is not attainable. It is within the Second Chapter that the need for an alternative means of managing lands and resources at SLFN No. 40 was identified, indicating the relevance of this research study.

Description of the present natural resources and land management regime at SLFN No. 40, as it was described in Chapter Three, served to satisfy the First Objective of this study. Chapter Three led to the identification of problems which currently exist within each resource sector, as well as problems common to all resource sectors. Common problems included: inadequate authoritative power over resources; lack of regulations; lack of resource development opportunities; and, insufficient compliance to existing regulations resulting from unsatisfactory enforcement capabilities and poor knowledge of regulations. Little management of resources appeared to be occurring on the reserve and this could result in the sustainability of lands and resources at SLFN No. 40 being jeopardized. Chapter Three not only concluded that resource problems and obstacles to development currently exist, but confirmed a need for improved management through the implementation of an alternative regime.

With a need for an alternative management regime established and specific resources sector problems identified, an examination and comparison of two land and resources management alternatives, IAOMA and the FAFNLM, resulted in the conclusion that the Framework Agreement model would be the best alternative to implement at SLFN No. 40. This conclusion served to satisfy the second objective of this study. When analyzing the two identified alternative regimes, the problems identified in Chapter Three were considered throughout the analysis. Knowledge of the present situation of the First Nation and the problems associated with it was essential in the determination of which alternative would work best for the community.

Analysis of the two alternatives led to the identification of the strengths and weaknesses of each and served to fulfill the third objective of this study. The choice to follow the Framework Agreement resulted from comparative examination of the strengths and weaknesses of each alternative which led to the following conclusions: the Framework Agreement was designed by First Nations for First Nations; the Framework Agreement could provide SLFN No. 40 with a comprehensive authority to govern and manage reserve lands and resources; the Framework Agreement could allow for the expression of

self-government in terms of lands and resources; the Framework Agreement provides the opportunity to create enforceable Land Code laws; the Framework Agreement was well received by the Assembly of First Nations; First Nations involved with the Agreement responded positively to the Agreement; despite IAOMA's broader scope of applicability, in terms of lands and resources management IAOMA was overall weaker, leaving ultimate authoritative powers in the hands of the Minister and the GIC; the IAOMA was the less likely of the two alternatives to be passed into legislation by parliament.

The authority obtained under either arrangement could only be applied to federal First Nation lands and related resources. Another important conclusion reached was that the Tripartite Agreement would remain effective even after the signing of the FAFNLM, as third party interest arrangements would be unaltered by the application of the Framework Agreement. Nevertheless it was its strengths, and high probability of it being passed as legislation that led to the decision to pursue the Framework Agreement further.

However, pursuit of the Framework Agreement should not be taken without caution. With the acceptance of sovereignty over lands and resources comes the responsibility and accountability for decision-making, and the acceptance of a reduction in the fiduciary responsibility of Canada to First Nation signatories of the Agreement. It should also not be forgotten that gaining authority over land and resources would not eliminate the many obstacles to successful development faced by First Nations. As well, while the Tripartite Agreement may soon be terminated by SLFN No. 40, it is unlikely that the City of Winnipeg will stop its attempts to control development activities at SLFN No. 40.

Chapter four also concluded that while involvement in the Framework Agreement should be pursued, becoming involved would remain a challenge, as the Agreement is currently closed to others than the original fourteen signatory First Nations. Following the steps outlined in this document could help to ensure, but not guarantee, SLFN No. 40 the opportunity of involvement in the Framework Agreement. The challenge will not end there, however. Hard work, community spirit, enthusiasm and dedication to the cause will be required to create effective land and resources management at SLFN No. 40.

Taking the challenge could pay off for SLFN No. 40, as once the ability to create laws and govern their lands and resources is granted to them, the power will remain for future generations to enjoy.

In order to meet the fourth and final objective of this study, a strategy for improving land and resources management through the development of a FAFNLM model was elaborated. The most important conclusion derived from this model was that the Framework Agreement could be used to improve land and resources management at SLFN No. 40.

The model recognized the current lack of resource development potential due to restrictions imposed upon SLFN No. 40 as a result of the Tripartite Agreement, and the fact that three of the most important resources, fish, manomin, and the waters of Shoal Lake fall outside of the jurisdiction of the Framework Agreement. Due to these limitations, it was suggested that the regulatory power of the Framework Agreement be used to impart resource sustainability, maximize benefits from resource use, and promote environmental and human safety on the resource sectors within its jurisdiction. The Framework Agreement should be used as a planning and community development tool, as well as a tool to provide a positive regulatory framework for economic development when the community is ready for it. It was concluded that education and enforcement through the establishment of resource officers would be required to ensure that regulations would be understood and followed. Of the resource sectors affected by the Framework Agreement, Chapter five identified eco-tourism type ventures as possibly having the greatest potential for regaining economic security from the resource base available to SLFN No. 40.

6.2 RECOMMENDATIONS

The research findings presented within this practicum document have led to the following recommendations:

1. Involvement in the FAFNLM should be pursued by SLFN No. 40.

2. SLFN No. 40 should talk with and seek advise from other First Nations involved in the FAFNLM, especially the First Nation community of Scugog Island, whose small population and minimal land management experience provides a situation that is similar to SLFN No. 40.

3. SLFN No. 40 Chief and Council should promote the benefits of the FAFNLM to the community in order to gain their support.

4. The First Nation should use its law-making powers to incorporate planning, community development, economic development, human safety, sustainability, environmental protection and maximization of resource benefits.

5. As the currently most profitable and highly utilized resources (manomin, and fisheries), cannot be directly improved through the FAFNLM, other means of improving control and management should be sought. Co-management agreements could potentially provide SLFN No. 40 with greater management control and enforceability.

6. While the Tripartite Agreement limits some of the capacities ordinarily achievable under the Framework Agreement, the First Nation should operate within those constraints and work to maximize the benefits which can be obtained through it.

7. The potential for developing individual resources at SLFN No. 40 is low due to lack of resource potential and Tripartite Agreement constraints. Low impact forms of eco-tourism could be possibly be designed to meet approvals, help to restore economic securities, provide employment, retain culture, utilize natural skills and maintain a pristine environment. Further research into this area should be conducted.

8. Adequate enforcement will be fundamental to the effective workings of any management regime. New powers mean very little if those powers are not enforced. SLFN No. 40 should make provisions for lands and resources enforcement officers, and ensure that adequate training and funding is provided through the Individual Transfer Agreement.

9. Education should be provided to community members to ensure that members are aware of all resources and land laws that could result from the Framework Agreement. Education should also be made available to First Nation members wanting to become involved in resource developments on reserve lands, as well as to those members wanting to serve on the Lands Advisory Committee.

10. The First Nation Government should encourage individual members to undertake development ventures, as the combination of Government and business often does not result in successful economic outcomes.

11. Elders and community members should be actively involved in Land Code and law creation, in order to ensure that customs and traditional knowledge is incorporated into the management plan, and that cultural values will be preserved.

12. The community should be involved in the decision-making-process as much as possible. By managing in this way, decision-making power is more equally distributed amongst the people, in a way that incorporates Anishinaabe tradition and giving greater potential for success.

13. SLFN No. 40 should be cautious and careful in their decision-making, should they decide to enter into the Framework Agreement, as responsibility and accountability for decisions made will rest with the First Nation, and not with the Government of Canada.

14. Should SLFN No. 40 not be permitted, or choose not to enter into the FAFNLM, an alternative strategy for improving reserve lands and resources management at SLFN No. 40 needs to be sought. SLFN No. 40 should proceed to exercise and assert its inherent right of self-government as recognized and affirmed within section 35 of the *Constitution Act*, 1982.

6.3 CONCLUDING REMARKS AND RECOMMENDATIONS

History has shown that prior to the arrival of Europeans in North America, aboriginal peoples were in a position of power and self-governance, not only in relation to lands and resources, but in relation to each other as well. European arrival and imposition of sovereignty in Canada led to the signing of Treaties and the implementation of the *Indian Act*, which legislated the removal of power and governing authority from First Nations people. The FAFNLM could provide SLFN No. 40, and all First Nations across Canada with an opportunity to regain some of the control and governance that was historically theirs. The Framework Agreement could provide SLFN No. 40 people with the opportunity to prove themselves as capable managers of their lands and resources. This authority and responsibility could help SLFN No. 40 to re-establish lost confidence, boost local self-esteem, create greater interest in the management and sustainability of reserve lands and resources, and place SLFN No. 40 in a better position to become involved in the management of resources outside of the jurisdiction of its reserve.

Neither the IAOMA nor the FAFNLM could provide SLFN No. 40 with all of the authoritative capabilities that they hope for. While the Framework Agreement could technically provide the First Nation with complete authority over lands and resources,

existing third party arrangements, the unique location of the reserve, and the lack of marketable resources will limit development opportunities. The Framework Agreement will not put an end to SLFN No. 40 struggles, but could provide beneficial resource management and control improvements for the First Nation. The opportunity for self-government in terms of lands and resources provided by the Framework Agreement should not be overlooked, as the experience that could be gained in this area could be utilized to attain other self-government agreements. In order to benefit from the Framework Agreement, SLFN No. 40 must be willing to make the Framework Agreement work for them. Whether or not the land and resources benefits that could be obtained as a result of the Agreement will ever be realized at SLFN No. 40 will depend to a significant degree on the desire, determination, and effort exercised by the First Nation.

While it is the author's belief that implementing the FAFNLM at SLFN No. 40 would be a worthwhile venture, it is not known if the same belief will be held by the community of SLFN No. 40. It is hoped that the information provided in this practicum will help SLFN No. 40 to make an informed decision as to whether or not the FAFNLM is indeed appropriate for their community. Further research should be conducted to determine community acceptance and responses to the possible implementation of the Framework Agreement at SLFN No. 40.

It should be noted that the resources management suggestions presented in this document are only suggestions. It will remain up to SLFN No. 40 to decide if the suggestions presented are worth following.

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APPENDIX I

Survey to establish the present land and resources management regime at Shoal Lake First Nation No.40. August, 1997.

Questions to be directed to Chief and Council of Shoal Lake First Nation No.40.

Resources:

Wildlife, Hunting and Trapping.

1. How much hunting and trapping takes place on reserve land? (i.e. no.'s of First Nation members involved in these activities, no's of animals taken).

2. What species are currently being taken on reserve land? How do the species populations of today compare to those of the past?

3. What factors outside of First Nation hunting and trapping are impacting upon wildlife populations on reserve?

4. What changes do you propose should take place in order to improve wildlife populations if they are being negatively impacted upon?

5. Are conservation measures regulating the numbers of animals that can be taken by First Nation people on reserve lands?

6. Is hunting and trapping on reserve land regulated at all? If not should it be?

7. To what extent are people able to meet their needs under the current constraints or animal populations found on reserve?

8. Beyond use for food, what other uses do the people of Shoal Lake First Nation No.40 have for wildlife?

9. Does commercial selling of wildlife products by members of Shoal Lake First Nation No.40 currently take place ?

   a.) If not, why not?

   b.) Would you like to see it take place?

10. Describe the hunting and trapping problems faced by your First Nation community.

11. What changes regarding the management of First Nations wildlife, hunting, and trapping would you like to see take place?

12. Do you feel that IAOMA will permit you to make any of the changes that you would like to see take place?

13. Do you see any economic opportunities for Shoal Lake First Nation No.40 linked to wildlife resources in the area?

(Although fisheries are located off reserve, I am still interested to know what activities, problems, and economic potential exists in this area.)

Fishing

1. Are fish populations in Shoal Lake healthy? How do they compare to populations in the past?
2. Are conservation measures negatively affecting First Nations Harvests?
3. What restrictions are currently placed on First Nations Fishers?
4. What are the most popular fish species taken by fishers?
5. Are fishers able to meet their basic food needs under current restrictions, regulations, or fish populations?
6. What factors outside of First Nation fishing are impacting upon fish populations?
7. What changes do you propose should take place in order to improve fish populations if they are being negatively impacted upon?
8. How has the collapse and closure of the walleye fishery affected your community?
9. Does your community participate in sport or commercial fishing ventures?
10. What fishery management problems are currently faced by your First Nation community?
11. What changes would you like to see made in terms of fisheries management?
12. Do you think IAOMA would help your First Nation to achieve any of those changes?
13. Are any members of Shoal Lake First Nation No.40 currently employed as a result of fishery activities which are in place on the reserve?
14. Do you see any economic potential for your First Nation community related to fisheries?

Manomin (Wild Rice)

1. Describe the importance and historical significance of manomin to your First Nation Community and how it is used?
2. How many members of your First Nation are involved in the growing and harvest of manomin on reserve land?
3. How much manomin is grown and where is it located?
4. How has the manomin resource of today changed from in the past (i.e. quantities harvested, locations, people involved)?

5. If there has been a change in the manomin resource and its usage, what factors do you suspect are responsible for that change?

6. Does your First Nation have adequate control over the manomin resource?

   a) if not, what management changes would you like to see occur?

7. Do you think IAOMA could be used to improve the management and control that your First Nation has over manomin?

8. Do you see any economic potential for your First Nation community related to manomin?

Mineral Resources

1. Has there been any interest shown or possibilities for the development of mineral resources on Shoal Lake First Nation No.40 reserve land?

   a.) If so what kind of developments?

   b.) How would such developments affect your First Nation Community?

2. Are there currently any mining activities taking place on Shoal Lake First Nation No.40 reserve land? If so what are they and how are they affecting First Nations people, i.e. employment, environmental degradation, economics, etc.

3. Are any members of Shoal Lake First Nation No.40 currently employed as a result of mining activities which are in place on the reserve?

4. How are mineral resources on Shoal Lake First Nation No.40 reserve land currently managed?

5. What kind of mining and mineral related problems does your First Nation community currently experience?

6. Describe how the *Indian Act* and the Shoal Lake Agreements restrict the development of mineral resources by Shoal Lake First Nation No.40.

   a.) Do you feel these restrictions are necessary in order to preserve water quality and prevent environmental degradation?

7. What mineral management changes would you like to see occur in the future?

8. Do you feel that IAOMA will permit you to make any of the changes that you would like to see take place?

9. Do you see mining as a source of economic gains for Shoal Lake First Nation No.40?

Forestry

1. Has there been any interest shown or possibilities for the development of forest resources on Shoal Lake First Nation No.40 reserve land?

   a.) If so what kind of developments?

   b.) How would such developments affect your First Nation Community?

2. Are there currently any forestry activities taking place on Shoal Lake First Nation No.40 reserve land? If so what activities are taking place and how are they affecting First Nations people, i.e. employment, environmental degradation, economics, etc.

3. Are any members of Shoal Lake First Nation No.40 currently employed as a result of forestry activities on reserve?

4. Describe how forest resources on Shoal Lake First Nation No.40 reserve land is currently managed.

5. What kind of forestry related problems does your First Nation face?

6. Describe how the *Indian Act* and the Shoal Lake Agreements restrict the development of the forest industry by Shoal Lake First Nation No.40.

   a.) Do you feel these restrictions are necessary in order to preserve water quality and prevent environmental degradation?

7. What forestry management changes would you like to see occur in the future?

8. Do you feel that IAOMA will permit you to make any of the changes that you would like to see take place?

9. Do you see forestry as a source of economic gains for Shoal Lake First Nation No.40?

Water Resources

1. Have you noticed a change in Shoal Lake water quality, or has it stayed relatively constant over the years?

   a.) If there have been noticeable quality changes, what do you suspect the cause of these changes has been?

2. What treatment is currently applied to the water consumed by Shoal Lake First Nation No.40 members.

   a.) Do you feel that this treatment is necessary or adequate?

3. What activity would you say has the largest impact upon Shoal Lake water quality?

4. How concerned are you over the issue of Shoal Lake water quality?

5. What measures does Shoal Lake First Nation No.40 take in order to aid in the maintenance of a high quality water supply?

6. Describe the water quality concerns and problems that have faced your First Nation community.

   a.) Are these concerns and problems being handled sufficiently?

   b.) What changes would you like to see made in order to improve water quality, and reduce concerns and problems?

7. How do you think IAOMA could be used to improve the water management practices at Shoal Lake First Nation No.40?

8. Describe how the concern for water quality often prevents the initiation of First Nations resources development proposals (i.e. Snowshoe Bay development proposal).

9. Have the many restrictions and restraints over development in the region been unfairly imposed, or do you feel that the restrictions and restraints are necessary in order to protect the water supply.

10. Do you think that the terms of the Shoal Lake agreements and watershed agreement were necessary in order to protect the quality of the water?

11. How have these agreements hindered your ability to use the water resources as you would like? In what other ways have these agreements been a hindrance?

12. To what extent have the terms of the agreements been met?

13. Has the watershed co-management plan, which was a provision of the 1994 Shoal Lake Watershed Agreement been developed?

14. How much control is Shoal Lake First Nation No.40 currently able to authorize over it's water resources?

15. Has the area of water resources created employment opportunities for any members of Shoal Lake First Nation No.40?

Waste Management

1. Describe the current waste management regime in place at Shoal Lake First Nation No.40.

2. Is the current waste management regime in place at Shoal Lake First Nation No.40. efficient, effective, and environmentally sound?

   a.) What are the problems with it?

   b.) What would you like to change about it?

3. Describe how the *Indian Act* and the Shoal Lake Agreements have impacted upon the waste management regime in place at Shoal Lake First Nation No.40.

   a.) Have these impacts been positive? Negative? Justifiable?

4. Have the waste management terms of the Shoal Lake agreements been met?

5. How much control does Shoal Lake First Nation currently have over the area of waste management?

6. How do you feel the implementation of IAOMA could improve the control which Shoal Lake First Nation No.40 currently has over it's waste management?

7. What changes to the present waste management regime would you like to see made in the future?

8. Are any members of Shoal Lake First Nation No.40 currently employed as a result of the waste management regime in place on the reserve?

Tourism.

1. Has there been any interest shown or possibilities for the development of a tourism industry on Shoal Lake First Nation No.40 reserve land? If so what kind of developments and how would such developments affect your First Nation Community?

2. Are there currently any tourism activities taking place on Shoal Lake First Nation No.40 reserve land? If so what are they and how are they affecting First Nations people, i.e. employment, environmental degradation, economics, etc.

3. Does Shoal Lake First Nation No.40 currently operate any tourist industries?

4. What, if any, tourist industries were in operation in the past, and why are they no longer in operation today?

5. What tourism developments would you like to see your First Nation initiate in the future?

6. Describe how the *Indian Act* and the Shoal Lake Agreements restrict the development of tourist industries by Shoal Lake First Nation No.40.

   a.) Do you feel these restrictions are necessary in order to preserve water quality and prevent environmental degradation?

7. Do you feel that the implementation of IAOMA could help your First Nation to establish tourism industries in the Shoal Lake region? And if so, how so?

8. Do you think that development of a tourism industry could provide an economic resource base for the First Nation?

9. Are any members of your First Nation currently employed as a result of tourism on Shoal Lake First Nation No.40 reserve land?

Environmental Protection

1. How much of a concern is environmental protection to Shoal Lake First Nation No.40?

2. What initiatives are presently being taken by Shoal Lake First Nation No.40 in order to promote environmental protection?

3. What problems does the First Nation face when it comes to the management and protection of the environment?

4. How much control does Shoal Lake First Nation No.40 have over environmental protection matters?

5. Describe how the *Indian Act* and the Shoal Lake Agreements have affected environmental protection at Shoal Lake First Nation No.40.

   a.) Have these affects been positive? Negative? Justifiable?

6. One of the provisions of the Shoal Lake Agreements was the development of an environmental management plan to be implemented by Shoal Lake First Nation No.40. Has such a plan been implemented?

7. Have the resource development inventory studies and the community economic development strategies (provisions of the Shoal Lake agreements) been completed?

   a.) If they have what kinds of environmentally sustainable economic resource development alternatives have been identified?

   b.) Does your First Nation plan to pursue any of the suggested alternatives?

8. How would you like to improve the environmental management regime presently in place at Shoal Lake First Nation No.40.

9. How do you think IAOMA could be used to aid in the improvement of the environmental management regime at Shoal Lake First Nation No.40.

10. Does environmental management on the reserve currently employ any members of the Shoal Lake First Nation No.40 community?

Roads, Buildings, Housing, and Septic

1. How does Shoal Lake First Nation No.40 currently manage the construction of roads, buildings, housing and septic on reserve?

2. Does the construction of roads, buildings, housing and septic on reserve provide employment to members of your First Nation?

3. Describe how the *Indian Act* and the Shoal Lake Agreements have affected the construction and maintenance of roads, buildings, housing and septic on reserve?

   a.) Have these affects been positive? Negative? Justifiable?

4. How do you decide on the location of new homes on the reserve?

5. What kind of procedures and restrictions does your First Nation Face in terms of the location and construction of roads, buildings and housing on the reserve?

6. What kind of problems do you experience related to the construction of roads, buildings, and housing on reserve?

7. What kinds of changes would you like to see made in terms of the on reserve construction of roads, buildings, and housing?

8. Do you think IAOMA could be used to help make the desired changes? If so, how?

9. Who is in charge of the maintenance and repair of these structures after construction?

10. Why is there currently a shortage of housing on your reserve?

11. How often are the homes on your reserve replaced or rebuilt?

12. Describe the current septic system in place on the reserve and the problems related to it.

13. What kind of procedures and restrictions does your First Nation Face regarding the implementation of septic systems?

14. What kind of problems result from the current septic system that is in place on the reserve?

15. What changes would you like to see made to improve the current on reserve septic system?

16. Do you think IAOMA could be used to help make the desired changes? If so, how?

Other Developments

1. Are there any other on reserve developments that have been tried, are currently being tried, or that you would like to see tried in the future?

2. Describe such developments and indicate the problems and benefits related to them.

3. Describe how the *Indian Act* and the Shoal Lake Agreements have affected these other developments.

   a.) Have these affects been positive? Negative? Justifiable?

4. Describe the changes that you would like to see made regarding these other developments.

5. Do you think IAOMA could be used to help make these changes occur?

6. Do any of the other developments mentioned in this section provide employment to members of Shoal Lake First Nation No.40?

Current Resources Initiatives

1. During my visit to Shoal Lake First Nation No.40, I noticed that there were several initiatives and programs being developed in order to improve conditions on the reserve. For example the water quality sampling program, rebuilding and making better access to the boat docks, creation of a community garden.

2. Could you please describe the programs and initiatives which are currently in place, which ones are being developed, and what more you would like to see accomplished in the future.

3. What constraints does the First Nation presently face when attempting to establish programs and other initiatives?

4. Do you think implementation of IAOMA could help you to overcome those constraints? If so how? If not why not?

5. Do any of these initiatives provide employment to members of your First Nation community?

General Resources Questions

1. What area of natural resources do you feel has the largest potential for providing an economic resource base to Shoal Lake First Nation No.40?

2. What resources do you see as being the most important?

3. What natural resources do you exercise the least control over?

4. What types of control over natural resources should your First Nation be able to exercise?

5. What would you say is your most fragile/endangered resource? Least fragile/endangered resource?

6. What prevents you from utilizing and managing resources as you would like?

7. Could you describe, in general, how you would like to see IAOMA implemented, and what you would like to gain from it in terms of natural resources management.

8. Could you also describe any concerns that you have over the IAOMA legislation and it's possible affects upon the natural resources regime on reserve.

APPENDIX II

Survey to establish general background information about Shoal Lake First Nation No.40. August, 1997.

General Questions to Establish Background Information:

1. Could you please provide me with some information on the demographics of your First Nation community (i.e. number of First Nation members living on reserve, age breakdown of community etc.).

2. Is out-migration a problem or concern of Shoal Lake First Nation No.40?

3. Could you describe the general employment situation for First Nation members on the reserve? (i.e. how many employed, and in what field, how many unemployed, employment problems, etc.)

4. How many homes are occupied by members of Shoal Lake First Nation No.40? Where are these houses located?

5. Could you describe the issue of road access to your community. Has there been any progress on gaining road access? What seems to be the reason for not being able to obtain road access?

6. How has the lack of road access to your community affected members of the community?

7. Could you describe your reserve land situation, i.e. sharing reserve lands with Iskatewizaagegan No.39.

8. Has the sharing of reserve land led to any problems? If yes, please describe the problems that have occurred.

9. How would you describe your relationship with Iskatewizaagegan No.39?

10. Do you think the fact that your reserve land is shared, problems will occur when you want to make changes to your management regime?

APPENDIX III

Survey conducted on Land Managers from three First Nation signatories of the Framework Agreement on First Nation Land Management .

SURVEY: FIRST NATIONS INVOLVED IN FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT.

1.) How are you currently managing your lands?
   a.) according to the Indian Act
   b.) according to section 53 or 60
   c.) according to the department's Regional Lands Administration Program
   d.) according to the Framework Agreement, despite not yet been ratified by gov.
   e.) other

2.) Where in the Framework Agreement process does your First Nation currently stand?
   a.) have land codes been written
   b.) are being written
   c.) been ratified by your First Nation, if so what was the outcome of the vote?

3.) If the Framework Agreement has not yet been ratified by your First Nation when do you expect it to be?

4.) Have you been given any indication as to when ratification by the government of Canada will occur?

5.) Were sufficient funds provided to your First Nation in order to carry out the steps required to meet the conditions of the Agreement, i.e. development of land codes, establishment of a resource center by the lands advisory board?

6.) Is the Land Management Act consistent with the Framework Agreement?

7.) Do the Agreement and Act meet the needs of your First Nation in terms of land and resources management?
   a.) if so how?

8.) Could you identify strengths and weaknesses of the Agreement?

9.) Have sufficient training programs been provided to your people which will enable your First Nation to effectively carry out your new land and resource management functions?
   a.) if so what types of programs?
   b.) who paid for them?

10.) Do you have any recommendations, cautions, or advice to give to Shoal Lake First Nation No.40 who seeks to gain greater control over their lands and resources

11.) Do you think that previous land management experience is necessary to effectively become involved in the Framework Agreement, or would a F.N. without extensive experience be able to adequately cope with the new responsibilities and capabilities of the Framework Agreement?

12.) How do you feel the Framework will affect the fiduciary responsibility and relationship that the federal government has with your First Nation? .

13.) Do you feel that the land code laws will be enforceable and stand up in a court of law, and thus be superior to the current arrangement of band by-laws?

14.) Do you think that the Framework Agreement model, and resulting management regime could be somehow applied to the management of off-reserve resources by First Nations?

15.) Do you see the Framework Agreement as improving the finaceability of interests on reserve? Has your First Nation taken precautions to help protect interests?

16.) Do you see the Framework Agreement as being able to reduce the possibility for corruption by First Nation Government? If so how?

17.) Do you consider the Framework Agreement as self-government of lands and resources, or just a step towards it?

18.) If a First Nation has little or no resource development capacity, would you still think that the Agreement is a worthwhile endeavor?

APPENDIX IV

Framework Agreement on First Nation Land Management. 1996, Feb. 12. Georgina Island.

FRAMEWORK AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN

THE FOLLOWING FIRST NATIONS:

WESTBANK, MUSQUEAM, LHEIT-LIT'EN, N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, ST. MARY'S

AND

THE GOVERNMENT OF CANADA

1996

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FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

Agreement made on the 12th day of February, 1996, as amended.

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

BETWEEN:

THE FOLLOWING FIRST NATIONS:

WESTBANK, MUSQUEAM, LHEIT-LIT'EN, N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, ST. MARY'S, as represented by their Chiefs

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development

WHEREAS:

The First Nations have a profound relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator and have a deep desire to preserve their relationship with the land;

The First Nations should have the option of withdrawing their lands from the land management provisions of the *Indian Act* in order to exercise control over their lands and resources for the use and benefit of their members;

The Parties wish to enter into a government to government agreement, within the framework of the constitution of Canada, to deal with the issues of land management;

The Parties understand that this Agreement must be ratified;

NOW THEREFORE,

In consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree that the First Nations shall have the option of exercising control over their lands and resources.

PART I

PRELIMINARY MATTERS

1. INTERPRETATION

1.1 In this Agreement,

"Canada" or "Crown" means Her Majesty the Queen in right of Canada;

"eligible voter" means a member of a First Nation who is eligible, pursuant to clauses 5.3(a), 7.2 and 7.5(a), to vote under this Agreement;

"federal law" means a law enacted by Canada and does not include a land code or a First Nation law;

"federal legislation" means the legislation to be enacted by Canada under Part X;

"First Nation" means a band that is a Party to this Agreement;

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code;

"First Nation law" means a law enacted by a First Nation in accordance with its land code;

"First Nation Lands Register" means the register established pursuant to clause 51 to register interests in First Nation land;

"interest", in relation to First Nation land, means any interest, right or estate of any nature in or to that land, including a lease, easement, right of way, servitude, or profit à prendre, but does not include title to that land;

"land code" means a code, approved by a First Nation in accordance with this Agreement, that sets out the basic provisions regarding the exercise of the First Nation's rights and powers over its First Nation land (although each First Nation can select its own name for the land code);

"Lands Advisory Board" means the board referred to in clause 38;

"licence", in relation to First Nation land, means any right of use or occupation of First Nation land, other than an interest in that land;

"member", in respect of a First Nation, means

(a) a person whose name appears on the Band List, or

(b) a person who is entitled to have his or her name appear on the Band List;

"Minister" means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of this Agreement;

"verifier" means the person appointed pursuant to clauses 8 and 44 to monitor and verify the opting in process for a First Nation.

1.2 Terms that are defined or used in the *Indian Act* have the same meaning in this Agreement, unless the context otherwise requires.

1.3 This Agreement is not a treaty and shall not be considered to be a treaty within the meaning of section 35 of the *Constitution Act, 1982.*

1.4 The Parties acknowledge that the Crown's special relationship with the First Nations will continue.

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

1.6 This Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources or to preclude other negotiations in respect of those rights.

2. FIRST NATION LAND

2.1 Land that is a reserve of a First Nation is eligible to be managed by that First Nation under a land code as First Nation land.

2.2 First Nation land includes all the interests, rights and resources that belong to that land, to the extent that these are under the jurisdiction of Canada and are part of that land.

2.3 The Parties agree that First Nation lands are lands reserved for Indians within the meaning of section 91(24) of the *Constitution Act, 1867*.

3. INDIAN OIL AND GAS

3.1 The *Indian Oil and Gas Act* will continue to apply to any First Nation lands, or interests in First Nation land, that are "Indian lands" within the meaning of that Act.

3.2 Any interest in First Nation land that is granted to Canada for the exploitation of oil and gas under a land code will be deemed to be "Indian lands" within the meaning of the *Indian Oil and Gas Act*.

3.3 Section 4 of the *Indian Oil and Gas Act* will continue to apply to revenues and royalties from oil or gas on First Nation land, despite anything to the contrary in clause 12.

4. RESERVES

4.1 Any reserve managed by a First Nation under a land code will continue to be a reserve within the meaning of the *Indian Act*.

4.2 Any reserve, title to which is vested in Canada, and managed by a First Nation under a land code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

4.3 Where a First Nation wishes to manage a reserve, the whole of the reserve will be included as First Nation land to avoid disjointed administration of the reserve, subject to clauses 4.4 and 4.5.

4.4 A portion of a reserve may be excluded from a land code only if

(a) the portion of the reserve is in an environmentally unsound condition and the condition cannot be remedied by measures that are technically and financially feasible before the land code is expected to be submitted for community approval;

(b) the portion of the reserve is the subject of ongoing litigation that is unlikely to be resolved before the land code is expected to be submitted for community approval;

(c) the portion of the reserve is uninhabitable or unusable as a result of a natural disaster; or

(d) there exist one or more other reasons which the First Nation and Canada agree justify excluding a portion of a reserve.

4.5 A portion of a reserve which is to be excluded from a land code must be identifiable by a survey under section 29 of the *Canada Lands Survey Act* and the exclusion must not have the effect of placing the administration of a lease or other interest in land under different land management systems.

4.6 The First Nation will make provision to amend the description of its First Nation land in its land code to include the excluded portion of the reserve when the First Nation and Canada agree that the condition justifying the exclusion no longer exists.

PART II

OPTING IN PROCEDURE

5. DEVELOPMENT OF A LAND CODE

5.1 A First Nation that wishes to manage one or more of its reserves will first develop a land code.

5.2 The land code of a First Nation will

(a) describe the lands that are subject to the land code;

(b) set out the general rules and procedures that apply to the use and occupancy of First Nation land, including licences, leases and transfers made by valid will or on intestacy of interests in First Nation land and including interests in First Nation land held pursuant to custom or a Certificate of Possession issued under the *Indian Act* before the land code takes effect;

(c) set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land;

(d) set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under the land code;

(e) set out the procedures for making and publishing its First Nation laws;

(f) set out the conflict of interest rules for land management;

(g) identify or establish a forum for the resolution of disputes in relation to interests in First Nation lands, including the review of land management decisions where a person, whose interest in First Nation land is affected by a decision, disputes that decision;

(h) set out the general rules and procedures that apply to the First Nation when granting or expropriating interests in First Nation land, including provisions for notice and the service of notice;

(i) set out the general authorities and procedures whereby the First Nation delegates administrative authority to manage its First Nation land to another person or entity; and

(j) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land.

5.3 A land code could also contain the following provisions:

(a) a provision to change the age of voter eligibility from 18 years to an age between 18 and 21 years, inclusive, for votes in respect of amendments to the land code or a possible exchange of First Nation land;

(b) any general conditions or limits on the power of the First Nation council to make First Nation laws;

(c) any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;

(d) any provisions respecting encumbering, seizing, or executing a right or interest in First Nation land as provided in clause 15; and

(e) any other matter respecting the management of First Nation land.

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

6.1 Canada and each First Nation that intends to manage its First Nation land will also enter into an individual agreement to settle the actual level of operational funding for the First Nation and the specifics of the

transfer of administration between Canada and the First Nation.

6.2 The First Nation and the Minister will each choose a representative to develop the individual agreement and to assist in transferring administration of the First Nation land.

6.3 Upon the request of a First Nation that is developing a land code, the Minister will provide it with the following information, as soon as practicable:

(a) a list of all the interests and licences, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the *Indian Act*;

(b) all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land; and

(c) any other information in Canada's possession that materially affects the interests and licences mentioned in clause 6.3(a).

6.4 An amendment to an individual agreement with Canada must be made in accordance with the procedure in that agreement.

7. COMMUNITY APPROVAL

7.1 Both the First Nation's land code and its individual agreement with Canada need community approval in accordance with this clause.

7.2 Every person who is a First Nation member, whether resident on or off-reserve, who is at least 18 years of age, subject to clause 7.5(a), is eligible to vote on whether to approve their First Nation's proposed

land code and its individual agreement with Canada.

7.3 The land code and individual agreement will be considered approved by the community if

(a) a majority of eligible voters participate in the vote and at least a majority of the participating voters vote to approve them;

(b) the First Nation registers all eligible voters who signified their intention to vote, in a manner determined by the First Nation, and a majority of the registered voters vote to approve them; or

(c) the community approves them in such other manner as the First Nation and Canada may agree upon.

7.4 The land code and individual agreement will not be considered approved if less than 25% plus one of all eligible voters voted to approve them.

7.5 The First Nation council may, by resolution,

(a) change the age of voter eligibility, under clause 7.2, to an age between 18 and 21 years, inclusive; and

(b) increase the minimum percentage for community approval otherwise required under this clause.

7.6 The First Nation council will take reasonable steps to locate its eligible voters and inform them of

(a) their right to participate in the approval process and the manner in which that right can be exercised; and

(b) the content of this Agreement, the individual agreement with Canada, the proposed land code and the federal legislation.

7.7 Reasonable steps to locate and inform eligible voters may include the following:

(a) mailing out information to eligible voters at their last known addresses;

(b) making enquiries of family members and others to locate eligible voters whose addresses are not known or are uncertain;

(c) making follow up contact with eligible voters by mail or telephone;

(d) placing advertisements in newspapers circulating in the community and in newspapers circulating in other localities where the number of eligible voters warrants;

(e) posting notices in the community;

(f) holding information meetings in the community and in other places where appropriate; and

(g) making copies of the documents referred to in clause 7.6(b) available at the administration office of the First Nation and in other places where appropriate.

7.8 The First Nation council will, within a reasonable time before the vote, also take appropriate measures to inform other persons having an interest in its lands of the federal legislation, the proposed land code and the date of the vote.

7.9 Where the federal legislation has not yet been enacted when a First Nation proceeds under this clause, Canada will provide the First Nation with a draft copy of its proposed legislation which the First Nation will use to inform its eligible voters and other persons.

7.10 An amendment to a land code must be made in accordance with the procedure in the First Nation's land code.

8. VERIFICATION PROCESS

8.1 Where a First Nation develops a proposed land code and resolves to submit it to the community for approval, an independent person will be appointed as a verifier to monitor and verify the opting in process. The verifier will be chosen in accordance with clause 44.

8.2 The representatives of the First Nation and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and provide information and advice to the verifier, after consulting with their respective Parties.

8.3 The First Nation will submit the following information to the verifier:

(a) a copy of the proposed land code;

(b) an initial list of the names of every First Nation member who, according to the First Nation's records at that time, would be eligible to vote on whether to approve the proposed land code; and

(c) a detailed description of the community approval process that the First Nation proposes to use under clause 7.

8.4 The verifier will

(a) decide whether the proposed land code conforms with the requirements of clause 5;

(b) decide whether the proposed community approval process conforms with the requirements of clause 7;

(c) determine whether the community approval process is conducted in accordance with the process that was confirmed; and

(d) certify as being valid a First Nation's land code that is properly approved by the First Nation.

8.5 The verifier also has the power to make a final decision to resolve

(a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and

(b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.

8.6 A verifier will make decisions that are consistent with clauses 4.4 and 4.5.

8.7 A verifier will not deal with disputes over funding.

8.8 Within 30 days of receiving the First Nation's information pursuant to clause 8.3, the verifier will issue a written notice to the First Nation and the Minister stating whether the proposed land code and community approval process are consistent with this Agreement.

8.9 The verifier will provide written reasons to the First Nation and the Minister in any case where he or she decides that the proposed land code and community approval process are not consistent with this Agreement.

9. CONDUCT OF COMMUNITY VOTE

9.1 Once the verifier confirms that the proposed land code and community approval process are consistent with this Agreement, the First Nation may proceed to submit its proposed land code, and the individual agreement with Canada, for community approval.

9.2 The verifier will publish one or more notices advising the community of the date, time and place of the First Nation's approval vote.

9.3 The verifier may designate one or more assistants to help observe the conduct of the vote.

9.4 The verifier and any assistant observers will have complete authority to observe the approval process.

9.5 Within 15 days of the conclusion of the vote, the verifier will issue a written report to the First Nation and to the Minister on whether the community approval process was conducted in accordance with the process as previously confirmed.

10. CERTIFICATION OF LAND CODE

10.1 Where a First Nation approves a land code and its individual agreement with Canada, the First Nation council must, without delay, send a true copy of the land code to the verifier together with a statement from the First Nation council that the land code and the individual agreement were properly approved.

10.2 Upon receiving a copy of a First Nation's land code and statement, the verifier will, subject to clause 11, certify the land code as being valid.

10.3 The verifier will immediately provide the First Nation, the Lands Advisory Board and the Minister with a copy of any certified land code.

10.4 The Lands Advisory Board will, in such manner as it considers advisable, publish a notice announcing the certification of a land code and the date the land code takes effect and advising the public of the means of obtaining copies of it.

10.5 Once a land code is certified by a verifier and takes effect, the land code has the force of law and will be given judicial notice.

10.6 A land code that has been certified pursuant to this Agreement is deemed to have been validly approved by the First Nation.

10.7 A land code takes effect on the day that it is certified by the verifier or on such later date as may be specified in the land code.

11. DISPUTED VOTE

11.1 Canada or any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting process to the verifier.

11.2 A verifier will not certify a land code if he or she is of the opinion that the following two conditions exist:

(a) the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and

(b) the land code might not have been approved but for the irregularity in the process.

11.3 Before making a decision under this clause, the verifier will provide the First Nation and the Minister with a reasonable opportunity to make submissions on the issue.

11.4 Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.

PART III

FIRST NATION LAND MANAGEMENT RIGHTS AND POWERS

12. LAND MANAGEMENT POWERS

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

12.2 This power includes

(a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and

(b) the authority to grant interests and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 An interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

12.4 For any purpose related to First Nation land, a First Nation will have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.

12.5 First Nation land, revenues, royalties, profits and fees in respect of that land will be managed by the First Nation council or its delegate for the use and benefit of the First Nation.

12.6 If a First Nation establishes an entity for the purpose of administering its First Nation land, the entity shall be deemed to be a legal entity with the capacity, rights, powers and privileges of a natural person.

12.7 A First Nation has the right, in accordance with its land code, to receive and use all moneys acquired by or on behalf of the First Nation under its land code.

12.8 Once a First Nation's land code takes effect, all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members before that date shall cease to be Indian moneys under the *Indian Act* and shall be transferred by Canada to the First Nation.

13. PROTECTION OF FIRST NATION LAND

13.1 Title to First Nation land is not changed when a First Nation's land code takes effect.

13.2 The Parties declare that it is of fundamental importance to maintain the amount and integrity of First Nation land.

13.3 First Nation land will not be sold, exchanged or conveyed, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

14. VOLUNTARY EXCHANGE OF FIRST NATION LAND

14.1 A First Nation has the right to exchange a parcel of First Nation land for another parcel of land, if that other parcel of land becomes First Nation land. An exchange of First Nation land may provide for

additional compensation, including land that may not become First Nation land, and may be subject to any other terms and conditions.

14.2 Any exchange of First Nation land will require community approval in accordance with the process established in the land code.

14.3 First Nation land will only be exchanged for land that Canada consents to set apart as a reserve. In addition, the agreement of Canada is required on the technical aspects of the exchange.

14.4 The title to the land to be received in exchange for that First Nation land will be transferred to Canada and will be set apart by Canada as a reserve, as of the date of the land exchange or such later date as the First Nation may specify. This does not apply to land that is received by the First Nation as additional compensation and that is not intended to become First Nation land.

14.5 Where an exchange of First Nation land is approved by a First Nation in accordance with its land code, the First Nation can execute an authorization to Canada to transfer title to the land.

14.6 Upon the issuance to Canada of an authorization to transfer title to First Nation land under clause 14.5, Canada will transfer title to the land in accordance with the authorization and the applicable terms and conditions of the exchange.

14.7 A copy of the instruments transferring title to First Nation land will be registered in the First Nation Lands Register.

14.8 As of the date of the land exchange, or such later date as the First Nation may specify, the description of First Nation land in the land code will be deemed to be amended to delete the description of the

First Nation land that was exchanged and to add the description of the First Nation land received in exchange.

14.9 For greater certainty, the First Nation land that was exchanged will cease to be a reserve.

15. IMMUNITY FROM SEIZURE, ETC.

15.1 The Parties confirm that section 29 and subsections 89(1) and (2) of the *Indian Act* will continue to apply to any reserve that is First Nation land.

15.2 Subsection 89(1.1) of the *Indian Act* will continue to apply to all leasehold interests that existed when the land code took effect if the First Nation land was designated land at that time.

15.3 A land code may provide that some or all of the provisions of subsection 89(1.1) of the *Indian Act* are also applicable to other leasehold interests in any First Nation lands.

15.4 The Parties confirm that section 87 of the *Indian Act* continues to apply to First Nation land, so that

(a) the interest of an Indian or a First Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the *Indian Act*; and

(b) the personal property of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.

16. THIRD PARTY INTERESTS

16.1 Interests or licences held by third parties or Canada in First Nation land, that exist at the time the land code takes effect, continue in force according to their terms and conditions.

16.2 Any rights of locatees in possession of First Nation land, either by custom or by allotment under the *Indian Act*, to transfer, lease and share in natural resource revenues will be defined in the land code.

16.3 Once a land code takes effect, no interest or licence in relation to First Nation land may be acquired or granted except in accordance with the land code.

16.4 For greater certainty, disputes in relation to third party interests shall be dealt with in the forum identified or established in a land code pursuant to clause 5.2(g).

17. EXPROPRIATION BY FIRST NATIONS

17.1 A First Nation with a land code in effect has the right to expropriate interests in First Nation lands without consent if deemed by the First Nation council to be necessary for community works or other First Nation purposes.

17.2 A First Nation's power of expropriation will be exercised in accordance with the rules and procedures specified in its land code, its laws and this Agreement.

17.3 An interest in First Nation land that a First Nation expropriates becomes the property of the First Nation free of any previous claim or

encumbrance in respect of the interest.

17.4 A First Nation that expropriates an interest in First Nation land will give fair compensation based on the heads of compensation set out in the *Expropriation Act* (Canada).

17.5 A First Nation will establish a mechanism to resolve disputes over compensation it pays for expropriation.

17.6 Any interest in First Nation land that was obtained pursuant to section 35 of the *Indian Act* or any interest that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with this Agreement, is not subject to First Nation expropriation.

17.7 A First Nation is not precluded from entering into an agreement with a utility or public body for the purpose of granting it an interest in First Nation land that is exempt from expropriation by the First Nation.

17.8 No expropriation of an interest in First Nation land by a First Nation takes effect earlier than either of the following days:

(a) the date the notice of expropriation is registered in the First Nation Lands Register; or

(b) the 30th day after the day the last copy of the notice is served.

PART IV

FIRST NATION LAW MAKING

18. LAW MAKING POWERS

18.1 The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

18.2 The following examples illustrate some of the First Nation laws contemplated by the Parties:

(a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;

(b) laws on the creation, regulation and prohibition of interests and licences in relation to First Nation land;

(c) laws on environmental assessment and protection;

(d) laws on the provision of local services in relation to First Nation land and the imposition of equitable user charges; and

(e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

18.3 A land code will not address the taxation of real or personal property. Section 83 of the *Indian Act* will continue to apply.

18.4 In any proceeding, a copy of a law of a First Nation appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature, evidence of its enactment, of the date of its enactment and of the signature of any person appearing to have signed it.

18.5 This Agreement does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries.

19. ENFORCEMENT OF FIRST NATION LAWS

19.1 To enforce its land code and its First Nation laws, a First Nation will have the power to

(a) establish offences that are punishable on summary conviction;

(b) provide for fines, imprisonment, restitution, community service, and alternate means for achieving compliance; and

(c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

19.2 First Nation laws may adopt or incorporate by reference the summary conviction procedures of the *Criminal Code* for the purpose of enforcement.

19.3 Persons may be appointed by the First Nation or the Governor in Council to act as justices of the peace for the purposes of enforcement. If no justice of the peace is appointed, then First Nation laws will be enforced through the provincial courts.

19.4 A person appointed as a justice of the peace under this clause will have jurisdiction to try offences established by or under a land code or a First Nation law.

19.5 Decisions made by a justice of the peace appointed under this clause may be appealed to a court of competent jurisdiction.

19.6 The First Nation will protect the independence of each justice of the peace it appoints in a way similar to that in a province, for example tenure, removal and remuneration.

19.7 The First Nation and Canada may enter into agreements for the training, supervision and administrative support for justices of the peace appointed by the First Nation. Provinces may also be parties to such agreements with First Nations.

19.8 The First Nation and Canada will enter into an agreement for the appointment, training, supervision and administrative support for any justice of the peace appointed under this clause by the Governor in Council. The affected province will be invited to participate in the development of and be a party to such agreement.

19.9 For the purpose of prosecuting offences, the First Nation will follow one or more of these options:

(a) retain its own prosecutor;

(b) enter into an agreement with Canada and the government of the province to arrange for a provincial prosecutor; or

(c) enter into an agreement with Canada to arrange for a federal agent to prosecute these offenses.

20. APPLICATION OF FEDERAL LAWS

20.1 Federal laws applicable on First Nation land will continue to apply, except to the extent that they are inconsistent with the federal legislation.

20.2 Notwithstanding any inconsistency with the federal legislation, the *Emergencies Act* will apply on First Nation land, but any appropriation of an interest in First Nation land under the *Emergencies Act* shall be authorized expressly by an order in council.

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

21.1 Once a land code takes effect, the First Nation, its members and its First Nation land will not be subject to the following:

(a) sections 18 to 20 and 22 to 28 of the *Indian Act*;

(b) sections 30 to 35 of the *Indian Act*;

(c) sections 37 to 41 of the *Indian Act*;

(d) sections 49, 50(4) and 53 to 60 of the *Indian Act;*

(e) sections 66, 69 and 71 of the *Indian Act*;

(f) section 93 of the *Indian Act*;

(g) regulations made under section 57 of the *Indian Act*; and

(h) regulations made under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with this Agreement or the land code or the laws of the First Nation.

22. EXISTING FIRST NATION BY-LAWS

22.1 A First Nation will continue to have the authority under the *Indian Act* to make by-laws.

PART V

ENVIRONMENT

23. GENERAL PRINCIPLES

23.1 The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

23.2 The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

23.3 The principles of these regimes are set out below, while specific details of environmental protection will be set out in an environmental management agreement between Canada and each First Nation.

23.4 The environmental assessment and protection regimes will be implemented through First Nation laws.

23.5 The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

23.6 This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

24. ENVIRONMENTAL MANAGEMENT AGREEMENT

24.1 Canada and each First Nation with a land code in effect, or a group of such First Nations, will negotiate an environmental management agreement.

24.2 The Parties wish to involve the appropriate provinces in the development of the environmental management agreements. The Parties agree to harmonize environmental management, with the involvement of the provinces where they agree to participate. A province could become a party to an environmental management agreement or there could be separate agreements among the First Nation, Canada and the province.

24.3 An environmental management agreement in essence will be a plan on how the First Nation will enact environmental protection laws deemed essential by the First Nation and Canada. It will also include timing, resource, inspection and enforcement requirements.

24.4 The Parties will identify areas they consider essential for environmental protection for particular First Nations. At the time of this Agreement, the Parties have identified the following areas as essential for all First Nations:

(a) solid waste management;

(b) fuel storage tank management;

(c) sewage treatment and disposal; and

(d) environmental emergencies.

24.5 For those areas identified as essential by the Parties, First Nation environmental protection standards and punishments will have at least

the same effect as those in the laws of the province in which the First Nation is situated.

24.6 For greater certainty, if there is an inconsistency between the provision of a federal law respecting the protection of the environment and a provision in a land code or First Nation law respecting the protection of the environment, the federal provision will prevail to the extent of the inconsistency.

24.7 The parties to each environmental management agreement will make best efforts to sign the agreement within one year after the First Nation's land code takes effect, or within such longer period as they may agree to.

24.8 Each environmental management agreement will include a mechanism for its periodic review and updating by the parties to that agreement.

25. ENVIRONMENTAL ASSESSMENT

25.1 Subject to clause 27, a First Nation will, with the assistance of the Lands Advisory Board and the appropriate federal agencies, make best efforts to develop an environmental assessment process within one year after the First Nation's land code takes effect, or within such longer period as Canada and the First Nation may agree to.

25.2 The First Nation and Canada will, in the individual agreement referred to in clause 6, address how to conduct the environmental assessment of projects on First Nation land during the interim period until the First Nation's environmental assessment process is developed.

25.3 The First Nation's environmental assessment process will be consistent with requirements of the *Canadian Environmental Assessment Act*.

25.4 The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

25.5 The Parties agree that section 10 of the *Canadian Environmental Assessment Act* will not apply to projects located on First Nation land.

25.6 The Parties agree to use their best efforts to implement the principle that the First Nation's environmental assessment process be used where an environmental assessment of a project on First Nation land is required by the *Canadian Environmental Assessment Act*.

25.7 The Parties agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces where they agree to participate.

26. OTHER AGREEMENTS

26.1 The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.

26.2 Where matters being negotiated pursuant to clause 26.1 normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the parties will invite the affected province to be a party to such negotiations and resulting agreements.

27. RESOURCES

27.1 The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

PART VI

FUNDING

28. APPROPRIATION

28.1 Any amounts provided by Canada to the First Nations pursuant to funding arrangements in relation to First Nation land shall be paid out of such moneys as may be appropriated by Parliament for this purpose.

29. DEVELOPMENTAL FUNDING

29.1 Canada and the Lands Advisory Board will enter into a funding arrangement to allow the First Nations to develop land codes and community approval processes for their land codes, to negotiate the individual agreements mentioned in clause 6 and to seek community approval under clause 7.

30. OPERATIONAL FUNDING

30.1 An individual agreement between Canada and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under a land code. The agreement will determine specific funding issues, for example period of time, and terms and conditions.

30.2 A method for allocating such operating funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board.

30.3 Unless a First Nation and Canada agree otherwise, an individual agreement respecting the provision of funding under this clause will have a maximum term of five years and will include provisions for its amendment and renegotiation.

31. LANDS ADVISORY BOARD FUNDING

31.1 Canada will enter into a funding arrangement with the Lands Advisory Board for the five year period following the coming into force of this Agreement.

PART VII

EXPROPRIATION OF FIRST NATION LAND BY CANADA

32. RESTRICTIONS

32.1 In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that First Nation lands will not be subject to expropriation.

32.2 Despite the general principle against expropriation, First Nation land may be expropriated by Canada

(a) only with the consent of the Governor in Council; and

(b) only by and for the use of a federal department or agency.

32.3 The Governor in Council will only consent to an expropriation of First Nation land if the expropriation is justifiable and necessary for a federal public purpose that serves the national interest.

32.4 When making a decision to expropriate First Nation land, the Governor in Council, in addition to other steps that may be required before making such a decision, will at a minimum follow these steps:

(a) it will consider using means other than expropriation and will use those other means where reasonably feasible;

(b) it will use non-First Nation land, where such land is reasonably available;

(c) if it must use First Nation land, it will make reasonable efforts to acquire the land through agreement with the First Nation, rather than by expropriation;

(d) if it must expropriate First Nation land, it will expropriate only the smallest interest necessary and for the shortest time required; and

(e) in every case, it will first provide the First Nation with information relevant to the expropriation.

32.5 Prior to the Governor in Council issuing an order consenting to the expropriation of First Nation land, Canada will make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this clause and will provide a copy of the report to the First Nation.

32.6 Where a First Nation objects to a proposed expropriation it may refer the issue to an independent third party for a neutral evaluation under Part IX, within 60 days of the release of the report referred to in clause 32.5.

32.7 An order of the Governor in Council consenting to the expropriation will not be issued earlier than

(a) the end of the 60 day period referred to in clause 32.6; or

(b) the day the opinion or recommendation of the neutral evaluator is released, where the First Nation referred the proposed expropriation to an independent evaluator under clause 32.6.

33. COMPENSATION BY CANADA

33.1 In the event of the expropriation of First Nation land by Canada under this Part, Canada will provide compensation to the First Nation in accordance with this clause.

33.2 The compensation will include alternate land of equal or greater size or of comparable value. If the alternate land is of less than comparable value, then additional compensation will be provided. The alternate land may be smaller than the land being expropriated only if that does not result in the First Nation having less land area than when its land code took effect.

33.3 The total value of the compensation provided by Canada under this clause will be based on the following:

(a) the market value of the land or interest that is acquired;

(b) the replacement value of any improvement to the land that is acquired;

(c) the damages attributable to disturbance;

(d) the value of any special economic advantage arising out of or incidental to the occupation or use of the affected First Nation land to the extent that this value is not otherwise compensated;

(e) damage for any reduction in the value of a remaining interest; and

(f) damage for any adverse effect on any cultural or other special value of the land.

33.4 If the value and nature of the compensation cannot be agreed upon by Canada and the affected First Nation, either party may refer a dispute on compensation to arbitration under Part IX.

33.5 Any claim or encumbrance in respect of the interest expropriated by Canada may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest is being expropriated.

33.6 Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the superior court of the province in which the First Nation land is located.

34. STATUS OF LANDS

34.1 Where less than the full interest of the First Nation in First Nation land is expropriated by Canada,

(a) the land retains its status as First Nation land;

(b) the land remains subject to the land code and to any law of the First Nation that is otherwise applicable, except to the extent the land code or law is inconsistent with the expropriation; and

(c) the First Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the expropriation.

34.2 Alternate land accepted by the First Nation as part of the compensation will become both a reserve and First Nation land.

35. REVERSION OF INTEREST IN FIRST NATION LAND

35.1 Where an expropriated interest in First Nation land, which is less than the full interest of the First Nation in the land, is no longer required by Canada for the purpose for which it was expropriated, the interest in land will revert to the First Nation.

35.2 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the interest is no longer required and determine the disposition of any

improvements.

36. RETURN OF FULL INTEREST IN FIRST NATION LAND

36.1 Where the full interest of a First Nation in First Nation land was expropriated but is no longer required by Canada for the purpose for which it was expropriated, the land will be returned to the First Nation on terms negotiated by the First Nation and Canada, at the time of the expropriation or at a later date as agreed to by them.

36.2 Where the terms and conditions of the return cannot be agreed upon by the First Nation and Canada, either party may refer the dispute to arbitration under Part IX.

36.3 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the land is no longer required and determine the disposition of any improvements.

37. APPLICATION OF EXPROPRIATION ACT

37.1 Any provisions of the *Expropriation Act*, (Canada) that are applicable to an expropriation of First Nation land by Canada continue to apply, unless inconsistent with this Agreement.

PART VIII

LANDS ADVISORY BOARD

38. LANDS ADVISORY BOARD

38.1 A Lands Advisory Board will be established by the First Nations and composed of at least three members, to be appointed by the councils of the First Nations.

38.2 The Lands Advisory Board will have all necessary powers and capacity to properly perform its functions under this Agreement.

38.3 The Lands Advisory Board will select one of its members to serve as chairperson to preside over the Board and, subject to the direction of the Board, to act on its behalf.

39. FUNCTIONS OF THE LANDS ADVISORY BOARD

39.1 In addition to any other functions specifically assigned to it by the Parties, the Lands Advisory Board will be responsible for the following functions:

(a) developing model land codes, laws and land management systems;

(b) developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations;

(c) on request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes;

(d) assisting a verifier when requested by the verifier;

(e) establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code;

(f) on request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty;

(g) proposing regulations for First Nation land registration;

(h) proposing to the Minister such amendments to this Agreement and the federal legislation as it considers necessary or advisable;

(i) in consultation with First Nations, negotiating a funding method with the Minister; and

(j) performing such other functions or services for a First Nation as are agreed to between the Board and the First Nation.

39.2 The Lands Advisory Board will have authority to adopt rules for the procedure at its meetings and generally for the conduct of its affairs.

40. RECORD KEEPING

40.1 The Lands Advisory Board will maintain a record containing

(a) the name of each First Nation that approves a land code;

(b) a copy of that land code;

(c) a copy of each amendment to a land code; and

(d) the dates on which each was approved and certified.

41. ANNUAL REPORT

41.1 Within 90 days following the end of each year of operation, the Lands Advisory Board will deliver to the Parties an annual report, in both official languages, on the work of the Board for that year.

41.2 The Minister will cause a copy of the Lands Advisory Board's annual report to be laid before each House of Parliament within the first 30 sitting days of that House after the Minister receives it.

42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

42.1 In the event that the Lands Advisory Board is no longer in existence, the functions of the Lands Advisory Board under this Agreement will be performed by the Parties, except as follows:

(a) the functions set out in clauses 29 and 39, except clause 39.1(g), will be performed by the First Nations; and

(b) the functions set out in clauses 10 and 40 will be assumed by the First Nations Lands Register.

PART IX

DISPUTE RESOLUTION

43. GENERAL PRINCIPLES

43.1 The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out-of-court processes referred to in this Part to resolve the dispute.

43.2 Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.

43.3 Subject to clause 43.4, any dispute arising from the implementation, application or administration of this Agreement, the federal legislation, an individual Canada-First Nation agreement or an environmental management agreement may be resolved in either of two ways:

(a) Neutral evaluation - it may be referred to neutral evaluation by one party to the dispute; or

(b) Arbitration - it may be referred to arbitration by both parties to the dispute.

43.4 Any dispute respecting compensation for First Nation land expropriated by Canada or the terms and conditions for the return of the full interest in First Nation land will be referred to arbitration.

43.5 Any objection by a First Nation to a proposed expropriation under Part VII that has been referred to neutral evaluation will be evaluated and a report submitted by the neutral evaluator to the First Nation and Canada within 60 days of the referral to the neutral evaluator.

44. PANELS OF ARBITRATORS, ETC.

44.1 The Parties and the Lands Advisory Board will jointly establish lists of mutually acceptable persons willing to act as mediators, arbitrators, verifiers and neutral evaluators.

44.2 Parties who become involved in a dispute may select mediators, arbitrators and neutral evaluators from the appropriate list, or may agree to the appointment of an individual who is not on the list.

44.3 The selection and assignment of verifiers and the procedure to be followed by verifiers will be arranged by the Lands Advisory Board, Canada and the First Nation.

44.4 Individuals appointed to act as mediators, arbitrators, verifiers or neutral evaluators must be unbiased and free from any conflict of interest relative to the matter in issue and have knowledge or experience to act in the appointed capacity.

45. NEUTRAL EVALUATION

45.1 Where a dispute is referred to neutral evaluation, the evaluator will where appropriate,

(a) identify the issues in the dispute;

(b) assess the strengths of each party's case;

(c) structure a plan for the progress of the case;

(d) encourage settlement of the dispute; and

(e) provide the parties with a non-binding opinion or recommendation to resolve the dispute.

46. ARBITRATION

46.1 Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.

46.2 The procedure will follow the Commercial Arbitration Code, which is a schedule to the *Commercial Arbitration Act*.

46.3 If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.

46.4 The arbitrator will establish the procedures of the arbitration, subject to this clause.

47. RELATED ISSUES

47.1 The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.

47.2 Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if

(a) all parties to the process consent; and

(b) the person pays the costs of his or her participation, unless otherwise agreed by the other parties to the dispute.

47.3 The decision of a verifier and a decision or award of an arbitrator will be final and binding on the participating parties.

47.4 No order shall be made, processed, entered or proceeding taken in any court, whether by way of injunction, mandamus, certiorari, prohibition or quo warranto to contest, review, impeach or limit the action of a person acting as a verifier or an arbitrator under this Agreement.

47.5 Despite clause 47.4, judicial review may be taken under the *Federal Court Act* within 30 days of a decision of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement in respect of such person exceeding his or her jurisdiction, refusing to exercise his or her jurisdiction or failing to observe a principal of natural justice.

PART X

RATIFICATION AND ENACTMENTS BY THE PARTIES

48. RATIFICATION OF AGREEMENT

48.1 The Parties agree that they will seek to ratify this Agreement and implement it in the following manner:

(a) each First Nation agrees to develop a land code and to seek community approval; and

(b) Canada agrees to introduce the federal legislation to Parliament and, after two First Nations have obtained community approval, to proceed to have the federal legislation enacted.

48.2 This Agreement will be considered to have been ratified by a First Nation when the First Nation approves a land code, and to have been ratified by Canada when the federal legislation comes into force.

49. ENACTMENTS BY THE PARTIES

49.1 Canada agrees that the federal legislation that it recommends to Parliament will be consistent with and will ratify this Agreement.

49.2 In the event of an inconsistency or conflict between the federal legislation and any other federal enactment, the federal legislation will prevail to the extent of the inconsistency or conflict.

49.3 In the event of an inconsistency or conflict between a land code of a First Nation and any by-law made under section 81 of the *Indian Act* or any First Nation law, the land code will prevail to the extent of the inconsistency or conflict.

PART XI

OTHER MATTERS

50. LIABILITY

50.1 The First Nation will not be liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to First Nation land that occurred before the First Nation's land code takes effect.

50.2 Canada will not be liable for acts or omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation's land code takes effect.

50.3 Canada will indemnify a First Nation for any loss arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect of First Nation land that occurred before the First Nation's land code takes effect.

50.4 The First Nation will indemnify Canada for any loss arising from an act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in respect of First Nation land that occurs after the land code takes effect.

50.5 No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, in good faith during the course of and for the purposes of carrying out his or her functions under this Agreement.

51. FIRST NATION LANDS REGISTER

51.1 Canada will establish a First Nation Lands Register to record documents respecting First Nation land or interests in First Nation land. It will be administered by Canada as a subsystem of the existing Reserve Land Register.

51.2 A separate register will be maintained for each First Nation with a land code in effect.

51.3 The Governor in Council will be authorized in the federal legislation to make regulations respecting the First Nation Lands Register. These regulations will be developed by the Lands Advisory Board and the Minister.

52. STATUS OF DOCUMENTS

52.1 The *Statutory Instruments Act*, or any successor legislation, will not apply to a land code or to First Nation laws.

53. PROVINCIAL RELATIONS

53.1 Where Canada and a First Nation intend to enter into an agreement that is not referred to in this Agreement but is required to implement this Agreement and where it deals with matters that normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province to be a party to the negotiations and resulting agreement.

54. TIME LIMITS

54.1 The time limits in this Agreement for the doing of anything may be waived on consent.

55. OTHER REGIMES

55.1 Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.

56. REVIEW PROCESS

56.1 The Lands Advisory Board will, on a continuing basis, consult with representatives of the Parties for the purpose of assessing the effectiveness of this Agreement and the federal legislation.

56.2 Within four years of the federal legislation coming into force, the Minister and the Lands Advisory Board or their representatives will jointly conduct a review of this Agreement. It will focus on the following issues, among others:

(a) the functioning of land management under this Agreement;

(b) the adequacy and appropriateness of the funding arrangements;

(c) the role of the Lands Advisory Board;

(d) whether there is a demand by other First Nations to use this Agreement;

(e) changes that may improve the functioning of First Nation land management;

(f) the dispute resolution processes; and

(g) such other issues as may be agreed to by the Parties.

56.3 Canada and the First Nations will make best efforts to complete this review within one year. Following completion of the review, the Minister will meet with representatives of the First Nations to discuss the results of the review.

57. AMENDMENTS

57.1 This Agreement may be amended by agreement of the Parties.

57.2 After ratification of this Agreement by one or more First Nations under clause 48.1(b), but prior to its ratification by Canada, the Parties may agree to technical amendments to this Agreement without it being resubmitted for ratification by those First Nations.

57.3 Prior to the enactment of the federal legislation, the wording of this Agreement may be amended by agreement of the Minister, on behalf of Canada, and the Chiefs of two First Nations, on behalf of the First Nations, if it is necessary to ensure consistency between the wording of a provision of this Agreement and a provision of the federal legislation.

58. RECITALS

58.1 The recitals form part of this Agreement.

59. COMING INTO FORCE

59.1 This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.

59.2 Despite clause 59.1, such provisions of this Agreement as are necessary to allow a First Nation to ratify this Agreement before Canada ratifies this Agreement will have effect as of the day Canada and that First Nation both sign this Agreement.

The Parties, by their duly authorized representatives, have duly signed this Agreement at Georgina Island on the 12th day of February, 1996.

MINISTER:

Minister Ronald A. Irwin

Witness(es)

CHIEFS:

Westbank First Nation:

Chief Robert Louie

Witness(es)

Musqueam First Nation:

Chief Joe Becker

Witness(es)

Lheit-Lit'en First Nation:

Chief Barry Seymour

Witness(es)

N'Quatqua First Nation:

Chief Harry O'Donaghy

Witness(es)

Squamish Nation:

Chief Philip Joe

Witness(es) SeaQwalia/

Siksika Nation:

Chief Robert Breaker Jr.

Witness(es)

Muskoday First Nation:

Chief Austin Bear

Witness(es)

Cowessess First Nation:

Chief Lionel Sparvier

Witness(es)

Opaskwayak Cree First Nation:

Chief Francis Flett

Witness(es) _____

Nipissing First Nation:

Chief Margaret Penasse-Mayer

Witness(es)

Mississaugas of Scugog Island First Nation:

Chief Gary Edgar

Witness(es)

Chippewas of Mnjikaning First Nation:

Chief Lorraine McRae

Witness(es)

Chippewas of Georgina Island First Nation:

Chief William McCue

Witness(es)

St. Mary's First Nation:

Chief Arthur Bear

Witness(es)

IMAGE EVALUATION
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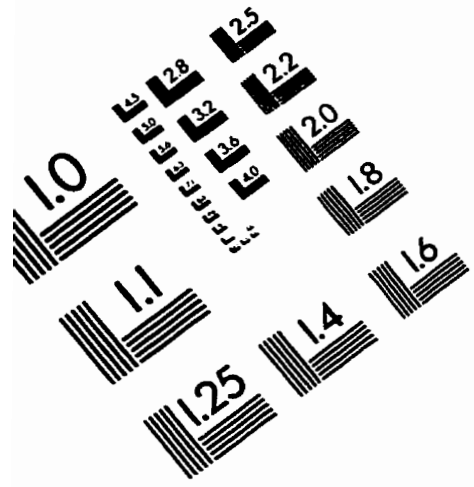

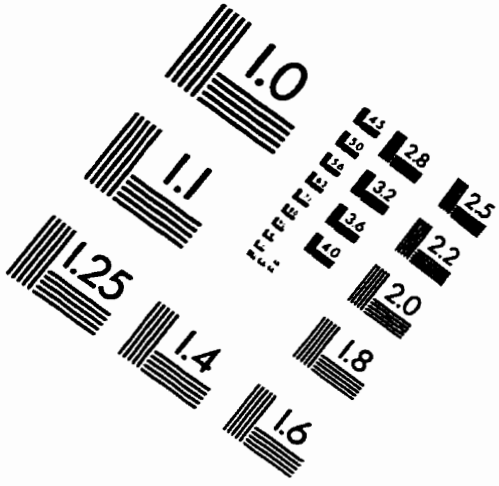

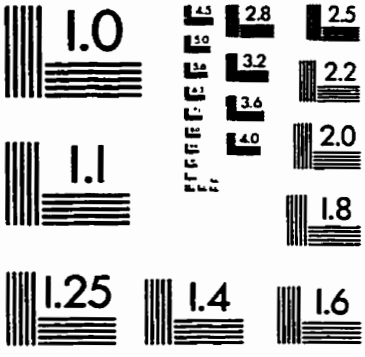

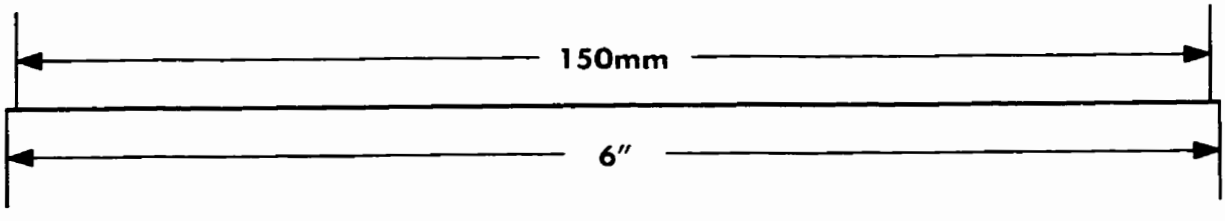

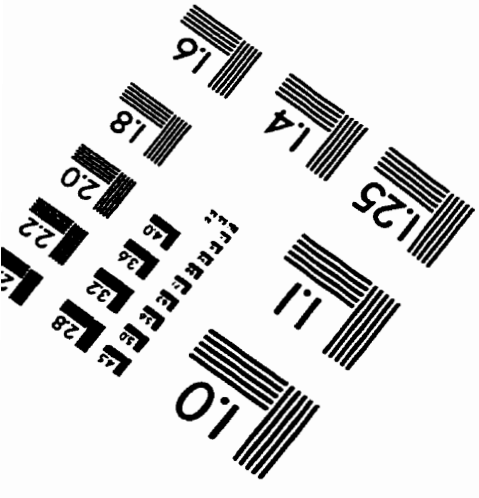

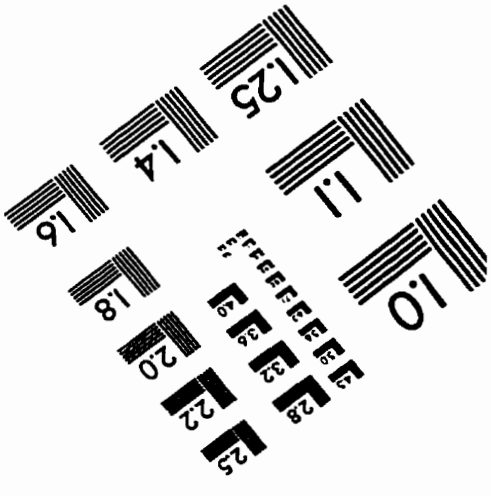

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