

**Department of Indian Affairs and Northern Development
Departmental Audit and Evaluation Branch**

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**Evaluation of DIAND's
Lands Management Program**

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Introduction

This summary provides the findings, conclusions and recommendations of the evaluation of DIAND's Land Management Delivery System that was approved by the Departmental Audit and Evaluation Committee in March 1995. The study was conducted in close consultation with the Lands, Trust and Services Directorate and an Evaluation Advisory Committee composed of departmental officials from headquarters and regions, and First Nations representatives.

The evaluation, which was national in coverage, set out to determine the performance of this system, including the devolution of land management to First Nations, as well as how effective land management activities have been.

The study involved interviews with 62 First Nations, numerous DIAND employees in headquarters and regions, and other federal departments, case studies in Ontario and British Columbia, exploration of public and private sector land management models for lessons learned and best practices, and an extensive review of documentation.

Main Findings

Mandate and Objectives:

DIAND's land management mandate is operational in nature and is strongly focussed on legal obligations arising from the *Indian Act*, from other related legislation to a minor extent, and from the fiduciary duties of the Minister and DIAND staff.

Broadly speaking, the interests of First Nations in land management are: protection of the land base; social and economic development, and affirmation of control and self-government in land management matters. DIAND's mandate imposes a similar charge on DIAND, and both are saddled with the inadequacies and inefficiencies of the *Indian Act*.

First Nations indicate considerable continuing needs for institution building for land management at the band level. First Nations interviewees confirmed their continuing willingness to turn to DIAND to obtain this administrative and management support.

Structures, Processes and Resourcing:

The relationship between headquarters and the regions with respect to land management reflects broader organizational frameworks of the department, whereby headquarters has a policy, advisory, approvals and systems role and regions have an operational role. In this framework, headquarters undertakes only limited and selective, as opposed to comprehensive and systematic, performance monitoring functions.

The total cost of the system, identified in Part III of the Estimates for 1995-1996, is relatively high at over \$8 million, including employees, some corporate services and overhead and systems costs. As one indicator of performance, the ratio of estimated costs (over \$8 million) to revenues (over \$30 million) is not favourable, although there are many mitigating factors in applying such a performance indicator. These factors include: (i) the bulk of lands transactions having limited or no cost recovery potential; (ii) deference of DIAND land management officials to the land use planning objectives of First Nations; and, (iii) the Land Management Delivery System pursuing a significant range of non-financial objectives (which vary from land transaction to land transaction).

Decentralization, Delegation and Devolution in Lands Management:

There is a limit to the number of First Nations that can participate in devolutionary programming as currently structured. Most have too few land related transactions to make any commercially-based form of land management worthwhile. As an illustration, only three reserves with 53/60 had more than 500 transactions altogether over the four year period 1992 to 1995. Six reserves under 53/60 show fewer than 10 transactions over the entire period 1992 to 1995.

First Nations and DIAND officials expressed concern about the devolutionary programs. These included:

- Uncertain accountability;
- Stringent entry criteria;
- Funding formula and conditions;
- Transaction-based Nature;
- Relative Inequity Among First Nations;
- Inadequacy of Funding;
- Communications difficulties; and,
- Increase in workload for DIAND.

While these critical points were made by interviewees, no First Nation has wanted out of 53/60 once in. Indeed, despite these difficulties, it would appear that First Nations involved in the devolutionary programs strongly support the concept and the direction of the department's decentralization and devolution programs.

Best Practices and Alternative Delivery:

Public Sector Organizations:

A review was made of nine public sector organizations with significant real property responsibilities. These represented a range of jurisdictions, including municipal, provincial and federal governments, and crown corporations.

The structures, processes, and tools leading to good land management were identified. Common themes included:

- Transferring control where appropriate;
- Linking land and related matters;
- Providing the tools required;
- Using technology as an enabler;
- Getting the skills that are needed; and,
- Ensuring the satisfaction of clients and other stakeholders.

Private Sector Firms:

Interviews with two private sector real property firms were undertaken and the following highlights emerged:

- hectic pace of workload;
- significant emphasis on soft skills such as effective communication;
- considerable reliance on the job training;
- use of complex automated information systems; and,
- significant backlogs mainly in deferred maintenance.

First Nations:

Case studies and interviews with twenty-one First Nations in three regions revealed a significant number of best practices and lessons learned in the areas of organization, processes, tools and resources, and strategies.

A review of First Nations alternative service delivery options reveals that a limited number of opportunities are available:

- contract out basic land management functions on a regional or district basis to corporations (preferably Aboriginal) that enjoy the trust and support of First Nations and that have proven expertise and systems for benefitting from state of the art” efficiencies and economies of scale in land management.

- enable First Nations with significant land management competence to accomplish agreed upon land management tasks for other First Nations, with the consent of all First Nations involved.
- move many of the land management functions of DIAND, including registration, and First Nations to First Nation organizations above the First Nation level, such as tribal councils.

Conclusions

Based on the above findings, the evaluation of land management leads to the following conclusions. There is a need to address:

- the legalistic, transactions-based, rules-focussed, and somewhat reactive, compliance-oriented nature of the delivery system.
- the general lack of clearly stated mandates, objectives and priorities relating to land management.
- the general lack of awareness at the operations and field levels (within DIAND and First Nations) about land management mandates, objectives and priorities.
- the lack of knowledge about the system and its performance, and the relative lack of ongoing performance indicators and feedback loops.
- the lack of appropriate decentralization and devolution opportunities for bands having a relatively smaller number of transactions.
- the frustrations and drawbacks being experienced by a number of First Nations in the implementation of RLAP and 53/60.
- the stress the system is under, especially the “crisis mode” that several DIAND regions are operating in.
- the lack of awareness of best practices and lessons learned throughout the system.
- the potential application of best practices and alternative delivery to DIAND’s Land Management Delivery System.

Recommendations

It is recommended that the Assistant Deputy Minister, Lands and Trust Services in coordination with Regional Directors General:

1. Engage in a process with First Nations to make the objectives of lands management more oriented toward capacity-building and strategy development and implementation.
2. Encourage, in partnership with First Nations, a strengthening of the general knowledge and of the results management framework of land management delivery.
3. Improve the design of existing devolutionary programs based on the co-management, delegation, and sectoral self-government models with a view to broaden eligibility and improve their efficacy. In addition, this course of action will enable the department to address the concerns and frustrations of current participating First Nations.
4. Address the condition of “crisis management” in DIAND’s land management in headquarters, regions, and First Nations.
5. Develop alternative delivery models and implement them as appropriate opportunities arise.

Purpose of the Report

This summary provides the findings, conclusions and recommendations of an evaluation of DIAND's Land Management Delivery System, an evaluation that was approved by the Departmental Audit and Evaluation Committee in May 1995.

Purpose of the Evaluation

The evaluation, which was national in coverage, set out to determine the performance of this system, including the devolution of land management to First Nations, as well as how effective land management activities have been. The evaluation also addressed possible more cost-effective ways of meeting departmental obligations in the area of lands. Accordingly, the study focused on mandate and objectives, structures and resourcing, the devolutionary initiatives of the department, and best practices and alternative delivery.

Evaluation Approach

The study involved interviews with 62 First Nations, numerous DIAND employees in headquarters and regions, other federal departments, case studies in Ontario and British Columbia, exploration of public and private sector land management models for lessons learned and best practices, and an extensive review of documentation.

The study was conducted in close consultation with the Lands Directorate and an Evaluation Advisory Committee composed of departmental officials from headquarters and regions, and First Nations representatives.

Section 2 -

DIAND's Land Management Delivery System

The Land Management Delivery System refers to those functions and processes within DIAND and First Nations for initiating, managing, and either continuing or bringing to a close interests in land on Indian reserves.

The Land Management Delivery System encompasses about 600 First Nations, 2,366 reserves, totalling 2.7 million hectares of reserve land across Canada. The total stock of interests in these lands is estimated at about 30,000 to 40,000. In administrative terms, this includes a headquarters directorate comprising about 50 staff as well as 9 regional and 7 district operations with approximately 100 staff.

DIAND has a unique, national, bipolar (Minister and First Nations), multi-unit, multi-stakeholder, highly interactive and in many ways self-contained, uniform and complete land management regime. For example, Her Majesty owns virtually all reserve lands; the regime has an authority clearly established in the Minister; the regime has its own laws, regulations, policies and practices; the Crown remains lessor for all leases on reserve land; the basic land management requirements are common for reserves throughout Canada.

It is increasingly problematic and perhaps inaccurate to refer to the system as DIAND's Land Management Delivery System. In many respects, the delivery system is increasingly outside of the direct control of the department itself. The regime is increasingly co-managed with First Nations. For example, although virtually all transactions dealing with reserve land must be authorized under the Act, the department seeks First Nation consent for virtually all transactions. The Regional Lands Administration Program (RLAP) and 53/60 programs are involving First Nations in the administrative responsibilities associated with land management.

In comparison to many other land management systems, this Land Management Delivery System would be considered highly complex. This is demonstrated by: the variety of interests in land, the high volume of land related activities (compared to many private sector real property firms), the magnitude and geographic dispersion of the assets involved, the interaction required between Minister and bands on many land activities, the number of factors and influences on the system, the complexity and value drive nature of the outputs of the system as well as the high risks and potential liabilities associated with federal involvement in these activities, given the fiduciary duties and special responsibilities as reinforced by the courts.

DIAND's Land Management Delivery System has multiple links to other processes, and at the regional, district and First Nation level, the processes are frequently combined in one unit and one group of officers. For example, additions to reserve, Section 35 transfers, and some aspects of Treaty Land Entitlements may be handled by officers of regional lands units.

Section 3 -

Land Management Mandate and Objectives

DIAND's land management mandate is operational in nature and is strongly focussed on legal obligations arising from the *Indian Act*, from other related legislation to a minor extent, and from the fiduciary duties of the Minister and DIAND staff.

With support from a least some First Nations, DIAND's land management mandate is evolving to incorporate measures that will allow for increasing decentralization and devolution of land management responsibilities and duties to First Nations.

With respect to land management, the emphasis on the *Indian Act* has significant positive and negative features. On the positive side, the Act is the unifying feature to a complex system; the Act provides instruction on key and basic land transactions. On the negative side, the general framework of the *Indian Act* has many drawbacks; the sections addressing real property transactions are deficient; and the Act is not fully responsive to the pace of transactions and the opportunities for economic and social development that are being made available through land transactions. In other words, a legalistic, transaction-based system with bipolar accountabilities may not be able to address emerging opportunities efficiently.

Fiduciary duty requires of Crown officials the highest standards of ethical behaviour in serving their Principals, the First Nations in question. Fiduciary duty is neither a barrier or a stumbling block to effective land management transactions; rather it is a guideline and a point of reference, imposing measures involving utmost loyalty, greater certainty, and probably delays.

Broadly speaking, the interests of First Nations in land management are: protection of the land base; social and economic development, and affirmation of control and self-government in land management matters. DIAND's mandate imposes a similar charge on DIAND, and both are saddled with the inadequacies and inefficiencies of the *Indian Act*.

Current First Nation priorities with respect to land management focussed on implementation of measures that provide for more control and autonomy, more opportunity, and greater capacity at the band level to undertake land transactions efficiently and effectively.

From interviews with First Nations, there are indications of considerable continuing needs for institution building for land management at the band level. In the interview program, First Nations interviewees confirmed their continuing willingness to turn to DIAND to obtain this administrative and management support.

Section 4 -

Land Management Structures, Processes, and Resourcing

The relationship between headquarters and the regions with respect to land management reflects broader organizational frameworks of the department, whereby headquarters has a policy, advisory, approvals and systems role and regions have an operational role. In this framework, headquarters undertakes only limited and selective, as opposed to comprehensive and systematic, performance monitoring functions.

The total cost of the system, from an ongoing management perspective, is relatively high at over \$8 million, including employees, some corporate services and overhead and systems costs. As one indicator of performance, the ratio of estimated costs (over \$8 million) to revenues (over \$30 million)¹ is not favourable, although there are many mitigating factors in applying such a performance indicator. These factors include: (i) the bulk of lands transactions having limited or no cost recovery potential; (ii) deference of DIAND land management officials to the land use planning objectives of First Nations; and, (iii) the Land Management Delivery System pursuing a significant range of non-financial objectives (which vary from land transaction to land transaction).

DIAND interviewees in land management in the regions described the chief strengths of the Land Management Delivery System to be: competent staff who know their jobs and clients; good working relationship with First Nations at the operational level; and a well-written Lands Manual.

DIAND interviewees in land management in the regions described the chief weaknesses of the Land Management Delivery System to be: increasing workload and inadequate resourcing; excessive paperwork and the crisis mode of employees, typified by moving from urgent matter to another in quick succession; the communications problems associated with devolution programs; inadequate monitoring; impractical training; and the occasional lack of technical help from DIAND, both as new situations arise for the First Nations land management office, and as more complex transactions become a requirement.

DIAND interviewees discussed options such as: better strategic planning relating to delivery; better use of current resources; cost recovery; hiring of more qualified people in terms of property management; reviewing systems support for land management; further devolution and changes to the *Indian Act*; and improved training as possible approaches to resolving the issues identified.

¹ In the absence of systematic quarterly and annual updating of real property revenue statistics, the figure used here is taken from page 2-31 of Part III of the Main Estimates 1995-96 for DIAND. The \$30 million has been referred to at least since the Lands, Revenues and Trust (LRT) Review of 1987. While there is unsubstantiated reason to believe that both the \$8 million and \$30 million are understated, the general point made about the revenue/cost ratio stands. A secondary pertinent point, relating to the relative lack of reliable performance measures, is addressed later in this summary.

Section 5 -

Decentralization, Delegation and Devolution in Lands Management

In the four year period 1992 to 1995, about 32,000 land related interests and transactions were registered with DIAND. The vast majority of these interests and transactions involved transfers, leases, addenda, assignments, mortgages, permits, sub-leases, and discharges. A large share of these, perhaps 90 per cent or more, originate with about 120 First Nations, many of which were interviewed in the course of this study.

At present, DIAND has two devolutionary programs in place: the Regional Lands Administration Program (RLAP) and the Land Management Delegation Program (53/60), 53/60 being a reference to sections of the Indian Act. One hundred First Nations participating in the RLAP Program and 15 First Nations participating in the 53/60 program² together benefit from about \$3.6 million annually (including about \$1.0 million for training). About twenty-five per cent of all land related transactions were incurred by the 15 First Nations under 53/60.

Regions vary greatly with respect to the number of land related transactions conducted on Indian reserves, and with respect to participation in delegated and devolutionary programming. First Nations which can best take advantage of such programming are located near high density urban areas where there is a demand for commercial property development, housing and (within a reasonable distance) cottage development. Ontario, Saskatchewan, and British Columbia together account for 70 per cent of all participating First Nations in the two above-mentioned programs.

There is a limit to the number of First Nations that can participate in devolutionary programming as currently structured. Most have too few land related transactions to make any commercially-based form of land management worthwhile. As an illustration, only three reserves with 53/60 had more than 500 transactions altogether over the four year period 1992 to 1995. Six reserves under 53/60 show fewer than 10 transactions over the entire period 1992 to 1995.

Anecdotal evidence from interviews with First Nations and DIAND officials suggest that the devolutionary programs are not receiving high levels of satisfaction. Among the points made by interviewees are:

- **Uncertain accountability:** Many First Nations fear that the assumption of delegated authorities weakens the protection afforded their land related interests. Their concern is that by accepting delegation of ministerial authority they relieve the Minister of part of his fiduciary obligation and statutory duty.

² Numbers indicated here are as of April 1, 1996. The number of First Nations participating in RLAP is steadily increasing, while the number participating in 53/60 is relatively stable.

- **Stringent entry criteria:** A particular concern is the requirement for a First Nation referendum which forces the political leadership to submit itself to what is effectively a vote of confidence in order to obtain delegated authority. Because of the sensitivity of land issues, some referenda are negative, putting the political leadership in an awkward position.
- **Funding formula and conditions:** Under the funding formula for the RLAP and 53/60 programs, amounts made available to First Nations to provide land management services in lieu of DIAND are based largely on the number of revenue producing land transactions which First Nations undertake.³ The formula measures three types of workload (administration, other functions and development) and focuses on three generic types of transactions (leases, permits and allotments). The funding formula is unpopular with many First Nations, both inside and outside the devolutionary programs. The formula is seen as inflexible, unresponsive to the diversity of land management activities, and too transaction driven.
- **Transaction-based Nature.** According to some interviewees, the transaction-based nature of the funding formula is restrictive and unfair. The formula equates land management mainly with the numbers of leases, permits and allotments issued, and apparently rewards commercial success. The formula allows little room for land use planning, surveying and environmental assessments, as well as more traditional land use processes. In effect, the formula does not encompass land functions which are not part of the department's statutory duties under the Act.
- **Relative Inequity Among First Nations.** First Nations located near large communities, and with a high volume of transactions, are making considerable money from interests on their land, and do not require DIAND funding to run a land management office. Yet these First Nations receive a high level of funding under the devolutionary programs. Other First Nations, particularly ones with a smaller volume of transactions and with fewer external transactions, are left with less or no funding, and may not be able to operate a lands office as such, with a compounding impact on land management opportunities. On a related point, it is noteworthy that a level of inequity has been reduced through the recent decision in some DIAND regions to reduce the incidence of "grand fathering", that is, provision of RLAP funding at historic levels, considerably beyond the levels justified by the funding formula.

³The funding formula also includes Certificates of Possession that are not revenue producing.

- **Inadequacy of Funding:** Some First Nation interviewees referred to an insufficient budget allocation for professional fees (including legal advice) under 53/60. Others stated that the compensation formula provided only enough funding for a part-time position at most and that the limited level of funding contributed to an allegedly high turnover rate among RLAP Land Managers. These limitations were occurring at a time when land management activity of reserves is increasing because of the growing number of First Nation members returning to reserves. Interviewees reported that funding under the formula is too limited to attract good people for the growing volume of work. DIAND staff, and Land Managers from 53/60 and RLAP communities interviewed in the course of this assignment noted that they did not have the staff resources to provide adequate land management.
- **Communications difficulties:** Communication difficulties, bearing on the understanding of the devolution programs, were reported by many respondents to interviews. 53/60 and RLAP First Nations wanted more sharing of experiences between funded First Nations. RLAP First Nations complained that they had no knowledge of the state of their funding or other elements of the programming. It was said that, in the three regions that have districts, the districts can ask for release of money to First Nations for RLAP programs, but they have no knowledge of whether these funds are actually released. Conflicting priorities and dovetailing of responsibilities (e.g. estates, money issues, trust accounts issue) were also mentioned as weaknesses.
- **Increase in workload for DIAND:** Devolution is normally expected to decrease the workload of the devolving agency, yet in this case the opposite may be happening, at least for an interim period of time: the more DIAND devolves, the more the workload of its own regional and district staff grows.
- While these critical points were made by interviewees, no First Nation has wanted out of 53/60 once in. Indeed, despite these difficulties, it would appear that First Nations involved in the devolutionary programs strongly support the concept and the direction of the department's decentralization and devolution programs.

Section 6 -

Best Practices and Alternative Delivery

Best Practices of Public Sector Real Property Managers

A review was made of nine public sector organizations with significant real property responsibilities. These represented a range of jurisdictions, including municipal, provincial and federal governments, and crown corporations. These organizations are involved in land management activities across Canada and in other countries, and all were in a process of major change in their approach to land management.

The study involved identifying the structures, processes, and tools leading to good land management, as well as the shortcomings which prevented land management activities from being as effective and efficient as they might be. Several common themes emerged:

- **Transferring control where appropriate:** Public sector land management organizations are recognizing that land is most appropriately managed by the organization most closely tied to the use of the land. They have begun to devolve the responsibility for managing lands to their users. Interviewees believed that the effectiveness of land management can be improved by delegating the authority to perform many lands management tasks to the local level without significantly increasing the risk associated with transactions. However, training and support as well as the installation of accountability mechanisms are essential to make the transfer of responsibility successful.
- **Linking land and related matters:** Land management decisions impact on resources such as forests and minerals, and on the environment in general. Nevertheless, land and resource management activities have generally been separated and compartmentalized, with inadequate communication among respective managers. A good number of the organizations interviewed have recognized that land, resource and environment decisions cannot be made in isolation, and are beginning to establish structures and processes that insure that cross-impacts are fully considered in decision making.
- **Providing the tools required:** Land related activities often require a broad range of expertise. It is necessary that managers and experts are provided with a framework in which they can do their jobs in a responsible and timely manner. Even today they are often hampered by having to follow rigid steps and carefully defined sequences, accompanied by time-consuming sign-offs and approvals. This has resulted in a slow and cumbersome process, and has minimized the efficiency and effectiveness of land management organizations. Many organizations are now undertaking careful reviews of their policies, and are replacing mandatory procedures with guidelines that provide direction and advice but allow discretion in how tasks are carried out.

- **Using technology as an enabler:** Organizations have come to understand the need to clearly identify information needs and to develop tools that can maintain and generate the data they require. Technological advances mean that information once housed in separate systems can now be integrated, eliminating problems such as inconsistency among systems, and enabling the sharing of information.
- **Getting the skills that are needed:** It is important to identify training needs and establish programs to meet them. Where special expertise is required, it may be less expensive and more effective to contract out for this expertise.
- **Ensuring the satisfaction of clients and other stakeholders:** Clients develop a better understanding of the services provided and the quality and response times to be expected from lands management organizations when these organizations develop and communicate service standards. It is generally worthwhile to involve clients in this process to ensure that their needs are fully addressed.
- With respect to the process of change in land management, the interviewees made the following points:
 - New models may require the assumption of more risk, and risk management will need to be integrated in the decision-making process;
 - There is a need to pursue change even when faced with resistance, as the working environment will eventually adapt;
 - Change must be flexible, and organizations should be prepared to modify directions as new technology becomes available or as new information is uncovered; and
 - Strong leadership and well-defined vision are essential to any change plan.

Best Practices of Private Sector Real Property Managers

Two private sector real property firms were interviewed, and the following highlights emerged:

- The cases indicate that work in these firms proceeds at a hectic, even crisis pace; the cases suggest that a hectic pace is a reflection of the ratio between volume of work and staffing levels and may be close to the norm for the real property industry.
- One of the firms placed a great deal of emphasis on soft skills, such as effective communications with clients, maintaining a non-adversarial attitude, working well with others, and ensuring that all commitments are met.

- Since there is considerable reliance on learning on the job, turnover is costly and must be kept as low as possible. The firms interviewed are able to reward employees for extra effort and thus minimize turnover, particularly when the market is not especially competitive and the firm can charge what the market can bear to cover its costs.
- Though the firms varied considerably in this regard, there was some emphasis on specialization and division of labour, with each employee assigned certain normal responsibilities and tasks.
- One of the firms emphasized training and accreditation, with Property Managers having professional designation from Institute of Real Estate Management (IREM) or a similar organization. In both cases, office personnel are required to know and operate complex, computerized accounting systems. The firms maintain industry contact and awareness via membership in professional associations.
- The firms are computerized, operating with the use of a variety of softwares. One firm identified a clear need for property management software not currently on the market.
- Backlogs are important in the operations of both firms, but consist mainly of accumulating or deferred maintenance problems. Such problems may result from limited cash flow or a scarcity of suitable contractors. It was suggested that these problems can be dealt with by planning.

Best Practices for First Nations Land Managers and for DIAND Officials

The case studies and interviews with 62 First Nations in three regions revealed the following best practices and lessons learned. Some of the points are also applicable to DIAND.

Organization:

- focus primary accountability for land management in one person, a land manager or officer
- involve the land manager or officer in the broader strategic issues facing the community
- provide for continuity of service and low turnover in land management functions

Processes:

- routinely involve chief and council in land management strategies and development of band land use rules
- involve land management in strategic planning, business planning, and budgeting by the band
- integrate land management with commercial and capital plans
- link land management activities to the economic development board
- ensure proper registry procedures (filing) at the band level

Tools and Resources:

- computerization, including modem, and fax
- use of appropriate software, including spreadsheet and LTMS or equivalent
- future linkages to Geographic Information Systems (GIS)

Strategies:

- timely surveys and early resolution of boundary disputes respecting interests in land
- broader awareness and understanding of land management issues in the community
- development of band land management policy
- development of band land use or community plan
- development of land use and zoning by-laws
- use of head-lease and sub-lease arrangements for appropriate residential, cottage and commercial industrial situations
- tendering process for valuable tracts of land
- communication with tenants
- monitoring and enforcement routines
- avoidance of bucshee leases
- hiring of a management company to assist in land transactions, where volume and complexity of transactions warrant

Alternative Service Delivery: First Nation Alternatives

A limited number of opportunities are available. In putting forward the following, it is useful to keep in mind that the vast majority of land related transactions are routine and follow set patterns. The primary concern is to ensure that increasingly larger complex leases and significant precedent-setting opportunities are well managed:

- contract out basic land management functions on a regional or district basis to corporations (preferably Aboriginal) that enjoy the trust and support of First Nations and that have proven expertise and systems for benefitting from state of the art" efficiencies and economies of scale in land management. Alternatively, all low or medium sensitivity land related transactions still in the department, or even all remaining DIAND field operations with respect to land management could be transferred to these First Nation Land Management Organizations (FNLMOs).
- enable First Nations with significant land management competence to accomplish agreed upon land management tasks for other First Nations, with the consent of all First Nations involved. There would probably be significant resistance to this approach, given competitive marketing strategies and the commercial confidentiality involved.

- move many of the land management functions of DIAND, including registration, and First Nations to First Nation organizations above the First Nation level, such as tribal councils. Though First Nations have indicated a resistance to this concept, it could have many advantages:
 - a stronger sense of identity between lands managers and First Nations because decisions on land related transactions would be made within the region and not in a remote office in Ottawa or the provincial center;
 - a greater ability to deal with government and the private sector on issues of common interest to several First Nations, such as the rate and location of economic development, the integrated management of all resources, the integrated management of the environment, and regional planning in general;
 - a better ability to design management programs which take account of regional and linguistic variations; and
 - removal of the “lightening rod” away from the DIAND bureaucracy and into the Indian community.

Section 7 -

Overview: Strengths and Weaknesses

Strengths

Based on documents and files available for this study and interviews with government personnel and others, the Land Management Delivery System has the following strengths:

- In terms of the necessity of meeting the statutory requirements of the *Indian Act*, the Land Management Delivery System has a mandate and objectives that can be judged to be appropriate, relevant and clear.
- The system works reasonably well on a day to day basis, in the wide variety of conditions and circumstances which are faced by First Nations and DIAND officials. Most of the time, interests in land are initiated, managed and brought to a close, in a legally enforceable manner, and without the attraction of legal liabilities to the Crown.
- There is a considerable convergence of priorities between First Nations participating in the devolutionary programs and DIAND, particularly with respect to the protection of the land base, the pursuit of decentralization and devolution, the fulfilment of fiduciary responsibilities, and the pursuit of social and economic development opportunities through interests in land.
- In the sense of having to resolve a common set of problems under common constraints imposed by the *Indian Act*, there is a good working relationship between First Nation lands officers and DIAND lands officials at the operational level. In general, First Nations lands officers appreciate the services, support and collegiality offered by their counterparts in DIAND.
- It would appear that First Nations involved in the devolutionary programs strongly support the concept and the direction of the department's decentralization and devolution programs.
- Based on information available for this study, DIAND's Land Registry function, an *Indian Act* statutory requirement, is performing to the satisfaction of its stakeholders.
- There is abundant evidence that both DIAND and many First Nations want to move beyond the present *Indian Act* based delivery system to a system that is less constrained in its operations. Important steps have already been taken both within and outside of the *Indian Act*. Through the FNMLA, DIAND is in the process of offering First Nations a new land management regime outside of the *Indian Act*.

- Based on the evidence gathered for this study, the material being produced for the Land Management Manual is of high quality.

Concerns

The Land Management Delivery System has the following weaknesses:

- Despite the overall strengths and the best of intentions, the system remains a creature of the *Indian Act*. The inadequacies and deficiencies of the *Indian Act* with respect to land management are well documented and continue to cause frustration, inefficiencies and delays. As a consequence, the Land Management Delivery System under which DIAND and First Nations operate is legalistic, rules-based, and largely reactive in nature. This reinforces the problems caused by the *Act*.
- It would appear that important gaps remain in the communication and promotion of DIAND's land management activities. For example, a sizeable proportion of the First Nations and DIAND officials interviewed indicated they were not aware of DIAND's or First Nation priorities with respect to lands management.
- Much continues not to be known about this system, for example, in terms of the total stock of active interests in land, etc., and their breakdown by component; levels of compliance; revenue management performance; scope and significance of bushy land transactions etc. Furthermore, the system does not capture the costs being incurred at all levels for its management, nor is there a grasp on the sources and volumes of revenue, by different classes of leases, by degree of compliance, etc. There is no ability to ascertain whether components of the system are efficient in the sense of imparting more benefits than costs to the overall system. There is thus virtually no data which enables judgement on the efficiency of the present system or which would enable the development of a more efficient system.
- The Land Management Delivery System at all levels in DIAND and First Nations is under considerable stress. Officials expressed concerns about their capacity to meet their current workload as well as cope with increased demand. For example, as land related interests and transactions are increasing in volume and complexity; First Nations need more advice; there has been some reduction in staffing in some regions; turnover is high at the DIAND and First Nation operating levels; DIAND staff report operating in a crisis, largely reactive and exception basis mode. Much of the land management expertise of DIAND officers is acquired through on the job experience; the departure of some of these officers because of excessive stress could mean serious reductions in the ability of the system to do its work. First Nations face similar problems with respect to experience lands managers, whose departure because of overwork or underpay could raise serious problems.

- The Lands Transaction Management System (LTMS) continues to have material inadequacies; the Indian Land Registry System (ILRS) is still in the process of being automated. Both the ILRS and the LTMS (being upgraded under WINLANDS) are moving in the right direction, and are dependent on resource availability. However, the slow speed at which things are falling into place at this critical time for lands management for First Nations and DIAND should be of great concern.
- The Land Management Delivery System as a whole lacks feedback loops and performance indicators which are vital to monitoring system effectiveness and the identification of bottlenecks at the First Nation, district office, regional and national levels. Without such systems, there is no tangible evidence that staff are working in a continual crisis management mode, even though there is compelling reason to believe they are.
- On a transaction basis, there is virtually no cost recovery, despite ample precedent in peer organizations and despite knowledge that some First Nations should be able to meet their own costs because of substantial revenues. The potential for cost recovery remains a contentious issue, and opportunities for cost recovery should continue to be explored. On a broader scale, measures of financial viability are lacking.
- It would appear that more technical assistance support in land management is wanted by First Nations than DIAND is able to provide. Most First Nations implementing RLAP and 53/60 need continuing guidance, advice and support on land management issues and appear to have contributed to an increasing rather than decreasing workload for DIAND. There is an indication that devolutionary programming has proceeded with insufficient attention given to a prior need for capacity building at the First Nation level. If this is not corrected, the ability of the system to continue to function may be in jeopardy.
- First Nations are concerned about service levels at DIAND's operations levels, due to downsizing, attrition, and turnover of DIAND staff. First Nations perceive some lack of clarity about the degree to which the present conduct of devolution is about the creation of a more effective system in the long-run as opposed to meeting the short-run fiscal concerns of the federal government.
- DIAND's decentralization and devolutionary programs operate under constraints that restrict their relevance and application to only a small portion of Indian reserves. The focus is largely on the revenue producing development of land, and the fact that there are many other potential uses of land is largely ignored. The funding formula has been criticized as catering to a single option, as well as being too complex.
- There is concern about the administration of lands within reserve boundaries. It would appear that surveys do not support a sizeable proportion of the transactions undertaken with an increasing risk of boundary disputes arising with reserves. There is evidence that a portion of the First Nations are engaging in some form of bucshee transactions, largely among members, and probably to avoid the bureaucratic requirements of the *Indian Act*.

- Most proposals to improve the system at the strategic level have faced a relatively high degree of resistance because of First Nation concerns about reducing the Crown's fiduciary obligations. This suggests the need for finding methods of fulfilling fiduciary responsibilities via alternative methods of lands management delivery, such as working through tribal councils or other regional organizations.

Section 8 - Conclusions

Based on the above findings, the evaluation of land management leads to the following conclusions. There is a need to address:

- the legalistic, transactions-based, rules-focussed, and somewhat reactive, compliance-oriented nature of the delivery system. While meeting legal obligations and being in compliance will no doubt remain one of the “success factors” of the system, it will no longer be sufficient, as land management evolves in the years ahead.
- the general lack of clearly stated mandates, objectives and priorities relating to land management. This study has demonstrated that the actual objectives and outputs of land management enjoy broader support among First Nations and DIAND officials, and go beyond meeting legal obligations. In short, there is a need to formally document the broader objectives and priorities.
- the general lack of awareness at the operations and field levels (within DIAND and First Nations) about land management mandates, objectives and priorities. There is a need to communicate the overarching direction and strategies of land management to those involved.
- the lack of knowledge about the system and its performance, and the relative lack of ongoing performance indicators and feedback loops. The significant gaps in information and knowledge must be overcome.
- the lack of appropriate decentralization and devolution opportunities for bands having a relatively smaller number of transactions. These bands, too, must be increasingly involved in land management activities.
- the frustrations and drawbacks being experienced by a number of First Nations in the implementation of RLAP and 53/60. There is a need to address the concerns that have been expressed and documented in this report.
- the stress the system is under, especially the “crisis mode” that several DIAND regions are operating in. There is a need to understand the causes for this crisis mode, and to reinforce a positive working environment for land management.
- the lack of awareness of best practices and lessons learned throughout the system. There is a need for First Nations and DIAND officials to learn from the best practitioners.
- the potential application of best practices and alternative delivery to DIAND’s Land Management Delivery System. In short, there is a need to actively explore alternative delivery opportunities on a test case basis.

Section 9 - Recommendations

It is recommended that the Assistant Deputy Minister, Lands and Trust Services in coordination with Regional Directors General:

- 1. Engage in a process with First Nations to make the objectives of lands management more oriented toward capacity-building and strategy development and implementation:*** In addition to meeting legal obligations and ensuring compliance with laws and regulations, the objectives of land management could encompass capacity building in non-legal areas, primarily for First Nations, and also for DIAND.

For First Nations, capacity building may imply enabling and empowering First Nations, when consent has been given, to take increasing control of the management processes, from planning through to monitoring, relating to lands. With the consent, involvement and participation of First Nations, this could involve for First Nations further capacity building with respect to: land use planning; effective management and monitoring of interests in land; client and tenant relations; revenue management and collections, land management office best practices, etc.

Capacity building: may imply enabling First Nations to be increasingly anticipatory and pro-active with respect to revenue producing opportunities.

Going hand in hand with further devolution, focussed capacity building may imply:

- formalizing the ongoing (and on the job) coaching, consulting, and mentoring roles of DIAND land management officials with respect to First Nation land management offices and personnel;
- building a few partnerships with “state of the art” public and private sector real property entities, in order to allow for workshops, seminars and trainee ship programs with the real property experts of these firms;
- providing a forum for the exchange of views among First Nation land management officials, in order to promote best practices and to reveal lessons learned; and
- providing improved expertise for highly complex and highly promising leasing situations (that is, those non-routine, precedent setting situations where significant advantages can be gained for a First Nation or First Nations).

2. ***Encourage, in partnership with First Nations, a strengthening of the general knowledge and of the results management framework of land management delivery:***

The scope, size and activity levels of the management system should be reliably and accurately reported on a routine basis, for those segments involving both DIAND and First Nations. This potentially includes such aspects as:

- total number of various interests in land by region, First Nation, key sector or category (commercial, agricultural, residential, etc.);
- understanding of the costs relating to program delivery at the DIAND and First Nation levels;
- analysis of cost recovery and revenue recovery performance, including numbers of financially non-performing or non-compliant leases; and,
- potentially, measures of backlogs for both transaction and administrative activities.

For First Nations, self-assessment against state of the art and best practices is part of capacity building. At present, land management officials have only limited tools for determining whether they are doing a good job. There is a requirement for developing indicators and related measures that will enable First Nation and DIAND officers to comfortably self-assess their performance against a credible, widely accepted scale. Approaches involving self-assessment have been implemented in a number of First Nation sectors.

3. ***Improve the design of existing devolutionary programs based on the co-management, delegation, and sectoral self-government models with a view to broaden eligibility and improve their efficacy. In addition, this course of action will enable the department to address the concerns and frustrations of current participating First Nations.***

At present, a large number of First Nations do not qualify for 53/60. Although most First Nations would qualify for RLAP, the amount of funding available is insufficient. There is a need to allow for devolution of land management activity to those First Nations that do not presently qualify, but who have some capacity for self-management in lands. Eligibility criteria must be appropriate for allowing a broader range of participation.

4. ***Address the condition of “crisis management” in DIAND’s land management in headquarters, regions, and First Nations:*** The widespread finding of the interview programs that land management is continually in a crisis mode is troubling in a context of significant challenge and where further change is called for. The crisis management character associated with this function must be diminished, for further change to be positive. Given that the causes of this condition may vary from region to region, the following aspects can potentially be addressed by regions:

- Reconfirm the factual character of crisis management and determine its likely causes in the regional context;
- Develop and apply appropriate workload volume measures;

- Communicate objectives and standards, at the strategic and operating levels;
- Allow for and give due recognition to coaching/mentoring function in lands management;
- Introduce work planning concepts designed to lessen crisis management, including formal prioritization of requirements;
- Improve the toolkits available to officers, including information systems, capable computers, manuals, training, standard forms, etc.; and
- Provide for training that enables land management officers to manage demanding requirements successfully.

5. ***Develop alternative delivery models and implement them as appropriate opportunities arise:*** Despite the significant number of constraints involved, there is potential value in enabling and exploring alternative delivery opportunities. These may involve:

- Devolution of land management responsibilities to entities other than First Nations, with the consent of the First Nations involved: such entities could be tribal councils or development corporations at the band or supra-band level.

Terms of Reference

TERMS OF REFERENCE

THE EVALUATION OF LAND MANAGEMENT PROGRAMS

Purpose: To determine the performance of DIAND's land management programs including the devolution of land management to First Nations.

Background: Indian lands comprise 2366 reserves or 2.7 million hectares of reserve lands across Canada and are managed in accordance with the Indian Act and related legislation. Primary responsibility for the management of land transactions rests with the Lands Directorate of LTS, which processes 10,000 new land transactions annually. In addition, there are some 30,000 transactions in the system, transactions which require on-going administration. Some of these transactions are revenue generating (i.e. leases with third parties for commercial development, industrial projects, agricultural purposes, cottages, residences, natural resources, etc.) and others are non-revenue generating (i.e. transactions between First Nations and members). Transactions administered by DIAND on reserve lands generate over \$30 million annually. These transactions are administered through regional, district and First Nation offices.

New Treaty Land Entitlements (TLE) and Specific Claims initiatives are expected to increase the land base by over one million acres over the next 3 to 5 year period.

An evaluation of land management is needed to assess the effectiveness of these programs in delivering services to First Nations. This evaluation will cover a number of land management programs and activities, including the devolution program. The Treasury Board has directed LTS to put a submission before the committee in March 1996, to renew among other things the delegation authorities under sections 53 and 60 of the *Indian Act*. The submission must address financial alternatives including consideration of cost recovery options and funding formulae. This evaluation will assist LTS in devolving land management to First Nations and in preparing the Treasury Board submission.

While the department is actively pursuing the goals of devolution of control to First Nations, the devolution of land management has lagged behind other initiatives. Only 71 First Nations (12%) participate in either of the existing land management devolution elements:

- 1) administration through the Regional Land Administration Program (RLAP); and
- 2) delegation under Sections 53 and 60 of the *Indian Act*. For 1994-1995, funding of the devolution program was \$2.6 million.

Issues:

Key issues to be addressed include:

1. Are the departmental land management objectives and obligations clear and appropriate?
2. How effectively is the department meeting its land management responsibilities? Does it have adequate resources and structures? What is the potential impact of TLE and specific claims initiatives on this effectiveness?
3. How effective are the land management devolution programs? (i.e., with respect to program design, funding, informatics, training, promotion)
4. What impacts are land management and devolution activities having on First Nations?
5. Are there more cost-effective ways to meet departmental obligations?

Scope:

The evaluation will be national in scope and include an advisory committee composed of representatives from regions, headquarters and First Nations.

Approach:

The study will be conducted under the direction of the Departmental Audit and Evaluation Branch, with advice and assistance from the Lands Directorate and the advisory committee. The research will involve a combination of in-house resources and consultants, including First Nations consultants.

Multiple lines of evidence to assess performance will include:

- file and document reviews, including a statistical analysis
- cost benefit study including costing options
- profiles of regional activity including "best practices" models
- stakeholder interviews (departmental officials, First Nations, provincial and municipal representatives)
- studies of alternative delivery models including comparison studies of other organizations

- impact analysis of TLE and Specific Claims
- focus groups to review issues and alternatives

Schedule: The study will begin in March 1995 and will be completed by December 31, 1995.

Costs: The evaluation budget is estimated to be \$120,000 to be shared equally between DAEB and LTS.

Approved by:

Wendy Porteous
Assistant Deputy Minister
Lands and Trusts Services
March 2, 1995

Action Plan

AUDIT AND EVALUATION / VÉRIFICATION INTERNE ET ÉVALUATION

REQUEST FOR ACTION PLAN / DEMANDE DE PLAN D'ACTION

PROJECT / PROJET : 94/16
DATE SENT / DATE D'ENVOI : 97-04-10
DATE DUE / ÉCHÉANCE : 97-05-26

PAGE : 1 OF / DE : 2

PROJECT TITLE / TITRE DU PROJET : Evaluation of the Lands Management Program

REGION OR BRANCH / RÉGION OU DIRECTION GÉNÉRALE : Lands and Trust Services - Assistant Deputy Minister

(1) RECOMMENDATIONS / RECOMMANDATIONS	(2) REPORT / RAPPORT PAGE NO.	(3) ACTION PLAN / PLAN D'ACTION (If space provided is insufficient please continue on blank sheet. / Si vous manquez d'espace, veuillez continuer sur une page blanche.)	(4) RESPONSIBLE MANAGER / GESTIONNAIRE RESPONSABLE (TITLE / TITRE)	(5) PLANNED COMPLETION DATE / DATE PRÉVUE DE MISE EN OEUVRE
1. It is recommended that the Assistant Deputy Minister, Lands and Trust Services, in coordination with Regional Directors General, engage in a process with First Nations to make the objectives of lands management more oriented toward capacity-building and strategy development and implementation.	18	Establish a dialogue with First Nations and other stakeholders in partnership with regions through a series of "tables" on various topics. This process is expected to result in an action plan which reflects both objectives and initiative to address these objectives.	ADM, Lands & Trust Services Regional Directors General	May 31, 1998
2. It is recommended that the Assistant Deputy Minister, Lands and Trust Services, in coordination with Regional Directors General, encourage, in partnership with First Nations, a strengthening of the general knowledge and of the results management framework of land management delivery.	19	Develop a description of current sector activities and their status including all available performance information as a basis for a dialogue with First Nations. The need for further improvements to system information will be assessed and addressed in the action plan.	Director General, Lands & Environment	May 31, 1998
3. It is recommended that the Assistant Deputy Minister, Lands and Trust Services, in coordination with Regional Directors General, improve the design of existing devolutionary programs based on the co-management, delegation, and sectoral self-government models with a view to broaden eligibility and improve their efficacy. In addition, this course of action will enable the department to address the concerns and frustrations of current participating First Nations.	19	The need for new and improved programs will be assessed as part of the dialogue with First Nation. The possibility of interim responses to First Nation concerns on urgent issues will be considered on a case by case basis in the context of the commitment to dialogue and partnership.	ADM, Lands & Trust Services Regional Directors General	May 31, 1998

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4. It is recommended that the Assistant Deputy Minister, Lands and Trust Services, in coordination with Regional Directors General, address the condition of "crisis management" in DIAND land management in headquarters, regions, and First Nations.	19	The need for operational improvements will be assessed as a part of the dialogue with First Nations. The possibility of interim action to address urgent needs will be considered on a case by case basis in the context of the commitment to dialogue and partnership.	Director General, Lands & Environment	May 31, 1998
5. It is recommended that the Assistant Deputy Minister, Lands and Trust Services, in coordination with Regional Directors General, develop alternative delivery models and implement them as appropriate opportunities arise.	20	The need for alternative service delivery mechanisms will be assessed by First Nations and the department. Any initiatives in this area will be reflected in the action plan which will result from the planned dialogue.	ADM, Lands & Trust Services Regional Directors General	May 31, 1998