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Discussion Paper Presenting A First Nation Environmental Vision Statement and Self-Government Implementation Strategy

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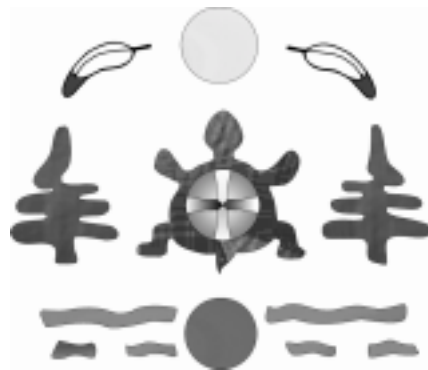
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**DISCUSSION PAPER
PRESENTING
A FIRST NATION ENVIRONMENTAL
VISION STATEMENT
AND SELF-GOVERNMENT
IMPLEMENTATION STRATEGY**

November 5, 1996



Centre for Indigenous Environmental Resources

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1. FOREWORD

This discussion paper has been prepared by the Centre for Indigenous Environmental Resources (CIER) as part of the creation of series of documents agreed upon and being prepared by participants in a consultation process initiated and supported by Indian and Northern Affairs Canada (INAC), Lands and Environment Division. The first meeting in this consultation process resulted in the identification of the need for further discussion relating to:

- the Crown's fiduciary obligation,
- the development of a national networking and communication strategy in environmental matters,
- a common environmental vision statement and self-government implementation strategy

It was agreed that opportunity would be given for the development of discussion documents in support of this consultation process, and that subsequent meetings would be held continuing the discussions. The papers are meant to assist in defining issues, building understandings, creating options and facilitating ongoing discussion among First Nations and INAC.

While a full discussion of the issues have long been requested by First Nations in Canada, this paper is in direct response to the INAC policy to *"get out of the field of the environment"*. The purpose of this discussion paper is to set forth an environmental vision statement, and an approach to the description and implementation by First Nations of the exercise of full jurisdiction in the environmental field. There are many possibilities for a fruitful discourse on this topic. This document is intended to expand, rather than limit options.

The implications of the INAC policy for First Nations in Canada, and for the environment, are profound. Canvassing the full range of options will be extremely complex, extraordinarily diverse and fraught with challenges for both Government and First Nations. The level of partnership required among Government departments each having some environmental jurisdiction will be key to the success of this initiative. This will require a strong leadership role for INAC in facilitating partnerships that nurture, facilitate, and promote the creation of First Nations institutions that meet the needs of First Nations, their lands, and environments.

Ultimately, agreement must be complete and all relevant departments must participate with the

acknowledgement that exercise of the inherent right of self-government mandates the full and/or partial displacement of all relevant federal departments from the lives of First Nations.

This paper is meant to facilitate discussion. Ultimately the choice and implementation of any and all options resides with First Nations people. This is where the process begins, and this is where it will end.

2. HISTORICAL BACKGROUND

This paper has been created almost entirely with a view to the future of First Nations people within Canada. In this sense it is a very hopeful and proactive document that attempts to discuss issues concerning our collective movement *forward*. For our people though, the ability to look in this direction is fully dependent upon our ability to look at, acknowledge, learn from, and as the case may be, forgive the past. For this reason, an understanding of the historical context of this situation is critical. It will also serve to shed light on the absolute necessity of engaging in further research into both First Nation and Canadian governmental concepts, beliefs, assumptions, and processes.

As a result of colonisation, First Nations have experienced the destruction and dispossession of their lands and their livelihoods. This has resulted in a legacy that has pervaded every aspect of the lives of our people and remains the preeminent force behind our determination to regain control over our individual and collective destinies. This movement towards the restoration of our rightful position in Canada may be seen most clearly in the resurgence of our cultural and spiritual practices, the protection – sometimes with force – of our traditional and reserve lands, and our relentless and impassioned struggle to attain self-government.

In this process, First Nations have had to face the perspectives, ideas, methodologies, and practices of mainstream Canadian society, and consequently, the challenges associated with negotiating First Nation needs from an entirely different perspective. Nowhere has the clash of these two ideologies been more obvious and divisive than in discussions dealing with environmental matters. While a full canvassing of the ideological differences is beyond the scope of this discussion paper, a few key ideas, and their contemporary application are worthy of note.

Primarily, First Nations are *of this land* called Canada, whereas non-First Nation Canadians are relative newcomers. The implications of this fundamental difference are profound, but most critically, what this means is that the systems created and utilised by the two groups to survive are fundamentally different. For First Nations societies, institutional structures such as governments, existed to ensure that First Nations remained connected to the source of their lives, Mother Earth, and these structures, out of necessity, respected the dependence of First Nations

upon that source. In general terms, decisions were made with full appreciation of the direction provided by nature, in which all were connected. Our systems evolved over very long periods of time, and represented an evolution maintained in harmony with our surroundings and the Creator. The clan system of government is a clear example of a system that integrates and is fundamentally based on our relationship with the earth and its other inhabitants, our relatives.

This is in contrast to the systems set up by those who colonised Canada two hundred years ago. These institutions were supplanted primarily from the English parliamentary system, having originally evolved under a completely different set of circumstances and constraints, including a fundamentally different relationship with land. The vast majority of the English parliamentary system was created to entrench a system of ownership of property with a particular focus on land as one of the most valuable forms of property. This ideology was foremost in the minds of the Canadian parliamentarians and is starkly evidenced by the land policy of the Crown in its treaty making endeavours with First Nations.

Similarly, the ownership and control perspective found its way into the creation of the guiding document of Canada, our Constitution, through the peculiarities of the initial division of responsibility between the Federal and Provincial governments. For example, the federal power over “the regulation of trade and commerce”, which is the power that allows the federal government to regulate on matters related to trade between provinces and in Canada generally, is seen as a discrete concept relating to business and economic matters within Canada. This area of jurisdiction does not include a very obvious product of economic activity, that being pollution. In fact, there is no specific power relating to pollution, notwithstanding the familiarity that the English had with that concept beginning almost three hundred years prior to their coming to Canada. This reflects a very clear attitude about the purpose of land, its relationship to people, and the role of systems of governance in protecting or being concerned about its well-being.

This role of land as something to be owned, primarily for the purpose of its contents being used in the production of wealth (hence the term “natural resources”), has resulted in the fractioning of all things related to land into discrete components having little to do with maintaining its original capacity to thrive. This is the most fundamental departure between First Nation and Canadian Government ideologies. It resulted in the creation of government entities that deal with the components of the “environment” as if they were not related, and the creation of

legislation that further entrenches that system. The recent Canadian Environmental Protection Act review brought to the surface many of the concerns raised by First Nations, and highlighted the difficulties associated with a piecemeal approach. Similarly, the “Harmonisation Initiative” of Environment Canada, which has attempted to reduce duplication and overlap in environmental jurisdictions and legislation, and has by all accounts failed, has clearly demonstrated how difficult it can be to rethink and then restructure an entrenched environmental ideology. It is noteworthy that First Nations were excluded from decision-making roles in both processes.

Ultimately, these jurisdictional issues must be reconsidered with a view to creating a contemporary application of traditional First Nation governance ideology, particularly the components emphasising reverence, respect, interconnectedness, and the proper relationship of the people to the land. The process of adaptation that was interrupted by colonisation must be reinstated whereby First Nations create modern institutions fundamentally derived from traditional values. A redefinition and restructuring of the fundamental purpose of both land and institutions will translate into the creation of first Nation Government institutions that are able to meet both the needs of the people, and the land upon which they depend. It should translate into governmental mandates that are aimed at preventing the creation of waste, rather than the development of strategies to deal with waste once created. It should translate into the creation of departments that can deal with the protection and enhancement of particular regions, ecozones, or ecosystems, rather than discrete components reduced out of those systems. It should spend most of its fiscal resources on prevention and education, rather than remediation and enforcement.

This discussion paper attempts to provide some initial thoughts on both the First Nation definition of “environment” and “environmental protection”, and a process by which these jurisdictions may begin to be restored.

3. INTRODUCTION

The purpose of this discussion paper is to set forth an initial basis for discussion on the following preliminary issues:

1. An Environmental Vision Statement
2. Objectives of the Process
3. Principles of the Process
4. Plan of Action
5. Initiative Development Approach

The topics presented here are based on recognition of the need to develop First Nation institutions having the mandate and capacity to deal with environmental issues.

4. VISION STATEMENT

A. Introduction

The inherent right of First Nations to govern themselves demands the complete restoration of jurisdictions in all areas of decision-making to First Nation Governments. Self-government by definition and necessity includes comprehensive jurisdiction over reserve lands, treaty lands, and traditional territories. This means that each First Nation will have ultimate authority in the implementation of environmental systems, and will utilise innovative designs, mechanisms, and models in caring for its lands and peoples and in realising a long and healthy future.

The vision statement attempts to illustrate the full range of possibilities that self-government will bring to First Nations in implementing long-term environmental protection over all lands presently held by our people, including all respective traditional territories. In its narrowest application, it assures that First Nations will have, at minimum, achieved the highest recognised standards in all areas of protection. In its broadest sense, First Nations ultimately will have accomplished a level of protection unparalleled in today's environmental context. Included in this statement are the following themes:

- a. First Nations' definition of environmental protection;
- b. the role and significance of cultural transmission;
- c. governance and holism;
- d. partnerships;
- e. the creation of First Nation institutions; and,
- f. some anticipated environmental outcomes.

B. An Understanding of First Nations Relationship to the Environment: The Natural Law

Irrespective of cultural diversity, including linguistic and geographical differences, First Nations share fundamental principles concerning the environment. The “environment” is seen as a source of reference to the extremely dynamic and infinitely complex system of interaction between all creation, including natural and cyclical processes. All creation is connected and interrelated, and all parts of the environment combine to form a whole. All creation is intrinsically dependent of the health and well being of the environment’s infinite biodiversity. In its undisturbed state the environment blends old life with the new through regenerating energy and matter within a “waste less” system.

Natural Law governs and maintains this system in a delicate and sustained balance. Inherently mysterious and enigmatic, Natural Law is beyond conception in the definitive sense and can only be understood in spiritual terms through a connection with the Creator. Nevertheless, through the observation of its effects; processes of regeneration and renewal, the maintenance of fundamental relationships within creation, cyclical fluctuations in temperature, rain, wind, and air currents, Natural Law manages to sustain the environment in an equilibrium state within a continuous process of change.

As First Nations, we acknowledge that our role in this system is to maintain the integrity of the environment’s balance. It is in fact a recognition of the supremacy of the Natural Law in our lives, a recognition of the interrelation and dependence of all creation, and a recognition of the necessity to live within the processes of creation. At times, First Nations will refer to these relationships, this natural ordering, as “holism”. Principles embodied in the Natural law include:

- Natural Law is pre-eminent. Its force is always to be respected and fully considered within the making of every decision. For example, decisions with respect to the preservation of a fishery must focus on “sustainable” harvesting methods rather than the transplantation of alien fish from a foreign environment. Natural Law has in many cases punished decision-makers who have ignored its force.

- Natural processes extend beyond all boundaries, including political, economic and national borders. What affects one area will affect all areas. The surprise of finding South American based DDT in beluga whales and other Arctic life forms are a testament to this principle.
- All creation is interrelated and connected within a delicate balance. This balance is what sustains the well-being of all creation.
- Being guided by Natural Law means the preservation of biodiversity. Each life-form performs a vital function in maintaining this balance. This is true for all life-forms regardless of whether they have been “identified” or “discovered”.
- Humans are part of the balance, neither above nor below it. Any actions that we undertake must accord with maintaining the integrity of the balance. All aspects of development for First Nations are centered upon the trust which the Creator gave to First Nation people as stewards over the environment.
- The protection and preservation of the land, air and water is vital to ensure the survival of all creation. Taking care of the earth ensures that it will take care of us, our children and generations to come.

Living by the principles of the Natural Law will represent new beginning within non-Aboriginal contemporary environmental life and thinking. It has yet to be realised in the modern environmental application or context. It conflicts with environmental concepts and paradigms that conceptualize human need as primary in relation to the needs of creation’s other entities. This includes what has come to be known as “sustainable development” or “sustainable livelihood”. It also contrasts with what has been called the “deep ecology movement” since the Natural Law implicitly recognizes the human population as part of creation. In fact, an environment-centered perspective is an inherent recognition of the Natural Law and the interrelatedness of all creation. In this sense, an environment-centered perspective governed by the principles of Natural Law can also be described as “ecologically sustained development”. For the purposes of clarity and consistency in this discussion paper, the term “ecologically-sustainable development”, (ESD), will be used when referring to the above concepts.

Ecologically sustained development, implies a fundamental relationship between environmental protection and harvesting, or what has come to be known as “resource management”.

Harvesting of the earth’s wealth and protecting and preserving the earth’s wealth are essentially equal parts of the same. It makes little sense to protect and preserve environmental systems when institutions that determine harvesting decisions are separate and exclusive from the institutions created to protect the environment. For First Nations, “environmental protection” implies “resource management”.

Ecologically sustained development, in its fullest sense, characterizes a manifestation of a state of being that perhaps only indigenous peoples can imagine and understand. For many First Nation people, the principles embodied in the Natural Law continue to symbolize a reality within total being and livelihood. It is for these reasons that the protection and preservation of First Nation lands, air, and water require levels of autonomy greater than the simple transfer of INAC’s environmental functions. Environmental protection necessarily includes jurisdictions held by Health and Welfare’s environmental health division, Department of Environment, and Fisheries and Oceans, as well as all related jurisdictions, including education, health, justice, and family.

C. ESD, Self-Government and First Nation Culture

First Nations were the original inhabitants of Canada; living in harmony and balance with the natural surroundings through unique political, social, spiritual and economic institutions that paid respect to the cyclical and interconnected qualities of the environment; including ultimate respect of the Natural Law. Many people have come to recognise what First Nations have always known; that as self-governing peoples First Nations took care of the earth for countless generations, maintaining its delicate balance while living a life that provided all that was needed.

Most First Nations will initiate and achieve long-term protection and preservation over their environments under the principles of ESD. Since greater levels of autonomy will augment opportunities to realize ESD, each community's success will largely be determined on its definition and subsequent implementation of self-government. As a result, questions that First Nations will pose are not what to do with either water, air, and/or soil contamination but how to best ensure the preservation of their pristine quality? This is indicative of the First Nation way of life presently, as it has been historically.

Since contact, the implementation of the Indian Act and countless other historical events have resulted in economic, social, and political marginalization for First Nations. They have witnessed a loss in cultural pride, identity, and individual and collective spirit. As a consequence, First Nations have had difficulty in preventing environmental degradation of First Nation lands. While much of this degradation had originated from non-First Nation sources, it is evident and ironic, that after so many years of proud environmental stewardship, some of this is attributed to the actions of some of our people.

After many years of injury to individual and collective identity, morale and spirit, there has now been a revival and celebration of the uniqueness and commonalities of our respective indigenous cultures. Through increased autonomy over the affairs of our people, the path to self-government promises to provide greater opportunities for First Nations to restore their cultures within all senses of livelihood. Many First Nations perceive this to be the vital link in restoring individual and collective strength, identity and dignity in our communities.

First Nation cultural preservation represents a significant step towards realizing ESD. Threats to our local environments have occurred at times when the survival of our respective cultures have been most threatened and vulnerable. The interrelatedness between the people and the land is what many First Nation Elders have been telling our people for countless generations. With each community restoring, maintaining, and enhancing core cultural values that are by definition holistic, including language and knowledge systems, First Nations will have taken great strides towards realising protection over all lands.

i. Values

Kindness, strength, honesty, courage, wisdom, and sharing represent prominent values within the culture of all First Nations. Each in their own way reflects and enhances the principles of ESD. However, respect and humility represent the most critical values in achieving ESD.

- Respect: The central value that underlies all First Nation cultures is a respect for creation. Respect is conveyed in the form of recognition of the inherent dignity, freedom, and spiritual integrity of all peoples, animals, trees, mountains, rocks, insects, the wind, clouds, and spirits. Incorporating this value into everyday livelihood, as opposed to thinking solely in human-centered terms, provides a strong basis for sustained harvest management including ecologically sustained economic development initiatives.
- Humility: Recognition that the Natural Law is infinitely mysterious. In addition, this value teaches that humans are small in significance when compared to the full context of creation.

ii. Language

The preservation of First Nation language systems is a crucial aspect of cultural restoration and development. Languages echo and support the cultural mind-set of a nation by preserving and giving voice to emulation the thought process that reflect the knowledge and wisdom of a people. Without a language base, the essence of a culture is lost.

The value that each First Nation language has with respect to ESD is immeasurable, since each language base provides a unique degree of insight into both perception and conception of matters that relate directly and indirectly to the environment. For example, common within all First Nation languages is a distinct ability to characterize creation in its living and most genuine state, an ability that far exceeds both the English and French language systems.

iii. Indigenous Environmental Knowledge

Living harmoniously with the land, air and water since time immemorial has provided First Nations with a rich system of environmental knowledge and skills. The prosperity of each generation was made possible largely by the effective transmission of this evolving system of knowledge. Indigenous environmental knowledge continues to play a vital role in the education and training of our people for the purposes of both remediating environmental degradation and in preserving the Natural Law. First Nations will incorporate this system of knowledge within all areas of community decision-making.

D. Governance and ESD

In the spirit of living within balance and harmony with all of creation, our ancestors recognised the true power sources. For instance, the ultimate source of power was the Creator; the reason for life itself. Second was creation. Third was Nationhood, such as the Cree, Ojibwa, and the Mik'Maq. Fourth were First Nation people, including the community and the family. The fifth source of power is what we call government, that being power delegated by the people. As a result, every aspect of decision-making reflected the fundamental principles embodied by the Natural Law.

Central to all initiatives is the over-riding necessity for First Nations to assume governing control over all facets of existence. Full restoration of jurisdictions remains the prerequisite for the implementation of ESD. With full control over our destinies, First Nations will design and enact comprehensive governing structures and systems based on some combination or synthesis of traditional and contemporary systems. As a product of this realisation, First Nations, either individually and/or in aggregation, will create constitutions that will determine the legal and moral parameters for governing authorities, including a clear division of powers, both internally and within individual First Nations. Implicit is the enactment of an environmental code of ethics providing an effective and far reaching instrument in addressing environmental protection.

A First Nation constitution will define the parameters of each communities' direction and existence. Written, or partially written, in a First Nation language, it will entrench fundamental cultural values, principles, customs and knowledge systems. It will provide the foundation for a community's decision-making process, demanding full accountability for environmental and social effects within all aspects of development. It will outline specific rules and procedures for decision-making, including the principles on consensus, participation and consultation, and community ratification.

As recognised governing bodies, First Nation governments will have full and comprehensive legislative capabilities. Present federal and provincial environmental legislation is characterized by regulatory gaps. These legislative efforts fall short of meeting First Nations' environmental needs. For this reason, First Nations need to enact effective and efficient legislation concerning assessment, protection, and management of their lands and territories. In addition, First Nations

through negotiations with federal and provincial governments must determine the extent to which current federal and/or provincial legislation will be incorporated into their laws and regulations.

All legislation will derive from the paramountcy of a First Nation constitution and will reflect community needs and priorities along with the needs and capacity of the local environment. For instance, environmental assessment legislation will ensure the analysis of environmental, social, cultural, and economic, health, and cumulative effects. This analysis will be necessary to assess the capacity of the environment to absorb the impact of proposed activities. Environmental protection legislation must set stringent standards for air, soil, and water quality, fully identify and legislate action to be taken concerning community-specific hazardous products and waste, and outline clear repercussions for environmental violations.

The written law is a relatively new concept for First Nation people. For our ancestors, environmental assessment, protection, and management were incorporated in life. We must bring our people closer to the values our ancestors once held. The entrenchment of laws through both legal and moral applications will together with our traditional values provide a strong moral and statutory basis for long-term protection of our lands.

E. Partnerships

Working towards long-term environmental protection and preservation requires joint efforts and commitments by all people. Without such a commitment, local initiatives are by nature vulnerable to global effects. As a result, First Nations must forge strategic partnership-building initiatives both within Canada and abroad for the purpose of effecting long-term environmental protection.

As a necessary condition, First Nation governments will need to be included as active partners in the design and implementation of regional and national environmental policy. This is a result of the transboundary nature of environmental effects coupled with the fact that First Nation lands and territories are distributed within all regions in Canada, across provincial and territorial boundaries. Without parallel commitments in environmental protection and preservation by both the federal and provincial governments, the protection of First Nation lands and territories will prove to be extremely difficult if not impossible to achieve.

As a result, First Nations need to be equal participants and have equal decision-making powers in all national and international fora that will determine the parameters and content of Canadian environmental organizations and networks mandated in environmentally-related fields such as Minister councils, round table committees, discussion groups and national and regional environmental task forces. First Nations will need to be full participants in bodies that contribute to and/or design national policies concerning management of forests, fisheries, and wildlife, biodiversity, protection of endangered species, international trade, environmental enforcement mechanisms, etc.

The final implementation of our inherent right of self-government must result in the recognition of our peoples as founding partners within the Canadian Constitution, as a third level of government, including equal participant-status in all future constitutional meetings. This new relationship between all non-delegated governments will symbolize Canada's genuine recognition of our historical role in this country's development, including the nation-to-nation status of our treaties, and our inherent rights as Canada's First Peoples.

F. Creating First Nation Institutions

For many First Nations, the product of realising the inherent right of self-government will have called for structural changes within a broad range of institutions. First Nations will choose to design new institutions that reflect and accord with cultural values and community needs. Throughout these institutions, communities will experience greater opportunities to facilitate cultural development and in enacting innovative measures to deal with contemporary environmental realities. Integrating institutions into holistic designs that reflect and entrench cultural fundamental needs and values will help empower communities to move beyond simple and ad hoc program systems to ones that are more dynamic, comprehensive, and proactive.

Implementing principles built on ESD requires First Nation autonomy over a significant range of institutional areas. While a full discussion concerning these areas is not possible or feasible within the scope of this paper, any process that deals with environmental jurisdictional transfer must ultimately consider the full range of jurisdictions First Nations will need in order to achieve environmental protection and preservation. However, for the purposes of creating preliminary discussion on this subject, four areas are briefly considered. They include education, health, family, and the economic system.

i. Education and Environment

To achieve and maintain long-term protection and preservation of our local environments, education will need to resume its central and historical function in the total livelihood of First Nations. First Nation control over educational programs and systems will provide greater opportunities for youth to learn Indigenous environmental knowledge and management systems, practical ways to integrate and apply both Indigenous environmental knowledge and mainstream scientific concepts, as well as greater opportunities to experience and interact out in the environment.

ii. Health and Environment

First Nations will design institutions that recognise and respect the dynamic and circular relationship inherent between human and environmental well-being. Environmental health policies and initiatives will combine both human and environmental health considerations into all aspects of development. This is particularly vital concerning potential impacts to areas such as: bio-diversity, wildlife, and fisheries, including water, soil, and air quality. In addition, policies and initiatives will include the protection and preservation of traditional economies, medicines, burial grounds and historical gathering places as well as maintenance of individual and collective identity, balance, and cohesion.

iii. Family and Environment

With jurisdiction over Child and Family Services, First Nations will be in a better position to restore the extended family base to its historical position of strength and dignity. Strong and healthy families will play an instrumental role in the total educational experience of our youth, both within and outside of formal institutions. In addition to strengthening cultural and language transmission, families will instill fundamental values of kinship within the family and to all creation.

iv. Economy and Environment

While there has been considerable changes in the way society secures and allocates creation's wealth, such as a greater movement towards global commerce and an increasing mechanization of harvesting techniques, it will be the goal of First Nations to maintain the same principles in realising ecologically sustained development. First Nations consider this to be necessary for the ultimate survival of our way of life and to fulfill our obligations to both the Creator and to future generations. For instance, contemporary realisation of ecologically sustained development will centre on the fundamental recognition that when it comes to dealing with the earth's wealth,

harvesting and protecting are equal parts of the same relation. In other words, since long-term economic performance is fully dependent on the availability and quality of natural wealth, sound environmental policy inextricably translates into sound economic policy.

The principles of holism, or ecologically sustained development, will be included throughout a community's planning process and will permeate within all levels of decisions. First Nations could achieve this on the strength and direction of its unique constitutional design as well as by realising full participation by all peoples within all decisions. For instance, the constitution will set out clear guidelines and regulation in the construction of housing, in infrastructure development, in transportation policy, in economic policy, and within all areas of social development. The focus will be to integrate both short-term and long-term economic needs with long-term capacity of the environment to absorb, regenerate, and heal the effects of human impact. Without this long-term assurance, First Nations will resist situations of short-term gain where future generations are likely to be over-burdened by the cost of a decision. In these situations, First Nations will utilise what is commonly known as the "precautionary principle".

Ecologically sustained development by practical definition assumes a strong degree of self-sufficiency. However, First Nations' ability to achieve economic and environmental integration is extremely complicated when we consider the present economic challenges facing many of our communities. In fact, without practical opportunities or access to an adequate economic base, it is improbable that First Nations will achieve long-term environmental protection and preservation over their lands and territories. As a result, fundamental issues need to be addressed. This includes a necessity to finalize land claims in an equitable and just manner acceptable to both Canadians and First Nations; including resolving outstanding treaty land entitlement, the negotiation of new treaties or land claims, and greater understanding of the spirit and intent of past treaties from the perspective of our people. In addition, First Nations will have required a re-examination into the legal and moral legitimacy of the *1932 Natural Resource Transfer Act*. Without some form of agreement in any of these issues, it is unlikely that the majority of First Nations will ever realize economic self-sufficiency.

G. Positive Environmental Outcomes

As a product of a new relationship within the Canadian Federation, First Nations will play an instrumental role in preserving and enhancing environmental quality at a sustainable level for all Canadians. Our efforts will centre on achieving the following:

- The entrenchment of ecologically sustained development principles in all matters of decision-making within Canada. This must apply to the decision-making of all levels of government in Canada.
- Fair value for Canada's natural wealth. First Nations will advocate for the full internalization of environmental effects in the costs of production in all development decisions. This must include a conceptual reduction in the discount rate, full ecological considerations including corresponding cumulative, social and cultural impacts.
- The enactment of comprehensive environmental legislation suitable and acceptable to all Canadians. This would include broader and deeper applications of current legislation that deal with environmental assessment, protection and management. Environmental assessment legislation must include not only environmental effects but social, cultural and cumulative effects as well. The process will be designed to allow for maximum public participation. Environmental protection legislation must extend to include the protection of endangered species, biodiversity, national and regional cultural and heritage sites, and a comprehensive application concerning all hazardous products.
- The establishment of creative environmental and governmental dispute resolution mechanisms. This will include greater emphasis in negotiation, mediation, and conciliation. These mechanisms should support a process independent from First Nation and non-First Nation government influence and recognise unique rights and standing for components of environmental problems not usually considered, such as independent right and standing for environmental components.

- Harmonization of standards and regulations between all governments. This process will ensure the elimination of costly over-lap while allowing upward mobility of the level of standards over time. First Nations will advocate for a flexible, consensus-based approach to environmental standard setting in order to allow for changing environmental conditions and the input of new information. In addition, First Nations advocate for moderately inflated standards in the form of “precautionary levels” so as to provide a cushion for human errors and miscalculation.
- Greater recognition for ecosystem processes in national environmental policies. First Nations will advocate for ecozone policies and approaches in environmental management; such as managing a system: a forest, river, lake, and wetland that are connected and interdependent. This implicitly calls for comprehensive and mutually respecting co-management initiatives by all relevant governments, including First Nation Governments.
- Financial commitments in environmental research, design, and development.
- Greater educational awareness in environmental processes. First Nations will work towards promoting ESD in all facets of Canadian livelihood.
- Global environmental advocacy. First Nations advocate that all governments, including the Federal Government, and all provincial, territorial, and First Nation Governments work towards providing a unified Canadian team in pressing for global environmental protection and preservation.

5. OBJECTIVES OF THE PROCESS

Objectives of the process to develop and restore the exercise of full jurisdiction in the field of the environment could include the following:

1. To fully resource and mutually recognise the inherent right of self-government in environment for First Nation governments, consistent with section 35 of the Canadian Constitution. This will necessitate a new division of legislative authorities and powers, both exclusive and shared, and a long-term approach to further reorganisation, as required, of the relationships between the newly ordered governments.
2. To fully protect, both in the transition period and for time immemorial, the recognition, powers, authority, and efficacy of First Nation governments in the field of the environment. This may be accomplished by legislative and/or constitutional protection as First Nations see fit.
3. To develop a comprehensive environmental protection regime for First Nations that meet local, regional, and national needs, concerns, and considerations. This regime will be based on the following:
 - a. recognition of the supremacy of First Nation laws within First Nation jurisdictions. This means that in an area of First Nation jurisdiction, First Nation laws will prevail if they conflict with Federal or Provincial laws;
 - b. the development of meaningful partnerships among Federal, Provincial and First Nation governments, and among First Nation governments, in order to realise and ensure comprehensive environmental protection within First Nation jurisdiction;
 - c. the development and implementation of contemporary applications of all treaty and Aboriginal rights;
 - d. the preservation and implementation of all fiduciary rights and obligations;

- e. proper compensation for outstanding environmental liabilities of the Federal and Provincial Governments.
- 4. To develop efficient and effective First Nation environmental institutions based on the knowledge, history, tradition and culture of First Nations, while having access to, and taking full advantage of, contemporary and technological advancements.
- 5. To develop First Nation environmental institutions which respect and contribute to the health and well-being of First Nations and the environment for all current and future generations.
- 6. The equitable sharing, by Canada and the provinces with First Nations, of all natural resources.
- 7. Constitutionally guaranteed and enforceable fiscal arrangements to achieve environmental protection, as defined by First Nations. This included fully-resourced training and employment opportunities for First Nations in order to create the capacity to engage in environmental protection of their lands and resources.
- 8. The development of effective inter-governmental dispute resolution mechanisms and internal justice systems respecting and protecting First Nations government and citizens.

6. PRINCIPLES OF THE PROCESS

The process of restoring the inherent right of self-government in the environment must be guided by a set of principles which will serve to set forth the fundamental concepts and bases upon which First Nation government systems will be able to implement those jurisdictions. A suggested list of principles, compiled from research on numerous self-government processes in Canada, including the following:

1. The process will not jeopardize First Nations constitutional rights, Treaty rights and Aboriginal rights. These rights will remain unaffected and will form the basis for new relationships developed as a result of this process.
2. The Federal Government's fiduciary obligations will remain intact except in those incidents where First Nation governments choose and are able to exercise decision-making powers and authority unfettered by any involvement of the Federal Government.
3. Any and all liabilities, whether or not currently defined, for past actions and inactions by Canada will continue as Canada's liabilities unaffected by this process.
4. First Nation governments will be able to undertake legislative, executive, administration, and judicial functions in all areas that are necessary to give effect to the inherent right of self-government in the environment.
5. First Nation governments and their powers will be based on mutual recognition of the inherent right to self-government, consistent with s.35 of the Constitution Act, 1982.
6. The treaty rights of First Nations will be given an interpretation that gives full recognition of the original spirit and intent of the treaties while recognising contemporary circumstances.
7. This process will not negatively affect the stability and security of the relationship between First Nations and Canada.

8. This process will have no adverse impacts on other initiatives between First Nations and Canada.
9. Full and enforceable fiscal arrangements for costs associated with this process including operational, administrative, and program service and delivery costs, will be made in a fair and equitable manner, taking into account the needs of First Nations, the obligations of the Federal Government, the scope of the new responsibilities, institutions and structures being created, and the resources available in all effected Federal Governments.
10. Agreements made as a result of this process will not be able to be unilaterally changed by Canada.
11. It is recognized that First Nation governments have the authority to enter into inter-governmental agreements, arrangements and relationships, as they deem appropriate.
12. This process is an opt-in process where by individual First Nations will have the right, in their sole discretion, to ratify agreements and the implementation of new relationships. Conversely, all First Nations will have the option to remain under the administration of the Federal Government.
13. The ability and right of First Nations to be fully apprised of all aspects of the process of restoring the exercise of environmental jurisdictions to First Nations, such that they may be able to fully participate in developing and exploring options and making decisions.
14. The agreements and implementation of new relationships will be subject to ratification by all First Nations.
15. In the provision of financing this process, reasonable good faith bargaining will be agreed to in order to accomplish the objectives of the initiatives.

7. PLAN OF ACTION

A Conceptual Approach

It is critical to develop and create First Nation governments, which can fully and appropriately exercise comprehensive jurisdiction over matters related to the environment. To be truly representative of First Nation environmental perspectives the delineation of jurisdictions and institutions must be derived from a source within the values, traditions, and cultures of First Nations. From this source of knowledge will come the direction that will guide the development of meaningful and appropriate legal, organisational, and institutional structures.

The Vision Statement presented for discussion purposes in section one, is an attempt to capture the essence of common environmental values and principles amongst First Nations in Canada. From these common threads, a proposed approach had been developed and attempts to create a process by which to continue with development of this initiative.

In general terms, the proposed process involves a number of concurrent activities in addition to a series of specific tasks that must be completed. The activities that must occur throughout the process of restoration are:

- information dissemination
- consultation
- ratification and consensus-building

Tasks that are specifically required in order to develop options and proceed with implementation relate to the following functions:

- research on existing government jurisdictional framework, policies, and programs
- development of options for self-government in the environmental field
- development of framework for First Nation government jurisdictions
- development of institutional systems
- implementation of jurisdictions and systems
- protection of environmental jurisdictions and regimes through a concurrent political process

8. INITIATIVE DEVELOPMENT APPROACH

The proposed process consists of four components:

- A. The creation of a national body that can work with communities, existing organisations, and First Nation and non-First Nation governments to develop and implement approaches to the exercise of the self-government in the environmental field and the creation of environmental protection regimes.
- B. The remediation of environmental lands and the creation of capacity, within First Nations, to implement and conduct the remediation and to implement all other environmental jurisdictions as they may be defined.
- C. Implementation of First Nation environmental jurisdictions and regimes.
- D. The protection of all First Nation rights in the transfer process, including environmental protection regimes.

A. National Environmental Council

It is proposed that a National Environment Council (NEC), an administrative committee consisting of highly qualified political and technical persons, be put in place through federal legislation created under s.91 (24) of the Constitution Act, 1867. The main function of the NEC would be to ensure completion of the tasks required in order to:

- develop options;
- ascertain the level of support for those options; and,
- implement particular options through assistance provided to the relevant political/decision-making bodies.

Specifically, the NEC could:

- a) direct and complete research into related government jurisdictional arrangements, programs, policies, services, and institutional philosophies
- b) identify environmental needs as they relate to legal, education and training, institutional, economic, health, technology, and lands issues
- c) develop options to existing programs and services, including the creation of new arrangements to meet identified needs
- d) direct and ensure full consultation and participation of all First Nations in the process
- e) develop a broad governmental framework, including legal, operational, and organisational mechanisms
- f) develop options for detailed institutional structures, including administrative considerations
- g) seek and obtain ratification of existing First Nation governments

- h) develop transitional and final implementation plans
- i) create transitional legislative and regulatory environmental protection regime structures and systems
- j) engage in transitional negotiations for funding and allocation of resources
- k) direct the evolution and evaluation of the National Environmental Committee

Members of the NEC could be selected from various regions or ecozones in Canada ensuring a linguistic, generational, and gender balance.

The National Environment Council will be comprised of four divisions:

a) Research and Policy Division

Responsible for the research function of the initiative, and the general technical, legal, and policy work. This division would establish research teams responsible for key areas, such as:

- an inventory of environmental issues facing First Nations
- development of remediation options relating to degradation of First Nation lands
- summaries of current jurisdictional and institutional mechanisms
- summaries of current environment-related programs and services provided by the federal government, and their effectiveness
- specific financial information on all federal environment related programs and services for First Nations
- an inventory of environmental training needs and the breadth of existing expertise
- a summary of current First Nation mechanisms and institutions for environmental protection
- an analysis of the fiduciary rights and obligations of the federal government
- an analysis of the outstanding environmental liabilities and claims against the federal government, and possible mechanisms for resolution of those claims
- development of initial or transitional legislative and regulatory mechanisms

- development of options papers on existing programs and services, with a view to recommending the maintenance of the status quo, modification, discontinuance, or creation of a new program
- assisting the consultation division with creation of consultation and communications documents
- assisting the consultation division with summarization of the consultation processes

b) Consultation and Ratification Division

Engages in consultation initiatives with First Nation organizations, deals with options from the consultation processes, and seeks and obtains ratification at the First Nation government level. Consultation includes communications, dissemination of information to both First Nations and non-First Nations, and education on environmental issues and rights. This division could also have the following responsibilities:

- preparation of consultation documents, including goals of consultation function(s)
- development of a consultation schedule (piggybacking onto existing schedules of national, regional, and local meetings)
- administration, summarisation, and development of recommendations flowing from consultation processes
- development, administration, and dissemination of communications materials, including educational approaches to First Nations and non-First Nations
- development of ratification approach, including liaison function with parallel political process
- administration of ratification strategy, if appropriate
- providing advice to and consulting with the parallel political process
- administration of ratified interim and transitional legislative and regulatory mechanisms
- administration of ratified implementation plans

c) Allocation Division

Responsible for interim funding negotiations with Treasury Board, INAC and First Nations. This division could also be responsible for receipt and allocation of transfer payments directly

from Treasury Board to First Nation governments. In the long term this function could play a central role in establishing procedures and entities that would serve an allocative responsibility for First Nations regarding environmental matters. Other key functions include:

- research into the existing financial allocation mechanisms regarding environmental matters for First Nations
- development of a new fiscal framework that could incorporate existing funding mechanisms in the interim, but would, in the long term, require the development of a comprehensive and unique allocative process controlled by First Nations
- administration of the interim allocative framework
- determination of remediation priorities, and allocation of resources

d) Executive Division

Responsible for the administration of the responsibilities of the Council, including the development, ongoing revision and adaptation of its terms of reference, and:

- overall administrative responsibility
- ensuring the implementation of decisions taken by the NEC
- ensuring accountability and transparency

B. Remediation of Environmental Degradation

Based upon the research and consultation findings of the NEC, in particular the inventory process relating to both environmental issues and technical skill capacity levels, initial efforts will focus upon remediating the current environmental issues presenting both actual and potential health hazards to communities. While these remediations may continue to be conducted using the methodologies and standards mandated by INAC and Environment Canada, a self-government focus would likely see the prioritisation of the required remedial work, allocation of resources, determination of the standard of remediation required, and completion of the work itself, being conducted by First Nations. This stage of restoration of First Nation environmental jurisdiction should begin immediately with an administrative transfer of responsibility to those organisations and communities with the technical capacity to engage in remediation.

On a broader level, this would require the development within many First Nation communities of a wide array of technical skills needed to conduct this type of work. This form of “technical capacity-building” through the development of skills in the areas identified by the NEC in its research, and including assessment, monitoring, inspection, analysis, testing, and remediation, together with the transmission of indigenous environmental knowledge, will provide First Nations with the needed tools to alleviate the current environmental degradation of their lands, to exercise their environmental jurisdictions, and to implement environmental protection regimes. First Nations individually, regionally, and/or in partnership with First Nation and non-First Nation educational institutes and training centres will facilitate the design of programs capable of meeting the needs of the communities’ local environments.

C. Implementation of Self-Government Based Environmental Protection Regimes

While the work of the NEC, particularly the consultation process, will provide the substantive direction that will guide the implementation of self-government in the environmental fields, and particularly will be the stage of the process where the specific institutional structures will be developed, there are already obvious components:

1. Fundamentally, the implementation structure, process, and result will be individual, unique, and completely within the absolute decision-making realm of each autonomous First Nation.
2. There must be a sufficient level of commitment to the national aspect of environmental issues, and the need to ensure appropriate standards.

D. General Options for the Protection of Self-Government Based Environmental Protection Regimes

In the process of restoration of environmental jurisdiction and the creation of environmental protection regimes there needs to be a process that assures the full protection of First Nations rights. There are numerous approaches that could be utilised, including:

1. Full jurisdiction in the field of the environment can be implemented and protected by agreements between First Nations and Canada.
2. Canada can create legislation under its exclusive jurisdiction over “Indians, and lands reserved for Indians”. Legislation created under section 91 (24) of the Constitution Act, 1867, could result in broad and comprehensive legislation delegating to First Nations rights, responsibilities, and authority in all jurisdictions relevant to the environment. Legislation could also be utilised to create a body with the mandate to canvass the issues, develop strategies and options for change, engage in consultations, build consensus, and develop implementation plans. A clear disadvantage of this strategy is that Canada retains the right to unilaterally amend its legislation. As a transitional strategy, though, this approach could assist in the development of numerous acceptable approaches depending upon the needs and political desires of the particular First Nation or region. In the short term, this approach is not inconsistent with the inherent right to self-government and could allow for the creation of flexible transfer agreements that are developed without prejudice to any past, current, or future self-government processes. As well, utilising this authority for the development of technical options through the creation of a national body could allow for a separate, purely political process designed to address the issues around long-term protection of First Nation rights in the transfer process.
3. First Nations in Canada can enter into a Treaty implementing the objectives of the exercise of self-government in the environmental field. This would be protected by section 35 (1) of the Constitution Act, 1982, which recognises and affirms the existing aboriginal and treaty rights of the Aboriginal peoples of Canada. The advantage of this option is that such a treaty could not be unilaterally amended by Canada without full justification and prior consultation with First Nations. This treaty would be based on an

existing right, and as such, would not require a constitutional amendment or agreement process to implement. As well, section 35 protection requires the consent of Canada and at least seven of ten provinces comprising fifty percent of Canada's population, prior to amendment.

4. The recognition and implementation of the inherent right of self-government in environment could be protected by an amendment to Canada's Constitution. While this would entail a constitutional agreement process, it would provide greater protection than a treaty in that it could not be unilaterally amended by Canada without adherence to the amending formula (consent of Canada and at least seven of ten provinces comprising fifty percent of Canada's population). There currently is not a constitutional discussion process underway.

Regarding each of the options above, this discussion paper can only present some of the relevant issues for consideration; ultimately, the appropriate approach to protection of First Nation rights in the environmental field, is a subject for political discourse and decision. In this discussion there are a number of key issues for resolution, including:

1. The role of existing First Nation political bodies in a consensus building, or ratification process. Particularly critical are the relationships of national and regional bodies to the determination of the level of protection required.
2. The development of national and regional political consultations that ensure a full and efficient discussion of the issues by all those effected or concerned.
3. The development of long-term First Nation political mechanisms and partnerships that promote national and regional environmental protection.

Given the obvious need for a separate political ratification process on these issues, this paper will deal with an approach that can run concurrently with any political process that may be developed. The relationship between these two necessary processes needs to be discussed in greater detail by political representatives.