

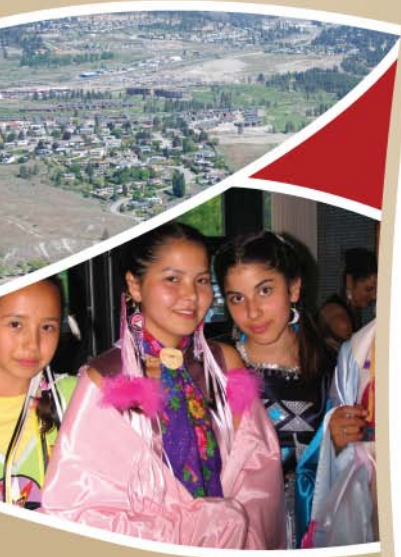


Community. Leadership. Pride.



**WESTBANK
FIRST NATION**

Moving Forward Together
A presentation
to the City of Kelowna
Tim Raybould
October 18th 2010



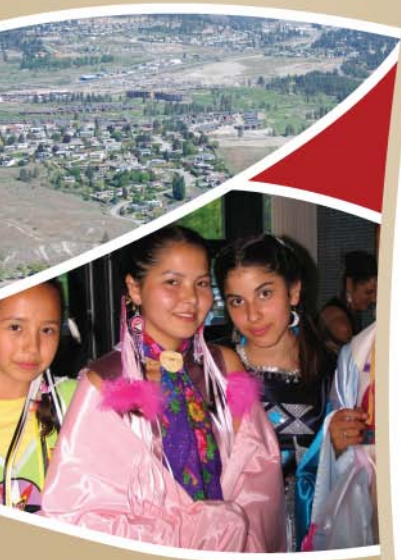
Before Contact...

- Aboriginal people were living in organized societies and occupying the land, now known as Canada, before Europeans and other Nations arrived.
- Before European people came to the Americas it is estimated that there were between 90 to 112 million Aboriginal people in North and South America.



Relationship to the Crown

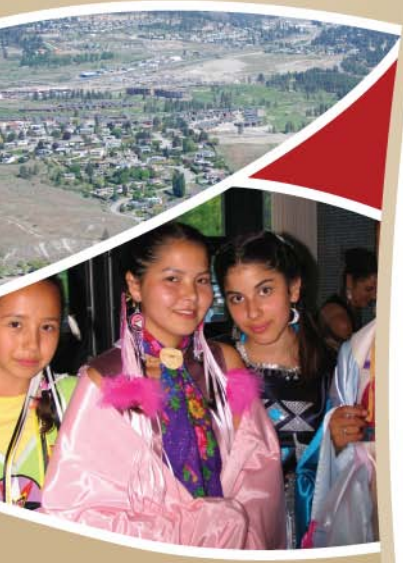
- Royal Proclamation of 1763
- Pre-confederation Treaties.
- Post-Confederation – 1867
Federal Jurisdiction for “Indians and lands reserved for Indians” - Canadian Constitution, s. 91(24)
- 11 Numbered Treaties - Most of Canada covered by treaties





BC a different Story...

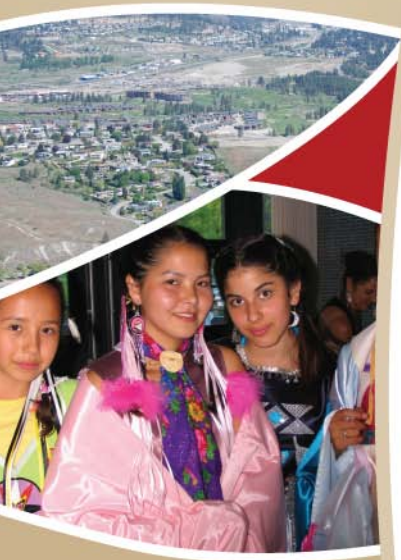
- 14 land purchases on Vancouver Island known as the Douglas Treaties
- After mainland became a colony in 1858, no more treaties were made
- Reserves were set out for each tribe
- Originally and for a short time Aboriginal people could homestead and farm on same terms as settlers





Acts of denial...

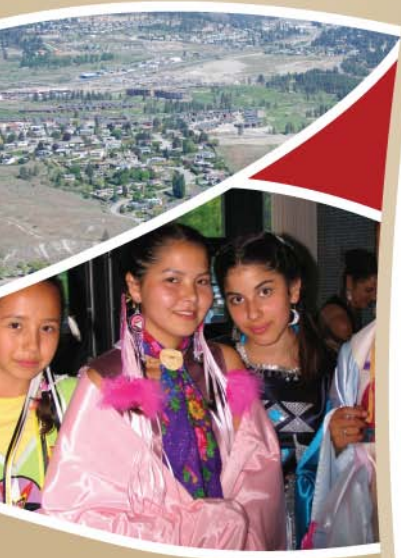
- Governor Trutch - right to obtain Crown land taken away
- Reserves unilaterally set and then reduced in size by - McKenna-McBride Royal Commission (1913-1916)
- Land ownership ignored
- No compensation paid
- No treaties entered into





1871 - BC joins Canada

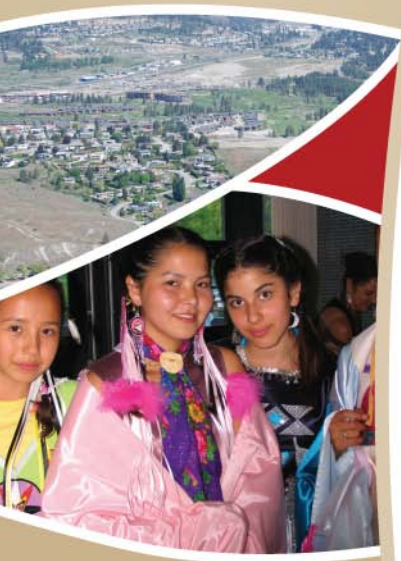
- New Province's policy set:
 - No Recognition of aboriginal title
 - No need for treaties to extinguish title
 - Next 100 years would see little progress on the "land question"





Indian Act, 1876

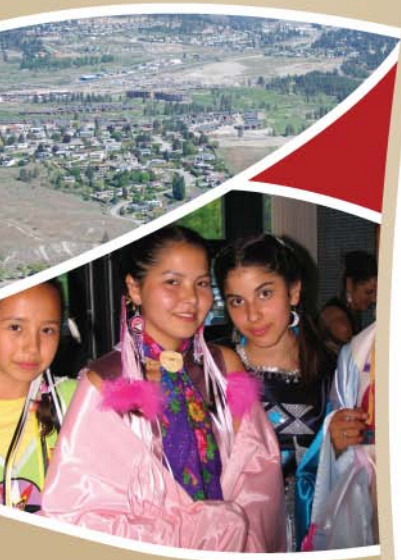
- Regulates most aspects of Aboriginal people's lives
- Used to implement the treaties
- Restricts peoples movements
- Sets out new forms of government
- Exerts political and financial authority
- First Nations are treated as wards





Government actions suspect

- Aboriginal children taken to residential schools
- Potlatch and other ceremonies outlawed
- Illegal to make land claims (1927-1951)
- Enfranchisement encouraged
- No voting rights (1949 BC, 1960 Federal)





Aboriginal Rights and title in BC - Legal basis

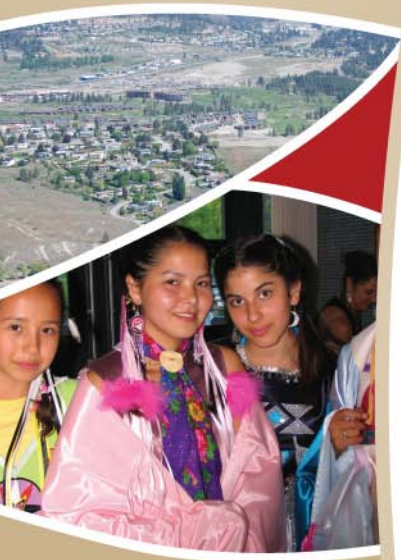
- *Calder* (1973): recognized aboriginal title existed (Nisga'a)
- *Sparrow* (1990): recognizes right to fish (Musqueam)
- *Delgamuukw* (1997): confirms aboriginal title still exists (Gitksan & Wet'suwet'en)
- *Haida and Taku* (2004): duty to consult and accommodate
- *William* (2007): Test for proof of title (Tsilhqo'tin)





Options for First Nations

- *Negotiate* recognition of land, resource, governance and jurisdiction issues through the BC Treaty Process
- *Make other arrangements* with the Crown where possible – i.e. Reconciliation Agreements
- *Go to court* and have aboriginal rights and title decided on a case-by-case, right-by-right basis
- *Exercise rights and title* over traditional territory without recognition by Crown.





Why Treaties?

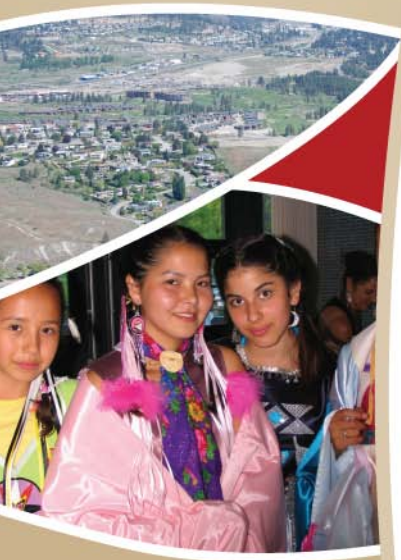
- Section 35 of the *Constitution Act, 1982*
 - Aboriginal rights and treaty rights, both existing and those that may be acquired, are recognized and affirmed.
- Over the last 36 years, aboriginal rights have evolved and been defined by the courts
- Without a treaty, rights and title are uncertain





What are treaties intended to accomplish?

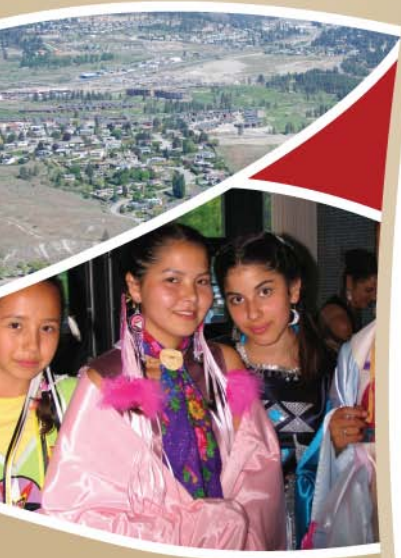
- Reconciliation
- Improved quality of life for First Nation's people
- Certainty
- Reduced conflict
- Clarification of Aboriginal rights and title
- Constitutional protection





What is being negotiated?

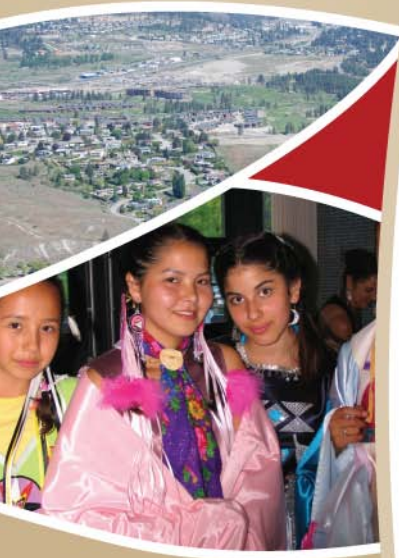
- First Nations government structures and related financial arrangements;
- Jurisdiction over and ownership of lands, waters and resources; and,
- Cash settlements.





Implementing the economic components of title

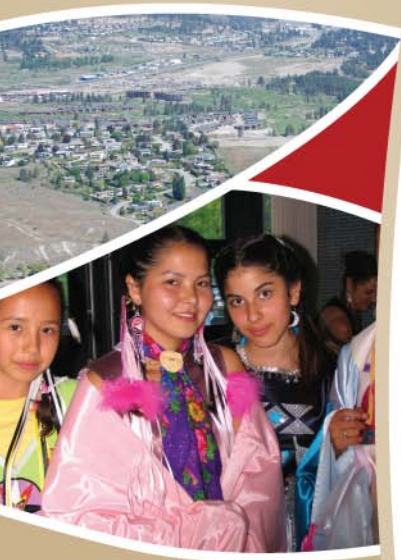
- Tribal land Use Planning
- Growth of “Benefits Agreements” with industry
- Forestry Initiatives – New FN Forest Tenures
- Reconciliation Agreements with BC (e.g. Haida and Coastal First Nations)
- Mining Revenue (tax) Sharing Agreements– (e.g McLeod Lake, Tk’emlups, Skeetchestn





WFN Land Claims (Comprehensive)

- Westbank has a mandate to settle the “land question” through the British Columbia treaty making process or other means.
- Westbank submitted a “Statement of Intent” to negotiate to the British Columbia Treaty Commission in December 1993.
- BCTC accepted Westbank’s Statement of Intent in January 1994.
- Treaty negotiations began in September 1995.





WFN Land Claims (Comprehensive)

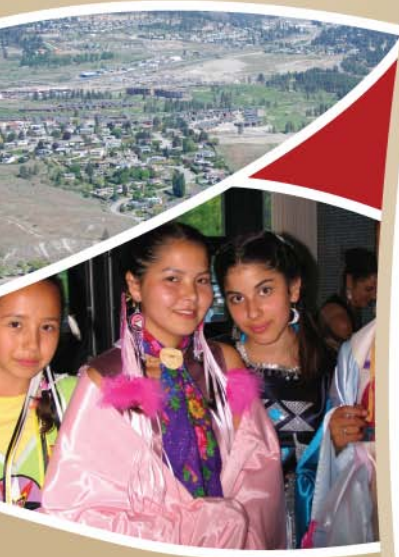
- WFN is currently in stage four of the six stage process.
- Westbank participated in a “Common (treaty) Table” with other First Nations.
- Westbank formally suspended negotiations in 2009.
- Westbank is currently engaged in Reconciliation Negotiations with BC.

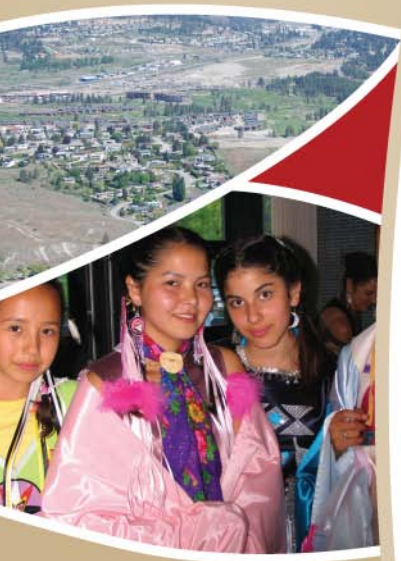




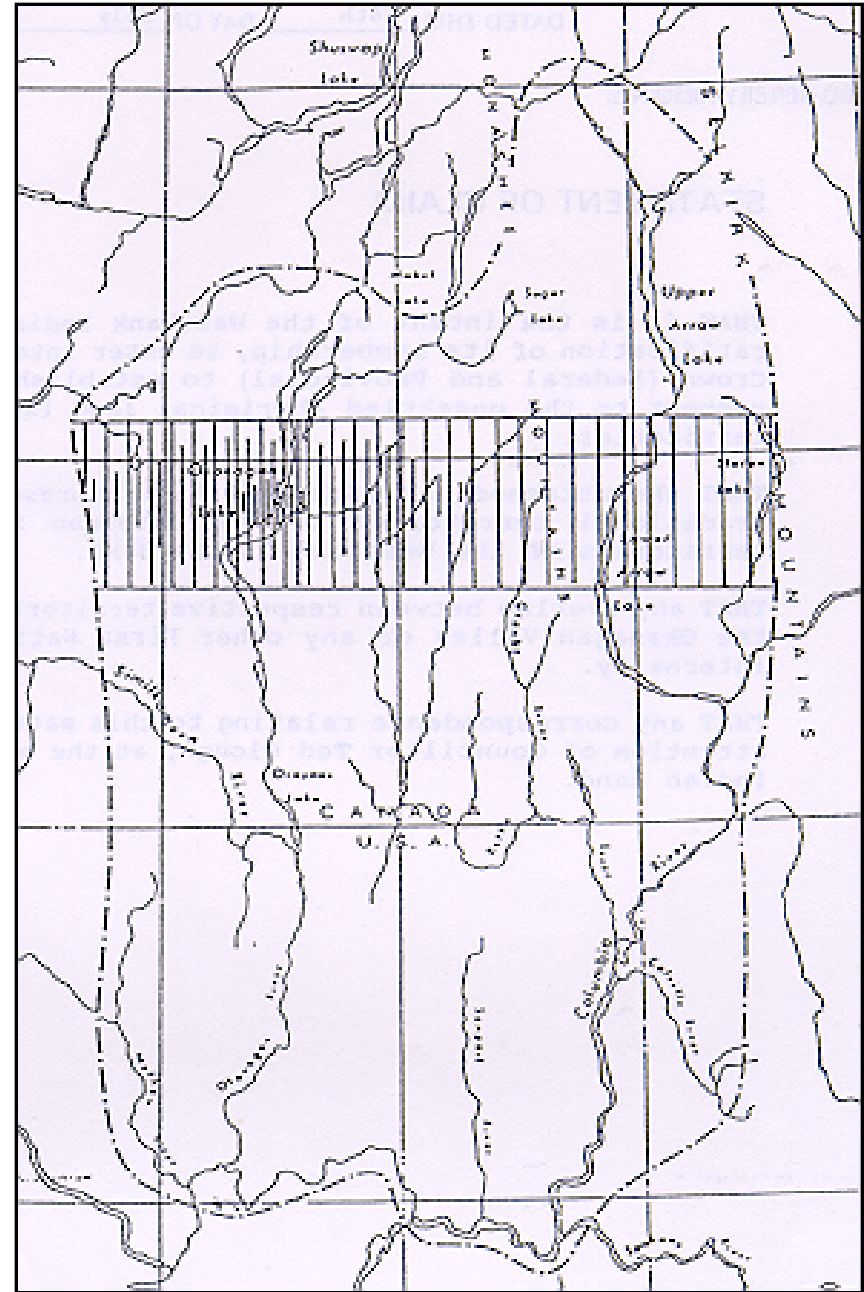
Westbank as Part of the Okanagan Nation Territory

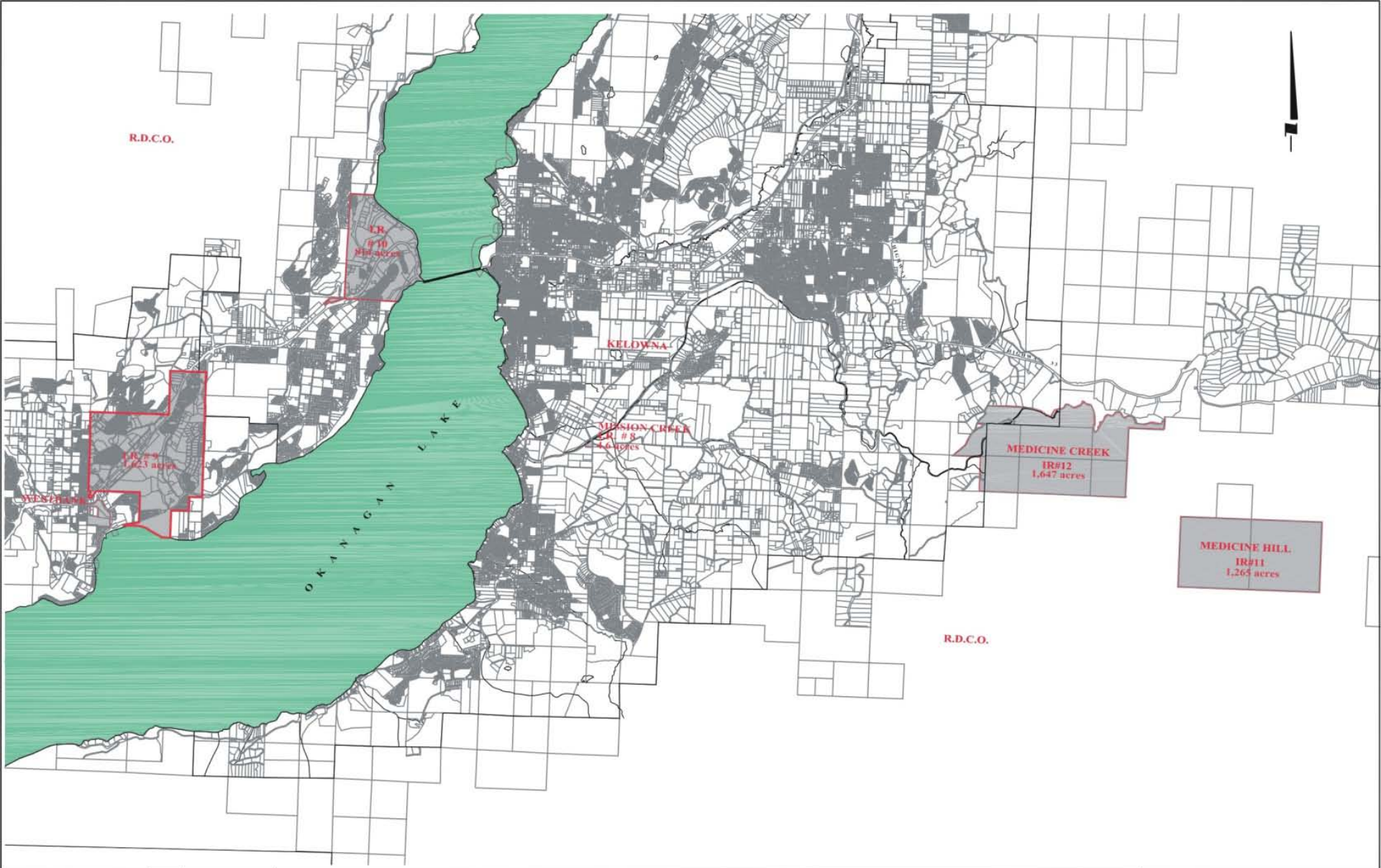
- Westbank First Nation is one of seven member Bands that comprise the Okanagan Nation. Traditionally the Okanagans (syilx) occupied an area of approximately 69,000 sq. km.
- Extends from Mica Creek in the north, to Kootenay Lake in the east, down to Wilbur, WA in the south, and west to the Nicola Valley.





WFN Government Statement of Intent



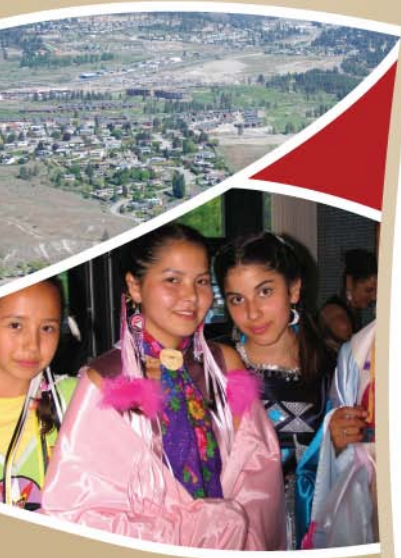


Westbank Lands



Some Statistics

- Number of Reserves 5
- Acreage of Westbank Lands 6,000
- Total Westbank Membership 650
- Non-Member Residents 9,000
- Council - four Councillors, one Chief
- Advisory Council – five elected by wards
- 2009 - 2010 Budget million 37+
- Number of Employees 114





Westbank First Nation Self-government Vision

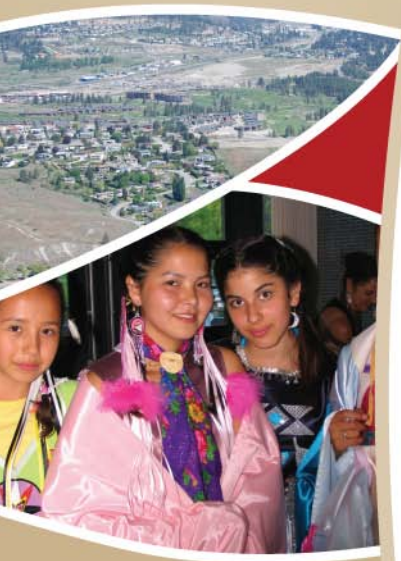
- Through self-government Westbank First Nation (“WFN”) will recognize and honour its history, culture and connection to its lands and create a stable, accountable government to support social and economic development.





Self-Government as an Aboriginal Right

- WFN entered into self-government negotiations on the basis that self-government is an aboriginal right recognized and protected under s.35(1) of the Constitution Act 1982.
- There is judicial support for the view that self-government is an aboriginal right (*Campbell v BC*; *Bone v Sioux Valley Indian Band*; *Delgamuukw v BC*).
- The Royal Commission on Aboriginal Peoples Report (RCAP), Parliamentary Committees and the May 31, 2005 First Nations Federal Crown Political Accord support recognition of the inherent right of self-government as an aboriginal right.
- WFN Self-Government Agreement implements self-government based on recognition that the inherent right of self-government is an existing aboriginal right within section 35 Constitution Act 1982.





The Situation under the *Indian Act*

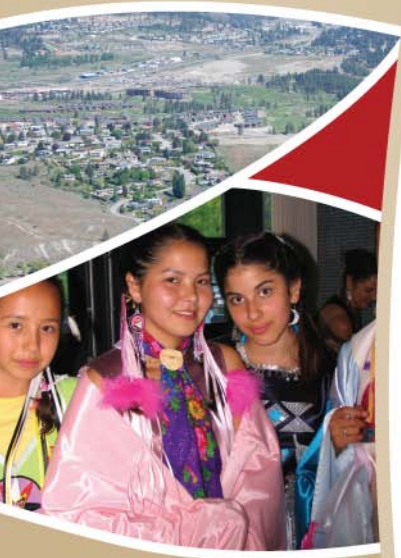
- Before self-government Westbank First Nation (WFN) was governed under the *Indian Act* which was not an appropriate framework for modern First Nation governance.
- The stability of WFN government (elections, council procedure, etc.) and the WFN economy were too heavily determined by the federal government.
- The jurisdiction available under the *Indian Act* was delegated and limited in scope.
- There was not sufficient financial and political accountability to WFN membership under the *Indian Act*.
- WFN could not achieve its full potential nor realize its vision under the *Indian Act*.





Chronology of WFN Self-government

- The Okanagans were self-governing before colonization and imposition of the *Indian Act* in 1876.
- 1963 – Westbank separates from Okanagan Indian Band (Vernon).
- 1970s – WFN begins to explore options for self-government along with other progressive First Nations in BC.
- 1986 – WFN Settles 'Cut of Claims'
- 1988 – the 'Hall Inquiry' identifies problems with the way Westbank is governed and recommends changes including self-government.
- 1990 – Westbank signs Framework Agreement and begins negotiating self-government.





Chronology of WFN Self-government

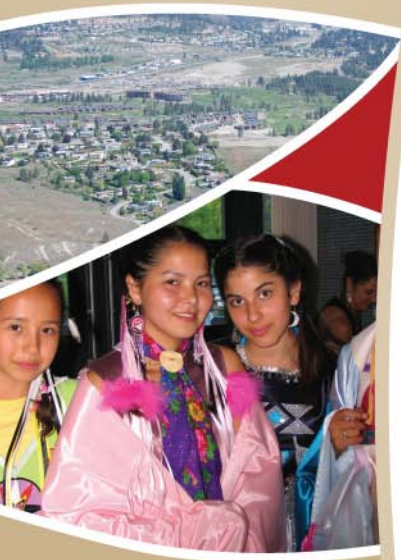
- 1991 – Begins collecting property taxes
- 1998 – Westbank/Canada sign Self-Government Agreement-in-Principle.
- 2000 – WFN/Canada initial Self-Government Final Agreement (SGA).
- May 24th 2003 – Members ratify Self-Government Agreement and the WFN Constitution.
- Land Code pursuant to the *First Nations Land Management Act* – implemented on July 1st 2003.
- *Westbank First Nation Self-Government Agreement Act* passed by Parliament May 6th 2004.
- Self-Government Agreement and WFN Constitution come into force April 1st 2005.





An evolving form of contemporary government

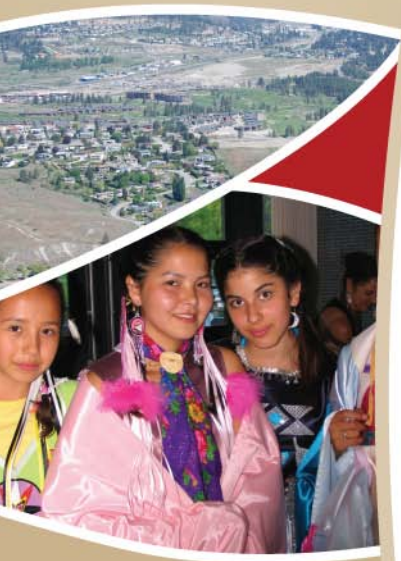
- ⊙ Few First Nations are self-governing although many are negotiating (sectoral and comprehensive arrangements).
- ⊙ In BC (with the exception of Sechelt) the only other self-government was negotiated as part of treaty settlements.
- ⊙ Powers of First Nation governments are part federal, part provincial, part municipal and part uniquely aboriginal.





Key Components of the WFN Self-Government Agreement

- Acknowledges that there is an aboriginal or inherent right to self-government.
- Bilateral agreement with Canada, BC is not a party. Agreement is not a treaty.
- Addresses the relationship between Westbank Law and federal laws. In some cases of conflict Westbank Law is paramount, in other situations Federal Law prevails.
- Applies only to existing Westbank reserve lands or future reserve lands (WFN Lands).
- WFN Lands remain federal reserve lands under s.91(24) of the *Constitution Act*.
- Third party interests in Westbank Lands are protected and existing Certificates of Possession, Leases and other interests in Westbank Lands continue under their current terms and conditions.
- Reflects a government to government relationship between WFN and Canada.
- Non-derogation clauses protect aboriginal rights of WFN and Okanagan Nation. WFN is not prevented from participating in other processes to implement self-government.





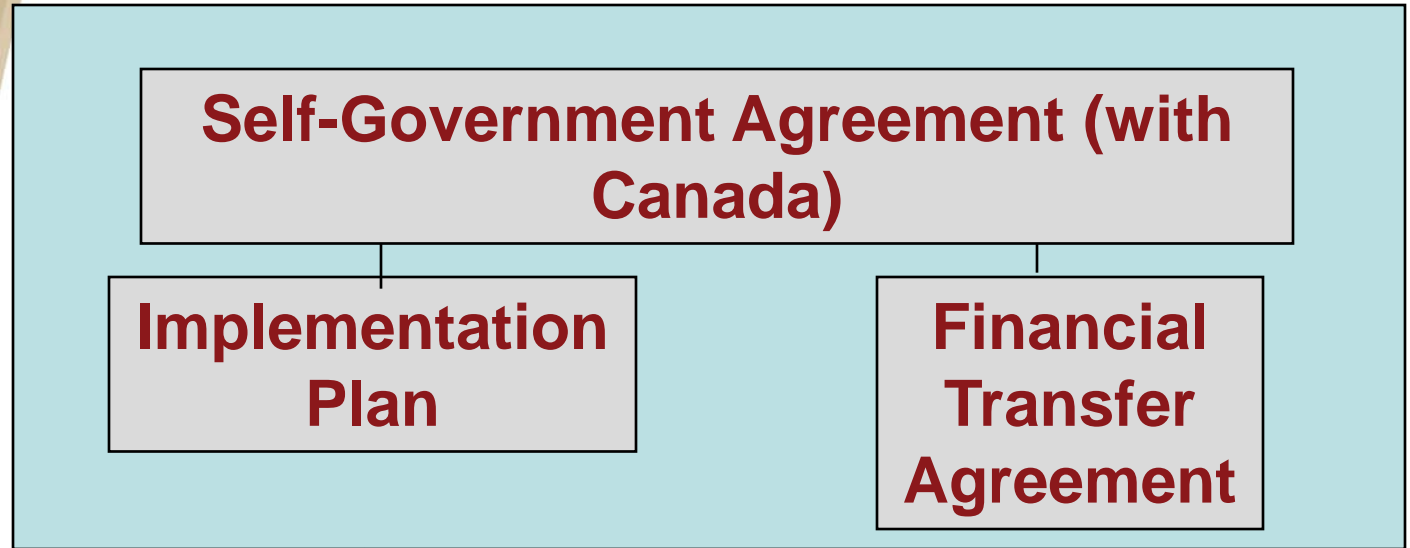
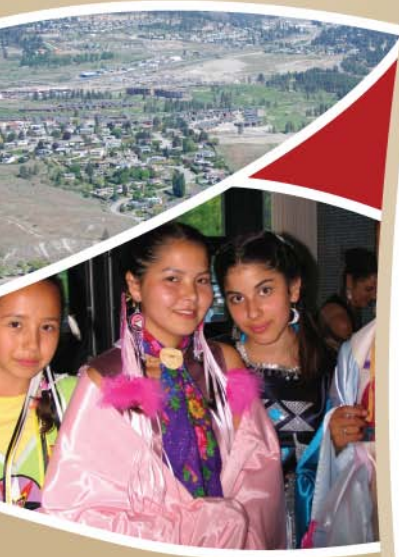
Key Components of the WFN Self-Government Agreement

- The fiduciary relationship between Canada and WFN continues.
- WFN members continue to be entitled to rights and benefits as aboriginal peoples and Canadians.
- A transition process and WFN can “draw down” jurisdiction at its own pace.
- Identifies additional jurisdiction areas for further negotiation.
- Includes principles for financial transfer agreement.
- Charter of Rights and Freedoms* applies to WFN government with due regard to section 25 of the *Charter*.
- WFN Constitution ensures open, accountable and transparent government. The Constitution comes into effect with Self-Government.
- Non-members living on Westbank Lands or having an interest in Westbank Lands will be provided in Westbank Law with mechanisms to have input into Westbank Laws that directly and significantly affect them.
- Canada’s liability for past wrongs continues and there are mutual indemnification clauses.
- Built-in review of SGA.





Self-Government Authority



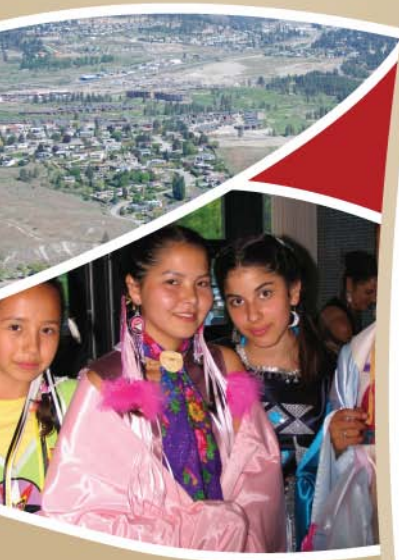
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WFN Jurisdiction under Self-Government

1. Westbank First Nation Membership*
2. Wills and Estates*
3. Financial Management
4. Westbank Lands and Land Management
5. Landlord and Tenant
6. Resource Management
7. Agriculture
8. Westbank Environment
9. Culture and Language*
10. Westbank Education*
11. Westbank Health Services*
12. Enforcement of Westbank Laws
13. Licensing, Regulation and Operation of Businesses
14. Traffic and Transportation
15. Public Works, Community Infrastructure and Local Services
16. Prohibition of Intoxicants
17. Public Order, Peace and Safety

*only apply to WFN members



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WFN Self-Government Act

- Passed May 6th 2004 - came into force April 1st 2005.
- Federal legislation is how Canada ratified Agreement
- The Act is short and sets out:
 - Agreement brought into effect -has “the force of law”.
 - Agreement is binding upon all persons.
 - If a conflict between Agreement or Act or any other federal law, the Agreement and Act prevail.
 - Except as set out in Agreement *Indian Act* no longer applies.
 - The *Statutory Instruments Act* does not apply.
 - Judicial notice is taken of Agreement and Westbank Laws.
 - Consequential and coordinating amendments to other federal laws (i.e. *Access to Information Act*, *Lobbyist Registration Act*, *Privacy Act*).





WFN Constitution

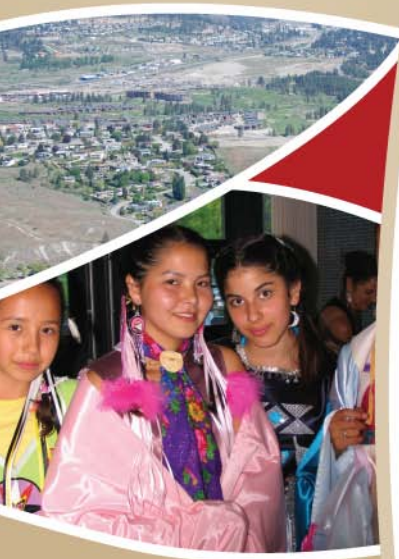
- Developed by community working group of WFN members.
- Sets out WFN governance rules and provisions for membership, land management and financial administration. Identifies requirement for additional detailed WFN Laws in specific areas.
- Ratified by members at the same time as Agreement.
- Can be amended by referendum vote of WFN members.
- Come into force on the same day as Agreement.





Contents of WFN Constitution

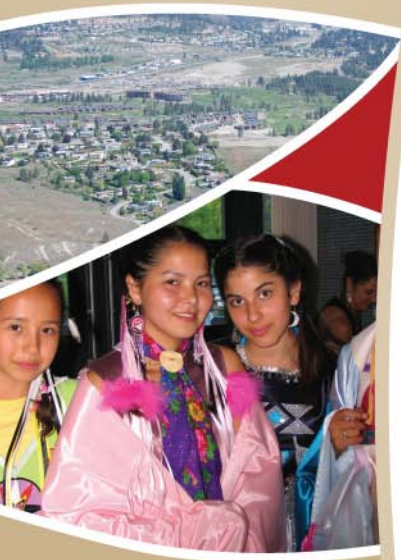
1. Principles
2. Membership Rules
3. Duties & Responsibilities of Council
4. Officers and Employees
5. Elections of Council
6. Council Procedure and Meetings
7. Law Enactment Procedures
8. Conflict of Interest
9. Financial Management and Accountability
10. Land Rules
11. Referendum Procedures
12. Amendment
13. Liability
14. Coming Into Force





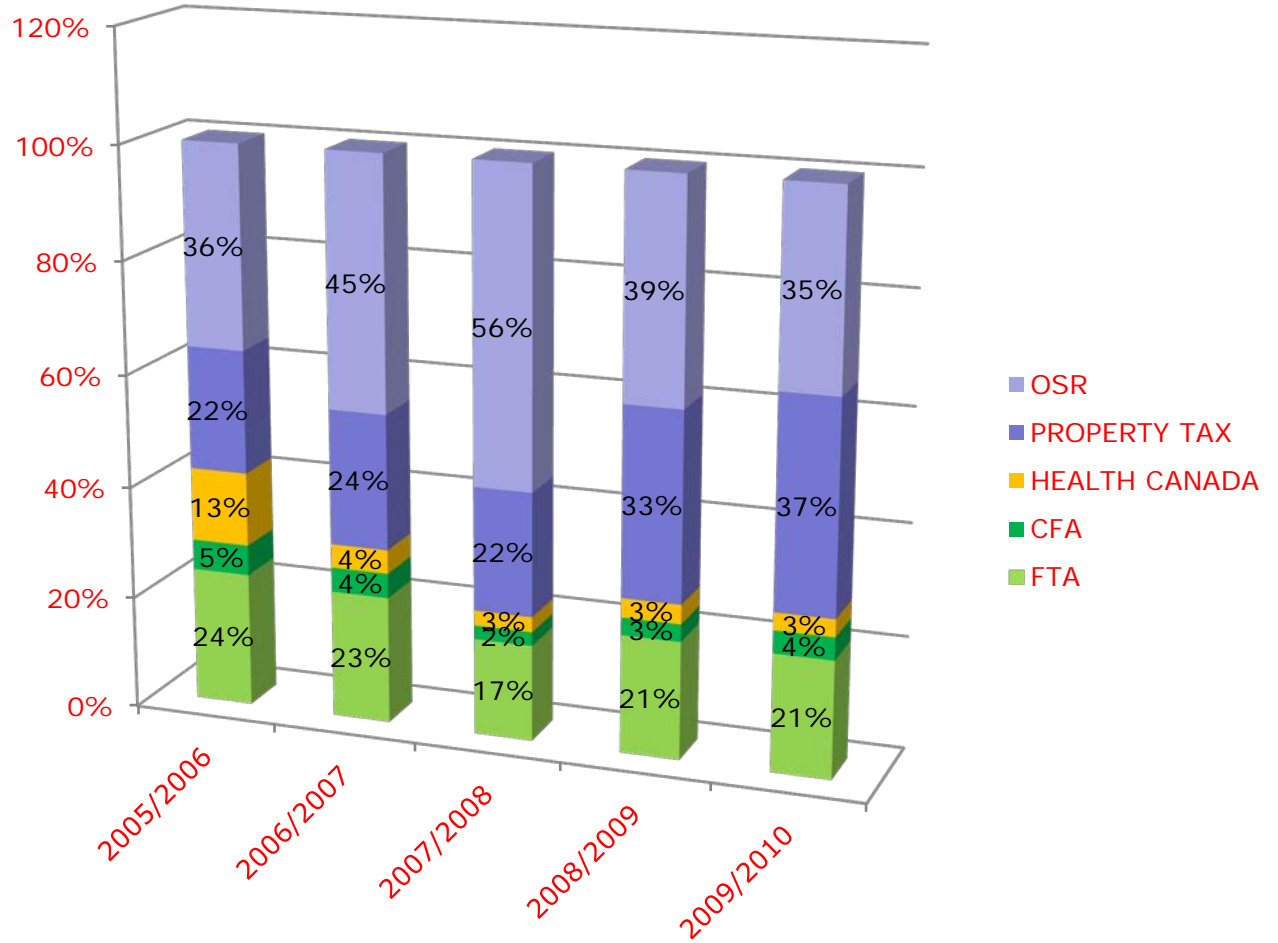
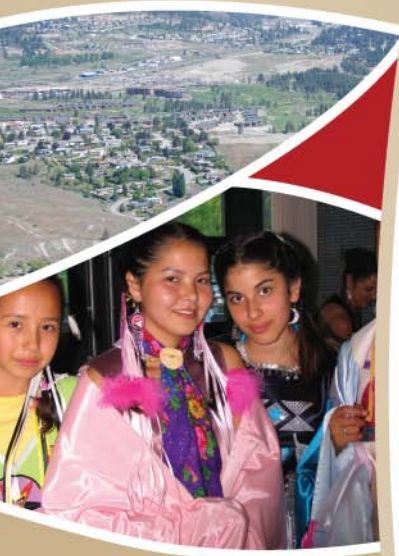
Financial Transfer Agreement

- Canada provides program funding for Federal programs and services that continue after self-government and are delivered by WFN (i.e. social services, health).
- Canada provides some block funding for WFN to help support self-government and the exercise of WFN jurisdiction.
- There was limited one time implementation cost funding to assist transition to self-government.
- FTA's are for 5 years and have built in escalators for growth and inflation.
- First FTA ratified at the same time as Agreement.
- Difficult negotiations on funding levels. Work still needs to be done to move general federal policy on self-government funding to an approach recognizing real needs of a self-governing First Nation.





WFN – Breakdown of Revenues Sources



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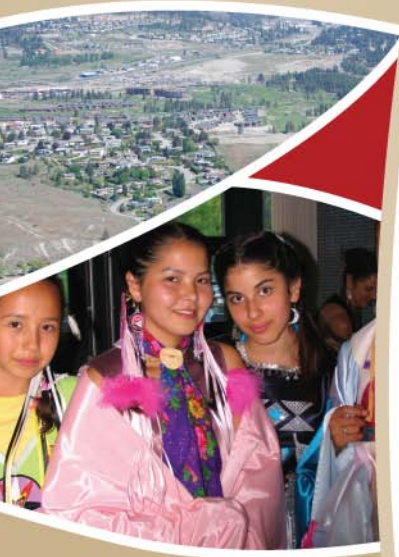
Law Development

- On April 1, 2005 WFN moved to a new era in its history with the coming into force of self-government.
- On March 31st 2005 twenty (20) WFN Laws were enacted modernizing and improving former *Indian Act* by-laws.
- WFN has exercised its recognized jurisdiction following the WFN Constitution process enacting:
 - Long Term Debt Liability and Guarantees Law
 - WFN Advisory Council Law
 - Family Property Law
 - Land Allotment Law
 - Council Remuneration Law
 - Public Officials Immunity Law
 - Land Use Plan Law
 - WFN False Alarm Law
 - WFN Dispute Adjudication Law
 - WFN Notice Enforcement Law
 - WFN Community Protection Law
 - WFN Expropriation Law
 - WFN Road Dedication Law

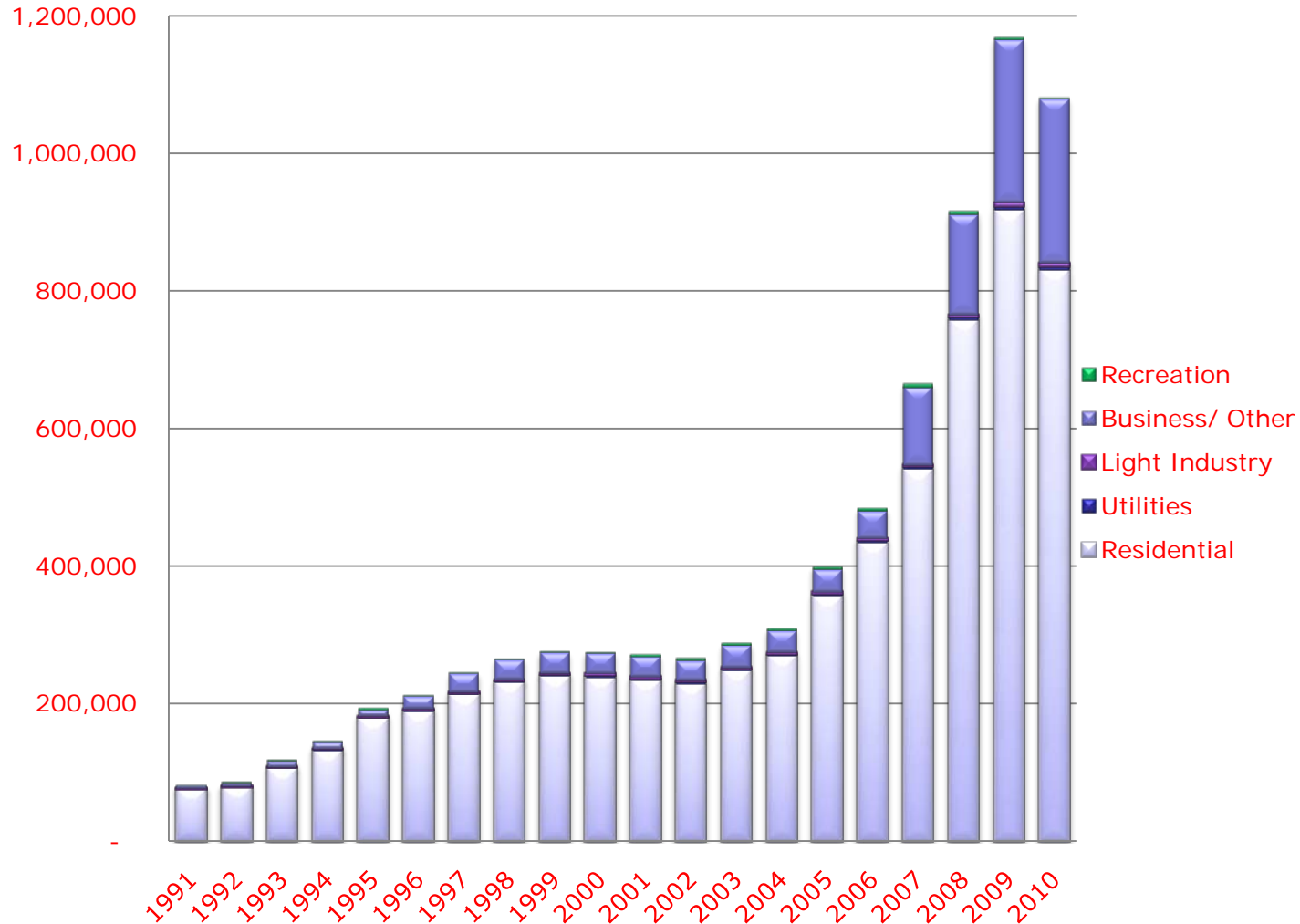




WFN: Property Assessments 1991 – 2010



Thousands



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Local Agreements/MOUs

- CORD
 - MOU on Cooperation
 - Gallagher's Canyon Agreement
 - Regional Geographical Information Services (Dec 15th 2008)
 - Local Services Agreement (Jan 15th 2007)
 - Sewer Agreement (Sept 26th 2007)
- District of West Kelowna
 - Gellatly Bay Agreement (June 6th 2010)
 - MOU on cooperation (May 3rd 2010)





Working Together...

- Opportunities to work together where there are common interests.
- Need to resolve issues where there are competing interests.
- Communication and information sharing between staffs and politicians.
- Importance of Local Service Agreements and other agreements-evolution.
- Infrastructure development – joint initiatives.
- Policy development and implementation.
- Dispute resolution.

