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Expanding Commercial Activity on First Nations Land

Lowering the Costs of Doing Business on Reserve

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Table of Contents

Acknowledgements	i
Table of Figures	v
Table of Tables	v
Executive Summary	1
Conclusions	1
Impediments to Successful Developments Identified	2
Introduction	3
Context of Study	4
Policy Environment	4
First Nation Policy Goals	4
National Policy Goals	5
Constraints	5
Policy Conclusion	5
Benefits of Lowering the Costs of Doing Business	5
General Benefits	5
Estimating the Fiscal Benefit	8
New Approach	8
Description of Research Methods	9
The Location of the Four Case Studies	10
How Costs Were Calculated	11
Professional Costs	11
Opportunity Costs	12
Some Notes	13
Case Study Analysis	14
Seymour Creek Indian Reserve No. 2 – The Real Canadian Superstore	14
Project Description	14
Development Initiation/Concept	15
Land Use Planning	16
Land Leasing	17
Financing the Development	18
Service Agreements	20
Construction	20
Overall Assessment	21
Kamloops Indian Reserve No. 1 – Sun Rivers	23
Project Description	23
Development Initiation/Concept	23
Land Use Planning	24
Land Leasing	24
Financing the Development	25
Service Agreements	26
Construction	27
Overall Assessment	27
Siksika Nation Indian Reserve No. 146 – Commercial Development	28
Project Description	28
Project Initiation/Concept	29



Land Use Planning	29
Land Leasing	30
Financing the Development	31
Service Agreements	32
Construction	32
Costs	33
Uashat Indian Reserve No. 27 – Sobey’s	34
Project Description	34
Development Initiation/Concept	34
Land Use Planning	35
Land Leasing	35
Financing the development	36
Service Agreements	37
Construction	37
Overall Assessment	37
Conclusions and Summary of Recommendations	38
Conclusions	38
Identified Problems	41
1. Reluctance of the Crown to take risk	41
3. Lack of Administrative Capacity	42
5. Uncompetitive Infrastructure	43
6. Poor Access to Financing	43
7. High search costs	44
8. Lack of Business Class	44
Recommendations	45
Reduce Search Costs	45
Improve Regulatory Certainty	45
Build Administrative Capacity	46
Develop Competitive Infrastructure	46
Improving Access to Financing	47
Future Projects	47
Short Term	47
Best Practices in Investment Facilitation	47
Costs of Business	48
Costs of Doing Business by Industry	48
Maximizing the potential of Bill C-49	48
Longer Term	49
Project Financing Techniques	49
Enhancing Business Incubation Techniques for Aboriginal Businesses	49
Administrative Best Practices Pilot	49
Appendix A	i
An Anatomy of Land Development on First Nation Land	i
An Anatomy of Land Development Off Reserve	v
Vancouver	vii
Kamloops	viii
Calgary	ix
The Differences between Doing Business On and Off Reserve	ix
Appendix B – The Construction of an Off-Reserve Development Comparable	xi



Appendix C – Summary of Recommendations	xiv
Appendix D – Case Study Questionnaire	xviii
Development Initiation/Concept	xviii
Land Use Planning	xx
Land Leasing	xxii
Financing the Development	xxiv
Service Agreements	xxv
Construction	xxvii
Costs	xxix
Overall Assessment	xxxi



Table of Figures

<i>Comparison of Development Time Frames</i>	2
<i>Figure 1 Imperfect Investment Environment</i>	4
<i>Figure 2 Lower Costs of Doing Business Builds Stronger Healthier Communities</i>	6
<i>Figure 3 Cost of Doing Business</i>	12
<i>Figure 4 Which costs are accounted for? Which costs are not accounted for in this study?</i>	13
<i>Figure 5 Comparison of Timelines – Seymour Creek Indian Reserve No. 2</i>	22
<i>Figure 6 Comparison of Timelines – Sun Rivers and Average</i>	28
<i>Figure 7 Comparison of Timelines – Siksika and Average</i>	33
<i>Figure 8 Comparison of Timelines – Sobeys and Average</i>	38
<i>Figure 9 Total Time Elapsed In Development Approval Processes.</i>	39
<i>Figure 10 The Complicated Maze</i>	39
<i>Figure 11 The Simplified Maze</i>	40
<i>Figure A 12 The Anatomy of On Reserve Land Development</i>	ii
<i>Figure A 13 The DIAND Designation Process</i>	iii
<i>Figure A 14 The DIAND Lease Process</i>	iv
<i>Figure A 15 International Initial Investment Costs Comparison</i>	v
<i>Figure A 16 Anatomy of Major Development in Vancouver</i>	vii
<i>Figure A 17 Anatomy of Major Land Development in Kamloops</i>	viii
<i>Figure A 18 Anatomy of Major Land Development in Calgary</i>	ix
<i>Figure A 19 Timeframe for Land Development On and Off reserve</i>	x
<i>Figure B 20 Construction of Off Reserve Comparable</i>	xiii

Table of Tables

<i>Table 1 Developments on Squamish Band Lands</i>	15
<i>Table 2 Loblaw's Companies Limited Annual Financials</i>	19
<i>Table 3 Expected Time vs. Actual Time</i>	22
<i>Table 4 Time and Cost Estimates – By-laws</i>	27
<i>Table 5 Time and Costs – Expected and Actual</i>	27
<i>Table 6 Project Participants</i>	29
<i>Table 7 Time and Cost = Designation Process</i>	30
<i>Table 8 Siksika Financing Sources</i>	31
<i>Table 9 Summary of Costs - Siksika</i>	33
<i>Table 10 Financial Statement Summary – Sobeys's</i>	36
<i>Table A 11 Location Sensitive Factors</i>	vi

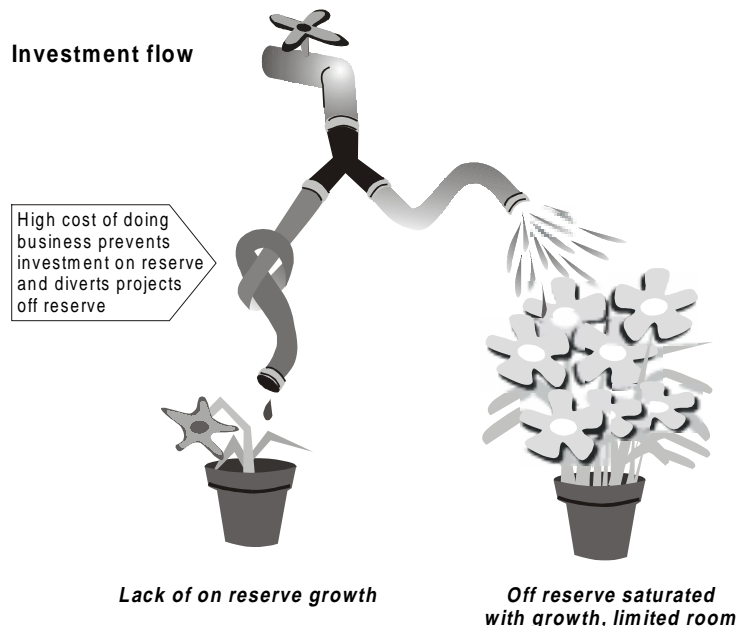


Executive Summary

Opponents of First Nation governments often argue that what they advocate is in the best interests of First Nation persons. The usual argument is that First Nation governments themselves force many people to leave the reserve in order to find opportunity. The implication is that First Nation governments are limiting their prospects and so the solution is to do away with these governments.

This study analyzed investment projects on reserve and compared them to projects off-reserve. It found that *the lack of opportunities on reserve has resulted from the imposed system of First Nation governance, which has artificially raised the costs of doing business far beyond what prevails off-reserve.* It can cost four to six times as much to put together a major investment project on reserve and it takes much longer to take a project from the proposal to operating stages. As a result, even favourably located reserves have low business presence and see potential investment diverted to adjacent jurisdictions even when these alternative locations are less favourably sited.

The study implies that the remedy suggested by critics is wrong. The way to improve the lives of First Nation people is not to do away with First Nation governments - it is to give these governments the powers they need to attract investment and provide opportunities and well being for their people.



The following case studies were analyzed:

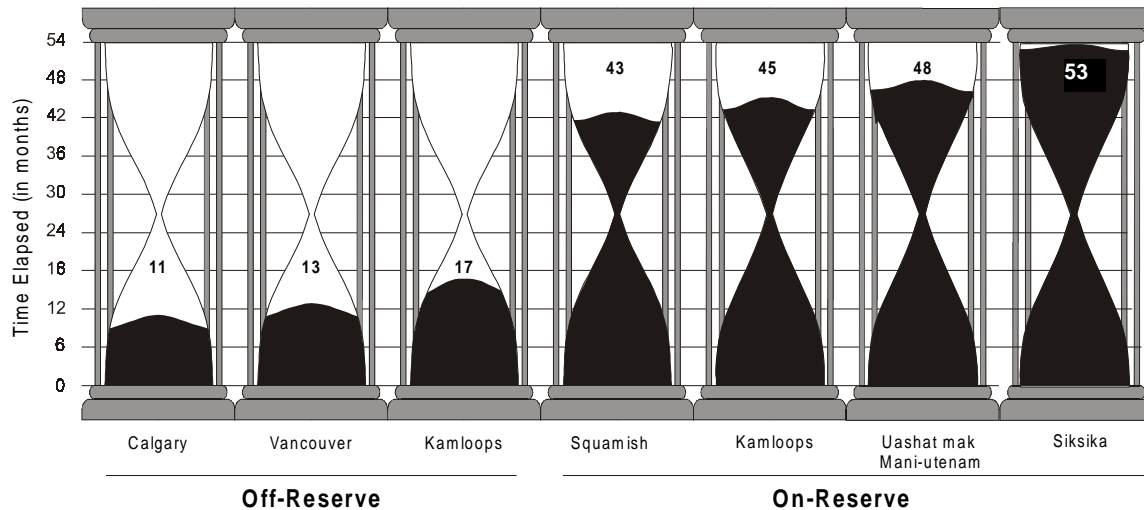
- Real Canadian Superstore at Seymour Creek I.R. No. 2 (near Vancouver, BC);
- Sun Rivers Golf Course and residential development at Kamloops I.R. No. 1 (near Kamloops, BC);
- Mixed use development at Siksika I.R. No. 146 (near Calgary, Alberta); and,
- Sobeys' food store at Uashat I.R. 27 (near Sept-Illes, Quebec).

Conclusions

The time elapsed in completing development approval processes is illustrated in the figure below. Comparisons made include Calgary/Siksika, Vancouver/ Squamish, and Kamloops/Kamloops Shuswap. The time frames loosely matches the professional hours billed with each approval process as well as the foregone revenues associated with longer approval times. The differences were significant enough to deter investors.



Comparison of Development Time Frames



Impediments to Successful Developments Identified

1. **Absence of regulatory harmony, certainty and jurisdictional clarity.** First Nation jurisdiction is not well enough established to allow them to develop the laws and regulations needed to eliminate investment uncertainty.
2. **Incomplete separation of politics and administration.** Because of resource limitations, qualified persons are often called upon to perform both political and administrative roles. This can create a perception of political influence on projects.
3. **Poor access to financing.** The financing problem is twofold. There is a problem financing infrastructure improvements and investors find their financing options more limited. This study found that most on-reserve projects must be financed through retained earnings, which reduces the pool of potential investors.
4. **Noncompetitive infrastructure.** Most large investment projects on First Nation lands have required extensive infrastructure improvements. This creates a First Nation Catch-22. They need the economic spin-offs these projects generate, however without these benefits they cannot afford the infrastructure improvements needed to attract these projects.
5. **Reluctance of the Crown to take risk.** The Department of Indian Affairs has conflicting obligations. On one hand it must improve the welfare of First Nation people. On the other hand the Department must operate within the restrictions of the financial administration act and in an environment of scarce resources. Improving welfare often means crown investment and such investment carries risk, which are difficult to assimilate within the current federal fiscal regime. This problem manifests itself in the negotiation of lease documents and contributes to lengthy delays in approval times.
6. **High search costs.** It is often difficult for developers to obtain the information needed to analyze site suitability when First Nation lands are under consideration. If developers do not know how to search for sites on First Nations lands then even the most attractive First Nation sites will fail to attract investment. There is a pressing requirement for improved land development and statistical information to facilitate the investment process.

Lower costs of doing business with First Nations is in the interests of everyone and will lead to improved First Nation fiscal positions, greater economic opportunities and stronger healthier First Nation communities. Opportunities to lower the costs of doing business with First Nation exist. A number of innovative investment facilitation strategies are being used by First Nations. The ITAB and DIAND have already begun their next partnered research project to identify and communicate these best practices to all First Nations.



Introduction

Gathering Strength, the federal government's response to RCAP, committed the federal government to strengthening aboriginal governance, developing a new fiscal relationship for First Nations and supporting strong communities, economies and people. *Gathering Strength* also recognized the interdependence of many of these goals.

This study supports the agenda outlined in RCAP and *Gathering Strength*. It was inspired by a considerable body of anecdotal evidence that suggests there are large barriers to investing on First Nation lands. Specifically, this anecdotal evidence suggested:

1. Investments on First Nation lands are subject to a higher level of uncertainty at every stage of the approval process.
2. It is more difficult to acquire the necessary information needed to make investment decisions.
3. It takes much longer to get final approvals for major investment projects.
4. The total legal, engineering and consulting fees associated with investment projects are much higher on-reserve than off. By some accounts the total professional costs incurred in investment projects have been as much as six times higher on-reserve than off.
5. The costs imposed by investment projects on both First Nation administrative infrastructures and developers are high.

This anecdotal evidence bore further investigation and this study found it to be for the most part accurate. This corroboration has strong implications. First, it implies that higher costs of doing business on reserves have caused a diversion of investment towards other locations. It explains why low economic activity plagues even favourably located reserves. The diversion of investment has caused other problems as well: difficulties in developing First Nation entrepreneurs; less experience in developing business friendly administrations; reduced effectiveness of economic development initiatives aimed at First Nations; and poor incentives for accountability (this is discussed in the text box entitled, "*Market Forces and Accountability*").

Simply put, high costs of doing business are to economic development what poor soil is to agriculture. If the soil is infertile then the best efforts at plowing, planting and watering will be wasted. This study shows that the first step in improving First Nation economies and all the social ills that result from that economic weakness is to reduce the costs of doing business. This supports all other social and economic policy goals.

The study identifies specific reasons for high costs and offers some suggestions for reducing them. Finally it suggests some further research that will further support this cost cutting agenda.



Context of Study

Policy Environment

First Nation Policy Goals

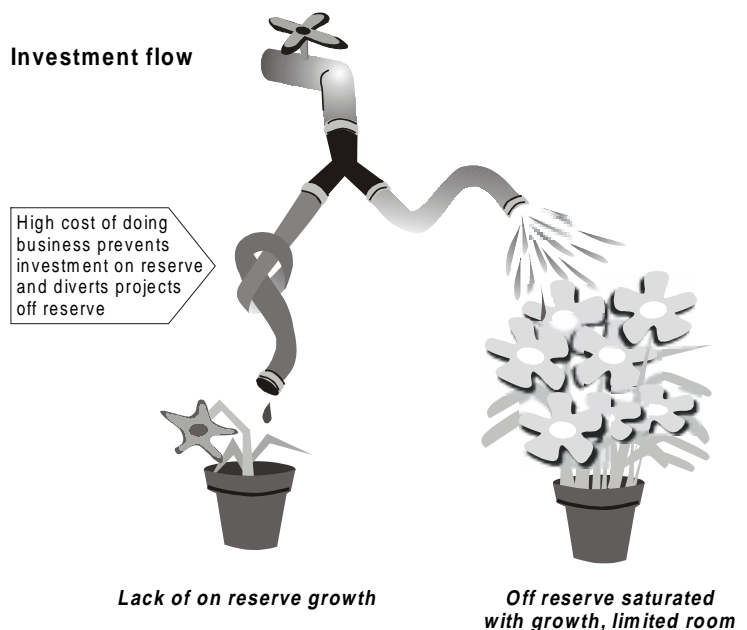
First Nation policy goals were outlined in the Royal Commission on Aboriginal Peoples (RCAP). The federal government committed itself in *Gathering Strength* to further developing self-government and providing First Nations with a new fiscal relationship. *Gathering Strength* also reiterated the federal desire to develop First Nation economies. Clearly, the intention of *Gathering Strength* is to provide First Nations with greater autonomy and correct the poor living conditions on reserves in Canada.

How On-Reserve Individuals Rank in the World		
Human Development Index ranking	Life Expectancy at birth (years)	Per Capita Income
1. Canada	77.2	\$19,320
35. Trinidad and Tobago	70.9	\$8,380
62. United Arab Emirates	70.8	\$7,000
On-Reserve Natives	67.6	\$6,542

Some urgency is added to this goal by some observations about First Nation demographics. These imply that the scale of the social problems created by underdeveloped reserve economies will grow markedly if not checked soon. First Nation populations are the fastest growing in Canada and have been for some time. Their share of the Canadian labour force is expected to triple over the next twenty years. If their economies do not improve there will be increases in Canada's rate of unemployment, downward pressure on productivity, upward pressure on the social expenditures associated with poverty and large scale migration from reserves onto provincial social assistance programs.

Figure 1 Imperfect Investment Environment

The key problem is that rates of business investment on reserves are well below those in the rest of the country. It is low even with First Nations who have strategically located reserves. For example, in the Fraser Valley and Lower Mainland of British Columbia virtually all the available land outside of reserves has been developed. However despite these pressures, Fiscal Realities has found that fully 81 per cent of the developable First Nation land in these areas is not developed. RCAP confirmed that similar results hold for First Nation lands across the country.



Several case studies prepared for the RCAP described how there were no linkages between aboriginal and non-aboriginal economies. Even though the aboriginal communities were contributing substantial amounts to the local non-aboriginal economy there appeared to be little investment on reserve (RCAP Volume 2, page 847). In some cases, adjacent jurisdictions appear to be competing for tax revenue and on reserve sites are viewed as an unwelcome competitive threat.

National Policy Goals

The federal government wishes to improve Canadian productivity performance in order to maintain standards of living and ensure the sustainability of social programs. Income growth over the last twenty years has been relatively flat and the principle reason is slow productivity growth. If this trend continues over the next twenty years, Canadian living standards will decline and major changes will be required in Canada's social programs. The reason is that the status quo will not be sustainable because of strong growth in the proportion of retirees in our population. The rapid growth of the First Nation share of the labour force over this same period will make productivity improvement much more difficult unless First Nation economies are improved.

Constraints

Clearly, the federal government can serve multiple policy goals if new self-government arrangements also improve conditions for economic growth. However, pursuit of this objective is subject to some constraints. For example, there is a fairly strong public consensus that economic development initiatives should not include business subsidies. Critics argue that in the absence of other considerations such as first mover advantages in technology industries, these subsidies simply skew investment decisions from one site to another. Second, despite marked improvement in its fiscal situation, there are limitations on federal spending.

Policy Conclusion

The policy environment points towards a simple conclusion. If business investment on First Nation lands can be improved, First Nation economies will improve. This will improve the living conditions of First Nation people and help avert the social strains implied by First Nation population growth. Improving business investment will also support the federal government's goals of improving Canadian productivity and living standards and ensuring Canada's social programs can withstand the fiscal challenge of an aging society.

Benefits of Lowering the Costs of Doing Business

General Benefits

The general benefits of lowering costs of doing business on reserve are as follows:

- More opportunities to invest on First Nation lands.
- Enhanced effectiveness of other First Nation economic development initiatives.
- Supports the development of entrepreneurs and a First Nation business class.
- A higher rate of GDP growth in Canada.



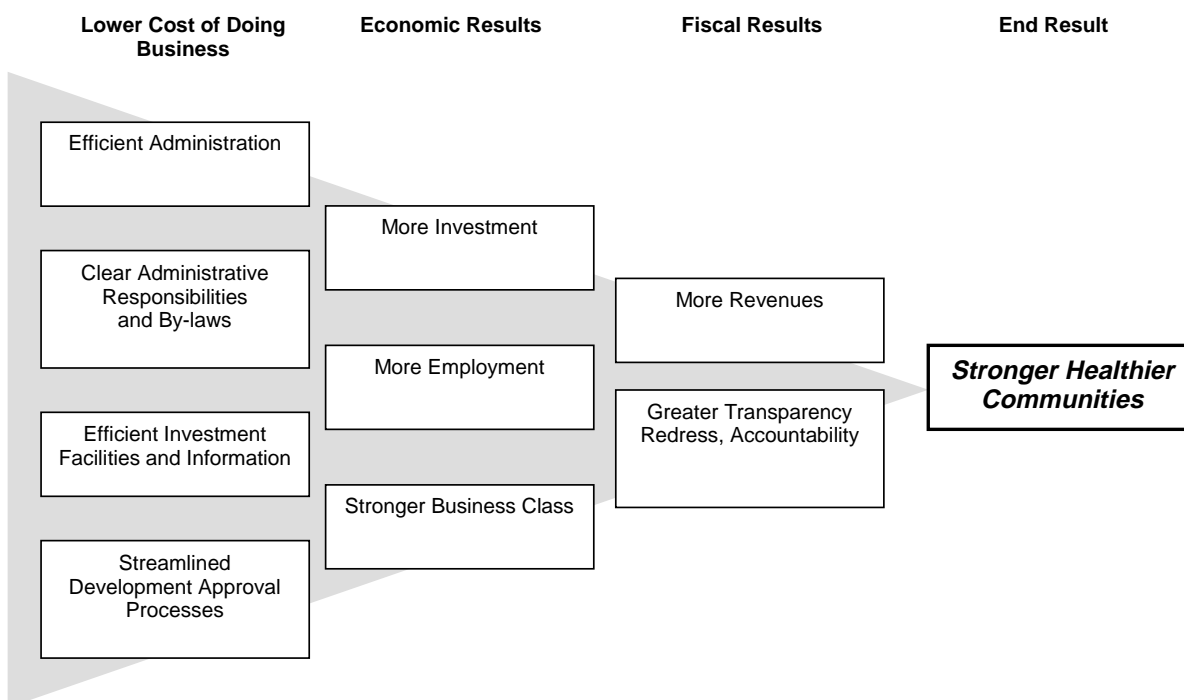
- More jobs and higher personal and community incomes on reserves.
- Lower social assistance dependency on reserves.
- Greater incentives for First Nations to develop more responsive, accountable government.
- A lower rate of unemployment for Canada and improved productivity performance.
- Reduced fiscal and social strain from an aging society.

Lowering the cost of doing business will also support the commitment made in *Gathering Strength* to develop a new fiscal relationship and self-government. Lowering the costs of doing business generates the following benefits specific to these initiatives:

- Greater capacity by First Nations to assume program responsibilities.
- New business opportunities will develop financial management and project development skills.
- The political climate for self-government is enhanced by a demonstration of the economic benefits.

The picture below summarizes the effect of lowering the costs of doing business on the economic and fiscal objectives of *Gathering Strength*. It starts from the premise that the costs of doing business are lowest with an efficient investor-friendly administration. Such a regime is characterized by clear rules and by-laws, transparent service responsibilities and decision-making processes, reliable and timely land development and statistical information, and a streamlined development approval process. Such a regime generates employment, business opportunities and a business class. This results in a stronger revenue base and broader support for government policies that attract investment. The end result is a stronger, healthier First Nation community that is comprised of more economically advantaged citizens better able to contribute to the social infrastructure of the country.

Figure 2 Lower Costs of Doing Business Builds Stronger Healthier Communities



There is one important caveat. Reducing the costs of doing business on reserve will create necessary, but not sufficient, conditions for economic development. Other factors may still need to be addressed. For example, many reserves are poorly located and lack natural resources, while others have poor infrastructure and low levels of educational attainment and work experience. However, initiatives aimed at these deficiencies will work much better if the costs of doing business are lowered.

Market Forces and Accountability

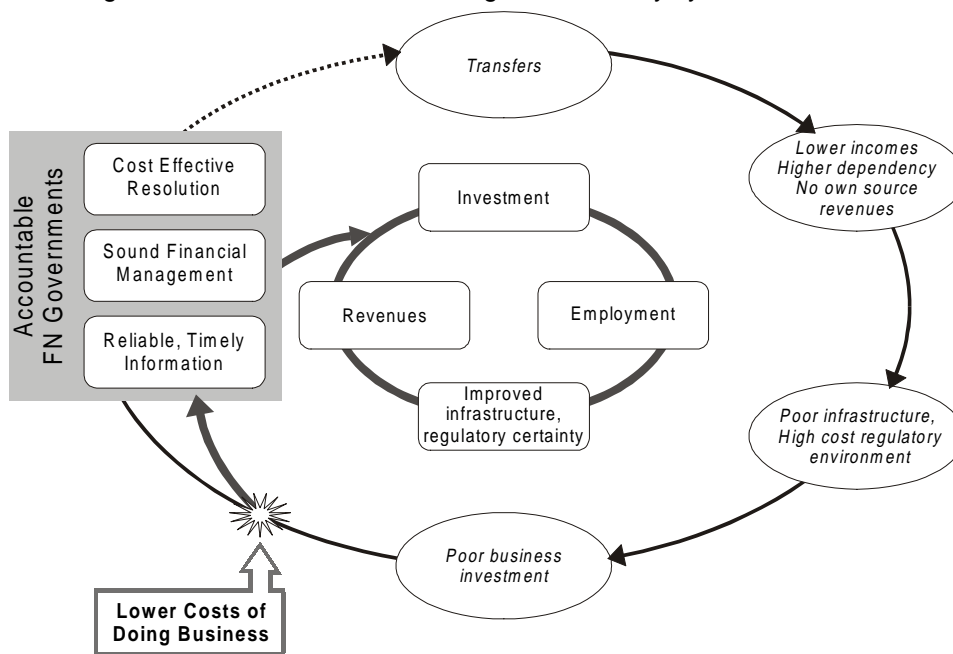
Maintaining accountability is often viewed as properly establishing the financial controls and reporting requirements by which governments are held accountable by law. Financial controls are only one of the elements of the whole accountability regime. Accountability is ultimately a function of the total system of government and the relationship it establishes with its citizens. For example, it depends on the ability of citizens to understand what level of government is responsible for providing *or financing* what particular service. It also depends on incentives.

In the case of First Nations, the accountability regime is weakened because it is difficult for citizens to determine final responsibilities. Disputes between the federal and provincial governments about complex financial arrangements have made it difficult for citizens to even determine where final responsibilities lie. This study does not really address that issue - its resolution must await the re-specification of the Canadian fiscal framework as it pertains to First Nations. That is an issue of designing the appropriate fiscal relationship.

However, this study does address incentives. The First Nation accountability regime is weakened in direct proportion to the extent that First Nations are handicapped in the pursuit of investment opportunities. This incentive is addressed directly through this study.

A brief explanation is in order. When jurisdictions compete for investment, they essentially provide assurances that they will provide good quality services relative to tax rates. Investors will be reluctant to put their money at risk in any jurisdiction where this does not hold. The reassurance that investors require is a good track record, readily understandable and accessible financial reporting, clear rules and processes for decision making and commitments that are enhanced through a jurisdiction's own policies and laws and even performance measures. However, if jurisdictions are unable to compete for investment, then these incentives are correspondingly reduced.

By removing the barriers so First Nations can compete for investment, First Nations can jump off the dependency cycle they are now in. Competing for investment will provide more incentives for accountable First Nation government. This self-enforcing accountability cycle is illustrated below:



Estimating the Fiscal Benefit

Fiscal Realities has done rough calculations of the fiscal impacts of improving First Nation economies. These show that *if* a convergence of First Nation income and employment levels to the Canadian average could be brought about over the next sixteen years, a gross *fiscal* benefit of roughly \$85 billion would be created. It bears repeating that this is simply the fiscal portion of the benefit, or more simply the impact on government balance sheets. The total economic impact, which is what people actually experience, would be much greater. Furthermore, this estimate of the fiscal benefit is a conservative one. It is based on the assumption that First Nations will assume no further tax jurisdiction over this time frame. It assumes that little of the additional activity generated will benefit the rest of the Canadian economy. If First Nations do assume additional jurisdiction and there is substantial spillover of benefit, then the fiscal benefits of improving the First Nation economy become much larger.

This demonstrates that a strategy for improving First Nation economies is more than social policy aimed at helping the disadvantaged. It must be a fundamental element of any strategy for improving Canadian productivity and ensuring the sustainability of social programs. The improvement of First Nation economies should not come at a cost to other Canadians but instead contribute to improving living standards and provide new business opportunities.

New Approach

Improving First Nation economies should be a national policy imperative. However, there is little public appetite for using large public expenditures to bring this about. The public is suspicious of spending aimed exclusively at one group no matter how disadvantaged and it is skeptical of traditional economic development initiatives – business subsidies and loan guarantees. Regional development initiatives have had a very mixed record of success and critics argue that they simply distort investment away from its highest valued return and thus destroy rather than create wealth.

This paper recognizes these criticisms and starts from a different premise – First Nation economies have not performed well because market forces have not been able to operate properly on First Nation lands. The fundamental reason is that the regulatory regime and decision making structure governing First Nation lands has artificially raised the costs of doing business. As a result, investment has been skewed from First Nations towards lower valued returns. A strategy that reduces business costs will therefore do the opposite of what critics fear. It will raise the returns from investment on reserve, make markets operate more efficiently and create business opportunities and wealth for the whole country.

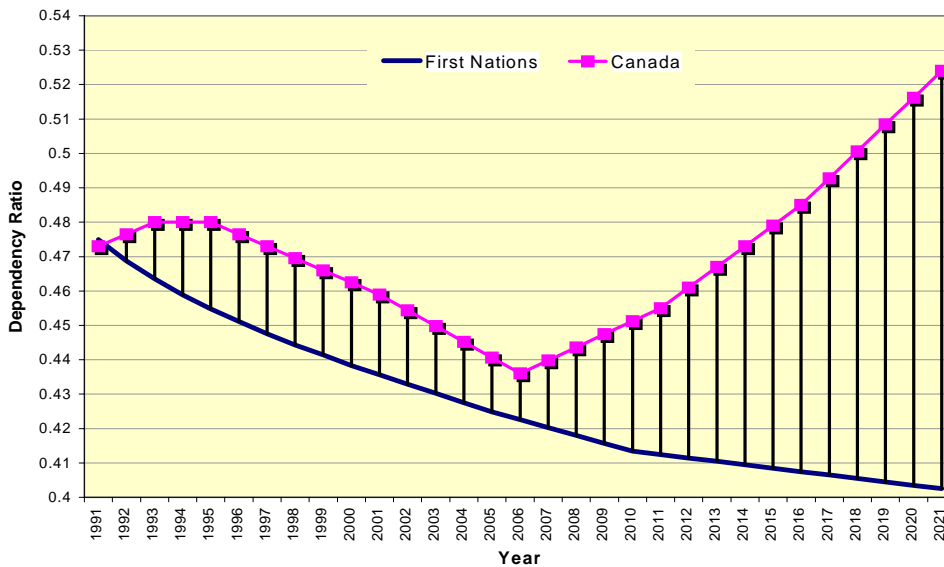
An Opportunity to Reduce the Costs of Doing Business

The *Indian Act* forms the basis of the current regulatory regime that affects Indian Reserves. It places decision making power and a fiduciary responsibility over reserve lands into the hands of the Minister of Indian Affairs. This has created an enormously complex job for the Department of Indian Affairs because there are over 600 First Nations in Canada. This enormous responsibility prevents timely responses to economic development proposals and does not provide incentives for First Nations to develop their own administrative infrastructure.

This situation is improving. The recent passage of Bill C-49, *An Act respecting the ratification and implementation of the Framework Agreement on First Nation Land Management* will help address some of the problems. This Act allows First Nations more direct control over the management of their reserve lands. However, this addresses only one aspect of the total regulatory regime. Certainly, further research should be conducted into how all aspects of this regime can be improved and how individual First Nations and the Land Advisory Board might act to reduce the costs of doing business.



**Dependency Ratio Projections
Canada vs. First Nations**



Data Sources: Statistics Canada 91-537, DIAND population projections.

The Opportunity to Improve the Fiscal Relationship

A dependency ratio is the population between the ages of 15-64 divided by the total population. Over the next 10 years the Canadian dependency ratio will be falling. Barring a severe economic downturn, this will be a period of rising federal government budget surpluses.

In 10 years time Canadian dependency ratios will begin to rise sharply because of increases in the number of retirees. By 2016, there will be 24 retirees for every 100 workers, compared to 18 today. Therefore, productivity must rise by roughly 25% to avoid a reduction in living standards.

At the same time, the First Nations' share of this work force will double. First Nation dependency ratios will decline sharply throughout this time period. However, First Nations are characterized by lower incomes and higher rates of social dependency than is Canada as a whole. This suggests that the increase in Canadian dependency ratios alone understates the real fiscal pressure Canadians will face in the future. It does not account for the increase in the costs of First Nation under-utilization implied by demographic trends.

If economic conditions for First Nations do not improve then productivity improvements required by other workers will have to be correspondingly higher. If they do not improve sufficiently then declines in the quality of social services and living standards will happen for all Canadians.

Description of Research Methods

This report uses case studies of completed or “in-progress” residential and/or commercial projects to evaluate the costs associated with the regulatory and consultative processes in First Nation land development. Because of the difficulties and confidentiality issues raised in determining professional fees and hours associated with specific projects, the time spent in completing each component of a land development deal is used as a proxy for professional costs. Time is also used to estimate the opportunity costs associated with project delays.

There are no industry standards for the costs associated with the various components of land development. In general, assuming community interests and regulatory safeguards are met, the shorter the time frame for finishing each component of a land deal, the lower the costs and the greater the net benefit produced. Also, in general the shorter the time to proceed from concept to construction the lower the opportunity costs and the greater the net benefit.



To provide benchmarking, comparisons will be made to off-reserve land developments. Where this is not possible, careful attention will be paid during case study interviews to identifying the frustrating aspects of First Nation land development. Four First Nation case studies were selected.

- Real Canadian Superstore at Seymour Creek I.R. No. 2, a Squamish Nation reserve in North Vancouver, British Columbia.
- Sun Rivers golf course and residential development at Kamloops I.R. No. 1, a Kamloops Indian Band reserve in Kamloops, British Columbia.
- Mixed use development (commercial/office) at Siksika I.R. No. 146, a Siksika Nation reserve near Calgary, Alberta. and,
- Sobeys Food Store at Uashat I.R. No. 27, an Innu First Nation located at Uashat mak Mani-Utenam in Sept-Iles, Quebec.

People involved in all aspects of these deals were interviewed. People representing both sides of the deal were also interviewed.

The Location of the Four Case Studies

These case studies are not typical First Nation communities but presented a good opportunity to disprove the theory that the costs of doing business on reserve are high. The First Nations discussed in the case studies have favourably located reserves and a history of active management of their land and resources. All have developed additional capacity and sophistication in terms of the administration from their experience with all aspects of major commercial and/or residential developments. All of the projects have been completed or are under construction.

Some other similar characteristics include.

- All were located on First Nation lands and required a designation.
- All required infrastructure to be upgraded.
- In three cases, the developer had a proven track record off-reserve and significant financial capacity.
- In all cases there was little doubt that if completed, the project would be economically viable.

Despite the success of the projects, evidence emerged suggesting the deals were difficult to put together. This included.

- A reluctance by the Crown to take risk. This protracted negotiations and increased the time to completion.
- A requirement in some cases that cash flows from other projects be used to guarantee financing for infrastructure improvements.
- A desire by the adjacent local authority to exert control over the reserve development through the application of their by-laws.
- A lack of regulatory certainty or in some cases the need to draft new regulations.
- A lack of suitable precedent documents.



The guideline used for each interview is attached in an appendix. Interviewees were asked to review the anatomy and cost estimates associated with their projects. They were also asked to suggest changes in policy that might reduce costs.

How Costs Were Calculated

Two types of cost were calculated. The professional costs incurred in putting a development deal together, and the opportunity costs incurred by delays in putting a deal together. In both cases, time is used as a proxy for costs and simply benchmarked against time spent in similar functions in off-reserve deals. Total costs were not really calculated, as there was no common unit of measure. However, the difference between costs on and off-reserve is loosely proxied by the sum of the difference in total time spent on all components of a deal AND the difference in average time that elapses from initiation to completion of a deal.

Professional Costs

The guideline identified six components to a land development deal. These roughly correspond to the anatomy of land development on and off reserve and are listed below. The time from start to finish was used as a proxy for the cost of each component. Interviewees were reluctant to have their confidentiality compromised by revealing actual professional time utilized and billing rates.

- **Project Initiation/Concept** – This is the initial phase of the project where the developer or community leaders pitch the idea to the community. It also includes the community performing due diligence on the developer and conducting economic and financial feasibility studies.
- **Land Use Planning and Community Processes** – This is the process the community uses to zone or designate the land for the particular type of development.
- **Land Leasing** – This is the development of the actual land lease agreement between the developer and the community, or the certificate of possession holder. It includes all the standard elements of a lease agreement and features unique to a First Nation context, such as employment policies or guarantees about tax rates.
- **Financing** – This refers to determining the proper method of financing and finalizing the commitment of all participating parties.
- **Infrastructure Development and Services** – Most significant projects on reserve require upgrading the existing physical infrastructure, building new infrastructure or obtaining access to the services and infrastructure in other jurisdictions. This component includes everything necessary to guarantee that sufficient infrastructure and services will be in place.
- **Construction** – This is probably the most heavily regulated of all components. It includes all the regulations associated with getting the project ready for use such as building standards, development approval processes, and risk, heritage and environmental assessments.

Each section of the case study questionnaire guide attempted to detail how much time was spent on each element of the development process. It also attempted to determine who spent this time.

Time is a proxy for costs. It is simply a measure of the professional time spent in persuading all parties with an interest in the deal to come to terms, developing regulations if necessary and complying with regulation.

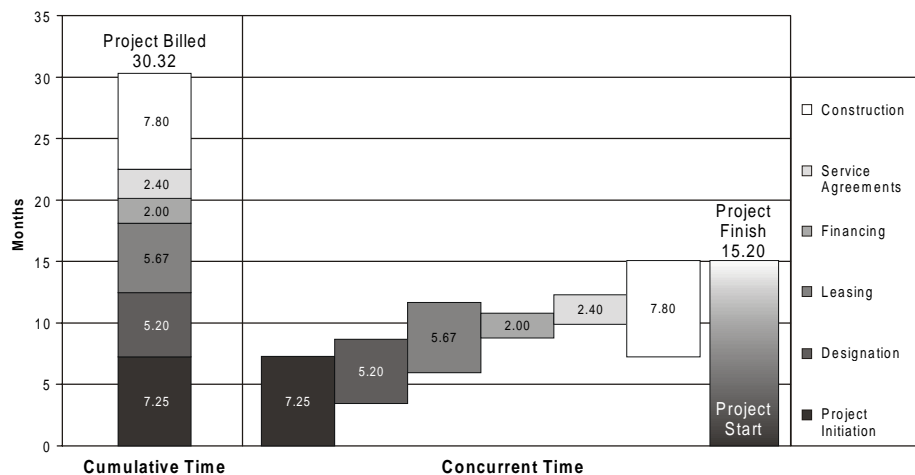


Opportunity Costs

Opportunity costs refer to the costs incurred by developer and First Nation alike during the period between the project's first conception and the beginning of its operational life. In general, the longer this period, the higher are the associated opportunity costs. This study assumes a direct linear relationship between the time needed to bring an operation to life and total opportunity cost. It therefore estimates the opportunity cost based on the amount of time that elapses between the initial project proposal and final approval. This is a crude assumption but sufficient for the purposes of this study.

- Opportunity costs cannot be calculated by simply summing all the time incurred in the components of a deal that are listed above. That would assume that deals proceed in stages, with each one occurring upon completion of the previous one. In fact, many of these elements proceed concurrently or overlap substantially. They certainly do not follow a neat sequential order as illustrated in Figure 3.

Figure 3 Cost of Doing Business



Opportunity costs borne by the First Nation can include.

- Lost lease revenue.
- Lost property tax revenue.
- Lost employment benefits.
- Lost cost savings to members (ie GST savings).
- Lost residual infrastructure benefits that may reduce the cost of future development on the reserve.
- Lost reduction in social assistance of membership.
- Lost opportunity for future development on reserve if the experience is sufficiently negative to eliminate any interest for exploring future project possibilities.

A developer also bears opportunity costs if a project is delayed or not completed.

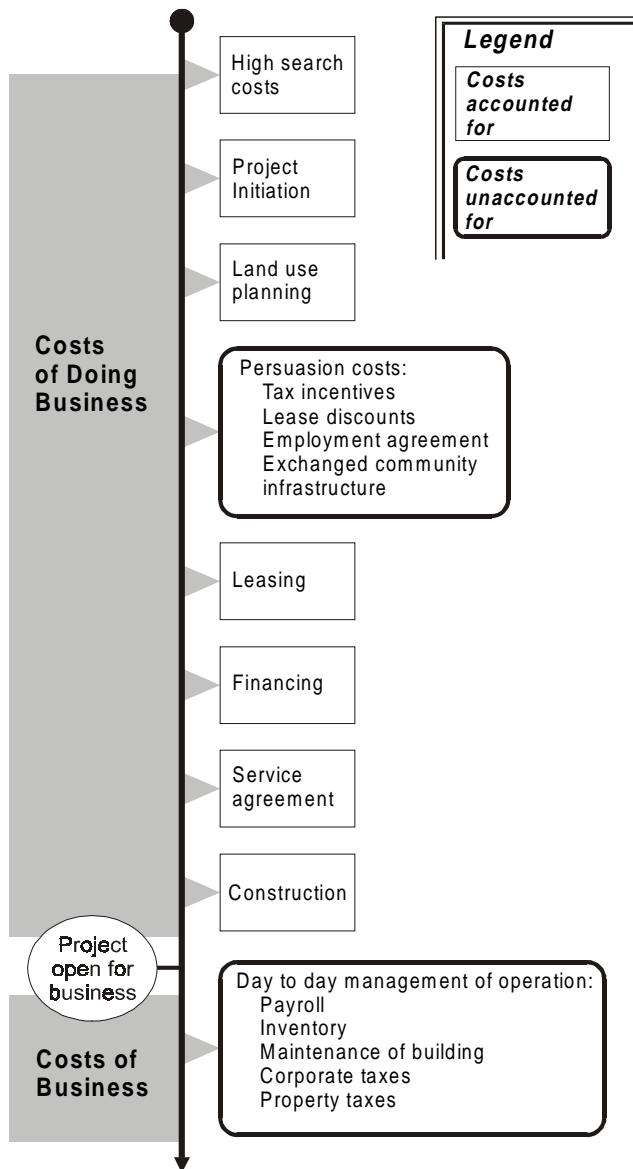
- Lost interest on financing during the delay
- Lost profit from operations of the project during the delay.
- Lost profitability over the life of the project if the delay caused a competitive development to become viable.
- Lost opportunity for future development on reserve if the experience is sufficiently negative to eliminate any interest for exploring future project possibilities.



Some Notes

The study focuses on the “costs of *doing* business” and not the “costs of business”. For example, it does not consider whether transportation costs are higher because of a remote location or whether labour costs are cheaper because of high unemployment and the possibility of making exempt earnings on reserve. As a rule of thumb it only assesses costs that are a function of the system of government and property rights prevailing on First Nation lands.

Figure 4 Which costs are accounted for? Which costs are not accounted for in this study?



Some aspects of “persuasion” costs are clearly not estimated by time but are worth mentioning nonetheless. These include the costs of: tax incentives and lease discounts, employment agreements, and enhanced community infrastructure for First Nation citizens. Time will be a biased proxy for differences in costs in direct relation to the extent that these types of cost tend to differ between First Nation and municipal deals.

This study does not properly account for differences in risk between on and off-reserve projects. However, this is a real cost since higher risk at any step in a deals development will reduce the possibility of a deal going forward and may impact financing arrangements. The cost of risk would be best measured as the value of projects which developers choose not to pursue because of differences in the degree of uncertainty between First Nation and municipal approval processes. This study identifies sources of risk, however no really accurate measure of its effect on investment is possible. Since only success stories were used, we have no estimate of how many projects did not go forward because First Nation processes are viewed as inherently risky.

This case study approach cannot accurately identify all incremental costs associated with doing business on First Nation lands. It is likely that some costs will be significantly underestimated. Again the problem is that we have focused only on success stories, and success stories will tend to be those cases where costs were already lower than average. This study cannot identify those cases where the costs of doing business were deemed to be so high at first blush that no proposal ever went forward.



This study provides estimates of comparative costs of doing a deal only after a prospective site has been identified. If, as seems likely, it is substantially more costly to identify a feasible site on First Nation lands than off, then this would further add to the total costs of doing business. Our estimates of the difference in the cost of doing business on reserve will tend to be underestimated because of this.

- There is one note of caution regarding the interpretation of each specific component cost. Some components of a deal on-reserve are not strictly comparable to their corresponding off-reserve components. For example, it is more difficult to draw a line between strictly commercial negotiations and the development approval process on-reserve than it is off-reserve. This is because many First Nation governments perform both public and private functions relative to business practices off-reserve. Lowering the costs of doing business with First Nations will make them more competitive.

Case Study Analysis

Seymour Creek Indian Reserve No. 2 – The Real Canadian Superstore

Project Description

This case study will examine the Real Canadian Superstore that is located on Seymour Creek Indian Reserve (I.R.) No. 2, one of twenty-three reserves that are held by the Crown for the sole benefit and use of the Squamish Nation membership. The Real Canadian Superstore is operated by Westfair Foods Ltd. (“Westfair”), a subsidiary of Loblaw Companies Ltd. The building comprises approximately 115,000 square feet on approximately 8 acres of I.R. No. 2.

The Squamish Nation (“Squamish”) is comprised of approximately 3,000 members, two thirds of which live on one of the reserves. These reserves are located on the North Shore of Vancouver, the Howe Sound and the Squamish Valley. Seymour Creek I.R. No. 2 is located on the North Shore in close proximity to downtown Vancouver and is adjacent to the District of North Vancouver.

The Squamish people have always had a strong link to the land and resources; they have sustained their culture for many generations within an area that includes the Howe Sound, the Squamish Valley, the North Shore, and Vancouver. Their concern about the land and resources available to sustain future generations of Squamish people led them to amalgamate into one political entity in 1923.

Sixteen villages of Squamish people sharing a common language and culture amalgamated into the Squamish Indian Band. This action was meant to recognize the collective entitlement of the Squamish people to the land as well as to protect the land base against further erosion through alienation. The mission statement of the Squamish Nation Council and Administration is: “Protect the amalgamation and enhance the Squamish Nation culture, values, and traditions through respect, equality and harmony for all.”

The rapid growth of Vancouver as an urban centre has presented challenges to the Squamish Nation Council and membership. The strategic location of Squamish Nation reserves near Vancouver has meant that there has been increasing demand for development that has challenged the Squamish Nation Council and administration to adapt rapidly and develop additional capacity in terms of their ability to respond to development proposals. The council and administration continue to meet this challenge and to work with different companies and institutions, native and non-native, to try to generate benefits for their membership.



The Superstore is an excellent example of how the Squamish Nation Council and administration have provided benefits to their membership albeit not the only one. Additional examples are included in the table below:

Table 1 Developments on Squamish Band Lands

Seymour Creek I.R. No. 2	Capilano I.R. No. 5	Stawamus I.R. No. 24
<ul style="list-style-type: none"> ◆ Seymour Creek Golf Centre ◆ Lynnwood Marina ◆ Real Canadian Superstore 	<ul style="list-style-type: none"> ◆ Park Royal Shopping Centre ◆ Park Royal Towers ◆ International Plaza ◆ Squamish Nation Rec. Centre 	<ul style="list-style-type: none"> ◆ Totem Hall

Development Initiation/Concept

In selecting the site at Seymour Creek I.R. No. 2 for this project, the same criteria were consistently noted by interview respondents and reports. Proximity to markets was probably the most important criteria. The site is in close proximity to all three municipalities on the North Shore. There is excellent access to major transportation routes from Seymour Creek I.R. No. 2 as the reserve is bisected by the Trans-Canada Highway and in close proximity to the Second Narrows Bridge. The site where the Superstore now stands was one of the largest undeveloped pieces of land on the easterly portion of North Vancouver at the time of the proposal. The eight-acre site drew the attention of both the Superstore and of Costco.

The local zoning laws were also a key attribute of the property that attracted Westfair Foods Ltd. While there was a zoning bylaw in place on Seymour Creek I.R. No. 2, the process for amending the bylaw was not as onerous when compared to land in the adjacent District of North Vancouver. The fact that the reserve was already designated for commercial use also made it attractive to Westfair. This lack of zoning restrictions on the Seymour Reserve allowed the Superstore to benefit from the site’s excellent location.

A third important criterion for selecting the site was competition. Westfair did not have a large presence on the North Shore and they wished to increase their market share. Their competitors in the grocery business had a significant share of the market on the North Shore and Westfair felt that they would be able to win some of that market share.

Initial conversations between Westfair and the Squamish Nation were to determine whether Squamish was prepared to develop any portions of Seymour Creek I.R. No. 2. After an initial proposal was sent via letter to the administration office, the Squamish Nation Council carefully considered whether this would be an appropriate use for the land. As there had been interest from other parties for the site, the Council took some time to determine what the best use of the land might be.

While there was no specific monetary value placed on the initial Westfair proposal, the Squamish Nation had begun to examine the value of the site. The Band Council had the site appraised to estimate not only the value of rents that could be achieved, but also examined other benefits that might accrue to the Squamish Nation and its members from the development of the site. These benefits included employment income to band members, tax savings to band members, and property taxes payable to the Squamish Nation.

This value was based on the assumption that the site would be available for development within six to twelve months and that the lease would have a term of at least 40 years. Competition and timeliness were



viewed as critical factors to this development at the outset. It was thought that if an alternative site were to be developed with either Westfair or one of their competitors as a tenant, the Seymour Creek site would lose some of its value. Although the project took longer than expected, both the Squamish Nation and Westfair remained committed to the site and the project. The dedication to the project from both sides allowed the Superstore to come to fruition.

The adjacent local authority, the District of North Vancouver, had not expressed a desire to attract 'big box' retail uses to land within their jurisdiction. They had limited ability to affect the development on the Seymour Reserve though, and could have viewed the Superstore as a better use than the firm selling topsoil and fill that was using the site previously. Big box retail was likely viewed by the District of North Vancouver Council as a better use than a casino, an issue that was being considered by the provincial government at the outset of these negotiations.

Westfair Foods Ltd. and Westfair Properties Ltd., the real estate agent for the food store, are subsidiaries of Loblaw Companies Ltd. They operate the Real Canadian Superstore throughout western Canada and have previous experience in development on reserve land in British Columbia. There are Real Canadian Superstores on reserve land in Campbell River, Westbank, and Duncan (Cowichan Valley). It should be noted that while these developments are on reserve, the negotiations for them were substantially different than the negotiations for the store at Seymour Creek I.R. No. 2.

In Campbell River, the key contact between Westfair and the band has been a developer. Westfair has not dealt directly with the Band Council in the same manner it did with Squamish Band Council. In Duncan, there is a similar case where a developer has interfaced between the band and Westfair. In Westbank, the development is located on CP lands therefore Westfair negotiated with a locatee, not Band Council.

The Economic Development committee, consisting of Squamish band councillors and members of the administration took the lead on the project. The team had varying levels of previous experience in terms of lease negotiations, service negotiations, rent reviews, construction, and environmental issues. The Director of Finance for the Squamish Nation managed the project on a day to day basis.

It took approximately twenty-four months from the initial meetings until an agreement in principle was drafted to be presented to Squamish Nation Council. During this time, the Squamish Nation was covering their own costs. The community and developer expected the process to take approximately six months, but the careful consideration that the Squamish Nation Council exercised in reviewing the proposal pushed back the start of negotiations on commercial terms. Once the decision was made to pursue development on the site, the movement towards an agreement in principle proceeded according to expectation.

Land Use Planning

The subject property is defined as First Nation or Band Lands under the terms of the *Indian Act*. Being Band Lands, the site had to be designated before it could be leased. The designation process is meant to ensure that the Crown's fiduciary duty to the Band's membership is protected and that the Band members best interests are protected.

Considerable consultation with the community regarding their wishes for land use had been recently completed. The community consultation process, conducted by UMA Engineering and Squamish Nation Council with the membership, had provided feedback that supported development of the site. In addition, the majority of the land required for the project had been designated previously so there was a strong mandate from the Squamish people to develop this area.



Portions of the site had to be assembled through the acquisition of interests from BC Hydro and the Ministry of Transport and Highways (MOTH). BC Hydro had a right of way through the reserve and MOTH had an interest that was required for access and egress from the site. These portions were not previously designated and although they comprised a relatively small percentage of the total site and there was a strong mandate from membership for development, a designation was still required. A designation vote allowed band membership to provide strong support for the development of the site with 94% approval.

Land Leasing

The eight-acre site has a complex leasing arrangement including two head leases and a sublease. The Squamish Nation formed a holding company called Stitsma Holdings Ltd. that entered into headlease agreements with Her Majesty the Queen in Right of Canada for reserve lands and roads as well as a headlease agreement with the British Columbia Hydro and Power Authority for the hydro lands.

The lease negotiations were lengthy due to this complex lease structure. The head-leases and the sub-lease were negotiated simultaneously. As there were few precedents for this type of lease structure, legal advice for the Squamish Nation, the Department of Justice (on behalf of the Federal Government) and Westfair Foods Ltd. took great care in ensuring their respective clients' interests were protected.

The agreement between Westfair and Squamish contained commercial terms that were carefully considered in order to arrive at a mutually advantageous agreement. One of the terms that the parties agreed to was the inclusion of a clause regarding employment. Westfair agreed to provide opportunities for employment for Squamish Nation members at the Superstore by providing the details of open positions to the Squamish Nation's employment officer.

Another term that was included in the agreement concerned an agency contract to operate a gas bar at their store. This is not a unique feature of a Real Canadian Superstore agreement as in fact, all Real Canadian Superstores have gas bars operated through agency agreements. This clause is worthy of consideration as it marks a departure from the old landlord/tenant type relationship that the Squamish Nation formerly engaged in. It represents the more active role that the Squamish Nation now takes in developments on its reserves.

Another interest component of the agreement concerns the construction of the building. The Squamish Nation entered into a joint-venture with a construction company to form Newhaven Projects Limited Partnership. This joint-venture construction company was nominated by the Squamish Nation to construct the improvements on the site. The construction phase of the project will be described in more detail below.

Tax rates were also a significant issue during the lease negotiations and there is a provision within the lease regarding this issue. The Squamish Nation collects property taxes from non-native leaseholders on reserve and in return provides municipal services (such as water, sewer, fire protection, police protection). Westfair was concerned that there was uncertainty about the level of the tax rates and asked that the Squamish Nation provide some certainty that the tax rate would not deviate too far from the rate being charged in the adjacent municipality.



Westfair still maintains that there is considerable uncertainty regarding taxes and services. They are not concerned about the tax rate as much as they are concerned about the quality and range of services provided for those services. They maintain that they are going on good faith that the Squamish Nation will provide the full range of municipal services for a competitive price. While not a concern at the moment, Westfair sees the potential for an Indian Band to look to property taxation to extract more revenue from a tenant in the event that the land rent is not (in the Indian Band's view) consistent with the value of the site.

The Indian Taxation Advisory Board (ITAB) takes the view that the assertion of jurisdiction and the provision of services are the primary reasons for a First Nation to tax leaseholders on reserve. This philosophy is consistent with other property tax jurisdictions such as municipalities. To date it appears that the Squamish Nation has followed this philosophy so the concerns of the Superstore, while valid, do not appear to be materializing at present.

There were several barriers to the land lease negotiations although the potential benefits of the site persuaded the parties to stay the course and complete the agreement. The fiduciary duty of the Crown to the Squamish people was viewed as one of the barriers to the negotiations. This fiduciary duty creates such potential liability for the crown that both the Department of Indian Affairs and the Department of Justice (as legal advisors to the Department of Indian Affairs) are required to pay close attention to the content of the lease(s).

The fiduciary duty manifested itself in the complexity of the lease documents themselves. The requirement for a head-lease from the federal government to Squamish, (through their holding company), as well a sub-lease also made negotiations difficult. All leases were negotiated simultaneously as they were interdependent. The process was further complicated by the fact that portions of the site had to be acquired from BC Hydro and MOTH, returned to federal lands, and then subleased.

Both Squamish and Westfair were committed enough to the process to persevere and find mutually advantageous terms for the lease. The result has been a win-win situation whereby Westfair has gained a foothold into the North Shore market and the Squamish Nation has provided benefits for their membership.

Financing the Development

Westfair Foods Ltd. is a subsidiary of Loblaw Companies Ltd., a food distribution company with operations across Canada. The Company operates grocery stores under various banners including Loblaws, Provigo, SuperCentre, Zehrs, Save-Easy, Atlantic SuperCentre, OK! Economy and The Real Canadian Superstore. Loblaw's financial strength is demonstrated below in its financial statements. It was not possible to obtain financial statements for Westfair Foods Ltd. alone, but as a part of a group of companies with revenues of over C\$9.8billion and assets of C\$3.5billion it is apparent there is significant financial capacity.



Table 2 Loblaws Companies Limited Annual Financials

Date of Balance Sheet	02-JAN-1999 52 Weeks,C\$	03-JAN-1998 52 Weeks,C\$	28-DEC-1996 52 Weeks,C\$	3Yr. Growth
Total Revenue (\$000):	12,530,000	11,049,000	9,869,000	8.16
Earnings before Interest & Tax (\$000):	560,000	467,000	380,000	15.02
Profit/Loss (\$000):	261,000	213,000	174,000	21.17
Earnings per Share:	1.06	.88	.72	20.69
Total Assets (\$000):	7,105,000	4,013,000	3,531,000	30.49
Dividends Per Share	.20	.15	.12	
Return on Com. Equity:	12.78	15.04	-.16	
Employees:	113,000	63,000	50,200	

Source: www.globeinvestor.com

The ability to finance the improvements on the site privately meant that Westfair did not have to go to capital markets to look for funds nor did they have to satisfy any lenders requirements in order to finance the project.

While Westfair paid for the improvements on the site, there was also a requirement for them to contribute some funds towards infrastructure on the reserve. There was a need to invest in roads, water and sewer to make the project viable. The infrastructure benefited not only the Superstore site but also the remainder of the reserve, and therefore the Squamish Nation and Westfair entered an agreement to share these costs. Squamish financed their portion of the infrastructure with funds loaned by a major Canadian bank.

The Squamish Nation has had considerable difficulty obtaining financing for projects on-reserve. Before this project, the longest financing available to the Squamish Nation was seven years. The track record of the Squamish Nation allowed them to negotiate financing for this infrastructure investment for a term of fifteen years. This financing was lent at a rate reflecting the higher risk that the financial institution perceived the project had due to its location on reserve.

While Squamish may have been able to borrow strictly on the strength of the potential revenues from this project, it chose to use revenues from existing projects to guarantee the loan in order to achieve a lower borrowing rate. While financing was not a significant obstacle for this project it should be noted that there was not a significant amount of financing required. Westfair did not have to go to capital markets to obtain financing and Squamish was able to guarantee its loan with an existing stream of income from a separate project.

Financing is a significant problem for development on Squamish reserves. While lease revenue can be used as collateral, lenders still attach a higher risk premium to projects on reserve. When they are prepared to lend funds for projects on reserve, the higher risk they associate with such a project means that the cost of borrowing is higher than a similar project located off-reserve.



The financing of this project did not take a significant amount of time. It took approximately two months for the Squamish Nation to arrange the financing and it was in place before it was necessary to be drawn down.

Service Agreements

In 1982, the District of North Vancouver entered an agreement to provide services to the Seymour Creek reserve. In return, the Squamish Nation allowed the Seymour connector to pass through a portion of the reserve. This connector is a four-lane road that provides better access to the easterly portion of North Vancouver. This road allowed the District of North Vancouver to develop residential subdivisions.

When the Squamish Nation began their own property taxation regime, an interim service agreement was adopted to determine the cost and the scope of the services available on Seymour Creek I.R. No. 2. The Squamish Nation now pays the District a portion of the general municipal taxes collected on leasehold sites in return for full municipal services.

The services provided include water, sewer, police protection, and fire protection. A special agreement for the District of North Vancouver to provide Building Inspection services was made for this project. The District inspected the buildings to ensure they were up to standards but the Squamish Nation issued the permit.

The political issue of whether or not the reserve should be developed and whether the District of North Vancouver would provide services was solved through the 1982 agreement. The control of development on reserve is the central issue here and although the 1982 agreement allowed services to the site, the District was still advocating more control of development on reserve during this negotiation. They would have liked to use their architectural controls, signage laws, setback regulations, parking lot standards, lighting specifications for this project. They also advocated more "public" consultation with residents of the District of North Vancouver. They consider that the Seymour Reserve and any other reserve is the equivalent of a large privately owned piece of land that should be accountable to the bylaws that exist within the District.

Newhaven Success Story

The Newhaven Projects Limited Partnership continues to complete construction projects. The company has been profitable in its first two years of existence and is currently completing approximately \$12-15million in construction work per year. Additional projects that the partnership has been involved with since the Real Canadian Superstore are: the Squamish recreation centre located on Stawamus I.R. No. 24, a DIAND funded school on Vancouver Island for the Penelakut tribe, and a community centre for the District of Port Hardy. Squamish Nation members continue to work for the Partnership although it appears that it is more difficult to attract members to work on projects located off Squamish reserves than it is to attract them to projects that are located on Squamish reserves.

The pre-existing service agreement considerably reduced the time required to complete the Superstore. Negotiations focused more on economic rather than political issues. The District of North Vancouver was concerned that the development was going to place undue strain on their infrastructure and they requested traffic studies be completed in order to assess the additional stress.

Construction

The Squamish Nation entered into a joint venture with a construction company (Newhaven Construction Group) to form the Newhaven Projects Limited Partnership shortly before the lease with Westfair was completed.



The following work was completed by the partnership:

- Site work;
- Site development;
- Foundation; and
- Carpentry.

The partnership provided employment for 40 Squamish Nation members during the construction of the Superstore. There was a fixed schedule for the construction of the site with the completion date set for November 17, 1997. The construction was complete on November 15, 1997 and was completed \$200,000 under budget. The construction cost for the building was approximately \$6.8 million, with an additional \$1 million spent on store fixtures.

Building standard regulations from the District of North Vancouver do not apply to Seymour Creek I.R. No. 2, but the lease specified that the construction of the building would assume that they did apply. In this case, the following regulations are in place:

- The Building Bylaw, 1973, of North Vancouver;
- Electrical Safety Act, R.S.B.C. Chapter 104;
- Sewer Bylaw of North Vancouver;
- Gas Safety Act, R.S.B.C. Chapter 149,
- The Waterworks Regulation Bylaw, 1957, of North Vancouver, and all regulations made pursuant thereto, all as amended or replaced from time to time;
- Servicing standards established from time to time by the Engineering Department of North Vancouver in respect of services;
- Fire Bylaw of North Vancouver, and all regulations made pursuant thereto, all as amended or replaced from time to time.

Staff from the District of North Vancouver completed all building inspections as per the lease agreement. The District also required an environmental permit during construction. This permit required that the partnership address environmental issues that might arise during the construction of the building.

There was an environmental review and both the Department of Environment (federal) and the provincial standards were adhered to. As the site is in close proximity to the Seymour River, the Department of Fisheries had to be satisfied that there would be no adverse effects from the development on the river. Groundwater issues were also investigated. There was no heritage planning process. The Department of Indian Affairs was not active during this process.

Overall Assessment

The community expected to benefit from land rent revenue, property tax revenue, gas bar revenue, and employment through construction and operation of the Real Canadian Superstore. To date all of these benefits have accrued to Squamish Nation membership. The Squamish Nation has also benefited from the infrastructure investment that was made during the construction of the Superstore.



Future possible benefits from this project include reducing the cost of other projects on Seymour and other reserves. The infrastructure improvement will allow Squamish to further develop the Seymour reserve, as there is now better access to the reserve. The substantial amount of work done on the lease document will serve the Squamish Nation in their negotiations for development not only on the Seymour reserve but also on other Squamish Nation reserves.

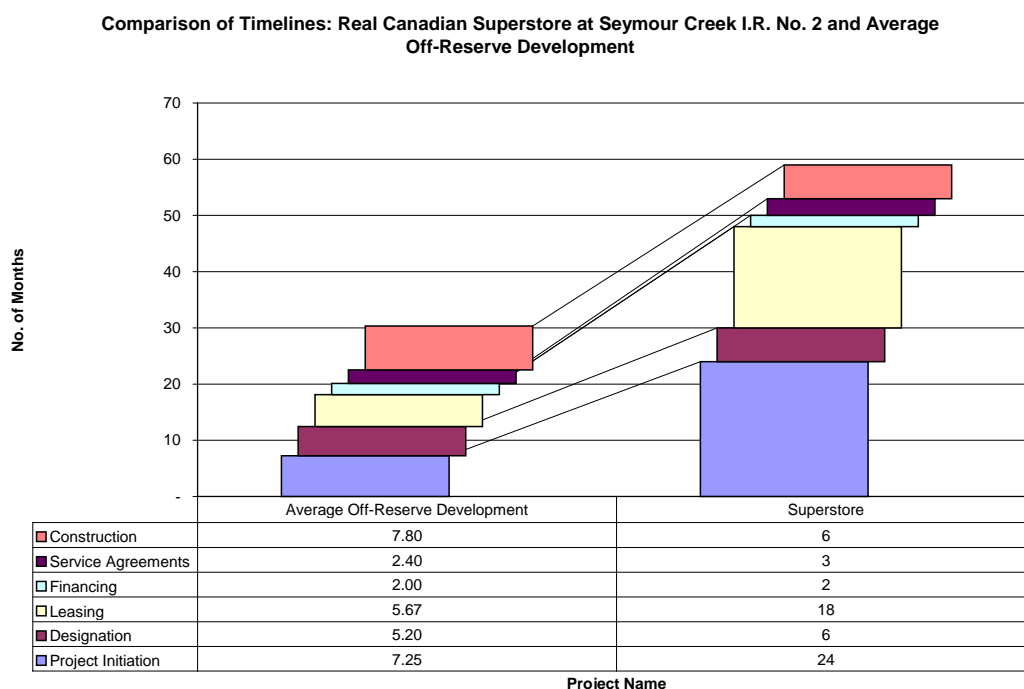
The community expected the project to take no more than two years to complete. In reality, it took four and a half years from the expression of interest until the doors of the store opened. The Squamish Nation felt that the fiduciary duty the Crown has to the Squamish people played a significant role in delaying the completion of the project. The fiduciary duty manifested itself in the lease negotiations. The necessity for land assembly further complicated the negotiations. The land assembly required additional lease documents in which the fiduciary duty could manifest itself again.

Table 3 Expected Time vs. Actual Time

Phase	Expected time spent on each component	Actual time spent on each component
Concept/Initiation	6	24
Designation	2	6
Leasing	6	18
Financing	2	2
Service Agreements	1	3
Construction	6	6
Total	23	59

The Squamish Nation has had a positive experience and would work with the developer again as it feels the developer, Westfair Foods Ltd., has demonstrated patience in working on reserve land. Westfair has also shown that they have the financial capacity to deliver on the commitments they make.

Figure 5 Comparison of Timelines – Seymour Creek Indian Reserve No. 2



Westfair Foods expected the project to be completed more quickly than it was. While this negotiation was lengthy, it does not necessarily follow that a negotiation on fee simple land would be completed more quickly. The individual circumstances of any particular property will determine how long the negotiations take and it is difficult to make a generalization that all of Westfair's negotiations on fee simple land have been completed more quickly than those on reserve.

While the deal was quite complex, both parties remained committed to negotiating mutually advantageous terms for the project. The integrity and commitment of all parties allowed both Westfair and Squamish to arrive at a fair and equitable agreement.

Kamloops Indian Reserve No. 1 – Sun Rivers

Project Description

This case study will examine the Sun Rivers development located on approximately 460 acres on the Kamloops Indian Reserve (I.R.) No. 1. The project is comprised of a 19-hole championship golf course, approximately 2,000 residential units, a school, and office/commercial space. The project has recently begun construction, with the golf course scheduled to open in the spring of 2001. Residential lots in the first phase of the project are currently being marketed.

The main reserve for the Kamloops Shuswaps (Secwepmc people) is located near the junction of the North and South Thompson Rivers near the city of Kamloops. Beginning with the fur trade and extending through the time of Chief Louis (1855-1915) until the present, the leaders of the Kamloops Shuswaps have always been concerned with viable economic co-existence between their community and the surrounding non-Shuswap communities. It was this concern that led to the 1962 passage of a by-law by the Chief and Council to formally establish the Mount Paul Industrial Park. The park has grown from 11 original businesses to over 150 today, with annual sales of over \$150 million.

The Kamloops Shuswaps have significant administrative experience and capacity with land development. In 1990, the Kamloops Shuswaps completed the DIAND land management course and have leasing capacity under Sections 53-60 of the *Indian Act*. The Kamloops Shuswaps were instrumental in the only First Nation led change to the *Indian Act* in 1988 with the passage of Bill C-115 – an amendment to allow First Nation property tax authority. The Kamloops Shuswaps began to collect property tax from all their leaseholders in 1990.

Current reserve lands of the Kamloops Shuswaps cover 33,000 acres and total membership is over 900. The reserve lands for the Kamloops Shuswaps are prime development lands in the area. The city of Kamloops, with a population just under 100,000, has nearly reached its infrastructural limits. As population and demographic pressures increase on the city of Kamloops, pressure to have a residential development on the Kamloops reserve has increased.

Development Initiation/Concept

It was into the development friendly First Nation environment of the Kamloops Indian Band that Richard Souter approached the Kamloops Shuswaps in early 1994 with an idea to develop 457 acres of reserve land just east of the Yellowhead Highway on the sunny side of the South Thompson River. The proposal was for 2,000 residential units surrounding an 18 hole golf course. The preliminary value of the completed



development was estimated at \$400 million. Given the local climate and the demographics of the Canadian population, it was considered a “can’t miss” proposition.

The Kamloops Shuswaps Council considered the proposal for one full year. In December 1994, after a change in Council, a decision to proceed full speed with the development was made. The Chief, a veteran councilor, the Chief’s executive assistant and the land administrator were given the responsibility to clear any barriers to this development. All four of these individuals had extensive experience with project management, negotiating service agreements and large scale residential and commercial developments. Their combined experience was over 80 years.

Although the developer had not worked on a First Nation before, they had experience with similar developments. The developer’s familiarity with similar projects on Indian Reservations in the south western United States provided reason for optimism at the outset of the project that this proposal would become reality. Given the experience and expertise of the participants, expectations were high for a quick turnaround from formal acceptance by the Chief and Council to Sun Rivers construction. Sun Rivers believed they would begin construction in 1996, soon after the designation. The staff of the Kamloops Shuswaps saw no reason at the time not to believe this was possible. Construction on Sun Rivers, however, did not start until August 1998.

Land Use Planning

The Sun Rivers proposal was similar to the Superstore at Seymour Creek I.R. No. 2 in that both projects were proposed for sites that were defined as “band lands” by the *Indian Act*. This meant that the land had to be designated for lease via the designation process set forth by the Department of Indian Affairs.

The Kamloops Indian Band found that the Crown’s fiduciary duty can expose them to such potential liability that they (the Department of Indian Affairs and/or the Department of Justice) become unwilling to undertake even a minimal amount of risk. In this case study, the inability to take risk led DIAND to want to define the use clause in the designation quite clearly. The Kamloops Indian Band, on the other hand, wanted more flexibility in the designation. The disagreement led to a more lengthy, and consequently more costly, designation process.

The designation process required the developer to provide information materials and presentations to the community detailing the plans for the development. It has been estimated that the cost to developer for presentations to the community associated with the designation and the lease were over \$100,000. These presentation materials were successful in communicating the merits of the development to the Kamloops Indian Band membership. At a band meeting, the membership voted by a margin of 74% to allow a portion of its reserve land to be reverted to the federal government to be leased to the developer.

Land Leasing

With the majority of the Kamloops Indian Band membership voting in favour of the development, the Kamloops Band Council was able to begin the negotiation of lease and master agreement document. This complex lease structure is similar to the case of the Superstore at Squamish in that the Kamloops Indian Band entered into a head lease with Her Majesty the Queen in Right of Canada. The head lease has an initial term of 99 years that expires in 2095. This expiry date can be amended to June 30, 2115 as the final development of Sun Rivers nears completion. This is to ensure that all residential units will have a lease of at least 99 years.



Sun Rivers and the Kamloops Indian Band also entered into a Master Development and Services Agreement. This agreement details specific development issues such as permitted uses, servicing development approval process, parks, environmental matters, heritage matters, and property taxes.

In addition to money spent on community presentations for the designation process and the lease document, the community estimates that it invested 2 years and over \$75,000 with lawyers in a painstaking process to develop the basic framework of the lease document. Both parties then spent an estimated \$300,000 on legal fees developing the final lease agreement. The developer suggested that this about 5 times higher than they would expect to pay for a similar document off reserve.

Sun Rivers Ltd. was concerned that there was insufficient administrative capacity to ensure that the Kamloops Shuswaps political climate or the general First Nation political climate did not interfere with the Sun Rivers development. Although, it would be impossible for any government to provide such a guarantee, the project was being developed at the time of the Gustafson Lake crisis. Sun Rivers asked for and received a “comfort clause” that stated that the Kamloops Shuswaps government would provide their best efforts to maintain the marketability and property values of the Sun Rivers tenants, in other words, no roadblocks.

The comfort clauses were clearly spelled out in the Master Agreement to reduce any uncertainty about the ability of a homeowner at Sun Rivers to enjoy their investment. One of the clauses ensures that there will be no interruption or disturbances to the development during the term of the lease. Another clause guarantees motor vehicle access to the development during the term. A final clause ensures that in the event that any heritage discoveries are made, the Kamloops Indian Band will act reasonably and expeditiously.

In addition to the complexity of the lease agreements, there was an additional need to draft development standards bylaws, development approval by-laws, or zoning by-laws and permanent building regulations. To provide any level of certainty, the developer and the community had to create new legislation and write new by-laws. The result, in addition to the opportunity cost of time, was extremely high legal fees, professional fees and staff time, and effort.

Financing the Development

The developers combination of familiarity with similar projects on Indian Reserve land (or other forms of leased land) and their excellent financial credentials allowed them to secure financing for the project. Again a parallel can be drawn between the Superstore project and the Sun Rivers project. Both developers were able to provide funds for the development but a difficulty remained in financing the required upgrade of infrastructure to make the project viable.

The responsibility to upgrade infrastructure and provide financing for it would fall upon the Kamloops Indian Band. Just as the Squamish Nation had to raise funds to improve infrastructure on the Seymour Creek reserve for the Superstore, the Kamloops Indian Band faced a similar financing problem with the Sun Rivers development.

Off reserve local governments usually spread the cost of significant community infrastructure over a long period and are able to float long term low interest bearing bonds. First Nation governments do not have the legislative basis or credit rating to accomplish this. The Kamloops Shuswaps therefore had to utilize support from DIAND, private resources and short term financing, to build a water intake and water



treatment plant capable of supporting both the band members and the additional 5,000 leasehold population equivalents. Although the Kamloops Shuswaps were able to accomplish this within a year and a half, this is undoubtedly an impossible barrier for many other smaller less urban First Nations.

Service Agreements

Similar to the city of Kamloops, at the outset of the project the band consistently had some of the poorest water quality in BC. In addition the pumping system and supply infrastructure on the Kamloops reserve were very poor. All residents depended upon septic tanks, which are not conducive to high-density urban development. They would hardly be the quality of services demanded by people purchasing homes costing over \$200,000. Before the Sun Rivers development could proceed, the Kamloops Shuswaps had to significantly upgrade their water system and sign a service agreement with the city of Kamloops to hook on to their existing sewage treatment system.

Providing high quality sewer services to the Sun Rivers development required a service agreement with Kamloops city. On the surface, it seems like a simple proposition. The Kamloops Shuswaps wanted sewage treatment and the city of Kamloops had some excess capacity to sell. According to the Indian Taxation Advisory Board (ITAB), service agreements between First Nation and local governments are never easy. At least three difficult questions must be answered:

- What services are included in the agreement?
- Who are these services being provided to? And
- What is the price for these services?

In the case of the Kamloops Shuswaps – Kamloops city service agreement, the services included in addition to sewage treatment, Kamloops city parks, its library, its art gallery and a few other so called soft local government services. These services were being provided to anyone on the Kamloops reserve who hooked on to the Kamloops city sewer treatment system. The price of these services was \$200 per hookup per year with an inflation clause. To put this in perspective, people in Kamloops pay about \$100 per year for sewer services. In the interest of cooperation and good will, the parties agreed in the final agreement that the \$200 per hook-up per year payment would be set aside into a separate account to be used for recreational projects that benefit both the residents of the city and the band.

Sun Rivers was worried that the Kamloops administration would not be able to maintain the high standards of local services that their prospective tenants would surely demand. The band was similarly concerned that the cost of achieving the high standards would exceed the available tax revenue and result in the band subsidizing the service costs for the development from other revenue sources.

After an estimated 4 months of extra negotiating time and considerable economic and engineering analysis, a unique public-private arrangement concerning property tax revenues and expenditures was reached. The Kamloops Shuswaps would turn over 30% of the property tax received from the Sun Rivers development to Sun Rivers Ltd. to deliver a number of local services including, road, utility, parks and other maintenance activities. Both parties also agreed to raise the tax rates in the Sun Rivers development to the equivalent Kamloops City rates. Given the inherent local government incentive to maintain high property values so as to receive higher revenues, this clause demonstrates the security that Sun Rivers required from the Kamloops Shuswaps administration to enter into the service arrangement.



By some accounts, it is remarkable that the city was prepared to enter into an agreement for sewer servicing. It is interesting to note, according to Kamloops Shuswaps staff, that by using an interest based negotiations method, the service agreement only took 3 months longer than expected, with significantly reduced legal costs. This has had the positive impact of developing a closer working relationship between the city and the Kamloops Shuswaps, which will doubtless generate further benefits.

There were two suggestions for lowering the costs of doing business associated with substandard physical infrastructure in the Kamloops Shuswaps community. First, improve access to long term capital so that First Nations can develop competitive infrastructure. Second, develop negotiating capacity and model service agreements while encouraging standards for local government service pricing.

Construction

The project has only begun construction so it is difficult to comment on this process too much. It is useful to note that there were no heritage resource management by-laws on this reserve. The environmental review process that exists on reserve has also impacted construction. The Sun Rivers developer was concerned that this environmental review process was conducted under federal law by DIAND. It was felt that this cumbersome bureaucratic process took about 4 months longer than would the comparable, and for the developer more familiar, provincial environmental review process.

Overall Assessment

Those closest to the project cite three principle reasons for their delays; lack of a local regulatory environment, lack of local administrative capacity, and limited physical infrastructure. The table below summarizes the approximate time and costs associated with each of these by-laws and processes.

Table 4 Time and Cost Estimates – By-laws

By-Law/Process	Estimated Costs	Estimated Cost Split	Estimated Time to Complete
Zoning/Designation	\$300,000	50/50	1 year
Heritage Resource Management	\$250,000	80 – Developer 20 – Community	1 year
Building Standards	\$250,000	80 – Developer 20 – Community	1 year

In the city of Kamloops, all of these by-laws exist. In comparison, the cost to the developer off reserve is substantially lower.

The table below summarizes the stark differences between regulatory cost expectations and reality in the Kamloops Shuswaps – Sun Rivers development.

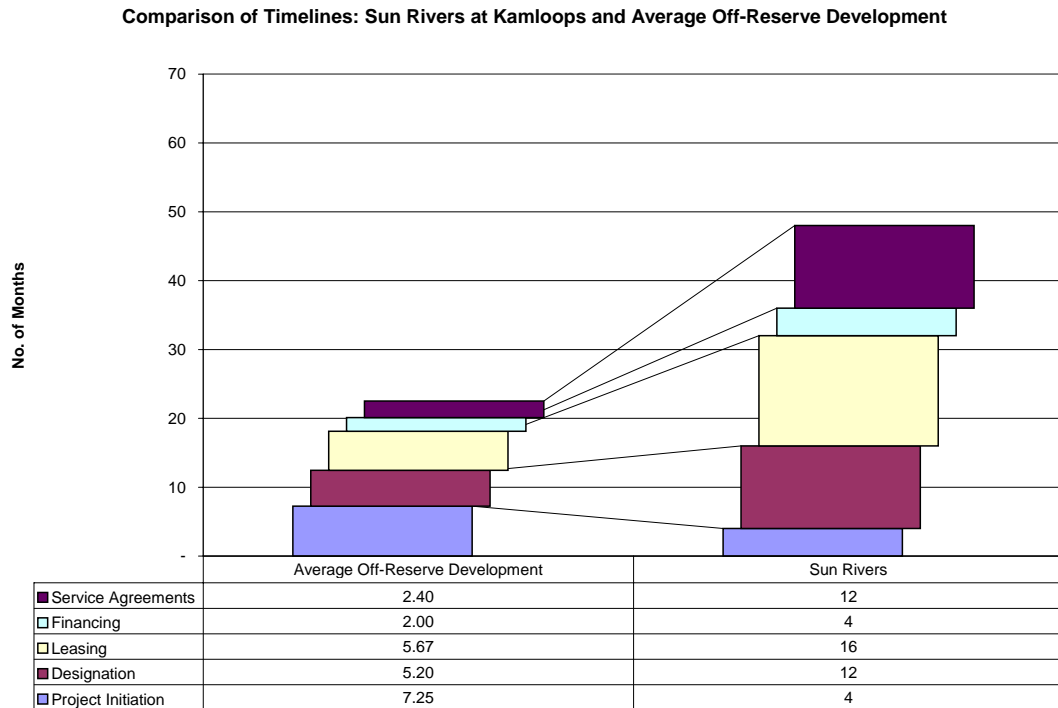
Table 5 Time and Costs – Expected and Actual

	Expected Time to Construction	Actual Time to Construction	Expected Regulatory Cost to Construction	Estimated Regulatory Cost to Construction *
Kamloops Shuswaps	1-2 years	4 years	\$200,000	\$500,000
Sun Rivers	1-1.5 years	4 years	\$400,000	\$1 million

These are ball park estimates only.



Figure 6 Comparison of Timelines – Sun Rivers and Average



Given this wide divergence between expectations and reality for the Sun Rivers project, the reasons for success are instructive. Both parties agree that the most important reasons for getting this far are determination, deep developer pockets and the willingness of staff on both sides to work many unpaid hours and thereby reduce these high cost of doing business.

As a result of this extraordinary effort by a few individuals, a characteristic of all the case studies reviewed in this research, goodwill still remains between Sun Rivers and the Kamloops Shuswaps. Both parties expressed interest in working together on future projects, especially if some of their recommendations could be implemented for future projects.

Siksika Nation Indian Reserve No. 146 – Commercial Development

Project Description

This case study will examine the mixed use complex located on the Siksika Indian Reserve No. 146, approximately 80 km east of the city of Calgary, Alberta. The complex is located on the reserve that is held by the Crown for the use and benefit of the Siksika Nation’s membership. The reserve is comprised of over 70,000 hectares and more than 3,000 members live on the reserve.

The project is a mixed use building on an approximately five-acre site that is comprised of both office and commercial space. This case study is different from the previous two in that a portion of the project (just over 40%) was funded publicly through the federal Native Economic Development Program (NEDP).



Project Initiation/Concept

The Siksika Nation had been attempting to obtain financing for a new office building since 1980 and when the Native Economic Development Program (NEDP) was announced in 1988, they made an application for funding. The proposed structure was to satisfy the need for office space as well as to provide some commercial space that would satisfy the local demand for space and generate revenue for the Siksika Nation.

The Siksika Economic Development Corporation (SEDCo), a wholly owned subsidiary of the Siksika Nation, initiated the application. At the time of the development, SEDCo was a wholly owned subsidiary of the Siksika Nation. The corporation consisted of a General Manager, a Development Officer, an Accounting Clerk and a Receptionist. Since that time, a new entity called Siksika Resource Developments Ltd. (SRDL) has been established to separate the political and development functions within the Siksika Nation. SEDCo is now wholly owned by SRDL, who in turn is wholly owned by the Siksika Nation.

The Siksika Nation's own demand for office space combined with a positive business climate in the area convinced them that a mixed use building of office and commercial space would be economically viable. The availability of complementary services was also noted as criteria for locating this development on the Siksika Reserve. SEDCo concluded that the lack of comparable space in the area meant that the development would be able to attract tenants.

SEDCo and their business development consultants initially presented the proposal to the Chief and Council. The Chief of the Siksika Nation took the role as the community's leader during the negotiations for this project. This was not the first time that the Chief had been involved in a development project as the Siksika Nation had previously developed a vacation resort. The administrative staff of the Siksika Nation took the role as the project managers. The participants from the community's project are listed below in the stages that they were involved:

Table 6 Project Participants

Project Phase	Team Members
Initiation and Concept	Chief, Council, Consultants, SEDCo
Land Use Planning	Consultants, SEDCo
Land Designation	SEDCo, Consultants
Lease Negotiation	SEDCo, Department of Indian Affairs, Legal Counsel
Development Approval	Chief, SEDCo, Consultants
Construction	SEDCo, Consultants

Land Use Planning

Just as the developments on the Squamish and Kamloops reserves are located on First Nations lands, so is the development at Siksika. There was no land use plan or zoning bylaw in place for this site but the close proximity of other non-residential uses and its location near the highway made it a likely choice for a commercial or office type development. The Siksika Nation had already designated a site immediately south of the complex and developed four institutional buildings in the late 1960s.



The site's definition as band lands required it to be designated according to the *Indian Act* before it could be leased to any tenants. Over three hundred house visits were made in order to communicate the development proposal to the Siksika membership. In addition to these house visits, there were fifteen band meetings. The cost for this consultation was estimated at \$25,000. A portion of the costs was covered by the Department of Indian Affairs who contributed \$15,000.

DIAND became involved in the designation process and although the process leading up to the referendum vote for the designation only took three months, the official designation could not be completed until the head lease was signed. Political concerns were a barrier in the designation process. It should be noted that a provincial MLA voiced objections in the Provincial Legislature to using Federal Grant money to support the construction of a commercial complex. The community's project management team spent a significant amount of time and money in the designation process, as outlined in the table below.

Table 7 Time and Cost = Designation Process

Designation Phase	Team Members	Person Months	Salaries and Overhead
Document preparation	SEDCO/Consultants	1.5	\$6,000
Public meetings	SEDCO, Council	2.5	20,000
Lease negotiations	SEDCO, Lawyers	15 months (part time)	15,000
Contract negotiations	SEDCO, Lawyers	2.0	\$10,000

Land Leasing

The subject property is comprised of approximately 5.41 acres, which was valued by an appraiser based on regional comparisons for leased commercial land in a rural setting. This value was determined as though it had a 75 year lease zoned for industrial/commercial type uses.

Both the Siksika Nation and SEDCO were parties to a headlease with the federal crown. These negotiations were lengthy, as this was the first major project developed after BILL C-115 had been passed. This amendment to the *Indian Act* allowed First Nations to collect property tax revenue from leaseholders on reserve. The implications for the Crown, the First Nation, and the tenant regarding property taxation and service delivery were carefully considered in light of this amendment and the headlease was revised many times. One of the revisions to the lease was the inclusion of a unique clause that allowed tenants to defer their property taxes for five years.

Although the involvement of DIAND and DOJ meant that more time and resources had to be spent, DIAND helped to fund this process and reduce the impact of this barrier to the development by providing a \$200,000 grant. The land lease process occurred concurrently with the designation process and took approximately eighteen months. It was only expected to take six months.



Financing the Development

The project was financed from a combination of sources as follows:

Table 8 Siksika Financing Sources

Source	Amount
NEDP Grant	\$2,000,000
Siksika Nation Equity	600,000
Bank Loan	1,500,000
INAC Equity	300,000
TOTAL	\$4,400,000

Several issues increased the cost of financing to this project including the issue of foreclosure, the timeliness of lease negotiations, and the upgrading of infrastructure. A major risk to the project was the fact that 80% of the original tenants were Siksika members who would be exempt from lawsuits to recover rental arrears. The five major Canadian banks refused to provide SEDCo with a long-term mortgage on these grounds.

A long-term mortgage was eventually negotiated with Peace Hills Trust however they refused to provide interim financing during construction. SEDCo obtained interim financing from CIBC requiring all documentation and security be provided to CIBC for nine months and then transferred to Peace Hills Trust. This duplication increased costs for financing considerably.

The cost of financing also increased when the lease negotiations continued for longer than expected. During the eighteen months of lease negotiations interest rates climbed by 1.75%. The Siksika Nation asked DIAND for an additional \$150,000 of equity to reduce debt service costs to their original levels.

Like the projects at Squamish and Kamloops, this project also required infrastructure improvements. The expansion of the sewage lagoon, the major upgrade requiring financing, was primarily the responsibility of the Siksika Nation although some funds were provided by a DIAND grant. In order to secure financing, the Siksika Nation used existing cash flows as collateral. These included cash flow from existing tenants such as the Hidden Valley Cottage Owners Association, who sub-lease 300 lots from the Siksika Nation.

The Siksika Nation found that there were significant hurdles in attracting finance to their project. These included:

- Lack of collateral;
- High level of risk associated with the project by virtue of it being situated on reserve land;
- Lack of access to capital markets; and
- Subjects and conditions attached to the lending requirements by the financial institutions.

There was approximately \$30,000 in costs related to the \$1,500,000 loan required for the project. The community and developer expected the financing portion of the project to take about a month although in actual fact, it took twelve months for all the financial aspects to fall into place.



Service Agreements

This project did not require a new service agreement as there were already agreements in place between the Siksika Nation and the adjacent local authority, the Town of Gleichen. Negotiations would have been aggressive if there had been a need for them because the adjacent local authority was competing for the property tax revenue that this type of project would generate.

Prior to 1995, the Town of Gleichen provided treated water to the reserve. Fire protection was provided by Siksika Protection Services with the understanding that the Gleichen Fire Department could be called to large fires and paid on a per call basis by the Siksika Nation. Policing and ambulance services were separate from any services provided by the Town of Gleichen. The RCMP in Gleichen provided policing for the site until 1994, when the responsibility was transferred to Siksika Nation Law Enforcement. A private contractor provided Ambulance services on a fee for service basis. The Siksika Nation Public Works Department provided all other services for a modest monthly fee paid by SEDCo.

All costs associated with these service agreements were borne by the Siksika Nation and not by SEDCo. This project benefited from the service agreements already in place and this component of the project was not a significant barrier in its completion.

Construction

An external construction company from Calgary constructed the project for a negotiated management fee but band members were employed during its construction. The tight budget for construction was a concern to SEDCo so they chose an experienced firm for the contract and monitored its progress closely.

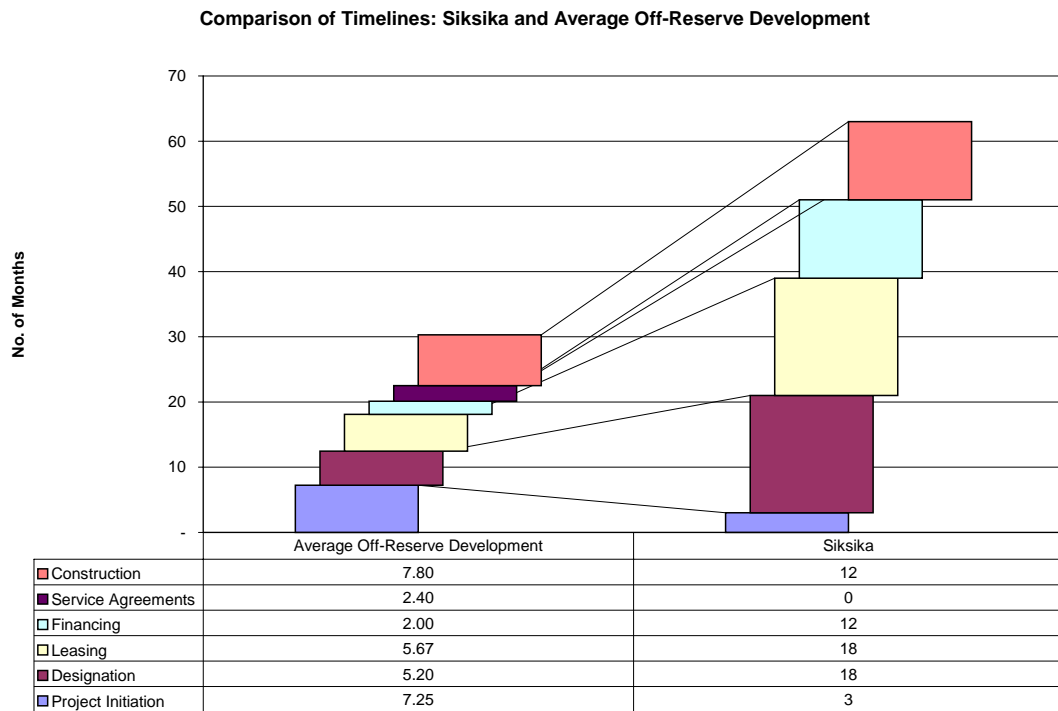
An environmental review was conducted by DIAND. This process took one day and was conducted at no cost to the Siksika Nation. DIAND reviewed the environmental information and conducted the assessment. Developer fees were not higher than in adjacent communities and the project did not have to go through a heritage planning process.

There was a development approval process. It was conducted by Band Council, the NEDP, and the financial institution lending the money for the infrastructure improvements. SEDCo paid approximately \$25,000 to complete this process and found that there was a substantial amount of duplication between the NEDP and the financial institution. SEDCo expected the process to take three months to complete. In the end, it took approximately twelve months due to the delay in the approval of the head lease.

Figure 7 compares the Siksika development components to off reserve development components.



Figure 7 Comparison of Timelines – Siksika and Average



Costs

Table 9 Summary of Costs - Siksika

Phase	Salaries and OH	Legal	Professional	Other	Total
Concept/Initiation	5,000	5,000	20,000		\$30,000
Designation	30,000	5,000	5,000		40,000
Leasing	5,000	10,000	5,000		20,000
Service agreements				Contractor	
Construction	20,000	5,000	80,000	4,500,000	4,605,000
TOTAL					\$4,695,000

The community expected to accrue benefits from employment for its membership, lease revenues, and investments. It has realized benefits from employment and lease revenues to date. SEDCo expected the project to take 18 months from approval to completion. In reality it took 36 months, due mainly to the high level of detail involved in ensuring the Crown observed its fiduciary duty to the Siksika Nation membership. Once the Department of Justice and DIAND approved the lease, the development proceeded on time and within budget.



Uashat Indian Reserve No. 27 – Sobey's

Project Description

This case study will examine the Sobey's food store that is located on the Uashat Indian Reserve (I.R.) No. 27, in close proximity to the city of Sept-Iles, Quebec. The reserve is one of two held by the Crown for the use and benefit of the Uashat mak Mani-Utenam Innu First Nation. The Uashat Reserve No. 27 is comprised of approximately 117 hectares. The Maliotenam Reserve No. 27A (the other reserve held by this First Nation) is comprised of approximately 527 hectares and is located approximately 16 km east of Sept-Iles. The Uashat mak Mani Utenam Innu First Nation have a membership of over 3,000 people. Over 80% of these members reside on one of the two reserves.

The Sobey's store at the Uashat reserve includes grocery items as well as a butcher, a florist, a delicatessen, a bakery, and a fresh seafood market in addition to having a Western Union (a wire service), a film developing centre, and a lottery booth.

Development Initiation/Concept

The initiative for the project came from the developer/tenant, Sobey's. One of the main criteria in their selection of the site was its proximity to markets. The large parcel of raw, undeveloped land in close proximity to the city of Sept-Iles was attractive to the tenant. In this sense, the project seems to have some similar characteristics to the Superstore at Seymour Creek I.R. No. 2.

At Uashat, the subject property is also facing a shopping centre, so there was an additional benefit from the agglomeration of commercial uses. The location within the region and the exposure for the store was critical in attracting the attention of the tenant and maintaining their interest throughout what would be a four and a half year negotiation and construction process.

Another significant criterion in the tenant's selection of this site was competition, or the lack thereof, within the area. Sobey's viewed this site as an opportunity to take advantage of an under-served market in the city of Sept-Iles. There was competition from other sites off-reserve for this project. Adjacent municipalities were competing for the property tax revenue that would be generated by a food-store such as Sobey's.

The Chief took the role of the project leader within the community and the Band Council participated in the development at varied stages. While the Chief did not have a significant amount of previous experience working on projects of this nature, an administrative staff member who took on the role of the community's project manager did have some previous experience. Engineers and lawyers were added to the team early on.

Sobey's Inc. is a national grocer and food service business with operations across Canada. They are a part of the Empire Co., which has real estate and investment groups in addition to their food operations. Sobey's was started in 1907 and over the last 90 years has grown to an enterprise of 120 stores in 6 provinces, grossing over C\$3 billion per year. The developer had no previous experience working with First Nations or on reserve land. Nevertheless, they provided the initiative and prepared a proposal for the development to the administrative staff. This initial presentation outlined the concept of the development and was paid for by Sobey's. The preparation of the proposal involved legal advice and community consultation.



Land Use Planning

Like the three case studies discussed previously, this project was proposed for a site defined as First Nations land and as such, it had to be designated for lease. The designation process was problematic for this project because of the unique circumstances that exist for certain reserves in Quebec, the Uashat Reserve No. 27 being one of them.

On the Uashat Reserve No. 27, the designation process carried the risk that the land would automatically revert to the Government of Quebec as soon as the Crown accepted the designation. This complication stalled the development for a substantial amount of time (two and a half years) until a solution to the land tenure question was found. This solution was attributable in large part to the exceptional effort on the part of representatives from the Band, DOJ, DIAND, and Sobey's.

An initial option proposed by DIAND was to try to get the Government of Quebec to use an appropriate legal mechanism to eliminate the risk associated with the designation process. However, the representations made to the Government of Quebec failed and the province refused to provide the necessary guarantees so this option had to be rejected.

Working with DOJ, DIAND tried to find a legal mechanism to allow the project to go forward. DOJ finally issued an opinion on the possibility of awarding a Ministerial permit under section 28(2) of the *Indian Act*. This section of the Act states that:

“the Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.”

This allowed Sobey's to occupy or use a portion of the Uashat Reserve No. 27 without the Band Council having to go through a designation process that would have risked the land reverting to the jurisdiction of the provincial government.

Land Leasing

Negotiations followed between Sobey's and the Band on the commercial terms and conditions that would form the basis of a mutually advantageous agreement. On May 30, 1995, Sobey's and the Band signed an agreement in principle establishing the parameters for opening a store on the reserve. In the agreement, the Band agreed to undertake the necessary measures to have a ministerial permit awarded to the Société de développement économique de Uashat et Maliotenam Inc. (SDEUM). This organization (SDEUM) could be likened to Stitsma Holdings Ltd. in the Squamish case study or to SEDCo in the Siksika case study. The permit was issued for a nominal amount.

A head lease was negotiated between SDEUM and the Crown while a sub-lease was negotiated between SDEUM and Sobey's. The term negotiated for the sub-lease was forty years, with an option to renew for an additional twenty years. The rent being collected by the Band will allow it to pay off its debt for the project. The end result is that SDEUM will own the building at the end of the term.



Provisions regarding employment of band members, use of community owned businesses and or services, and local contractors were included in the agreement between Sobey's and SDEUM. There were no finite targets regarding hiring practices but SDEUM expected Sobey's to use its best efforts to provide opportunities for its membership. The developer has also agreed to maintain access to the site.

Financing the development

As discussed previously, Sobey's is a large company with approximately 120 stores and over Cdn \$3 billion in sales in 1998. Their financial capacity is demonstrated in their financial statements below:

Table 10 Financial Statement Summary – Sobey's

ANNUAL FINANCIALS		
Date of Balance Sheet	02-MAY-1998	03-MAY-1997
	12 Months,C\$	12 Months,C\$
Total Revenue (\$000):	3,180,004	2,969,512
Earnings before Interest & Tax (\$000):	85,056	68,360
Profit/Loss (\$000):	37,339	26,870
Earnings per Share:	N/A	N/A
Total Assets (\$000):	922,913	770,527
Dividends Per Share	N/A	N/A
Return on Com. Equity:	20.66	N/A
Employees:	30,000	N/A

Source: www.globeinvestor.com

The size and financial strength of the company allowed the project to be financed privately. Sobey's funded approximately 75% of the total cost of the project with their own equity. Long term financing for funding required by SDEUM was provided by CIBC.

This project required significant infrastructure changes, as a creek had to be diverted from the project site. There were also problems with the soil and clay base of the site. The developer and the community funded these changes.

The absence of appropriate collateral proved problematic for the Uashat mak Mani-Utenam Innu First Nation in their attempts to raise funds for the infrastructure improvement required for the site. They found the limited access to capital markets to be a problem as well.

These barriers were overcome because of the community's cash resources, good credit rating, and goodwill. The costs associated with obtaining financing included \$200,000 of community staff time. The community and the developer expected this portion of the development to take 6-9 months but the reality was that it took much longer, mainly due to the uncertainty surrounding the land tenure.



Service Agreements

The Sobey's development required the negotiation of a service agreement. The surrounding communities were competing for the development to obtain the tax revenue that it would generate and therefore the negotiations were not as co-operative as they would have been otherwise. There were some existing agreements between the band and the adjacent local government that included services such as sewer, water, garbage removal, fire protection, road maintenance, policing, parks and snow removal. The developer was involved in the negotiation of these agreements with local government. The project team spent 18 months negotiating the service agreements. The value of the teams' time and the estimated total cost of these negotiations were \$200,000.

The principle barriers in negotiating a service agreement were both political and economic. As mentioned previously, the adjacent local governments were competing for the development. On the political side, the local authority was trying to provide economic opportunities for its constituents. On the economic side, the local authority wanted to access the tax revenue that would be associated with this food store.

Having reached a dead-end in the negotiation, a mediation team was set up that included representatives of Indian and Northern Affairs, Municipal Affairs, and the Indian Taxation Advisory Board (ITAB). A report binding the adjacent local authority and the First Nation was drafted and agreements were signed thereafter. The report contained representations by the community.

The ITAB was established in 1989 to complement the amendments to the *Indian Act* and to facilitate the development and approval of First Nation taxation bylaws. The ITAB provides assistance to First Nations at all stages of their property taxation bylaw development and also monitors the concerns of taxpayers whose interests are affected by taxation under Section 83. The ITAB also mediates in disputes like this one between First Nations and local governments. In particular, the ITAB service agreement software was used to estimate the fair costs of services to Uashat mak Mani-Uteman First Nation from Sept Iles.

Construction

The community did have building standards and regulations in place at the time of construction and the developer adhered to these. The project underwent an environmental review that was paid for independently by the community. The Department of Indian Affairs' only role was to oversee this process.

Overall Assessment

The community expected to benefit from increased employment, lease revenues, taxes, infrastructure provision, and investment. Although to date there has been little employment benefit, the remainder of the expected benefits have materialized. Infrastructure developed for this project has been utilized for other band developments namely, twenty residential lots. Taxes and lease revenues have also increased. The community has been pleased with their experience with the developer.

A lack of co-operation from other jurisdictions existed at two levels: at the provincial level, the land tenure issue created problems, and at the municipal level service provision became an issue as the municipality was also competing for the project to generate property tax revenue.



Figure 8 Comparison of Timelines – Sobey's and Average

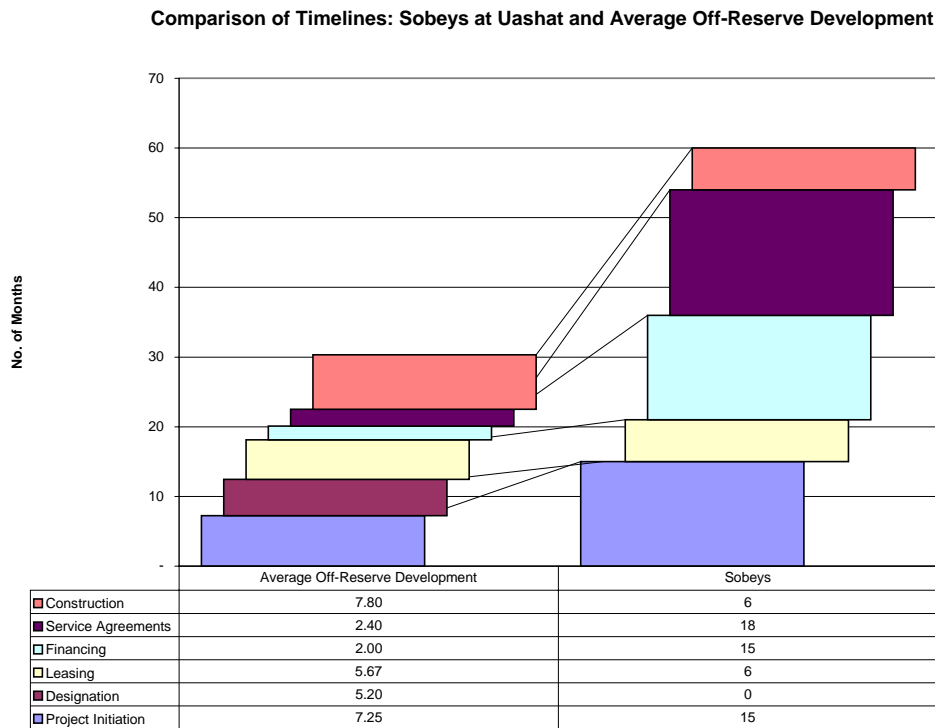


Figure 8 illustrates the project component differences between the Sobey's of Uashat mak Mani-Uteman and a typical off reserve development.

Conclusions and Summary of Recommendations

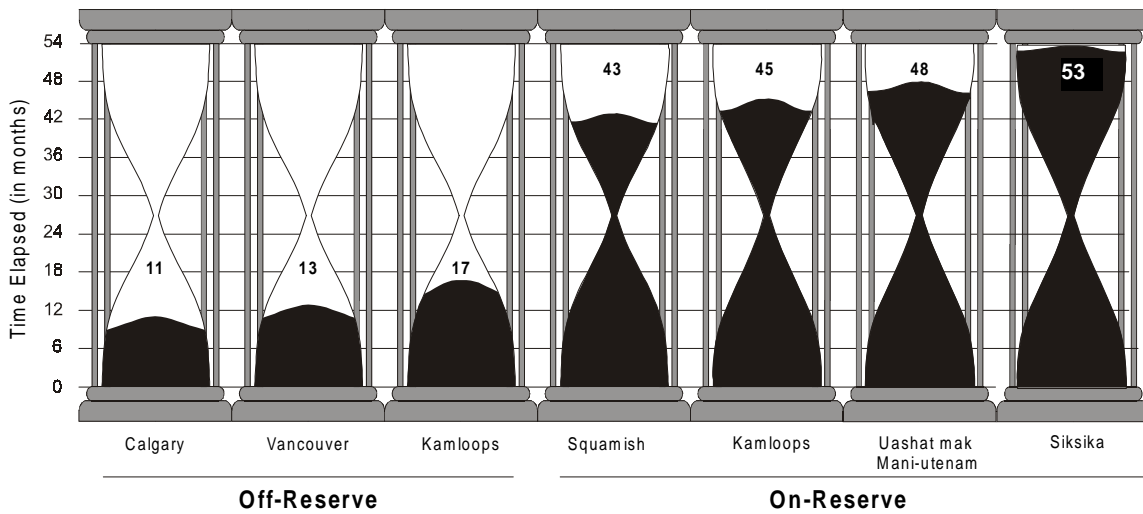
Conclusions

This study confirmed that the costs of doing business are higher on First Nation lands than in adjacent jurisdictions. This is illustrated in Figure 9 which shows the total time elapsed in development approval processes for three First Nation projects compared with their adjacent jurisdictions. Furthermore, these case studies likely *underestimated* the true extent of the cost differences between on and off-reserve projects since only successful developments were studied where the costs of doing business were relatively low in the first place.

These longer time frames both increased the professional costs incurred in putting investment deals together and caused the investor to lose revenues while waiting for projects to begin operations. These findings are significant and help to explain why First Nation economies have developed so slowly. They are part of the explanation for the under developed business class of First Nations. Finally, they help explain why First Nations have never developed the types of accountability regime that investors demand in that until very recently, First Nations have simply not had investors demanding such things.



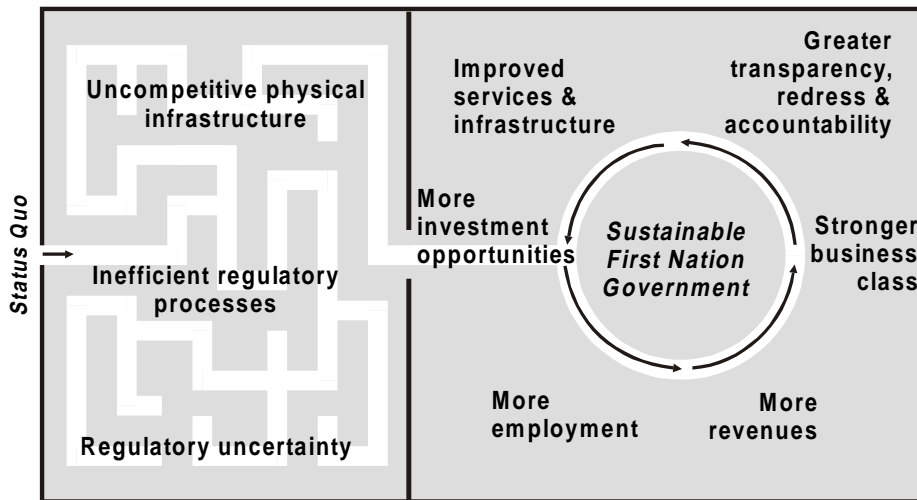
Figure 9 Total Time Elapsed In Development Approval Processes.



The simplest summation of the case study evidence is that First Nations have been left largely outside the market economy and all the benefits that derive from participating in it.

Figure 10 The Complicated Maze

The Complicated Maze to Sustainable First Nation Government

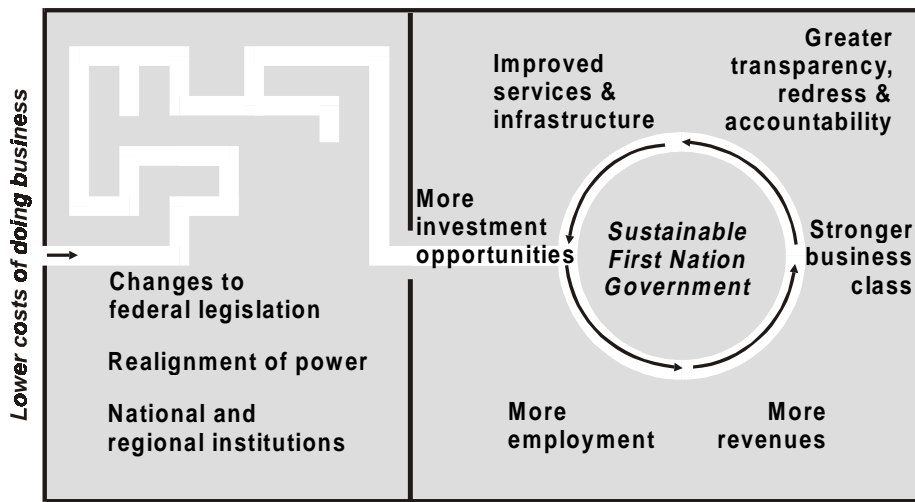


The present problem is illustrated in the figure entitled, "The Complicated Maze". It shows that difficulties in putting investment deals together have prevented the establishment of self-sustaining First Nation economies. What this picture does not show, is that investors suffer as well because investment is often diverted from what would otherwise be the best available site. The end result is reduced productivity growth for the country as a whole.



Figure 11 *The Simplified Maze*

The Simplified Maze to Sustainable First Nation Government



The intent of this study is to devise strategies for moving from the complicated maze to the second figure entitled, *"The Simplified Maze"*. This figure shows that making it easier to invest on First Nation lands supports the goal of developing self-sustaining First Nation economies.

There are three root causes of higher costs of doing business. First, most investors are unfamiliar with how to do business on a reserve. They have to learn new rules of the game, acquire new contacts, and new sources of information in order to do so. Second, most Band administrations are too thinly stretched and unfamiliar with investor needs to effectively facilitate investment proposals. As a result, proposals often bounce between departments or simply languish on someone's desk for want of simple information. The third source is the existing regulatory environment and the conflict within DIAND between carrying out its fiduciary responsibility and promoting economic growth. Essentially, most of the law, regulations, and policy surrounding First Nations were designed at a time when the economic development of First Nations was not the primary consideration. Ironically, the under development of First Nations is now often used as an argument against further developing self-government. In fact, this study has found that the lack of recognized First Nation jurisdiction is ultimately at fault.

Of these root problems, the first two would normally be self-correcting. It stands to reason that if deals are profitable enough, people will take the trouble to learn. However, the third type of problem is preventing this. Learning is based on successful experiences but regulatory problems are limiting the number of successful experiences. Furthermore, investors who do learn how to operate in this difficult environment have little incentive to share their knowledge since by doing so, they would only create rivals.

This all points to a simple conclusion. If left alone, the costs of doing business on reserve will come down only very slowly and until they come down, market forces will not work properly on reserve. Government initiatives are required to correct this problem and prevent another First Nation generation from growing up with hopelessness.



Only government can correct the third problem and government assistance could help a great deal in addressing the learning curves associated with the first two. In fact, a concerted effort that addresses all three would work best – (1) make First Nation lands more accessible to investors; (2) make First Nation governments more capable of dealing with investors; and, (3) create the regulatory changes that First Nation governments need to implement these changes.

Listed below are several specific problems that should be addressed.

Identified Problems

The case studies have identified the following as problems that raise the costs of doing business on First Nation lands.

1. Reluctance of the Crown to take risk

The Department of Indian Affairs has a tremendously complex task and is charged with seemingly conflicting assignments. The first assignment is to improve the welfare of Canada's First Nations people. The mission statement of DIAND is "*Working together to make Canada a better place for First Nations and Northern peoples*". This implies that DIAND should be encouraging economic development opportunities on reserve as these projects provide employment and the financial means to offer better quality services to the membership.

The second assignment is the fiduciary duty of the Crown. The Department of Indian Affairs, in conjunction with its legal counsel, the Department of Justice, is supposed to protect First Nation interests against bad deals and thus limit the Crown's exposure to liability in economic development projects. The end result is that the Minister of Indian Affairs must sign any lease agreement for a project on reserve.¹ The Minister must be assured that the best possible deal has been negotiated for the First Nation before signing. Anything less could cause the membership of that particular First Nation to take legal action against the Crown. A great deal of scrutiny is therefore required. Unfortunately, investment is inherently risky and scrutiny is time consuming. As a result of delays and a reluctance of the Crown to allow First Nations to share risk, First Nations are not only protected from bad deals but also lose many good ones.

2. Absence of Regulatory Harmony, Certainty and Jurisdictional Clarity

Municipalities and provinces have developed a substantial body of law and regulation to eliminate uncertainty and reassure investors. First Nation regulation over the same areas is generally less certain and more subject to challenge. This creates investor uncertainty. First Nations also have more encumbrances on their ability to write the necessary regulations. In fact, until the passage of Bill C-49, powers have been wholly lacking in some areas.

Provincial and municipal governments argue that they, and not Band governments, have jurisdiction over many matters pertinent to investors. These include authorities such as signage or closing times. This creates two problems. First, since these governments often view First Nations as their competitors, they have little incentive to devise regulation favourable to First Nation development. Second, even the possibility of challenge to the First Nation's authority is enough to create regulatory uncertainty.

¹ This will not be the case for those Bands instituting their own land codes, now that Bill C-49 has successfully passed.



First Nations are also encumbered in their ability to set regulations properly by lengthy process requirements and a lack of awareness of investor needs. As a result, investors often discover a regulatory vacuum. Some examples are that many First Nations have no heritage management, building standard or zoning by-laws. In fact, until recently they did not even have the power to draft zoning by-laws. This is improving as a result of the passage of Bill C-49. However, the exercise of these powers is still subject to cumbersome hurdles.

Investors are also less familiar with First Nation government. This creates uncertainty and, as a result, investors demand more assurance of regulatory certainty than they would from a municipality. For example, investors often demand considerable reassurance about maintaining competitive tax rates and service quality.

First Nations generally have different regulatory regimes from the rest of the province in which they are located. A combination of federal and First Nation regulations replace provincial and municipal regulations. This is not always a problem, as many municipal laws are also outdated and create red tape gridlock for investors. However, investors are at least generally familiar with municipal and provincial laws. An investor must therefore spend time learning the rules before they can invest knowledgeably on First Nation land (and of course they are still faced with the possibility of provincial challenges to this jurisdiction). Moreover, knowledge of one First Nation's regulations is not always applicable to another's. This makes it difficult to specialize in understanding First Nation investment and slows learning by investors.

3. Lack of Administrative Capacity

Many First Nations have only begun to deal with investment proposals and also lack the administrative resources that are required to address them properly. As a result, most have not developed administrative procedures for investment facilitation. By contrast, the most successful municipalities have developed administrative procedures that have personnel specifically assigned to handle investment proposals, transparent processes and fairly rapid turnaround times. These administrative deficiencies would normally correct themselves naturally over time. However, in the First Nation context, market corrections have been short-circuited by the regulatory environment and the reluctance of the Crown to take risk. First Nations have little to gain from improving their investor responsiveness so long as they are encumbered by lengthy delays in federal reviews of lease documents.

There is also an opportunity for DIAND to improve its administrative capacity for facilitating project development. Some interviewees noted that existing model lease documents are intended for simple lot developments and not large, complex projects. When they are employed for such projects, model lease documents tend to require significant modification, often at high cost.

4. Incomplete Separation of Politics and Administration

The lack of resources has caused another significant deficiency in the First Nation investment climate. Two key features of sound investment climates are the separation of political and administrative structures and of public from private functions. These separations send a positive message to investors that the regulatory environment is fair and stable. For example, the separation of politics and administration implies policy stability. It says there will be no political interference that changes the rules of the game in midstream or creates unfair rivalries. The separation of private and public ventures tells investors that they will never have to fear publicly subsidized competition. It sends a positive message about controlling the cost of government. It provides tangible guarantees that property tax revenues will go towards public services. It helps prevent conflicts of interest. It fosters the creation of a business class that is relatively unencumbered in its pursuit of profitable investment opportunities.



The problem is that resources are very limited and personnel with experience in investment facilitation are rare in First Nation jurisdictions. As a result some individuals often must perform multiple roles. For example, politicians may often perform investment facilitation that would be handled by administrative staff in other jurisdictions. As a result, there tends to be substantial blurring of politics and administration and of public and private roles.

5. Uncompetitive Infrastructure

Most large investment projects on First Nation lands have required extensive infrastructure improvements. For many First Nations, this has created a catch-22. They need the economic spin-offs that large investment projects generate; however, their economies are too weak to finance the necessary infrastructure improvements. In fact, most First Nations were unable to take advantage of the recent cost shared infrastructure program of the federal government owing to their financial weakness. DIAND policy is that it will only provide financial support for residential infrastructure intended for Band members.

These problems are exacerbated by difficulties in making use of existing municipal infrastructure. This is clearly the best use of public funds since the alternative is a pointless duplication of effort. However, in many cases where service agreements for infrastructure would be mutually beneficial, concluding these has been stymied by disputes over the proper assignment of costs, jurisdictional conflicts that prevent agreement in unrelated matters, and competition for the tax dollars that investment projects provide.

6. Poor Access to Financing

Financing of both public infrastructure and private developments presents a significant obstacle to the development of First Nation economies. Questions of security and rights of seizure create more risk and uncertainty for lenders thus increasing the cost of financing.

On the public infrastructure side, First Nations cannot access financing on the same terms as other jurisdictions. The Squamish case illustrates the difficulties that even a First Nation with a well-established record and strong revenues faces in obtaining financing. To re-iterate, they were forced to use revenues from another project to reduce the cost of borrowing (i.e. the Superstore project was deemed risky by lenders and a higher rate for borrowing was attached to it). The Squamish Nation was also limited to a relatively short financing term of only fifteen years.

The reasons include: limitations placed on the use of property for collateral by the *Indian Act*; a lack of credit history; a failure to pool borrowing requirements; limited access to own-source revenues; and the lack of certainty and conditional nature of transfer revenues. These results are pervasive in First Nation country. Both the term and cost of capital tend to be worse than those provided to other jurisdictions and as a result many infrastructure projects are rendered non-viable.

On the private development side, the case studies all involved companies with significant financial capacity (the exception was the Siksika project, which was partly funded by a federal economic development program). In all cases, the financial capacity of the developers was key in making the project successful. All of the developers had deep pockets and did not need to go to capital markets or satisfy lender requirements. This meant that financing component of the development process was not a factor in any of the case studies.



However, financing is a factor in most developments. If First Nation lands can only be developed by investors with deep pockets, then the pool of potential investors will continue to be very small. The inability of reserve sites to provide adequate security to lenders means that the majority of investors will simply steer clear of First Nation land. Sophisticated risk diversification tools may not be available. The lack of alternative financing methods will also prevent First Nation people from starting their own firms or projects on reserve. This will contribute to another problem, the lack of a business class on reserve.

7. High search costs

One of the fundamental characteristics of land both on and off-reserve is that it is not mobile. As a result, real estate markets tend to be local. There is no central real estate exchange for commercial properties that works like a stock exchange where investors can obtain information and make purchases.²

The lack of a centralized exchange means information must be obtained from primary sources. This raises the costs of acquiring information over what would be available from a centralized national exchange. As a result, “search” costs for real estate tends to be higher for other types of investment.³

These search costs are magnified with respect to sites on reserve. While this study did not assess search costs, the case study interviews suggested that these are a significant problem. It appears that many investors do not even consider First Nation sites because they do not know how to acquire the necessary information. In fact, the information often does not exist or is the property of engineering firms who have little incentive to make it freely available. Until these problems are overcome, many First Nations will not even be at the starting gate in the competition for investment.

The problem of high search costs is often dealt with by using real estate professionals off reserve. A realtor can reduce search costs by becoming a source of information concerning all properties on the reserve, adjacent lands and market conditions. The problem is that real estate professionals earn a fee for brokering deals and this creates negative perceptions on many reserves where the realtor is seen to be taking a piece of an already small pie. This is unfortunate because realtors could actually increase the exposure of First Nation lands and thus benefit the First Nation.

8. Lack of Business Class

First Nations have an under developed business class. This is hardly surprising given the costs of doing business on reserve. Developing a strong business class would certainly help lower search costs. It would also be an important vehicle for encouraging the separation of public and private roles in First Nation economies.

² Recent innovations such as Real Estate Investment Trusts are now allowing investors more options for investing in real estate.

³ Achour, Dominique; Gau, George; and Hamilton, Stanley. Real Estate Investment Analysis and Appraisal. University of British Columbia. 1992.



Recommendations

Reduce Search Costs

There are two considerations in reducing search costs. The first is improving the inventory of lands that are available for development and the second is marketing them effectively. Under the present system, it is developers themselves who must often identify appropriate sites. They must then work with the First Nation to have this land designated and put into an inventory of developable lands. Only then can they negotiate leasing and other aspects of the deal. This is a very expensive and frustrating process for a developer who may actually have to undertake two environmental assessments – one for designation and one for leasing. The inventory problem should get better as more Bands take advantage of the passage of Bill C-49.

Second, First Nations seem to do far less marketing of their jurisdiction and its sites than do other jurisdictions. Part of the problem is they make considerably less use of realtors. Additionally, First Nations lack the resources for marketing and, owing to regulatory constraints, have generally been unable to compete with municipalities. However, now that First Nations can develop their own land codes, there may be greater incentive to market the potential of locating on a First Nation and to make greater use of realtors. This marketing effort could be helped through a nationally coordinated information depository accessible via the Internet. However, considerable work must first be done in identifying what information investors require and ensuring it is available in a standardized, accessible format.

Improve Regulatory Certainty

The passage of Bill C-49 will make it easier to improve regulatory certainty on reserves. This Bill will allow First Nations to develop all aspects of land regulation pertinent to developers such as zoning, environmental assessment, and heritage designation. The Lands Advisory Board that was created with the passage of this legislation could assist by devising model codes and regulations in a manner akin to what ITAB does with property tax by-laws.

Other aspects of regulation also need to be improved. The development of national First Nation institutions through the fiscal relations process could also improve the situation. These institutions could apply the ITAB model, which provides greater certainty over property tax rates and the quality and availability of services, to other areas. The ITAB model uses a national institution to create regulatory harmony across First Nations and to provide greater guarantees of certainty than can an individual First Nation. ITAB has also worked to develop model agreements in fields such as tax rates, expenditures, and development cost charges in order to create a more certain environment.

The proposed transformation of ITAB into the First Nation Tax Commission (FNTC) will also improve regulatory certainty. The FNTC will have more powers and thus greater ability to provide investors with reassurances about tax rates and quality services.

First Nations will be limited in their ability to provide regulatory certainty until the issue of concurrent jurisdiction with provinces and municipalities can be resolved. These are particularly thorny issues because they have been linked to many others such as taxation and representation, the assignment of service responsibilities, Treaty settlement, and a new fiscal relationship. It is clear that a new fiscal relationship can be specified. This relationship must resolve the outstanding issues of jurisdictional uncertainty and provide First Nations with certainty over their revenues streams, service responsibilities, and jurisdictional authority.



Build Administrative Capacity

Several positive initiatives are currently underway. For example, the Lands Advisory Board will help build administrative capacity within First Nations by assisting them in developing and implementing their own land code, land management systems, and environmental assessment and protection regimes. They will establish a resource centre, curricula, and training programs for managers and others who perform functions pursuant to any Land Code.

The programs of the Lands Advisory Board should complement the training programs of ITAB. ITAB programs include budget based tax rates, tax administration, capital planning, and dispute resolution.

The Land Advisory Board should also consider assisting First Nations to use contract services to deal with the technical aspects of the approval process. This would promote the efficient use of scarce expertise and make it more generally available to all First Nations. Contracted services might include architects and engineers, as well as environmental assessment professionals. The use of contract services would be efficient and would help control and define costs, promote timeliness and quality control, and allow professional insurance to replace government provision.

There are two other capacity building exercises that should be undertaken.

The first is to develop economic strategies that complement land use strategies. Ideally, First Nations should either possess or have access to the administrative capacity needed to identify economic priorities, and associated infrastructure and training needs. When this capacity is in place, First Nations will not only have powers over land regulation, but will know how to use these powers for maximum economic benefit.

The second is to develop formalized investment facilitation processes within First Nations. First Nation administrations could learn from those municipalities and regions that have developed successful investment facilitation teams and procedures. Successful regions have developed transparent and accessible administration systems that respond promptly to requests for information. Specific individuals are tasked with meeting with potential investors and ensuring their requests for information are handled promptly. Approval procedures are formalized, streamlined, and clearly transparent.

DIAND should also look to improve its administrative capacity with respect to facilitating investment projects. Development professionals should be called upon to develop new model lease agreements pertinent to large complex lease projects. DIAND should also consider assigning new performance measures, which would make First Nation investment facilitation a departmental priority.

Develop Competitive Infrastructure

Physical infrastructure on First Nations has generally had to be improved in order to attract large investment projects. There are two ways to bring this about. First, by sharing existing municipal infrastructure and second, where this capacity does not exist, by having the First Nation undertake the improvements itself. Each of these options has significant obstacles.

The first approach is the most cost effective. However, it often cannot be brought about because of the jurisdictional conflicts created by a poorly specified fiscal relationship as was outlined above. As well, many municipalities view First Nations as competing with them for investment and hence, are reluctant to make it easier by entering into agreements to use their infrastructure. First Nations and municipalities are also



experiencing difficulties in working out cost sharing arrangements for soft infrastructure, which both might draw upon. The intangible nature of the benefit received from this type of infrastructure makes it difficult to negotiate cost sharing arrangements.

The establishment of the FNTC will make the negotiation of such agreements easier. ITAB has developed software that will assist in negotiations by calculating costs and developed generic service agreements. However, none of this is effective if municipalities and First Nations choose not to cooperate. Until jurisdictional conflict can be reduced through a fully specified fiscal relationship, this will remain a problem.

A government program would go a long way to addressing the infrastructure deficiency. It has long been the policy of DIAND not to fund improvements in physical infrastructure aimed at commercial developments. However, this policy does not support the goal of developing First Nation economies. There is also an equity issue. The cost shared nature of the federal government's earlier infrastructure improvement program made it very difficult for most First Nations to participate even though this is where infrastructure deficiencies are most pressing.

Improving Access to Financing

The establishment of the First Nations Financing Authority (FNFA) will assist First Nations in clearing the financing hurdle. This agency will be able to access capital markets at lower rates and under substantially better terms than can individual First Nations. This will make it easier to finance the infrastructure improvements that so many projects depend on.

However, the problem appears to go deeper than just First Nation government's access to capital. The case studies suggest that investors do not use many of the financial tools that are available for project financing when investing on First Nation lands. If there are regulatory issues that prevent this (and we did not investigate) then clearly First Nations are disadvantaged in terms of the type of investment they can attract.

The passage of Bill C-49 may alleviate part of the financing problem. It will not allow First Nation lands to be mortgaged, but it will allow interests in First Nation lands to be mortgaged. This means that leasehold interests would be subject to mortgage and seizure by third parties. This may provide some security to the financial institutions that are lending funds to projects located on First Nations lands and thus broaden the range of financial instruments that are available.

Future Projects

Short Term

Best Practices in Investment Facilitation

This project would examine how successful jurisdictions attract investment and explore the potential for applying these techniques within a First Nation context. The project seems warranted because this study found that in many instances investment proposals were slow to develop because of slow response time and unclear administrative procedures in Band administrations.



This project would examine all aspects of investment facilitation practices. (1) How these jurisdictions determine the types of investment they wish to attract. (2) How they integrate these goals into their land use and economic planning. For example, do they develop training and infrastructure programs specific to the types of investment they wish to attract? Have they developed mechanisms for industry input into these decisions? (3) How they market themselves to potential investors. This study focused on investment proposals that were sent to Band administrations. Successful jurisdictions will actively promote themselves as a site for investment. The research that produced this study suggests that most First Nations are not yet doing this except in a very rudimentary fashion. (4) How they determine investor needs and information requirements. (5) How the administration is organized to fast track investment proposals and meet the demands of potential investors for information. (6) How they work with other jurisdictions and public or private institutions.

The project would then suggest how to apply these ideas within a First Nation context. It would identify those measures which First Nations currently have the power to implement, and those which would require legislative change or agreement from other jurisdictions. It would also identify those measures which can be implemented but which would require modifications in order to work within a First Nation system of government.

This study will also work to determine the generic and industry specific information requirements of investors and what aspects of this information are currently deficient in a First Nation context. It would explore alternative means of producing and delivering this information.

Costs of Business

This project would complement the costs of doing business, by assessing the operating and capital costs associated with running a business on reserve. Essentially, it would assess all the costs associated with a project following its final approval. The aim would be to determine if First Nations are generally competitive with other jurisdictions.

Costs of Doing Business by Industry

This project would apply the methodology employed in this study to specific industries. The analysis would be applied to natural resource development projects, industrial development projects, and recreational projects. The intent would be to determine whether the conclusions of this study apply uniformly to all industries. If these costs differ widely across industries, this information could affect the economic development plans of First Nations and the proper response to the findings of this study.

Maximizing the potential of Bill C-49

This study would support and enhance the work of the Lands Advisory Board by examining the economic impact of the implementation different types of land laws. The *Act respecting the ratification and implementation of the Framework Agreement on First Nation Land Management* provides a First Nation (that is a party to the Act) with the power to make laws with respect to land. They can affect development, conservation, protection, management, use and possession of First Nation land.

This study would examine how the implementation of different types of land laws might lower the costs of doing business on reserve. The study would also enhance the First Nations Gazette by adding draft land laws thus reducing the cost of drafting regulation for First Nations in Canada.



Longer Term

Project Financing Techniques

The ECA study found some evidence that the project financing vehicles employed by developers on First Nation sites was limited. This study would explore the reasons for this. It would then suggest measures that might be undertaken to broaden the financing options available to developers.

Enhancing Business Incubation Techniques for Aboriginal Businesses

Business incubators have been used with some success in developing under developed economies. These might be very useful in a First Nation context where there is clearly an under developed business class and a shortage of start-up capital. This study would build in existing incubation techniques that are in use in Canada and propose how a First Nation business incubator be structured so that it works within the unique First Nation cultural context and allows the best possible sharing of expertise, infrastructure and overhead.

Administrative Best Practices Pilot

This project would draw upon research that identifies the statistical requirements of investors and identifies administrative best practices for investment facilitation. The pilot would be directed at a First Nation or group of First Nations. Under this pilot, the First Nation would seek to integrate its land management economic development, infrastructure and training strategies and couple these with a proactive investment facilitation strategy.



Appendix A

An Anatomy of Land Development on First Nation Land

There has been surprisingly little research on the cost of doing business on First Nation land. A full literature review, including RCAP turned up very few references and none of these was a systematic approach to estimating the costs of doing business. There were also no specific recommendations in the final RCAP report about reducing the costs of doing business. RCAP did recognize the competitive advantage that exists for off-reserve businesses.

“The comparatively low level of ownership on reserve may be attributable to several factors including difficulties obtaining financing, weak demand, historical dependency or socio-political cultures that are not supportive of business ownership. Higher levels of ownership in southern off-reserve areas may be a result from greater or more stable product/service demand, lower expected costs of doing business, and fewer obstacles from legal and socio-political factors.”

- *Patterns of Employment, Unemployment and Poverty, Four Directions Consulting Group*

A working group representing DIAND, financial institutions, and consultants in 1998 completed what was then, the most comprehensive analysis of the regulatory environment on First Nation land. This document, Understanding the Regulatory Environment for On-Reserve Lending, Frequently Asked Questions, provides a glossary of terms and brief answers to frequent questions about the First Nation regulatory environment. Although this guide does not compare the costs of doing business on versus off-reserve or analyze these differences, it does support the assertion that the cost of doing business on First Nation land is high.

“Doing business on First Nation land is a challenge ... The land-holding regime, restrictions on access, the taking of security, the administrative regimes of bands – with their different structures, powers and financing arrangements – all contribute to create a complex situation where standard mainstream ... practices are not applicable”

Although the cost of business on First Nation land associated with land rental, labor costs and capital costs are well understood, the cost of doing business on First Nation land is not. Understanding these costs requires understanding the process for development on First Nation land. Since there are many types of development this study focuses on major commercial or residential projects.

Figure 12 (following) illustrates a “general and simplified” regulatory process for a major commercial or residential development on First Nation land. Each element of this process represents a unique regulatory or process cost of doing business.



Figure A 12 The Anatomy of On Reserve Land Development

The process begins with some preliminary research either conducted by a developer or by the community. This research would probably involve answering the following questions:

- Who can lease the land – a Certificate of Possession Holder or the First Nation community?
- What is the preliminary feasibility of the project? Market interest? Proponent credibility?
- Is the land quickly available for leasing?
- Is the land serviced?
- What is a preliminary land value estimate?

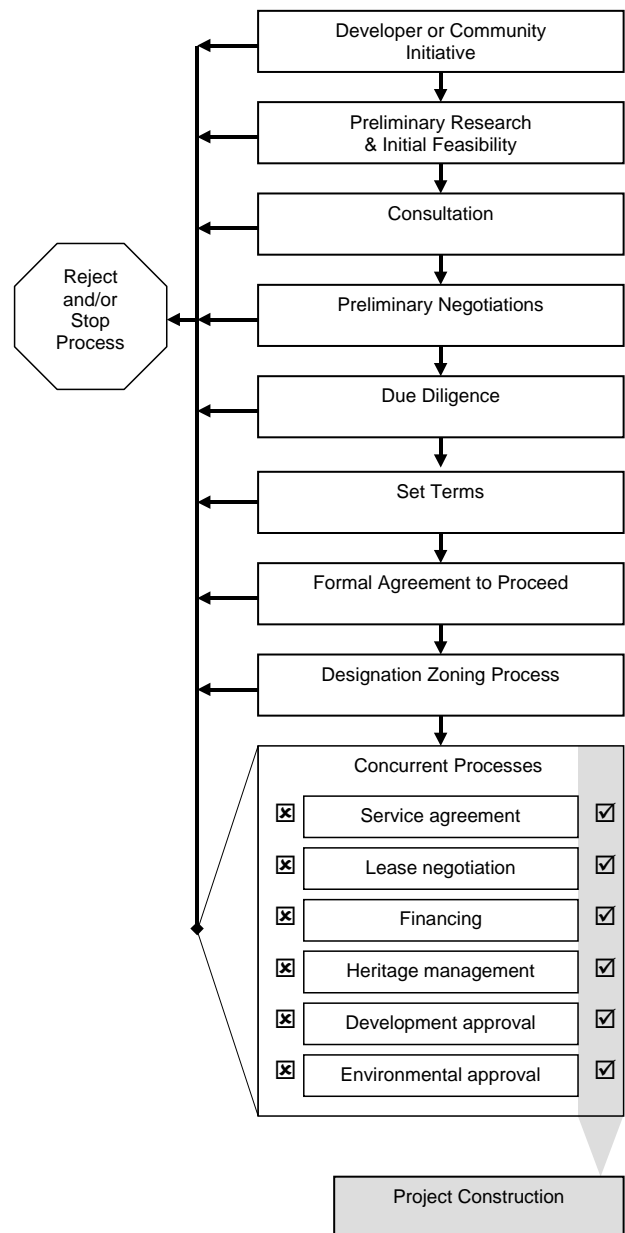
The next stage of the process is convincing the community or the certificate of possession holder that this is the highest and best use of the land. This could involve all or some of the following:

- meetings with the First Nation government staff,
- meetings with Chief and Council,
- presentations to the Community and/or
- other communications methods.

The consultation process could lead to preliminary negotiations of the terms of a deal. After preliminary negotiations it is assumed that the First Nation community will engage in further due diligence to determine the ability of the proponent to proceed with their proposal. If the proponent passes this due diligence, Chief and Council can make a formal decision to proceed.

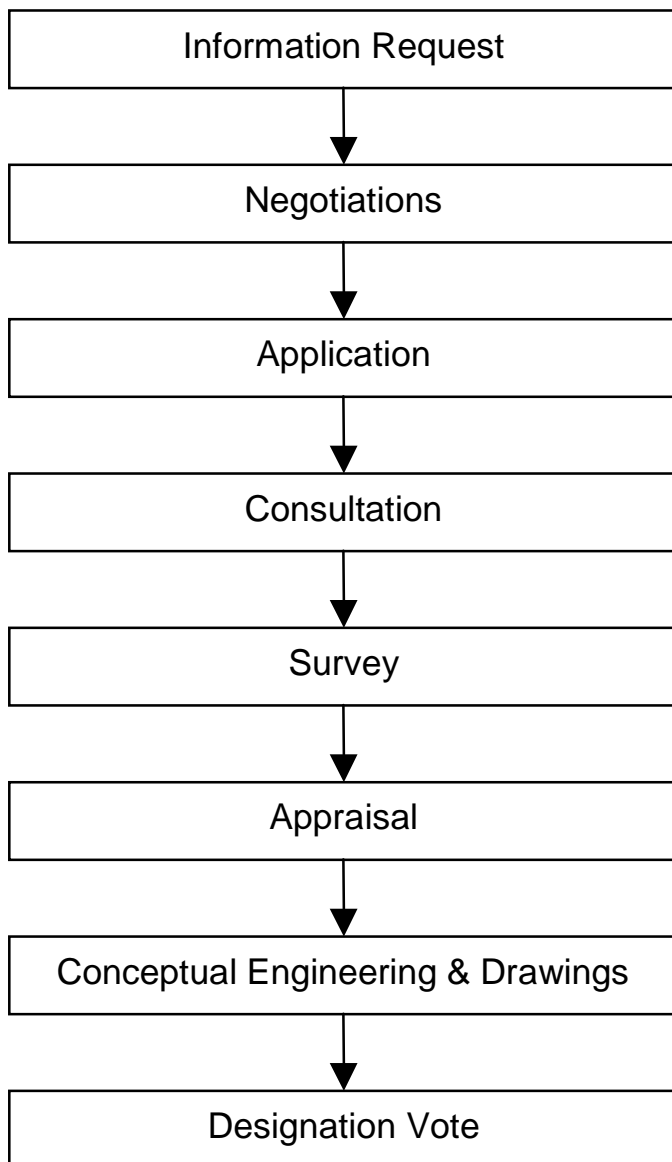
At this point, the development process runs into the *Indian Act* and the involvement of DIAND becomes necessary. The role of DIAND is to ensure that the Minister of Indian Affairs does not bear any liability for failing to protect and act in the best interests of the First Nation community members.

The land in question must be first designated to allow the First Nation or the Crown to enter into a lease agreement with the developer. Once the designation process has been approved by both the community and DIAND, a series of concurrent processes are launched. These processes include at least:



- Lease Development
- Service Agreements
- Financing
- Heritage Management
- Zoning and
- Building Standards

Figure A 13 The DIAND Designation Process



It is only after all these processes are complete that project construction begins. These processes are not formalized except where the participation of DIAND is required. This means that in many cases entirely unique by-laws and and/or processes have to be built to manage them.

Figure 13 illustrates the land designation process. The land designation process is managed by DIAND's regional land, trust services representative – the lands officer.

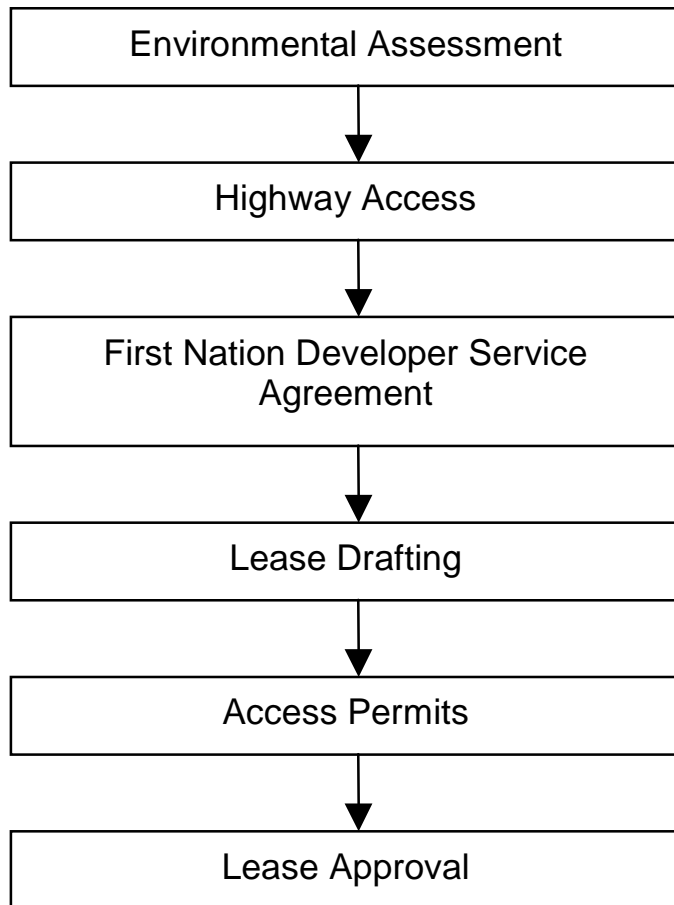
The land designation process begins with a request for information from the First Nation community to the DIAND regional office. The First Nation and developer then negotiate the terms, use and rent for the proposed designation lands. At this point, the First Nation makes an application to DIAND to request to lease the lands. This is DIAND's formal invitation to participate. The consultation phase is an opportunity for the First Nation, DIAND and the proponent to discuss the specific project requirements and assess the project's feasibility. Public Works Canada may also be involved in this part of the designation.

A survey of the exact area of the land to be leased and permitted must be developed. The survey is paid for by the proponent and involves DIAND and the federal Department of Natural Resources. After the area has been legally surveyed, an appraisal of the land is conducted. The appraisal is conducted to demonstrate that the proposed area is being used to its full potential and to determine an appropriate market rent for the land.



The penultimate phase of the land designation process is the conceptual engineering study and conceptual drawings. This study and drawings are reviewed by DIAND technical services and written approval is provided before the final phase of designation – the community vote. For the designation to be approved, at least 51% of the eligible electors must vote with at least 51% voting in favor for the vote to pass. In the event that less than 51% of the eligible voters participate, then a second vote must be held.

Figure A 14 The DIAND Lease Process



After the designation is complete, DIAND also participates in the approval of the lease. The role of DIAND in lease approval is illustrated in Figure 14. First DIAND and Public Works review an environmental assessment of the project. During the environmental assessment review, paid for by the developer, the First Nation can have input on archeological impacts.

Secondly, where applicable, highway access must be negotiated. Where highways are a provincial right of way, an Access Permit or Letter of Intent must be obtained from the Provincial Ministry of Highways. The third part of the DIAND participation, is a review of letters of intent to provide services or actual service agreements required for the development.

The lease drafted by the developer and the First Nation is then submitted to DIAND for review. If approved, the lease will be entered into the Indian Lands Registry. Once the lease has been finalized and registered, access permits over community or locatee lands must be negotiated. Each permit requires an environmental assessment report, an appraisal, and a legal survey.

Before construction can actually begin, the developer and the First Nation must finalize the service agreement, highway access and submit final design and drawings to the Lands Officer. Finally, the developer must issue a performance bond and obtain insurance certificates. Only after all of these steps are completed, can construction finally begin.



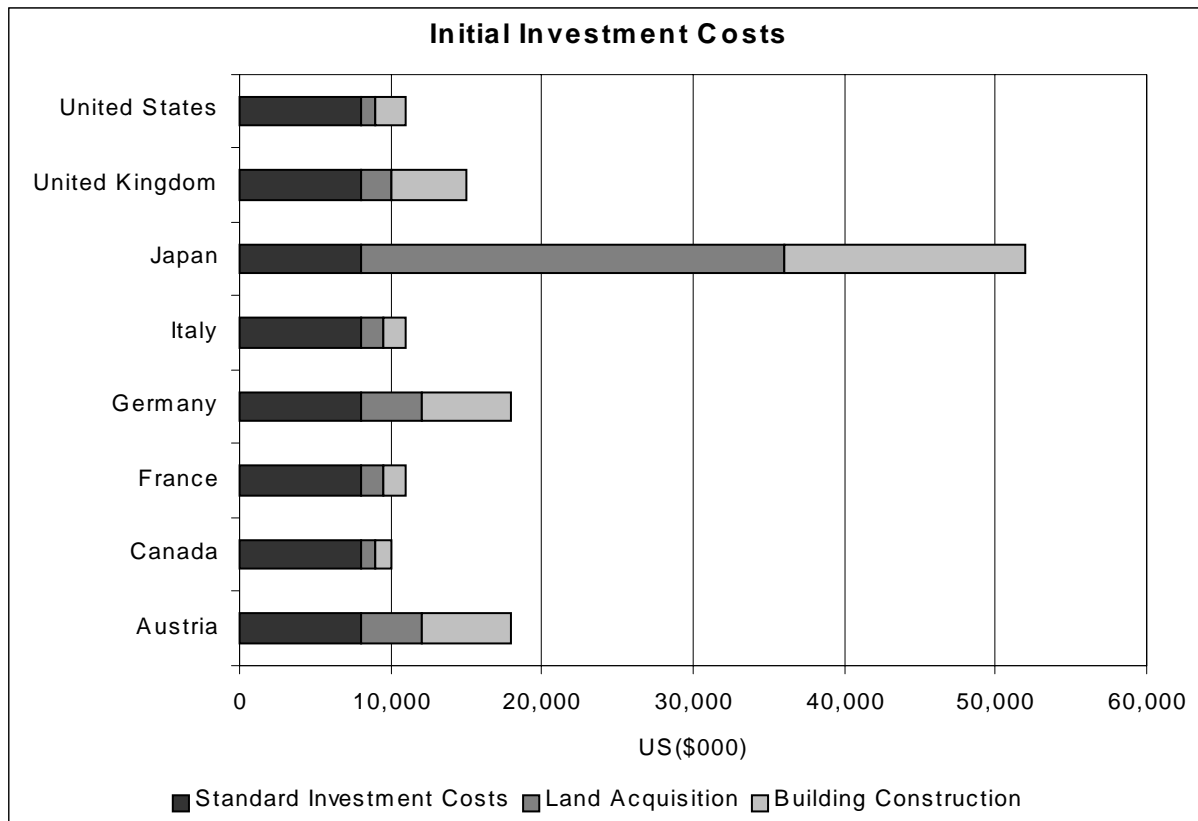
An Anatomy of Land Development Off Reserve

First Nations will have a difficult time competing for investment dollars because the costs of doing business off reserve are quite low in Canada. A number of studies have verified this, the largest was conducted by KPMG which compared the costs of doing business in 8 countries in North America, Europe and Japan. The study, released in March 1999, reflects cost data gathered through December 1998.

Although their study was more focussed on the cost of business than the cost of doing business, it does contain a number of results that are particularly relevant to this study. Their study reports Canada is the lowest cost country overall, and has the lowest costs in eight of the nine industries examined. Canada's competitive cost advantages include low land, construction, labor, electricity and telecommunications costs. For every industry examined, overall costs are lower in Canada than in the USA. Among the study's key findings are:

- Costs related to business location are, on average, 15.7 per cent lower in Canada. These costs amount to about 40 per cent of total operating costs and lead to an after-tax cost advantage of 6.7 per cent.
- Even the largest Canadian centers examined are less costly than any of their U.S. counterparts.
- Canada's overall cost advantage remains as long as the Canadian dollar exchange rate is under US\$0.87. It has been below this level since 1991. In recent months it has hovered in the US\$0.69 range.)

Figure A 15 International Initial Investment Costs Comparison



These results are particularly relevant for this study since they demonstrate that on-reserve development must compete globally with other low business cost Canadian cities. This makes any First Nation competitive disadvantages even more critical to overcome.

The scope of our cost of doing business with First Nations study roughly corresponds to KPMG's initial investment costs section. For KPMG, initial investment costs include land acquisition and occupancy costs, which would include regulatory costs. As is reflected in Figure 15 Canada has the lowest initial investment costs.

The KPMG study also identified the following location sensitive factors, which would apply to First Nation land development consideration. These are listed in order of importance in the table below.

Table A 11 Location Sensitive Factors

Site Selection Factors	% of respondents citing as important
Highway accessibility	91.5
Availability of skilled labour	88.0
Occupancy or construction costs	85.7
Labour costs	84.8
Availability of telecommunications services	82.0
Availability of Land	81.1
Local incentives	80.9
Energy availability and costs	78.9
Environmental regulations	78.6
Tax exemptions	77.9
Nearness To Major Markets	76.9
Low Union Profile	75.7
Availability of long term financing	65.0
Accessibility to major airport	60.0
Availability of unskilled labour	59.6
Worker technical programs	55.8
Raw materials availability	54.4
Near technical university	53.4
Railroad service	32.7
Waterway or ocean port accessibility	26.1

Although all aspects of First Nation competitiveness should be evaluated, this study is more focussed on the competitiveness of the processes associated with First Nation occupancy and construction costs, land availability, environmental regulations, and the availability of long term financing.

To evaluate competitiveness, it is instructive to describe and compare the development processes between municipalities and First Nations. The differences are rather startling.

Each local government has a different development approval process. To illustrate this, relatively complicated processes in Vancouver and Kamloops are contrasted to a more simple process in Calgary. These processes will be referenced throughout the case studies since for Siksika, Calgary is a competitor, for Squamish, Vancouver is a competitor and for the Kamloops Indian Band, Kamloops is a competitor.



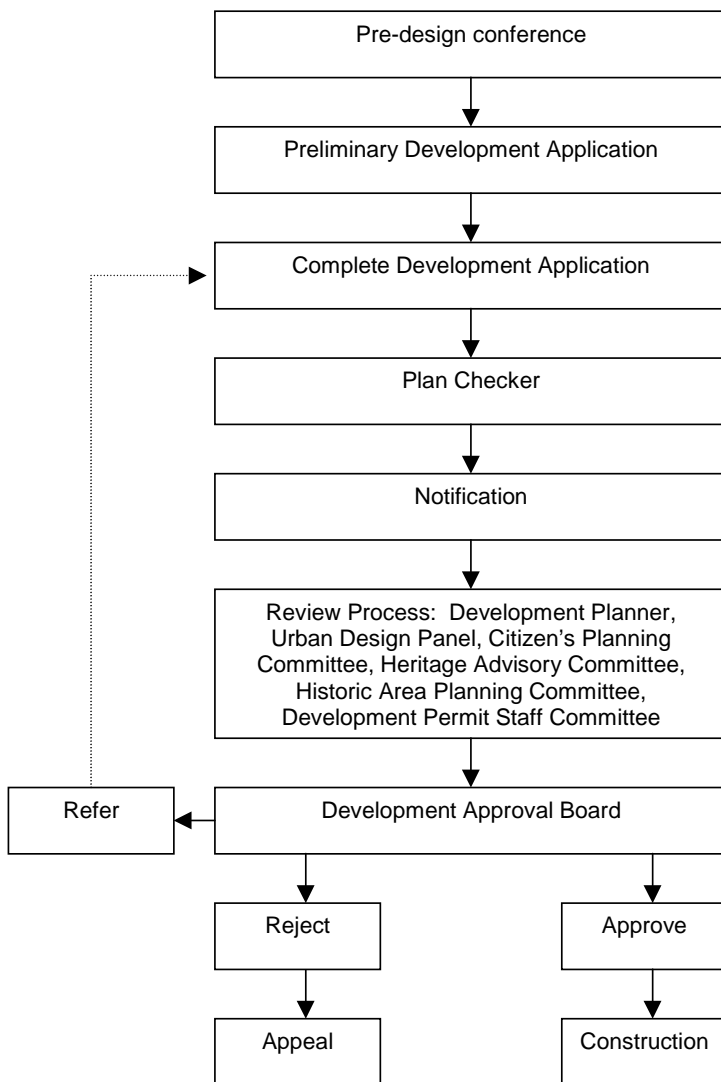
Vancouver

The Vancouver major development process is illustrated in Figure 16. This process begins with a pre-design conference between city staff and the developer to discuss timing and other basic issues.

The developer then submits a preliminary development application to the city to determine the appropriateness of the proposed use, preliminary impacts, density, and other initial considerations. This helps to establish the project's feasibility and forms the basis for submitting the complete development application.

The complete development application is subject to significant review. Initially, the Plan Checker who reviews the application's history and circulates it to the appropriate city staff reviews the application. The Plan Checker then provides details to the developer about the appropriate notification to the relevant area.

Figure A 16 Anatomy of Major Development in Vancouver



The development application is then concurrently reviewed by a number of citizen and planning committees and the Development Planner. In this manner, Vancouver is able to ensure consultation, and consent. After the concurrent review process is complete, the application is given to the Development Approval Board.

The Development Approval Board has three options. It can defer the application for resubmission with revisions. It can reject the application and let the developer appeal their decision or they can approve the application and let the development proceed to construction.

The City of Vancouver Planning Department estimates the time associated with this process as 8 weeks for the preliminary development review and an additional 8 weeks for the complete application review. The total estimate for this process is therefore approximately 4 months. The application fees submitted by the developer with the complete development application support the process. Fees vary with development size.

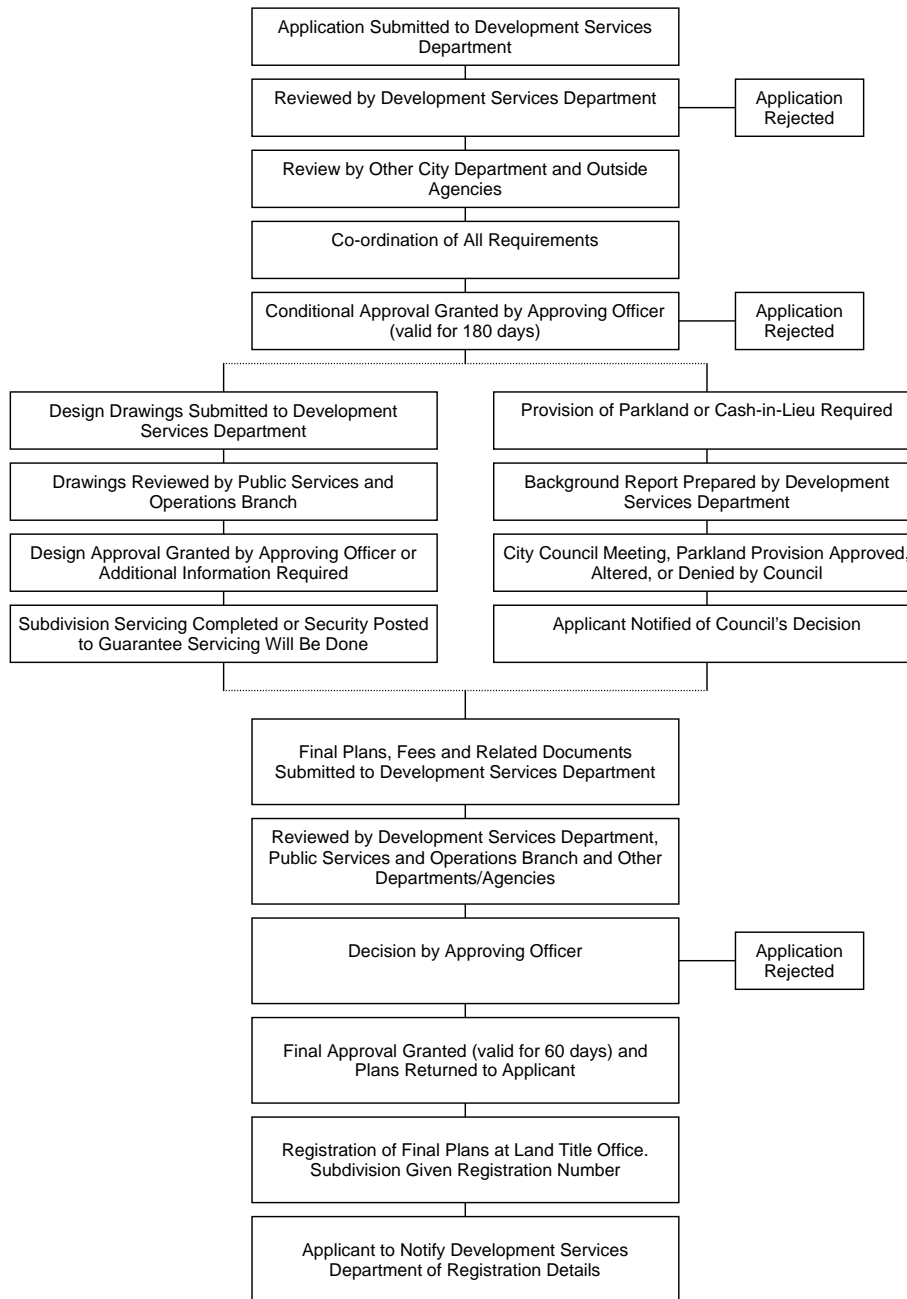


Kamloops

A rather detailed Kamloops City development approval process for major residential developments is illustrated in Figure 17. The process is based on 1988 Kamloops City documents that are still considered by the Kamloops planning department as a credible guide.

In many ways the Kamloops city development regulatory process is similar to the Vancouver process. It begins with a preliminary inquiry to form the foundation for a formal application.

Figure A 17 Anatomy of Major Land Development in Kamloops



The application is then reviewed by the city and outside agencies and if all requirements are met it is given conditional approval. Once conditional approval is received the development application either takes a non-parkland track or a parkland track. In some cases it may be required to proceed down both tracks concurrently. Most important in this part of the process is subdivision servicing and city council meeting to approve the development.

At this point, the developer can finally submit their final plans and fees to the city where, after review, the approving officer grants final approval.

The city of Kamloops estimates that it takes two months to receive a conditional approval, 2 months to receive council approval, 2 months to receive final approval and 2 months to register the development with the Land Title office. In sum, this process takes about 8 months.



Calgary

Figure A 18 Anatomy of Major Land Development in Calgary

Calgary has the shortest and most simple process for reviewing and approving applications for major commercial or residential developments. The Calgary development approval process is illustrated in Figure 18.

Like Vancouver and Kamloops, the Calgary process starts with a pre-application meeting with city staff and impacted citizens. The complete application is development and then circulated. To ensure opportunity for public consultation, an advertisement is developed for local newspapers.

The application is reviewed by the city's engineering department, planning department, by-law compliance review department and others before it is submitted to the Calgary Planning Commission. The planning commission then decides to reject or accept the application.

This seemingly streamlined process takes about 8 weeks in total. This includes about three weeks for processing, two weeks for advertising, and three weeks for decision and the appeals process.

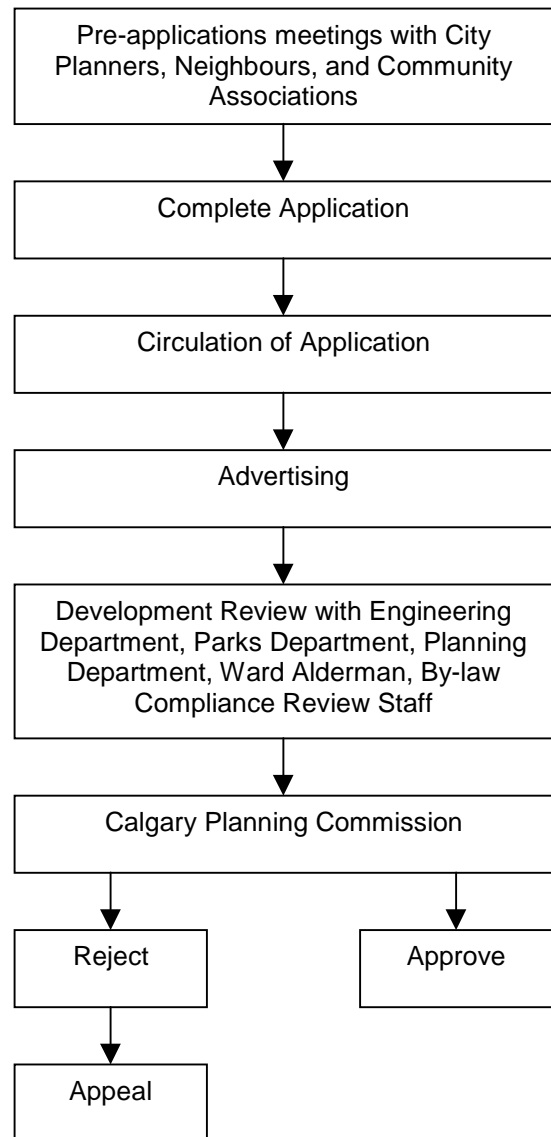
The Differences between Doing Business On and Off Reserve

There are several differences between the processes to develop land on and off reserves. One difference is the on-reserve designation process. The only comparable process off-reserve would be a process to rezone an area that requires 51 percent of all eligible municipal voters to support. Since most municipal elections have a participation rate of about 30 percent, this would be a rather onerous off-reserve process.

A second difference is the substandard state of physical and administrative infrastructure on reserves. The result of this poor physical infrastructure is that on-reserve service agreements are more complicated, more time consuming, and by extension, more expensive.

The causes of the poor administrative infrastructure are absent or incomplete regulatory framework for land development and inexperienced or untrained administrative staff. The result is once again more costly processes.

A third difference is the fact that the First Nation Council plays a role in both the development approval and the commercial negotiations. It plays both a public sector role and a private sector role. That means that the First Nation Council can impact the use and design standards that will be used on the site. The council also negotiates the commercial terms of the lease.



There is potential here for First Nations to create high quality developments on reserve because of this characteristic. The First Nation Council can negotiate for high design and construction quality within the developments on their reserve because they are both an approval authority and a commercial negotiator.

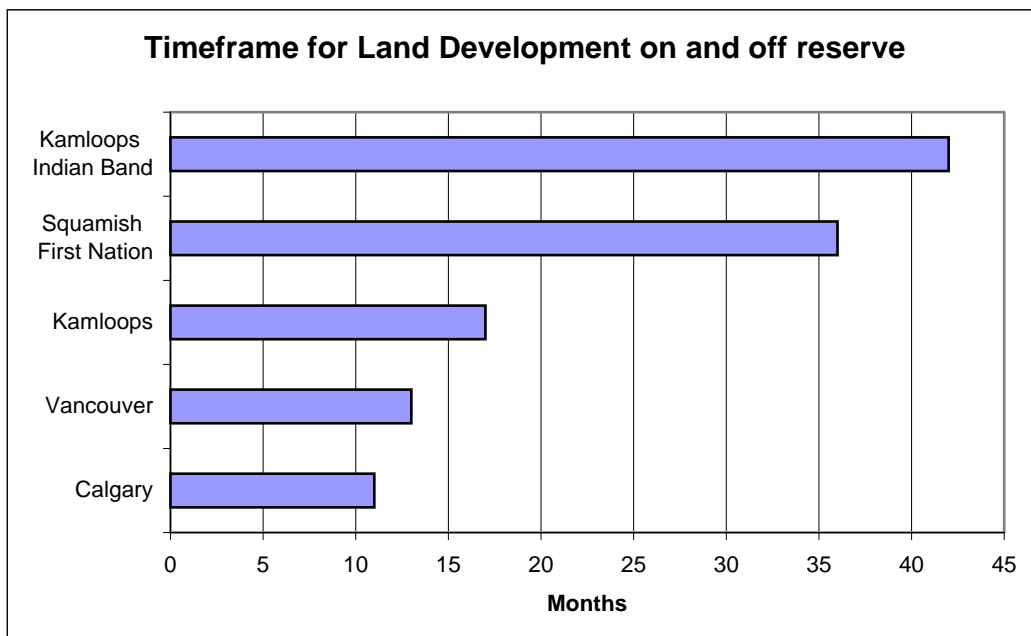
A fourth difference, and perhaps one that has the largest impact on the time it takes to complete a project on reserve, is the presence of a third party in both the development approval process and the lease negotiation. The third party is the Federal Crown. While a local authority is able to approve developments that are consistent with its bylaws a First Nation must also have the Federal Crown approve developments that it thinks are fit for its reserve. The Crown is involved through the Department of Indian Affairs and the Department of Justice.

The presence of a third party in the development approval process creates more opportunity for disagreement. The potential for disagreement raises the cost of doing business on reserve by increasing the amount of time required to complete the project.

Figure 19 summarizes the impact of these differences in land development processes for major residential or commercial projects in the cities of Calgary, Kamloops and Vancouver to the Kamloops Indian Band and the Squamish First Nation. The Kamloops Indian Band and Squamish First Nation estimates include the time to acquire the land. To provide a basis for comparison land acquisition can take as little as a month or as long as two years off reserve, but expert opinion suggests that six months is an industry norm.

As is illustrated, it takes at least twice as long and perhaps 6 times as long as to reach the construction phase on-reserve as it does off reserve. This is a potentially powerful explanation of the state of First Nation economies. This graph also illustrates the opportunity and direction for change.

Figure A 19 Timeframe for Land Development On and Off reserve



Appendix B – The Construction of an Off-Reserve Development Comparable

The hypothesis of this study is that the cost of doing business on reserve is high thus diverting investment towards sites off reserve. In order to test the hypothesis it was necessary to examine some developments off reserve that would provide a comparison. If the hypothesis was correct, then one would expect to find that the components of an on-reserve development process take longer to complete than the components of an off-reserve development process.

In order to construct an off-reserve comparable a selection of projects were researched and the average time for each component of the process was calculated. But before calculating the average it was necessary to examine the differences between on and off reserve development. While the development processes on and off reserve have many similar characteristics important differences should be noted.

The following components in the development process on-reserve were identified at the outset of the study:

- Project Initiation;
- Designation;
- Leasing;
- Service Agreements;
- Financing; and,
- Construction.

The majority of the stages are directly comparable to an off-reserve component. The exceptions are the *designation* component and the *leasing* component.

The designation component of a development on reserve is similar to a zoning process for a development off reserve. While the process is comparable, it should be noted that the participation rate required for a designation vote is higher than that generally required by a municipal vote for zoning change.

In some cases an off reserve project does not have to go through a zoning process because a site is already zoned for a particular use. This can be the case because land use plans are often in place in a municipality. These municipal plans provide developers with information about where certain types of development can be created with minimal approval cost.

While this is sometimes the case on reserve (as is seen in the Superstore case study) it is more often the case that each individual site must be designated because there is no comprehensive land use plan or designations in place. The on-reserve designation process is a reactive process as opposed to the proactive municipal zoning and land use plan. We have compared zoning process to the designation process.

It is more difficult to compare on and off reserve development processes when it comes to the leasing component. There are two issues here: the parties involved in a lease agreement and the activities that the lease governs. In any development process it is possible to have several parties involved in a transaction: the landlord, the developer, and the tenant(s). With a development on reserve the situation is complicated by



the fact that the landlord is not only the First Nation Council but also the Federal Crown consisting of the Department of Indian Affairs and the Department of Justice.

In some projects, it may be the case that the tenant and the developer are the same person. This is usually occurs where there is a single use occupying the development. In a project where there are several different uses occupying a development there is a greater chance that the developer will sublease space to individual tenants. In the case studies discussed here the major tenant and the developer were the same person.⁴

There are also two possible activities encapsulated within the lease component: land acquisition and tenant leasing. In a case off reserve a developer may have to first acquire the land from a landlord – this can be compared to the headlease arrangement that is required between a First Nation Band council on reserve and a developer. The off reserve developer can then build the space and let it to tenants. This could be compared to the sublease agreement that is discussed in the case studies (Stitsma – Superstore, SEDCo – tenants, SDEUM – Sobey's).

For our comparison we have asked off-reserve developers to identify the time it took them to acquire the land and then have it substantially leased (to the point that the project is in a positive cashflow position). We have compared this to the time it took a First Nation Council to complete headlease and sublease agreements with the tenant/developer.

In order to calculate an average real estate, developers were surveyed to provide information on projects in which they had been involved. The names of the projects and the developers have been withheld for confidentiality reasons but descriptions of the projects are provided.

Project 1 – A strip centre servicing the local trade area featuring a grocery store (IGA), a Starbuck's, an A&W (fast food restaurant), a video rental shop as tenants (among others). The centre is comprised of approximately 60,000 square feet on an approximately 5.5 acre site. The site required a zoning process and a change to the municipal official community plan (OCP).

Project 2 – A big box type grocery tenant located on over 4 acres in a building comprised of approximately 51,000 square feet. This comparable is particularly useful as the tenant is leasing the site from the landlord on a long-term lease (20 years). There was a zoning change required for this development (from industrial to commercial) but no change to the official community plan was required.

Project 3 – A build to suit light industrial building located an hour outside downtown Vancouver. The tenant is leasing over nine acres to build a 115,000 square foot building. The term of the lease is for twenty years with an option to renew. The local authority within which this site is located is keen to attract investment. There was no change required in the zoning bylaw or the official community plan.

Project 4 – A strip centre located approximately one half hour outside Vancouver's downtown. The project includes a furniture store and a fast food restaurant.

⁴ The Siksika and Kamloops developments are comprised of multiple tenants but a large portion each project is occupied by a single (anchor) tenant that has made the project viable. At Sun Rivers in Kamloops the tenant is the golf course and at Siksika the tenant is the Siksika Nation Administration.



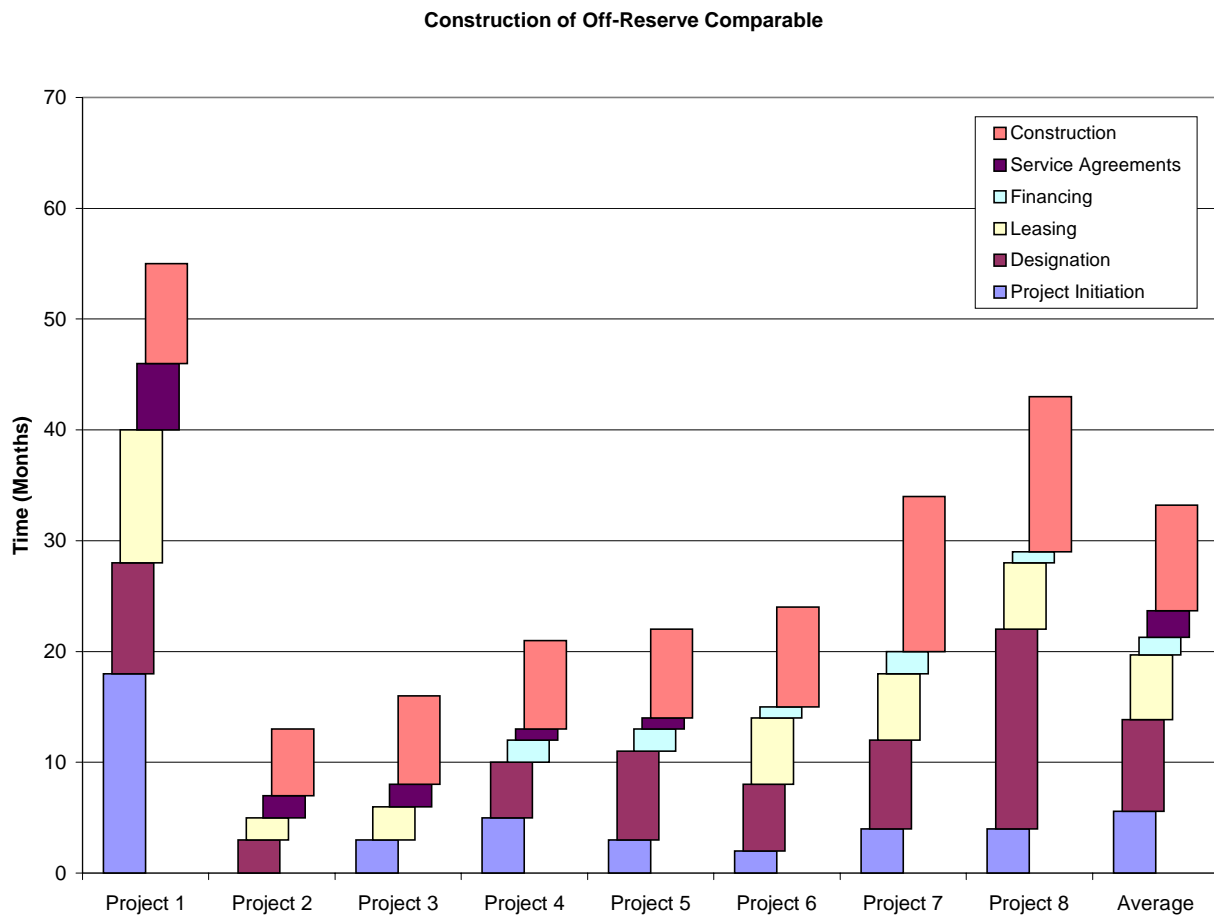
Project 5 – The restoration of light industrial warehouse in a gentrified area of Vancouver’s downtown. The building will eventually house office tenants but at the moment has passed city approvals for renovation and is under construction.

Project 6 – A power centre consisting of mainly big box retail uses. The project includes a department store, a furniture store, a house wares store and a bookstore. The project is located approximately one hour outside Vancouver.

Project 7 – A community strip centre located on Vancouver Island that includes a grocery store, a bank, a video store and a coffee shop/cappuccino bar as tenants.

Project 8 – A community strip centre located an hour outside of Vancouver. The project includes a drug store, a grocery store, and a fast food restaurant as tenants.

Figure B 20 Construction of Off Reserve Comparable



Appendix C – Summary of Recommendations

Short Term Recommendations				
Deliverable	What problem(s) does this address?	Which component(s) of the development process are reduced?	What research is required?	Which institutions are served by this research?
1. Best Practices in Investment Facilitation and Statistical Profile – A Template for the First Nation Context	<ul style="list-style-type: none"> • High search costs • Poor access to financing • Lack of administrative capacity • Incomplete separation of politics and administration • Lack of harmony and formalized procedure 	<ul style="list-style-type: none"> • Project initiation • Land use planning • Leasing • Financing • Service Agreements 	<ul style="list-style-type: none"> • A proactive strategy for attracting investment. • How can land use and economic planning facilitate investment? • How to market to potential investors? • What are investor information requirements? • How to work with other jurisdictions and institutions? 	<ul style="list-style-type: none"> • Indian Taxation Advisory Board • Lands Advisory Board • Fiscal Relations National Table • Governance Statistical Initiative
2. Costs of Business	<ul style="list-style-type: none"> • Lack of business class within First Nations communities 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • What are the costs associated with operating a business on reserve? • How do they compare with costs off reserve? 	<ul style="list-style-type: none"> • Indian Taxation Advisory Board • Lands Advisory Board • Fiscal Relations National Table



Short Term Recommendations				
Deliverable	What problem(s) does this address?	Which component(s) of the development process are reduced?	What research is required?	Which institutions are served by this research?
3. Costs of Doing Business by Industry	<ul style="list-style-type: none"> • All problems identified in this project 	<ul style="list-style-type: none"> • All stages 	<ul style="list-style-type: none"> • Application of methodology employed in this study to specific industries. • Do costs differ widely across industries? 	<ul style="list-style-type: none"> • Indian Taxation Advisory Board • Lands Advisory Board • Fiscal Relations National Table
4. Maximizing the potential of Bill C-49	<ul style="list-style-type: none"> • Lack of regulatory certainty • Lack of administrative capacity • Lack of harmony and formalized procedure 	<ul style="list-style-type: none"> • Project initiation • Land use planning • Leasing 	<ul style="list-style-type: none"> • Determine the potential economic impact of different laws • Enhance the First Nations Gazette with draft land use and development laws 	<ul style="list-style-type: none"> • Lands Advisory Board • Fiscal Relations National Table • Indian Taxation Advisory Board



Longer Term Recommendations				
Deliverable	What problem(s) does this address?	Which component(s) of the development process are reduced?	What research is required?	Which institutions are served by this research?
1. Project Finance Options for On Reserve Projects	<ul style="list-style-type: none"> • Poor access to financing • Absence of regulatory certainty • Lack of harmony and formalized procedure • Uncompetitive infrastructure 	<ul style="list-style-type: none"> • Financing • Leasing • Service agreements 	<ul style="list-style-type: none"> • Securitization - can projects be financed on the strength of future cash flows? • What public – private partnership type arrangements might be applicable on reserve? • How can First Nations enhance their credit rating and increase their attractiveness to potential investors? 	<ul style="list-style-type: none"> • Fiscal Relations National Table • Indian Taxation Advisory Board • AFN - CGA Working Group on Accountability • First Nation Finance Authority
2. Establishment of a business incubation centre	<ul style="list-style-type: none"> • Lack of First Nation business class • Lack of start-up capital on reserve 	<ul style="list-style-type: none"> • Project initiation • Financing 	<ul style="list-style-type: none"> • How can existing programs be enhanced to encourage a First Nations business class? 	<ul style="list-style-type: none"> • Indian Taxation Advisory Board • Lands Advisory Board • Fiscal Relations National Table • Aboriginal Business Canada



Longer Term Recommendations				
Deliverable	What problem(s) does this address?	Which component(s) of the development process are reduced?	What research is required?	Which institutions are served by this research?
3. Pilot Projects: <ul style="list-style-type: none"> • Administrative best practices and statistical profile • Bill C-49 Implementation 	<ul style="list-style-type: none"> • High search costs • Poor access to financing • Lack of harmony and formalized procedure • Absence of regulatory certainty 	<ul style="list-style-type: none"> • Project initiation • Land use planning • Leasing • Service agreements • Financing 	<ul style="list-style-type: none"> • Partnership with communities that are prepared to implement elements of previous research 	<ul style="list-style-type: none"> • Lands Advisory Board • Indian Taxation Advisory Board • Fiscal Relations National Table



Appendix D – Case Study Questionnaire

Development Initiation/Concept

In selecting your business site, rate the top three criteria.

- | | | |
|-----------------------------------|--------------------------------|-----------------------------|
| ___ Proximity to markets | ___ Proximity to raw materials | ___ Labour supply needs |
| ___ Business climate | ___ Wage rates | ___ Local zoning laws |
| ___ Transportation | ___ complimentary services | ___ Competition |
| ___ Police and fire protection | ___ other public services | ___ reputation of community |
| ___ Quality of life for employees | other _____ | |

Provide an overview of the development as it was originally described to the community. Include the initial estimated value of the development (assessed value if available), the phases of the project and some of the initial planned mutual benefits to each party?

Were adjacent communities supporting or competing?

What was the source of the initiative?

- | | | | |
|-------------|-----------|----------------|-----------|
| Developer | Community | Community Plan | Team List |
| Other _____ | | | |

Did the community have previous experience with projects?

- Yes No

If yes list a few

Who took the role as the communities project leader?

- | | | | |
|-------------|-------|----------------|------------|
| Staff | Chief | Council Member | Consultant |
| Other _____ | | | |

Did this person have any previous experience?

- Yes No



Who took the role as the community's project manager?

Staff

Chief

Council Member

Consultant

Other _____

Did this person have any previous project management experience?

Yes

No

Had the developer worked on a First Nation before?

Yes

No

List the participants on the community's project team. Since different team members would participate in different aspects of the project the following table might be useful:

Project Phase	Team Members
Initiation and Concept	
Land Use Planning	
Land Designation	
Lease Negotiation	
Development Approval	
Construction	

To whom was the proposal initially presented?

Chief and Council

First Nation staff

First Nation consultant

Other _____

How long did it take to prepare the presentation?

Who/Whom prepared the presentation?

Was there a plan or policy for handling project initiation costs?

Yes

No

Was the project part of the community plan?

Yes

No



How was the community informed of the initiative?

Chief and Council Communications

Community Newsletter

Meetings

Media

Other _____

How long did the community and developer expect this portion of the project to take?

How long did it take?

If it took longer than expected, what was the principle cause of delay?

Land Use Planning

What type of land was the development proposed for?

FN lands

Certificate of Possession

Did the FN have a land use plan?

Yes

No

Does the community have a zoning by-law?

Yes

No

Did the community have to zone the land for this development?

Yes

No

Did the community have to designate the land?

Yes

No

What was the term and purpose of the designation?

Describe and make a table for the phases of the designation process. How long did each phase take?
Who was involved?

How many presentations were made to the community?

Were presentation made to the media and the public?

Yes

No



Who paid for the costs of these presentations?

Developer

Community

Other _____

What was the estimated cost of these presentations?

Rate the top three barriers in the designation process?

____ Cultural Concerns

____ Previous Plans

____ Economic Concerns

____ Political Concerns

____ Community Opposition

____ Indian Act or DIAND

Other _____

Describe the barriers?

Describe how these barriers were overcome?

Other _____

How much time did the community's project management team spend on the designation? Fill in the table below:

Designation Phase	Team Members	Person Months	Salaries and Overhead

Are there any suggestions for reducing the costs in the land designation process?

What was DIAND's role in the designation process?



How long did the community and developer expect this portion of the project to take?

How long did it take?

If it took longer than expected, what was the principle cause of delay?

Land Leasing

What was the total area of the land being leased?

Did the band lease the land or was the lease done by DIAND?

What was the land value on the lease?

How was this calculated?

Were there any unique provisions in the lease?

Employment Contractors Services Tax Rates

Other _____

Describe each unique feature.

Were there any contingencies / subjects to associated with lease?

Yes No

If yes, describe below



How much time did the community's project management team spend on the land lease?

Were any presentations or material sent out to the community concerning the land lease?

Yes No

If yes, what were they, who paid for them and how much did it cost to develop them?

What were the principle barriers to the land lease agreement?

Cultural Money Political DIAND

Other _____

Provide a description of these barriers?

How were the barriers overcome?

Money Contract

Other _____

Describe solutions

Are there any suggestions for reducing the cost of land lease development?

How long did the community and developer expect this portion of the project to take?



How long did it take?

If it took longer than expected, what was the principle cause of delay?

Financing the Development

How was the project financed?

Project Financing Public/Private Partnership Public Private
First Nation Joint Venture

Other _____

Describe and draw the method for financing the project.

Did this project require significant community infrastructure changes?

Yes No

If Yes, what were the infrastructure changes required?

How were these financed?

Private Public Project financed Public/Private Partnership
Joint Venture First Nation Other _____

Describe (include shares, financing costs and term) infrastructure financing method?

What were hurdles to attracting financing?

Collateral Risk Assessment Access to capital markets Subject to's
Cooperation of other jurisdictions Amount of capital required up front Term

Other _____



Describe hurdles.

How were hurdles overcome?

How much time did the community's project management team spend on financial aspects of the development?

What is an approximate value of the community's project team's time per unit and an estimate of their total costs?

How long did the community and developer expect this portion of the project to take?

How long did it take?

If it took longer than expected, what was the principle cause of delay?

Service Agreements

Did the development require a service agreement?

Were adjacent communities supporting or competing?

Are there already some successful agreements in place?

Yes

No

If yes list



With who was it negotiated (pick one or more)?

Local Gov't

Regional District

Provincial Gov't

Other _____

What were the services required?

Water

Sewer

Police

Other (list) _____

Did the developer participate in the negotiations?

Yes

No

If yes, then how much did they spend on consultant? Legal fees?

What were the legal fees paid by the community? Consultant fees?

How much time did the community's project management team spend on the service agreement?

What is an approximate value of the community's team's time per unit and estimated total costs?

What were the principle hurdles to the service agreement?

Economic

Political

Historical

Other _____

Describe hurdles.



How were the hurdles overcome?

Suggestions for improving service agreement development.

How long did the community and developer expect this portion of the project to take?

How long did it take?

If it took longer than expected, what was the principle cause of delay?

Construction

Was there any employment of Band Members clause?

Yes

No

Does the community have building standards regulations?

Yes

No

If yes, how much time was spend enforcing them?

If no, what regulations were used?

Did the project have to undergo an environmental review?

Who conducted it?



How long did it take? How much did it cost the community, the developer?

What was the role of DIAND in the environmental review?

Were the developer fees higher than in the adjacent communities?

Yes

No

What did the community think of the process? the developer?

Suggestions for improvement?

Did the project go through a heritage planning process?

Who conducted it?

How long did it take? How much did it cost the community, the developer?

What did the community think of the process? The developer?

Suggestions for improvement?

Was there a development approval process?

How was it conducted?



Who paid for it? How much?

Suggestions for improvement?

How long did the community and developer expect this portion of the project to take?

How long did it take?

If it took longer than expected, what was the principle cause of delay?

Costs

Based on the previous section estimate the costs that fill in the table below for the community

Phase	Salaries and OH	Legal	Professional	Other	Total
Concept/Initiation					
Designation					
Leasing					
Financing					
Service agreements					
Construction					
Total					

Sources of info used _____



Estimate the costs to fill in the table below for the developer

Phase	Salaries and OH	Legal	Professional	Other	Total
Concept/Initiation					
Designation					
Leasing					
Financing					
Service agreements					
Construction					
Total					

Sources of info used _____



Overall Assessment

What were the expected benefits for the community?

Employment taxes lease revenues infrastructure
investments

What benefits did the community receive?

Employment taxes lease revenues infrastructure
investments

How long did the community and developer expect the project to take?

How long did it take?

If it took longer than expected, what was the principle cause of delay?

Would the community work with the developer again?

Yes No

Why?

Would the developer work in the community or with First Nations again?

Yes No

Why?

