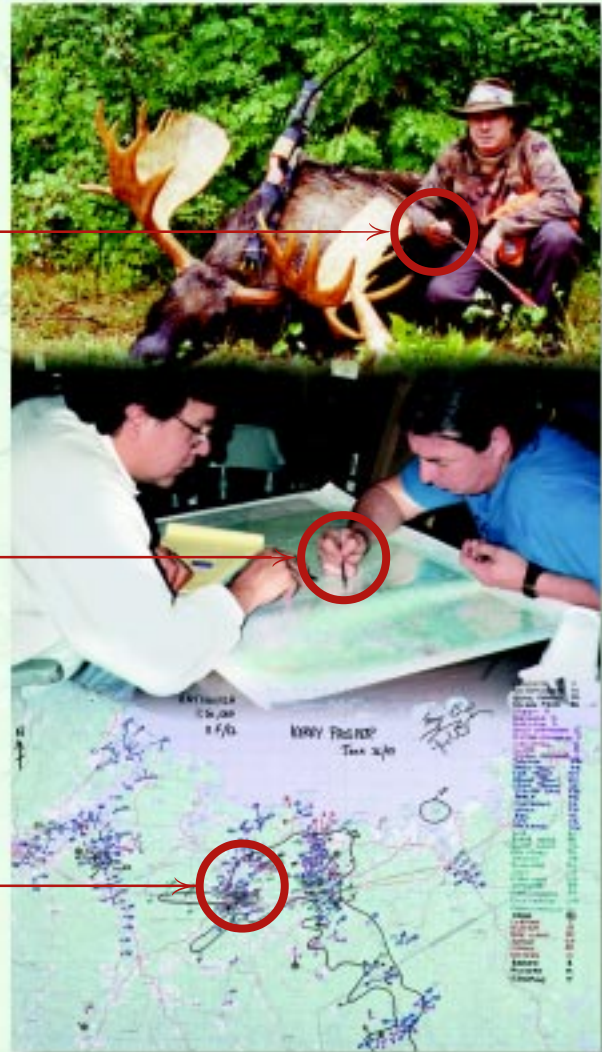


CHIEF KERRY'S MOOSE

a guidebook

to land use and
occupancy mapping,
research design
and data collection

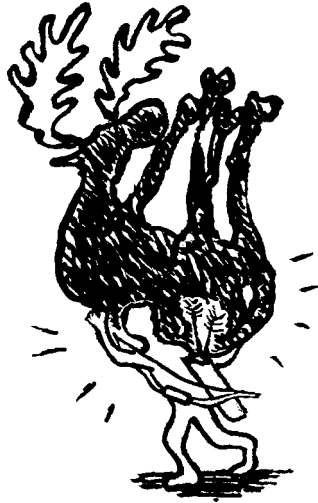


by Terry N. Tobias

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THE FRONT COVER

The top photograph on the front cover shows Kerry Prosper, who was Chief of the Afton First Nation at the time, with a bull moose he killed in 1995 to feed his family. This particular hunt was believed to be the first time in generations that a Mi'kmaq hunter killed a moose using a recurved bow. For this reason, this hunt held some symbolic importance for the nation. The middle photo shows James Michael, Director of the Treaty and Aboriginal Rights Research Centre of Nova Scotia, conducting a land use and occupancy mapping session with Kerry in 1997. The bottom photo depicts one of Kerry's map biography overlays that resulted from the interview. One of the hundreds of sites mapped is the location in the French Lakes area of Cape Breton where Kerry knocked down that moose.



CHIEF KERRY'S MOOSE

a guidebook to land use
and occupancy mapping,
research design and
data collection

*Part one in a series of publications intended for First Nation
researchers and decision makers, illustrating best practices
in land use and occupancy research and mapping.*

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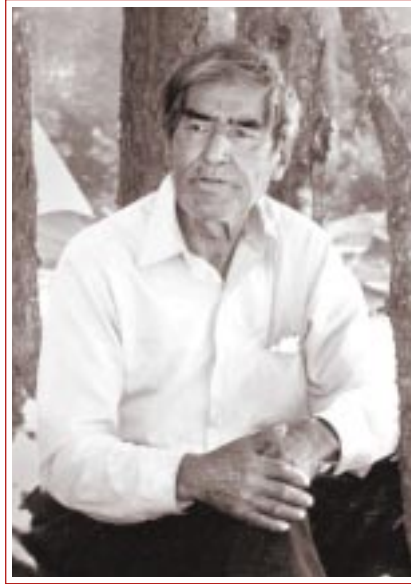
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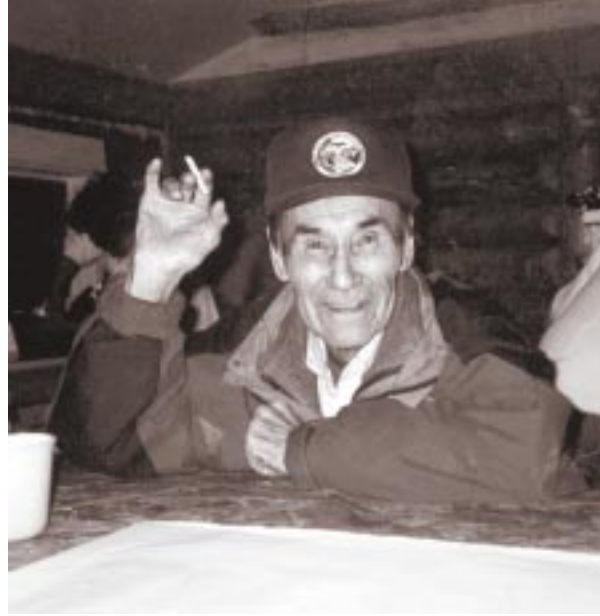
BAZILE DECOURSAY

1928-1993

*To Elder Bazile Decoursay, and all the elders
whose knowledge and wisdom continue to
enrich and revitalize the younger generations
of both First Nation and non-native peoples.*

AND

*To Dr. Peter Usher and Dr. Martin Weinstein,
generous colleagues and mentors, and leaders among
those who pioneered the Canadian land use and occupancy
research methodologies that are now being adapted
by indigenous cultures around the globe.*



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Foreword

Information – access to it, or access denied – has long been at the root of how communities have expressed who they are, to themselves and outsiders. The oral traditions of First Nations have been – for hundreds of years – cherished and deeply respected ways of communicating complex information about culture, politics, the environment, and what we now call economics. After European contact, these oral communications were given less and less weight, and First Nations were put at a profound disadvantage in negotiating about their lands and resources. Just a few years ago, I remember talking to a provincial cabinet minister about forestry operations that were going to have a serious negative impact on Algonquin lands and the Algonquins’ ability to sustain themselves. The minister said, “Prove it to me!” Clearly, words were not sufficient. That was a seminal moment in my life, and in my work.

It became clear to me that sure, we had anecdotal testimony, but that was not good enough. How can you demonstrate that the activities of outsiders are affecting your survival? It is so difficult to prove to the non-native establishment that you’ve got rights. You have to be able to show the impact to a people who are not themselves land based. So you need to draw them a picture. That’s what land use and occupancy mapping is all about.

This has become even more important following the 1997 landmark Supreme Court of Canada ruling in *Delgamuukw*. Although the court found that oral testimony does have weight in law, the court also underlined the

need to demonstrate physical occupation of territory in order to prove Aboriginal title. The only way you can prove physical occupation is by telling the court, “I was here, I have a house here, I have a trapline here, hunt small game over here ...” All these are markers of occupancy, and the only way to prove occupancy is by having a map that sets out the evidence in terms the people across the negotiating table, or a judge, will understand and accept.

For many First Nations though, the question is, “How to get started in the right direction so that our maps end up really serving our community and nation?” This is where Terry Tobias’ guidebook on use and occupancy mapping will be an extremely useful and timely tool. It is aimed at the community level – for researchers, lawyers and planners working in Aboriginal and treaty rights research and natural resource management.

I have been working in this field for about 18 years as a lawyer, advising First Nations in the preparation of evidence both for court and negotiation purposes. In all these years, my experience has been that there is not enough attention paid to methodology and detail. As the competition for scarce natural resources increases it can be expected that research standards will be more closely scrutinized by governments, courts and third party interests as our nations seek to establish Aboriginal title to lands and resources. Therefore, it is important for First Nations and their advisors to know how to do this research and how to do it well.

Terry Tobias’ work provides sound guidance in this regard by an individual who is accomplished, credible and experienced in this field. I’d like to add that credit is due to the Union of B.C. Indian Chiefs and Ecotrust Canada for helping bring this important project to fruition, and getting this guidebook to communities where it is desperately needed.

So take heart. The research is worth the effort. Years ago the minister made his challenge, “Prove it!” And in those days, no logging company ever asked the Algonquins where they could cut. Now they don’t cut without asking the permission of the Algonquins.



David C. Nahwegahbow, LL.B.

David is an Anishinabe lawyer from Whitefish River First Nation near Manitoulin Island, Ontario. He practises Aboriginal law and has an office in Ottawa. David is also President of the Indigenous Bar Association in Canada.

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I would also like to acknowledge those who have in quiet and important ways been my mentors over the years, in the arena of land use and occupancy research: Dr. Peter Douglas Elias, Dr. Harvey Feit, Dr. Peter J. Usher, and Dr. Martin Weinstein.

In 1982 George Smith and the Northern Village of Pinehouse invited me to live in their community and help design research that would demonstrate the importance of traditional resources to their way of life. In preparation, I wrote Martin Weinstein and asked his advice. He sent me a copy of Dr. Hugh Brody's beautifully written book, *Maps and Dreams*, which was then just hot off the press. That book documented the Union of BC Indian Chiefs groundbreaking and successful attempt to employ land use and occupancy mapping to help stop the construction of a pipeline. In some ways then, things are coming full circle with *Chief Kerry's Moose*, another UBCIC initiative. I would like to acknowledge the president of the UBCIC, Chief Stewart Phillip, and Leigh Ogston and all the other personnel whose ongoing endeavours are providing quality guidance, reference materials and conferences for First Nation researchers at the community, regional, national, and international levels. I would like to thank once again George Smith and all the people who welcomed me into their community almost two decades ago, and who were so good to me during my Pinehouse years.

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The Union of British Columbia Indian Chiefs supported the writing of the initial draft of this manual, and the Walter and Duncan Gordon Foundation funded the production costs. My thanks to Christine Lee and Chris Gullage of the Gordon Foundation for helping to distribute the manuscript to a wide network of reviewers.



Introduction

A boriginal peoples in Canada have been mapping aspects of their cultures for more than a generation. Indians, Inuit, Métis, non-status Indians and others have called their maps by different names at various times and places: land use and occupancy; land occupancy and use; traditional use; traditional land use and occupancy; current use; cultural sensitive areas; and so on. I use “land use and occupancy mapping” in a generic sense to include all the above. The term refers to the collection of interview data about traditional use of resources and occupancy of lands by First Nation persons, and the presentation of those data in map form. Think of it as the geography of oral tradition, or as the mapping of cultural and resource geography.

Most aboriginal communities in Canada – even some of the urban ones – have done this type of mapping. Some have completed whole series of map projects, each presenting a different theme. Others are now updating maps they first compiled years ago. People are busier than ever in their efforts to map various dimensions of use and occupancy. There is a good chance your community has recently done such a project, is doing one now, or is planning one. Possession and control of cultural data translates into considerable political power, at both the negotiating table and in court.

Think of it as
the geography
of oral tradition.

Governments probably will not drop extinguishment and surrender from their agendas.



Many land use and occupancy studies document the locations of natural features that are considered especially sacred or spiritual. Jayne Konisenta, Petr Cizek and Peter Marcellais, Chief of the Nahanni Butte Dene Band, pose on the frozen Nahanni River, Northwest Territories. In the background is Nahanni Butte, the feature from which the band takes its name. Community members identified the mountain as a sacred site during their mapping project.

Good quality mapping can be used in support of many different projects, some of which are listed below.

- ◆ Documenting elders' oral history before more knowledge is lost.
- ◆ Determining shared use areas and reconciling boundary conflicts between neighbouring aboriginal communities.
- ◆ Providing evidence for court cases involving aboriginal rights and title.
- ◆ Settling treaty and claims under federal land claims processes.
- ◆ Supporting compensation claims.
- ◆ Negotiating co-management agreements.
- ◆ Negotiating protective measures and benefits from industrial development.
- ◆ Determining probable impacts of development.
- ◆ Supporting injunctions to stop unwanted development.
- ◆ Providing baseline data for long-term community planning and resource management.
- ◆ Supporting administrative programs such as land use permitting.
- ◆ Developing education curricula.

Any group with aspirations to meaningful self-government and recognition of rights will engage in this kind of research. Governments probably will not drop extinguishment and surrender of aboriginal title from their agendas, although they may use different words for them. The need to do cultural research will remain as important as ever. Your grandparents' and parents' knowledge about their cultural pursuits and use of resources is central to getting recognition of rights in today's political climate. Similarly, the ability to document your own and your childrens' land and water-based activities may be critical for proving title and rights in the decades to come.

Even in a friendly political climate, an aboriginal government must acquire, update, and control access to an inventory of its people's cultural resources. Self-government requires the capacity to manage resources. Baseline inventories of cultural sites are needed and periodically need to be refined, verified and updated. Culture is not static or fixed in stone – patterns of occupancy and use change over time. There will always be a need to do good research, whether this involves collecting an initial baseline inventory or doing subsequent monitoring for change.

Many First Nation groups and communities have expressed concerns about a lack of clear direction for generating maps that will serve them well. This guide offers some ideas and recommendations that will result in

the construction of good maps. It is based on almost two decades of experience designing land use and occupancy mapping projects, and working with indigenous peoples at the community level to collect the data they need. The recommendations are grounded in hard experience of what has and has not worked for these kinds of projects.

This book is for leaders, administrators, and program personnel at the community or First Nation government level, as well as their consultants and external research people, and community researchers who have had experience with similar kinds of studies. The information and ideas contained here should be of use to anyone who has the responsibilities of designing mapping projects and providing guidance to community interviewers.

What follows is a consideration of the key factors that lead to success for aboriginal mapping. I do not offer a simple formula, or off-the-shelf methodology, that can be applied across the board. This is impossible. There are so many different reasons that research is done, a huge range of cultural and linguistic diversity among Canada's indigenous communities, and enormous contrasts in various nations' relationships to resources. The lifestyles of an urban community, and its dependence on traditional harvesting, are very different from a northern village's.

The discussion starts with what land use and occupancy mapping is about and cautions you to consider an important distinction between use and occupancy. I then outline the tasks involved. The concepts of map biography and map composite are introduced with the help of samples from a particular project. The guide then emphasizes the importance of quality data, and goes on to stress that although people tend to underestimate the challenge of obtaining good data, it is straightforward once you know how to conduct what is called social science. The importance of avoiding the museum approach to mapping is highlighted, followed by a look at how to lay the groundwork for good research. Obtaining and training good personnel, taking control of research design, and respecting your workers' limitations are discussed. Special attention is paid to response burden, the factor that most commonly undermines research. The five defining characteristics of any project (the why, who, when, where, and what) are discussed, along with the principles guiding research design and implementation, the measures of quality, and the culture of research. The guide ends with a summary of recommendations. There is a glossary at the back to help the reader with terms that may be unfamiliar.

The recommendations are grounded in hard experience of what has and has not worked for these kinds of projects.



In addition to natural features, sometimes human-made structures are considered to have a special spiritual significance and are mapped as sacred sites. Many Inuit consider their Inuksuit sacred and locate them on maps during land use and occupancy projects. This Inukshuk is near Pangnirtung on Baffin Island, Nunavut.